



# Trade Union Reform and Employment Rights Act 1993

## 1993 CHAPTER 19

### PART II

#### EMPLOYMENT RIGHTS

##### *Maternity*

#### **23 Right to maternity leave and right to return to work**

- (1) In the Employment Protection (Consolidation) Act 1978 (referred to in this Act as “the 1978 Act”), for Part III (maternity: right to return to work) there shall be substituted—
- (a) the sections 33 to 38A set out in subsection (2) below (which provide for a new right to maternity leave), and
  - (b) the sections 39 to 44, together with the heading, set out in Schedule 2 to this Act (which continue in effect the right to return to work with amendments to take account of the new right).
- (2) The provisions referred to in subsection (1)(a) above are—

### “PART III

#### MATERNITY

##### *General right to maternity leave*

#### **33 General right to maternity leave**

- (1) An employee who is absent from work at any time during her maternity leave period shall, subject to sections 36 and 37, be entitled to the benefit of the

terms and conditions of employment which would have been applicable to her if she had not been absent (and had not been pregnant or given birth to a child).

- (2) Subsection (1) does not confer any entitlement to remuneration.

### **34 Commencement of maternity leave period**

- (1) Subject to subsection (2), an employee's maternity leave period commences with—
- (a) the date which, in accordance with section 36, she notifies to her employer as the date on which she intends her period of absence from work in exercise of her right to maternity leave to commence, or
  - (b) if earlier, the first day on which she is absent from work wholly or partly because of pregnancy or childbirth after the beginning of the sixth week before the expected week of childbirth.
- (2) Where childbirth occurs before the day with which the employee's maternity leave period would otherwise commence, her maternity leave period shall commence with the day on which childbirth occurs.
- (3) The Secretary of State may by order vary either of the provisions of subsections (1) and (2).
- (4) No order shall be made under subsection (3) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

### **35 Duration of maternity leave period**

- (1) Subject to subsections (2) and (3), an employee's maternity leave period shall continue for the period of fourteen weeks from its commencement or until the birth of the child, if later.
- (2) Subject to subsection (3), where any requirement imposed by or under any provision of any enactment or of any instrument made under any enactment, other than a provision for the time being specified in an order made under section 45(3), prohibits her working for any period after the end of the period mentioned in subsection (1) by reason of her having recently given birth, her maternity leave period shall continue until the expiry of that later period.
- (3) Where an employee is dismissed after the commencement of her maternity leave period but before the time when (apart from this subsection) that period would end, the period ends at the time of the dismissal.
- (4) The Secretary of State may by order vary any of the provisions of this section.
- (5) No order shall be made under subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

### **36 Notice of commencement of leave**

- (1) An employee shall not have the right conferred by section 33 unless—

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- (a) she notifies her employer of the date (within the restriction imposed by subsection (2)) (“the notified leave date”) on which she intends her period of absence from work in exercise of her right to maternity leave to commence—
  - (i) not less than twenty-one days before that date, or
  - (ii) if that is not reasonably practicable, as soon as is reasonably practicable,
- (b) where she is first absent from work wholly or partly because of pregnancy or childbirth before the notified leave date or before she has notified such a date and after the beginning of the sixth week before the expected week of childbirth, she notifies her employer as soon as is reasonably practicable that she is absent for that reason, or
- (c) where childbirth occurs before the notified leave date or before she has notified such a date, she notifies her employer that she has given birth as soon as is reasonably practicable after the birth,

and any notice she is required to give under paragraphs (a) to (c) shall, if her employer so requests, be given in writing.

- (2) No date may be notified under subsection (1)(a) which occurs before the beginning of the eleventh week before the expected week of childbirth.
- (3) Where, in the case of an employee, either paragraph (b) or (c) of subsection (1) has fallen to be satisfied, and has been so satisfied, nothing in paragraph (a) of that subsection shall impose any requirement on the employee.

### **37 Requirement to inform employer of pregnancy etc**

- (1) An employee shall not have the right conferred by section 33 unless she informs her employer in writing at least twenty-one days before her maternity leave period commences or, if that is not reasonably practicable, as soon as is reasonably practicable—
  - (a) that she is pregnant, and
  - (b) of the expected week of childbirth or, if the childbirth has occurred, the date on which it occurred.
- (2) An employee shall not have the right conferred by section 33 unless, if requested to do so by her employer, she produces for his inspection a certificate from a registered medical practitioner or a registered midwife stating the expected week of childbirth.

### **37A Requirement to inform employer of return during maternity leave period**

- (1) An employee who intends to return to work earlier than the end of her maternity leave period shall give to her employer not less than seven days notice of the date on which she intends to return.
- (2) If an employee returns to work as mentioned in subsection (1) without notifying her employer of her intention to do so or without giving him the notice required by that subsection her employer shall be entitled to postpone her return to a date such as will secure, subject to subsection (3), that he has seven days notice of her return.

- (3) An employer is not entitled under subsection (2) to postpone an employee's return to work to a date after the end of her maternity leave period.
- (4) If an employee who has been notified under subsection (2) that she is not to return to work before the date specified by her employer does return to work before that date the employer shall be under no contractual obligation to pay her remuneration until the date specified by him as the date on which she may return.

### **38 Special provision where redundancy during maternity leave period**

- (1) Where during an employee's maternity leave period it is not practicable by reason of redundancy for the employer to continue to employ her under her existing contract of employment, she shall be entitled, where there is a suitable available vacancy, to be offered (before the ending of her employment under that contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with subsection (2) (and takes effect immediately on the ending of her employment under the previous contract).
- (2) The new contract of employment must be such that—
  - (a) the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
  - (b) the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had continued to be employed under the previous contract.

### **38A Contractual right to maternity leave**

- (1) An employee who has the right to maternity leave under section 33 and a right to maternity leave under a contract of employment or otherwise may not exercise the two rights separately but may, in taking maternity leave, take advantage of whichever right is, in any particular respect, the more favourable.
- (2) The provisions of sections 34 to 38 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in subsection (1) as they apply to the exercise of the right under section 33.”

## **24 Dismissal rights**

- (1) For section 60 of the 1978 Act (dismissal on ground of pregnancy) there shall be substituted—

### **“60 Dismissal on ground of pregnancy or childbirth**

An employee shall be treated for the purposes of this Part as unfairly dismissed if—

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- (a) the reason (or, if there is more than one, the principal reason) for her dismissal is that she is pregnant or any other reason connected with her pregnancy,
- (b) her maternity leave period is ended by the dismissal and the reason (or, if there is more than one, the principal reason) for her dismissal is that she has given birth to a child or any other reason connected with her having given birth to a child,
- (c) the reason (or, if there is more than one, the principal reason) for her dismissal, where her contract of employment was terminated after the end of her maternity leave period, is that she took, or availed herself of the benefits of, maternity leave,
- (d) the reason (or, if there is more than one, the principal reason) for her dismissal, where—
  - (i) before the end of her maternity leave period, she gave to her employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she would be incapable of work after the end of that period, and
  - (ii) her contract of employment was terminated within the four week period following the end of her maternity leave period in circumstances where she continued to be incapable of work and the certificate relating to her incapacity remained current, is that she has given birth to a child or any other reason connected with her having given birth to a child,
- (e) the reason (or, if there is more than one, the principal reason) for her dismissal is a requirement or recommendation such as is referred to in section 45(1), or
- (f) her maternity leave period is ended by the dismissal, and the reason (or, if there is more than one, the principal reason) for her dismissal is that she is redundant and section 38 has not been complied with.

For the purposes of paragraph (c) above a woman “takes maternity leave” if she is absent from work during her maternity leave period and a woman “avails herself of the benefits of maternity leave” if, during her maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by section 33 during that period.”.

- (2) In section 59 of the 1978 Act (dismissal on ground of redundancy),—
  - (a) for the words “employer, and” there shall be substituted the words “employer, and either—
    - (a) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was an inadmissible reason; or”; and
  - (b) there shall be inserted at the end, as subsection (2), the following—

“(2) For the purposes of this section “inadmissible”, in relation to a reason, means that it is one of those specified in section 60(a) to (e)”;

and the words preceding that subsection (2) shall become subsection (1).
- (3) In section 64 of the 1978 Act (qualifying period for right not to be unfairly dismissed), after subsection (2) there shall be inserted—

- “(3) Subsection (1) shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason.
- (4) For the purposes of subsection (3) “inadmissible”, in relation to a reason, means that it is one of those specified in section 60(a) to (e).
- (5) Subsection (1) shall not apply to a case falling within section 60(f).”.
- (4) In section 53 of that Act (written statement of reasons for dismissal), after subsection (2) there shall be inserted—
- “(2A) An employee shall be entitled (without making any request and irrespective of whether or not she has been continuously employed for any period) to be provided by her employer with a written statement giving particulars of the reasons for her dismissal if she is dismissed—
- (a) at any time while she is pregnant, or
  - (b) after childbirth in circumstances in which her maternity leave period ends by reason of the dismissal.”.

## 25 Rights on suspension on maternity grounds

After section 44 of the 1978 Act (set out in Schedule 2 to this Act) there shall be inserted as provisions of Part III the sections 45 to 47, together with the heading, set out in Schedule 3 to this Act (which makes provision conferring rights on employees suspended from work on grounds of maternity).

### *Employment particulars*

## 26 Right to employment particulars

For sections 1 to 6 of the 1978 Act (particulars relating to employment) there shall be substituted the sections set out in Schedule 4 to this Act.

## 27 Entitlement to itemised pay statement

After section 146(4) of the 1978 Act (provisions disapplied in relation to employment below minimum number of hours weekly) there shall be inserted—

- “(4A) Subject to subsection (4B), subsection (4) shall have effect as respects section 8 subject to the following modifications, namely—
- (a) the substitution of a reference to eight hours weekly for the reference to sixteen hours weekly, and
  - (b) the omission of the words “Subject to subsections (5), (6) and (7)”.
- (4B) Subsection (4A) shall not apply in relation to employment if, at the relevant date, the number of employees employed by the employer, added to the number employed by any associated employer, is less than twenty.
- (4C) For the purposes of subsection (4B) “relevant date” means the date on which any payment of wages or salary is made to an employee in respect of which

he would, apart from subsection (4B), have the right to an itemised pay statement.”.

*Employment protection in health and safety cases*

**28 Rights to claim unfair dismissal and not to suffer detriment**

Schedule 5 to this Act (which makes amendments of the 1978 Act for protecting employees against dismissal, and being subjected to other detriment, in health and safety cases) shall have effect.

*Unfair dismissal: assertion of statutory right*

**29 Dismissal on ground of assertion of statutory right**

- (1) After section 60 of the 1978 Act (as substituted by section 24 of this Act), there shall be inserted—

**“60A Dismissal on grounds of assertion of statutory right**

- (1) 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—
- (a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right; or
  - (b) alleged that the employer had infringed a right of his which is a relevant statutory right.
- (2) It is immaterial for the purposes of subsection (1) whether the employee has the right or not and whether it has been infringed or not, but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.
- (3) It shall be sufficient for subsection (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.
- (4) The following statutory rights are relevant for the purposes of this section, namely—
- (a) any right conferred by—
    - (i) this Act, or
    - (ii) the Wages Act 1986,for which the remedy for its infringement is by way of a complaint or reference to an industrial tribunal;
  - (b) the right conferred by section 49 (minimum notice);
  - (c) the rights conferred by the following provisions of the Trade Union and Labour Relations (Consolidation) Act 1992, namely, sections 68, 86, 146, 168, 169 and 170 (deductions from pay, union activities and time off).”.

- (2) In section 59 of the 1978 Act (dismissal on ground of redundancy), in subsection (2) (inserted by section 24(2) of this Act), after the word “(e)” there shall be inserted the words “or 60A(1) (read with (2) and (3))”.
- (3) In section 64 of the 1978 Act (qualifying period for right not to be unfairly dismissed), in subsection (4) (inserted by section 24(3) of this Act), after the word “(e)” there shall be inserted the words “or 60A(1) (read with (2) and (3))”.

*Reinstatement orders: compensation***30 Compensation for unfair dismissal when reinstatement or re-engagement ordered**

- (1) Sections 71, 74 and 75 of the 1978 Act (awards of compensation for unfair dismissal) shall be amended in accordance with subsections (2), (3) and (4).
- (2) In section 71—
  - (a) in subsection (1), for the words “section 75” there shall be substituted the words “subsection (1A)”; and
  - (b) after subsection (1) there shall be inserted—
    - “(1A) Subsection (1) is subject to section 75 except that the limit imposed by that section may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under section 69(2)(a) or (4)(d), as the case may be.”.
- (3) In section 74—
  - (a) in subsection (1), for the words “sections 75 and 76” there shall be substituted the words “subsection (8) and section 76”; and
  - (b) after subsection (7) there shall be inserted—
    - “(8) Subsection (1) is subject also to section 75 except that, in the case of an award of compensation under section 71(2)(a) where an additional award falls to be made, the limit imposed by section 75 may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under section 69(2)(a) or (4)(d), as the case may be, if that limit would otherwise reduce the amount of the compensatory award when added to the additional award.”.
- (4) In section 75(1), after the word “shall” there shall be inserted the words “(save where the exception in section 71(1A) or 74(8) applies)”.

*Service in armed forces***31 Application of 1978 Act to service in armed forces**

- (1) In section 138 of the 1978 Act (application of Act to Crown employment) for subsection (3) (service in the armed forces excepted) there shall be substituted—
  - “(3) This section applies to service as a member of the naval, military or air forces of the Crown but only in accordance with section 138A and it applies also to



employment by any association established for the purposes of Part VI of the Reserve Forces Act 1980.”.

(2) After section 138, there shall be inserted—

**“138A Application of Act to armed forces**

(1) The provisions of this Act which apply, by virtue of section 138, to service as a member of the naval, military or air forces of the Crown are—

Part I;

in Part II, sections 19 to 22 and 31A;

Part III;

in Part IV, section 53;

Part V, except sections 57A and 80;

Part VIII; and

this Part.

(2) Her Majesty may, by Order in Council,—

(a) amend subsection (1) above by making additions to, or omissions from, the provisions for the time being specified in that subsection by an Order under this subsection; and

(b) make any provision apply to service as a member of the naval, military or air forces of the Crown subject to such exceptions and modifications as may be specified in the Order.

(3) Subject to subsection (5) below, modifications made under subsection (2) above may include provision precluding the making of a complaint or reference to any industrial tribunal unless the person aggrieved has availed himself of the service procedures for the redress of complaints applicable to him.

(4) Where modifications include the provision authorised by subsection (3) above the Order in Council shall also include provision designed to secure that the service procedures for the redress of complaints result in a determination, or what is to be treated under the Order as a determination, in sufficient time to enable a complaint or reference to be made to an industrial tribunal.

(5) No provision shall be made by virtue of subsection (3) above which has the effect of substituting, for any period specified as the normal period for a complaint or reference on any matter to an industrial tribunal, a period longer than six months.

(6) No recommendation shall be made to Her Majesty to make an Order in Council under subsection (2) above unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

(7) In this section—

“the normal period for a complaint or reference”, in relation to any matter within the jurisdiction of an industrial tribunal, means the period specified in the relevant enactment as the period within which the complaint or reference must be made, disregarding any provision permitting an extension of that period at the discretion of the tribunal; and

“the service procedures for the redress of complaints” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in sections 180 and 181 of the Army Act 1955, sections 180 and 181 of the Air Force Act 1955 and section 130 of the Naval Discipline Act 1957.”.

*Sex discrimination*

**32 Right to declaration of invalidity of discriminatory terms and rules**

In section 6 of the Sex Discrimination Act 1986 (application of section 77 of the Sex Discrimination Act 1975, which provides for discriminatory terms of contracts to be void, to terms of collective agreements, employers' rules and rules of certain organisations), after subsection (4) there shall be inserted—

“(4A) A person to whom this subsection applies may present a complaint to an industrial tribunal that a term or rule is void by virtue of subsection (1) of the said section 77 if he has reason to believe—

- (a) that the term or rule may at some future time have effect in relation to him, and
- (b) where he alleges that it is void by virtue of paragraph (c) of that subsection, that—
  - (i) an act for the doing of which it provides may at some such time be done in relation to him, and
  - (ii) the act would be, or be deemed by virtue of subsection (3) above to be, rendered unlawful by the 1975 Act if done in relation to him in present circumstances.

(4B) In the case of a complaint about—

- (a) a term of a collective agreement made by or on behalf of—
  - (i) an employer,
  - (ii) an organisation of employers of which an employer is a member, or
  - (iii) an association of such organisations of one of which an employer is a member, or
- (b) a rule made by an employer,

subsection (4A) applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

(4C) In the case of a complaint about a rule made by an organisation, authority or body to which subsection (2) above applies, subsection (4A) applies to any person—

- (a) who is, or is genuinely and actively seeking to become, a member of the organisation, authority or body,
- (b) on whom the organisation, authority or body has conferred an authorisation or qualification, or
- (c) who is genuinely and actively seeking an authorisation or qualification which the organisation, authority or body has power to confer.

- (4D) When an industrial tribunal finds that a complaint presented to it under subsection (4A) above is well-founded the tribunal shall make an order declaring that the term or rule is void.”.

### *Transfer and redundancy rights*

## **33 Amendments of transfer of undertakings regulations**

- (1) The Transfer of Undertakings (Protection of Employment) Regulations 1981 shall be amended as follows.
- (2) In Regulation 2(1), in the definition of “undertaking” (which excludes from the Regulations undertakings, and parts of undertakings, not in the nature of a commercial venture), the words from “but does not” to the end shall cease to have effect.
- (3) In Regulation 3(4) (transfers to which the Regulations apply), for the words from “one” to the end there shall be substituted the words “one—
- (a) may be effected by a series of two or more transactions; and
  - (b) may take place whether or not any property is transferred to the transferee by the transferor.”.
- (4) In Regulation 5 (effect of relevant transfer on contracts of employment, etc)—
- (a) in paragraph (1), at the beginning, there shall be inserted the words “Except where objection is made under paragraph (4A) below,”;
  - (b) in paragraph (2) after the words “paragraph (1) above” there shall be inserted the words “but subject to paragraph (4A) below,”;
  - (c) after paragraph (4), there shall be inserted—
    - “(4A) Paragraphs (1) and (2) above shall not operate to transfer his contract of employment and the rights, powers, duties and liabilities under or in connection with it if the employee informs the transferor or the transferee that he objects to becoming employed by the transferee.
    - (4B) Where an employee so objects the transfer of the undertaking or part in which he is employed shall operate so as to terminate his contract of employment with the transferor but he shall not be treated, for any purpose, as having been dismissed by the transferor.”; and
  - (d) in paragraph (5), for the words “Paragraph (1) above is” there shall be substituted the words “Paragraphs (1) and (4A) above are”.
- (5) Regulation 7 (exclusion of occupational pension schemes) shall be re-numbered as paragraph (1) of that Regulation and after that provision as so re-numbered there shall be inserted—
- “(2) For the purposes of paragraph (1) above any provisions of an occupational pension scheme which do not relate to benefits for old age, invalidity or survivors shall be treated as not being part of the scheme.”.
- (6) At the end of Regulation 10(5) (duty to consult) there shall be added the words “with a view to seeking their agreement to measures to be taken.”.
- (7) In Regulation 11 (remedies for failure to inform or consult)—

- (a) paragraph (7) (deduction from compensation of any payments relating to failure to consult on redundancy) shall cease to have effect, and
- (b) in paragraph (11) (compensation subject to maximum of two weeks' pay for employee in question), for the words “two weeks' pay” there shall be substituted the words “four weeks' pay”.

### **34 Redundancy consultation procedures**

(1) Chapter II of Part IV of the 1992 Act (procedure for handling redundancies) shall be amended in accordance with subsections (2) to (5) below.

(2) In section 188 (duty of employer to consult trade union representatives)—

- (a) in subsection (4) (information to be disclosed to representatives), after paragraph (e) there shall be inserted “and
  - (f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by or by virtue of any enactment) to employees who may be dismissed.”,
- (b) for subsection (6) there shall be substituted—

“(6) The consultation required by this section shall include consultation about ways of—

- (a) avoiding the dismissals,
- (b) reducing the numbers of employees to be dismissed, and
- (c) mitigating the consequences of the dismissals,

and shall be undertaken by the employer with a view to reaching agreement with the trade union representatives.”, and

- (c) at the end of subsection (7) (exception from requirements in special circumstances) there shall be inserted—

“Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement.”.

(3) In section 190 (entitlement under protective award), subsection (3) (avoidance of double payments) shall cease to have effect.

(4) In section 193 (duty of employer to notify Secretary of State of certain redundancies), at the end of subsection (7) (exception from requirements in special circumstances) there shall be inserted—

“Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with any of those requirements.”.

(5) For section 195 there shall be substituted—

**“195 Construction of references to dismissal as redundant etc**

- (1) In this Chapter references to dismissal as redundant are references to dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related.
- (2) For the purposes of any proceedings under this Chapter, where an employee is or is proposed to be dismissed it shall be presumed, unless the contrary is proved, that he is or is proposed to be dismissed as redundant.”
- (6) Section 283 of the 1992 Act (which excepts employment as a merchant seaman from the provisions of Chapter II of Part IV) shall cease to have effect.