
STATUTORY INSTRUMENTS

2008 No. 3232 (C. 146)

EMPLOYMENT

The Employment Act 2008 (Commencement No. 1, Transitional Provisions and Savings) Order 2008

Made - - - - 15th December 2008

The Secretary of State, in exercise of the powers conferred by section 22 of the Employment Act 2008⁽¹⁾, makes the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Employment Act 2008 (Commencement No. 1, Transitional Provisions and Savings) Order 2008.

(2) In this Order:

“the 1996 Act” means the Employment Rights Act 1996⁽²⁾;

“the 2002 Act” means the Employment Act 2002⁽³⁾;

“the Regulations” means the Employment Act 2002 (Dispute Resolution) Regulations 2004⁽⁴⁾;
and

“the Act” means the Employment Act 2008.

Commencement

2. Subject to article 3, sections 1 to 7 of, and Part 1 of the Schedule to, the Act shall come into force on 6th April 2009.

Transitional provisions and savings

3. The transitional provisions and savings in the Schedule to this Order shall have effect.

(1) 2008 c. 24.

(2) 1996 c. 18. To which there are amendments not relevant to this Order.

(3) 2002 c. 22. To which there are amendments not relevant to this Order.

(4) S.I. 2004/752. To which there are amendments not relevant to this Order.

Status: This is the original version (as it was originally made).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

15th December 2008

Pat McFadden
Minister of State for Employment Relations and
Postal Affairs
Department for Business, Enterprise and
Regulatory Reform

SCHEDULE

Article 3

Part 1

Transitional Provisions and Savings

1. The following amendments and repeals made by the Act shall have effect subject to the provisions of paragraphs 2 and 3—

- (a) the repeal of sections 29 to 33, section 34(2), and of the definition of “statutory procedure” in section 40, of, and the repeal of Schedules 2 to 4 to, the 2002 Act;
- (b) the repeal of section 98A, and of the words “or 98A(1)” in sections 112(5)(a) and 120(1A)(a) of the 1996 Act;
- (c) the amendments to the Trade Union and Labour Relations (Consolidation) Act 1992(5); and
- (d) the amendment to section 124A of the 1996 Act.

2.—(1) The amendments and repeals referred to in paragraph 1 shall not have effect where on or before 5th April 2009 the standard dismissal and disciplinary procedure or the modified dismissal procedure applies by virtue of regulation 3 of the Regulations and on or before that date the employer has—

- (a) complied with the requirements of paragraph 1, 2 or 4 of Schedule 2 to the 2002 Act;
- (b) taken relevant disciplinary action against the employee; or
- (c) dismissed the employee.

(2) For the purposes of paragraph 2(1) the employer shall be treated as having complied with—

- (a) paragraph 1 of Schedule 2 to the 2002 Act where that employer has complied with paragraph 1(1) of Schedule 2 to that Act, and sent the statement or a copy of it to the employee;
- (b) paragraph 2 of Schedule 2 to the 2002 Act where the employee attends a meeting with the employer and the employee is informed that the employer is contemplating dismissing or taking disciplinary action against them;
- (c) paragraph 4 of Schedule 2 to the 2002 Act, where that employer has complied with paragraph 4(a)(i) and (ii) and 4(b) of that Schedule.

3.—(1) The amendments and repeals referred to in paragraph 1 shall not have effect where the standard grievance procedure or the modified grievance procedure applies by virtue of regulation 6 of the Regulations, and the action about which the employee complains (by complying with paragraph 6 or 9 of Schedule 2 to the 2002 Act, or presenting a complaint to an employment tribunal) occurs wholly before 6th April 2009.

(2) The amendments and repeals referred to in paragraph 1 shall not have effect where the standard grievance procedure or the modified grievance procedure applies by virtue of regulation 6 of the Regulations and—

- (a) the action which forms the basis of a grievance begins on or before 5th April 2009 and continues beyond that date; and
- (b) the employee presents a complaint to the employment tribunal or complies with paragraph 6 or 9 of Schedule 2 to the 2002 Act in relation to the grievance—

(5) 1992 c. 52.

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- (i) on or before 4th July 2009 under a jurisdiction listed in Part 2 of this Schedule and section 238 of the Trade Union and Labour Relations (Consolidation) Act 1992(6) does not apply;
- (ii) on or before 4th October 2009 under a jurisdiction listed in Part 2 of this Schedule and section 238 of the Trade Union and Labour Relations (Consolidation) Act 1992 applies;
- (iii) on or before 4th October 2009 under a jurisdiction listed in Part 3 of this Schedule.

4. The terms—

- “action”;
- “dismissed”;
- “grievance”;
- “modified dismissal procedure”;
- “modified grievance procedure”;
- “relevant disciplinary action”;
- “standard dismissal and disciplinary procedure”; and
- “standard grievance procedure”,

have the same meaning in this Order as they have in the Regulations.

5. The amendments to section 24 and section 163 of the 1996 Act, made by section 7 of the Act, shall not have effect where the complaint has been presented to the employment tribunal before 6th April 2009.

Part 2

Tribunal Jurisdictions

- Section 63 of the Sex Discrimination Act 1975(7) (discrimination in the employment field)
- Section 54 of the Race Relations Act 1976(8) (discrimination in the employment field)
- Section 145A of the Trade Union and Labour Relations (Consolidation) Act 1992(9) (inducements relating to union membership or activities)
- Section 145B of that Act(10) (inducements relating to collective bargaining)
- Section 146 of that Act (detriment in relation to union membership and activities)
- Paragraph 156 of Schedule A1 to that Act (detriment in relation to union recognition rights)
- Section 17A of the Disability Discrimination Act 1995(11) (discrimination in the employment field)

(6) 1992. Section 238(2) was amended by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8). Section 238(2A) was inserted by section 49(2), paragraph 77 of Schedule 8 to the Trade Union Reform and Employment Rights Act 1993 (c. 19) and subsequently amended by section 9 of the Employment Relations Act 1999 (c. 26), sections 40(9)(a) and (b) and 41(2)(a) and (b) of the Employment Relations Act 2004 (c. 24), section 240, paragraphs 56(1) and (15) of Schedule 1 to the Employment Rights Act 1996, and section 9, paragraphs 1 and 3(b) of Schedule 4 to the Employment Relations Act 1999. Section 238(2B) was inserted by section 16, paragraphs 1 and 2 of Schedule 5 to the Employment Relations Act 1999.

(7) 1975 c. 65.

(8) 1976 c. 74.

(9) 1992 c. 52. Section 145A was inserted by section 29 of the Employment Relations Act 2004 (c.24).

(10) 1992. Section 145B was inserted by section 29 of the Employment Relations Act 2004.

(11) 1995 c. 50. Section 17A was originally section 8 and renumbered by the Disability Discrimination Act 1995 (Amendment) Regulations 2003 (SI 2003/1673).

Section 23 of the Employment Rights Act 1996(12) (unauthorised deductions and payments)
Section 48 of that Act (detriment in employment)
Section 111 of that Act (unfair dismissal)
Section 24 of the National Minimum Wage Act 1998(13) (detriment in relation to national minimum wage)
Regulation 30 of the Working Time Regulations 1998(14) (breach of regulations)
Regulation 32 of the Transnational Information and Consultation of Employees Regulations 1999(15) (detriment relating to European Works Councils)
Regulation 28 of the Employment Equality (Religion or Belief) Regulations 2003(16) (discrimination in the employment field)
Regulation 28 of the Employment Equality (Sexual Orientation) Regulations 2003(17) (discrimination in the employment field)
Regulation 45 of the European Public Limited-Liability Company Regulations 2004(18) (detriment in employment)
Regulation 33 of the Information and Consultation of Employees Regulations 2004(19) (detriment in employment)
Paragraph 8 of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006(20) (detriment in employment)
Regulation 36 of the Employment Equality (Age) Regulations 2006(21) (discrimination in the employment field)
Regulation 34 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (22) (detriment in relation to involvement in a European Cooperative Society)
Regulation 51 of the Companies (Cross-Border Mergers) Regulations 2007(23) (detriment in relation to special negotiating body or employee participation)
Regulation 17 of the Cross-border Railways Services (Working Time) Regulations 2008(24) (breach of regulations).

Part 3

Tribunal Jurisdictions

Section 2 of the Equal Pay Act 1970(25) (equality clauses)
Section 163 of the Employment Rights Act 1996(26) (redundancy payments).

(12) 1996 c. 18.
(13) 1998 c. 39.
(14) SI 1998/1833.
(15) SI 1999/3323.
(16) SI 2003/1660.
(17) SI 2003/1661.
(18) SI 2004/2326.
(19) SI 2004/3426.
(20) SI 2006/349.
(21) SI 2006/1031.
(22) SI 2006/2059.
(23) SI 2007/2974.
(24) SI 2008/1660.
(25) 1970 c. 41.
(26) 1996 c. 18.

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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.