
EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force the provisions of the Employment Act 2008 (2008 c. 24) (“the Act”) set out in Article 2. Those provisions come into force on 6th April 2009.

Sections 1 to 7 of the Act make certain changes to the law relating to dispute resolution in the workplace. In particular, section 1 repeals the existing statutory dispute resolution procedures (sections 29 to 33 of, and Schedules 2 to 4 to, the Employment Act 2002 (2002 c.22)), removing the statutory procedures in their entirety. Section 2 repeals a related provision about procedural unfairness in dismissal cases (section 98A Employment Rights Act 1996 (1996 c.18)). Section 3 of the Act confers on employment tribunals discretionary powers to vary awards if parties have failed to comply with a relevant Code of Practice.

Section 4 of the Act amends employment tribunal procedure for determinations without a hearing. Sections 5 and 6 make changes to the law relating to conciliation by the Advisory, Conciliation and Arbitration Service. Section 7 allows tribunals to award compensation for consequential financial loss in certain types of monetary claim. Part 1 of the Schedule to the Act contains repeals relating to sections 1 to 7 of that Act.

This Order also contains transitional provisions, detailed in the Schedule to the Order. Paragraphs 1 to 3 of the Schedule have the effect that the repeal of the existing statutory dispute resolution procedures and related repeals and amendments made by sections 1 to 3 of the Act do not take effect in certain circumstances. In circumstances where the dismissal or disciplinary procedures apply and the employer has, before 6th April 2009, either complied with the requirements of paragraph 1, 2 or 4 of Schedule 2 to the Employment Act 2002, or taken relevant disciplinary action or dismissed the employee, the repeal of the statutory dispute resolution procedures does not take effect. In circumstances where the statutory grievance procedures apply and the action on which the grievance is based occurs wholly before the 6th April, or begins on or before the 5th April and continues beyond that date, the repeal of the statutory dispute procedures and related repeals do not take effect. For claims where the action on which the grievance is based begins on or before the 5th April and continues beyond that date, the existing procedures are preserved where the employee presents a complaint to an employment tribunal or complies with paragraph 6 or 9 of Schedule 2 to the Employment Act 2002 within the relevant specified date of either 4th July 2009, or 4th October 2009.

Paragraph 5 of the Schedule to this Order provides that section 7 of the Act, which amends section 24 and section 163 of the Employment Rights Act 1996 (compensation for financial loss), does not take effect where a complaint has been presented prior to section 7 coming into force on 6th April 2009.