



# Employment Tribunals Act 1996

## 1996 CHAPTER 17

### PART III

#### SUPPLEMENTARY

##### *Crown employment and Parliamentary staff*

#### **38 Crown employment.**

- (1) This Act has effect in relation to Crown employment and persons in Crown employment as it has effect in relation to other employment and other employees.
- (2) In this Act “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 a statutory provision.
- (3) For the purposes of the application of this Act in relation to Crown employment in accordance with subsection (1)—
  - (a) references to an employee shall be construed as references to a person in Crown employment, and
  - (b) references to a contract of employment shall be construed as references to the terms of employment of a person in Crown employment.
- (4) Subsection (1) applies to—
  - (a) service as a member of the naval, military or air forces of the Crown, and
  - (b) employment by an association established for the purposes of Part XI of the <sup>MI</sup>Reserve Forces Act 1996;

but Her Majesty may by Order in Council make any provision of this Act apply to service as a member of the naval, military or air forces of the Crown subject to such exceptions and modifications as may be specified in the Order in Council.

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### Marginal Citations

**M1** 1996 c. 14.

## 39 Parliamentary staff.

- (1) This Act has effect in relation to employment as a relevant member of the House of Lords staff or a relevant member of the House of Commons staff as it has effect in relation to other employment.
- (2) Nothing in any rule of law or the law or practice of Parliament prevents a relevant member of the House of Lords staff or a relevant member of the House of Commons staff from bringing before an [<sup>F1</sup>employment tribunal] proceedings of any description which could be brought before such a tribunal by a person who is not a relevant member of the House of Lords staff or a relevant member of the House of Commons staff.
- (3) For the purposes of the application of this Act in relation to a relevant member of the House of Commons staff—
  - (a) references to an employee shall be construed as references to a relevant member of the House of Commons staff, and
  - (b) references to a contract of employment shall be construed as including references to the terms of employment of a relevant member of the House of Commons staff.
- (4) In this Act “relevant member of the House of Lords staff” means any person who is employed under a contract of employment with the Corporate Officer of the House of Lords.
- (5) In this Act “relevant member of the House of Commons staff” has the same meaning as in section 195 of the <sup>M2</sup>Employment Rights Act 1996; and (subject to an Order in Council under subsection (12) of that section)—
  - (a) subsections (6) and (7) of that section have effect for determining who is the employer of a relevant member of the House of Commons staff for the purposes of this Act, and
  - (b) subsection (8) of that section applies in relation to proceedings brought by virtue of this section.

### Textual Amendments

**F1** Words in s. 39(2) 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

**M2** 1996 c. 18.

## General

## 40 Power to amend Act.

- (1) The Secretary of State [<sup>F2</sup>and the Lord Chancellor, acting jointly,] may by order—

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- (a) provide that any provision of this Act to which this section applies and which is specified in the order shall not apply to persons, or to employments, of such classes as may be prescribed in the order, or
- (b) provide that any provision of this Act to which this section applies shall apply to persons or employments of such classes as may be prescribed in the order subject to such exceptions and modifications as may be so prescribed.

(2) This section applies to sections 3, 8, 16 and 17 <sup>F3</sup>....

#### Textual Amendments

- F2** Words in s. 40(1) inserted (1.12.2007) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 48(1), 148, **Sch. 8 para. 38**; S.I. 2007/2709, **art. 4**
- F3** Words in s. 40(2) omitted (6.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 1 para. 8**; S.I. 2014/253, **art. 3(f)**

## 41 Orders, regulations and rules.

- (1) Any power conferred by this Act on a Minister of the Crown to make an order, and any power conferred by this Act to make regulations or rules, is exercisable by statutory instrument.
- (2) No recommendation shall be made to Her Majesty to make an Order in Council under section 38(4), <sup>F4</sup>... no order shall be made under section 3, 4(4) [<sup>F5</sup> or (6D)] [<sup>F6</sup>, 12A(12)] [<sup>F7</sup>, 28(5)] or 40, [<sup>F8</sup> and no regulations are to be made under section 37N, 37O or 37Q(5), ] unless a draft of the Order in Council [<sup>F9</sup>, order or regulations] has been laid before Parliament and approved by a resolution of each House of Parliament.
- (3) A statutory instrument containing—
  - (a) an order made by a Minister of the Crown under any other provision of this Act except Part II of Schedule 2, or
  - (b) [<sup>F10</sup>any other regulations ] or rules made under this Act,
 is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Any power conferred by this Act which is exercisable by statutory instrument includes power to make such incidental, supplementary or transitional provision as appears to the Minister exercising the power to be necessary or expedient.

#### Textual Amendments

- F4** Word in s. 41(2) omitted (6.4.2016) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 150(5)(a)**, 164(1) (with s. 150(8)); S.I. 2016/321, **reg. 3(d)**
- F5** Words in s. 41(2) inserted (25.4.2013 for specified purposes) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 11(2)**, 103(1)(i)(3)
- F6** Word in s. 41(2) inserted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 3 para. 4** (with s. 24(5), **Sch. 3 para. 4(2)**); S.I. 2014/253, **art. 3(h)**
- F7** Word in s. 41(2) inserted (25.4.2013 for specified purposes) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 12(4)**, 103(1)(i)(2) (with s. 24(2))
- F8** Words in s. 41(2) inserted (6.4.2016) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 150(5)(b)**, 164(1) (with s. 150(8)); S.I. 2016/321, **reg. 3(d)**
- F9** Words in s. 41(2) substituted (6.4.2016) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 150(5)(c)**, 164(1) (with s. 150(8)); S.I. 2016/321, **reg. 3(d)**

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**F10** Words in s. 41(3)(b) substituted (6.4.2016) by [Small Business, Enterprise and Employment Act 2015](#) (c. 26), **ss. 150(5)(c), 164(1)** (with s. 150(8)); S.I. 2016/321, reg. 3(d)

## 42 Interpretation.

- (1) In this Act [<sup>F11</sup> (except where otherwise expressly provided)] —
- [<sup>F12</sup>“ACAS” means the Advisory, Conciliation and Arbitration Service,]
  - “the Appeal Tribunal” means the Employment Appeal Tribunal,
  - “Appeal Tribunal procedure rules” shall be construed in accordance with section 30(1),
  - “appointed member” shall be construed in accordance with section 22(1) (c),
  - [<sup>F13</sup>“Certification Officer” shall be construed in accordance with section 254 of the Trade Union and Labour Relations (Consolidation) Act 1992,]
  - “conciliation officer” means an officer designated by [<sup>F14</sup>ACAS] under section 211 of the <sup>M3</sup>Trade Union and Labour Relations (Consolidation) Act 1992,
  - “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing,
  - “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, where the employment has ceased, was) employed,
  - “employers’ association” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992,
  - “employment” means employment under a contract of employment and “employed” shall be construed accordingly,
  - “[<sup>F15</sup>employment tribunal] procedure regulations” shall be construed in accordance with section 7(1),
  - [<sup>F16</sup>“representative” shall be construed in accordance with section 6(1) (in Part 1) or section 29(1) (in Part 2),]
  - “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”, in relation to the employer of an employee, means (subject to subsection (2)) a person who in consequence of a change occurring (whether by virtue of a sale or other disposition or by operation of law) in the ownership of the undertaking, or of the part of the undertaking, for the purposes of which the employee was employed, has become the owner of the undertaking or part, and
  - “trade union” has the meaning given by section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (2) The definition of “successor” in subsection (1) has effect (subject to the necessary modifications) in relation to a case where—
- (a) the person by whom an undertaking or part of an undertaking is owned immediately before a change is one of the persons by whom (whether as partners, trustees or otherwise) it is owned immediately after the change, or

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- (b) the persons by whom an undertaking or part of an undertaking is owned immediately before a change (whether as partners, trustees or otherwise) include the persons by whom, or include one or more of the persons by whom, it is owned immediately after the change,
- as it has effect where the previous owner and the new owner are wholly different persons.
- (3) For the purposes of this Act any two employers shall be treated as associated if—
- (a) one is a company of which the other (directly or indirectly) has control, or
- (b) both are companies of which a third person (directly or indirectly) has control;
- and “associated employer” shall be construed accordingly.

#### Textual Amendments

- F11** Words in s. 42(1) inserted (6.4.2016) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), [ss. 150\(6\)](#), [164\(1\)](#) (with s. 150(8)); S.I. 2016/321, reg. 3(d)
- F12** Words in s. 42(1) inserted (6.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 1 para. 9\(a\)](#); S.I. 2014/253, art. 3(f)
- F13** S. 42(1): definition of "Certification Officer" inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), [ss. 49\(8\)](#), 59; S. I. 2005/872, [art. 4](#), Sch. (with arts. 5-21)
- F14** Words in s. 42(1) substituted (6.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 1 para. 9\(b\)](#); S.I. 2014/253, art. 3(f)
- F15** Words in s. 42(1) 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](#)
- F16** Words in s. 42(1) inserted (25.6.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 21\(4\)](#), [103\(2\)](#)

#### Marginal Citations

- M3** 1992 c. 52.

### Final provisions

#### 43 Consequential amendments.

Schedule 1 (consequential amendments) shall have effect.

#### 44 Transitionals, savings and transitory provisions.

Schedule 2 (transitional provisions, savings and transitory provisions) shall have effect.

#### 45 Repeals and revocations.

The enactments specified in Part I of Schedule 3 are repealed, and the instruments specified in Part II of that Schedule are revoked, to the extent specified in the third column of that Schedule.

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**46 Commencement.**

This Act shall come into force at the end of the period of three months beginning with the day on which it is passed.

**47 Extent.**

This Act does not extend to Northern Ireland.

**48 Short title.**

This Act may be cited as [<sup>F17</sup>the Employment Tribunals Act 1996].

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**Textual Amendments**

**F17** Words in s. 48 substituted (1.8.1998) by 1998 c. 8, s. 1(2)(c) (with s. 16(2)); S.I. 1998/1658, art. 2(1), [Sch. 1](#)

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**Changes and effects yet to be applied to :**

- Pt. 3 heading words inserted by [2022 c. 35 Sch. 5 para. 23](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 7A(2F) inserted by [2022 c. 35 Sch. 4 para. 1\(2\)](#)
- s. 7B(A1) inserted by [2022 c. 35 Sch. 5 para. 4\(2\)](#)
- s. 9(2ZA) inserted by [2022 c. 35 Sch. 5 para. 5\(5\)](#)
- s. 9(5) inserted by [2022 c. 35 Sch. 5 para. 5\(9\)](#)
- s. 10(10) inserted by [2022 c. 35 Sch. 5 para. 6\(4\)](#)
- s. 29A(11) inserted by [2022 c. 35 Sch. 4 para. 1\(3\)](#)
- s. 30A inserted by [2022 c. 35 Sch. 5 para. 19](#)
- s. 37QA and cross-heading inserted by [2022 c. 35 s. 34\(4\)](#)
- s. 37QB inserted by [2022 c. 35 Sch. 5 para. 24](#)
- s. 41(1A) inserted by [2022 c. 35 Sch. 5 para. 25\(2\)](#)
- s. 41(5) inserted by [2022 c. 35 Sch. 5 para. 25\(4\)](#)
- Sch. A1 para. 21A inserted by [2022 c. 35 Sch. 4 para. 1\(4\)](#)
- Sch. A1 inserted by [2022 c. 35 Sch. 5 para. 1](#)