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## STATUTORY INSTRUMENTS

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# 2004 No. 2566 (C. 108)

## TERMS AND CONDITIONS OF EMPLOYMENT

### The Employment Relations Act 2004 (Commencement No.1 and Transitional Provisions) Order 2004

*Made - - - - - 29th September 2004*

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

#### **Citation and interpretation**

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

#### **Commencement**

3. The following provisions of the Act come into force on 1st October 2004—
  - (a) sections 29 to 32, 37 and 38;
  - (b) in Schedule 1 to the Act (minor and consequential amendments), paragraphs 8 to 12, 16 to 18, 20 and 21, 24 and 25, 31, 42(1), (2) and (4) and 43 (which contain amendments connected with sections 29 to 32);
  - (c) in Schedule 2 to the Act (repeals), the entries relating to sections 146, 148, 151(1), 152, and 155 of the 1992 Act and section 17 of the Employment Relations Act 1999(3) (which entries contain repeals connected with sections 29 to 32).

#### **Transitional Provisions**

4. The coming into force of the provisions mentioned in article 3 is subject to the transitional provisions in articles 5 to 8.

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(1) 2004 c. 24.  
(2) 1992 c. 52.  
(3) 1999 c. 26.

**5.** The sections inserted into the 1992 Act by section 29 of the Act (sections 145A to 145F) do not apply to an offer made to a complainant before 1st October 2004 or to an offer that is part of a series of similar offers made to a complainant where the first offer in the series was made to him before that date.

**6.—(1)** The amendments and repeals made by the following provisions of the Act—

- (a) section 30 and subsections (1) to (7) of section 31,
- (b) the paragraphs of Schedule 1 mentioned in article 3(b), and
- (c) the entries in Schedule 2 mentioned in article 3(c) that relate to sections of the 1992 Act, do not apply in the circumstances specified in paragraph (2).

**(2)** The circumstances are –

- (a) where the act or failure to act to which the complaint relates was done before 1st October 2004, or
- (b) where the act or failure to act to which the complaint relates is part of a series and the first act or failure in the series was done before that date.

**(3)** For the purposes of paragraph (2) an act extending over a period is done on the last day of that period and a failure to act shall be treated as done when it was decided on.

**(4)** For the purposes of paragraph (3), in the absence of evidence establishing the contrary, the employer shall be taken to decide on a failure to act—

- (a) when he does an act inconsistent with doing the failed act, or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

**7.** The amendments to section 152 of the 1992 Act made by section 32 of the Act do not apply in relation to a dismissal where “the effective date of termination”, as defined in section 97 of the Employment Rights Act 1996<sup>(4)</sup>, occurred before 1st October 2004.

**8.** The amendments made to sections 10, 11 and 12 of the Employment Relations Act 1999 by section 37 of the Act do not apply in relation to any disciplinary or grievance hearing occurring on or after 1st October 2004 that the worker was required or invited to attend before that date.

*Gerry Sutcliffe,*

Parliamentary Under Secretary of State for  
Employment , Relations Consumers and Postal  
Services,  
Department of Trade and Industry

29th September 2004

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force on 1<sup>st</sup> October 2004 sections 29 to 32, 37 and 38 of the Employment Relations Act 2004 (“the Act”).

Section 29 of the Act inserts new sections 145A to F into the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”). These sections contain protections for workers against being offered inducements by their employer not to be or to be a member of a trade union, not to take part in the activities of or not to make use of the services of their union, and not to have, or to give up having, their terms and conditions of employment determined by a collective agreement negotiated by their union.

Section 30 of the Act amends sections 146 to 151 of the 1992 Act to extend the existing protections of employees against detrimental action by their employer for being or not being a member of a trade union or for taking part in the activities of their union to workers who are not employees.

Section 31 of the Act amends sections 146 to 151 of the 1992 Act to give protections to workers against detrimental action by their employer for making use of the services of their trade union or for refusing to accept any of the inducements described above.

Section 32 of the Act amends section 152 of the 1992 Act to make the dismissal of an employee for making use of the services of his union or refusing to accept any of the inducements described above unfair.

Section 37 of the Act amends section 10 of the Employment Relations Act 1999 which confers a right on workers attending a disciplinary or grievance hearing to be accompanied by a work colleague or union official. The amendments modify the role that the person accompanying the worker may play at the hearing.

Section 38 amends section 21(1) of the Employment Tribunals Act 1996 so that there is a right of appeal to the Employment Appeal Tribunal from the decisions of employment tribunals under their jurisdiction to hear complaints of a breach of the right of a worker to be accompanied when attending disciplinary or grievance hearings.

The Order contains transitional provisions.