
STATUTORY INSTRUMENTS

2004 No. 3342 (C.156)

TERMS AND CONDITIONS OF EMPLOYMENT

The Employment Relations Act 2004 (Commencement
No.2 and Transitional Provisions) Order 2004

Made - - - - 12th December 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. 2 and Transitional Provisions) Order 2004.

2. In this Order—

“the Act” means the Employment Relations Act 2004; and

“the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992⁽²⁾.

3. In this Order, save where the text otherwise indicates, references to sections and Schedules are references to sections of and Schedules to the Act.

Commencement

4. 31st December 2004 is the appointed day for the coming into force of the following provisions of the Act—

(a) sections 15, 18, 33, 34, 36, 39 and 54;

(b) in Schedule 1 (minor and consequential amendments), paragraphs 26, 27 and 42(3); and

(c) in Schedule 2 (repeals), the entries relating to sections 67 and 176 of the 1992 Act and the entry relating to section 23(5) of the Employment Relations Act 1999⁽³⁾.

Transitional Provisions

5. The coming into force of the provisions mentioned in article 4 is subject to the transitional provisions in articles 6 to 12.

(1) 2004 c. 24.

(2) 1992 c. 52.

(3) 1999 c. 26.

6. Until the appointed day for the coming into force of sections 16, 17 and 20, in paragraph 166(2) of Schedule A1 to the 1992 Act (which section 15 substitutes for the original paragraph 166(2) of that Schedule) for “166A, 166B, 169A, 169B and 171A” there shall be substituted “169A and 169B”.

7. The amendments made to the 1992 Act by section 33 do not apply in the case of any decision by a union to exclude or expel an individual which is taken before the appointed day.

8. The amendments made to section 67 of the 1992 Act by section 34 do not apply to any complaint presented by an individual under section 66 of that Act which relates to a decision to discipline the individual which was taken by the union before the appointed day.

9. The amendments made to section 176 of the 1992 Act by section 34 do not apply to any complaint presented by an individual under section 174 of that Act which relates to a decision to exclude or expel the individual which was taken by the union before the appointed day.

10. For the purposes of articles 7 to 9, in determining whether a decision has been taken by a union before the appointed day, in the absence of evidence of a decision, regard may be had to the period within which it might reasonably be expected that a decision would be taken.

11. Notwithstanding the coming into force of paragraph 26 of Schedule 1, section 30(1)(e) of the Employment Tribunals Act 1996 (4) (“the 1996 Act”) shall continue to apply in the case of any award made on an application to the Employment Appeal Tribunal under section 67 or 176 of the 1992 Act which requires registration or proof on or after the appointed day.

12. Notwithstanding the coming into force of paragraph 27 of Schedule 1, section 36(1) to (3) of the 1996 Act shall continue to apply in the case of any sum payable in pursuance of an award of the Employment Appeal Tribunal made under section 67 or 176 of the 1992 Act which is outstanding on or after the appointed day.

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

12th December 2004

EXPLANATORY NOTE

(This note is not part of the Order)

This order brings into force on 31st December 2004 sections 15, 18, 33, 34, 36, 39 and 54 of the Employment Relations Act 2004 (“the Act”), together with paragraphs 26, 27 and 42(3) of Schedule 1 to the Act and related entries in Schedule 2 to the Act.

Section 15 amends paragraph 166 of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”). It extends the Secretary of State’s powers to amend (at the request of the Central Arbitration Committee) the provisions of Schedule A1 which provides a statutory procedure for the recognition and derecognition of trade unions for the purpose of collective bargaining.

Section 18 further amends Schedule A1 by inserting paragraphs 169A to C which provide order-making powers to enable the Secretary of State to deal with cases where, subsequent to anything being done under or for the purposes of the Schedule, the trade union to which the action related amalgamates or transfers its engagements or the employer involved ceases to be the employer (for example, by reason of a business transfer).

Section 33 amends sections 174 and 176 of the 1992 Act. Section 174 of the 1992 Act provides rights for individuals not to be excluded or expelled from a trade union. The amendment made by section 33 of the Act entitles a trade union to exclude or expel an individual wholly or mainly for taking part in activities of a political party. The amendment which section 33 makes to section 176 of the 1992 Act provides for new compensation arrangements where the tribunal considers that the exclusion or expulsion was attributable mainly to membership of a political party.

Section 34 of the Act also amends section 176, together with section 67, of the 1992 Act to provide that certain applications which were previously made to the Employment Appeal Tribunal will be made to an employment tribunal.

Section 36 replaces section 10(6) of the Employment Tribunals Act 1996 so as to clarify that the power conferred in that provision applies to any proceedings where a national security issue is at stake.

Section 39 makes a technical amendment to section 23 of the Employment Relations Act 1999 which confers certain order-making powers on the Secretary of State.

Section 54 provides a new order-making power for the Secretary of State to widen the means of voting available in ballots and elections conducted under the 1992 Act.

The Order contains transitional provisions.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provision of the Employment Relations Act 2004 were brought into force on 1st October 2004 by S.I. No. [2004/2566](#) —

<i>Provisions of the Act</i>	<i>Purpose</i>
Sections 29-32	For all purposes
Section 37	For all purposes

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

<i>Provisions of the Act</i>	<i>Purpose</i>
Section 38	For all purposes
Schedule 1 — paragraphs 8 to 12, 16 to 18, 20, 21, 24, 25, 31, 42(1), (2) and (4) and 43	For all purposes
Schedule 2 — the entries relating to sections 146, 148, 151(1), 152 and 155 of the Trade Union and Labour Relations (Consolidation) Act 1992; the entry relating to section 17 of the Employment Relations Act 1999	For all purposes