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## EXPLANATORY NOTE

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

This is the third commencement order made under the Employment Relations Act 2004 (“the Act”). The provisions which come into force on 6th April 2005 are listed in the Schedule to the Order. They comprise the bulk of the provisions of the Act which were not commenced by the first and second commencement orders.

The Order brings into force a number of provisions which amend Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”). These include provisions clarifying how the appropriate bargaining unit is to be determined by the Central Arbitration Committee (“CAC”) (sections 1 and 4). There are provisions addressing issues as to communications between the union and the bargaining unit, for example, section 5 which provides for the appointment of a suitable independent person to handle union correspondence with members of a bargaining unit when the CAC has accepted an application for recognition. Section 8 provides for postal voting for workers away from the workplace at the time of a workplace ballot. Section 20 confirms that, in relation to collective bargaining, “pay” does not include occupational or personal pension schemes. A number of provisions are designed to speed up the recognition or derecognition process, for example, section 2 which enables the CAC to terminate the period for reaching agreement on a bargaining unit, section 3 which requires the employer to provide certain information to the union and section 7 which enables the CAC to extend the period for the parties to reach agreement without the need for a time-consuming ballot.

The order commences section 21 of the Act which gives ACAS the power to require information from parties where it is asked to settle a recognition dispute.

A number of provisions of the Act which the Order commences deal with the law relating to industrial action. In particular, section 26 amends the protections which the 1992 Act provides for employees taking lawfully-organised, official industrial action. The protected period is extended from eight to twelve weeks and “locked out” days are disregarded when calculating this period. Section 28 introduces new matters to which a tribunal is to have regard when assessing whether an employer has taken reasonable procedural steps to resolve a dispute with a union. The duty to have regard to these matters applies where the parties have accepted that the services of a conciliator or mediator will be used.

The Order also commences provisions of the Act which deal with a number of rights for workers and employees, for example, section 40 amends the Employment Rights Act 1996 (“the 1996 Act”) to provide that an employee has the right not to be dismissed or treated detrimentally because he serves on a jury or is summoned to do so. The 1996 Act is further amended to provide that selection for redundancy, where the reason or one of the principal reasons is connected to the employee’s jury service, will be treated as an unfair dismissal. The right to bring a claim for unfair dismissal in relation to jury service is not subject to the requirement of one year’s qualifying service, nor is it restricted to those who have not reached their employer’s or the normal retirement age for their job or are otherwise below 65. Similarly, section 41 of the Act extends certain protections to those taking advantage of the statutory provisions relating to flexible working. Thus, an employee dismissed for making a flexible working application can complain of unfair dismissal even when involved in official or unofficial industrial action. Flexible workers, those applying to be so or complaining in relation to some aspect of their treatment as such are protected in respect of unfair dismissal and are not subject to the requirements as to length of service or age.

**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Sections 44 to 46 of the Act amend the National Minimum Wage Act 1998 (“the 1998 Act”) and the Agricultural Wages Act 1948. Section 44 allows for greater disclosure of information obtained by enforcement officers under the 1998 Act and section 46 introduces new provisions into the 1998 Act which enable an enforcement officer to withdraw or replace an enforcement or penalty notice.

Sections 48 to 51 of the Act make amendments to the procedures relating to the exercise of functions by the Certification Officer. These include new powers to deal with vexatious cases and litigants (sections 48 and 49 of the Act).

Section 55 of the Act deals with the provision of money for trade union modernisation. Money may only be provided for certain specified purposes and is deemed to be provided on terms which prohibit any of it being added to a union’s political fund.

The order contains a number of transitional provisions to deal with particular matters which are ongoing at the time of commencement.