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Employment Act 1982

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ELIZABETH II



Employment Act 1982

1982 CHAPTER 46

An Act to provide for compensation out of public funds for certain past cases of dismissal for failure to conform to the requirements of a union membership agreement; to amend the law relating to workers, employers, trade unions and employers' associations; to make provision with respect to awards by industrial tribunals and awards by, and the procedure of, the Employment Appeal Tribunal; and for connected purposes.

[28th October 1982]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Employee involvement

1.—(1) Section 16 of the Companies Act 1967 (additional matters of general nature to be dealt with in directors' report) is amended as follows. Employee involvement.
1967 c. 81.

(2) In subsection (1), the following paragraph is added at the end—

“(h) in the case of relevant companies, contain a statement describing the action that has been taken during the financial year to introduce, maintain or develop arrangements aimed at—

- (i) providing employees systematically with information on matters of concern to them as employees,
- (ii) consulting employees or their representatives on a regular basis so that the views of employees can

be taken into account in making decisions which are likely to affect their interests,

(iii) encouraging the involvement of employees in the company's performance through an employees' share scheme or by some other means,

(iv) achieving a common awareness on the part of all employees of the financial and economic factors affecting the performance of the company."

(3) After subsection (1) there is inserted the following subsection—

"(1A) For the purposes of subsection (1)(h) above, a company is a "relevant company" if the average number of persons employed by it in each week during the financial year exceeds 250; and for the purposes of this subsection the number of persons employed shall be the quotient derived by dividing by the number of weeks in the financial year the number derived by ascertaining, in relation to each of those weeks, the number of persons who, under contracts of service, were employed in the week (whether throughout it or not) by the company and adding up the numbers ascertained."

(4) After subsection (7) there is inserted the following subsection—

"(8) In subsection (1)(h) above "employee" does not include a person employed to work wholly or mainly outside the United Kingdom; and for the purposes of subsection (1A) above no regard shall be had to such a person."

Unfair dismissal

Compensation
for certain
dismissals.

2.—(1) The provisions of Schedule 1 shall have effect for the purpose of enabling the Secretary of State to make payments towards compensating individuals who in certain past cases have been dismissed for failure to conform to the requirements of a union membership agreement.

(2) The expenses incurred by the Secretary of State in consequence of that Schedule shall be defrayed out of money provided by Parliament.

3. For sections 58 and 58A of the 1978 Act there shall be substituted—

“ Dismissal relating to trade union membership.

58.—(1) Subject to subsection (3), the dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—

Dismissal for non-membership of union.

- (a) was, or proposed to become, a member of an independent trade union, or
- (b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time, or
- (c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused or proposed to refuse to become or remain a member.

(2) In subsection (1) “ an appropriate time ”, in relation to an employee taking part in the activities of a trade union, means a time which either—

- (a) is outside his working hours, or
- (b) is a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in those activities ;

and in this subsection “ working hours ”, in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

(3) Subject to the following provisions of this section, the dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been fair if—

- (a) it is the practice, in accordance with a union membership agreement, for employees of the employer who are of the same class as the dismissed employee to belong to a specified independent trade union, or to one of a number of specified independent trade unions ; and
- (b) the reason (or, if more than one, the principal reason) for the dismissal was that the employee was not, or had refused or proposed to refuse to become or remain, a member of a union in accordance with the agreement ; and

(c) the union membership agreement had been approved in relation to employees of that class in accordance with section 58A through a ballot held within the period of five years ending with the time of dismissal.

(4) Subsection (3) shall not apply if the employee genuinely objects on grounds of conscience or other deeply-held personal conviction to being a member of any trade union whatsoever or of a particular trade union.

(5) Subsection (3) shall not apply if the employee—

(a) has been among those employees of the employer who belong to the class to which the union membership agreement relates since before the agreement had the effect of requiring them to be or become members of a trade union, and

(b) has not at any time while the agreement had that effect been a member of a trade union in accordance with the agreement.

(6) Subsection (3) shall not apply if—

(a) the union membership agreement took effect after 14th August 1980 in relation to the employees of the employer who are of the same class as the dismissed employee, and

(b) the employee was entitled to vote in the ballot through which the agreement was approved in accordance with section 58A or, if there have been two or more such ballots, in the first of them, and

(c) the employee has not at any time since the day on which that ballot was held been a member of a trade union in accordance with the agreement.

(7) Subsection (3) shall not apply if the dismissal was from employment in respect of which, at the time of dismissal, either—

(a) there was in force a declaration made on a complaint presented by the employee under section 4 of the Employment Act 1980 (unreasonable exclusion or expulsion from trade union), or

(b) proceedings on such a complaint were pending before an industrial tribunal,

unless the employee has at any time during the period beginning with the date of the complaint under section 4 and ending with the effective date of termination been, or failed through his own fault to become, a member of a trade union in accordance with the union membership agreement.

(8) In any case where neither subsection (4) nor subsection (7) has the effect of displacing subsection (3) and the employee—

- (a) holds qualifications which are relevant to the employment in question,
- (b) is subject to a written code which governs the conduct of those persons who hold those qualifications, and
- (c) has—
 - (i) been expelled from a trade union for refusing to take part in a strike or other industrial action, or
 - (ii) refused to become or remain a member of a trade union,

subsection (3) shall not apply if the reason (or, if more than one, the principal reason) for his refusal was, in a case falling within paragraph (c)(i), that his taking the action in question would be in breach of the code or, in a case falling within paragraph (c)(ii), that if he became, or as the case may be remained, a member he would be required to take part in a strike, or other industrial action, which would be in breach of that code.

(9) For the purposes of subsections (3)(c) and (6)(c), where votes in a ballot may be cast on more than one day, the ballot shall be treated as held on the last of those days.

(10) For the purposes of subsections (3) and (7) the reference to the time of the dismissal shall, in a case where the dismissal was with notice, be construed as a reference to the time when the notice was given.

(11) For the purposes of subsection (7) an employee shall be taken to have failed through his own fault to become a member of a trade union only if the tribunal is satisfied that the fact that he is not a member is attributable to his failure to apply (or re-apply) for membership or to his failure to accept an offer of membership.

(12) Where the employer of any employees changes in such circumstances that the employees' period of continuous employment is not broken, this section and section 58A shall have effect as if any reference to the employees of any class of the later employer included a reference to the employees of that class of the former employer.

(13) Where the reason, or one of the reasons, for the dismissal of an employee was—

- (a) his refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his failure to become or his ceasing to remain a member of any trade union or of a particular trade union or of one of a number of particular trade unions, he must make one or more payments ; or
- (b) his objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his contract of employment or in writing) under which, in the event mentioned in paragraph (a), his employer is entitled to deduct one or more sums from the remuneration payable to him in respect of his employment ;

that reason shall be treated as falling within subsections (1)(c) and (3)(b).

(14) References in this section and section 58A to a trade union include references to a branch or section of a trade union, unless the context otherwise requires.

**Ballots as
to union
membership
agreements.**

58A.—(1) Subject to the following provisions of this section, a union membership agreement shall be taken for the purposes of section 58(3)(c) to have been approved in relation to the employees of any class of an employer if a ballot has been held on the question whether the agreement should apply in relation to them and either—

- (a) not less than 80 per cent. of those entitled to vote, or
- (b) not less than 85 per cent. of those who voted, voted in favour of the agreement's application.

(2) Subsection (1)(b) shall not apply if the agreement—

- (a) has not previously been approved in accordance with this section in relation to the employer's employees of the class in question, and
- (b) came into force in relation to them after 14th August 1980.

(3) The persons entitled to vote in a ballot under this section, in relation to the application of a union membership agreement to the employees of any class of an employer, shall be all those employees who belong to that class and who—

- (a) in the case of a ballot in which votes may only be cast on one day, are in the employment of the employer on that day ; or
- (b) in any other case, are in that employment on the qualifying day.

(4) "Qualifying day" means the day specified as such by the person conducting the ballot ; but no day shall be specified which—

- (a) falls after the last of the days on which votes may be cast in the ballot ; or
- (b) is so long before that date as to be unreasonable in relation to that ballot.

(5) A ballot under this section shall be so conducted as to secure that, so far as reasonably practicable, all those entitled to vote—

- (a) have an opportunity of voting, and of doing so in secret ; and
- (b) in a case which does not fall within subsection (3)(a), know, before they cast their votes, which day has been specified as the qualifying day.

(6) In determining for the purposes of subsection (3) whether a person belongs to a class of employees, any restriction of the class by reference to membership (or objection to membership) of a trade union shall be disregarded.

(7) An agreement shall not be taken for the purposes of section 58(3)(c) to have been approved through a ballot of the employees of any class of an employer if since it was held another ballot of those employees has been held under this section and both—

- (a) less than 80 per cent. of those entitled to vote, and

(b) less than 85 per cent. of those who voted, voted in favour of the agreement's application.

(8) Subsection (7) shall not affect the determination in any case of the question whether the condition in subsection (2)(a) is satisfied."

Basic award.

4.—(1) In section 73 of the 1978 Act (calculation of basic award) after subsection (4) there shall be inserted—

"(4A) Where the dismissal is to be regarded as unfair by virtue of section 58 or 59(a), the amount of the basic award (before any reduction under the following provisions of this section) shall not be less than £2,000.

(4B) The Secretary of State may by order increase or further increase the minimum award provided for by subsection (4A), but no order shall be made under this subsection unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament."

(2) The following provisions of section 73, namely—

(a) subsection (7) (reduction of award where complainant contributed to his own dismissal, except in cases of redundancy), and

(b) in subsection (7B) (reduction of award where justified by complainant's conduct, other than conduct taken into account under subsection (7)) the words from "other" to "subsection (7)",

shall cease to have effect; and after subsection (7B) there shall be added—

"(7C) Subsection (7B) shall not apply where the reason or principal reason for the dismissal was that the employee was redundant unless the dismissal is to be regarded as unfair by virtue of section 59(a), and in that event shall apply only to so much of the basic award as is payable because of subsection (4A)."

New special award.

5.—(1) In section 71(2)(b) of the 1978 Act (additional compensation to be awarded where order under section 69 not complied with unless it was not practicable for the employer to comply) for the word "unless" there shall be substituted the words "except in a case in which the dismissal is to be regarded as unfair by virtue of section 58 or 59(a) or in which".

(2) For section 72 of the 1978 Act (which provides that compensation for unfair dismissal shall consist of a basic award and a compensatory award) there shall be substituted—

“Compensation for unfair dismissal.

72. Where a tribunal makes an award of compensation for unfair dismissal under section 68(2) or 71(2)(a) the award shall consist of—

- (a) a basic award (calculated in accordance with section 73), and
- (b) a compensatory award (calculated in accordance with section 74), and
- (c) where the dismissal is to be regarded as unfair by virtue of section 58 or 59(a), a special award (calculated in accordance with section 75A);

but paragraph (c) shall not apply unless the complainant requested the tribunal to make an order under section 69, and shall not in any event apply in a case within section 73(2).”.

(3) After section 75 of the 1978 Act there shall be inserted—

“Calculation of special award.

75A.—(1) Subject to the following provisions of this section, the amount of the special award shall be—

- (a) one week’s pay multiplied by 104, or
- (b) £10,000,

whichever is the greater, but shall not exceed £20,000.

(2) If the award of compensation is made under section 71(2)(a) then, unless the employer satisfies the tribunal that it was not practicable to comply with the preceding order under section 69, the amount of the special award shall be increased to—

- (a) one week’s pay multiplied by 156, or
- (b) £15,000,

whichever is the greater, but subject to the following provisions of this section.

(3) In a case where the amount of the basic award is reduced under section 73(5), the amount of the special award shall be reduced by the same fraction.

(4) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the special award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

(5) Where the tribunal finds that the complainant has unreasonably —

- (a) prevented an order under section 69 from being complied with ; or

- (b) refused an offer by the employer (made otherwise than in compliance with such an order) which if accepted would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed ;

the tribunal shall reduce or further reduce the amount of the special award to such extent as it considers just and equitable having regard to that finding.

(6) Where the employer has engaged a permanent replacement for the complainant, the tribunal shall not take that fact into account in determining, for the purposes of subsection (2), whether it was practicable to comply with an order under section 69 unless the employer shows that it was not practicable for him to arrange for the complainant's work to be done without engaging a permanent replacement.

(7) The Secretary of State may by order increase any of the sums of £10,000, £20,000 and £15,000 specified in subsections (1) and (2), or any of those sums as from time to time increased under this subsection, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.”.

Reduction of compensation: matters to be disregarded.

6. After section 72 of the 1978 Act there shall be inserted the following section—

“Reduction of compensation: matters to be disregarded.

72A.—(1) This section applies in any case where a tribunal makes an award of compensation for unfair dismissal under section 68(2) or 71(2)(a) and the dismissal is to be regarded as unfair by virtue of section 58 or 59(a).

(2) In such a case the tribunal, in considering whether it would be just and equitable to reduce, or further reduce, the amount of any part of the award, shall disregard any conduct or action of the complainant in so far as it constitutes—

- (a) a breach, or proposed breach, of any requirement falling within subsection (3) ;
- (b) a refusal, or proposed refusal, to comply with a requirement of a kind mentioned in section 58(13)(a) ; or

(c) an objection, or proposed objection, (however expressed) to the operation of a provision of a kind mentioned in section 58(13)(b).

(3) A requirement falls within this subsection if it is imposed on the complainant in question by or under any arrangement or contract of employment or other agreement and requires him—

- (a) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions ;
- (b) to cease to be, or refrain from becoming, a member of any trade union or of a particular trade union or of one of a number of particular trade unions ; or
- (c) not to take part in the activities of any trade union or of a particular trade union or of one of a number of particular trade unions.”.

7. For section 76A of the 1978 Act (contribution in respect of compensation) there shall be substituted— Awards against third parties.

“ Awards against third parties.

76A.—(1) If in proceedings before an industrial tribunal on a complaint against an employer under section 67 either the employer or the complainant claims—

- (a) that the employer was induced to dismiss the complainant by pressure which a trade union or other person exercised on the employer by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, and
- (b) that the pressure was exercised because the complainant was not a member of any trade union or of a particular trade union or of one of a number of particular trade unions,

the employer or the complainant may request the tribunal to direct that the person who he claims exercised the pressure be joined, or in Scotland sisted, as a party to the proceedings.

(2) A request under subsection (1) shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time ; and no such request may be made after the

tribunal has made an award under section 68(2) or an order under section 69.

(3) Where a person has been joined, or in Scotland sisted, as a party to proceedings before an industrial tribunal by virtue of subsection (1) and the tribunal—

(a) makes an award of compensation under section 68(2) or 71(2)(a) or (b), but

(b) finds that the claim mentioned in subsection (1) is well-founded,

the award may be made against that person instead of against the employer, or partly against that person and partly against the employer, as the tribunal may consider just and equitable in the circumstances.”.

Interim relief.

8.—(1) For subsection (1) of section 77 of the 1978 Act (interim relief where employee alleges unfair dismissal for union membership or activities) there shall be substituted—

“ (1) An employee who presents a complaint to an industrial tribunal under section 67 alleging that the dismissal is to be regarded as unfair by virtue of section 58 may apply to the tribunal for an order under the following provisions of this section.”.

(2) In subsection (3) of section 77 for the words from “, at least” onwards there shall be substituted “give at the appropriate time—

(a) to the employer; and

(b) in the case of a section 76A request made at least three days before the date of the hearing, to the person to whom the request relates;

a copy of the application and certificate (if any) together with notice of the date, time and place of the hearing.

(3A) In subsection (3)—

‘appropriate time’ means—

(a) in relation to paragraph (a), not later than seven days before the date of the hearing;

(b) in relation to paragraph (b), as soon as reasonably practicable; and

‘section 76A request’ means a request made under section 76A(1) for the tribunal to direct a person to be joined or sisted as a party to the proceedings.”.

9.—(1) Section 62 of the 1978 Act (dismissal in connection with a lock-out, strike or other industrial action) shall be amended in accordance with subsections (2) to (4) below.

Dismissal in connection with strike or other industrial action.

(2) In subsection (2), for paragraph (b) there shall be substituted—

“(b) that any such employee has, before the expiry of the period of three months beginning with that employee’s date of dismissal, been offered re-engagement and that the complainant has not been offered re-engagement.”.

(3) In subsection (4)(b) for sub-paragraph (ii) there shall be substituted—

“(ii) in relation to a strike or other industrial action, those employees at the establishment who were taking part in the action at the complainant’s date of dismissal; ‘establishment’, in sub-paragraph (ii), meaning that establishment of the employer at or from which the complainant works; and”.

(4) In subsection (1), after the words “an employee” there shall be inserted the words “(the ‘complainant’)”; and in subsections (1)(b) and (3) for the word “employee” there shall be substituted, in each case, the word “complainant”.

(5) In section 67 of the 1978 Act (complaint to industrial tribunal) for subsection (3) there shall be substituted—

“(3) Subsection (2) shall apply in relation to a complaint to which section 62(3) applies as if—

(a) for the references to three months there were substituted, in each case, a reference to six months; and

(b) as if for the reference to the effective date of termination there were substituted a reference to the complainant’s date of dismissal (within the meaning of section 62(4)).”.

Action short of dismissal

10.—(1) In section 23 of the 1978 Act, in subsection (2A) (rights of employees where there is a union membership agreement) in paragraph (b) for the words “section 58(3A), (3B) or (3C)” there shall be substituted the words “section 58”.

Action relating to trade union membership.

(2) For subsection (2B) of that section there shall be substituted—

“(2B) A union membership agreement having effect in relation to the employees of any class of an employer shall be disregarded for the purposes of the application of subsection (2A)(a) to those employees unless the agreement has,

for the purposes of section 58(3)(c), been approved in relation to them in accordance with section 58A through a ballot held within the period of five years ending with the date on which the action in question occurred.”

(3) After subsection (1) of that section there shall be inserted—

“(1A) Every employee shall also have the right not to have action (short of dismissal) taken against him for the purpose of enforcing a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his failure to become or his ceasing to remain a member of any trade union or of a particular trade union or of one of a number of particular trade unions, he must make one or more payments.

(1B) For the purposes of this section, any deduction made by an employer from the remuneration payable to an employee of his in respect of that employee’s employment shall, if the deduction is attributable to the employee’s failure to become or his ceasing to remain a member of any trade union or of a particular trade union or of one of a number of particular trade unions, be treated as if it were action (short of dismissal) taken against the employee for the purpose of enforcing a requirement of a kind mentioned in subsection (1A).”

(4) In subsection (1)(c) of that section, for the words “a trade union” there shall be substituted the words “any trade union or of a particular trade union or of one of a number of particular trade unions”.

Awards
against third
parties.

11. For section 26A of the 1978 Act (contribution in respect of compensation) there shall be substituted—

“Awards
against
third parties.

26A.—(1) Where—

- (a) a complaint is presented to an industrial tribunal under section 24 on the ground that action has been taken against the complainant by his employer for the purpose of compelling him to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions, and
- (b) either the employer or the complainant claims in proceedings before the tribunal that the employer was induced to take the action by pressure which a trade union or other person exercised on the employer

by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so,

the employer or the complainant may request the tribunal to direct that the person who he claims exercised the pressure be joined, or in Scotland sisted, as a party to the proceedings.

(2) A request under subsection (1) shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made a declaration under section 24(3).

(3) Where a person has been joined, or in Scotland sisted, as a party to proceedings before an industrial tribunal by virtue of subsection (1), and the tribunal—

- (a) makes an award of compensation, but
- (b) finds that the claim mentioned in subsection (1) is well-founded,

the award may be made against that person instead of against the employer, or partly against that person and partly against the employer, as the tribunal may consider just and equitable in the circumstances.”

Union membership or recognition requirements in contracts

12.—(1) Any term or condition of a contract for the supply of goods or services is void in so far as it purports—

- (a) to require that the whole, or some part, of the work done for the purposes of the contract is to be done only by persons who are not members of trade unions or not members of a particular trade union; or
- (b) to require that the whole, or some part, of such work is to be done only by persons who are members of trade unions or members of a particular trade union.

(2) A person contravenes this subsection if, on the ground of union membership, he—

- (a) fails, in a case where he maintains (in whatever form) a list of approved suppliers of goods or services or a list of persons from whom tenders for the supply of goods or services may be invited to include the name of a particular person in that list;
- (b) terminates a contract for the supply of goods or services; or

Prohibition
on union
membership
requirements.

- (c) does, in relation to a proposed contract for the supply of goods or services, any of the acts mentioned in subsection (3) below.
- (3) The acts are—
- (a) excluding a particular person from the group of persons from whom tenders for the supply of the goods or services are invited ;
 - (b) failing to permit a particular person to submit such a tender ;
 - (c) otherwise determining not to enter into a contract with a particular person for the supply of the goods or services.
- (4) For the purposes of subsection (2)(a) above a person (the “first person”) fails to include the name of another person (the “supplier”) in a list, on the ground of union membership, if the ground, or one of the grounds, for failing to include his name is either—
- (a) that if the supplier were to enter into a contract with the first person for the supply of goods or services work to be done for the purposes of the contract would, or would be likely to, be done by persons who were not members of trade unions or of a particular trade union ; or
 - (b) that if the supplier were to enter into such a contract work to be done for the purposes of the contract would, or would be likely to, be done by persons who were members of trade unions or of a particular trade union.
- (5) For the purposes of subsection (2)(b) above, a person terminates a contract on the ground of union membership if the ground, or one of the grounds, for terminating it is either—
- (a) that work done, or to be done, for the purposes of the contract has been, or is likely to be, done by persons who are not members of trade unions or of a particular trade union ; or
 - (b) that work done, or to be done, for the purposes of the contract has been, or is likely to be, done by persons who are members of trade unions or of a particular trade union.
- (6) For the purposes of subsection (2)(c) above, a person does an act on the ground of union membership if the ground, or one of the grounds, on which he does that act is either—
- (a) that, if the proposed contract were entered into with the person referred to in subsection (3) above, work

to be done for the purposes of the contract would, or would be likely to, be done by persons who are not members of trade unions or of a particular trade union ;
or

- (b) that, if the proposed contract were entered into with that person, work to be done for the purposes of the contract would, or would be likely to, be done by persons who are members of trade unions or of a particular trade union.

(7) Subsection (2) above does not create an offence but the obligation to comply with it is a duty owed to each of the following—

- (a) in a case falling within subsection (2)(a) above, the person referred to in subsection (4) as the supplier ;
(b) in a case falling within subsection (2)(b) above, any other party to the contract ;
(c) in a case falling within subsection (2)(c) above, the person referred to in subsection (3) above ; and
(d) in any case, any other person who may be adversely affected by its contravention ;

and any breach of that duty shall be actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).

13.—(1) Any term or condition of a contract for the supply of goods or services is void in so far as it purports to require any party to the contract—

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on union
recognition
requirements.

- (a) to recognise one or more trade unions (whether or not named in the contract) for the purpose of negotiating on behalf of workers, or any class of worker, employed by him ; or
(b) to negotiate or consult with, or with any official of, one or more trade unions (whether or not so named).

(2) A person contravenes this subsection if, on the ground of union exclusion, he acts in a manner falling within paragraph (a), (b) or (c) of section 12(2) of this Act.

(3) For the purposes of subsection (2) above, a person acts on the ground of union exclusion if the ground or one of the grounds for his action is that the person against whom it is taken does not, or is not likely to, recognise, negotiate or consult as mentioned in subsection (1) above.

(4) Subsection (2) above does not create an offence but the obligation to comply with it is a duty owed to each of the following—

- (a) the person against whom the action is taken ; and
- (b) any other person who may be adversely affected by the contravention,

and any breach of that duty shall be actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).

Pressure to impose union membership or recognition requirements.

14.—(1) Nothing in section 13 of the 1974 Act shall prevent an act being actionable in tort in any case where a person induces, or attempts to induce, another—

- (a) to incorporate in a contract to which that other person is a party, or proposed contract to which that other person intends to be a party, any term or condition which is, or would be, void by virtue of section 12(1) or 13(1) of this Act ; or

- (b) to contravene section 12(2) or 13(2) ;

and the act constitutes, or is one of a number of acts which together constitute, the inducement or attempted inducement.

(2) Nothing in section 13 of the 1974 Act shall prevent an act which interferes with the supply (whether or not under a contract) of goods or services, or can reasonably be expected to have such an effect, being actionable in tort in any case where subsection (3) below is satisfied and one of the facts relied upon for the purpose of establishing liability is that any person has—

- (a) induced another to break a contract of employment or interfered or induced another to interfere with its performance ; or

- (b) threatened that a contract of employment under which he or another is employed will be broken or its performance interfered with, or that he will induce another to break a contract of employment or to interfere with its performance.

(3) This subsection is satisfied if—

- (a) the reason, or one of the reasons, for doing the act is that work done or to be done in connection with the supply of the goods or services in question has been, or is likely to be, done by persons (other than persons employed by the relevant employer) who are not members of trade unions or of a particular trade union ;

- (b) the reason, or one of the reasons, for doing the act is that such work has been, or is likely to be, done by persons (other than persons employed by the relevant employer) who are members of trade unions or of a particular trade union ; or

(c) the supplier of the goods or services in question is not the relevant employer and the reason, or one of the reasons, for doing the act is that the supplier does not, or is not likely to, recognise, negotiate or consult as mentioned in section 13.

(4) In subsection (3) above “the relevant employer” means the employer under the contract of employment mentioned in subsection (2) above.

Trade disputes

15.—(1) Section 14 of the 1974 Act (immunity for trade unions and employers’ associations from certain actions in tort) shall cease to have effect. Actions in tort against trade unions and employers’ associations.

(2) Where proceedings in tort are brought against a trade union—

(a) on a ground specified in paragraph (a) or (b) of section 13(1) of the 1974 Act ; or

(b) in respect of an agreement or combination by two or more persons to do or to procure the doing of an act which, if it were done without any such agreement or combination, would be actionable in tort on such a ground ;

then, for the purpose of determining in those proceedings whether the union is liable in respect of the act in question, that act shall be taken to have been done by the union if, but only if, it was authorised or endorsed by a responsible person.

(3) For the purposes of this section, but subject to subsection (4) below, an act shall not be taken to have been authorised or endorsed by a responsible person unless it was authorised or, as the case may be, endorsed—

(a) by the principal executive committee ;

(b) by any other person who is empowered by the rules to authorise or, as the case may be, endorse acts of the kind in question ;

(c) by the president or general secretary ;

(d) by any other official who is an employed official ; or

(e) by any committee of the union to whom an employed official regularly reports.

(4) An act shall not be taken, by virtue of subsection (3)(d) or (e) above, to have been authorised or endorsed by a responsible person if—

(a) that person was, at the time in question, prevented by the rules from authorising or endorsing acts of the kind in question ; or

(b) the act has been repudiated by the principal executive committee or by the president or general secretary.

(5) For the purposes of subsection (4)(b) above, an act shall not be treated as repudiated unless—

(a) it is repudiated as soon as is reasonably practicable after the purported authorisation or endorsement of the act has come to the knowledge of the principal executive committee or, as the case may be, of the president or general secretary ; and

(b) the person who purported to authorise or endorse the act has been notified in writing and without delay that it has been repudiated.

(6) An act shall not be treated as repudiated, notwithstanding subsection (5) above, if at any time after the union concerned purported to repudiate it the principal executive committee or president or general secretary has behaved in a manner which is inconsistent with the purported repudiation.

(7) In this section—

“ general secretary ” means the official of the union concerned who holds the office of general secretary or, where there is no such office, who holds the office which is equivalent, or the nearest equivalent, to that of general secretary ;

“ official ” means an official of the union concerned ; and
 “ employed official ” means, in relation to that union, an official who is employed by it ;

“ president ” means the official of the union concerned who holds the office of president or, where there is no such office, who holds the office which is equivalent, or the nearest equivalent, to that of president ;

“ principal executive committee ” means the principal committee of the union concerned exercising executive functions, by whatever name it is known ;

“ rules ” means the written rules of the union and any other written provisions forming part of the contract between a member and the other members (or, in the case of a special register body, between a member and the body).

(8) Where, for the purpose of any proceedings, an act is by virtue of this section taken to have been done by a trade union nothing in this section shall affect the liability of any other person in those or any other proceedings in respect of that act.

16.—(1) Subject to subsection (2) below, in any proceedings in tort brought against a trade union the amount which may be awarded against the union by way of damages in those proceedings shall not exceed the appropriate limit.

Limit on damages awarded against trade unions in actions in tort

(2) Subsection (1) above does not apply to any proceedings—

(a) for any of the following resulting in personal injury to any person, that is to say negligence, nuisance or breach of duty ; or

(b) without prejudice to paragraph (a) above, for breach of duty in connection with the ownership, occupation, possession, control or use of property (whether real or personal or, in Scotland, heritable or moveable).

(3) The appropriate limit is—

(a) £10,000, if the union has less than 5,000 members ;

(b) £50,000, if it has 5,000 or more members but less than 25,000 members ;

(c) £125,000, if it has 25,000 or more members but less than 100,000 members ; and

(d) £250,000, if it has 100,000 or more members.

(4) The Secretary of State may by order vary any of the sums for the time being specified in subsection (3) above.

(5) An order under subsection (4) above—

(a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament ; and

(b) may make such transitional provision as the Secretary of State considers appropriate.

(6) In this section—

“duty” means a duty imposed by any rule of law or by or under any enactment ; and

“personal injury” includes any disease and any impairment of a person’s physical or mental condition.

(7) For the purposes of this section, in any case where a trade union consists wholly or mainly of organisations or representatives of organisations, the members of such of those organisations as have their head or main office in Great Britain shall be treated as members of the union.

17.—(1) Where in any proceedings an amount is awarded by way of damages, costs or expenses—

(a) against a trade union or employers’ association ;

(b) against trustees in whom property is vested in trust for a trade union or employers’ association, in their capacity as such and otherwise than in respect of a breach of trust on their part ; or

Recovery of sums awarded in proceedings involving trade unions and employers’ associations.

- (c) against members or officials of a trade union or employers' association on behalf of themselves and all of the members of the union or association ;

no part of that amount shall be recoverable by enforcement against any protected property.

(2) In this section " protected property " means any property—

- (a) belonging to the trustees concerned otherwise than in their capacity as such ;
- (b) belonging to any member of the union or association concerned otherwise than jointly or in common with the other members ;
- (c) belonging to any official of the union or association concerned who is neither a member nor such a trustee ;
- (d) comprised in a political fund of the union concerned ;
or
- (e) comprised in a provident benefits fund of the union concerned.

(3) In subsection (2) above—

" political fund " means a fund which is a political fund for the purposes of section 3 of the Trade Union Act 1913 and which is (and was at the time when the act in respect of which the proceedings are brought was done) subject to rules of the union which prevent property which is or has been comprised in the fund from being used for financing strikes or other industrial action ;

" provident benefits " includes any payment, expressly authorised by the rules of the union, which is made to a member during sickness or incapacity from personal injury or while out of work, or to an aged member by way of superannuation, or to a member who has met with an accident or has lost his tools by fire or theft, and includes a payment in discharge or aid of funeral expenses on the death of a member or the wife of a member, or as provision for the children of a deceased member ; and

" provident benefits fund " means a separate fund which is maintained in accordance with the rules of the union for the purpose only of providing provident benefits.

18.—(1) Section 29 of the 1974 Act (meaning of " trade dispute ") shall be amended as follows.

Meaning of
" trade
dispute ".

(2) In the opening words of subsection (1) (which define a “trade dispute” by reference to the parties to the dispute and its connection with certain matters)—

- (a) for “between employers and workers” there shall be substituted “between workers and their employer”;
- (b) the words “, or between workers and workers,” shall be omitted; and
- (c) for “is connected with” there shall be substituted “relates wholly or mainly to”.

(3) In subsection (2) (which extends the definition to certain disputes with a Minister of the Crown who does not employ the workers in question) for “employer and those workers” there shall be substituted “those workers and their employer”.

(4) In subsection (3) (which extends the definition to disputes relating to matters occurring outside Great Britain) for “occurring outside Great Britain” there is substituted “occurring outside the United Kingdom, so long as the person or persons whose actions in the United Kingdom are said to be in contemplation or furtherance of a trade dispute relating to matters occurring outside the United Kingdom are likely to be affected in respect of one or more of the matters specified in subsection (1) of this section by the outcome of that dispute”.

(5) Subsection (4) (which provides that a dispute with a trade union or employers’ association is necessarily to be treated as a dispute to which workers or, as the case may be, employers are a party) shall be omitted.

(6) In subsection (6) for the definition of “worker” there is substituted—

“ “worker”, in relation to a dispute with an employer, means—

- (a) a worker employed by that employer; or
- (b) a person who has ceased to be employed by that employer where—
 - (i) his employment was terminated in connection with the dispute; or
 - (ii) the termination of his employment was one of the circumstances giving rise to the dispute.”.

(7) The amendments made by this section do not affect the question whether an act done by a person is done by him in contemplation or furtherance of a dispute, whether he is a party to the dispute or not.

Amendment
of sections
13 and 30 of
the 1974 Act.

19.—(1) In section 13 of the 1974 Act (acts in contemplation or furtherance of trade disputes) subsection (2) shall cease to have effect.

(2) In section 30 of the 1974 Act (interpretation), in the translation of “tort” as respects Scotland, for the words from “any” to “reparation” there shall be substituted the word “delict”.

Periods of continuous employment

Change of
basis of
computation
of period of
continuous
employment.

20.—(1) The amendments set out in Schedule 2 shall have effect for the following purposes—

- (a) amending enactments which confer rights by reference to the length of an employee’s period of continuous employment so as to substitute for periods expressed in weeks or years of fifty-two weeks corresponding periods expressed in months or years of twelve months ;
- (b) modifying the computation of an employee’s period of continuous employment under Schedule 13 to the 1978 Act so as to provide for computing the length of the period in months and years of twelve months ;
- (c) making minor and consequential amendments in connection with the purposes mentioned in paragraphs (a) and (b).

(2) The amendments set out in Schedule 2 shall not apply—

- (a) where the date by reference to which the length of an employee’s period of continuous employment falls to be ascertained (“the qualification date”) is before the commencement of this section, or
- (b) where the result would be to deprive a person of any right or entitlement which he would have had if the qualification date had fallen immediately before the commencement of this section.

(3) Subject to subsection (2), the amendments set out in Schedule 2 shall, so far as they relate to the computation of the length of a period of continuous employment, apply to periods before the commencement of this section as they apply to later periods.

(4) Nothing in this section shall affect—

- (a) any order made before the commencement of this section under section 18, 65 or 96 of the 1978 Act or any corresponding earlier enactment (exclusion of certain sections where equivalent protection afforded by collective agreement or wages order) ; or
- (b) the operation of any agreement or wages order to which such an order relates or the operation of any provision

of the 1978 Act in relation to such an agreement or wages order.

Supplemental

- 21.—**(1) In this Act—
- | | |
|---|--|
| <p>“ the 1974 Act ” means the Trade Union and Labour Relations Act 1974 ;</p> <p>“ the 1975 Act ” means the Employment Protection Act 1975 ;</p> <p>“ the 1976 Act ” means the Trade Union and Labour Relations (Amendment) Act 1976 ;</p> <p>“ the 1978 Act ” means the Employment Protection (Consolidation) Act 1978 ;</p> <p>“ the 1980 Act ” means the Employment Act 1980 ;</p> <p>“ employers’ association ”, “ official ” (in relation to a trade union), “ special register body ”, “ tort ” (as respects Scotland), “ trade union ” and “ worker ” have the same meanings as in the 1974 Act.</p> | <p>Interpretation, minor and consequential amendments and repeals.</p> <p>1974 c. 52.</p> <p>1975 c. 71.</p> <p>1976 c. 7.</p> <p>1978 c. 44.</p> <p>1980 c. 42.</p> |
|---|--|

(2) Schedule 3 to this Act (which makes minor and consequential amendments) shall have effect.

(3) The enactments mentioned in Schedule 4 to this Act are hereby repealed to the extent set out in the third column.

22.—(1) This Act may be cited as the Employment Act 1982. Short title, commencement and extent.

(2) This Act, except section 2 and Schedule 1, shall not come into operation until such day as the Secretary of State may appoint by order made by statutory instrument, and different days may be so appointed for different purposes.

(3) An order under this section may contain such transitional and supplemental provisions as appear to the Secretary of State to be necessary or expedient.

(4) Without prejudice to subsection (3) above—

(a) an order under this section bringing section 3 above into operation may provide that, for such period as may be specified in the order, section 58 of the 1978 Act (as substituted by section 3) shall have effect as if section 58(3)(c) applied only to a union membership agreement taking effect in relation to the employees in question after 14th August 1980 ; and

(b) an order under this section bringing section 10 above into operation may make corresponding provision in respect of section 23(2B) of the 1978 Act (as substituted by section 10(2) above).

(5) Paragraph 13(4) of Schedule 3 to this Act shall extend to Northern Ireland, but otherwise this Act shall not extend there.

Section 2.

SCHEDULES

SCHEDULE 1

COMPENSATION FOR CERTAIN DISMISSALS

Power of Secretary of State to make payments

1. The Secretary of State may, if he thinks fit, pay to a person who satisfies the conditions specified in paragraph 2 an amount not exceeding that specified in paragraph 3.

Conditions of eligibility

2.—(1) A person may apply for compensation under this Schedule where—

- (a) he was dismissed from his employment on or after 16th September 1974 (when the 1974 closed shop provisions came into force) and before 15th August 1980 (when the 1980 amendments came into force);
- (b) he did not bring, or brought but did not succeed in, a complaint of unfair dismissal; and
- (c) if the 1980 amendments had been in force in relation to his dismissal (the law otherwise being as it was at the time), he would have been entitled by virtue of those amendments to succeed in a complaint of unfair dismissal.

(2) In this paragraph—

“the 1974 closed shop provisions” means paragraph 6(5) of Schedule 1 to the 1974 Act, later amended by sections 1(e) and 3(5) of the 1976 Act and consolidated in subsection (3) of section 58 of the 1978 Act; and

“the 1980 amendments” means the amendments of section 58 of the 1978 Act made by section 7 of, and paragraph 12 of Schedule 1 to, the 1980 Act, except so far as relating to the approval of union membership agreements by ballot, or, in relation to a dismissal occurring before 1st November 1978 (when section 58 came into force), corresponding amendments of paragraph 6 of Schedule 1 to the 1974 Act.

Maximum amount of compensation

3. The maximum amount which the Secretary of State may pay to a person in respect of his dismissal is the amount which that person would have been awarded if he had brought a successful complaint of unfair dismissal—

- (a) disregarding any question of an order for reinstatement or re-engagement;
- (b) assuming, in relation to a dismissal occurring before 1st June 1976, that the provisions of the 1975 Act were in force relating to the basic award of compensation; and
- (c) taking into account the actual loss sustained by him rather than such loss as might have been foreseen at the time,

together with interest from the date of the dismissal calculated at the rate from time to time in force under section 17 of the Judgments Act 1838.

Construction of references to date of dismissal

4.—(1) Subject to the following provisions of this paragraph, references in paragraphs 2 and 3 to the date of a dismissal are to the effective date of termination in relation to that dismissal as defined in section 55(4) of the 1978 Act.

(2) In ascertaining for the purposes of those paragraphs whether a dismissal occurred before the commencement of any provision of the 1975, 1978 or 1980 Acts, that is to say in ascertaining—

(a) for the purpose of paragraph 2(1)(a) whether a person was dismissed before 15th August 1980,

(b) for the purpose of paragraph 2(2) whether a dismissal occurred before 1st November 1978, or

(c) for the purpose of paragraph 3(b) whether a dismissal occurred before 1st June 1976,

references to the date of the dismissal shall be construed in accordance with sub-paragraph (3) in the cases where that sub-paragraph applies.

(3) Where the notice required to be given by an employer by section 1(1) of the Contracts of Employment Act 1972 or section 49 1972 c. 53. of the 1978 Act (minimum period of notice) would, if duly given when notice of termination was given by the employer, or (where no notice was given) when the contract of employment was terminated by the employer, have expired on a date later than the effective date of termination as defined by section 55(4) of the 1978 Act, that later date shall be treated for the purposes mentioned in sub-paragraph (2) as the date of the dismissal.

Making an application

5. An application for compensation under this Schedule must be made in writing to the Secretary of State within twelve months from the passing of this Act or such further period as the Secretary of State may allow.

Reference of questions to appointed person

6.—(1) The Secretary of State may, if he thinks fit, before deciding an application for compensation under this Schedule, refer any question arising in connection with the application for inquiry and report by a person appointed by him under this paragraph.

(2) In any such case the applicant shall be informed of the identity of the appointed person and of the question or questions referred and shall be given an opportunity to make representations to the appointed person including oral representations if he so wishes.

(3) The Secretary of State may pay to any person attending at any place for the purpose of making such representations such travelling and other allowances as would be payable in connection with attendance at an industrial tribunal.

(4) A person may be appointed by the Secretary of State under this paragraph either for the purposes of a particular reference or for the purpose of such references as may from time to time be made to him; and the Secretary of State may pay to a person so appointed such remuneration and such travelling and other allowances as he may determine with the approval of the Treasury.

SCH. 1

Consideration of application

7. In considering an application for compensation under this Schedule, the Secretary of State shall have regard to, but shall not be bound by—

- (a) the findings of any industrial tribunal in proceedings arising out of the dismissal in question ; and
- (b) any report made in relation to the application by a person appointed under paragraph 6.

Notification of decision

8.—(1) The Secretary of State shall notify the applicant in writing of his decision.

(2) The notification shall be accompanied by a copy of any report made in relation to the application by a person appointed under paragraph 6.

Reconsideration of decision

9.—(1) The Secretary of State may, of his own motion or on the request of the applicant, reconsider his decision on any application for compensation under this Schedule on the ground that the decision was made in ignorance of, or was based on a mistake as to, some material fact.

(2) Where the Secretary of State decides of his own motion to reconsider a decision, he shall inform the applicant of that fact and of the grounds for reopening the case.

(3) A request by the applicant for reconsideration of the decision on his application must be made in writing to the Secretary of State within three months from the date on which the decision was notified to him, or such further period as the Secretary of State may allow.

(4) The provisions of paragraphs 6 to 8 shall, with the necessary modifications, apply in relation to the reconsideration of an application as they apply in relation to the original consideration of an application.

Liability to repay in certain cases

10.—(1) Where, for the purpose of obtaining compensation under this Schedule for himself or for another, any person misrepresents or fails to disclose any material fact, whether fraudulently or otherwise, the person to whom any such payment is in consequence made shall be liable to repay so much of it as the Secretary of State may direct, unless he can show that the misrepresentation or failure occurred without his connivance or consent.

(2) Except as provided by this paragraph, the reconsideration of a decision under paragraph 9 shall not give rise to a liability to repay.

(3) Any sum received by the Secretary of State by virtue of this paragraph shall be paid into the Consolidated Fund.

False statement an offence

SCH. 1

11.—(1) It is an offence for a person to make, for the purpose of obtaining compensation under this Schedule for himself or for another, a statement which is false in a material particular and which he knows to be so false.

(2) An offence under this paragraph is punishable on summary conviction with a fine not exceeding £1,000.

SCHEDULE 2

Section 20.

CHANGE OF BASIS OF COMPUTATION OF PERIOD OF CONTINUOUS
EMPLOYMENT*Right to guarantee payment*

1. In section 13 of the 1978 Act (general exclusions from the right to a guarantee payment), subsections (1) and (2) shall be renumbered (3) and (4) and the following subsections shall be inserted as subsections (1) and (2)—

“ (1) An employee shall not be entitled to a guarantee payment unless he has been continuously employed for a period of not less than one month ending with the day before that in respect of which the guarantee payment is claimed.

(2) An employee who is employed—

(a) under a contract for a fixed term of three months or less,
or

(b) under a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months,

shall not be entitled to a guarantee payment unless he has been continuously employed for a period of more than three months ending with the day before that in respect of which the guarantee payment is claimed.”

Right to remuneration on suspension on medical grounds

2. In section 20 of the 1978 Act (general exclusions from the right to remuneration on suspension on medical grounds), subsections (1) and (2) shall be renumbered (3) and (4) and the following subsections shall be inserted as subsections (1) and (2)—

“ (1) An employee shall not be entitled to remuneration under section 19 unless he has been continuously employed for a period of not less than one month ending with the day before that on which the suspension begins.

(2) An employee who is employed—

(a) under a contract for a fixed term of three months or less, or

(b) under a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months,

SCH. 2

shall not be entitled to remuneration under section 19 unless he has been continuously employed for a period of more than three months ending with the day before that on which the suspension begins.”.

Right to minimum period of notice

3.—(1) In sections 49 and 50 of the 1978 Act (rights of employer and employee to a minimum period of notice) for the words “four weeks” in section 49(1), (2) and (3) and section 50(1) and (2) (which relate to the period of continuous employment necessary before either right arises) there shall be substituted “one month”.

(2) In section 49(4) of that Act (which converts into a contract for an indefinite period a contract for a term certain of four weeks or less where the employee has been continuously employed for twelve weeks or more) for the words “twelve weeks” there shall be substituted “three months” and for the words “four weeks” there shall be substituted “one month”.

(3) After that subsection there shall be inserted—

“(4A) Subsections (1) and (2) do not apply to a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months unless the employee has been continuously employed for a period of more than three months.”.

Right to written statement of reasons for dismissal

4. In section 53(2) of the 1978 Act (period of continuous employment after which an employee has a right to a written statement of the reasons for his dismissal) for the words from “twenty-six weeks” onwards there shall be substituted “six months ending with that date”.

Right not to be unfairly dismissed

5.—(1) In section 64 of the 1978 Act (qualifying period for the right not to be unfairly dismissed)—

(a) in subsection (1)(a) for “fifty-two weeks” there shall be substituted “one year”; and

(b) in subsection (2) for “fifty-two weeks” and “four weeks” there shall be substituted, respectively, “one year” and “one month”.

(2) In section 73(3) of that Act (calculation of basic award for unfair dismissal), in paragraphs (a) and (b) the words “which consists wholly of weeks” shall be omitted.

Rights in connection with redundancy

6.—(1) In section 119(7) of the 1975 Act (exclusion of employees on short-term contracts from protection of provisions requiring consultation and notification in case of certain redundancies) for the words “12 weeks”, in each place where they occur, there shall

be substituted “three months”; and at the end of that subsection there shall be inserted—

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“Section 151 of and Schedule 13 to the Employment Pro- 1978 c. 44.
tection (Consolidation) Act 1978 (computation of period of continuous employment), and any provision modifying or supplementing that section or Schedule for the purposes of that Act, shall apply for the purposes of this subsection as if this subsection were contained in that Act.”.

(2) In section 81(4) of the 1978 Act (requisite period qualifying for right to redundancy payment), the words from “excluding any week” onwards (which relate to weeks before the employee attained the age of eighteen) shall be omitted.

(3) In section 104(2) of that Act (exclusion of redundancy rebate where employee’s right under collective agreement arises by virtue of a period of employment which is less than one hundred and four weeks)—

(a) for “period of employment” there shall be substituted “period of continuous employment”; and

(b) for “one hundred and four weeks” there shall be substituted “two years”.

(4) In section 106(2) of that Act (conditions to be satisfied before an employee can claim his unpaid redundancy payment from the Secretary of State), in paragraph (c) (exclusion where right under collective agreement arises by virtue of a period of employment which is less than one hundred and four weeks)—

(a) for “period of employment” there shall be substituted “period of continuous employment”; and

(b) for “one hundred and four weeks” there shall be substituted “two years”.

(5) In Schedule 4 to that Act (calculation of redundancy payment),

(a) in paragraph 2(a) and (b) the words “which consists wholly of weeks (within the meaning of Schedule 13)” shall be omitted; and

(b) paragraph 7 shall be omitted.

Computation of period of continuous employment

7.—(1) For section 151 of the 1978 Act (continuous employment) there shall be substituted—

“Computation of period of continuous employment.

151.—(1) References in any provision of this Act to a period of continuous employment are, except where provision is expressly made to the contrary, to a period computed in accordance with the provisions of this section and Schedule 13; and in any such provision which refers to a period of continuous employment expressed in months or years a month means a calendar month and a year means a year of twelve calendar months.

(2) In computing an employee’s period of continuous employment any question arising as to—

(a) whether the employee’s employment is of a kind counting towards a period of continuous employment, or

SCH. 2

- (b) whether periods (consecutive or otherwise) are to be treated as forming a single period of continuous employment,

shall be determined in accordance with Schedule 13 (that is to say, week by week), but the length of an employee's period of employment shall be computed in months and years of twelve months in accordance with the following rules.

(3) Subject to the following provisions of this section, an employee's period of continuous employment for the purposes of any provision of this Act begins with the day on which he starts work and ends with the day by reference to which the length of his period of continuous employment falls to be ascertained for the purposes of the provision in question.

(4) For the purposes of section 81 and Schedule 4 an employee's period of continuous employment shall be treated as beginning on his eighteenth birthday if that date is later than the starting date referred to in sub-section (3).

(5) If an employee's period of continuous employment includes one or more periods which, by virtue of any provision of Schedule 13, do not count in computing the length of the period but do not break continuity, the beginning of the period shall be treated as postponed by the number of days falling within that intervening period or, as the case may be, by the aggregate number of days falling within those periods.

(6) The number of days falling within such an intervening period is—

(a) in the case of a period to which paragraph 14(3) of Schedule 13 applies, seven days for each week within that sub-paragraph ;

(b) in the case of a period to which paragraph 15(2) or (4) of that Schedule applies, the number of days between the last working day before the strike or lock-out and the day on which work was resumed ;

(c) in the case of a period to which paragraph 16(1) of that Schedule applies, the number of days between the employee's last day of employment before service under Part I of the National Service Act 1948 and the day on which he resumed employment in accordance with Part II of that Act.”.

1948 c. 64.

(2) In Schedule 13 to that Act (computation of period of employment), for paragraphs 1 and 2 (preliminary provisions) there shall be substituted—

“ Preliminary

1.—(1) Except so far as otherwise provided by the following provisions of this Schedule, a week which does

not count under paragraphs 3 to 12 breaks the continuity of the period of employment.

(2) The provisions of this Schedule apply, subject to paragraph 14, to a period of employment notwithstanding that during that period the employee was engaged in work wholly or mainly outside Great Britain, or was excluded by or under this Act from any right conferred by this Act.

(3) A person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous."

(3) For paragraph 8 of that Schedule there shall be substituted—

"Power to amend paragraphs 3 to 7 by order

8.—(1) The Secretary of State may by order—

- (a) amend paragraphs 3 to 7 so as to substitute for each of the references to sixteen hours a reference to such other number of hours less than sixteen as may be specified in the order ; and
- (b) amend paragraphs 6 and 7 so as to substitute for each of the references to eight hours a reference to such other number of hours less than eight as may be specified in the order.

(2) No order under this paragraph shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

(3) The provisions of any order under this paragraph shall apply to periods before the order takes effect as they apply to later periods."

*Minor and consequential amendments relating to sections
1 to 4 of the 1978 Act*

8.—(1) In section 1 of the 1978 Act (obligation to give written particulars of terms of employment)—

- (a) in subsection (1) (the basic obligation) for the words "the beginning of an employee's period of employment" there shall be substituted "the beginning of an employee's employment" ; and
- (b) in subsection (2) (matters to be included in the statement), for paragraph (c) there shall be substituted—

"(c) specify the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period)."

(2) For section 2(4) of that Act (exclusion of obligation to give written statement where terms the same as those of previous employment) there shall be substituted—

"(4) No statement need be given under section 1 where—

- (a) the employee's terms of employment are the same as those of earlier employment with the same employer

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in respect of which a statement under that section and any information subsequently required under section 4 was duly given, and

- (b) that earlier employment ended not more than six months before the beginning of the employment in question ;

but without prejudice to the operation of subsection (1) of section 4 if there is subsequently a change in the terms of employment.”.

- (3) In section 4 of that Act (duty to inform of changes in terms of employment)—

- (a) in subsection (4)(b) (change of employer to be treated as change of terms where continuity of employment is not broken) the words from “in accordance with” to “Schedule 13” shall be omitted ; and

- (b) in subsection (5) (duty in such a case to specify date from which employment is continuous) for the words “continuous period of employment” there shall be substituted “period of continuous employment”.

- (4) After section 5 of that Act there shall be inserted—

“Employees becoming or ceasing to be excluded from ss. 1 to 4. 5A.—(1) Sections 1 to 4 shall apply to an employee who at any time comes or ceases to come within the exceptions from those sections provided for by section 5, 141, 144, 145 or 146(4) to (7), or under section 149, as if his employment with his employer terminated or began at that time.

(2) Subsection (1) of section 1 shall apply to an employee who ceases to come within the exception provided by section 5 with the substitution for the words “thirteen weeks” of the words “one month”.

(3) The fact that section 1 is directed to apply to an employee as if his employment began on his ceasing to come within one of the exceptions referred to in subsection (1) shall not affect the obligation under subsection (2)(b) of that section to specify the date on which his employment actually began.”.

- (5) In section 146 of that Act (miscellaneous excluded classes of employment)—

- (a) in subsection (4) (exclusion of part-time employees from rights which do not depend on a qualifying period of continuous employment), after “sections” there shall be inserted “1, 4,” ; and

- (b) after subsection (7) there shall be added—

“(8) References in subsections (4) to (7) to weeks are to weeks within the meaning of Schedule 13.”.

Other consequential amendments

- 9.—(1) In section 149 of the 1978 Act (which confers a general power to amend the Act by order)—

- (a) in subsection (1)(c) (which lists provisions whose operation may be varied or excluded), after “sections” there shall be inserted “13(2), 20(2), 49(4A),” ; and

(b) in subsection (2) (provisions to which the power does not extend), for “ and 142(1) ” there shall be substituted “, 142(1) and 151 ”.

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(2) In section 157(1) of that Act (reciprocal arrangements with Northern Ireland) for “ sections 1 to 7 ” there shall be substituted “ sections 1 to 6 ”.

SCHEDULE 3

Section 21.

MINOR AND CONSEQUENTIAL AMENDMENTS

PART I

MINOR AMENDMENTS

Unfair dismissal : effective date of termination

1. In section 55 of the 1978 Act (meaning of “ dismissal ”) for subsection (5) there shall be substituted the following—

“ (5) Where the contract of employment is terminated by the employer and the notice required by section 49 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by subsection (4)) then, for the purposes of sections 53(2), 64(1)(a), 64A and 73(3) and paragraph 8(3) of Schedule 14, the later date shall be treated as the effective date of termination in relation to the dismissal.

(6) Where the contract of employment is terminated by the employee and—

(a) the material date does not fall during a period of notice given by the employer to terminate that contract ; and

(b) had the contract been terminated not by the employee but by notice given on the material date by the employer, that notice would have been required by section 49 to expire on a date later than the effective date of termination (as defined by subsection (4)),

then, for the purposes of sections 64(1)(a), 64A and 73(3) and paragraph 8(3) of Schedule 14, the later date shall be treated as the effective date of termination in relation to the dismissal.

(7) “ Material date ” means—

(a) in subsection (5), the date when notice of termination was given by the employer or (where no notice was given) the date when the contract of employment was terminated by the employer ; and

(b) in subsection (6), the date when notice of termination was given by the employee or (where no notice was given) the date when the contract of employment was terminated by the employee.”.

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Continuity of employment in certain schools

2.—(1) In section 81 of the 1978 Act (general provisions as to right to redundancy payment) the following subsection shall be inserted after subsection (2)—

“(2A) For the purposes of subsection (2) the activities carried on by a local education authority with respect to the schools maintained by it and the activities carried on by the governors of those schools shall be treated as one business unless either of the conditions specified in subsection (2) would be satisfied without so treating them.”.

(2) In paragraph 17(1) of Schedule 13 to the 1978 Act, for the words “paragraph 18” there shall be substituted the words “paragraphs 18 and 18A”.

(3) After paragraph 18 of that Schedule there shall be inserted the following paragraph—

“18A.—(1) If an employee of one of the employers described in sub-paragraph (2) is taken into the employment of another of those employers, his period of employment at the time of the change of employer shall count as a period of employment with the second employer and the change shall not break the continuity of the period of employment.

(2) The employers referred to in sub-paragraph (1) are the governors of the schools maintained by a local education authority and that authority.”.

Insolvent employers : payments to employees

3. For subsection (2) of section 122 of the 1978 Act (definition of “relevant date” in relation to certain debts due from insolvent employers to their employees) there shall be substituted the following subsection—

“(2) In this section the ‘relevant date’, in relation to a debt, means whichever is the latest of—

- (a) the date on which the employer became insolvent ;
- (b) the date of the termination of the employee’s employment ; or
- (c) where the debt falls within section 121(2)(d) or subsection (3)(d), the date on which the award was made.”.

4.—(1) Section 122(3) of the 1978 Act (debts to which the provisions of section 122 about employees’ rights on insolvency of employers apply) shall be amended as follows.

(2) For paragraph (a) there shall be substituted the following paragraph—

“(a) any arrears of pay in respect of one or more (but not more than eight) weeks ;”.

(3) For paragraph (c) there shall be substituted the following paragraph—

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“(c) any holiday pay—

(i) in respect of a period or periods of holiday not exceeding six weeks in all ; and

(ii) to which the employee became entitled during the twelve months ending with the relevant date ;”.

5.—(1) Sections 122(11) and 123(9) of the 1978 Act (employee's rights on insolvency of employer and payment of unpaid contributions to occupational pension scheme) shall be amended as follows.

(2) In paragraph (a) for the words from the beginning to “was” there shall be substituted in each case the words “the application for a payment under this section has been”.

(3) In paragraph (c) for the word “further” there shall be substituted in each case the word “unreasonable”.

Application of the 1978 Act to employed spouses

6. Section 146(1) of the 1978 Act (which provides that certain provisions of that Act do not apply to employment where the employer is the husband or wife of the employee) shall cease to have effect.

Interest on awards made by or on appeal from industrial tribunals

7. In Schedule 9 to the 1978 Act (industrial tribunals), after paragraph 6 there shall be inserted the following paragraph—

“Interest on sums awarded

6A.—(1) The Secretary of State may by order made with the approval of the Treasury provide that sums payable in pursuance of decisions of industrial tribunals shall carry interest at such rate and between such times as may be prescribed by the order.

(2) Any interest due by virtue of such an order shall be recoverable as a sum payable in pursuance of the decision.

(3) The power conferred by sub-paragraph (1) includes power—

(a) to specify cases or circumstances in which interest shall not be payable ;

(b) to provide that interest shall be payable only on sums exceeding a specified amount or falling between specified amounts ;

(c) to make provision for the manner in which and the periods by reference to which interest is to be calculated and paid ;

(d) to provide that any enactment shall or shall not apply in relation to interest payable by virtue of an order under sub-paragraph (1) or shall apply to it with such modifications as may be specified in the order ;

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(e) to make provision for cases where sums are payable in pursuance of decisions or awards made on appeal from industrial tribunals ;

(f) to make such incidental or supplemental provision as the Secretary of State considers necessary.

(4) Without prejudice to the generality of sub-paragraph (3), an order under sub-paragraph (1) may provide that the rate of interest shall be the rate specified in section 17 of the Judgments Act 1838 as that enactment has effect from time to time.”.

1838 c. 110.

Employment Appeal Tribunal

8.—(1) In paragraph 18 of Schedule 11 to the 1978 Act (rules governing proceedings before the Employment Appeal Tribunal), after paragraph (d) there shall be inserted the following paragraph—

“(e) for interlocutory proceedings to be dealt with otherwise than in accordance with paragraph 16.”.

(2) Where, before the commencement of any rules made by virtue of sub-paragraph (1) above, interlocutory proceedings before the Appeal Tribunal have been dealt with otherwise than in accordance with paragraph 16 of Schedule 11, those proceedings shall be taken to have been dealt with in accordance with the requirements of that paragraph.

9. In paragraph 21A of that Schedule (enforcement of awards of Employment Appeal Tribunal under section 5 of the 1980 Act) after sub-paragraph (2) there shall be added the following sub-paragraph—

“(3) Any sum payable in pursuance of an award of the Appeal Tribunal under section 5 of the Employment Act 1980 shall be treated as if it were a sum payable in pursuance of a decision of an industrial tribunal for the purposes of paragraph 6A of Schedule 9 (interest on industrial tribunal awards).”.

1980 c. 42.

PART II

CONSEQUENTIAL AMENDMENTS

Industrial Courts Act 1919 (c.69)

10. In the Industrial Courts Act 1919, for section 8 (interpretation) there shall be substituted the following section—

“Inter-pretation. 8. In this Act—

“trade dispute” has the same meaning as in the Employment Protection Act 1975 ;

“worker” has the same meaning as in the Trade Union and Labour Relations Act 1974.”.

1975 c. 71.

1974 c. 52.

Administration of Justice (Scotland) Act 1972 (c.59)

11. In section 3 of the Administration of Justice (Scotland) Act 1972 (power of arbiter to state case for opinion of Court of Session), in subsection (3) (which excludes from the section arbitrations on industrial relations matters)—

(a) for the words from “relating to a trade dispute”, where first occurring, to “Trade Union and Labour Relations Act

1974” there shall be substituted the words “relating to a trade dispute within the meaning of the Employment Protection Act 1975”; SCH. 3
1975 c. 71.

- (b) for the words “the said Act of 1974” there shall be substituted the words “the Trade Union and Labour Relations Act 1974”.

Trade Union and Labour Relations Act 1974 (c.52)

12. In section 15 of the 1974 Act (peaceful picketing), in subsection (3) (right of former employees to picket their former place of work), for the words “and whose” there shall be substituted “where—(a) his”, and after the words “trade dispute,” there shall be inserted—

“or

- (b) the termination of his employment was one of the circumstances giving rise to a trade dispute.”.

Employment Protection Act 1975 (c.71)

13.—(1) The Employment Protection Act 1975 shall be amended as follows. 1975 c. 71.

(2) In section 126(1) (interpretation)—

- (a) ““trade dispute”,” shall be omitted from the list of expressions which have the same meaning as in the 1974 Act; and
- (b) at the appropriate place there shall be inserted ““trade dispute” has the meaning assigned by section 126A below”.

(3) After section 126 there shall be inserted a section 126A in the same terms as section 29(1) to (6) of the 1974 Act before the amendment of that section by this Act.

(4) In section 127(1) (power to extend employment legislation), after paragraph (f) there shall be inserted the following paragraph—
“(f) the Employment Act 1982; and”.

Aircraft and Shipbuilding Industries Act 1977 (c.3)

14. In section 6 of the Aircraft and Shipbuilding Industries Act 1977 (duty of Corporations to take steps to establish and maintain machinery for, amongst other things, the resolution of trade disputes), in subsection (2)(b) (in which “trade dispute” is defined by reference to the 1974 Act), for the words “within the meaning of the Trade Union and Labour Relations Act 1974” there shall be substituted the words “within the meaning of the Employment Protection Act 1975”.

Employment Protection (Consolidation) Act 1978 (c.44)

15. In section 13(1) of the 1978 Act (exclusion of right to guarantee payment if lack of work due to trade dispute), for the words “trade dispute” there shall be substituted the words “strike, lock-out or other industrial action”.

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16. In section 23 of the 1978 Act (action short of dismissal taken against employee in respect of trade union membership or activities), in subsection (2A)(b), after the words "subsection (1)(c)" there shall be inserted the words "or (1A)".

17. In section 59(a) of the 1978 Act (circumstances where dismissal on ground of redundancy is unfair), for the words "an inadmissible reason" there shall be substituted the words "one of those specified in section 58(1)".

18. In section 62 of the 1978 Act (dismissal in connection with a strike, lock-out or other industrial action), in subsection (4) (which defines "relevant employees" in relation to a lock-out by reference to their interest in the underlying trade dispute), for the words "trade dispute" there shall be substituted the word "dispute".

19. In section 64(3) of the 1978 Act (qualifying period and upper age limit in connection with unfair dismissal), for the words "an inadmissible reason" there shall be substituted the words "one of those specified in section 58(1)".

20. In section 64A(2) of the 1978 Act (extended qualifying period where there are no more than twenty employees), for the words "an inadmissible reason" there shall be substituted the words "one of those specified in section 58(1)".

21. In section 68(2) of the 1978 Act (compensation for unfair dismissal), for the words "sections 72 to 74" there shall be substituted the words "sections 72 to 76".

22. In section 71(2)(a) and (5) of the 1978 Act (compensation after section 69 order), for the words "sections 72 to 74" there shall be substituted in each case the words "sections 72 to 76".

23. In section 74(3) of the 1978 Act (calculation of compensatory award), for the words "section 73(7) or (9)" there shall be substituted the words "section 73(7A) to (9)".

24.—(1) In section 77 of the 1978 Act (interim relief pending determination of complaint of unfair dismissal), in subsection (2), at the beginning of paragraph (b) there shall be inserted the words "in a case in which the employee relies on section 58(1)(a) or (b)".

(2) In subsection (3) of that section, before the words "the relevant certificate" there shall be inserted the words "(where appropriate)".

(3) In subsection (5) of that section for the words from "was unfairly" to "subsection (1)" there shall be substituted the words "is by virtue of section 58 to be regarded as having been unfairly dismissed".

25. In section 149(2) of the 1978 Act (general power to amend the Act) for the word "75" there shall be substituted the words "73(4B), 75, 75A(7)".

26. In section 153(1) of the 1978 Act (interpretation) in the definition of "effective date of termination" for the words "and (5)" there shall be substituted the words "to (6)".

27.—(1) Schedule 2 to the 1978 Act (supplementary provisions relating to maternity) shall be amended as follows. SCH. 3

(2) In paragraph 2(4)—

- (a) for the words “58(3) to (3E)” there shall be substituted the words “58(3) to (12)” ; and
- (b) for the words “, 145(2) and 146(1)” there shall be substituted the words “ and 145(2)”.

(3) In paragraph 6(3)—

- (a) for the words “58(3) to (3E)” there shall be substituted the words “58(3) to (12)” ; and
- (b) for the words “, 145 and 146(1)” there shall be substituted the words “ and 145 ”.

28. In Schedule 12 to the 1978 Act (death of employee or employer) for paragraph 9 there there shall be substituted—

“9. Where—

- (a) the employee’s contract of employment has been terminated ; and
- (b) by virtue of subsection (5) or (6) of section 55 a date later than the effective date of termination as defined in subsection (4) of that section is to be treated as the effective date of termination for the purposes of certain of the unfair dismissal provisions ; and
- (c) before that later date the employer or the employee dies ;

subsection (5) or, as the case may be, (6) shall have effect as if the notice referred to in that section as required by section 49 would have expired on the date of the death.”.

29. In paragraph 11(1) of Schedule 13 to the 1978 Act (deemed continuity of employment where a later date is treated as the effective date of termination) after the words “55(5)” there shall be inserted the words “or, as the case may be, (6)”.

30.—(1) Schedule 14 to the 1978 Act (calculation of normal working hours and a week’s pay) shall be amended as follows.

(2) In paragraph 7(1) (the calculation date)—

- (a) in paragraph (h), after the words “55(5)” there shall be inserted the words “or, as the case may be, (6)” ; and
- (b) in paragraph (i), for the words “section 55(5) does not apply” there shall be substituted the words “neither subsection (5) nor subsection (6) of section 55 applies”.

(3) In paragraph 8(3) (maximum amount of week’s pay for certain purposes) after the words “55(5)” there shall be inserted the words “or, as the case may be, (6)”.

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Crown Agents Act 1979 (c.43)

31. In paragraph 15 of Schedule 1 to the Crown Agents Act 1979 (duty of Crown Agents to take steps to establish and maintain machinery for, amongst other things, the resolution of trade disputes), in sub-paragraph (2)(b) (in which "trade dispute" is defined by reference to the 1974 Act) for the words "within the meaning of the Trade Union and Labour Relations Act 1974" there shall be substituted the words "within the meaning of the Employment Protection Act 1975".

1974 c. 52.

1975 c. 71.

SCHEDULE 4

Section 21.

REPEALS

Chapter	Short title	Extent of repeal
1974 c. 52.	The Trade Union and Labour Relations Act 1974.	In section 2(1)(c), the words "subject to section 14 below". In section 3(2)(c), the words "subject to section 14 below". Section 13(2). Section 14. In section 17(2), the words "14(2)".
1975 c. 71.	The Employment Protection Act 1975.	In Schedule 3, paragraph 17. Section 119(17). In section 126(1), in the list of expressions which have the same meaning as in the 1974 Act, the words "trade dispute", " In Schedule 16, in Part IV, paragraph 3(3). Section 3.
1978 c. 44.	The Employment Protection (Consolidation) Act 1978.	In section 4(4)(b), the words from "in accordance with" to "Schedule 13". In section 5, the proviso. Section 7. In section 62(4), the word "trade". Section 71(3)(a). Section 73(1)(b) and (7). In section 73(3)(a) and (b), the words "which consists wholly of weeks". In section 73(7B), the words from "other" to "subsection (7)". Section 76B. Section 76C. In section 77(10), the definition of "appropriate time". In section 81(4), the words from "excluding any week" onwards. In section 100(2), the words "Without prejudice to section 146(1),". Section 143. Section 146(1). Section 147. In section 149(1)(c), the words "143(3) and (4)" and "(1) and". In section 149(2), the reference to section 7 and the words from "and paragraph (c)" to the end. In section 153(1), the definition of "inadmissible reason".

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Chapter	Short title	Extent of repeal
1978 c. 44.	The Employment Protection (Consolidation) Act 1978.	In Schedule 2, in paragraph 4(3), the words “, 146(1)”. In Schedule 4, in paragraph 2(a) and (b), the words from “which consists” to “Schedule 13” and paragraph 7. In Schedule 13, paragraph 13. In Schedule 16, paragraph 23 (9).
1980 c. 42.	The Employment Act 1980.	Section 7. Section 10. Section 15(4). Section 18. In Schedule 1, paragraphs 12 and 14.

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