



# Employment Act 2002

## 2002 CHAPTER 22

### PART 4

#### MISCELLANEOUS AND GENERAL

##### *Miscellaneous*

VALID FROM 06/04/2003

#### **41 Power to confer rights on individuals: amendment**

In section 23(5) of the Employment Relations Act 1999 (c. 26) (power to confer rights on individuals), the words “or otherwise” are omitted.

VALID FROM 06/04/2003

#### **42 Equal pay: questionnaires**

In the Equal Pay Act 1970 (c. 41), after section 7A there is inserted—

##### **“7B Questioning of employer**

(1) For the purposes of this section—

- (a) a person who considers that she may have a claim under section 1 above is referred to as “the complainant”, and
- (b) a person against whom the complainant may decide to make, or has made, a complaint under section 2(1) or 7A(3) above is referred to as “the respondent”.

*Status: Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) With a view to helping a complainant to decide whether to institute proceedings and, if she does so, to formulate and present her case in the most effective manner, the Secretary of State shall by order prescribe—
  - (a) forms by which the complainant may question the respondent on any matter which is or may be relevant, and
  - (b) forms by which the respondent may if he so wishes reply to any questions.
- (3) Where the complainant questions the respondent (whether in accordance with an order under subsection (2) above or not), the question and any reply by the respondent (whether in accordance with such an order or not) shall, subject to the following provisions of this section, be admissible as evidence in any proceedings under section 2(1) or 7A(3) above.
- (4) If in any proceedings under section 2(1) or 7A(3) above it appears to the employment tribunal that the complainant has questioned the respondent (whether in accordance with an order under subsection (2) above or not) and that—
  - (a) the respondent deliberately and without reasonable excuse omitted to reply within such period as the Secretary of State may by order prescribe, or
  - (b) the respondent's reply is evasive or equivocal,it may draw any inference which it considers it just and equitable to draw, including an inference that the respondent has contravened a term modified or included by virtue of the complainant's equality clause or corresponding term of service.
- (5) Where the Secretary of State questions an employer in relation to whom he may decide to make, or has made, a reference under section 2(2) above, the question and any reply by the employer shall, subject to the following provisions of this section, be admissible as evidence in any proceedings under that provision.
- (6) If in any proceedings on a reference under section 2(2) above it appears to the employment tribunal that the Secretary of State has questioned the employer to whom the reference relates and that—
  - (a) the employer deliberately and without reasonable excuse omitted to reply within such period as the Secretary of State may by order prescribe, or
  - (b) the employer's reply is evasive or equivocal,it may draw any inference which it considers it just and equitable to draw, including an inference that the employer has contravened a term modified or included by virtue of the equality clause of the woman, or women, as respects whom the reference is made.
- (7) The Secretary of State may by order—
  - (a) prescribe the period within which questions must be duly served in order to be admissible under subsection (3) or (5) above, and
  - (b) prescribe the manner in which a question, and any reply, may be duly served.

*Status: Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (8) This section is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before an employment tribunal, and has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.
- (9) Power to make orders under this section is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) An order under this section may make different provision for different cases.”

VALID FROM 27/04/2003

#### **43 Union learning representatives**

(1) The Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) is amended as follows.

(2) After section 168 there is inserted—

##### **“168A Time off for union learning representatives**

- (1) An employer shall permit an employee of his who is—
  - (a) a member of an independent trade union recognised by the employer, and
  - (b) a learning representative of the trade union,to take time off during his working hours for any of the following purposes.
- (2) The purposes are—
  - (a) carrying on any of the following activities in relation to qualifying members of the trade union—
    - (i) analysing learning or training needs,
    - (ii) providing information and advice about learning or training matters,
    - (iii) arranging learning or training, and
    - (iv) promoting the value of learning or training,
  - (b) consulting the employer about carrying on any such activities in relation to such members of the trade union,
  - (c) preparing for any of the things mentioned in paragraphs (a) and (b).
- (3) Subsection (1) only applies if—
  - (a) the trade union has given the employer notice in writing that the employee is a learning representative of the trade union, and
  - (b) the training condition is met in relation to him.
- (4) The training condition is met if—
  - (a) the employee has undergone sufficient training to enable him to carry on the activities mentioned in subsection (2), and the trade union has given the employer notice in writing of that fact,

*Status: Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) the trade union has in the last six months given the employer notice in writing that the employee will be undergoing such training, or
  - (c) within six months of the trade union giving the employer notice in writing that the employee will be undergoing such training, the employee has done so, and the trade union has given the employer notice of that fact.
- (5) Only one notice under subsection (4)(b) may be given in respect of any one employee.
- (6) References in subsection (4) to sufficient training to carry out the activities mentioned in subsection (2) are to training that is sufficient for those purposes having regard to any relevant provision of a Code of Practice issued by ACAS or the Secretary of State.
- (7) If an employer is required to permit an employee to take time off under subsection (1), he shall also permit the employee to take time off during his working hours for the following purposes—
- (a) undergoing training which is relevant to his functions as a learning representative, and
  - (b) where the trade union has in the last six months given the employer notice under subsection (4)(b) in relation to the employee, undergoing such training as is mentioned in subsection (4)(a).
- (8) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provision of a Code of Practice issued by ACAS or the Secretary of State.
- (9) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.
- (10) In subsection (2)(a), the reference to qualifying members of the trade union is to members of the trade union—
- (a) who are employees of the employer of a description in respect of which the union is recognised by the employer, and
  - (b) in relation to whom it is the function of the union learning representative to act as such.
- (11) For the purposes of this section, a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules.”
- (3) In section 169(1) (duty of employer to pay employee for time off under section 168), after “168” there is inserted “ or 168A ”.
- (4) In section 170 (duty to permit time off to take part in trade union activities), after subsection (2) there is inserted—
- “(2A) The right conferred by subsection (1) does not extend to time off for the purpose of acting as, or having access to services provided by, a learning representative of a trade union.
- (2B) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that

*Status: Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

description of employee to take time off during his working hours for the purpose of having access to services provided by a person in his capacity as a learning representative of the trade union.

(2C) Subsection (2B) only applies if the learning representative would be entitled to time off under subsection (1) of section 168A for the purpose of carrying on in relation to the employee activities of the kind mentioned in subsection (2) of that section.”

(5) In that section, at the end there is inserted—

“(5) For the purposes of this section—

- (a) a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules, and
- (b) a person who is a learning representative of a trade union acts as such if he carries on the activities mentioned in section 168A(2) in that capacity.”

(6) At the end of section 173 (provisions supplementary to section 168 to 170), there is inserted—

“(3) The Secretary of State may by order made by statutory instrument amend section 168A for the purpose of changing the purposes for which an employee may take time off under that section.

(4) No order may be made under subsection (3) unless a draft of the order has been laid before and approved by resolution of each House of Parliament.”

(7) In sections 199(1) and 203(1) (powers of ACAS and Secretary of State to produce Codes of Practice), at the end there is inserted “or for purposes connected with trade union learning representatives”.

(8) For section 200(3) there is substituted—

“(3) A Code containing practical guidance—

- (a) on the time off to be permitted to a trade union learning representative in accordance with section 168A (time off for training and carrying out functions as a learning representative),
- (b) on the training that is sufficient to enable a trade union learning representative to carry on the activities mentioned in section 168A(2) (activities for which time off is to be permitted), or
- (c) on any of the matters referred to in section 199(2),

shall not be issued unless the draft has been approved by a resolution of each House of Parliament; and if it is so approved, ACAS shall issue the Code in the form of the draft.”

PROSPECTIVE

#### 44 Dismissal procedures agreements

In section 110 of the Employment Rights Act 1996 (c. 18) (dismissal procedures agreements) after subsection (3) there is inserted—

*Status: Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“(3A) The Secretary of State may by order amend subsection (3) so as to add to the conditions specified in that subsection such conditions as he may specify in the order.”

## 45 Fixed-term work

- (1) The Secretary of State shall make regulations—
  - (a) for the purpose of securing that employees in fixed-term employment are treated, for such purposes and to such extent as the regulations may specify, no less favourably than employees in permanent employment, and
  - (b) for the purpose of preventing abuse arising from the use of successive periods of fixed-term employment.
- (2) The regulations may—
  - (a) specify classes of employee who are to be taken to be, or not to be, in fixed-term employment;
  - (b) specify classes of employee who are to be taken to be, or not to be, in permanent employment;
  - (c) specify circumstances in which employees in fixed-term employment are to be taken to be, or not to be, treated less favourably than employees in permanent employment;
  - (d) specify circumstances in which periods of fixed-term employment are to be taken to be, or not to be, successive;
  - (e) specify circumstances in which fixed-term employment is to have effect as permanent employment;
  - (f) make provision which has effect in relation to employees in fixed-term employment generally or provision which has effect only in relation to specified classes of employee in fixed-term employment.
- (3) The regulations may—
  - (a) confer jurisdiction (including exclusive jurisdiction) on employment tribunals;
  - (b) provide for specified obligations not to apply in specified circumstances;
  - (c) make provision about notices or information to be given, evidence to be produced and other procedures to be followed;
  - (d) amend, apply with or without modifications, or make provision similar to any provision of—
    - (i) the Employment Rights Act 1996 (c. 18) (including, in particular, Parts 5, 10 and 13),
    - (ii) the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), or
    - (iii) the Social Security Contributions and Benefits Act 1992 (c. 4);
  - (e) provide for the provisions of specified agreements to have effect in place of provisions of the regulations to such extent and in such circumstances as may be specified.
- (4) Without prejudice to the generality of this section, the regulations may make any provision in relation to employees which appears to the Secretary of State to be necessary or expedient—

---

*Status: Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

---

- (a) for the purpose of implementing Council Directive [99/70/EC](#) on the framework agreement on fixed-term work in its application to terms and conditions of employment;
  - (b) for the purpose of dealing with any matter arising out of or related to the United Kingdom's obligations under that Directive;
  - (c) for the purpose of any matter dealt with by the framework agreement or for the purpose of applying the provisions of the framework agreement to any matter relating to fixed term workers.
- (5) In its application to this section, section 51(1)(b) includes power to amend an enactment.
- (6) In this section—
- (a) “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment, and
  - (b) “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

#### **46 Fixed-term work: Northern Ireland**

- (1) The Department for Employment and Learning shall make regulations—
- (a) for the purpose of securing that employees in fixed-term employment are treated, for such purposes and to such extent as the regulations may specify, no less favourably than employees in permanent employment, and
  - (b) for the purpose of preventing abuse arising from the use of successive periods of fixed-term employment.
- (2) The regulations may—
- (a) specify classes of employee who are to be taken to be, or not to be, in fixed-term employment;
  - (b) specify classes of employee who are to be taken to be, or not to be, in permanent employment;
  - (c) specify circumstances in which employees in fixed-term employment are to be taken to be, or not to be, treated less favourably than employees in permanent employment;
  - (d) specify circumstances in which periods of fixed-term employment are to be taken to be, or not to be, successive;
  - (e) specify circumstances in which fixed-term employment is to have effect as permanent employment;
  - (f) make provision which has effect in relation to employees in fixed-term employment generally or provision which has effect only in relation to specified classes of employee in fixed-term employment.
- (3) The regulations may—
- (a) confer jurisdiction (including exclusive jurisdiction) on industrial tribunals;
  - (b) provide for specified obligations not to apply in specified circumstances;
  - (c) make provision about notices or information to be given, evidence to be produced and other procedures to be followed;
  - (d) amend, apply with or without modifications, or make provision similar to any provision of—

*Status: Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (i) the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919) (including, in particular, Parts 6, 11 and 15),
  - (ii) the Trade Union and Labour Relations (Northern Ireland) Order 1995 (S.I. 1995/1980 (N.I. 12)), or
  - (iii) the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7);
- (e) provide for the provisions of specified agreements to have effect in place of provisions of the regulations to such extent and in such circumstances as may be specified.
- (4) Without prejudice to the generality of this section, the regulations may make any provision in relation to employees which appears to the Department for Employment and Learning to be necessary or expedient—
- (a) for the purpose of implementing Council Directive [99/70/EC](#) on the framework agreement on fixed-term work in its application to terms and conditions of employment;
  - (b) for the purpose of dealing with any matter arising out of or related to the United Kingdom’s obligations under that Directive;
  - (c) for the purpose of any matter dealt with by the framework agreement or for the purpose of applying the provisions of the framework agreement to any matter relating to fixed term workers.
- (5) Power to make regulations under this section includes power—
- (a) to make different provision for different cases or circumstances;
  - (b) to make such incidental, supplementary, consequential or transitional provision as the Department for Employment and Learning thinks fit, including provision amending an enactment.
- (6) Power to make regulations under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (7) Regulations under this section shall not be made unless a draft of them has been laid before and approved by resolution of the Northern Ireland Assembly.
- (8) In this section—
- (a) “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment, and
  - (b) “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

VALID FROM 06/04/2003

#### 47 Flexible working

- (1) The Employment Rights Act 1996 (c. 18) is amended as follows.
- (2) After Part 8 there is inserted—



*Status: Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## “PART 8A

### FLEXIBLE WORKING

#### 80F Statutory right to request contract variation

- (1) A qualifying employee may apply to his employer for a change in his terms and conditions of employment if—
  - (a) the change relates to—
    - (i) the hours he is required to work,
    - (ii) the times when he is required to work,
    - (iii) where, as between his home and a place of business of his employer, he is required to work, or
    - (iv) such other aspect of his terms and conditions of employment as the Secretary of State may specify by regulations, and
  - (b) his purpose in applying for the change is to enable him to care for someone who, at the time of application, is a child in respect of whom he satisfies such conditions as to relationship as the Secretary of State may specify by regulations.
- (2) An application under this section must—
  - (a) state that it is such an application,
  - (b) specify the change applied for and the date on which it is proposed the change should become effective,
  - (c) explain what effect, if any, the employee thinks making the change applied for would have on his employer and how, in his opinion, any such effect might be dealt with, and
  - (d) explain how the employee meets, in respect of the child concerned, the conditions as to relationship mentioned in subsection (1)(b).
- (3) An application under this section must be made before the fourteenth day before the day on which the child concerned reaches the age of six or, if disabled, eighteen.
- (4) If an employee has made an application under this section, he may not make a further application under this section to the same employer before the end of the period of twelve months beginning with the date on which the previous application was made.
- (5) The Secretary of State may by regulations make provision about—
  - (a) the form of applications under this section, and
  - (b) when such an application is to be taken as made.
- (6) The Secretary of State may by order substitute a different age for the first of the ages specified in subsection (3).
- (7) In subsection (3), the reference to a disabled child is to a child who is entitled to a disability living allowance within the meaning of section 71 of the Social Security Contributions and Benefits Act 1992 (c. 4).
- (8) For the purposes of this section, an employee is—

*Status: Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) a qualifying employee if he—
  - (i) satisfies such conditions as to duration of employment as the Secretary of State may specify by regulations, and
  - (ii) is not an agency worker;
- (b) an agency worker if he is supplied by a person (“the agent”) to do work for another (“the principal”) under a contract or other arrangement made between the agent and the principal.

### 80G Employer’s duties in relation to application under section 80F

- (1) An employer to whom an application under section 80F is made—
  - (a) shall deal with the application in accordance with regulations made by the Secretary of State, and
  - (b) shall only refuse the application because he considers that one or more of the following grounds applies—
    - (i) the burden of additional costs,
    - (ii) detrimental effect on ability to meet customer demand,
    - (iii) inability to re-organise work among existing staff,
    - (iv) inability to recruit additional staff,
    - (v) detrimental impact on quality,
    - (vi) detrimental impact on performance,
    - (vii) insufficiency of work during the periods the employee proposes to work,
    - (viii) planned structural changes, and
    - (ix) such other grounds as the Secretary of State may specify by regulations.
- (2) Regulations under subsection (1)(a) shall include—
  - (a) provision for the holding of a meeting between the employer and the employee to discuss an application under section 80F within twenty eight days after the date the application is made;
  - (b) provision for the giving by the employer to the employee of notice of his decision on the application within fourteen days after the date of the meeting under paragraph (a);
  - (c) provision for notice under paragraph (b) of a decision to refuse the application to state the grounds for the decision;
  - (d) provision for the employee to have a right, if he is dissatisfied with the employer’s decision, to appeal against it within fourteen days after the date on which notice under paragraph (b) is given;
  - (e) provision about the procedure for exercising the right of appeal under paragraph (d), including provision requiring the employee to set out the grounds of appeal;
  - (f) provision for notice under paragraph (b) to include such information as the regulations may specify relating to the right of appeal under paragraph (d);
  - (g) provision for the holding, within fourteen days after the date on which notice of appeal is given by the employee, of a meeting between the employer and the employee to discuss the appeal;

*Status:* Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (h) provision for the employer to give the employee notice of his decision on any appeal within fourteen days after the date of the meeting under paragraph (g);
  - (i) provision for notice under paragraph (h) of a decision to dismiss an appeal to state the grounds for the decision;
  - (j) provision for a statement under paragraph (c) or (i) to contain a sufficient explanation of the grounds for the decision;
  - (k) provision for the employee to have a right to be accompanied at meetings under paragraph (a) or (g) by a person of such description as the regulations may specify;
  - (l) provision for postponement in relation to any meeting under paragraph (a) or (g) which a companion under paragraph (k) is not available to attend;
  - (m) provision in relation to companions under paragraph (k) corresponding to section 10(6) and (7) of the Employment Relations Act 1999 (c. 26) (right to paid time off to act as companion, etc.);
  - (n) provision, in relation to the rights under paragraphs (k) and (l), for the application (with or without modification) of sections 11 to 13 of the Employment Relations Act 1999 (provisions ancillary to right to be accompanied under section 10 of that Act).
- (3) Regulations under subsection (1)(a) may include—
- (a) provision for any requirement of the regulations not to apply where an application is disposed of by agreement or withdrawn;
  - (b) provision for extension of a time limit where the employer and employee agree, or in such other circumstances as the regulations may specify;
  - (c) provision for applications to be treated as withdrawn in specified circumstances;
- and may make different provision for different cases.
- (4) The Secretary of State may by order amend subsection (2).

#### **80H Complaints to employment tribunals**

- (1) An employee who makes an application under section 80F may present a complaint to an employment tribunal—
  - (a) that his employer has failed in relation to the application to comply with section 80G(1), or
  - (b) that a decision by his employer to reject the application was based on incorrect facts.
- (2) No complaint under this section may be made in respect of an application which has been disposed of by agreement or withdrawn.
- (3) In the case of an application which has not been disposed of by agreement or withdrawn, no complaint under this section may be made until the employer—
  - (a) notifies the employee of a decision to reject the application on appeal, or

*Status: Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) commits a breach of regulations under section 80G(1)(a) of such description as the Secretary of State may specify by regulations.

(4) No complaint under this section may be made in respect of failure to comply with provision included in regulations under subsection (1)(a) of section 80G because of subsection (2)(k), (l) or (m) of that section.

(5) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the relevant date, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(6) In subsection (5)(a), the reference to the relevant date is—

(a) in the case of a complaint permitted by subsection (3)(a), the date on which the employee is notified of the decision on the appeal, and

(b) in the case of a complaint permitted by subsection (3)(b), the date on which the breach concerned was committed.

#### 80I Remedies

(1) Where an employment tribunal finds a complaint under section 80H well-founded it shall make a declaration to that effect and may—

(a) make an order for reconsideration of the application, and

(b) make an award of compensation to be paid by the employer to the employee.

(2) The amount of compensation shall be such amount, not exceeding the permitted maximum, as the tribunal considers just and equitable in all the circumstances.

(3) For the purposes of subsection (2), the permitted maximum is such number of weeks' pay as the Secretary of State may specify by regulations.

(4) Where an employment tribunal makes an order under subsection (1)(a), section 80G, and the regulations under that section, shall apply as if the application had been made on the date of the order.”

(3) After section 47C there is inserted—

#### “47E Flexible working

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee—

(a) made (or proposed to make) an application under section 80F,

(b) exercised (or proposed to exercise) a right conferred on him under section 80G,

(c) brought proceedings against the employer under section 80H, or

*Status: Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.

(2) This section does not apply where the detriment in question amounts to dismissal within the meaning of Part 10.”

(4) After section 104B there is inserted—

**“104C Flexible working**

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

- (a) made (or proposed to make) an application under section 80F,
- (b) exercised (or proposed to exercise) a right conferred on him under section 80G,
- (c) brought proceedings against the employer under section 80H, or
- (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.”

**48 Rate of maternity allowance**

(1) In section 35A of the Social Security Contributions and Benefits Act 1992 (c. 4) (appropriate weekly rate of maternity allowance)—

(a) for subsections (1) to (3) there is substituted—

“(1) For the purposes of section 35(1) above the appropriate weekly rate is (subject to subsection (5A) below) whichever is the lower rate of—

- (a) a weekly rate equivalent to 90 per cent of the woman’s average weekly earnings; and
- (b) the weekly rate for the time being prescribed under section 166(1)(b) below.”;

(b) in paragraph (c)(i) of subsection (5), for “the lower earnings limit” there is substituted “ an amount 90 per cent of which is equal to the weekly rate prescribed under section 166(1)(b) below that is ”; and

(c) after that subsection there is inserted—

“(5A) Where subsection (5B) below applies the appropriate weekly rate is the weekly rate for the time being prescribed under section 166(1)(b) below.

(5B) This subsection applies where a woman is treated by virtue of regulations under sub-paragraph (i) of paragraph (c) of subsection (5) above as having received a payment in respect of each week in the specified period equal to the amount mentioned in that sub-paragraph.”

(2) In relation to any time before the coming into force of section 19, the reference to section 166(1)(b) of the Social Security Contributions and Benefits Act 1992 (c. 4) in section 35A(5)(c)(i) of that Act (as amended by subsection (1)(b) above) is a reference to section 166(3) of that Act.

*Status: Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Commencement Information

**II** S. 48(1)(b)(2) in force at 24.11.2002 by S.I. 2002/2866, **art. 2(1)**, Sch. 1 Pt. 1 (with Sch. 3 para. 4)

VALID FROM 05/07/2003

## 49 Work-focused interviews for partners

After section 2A of the Social Security Administration Act 1992 (c. 5) (claim or full entitlement to certain benefits conditional on work-focused interview), there is inserted—

### “2AA Full entitlement to certain benefits conditional on work-focused interview for partner

- (1) Regulations may make provision for or in connection with imposing, at a time when—
  - (a) a person (“the claimant”) who—
    - (i) is under the age of 60, and
    - (ii) has a partner who is also under that age,
 is entitled to a benefit to which this section applies at a higher rate referable to his partner, and
  - (b) prescribed circumstances exist,
 a requirement for the partner to take part in a work-focused interview as a condition of the benefit continuing to be payable to the claimant at that rate.
- (2) The benefits to which this section applies are—
  - (a) income support;
  - (b) an income-based jobseeker’s allowance other than a joint-claim jobseeker’s allowance;
  - (c) incapacity benefit;
  - (d) severe disablement allowance; and
  - (e) invalid care allowance.
- (3) For the purposes of this section a benefit is payable to a person at a higher rate referable to his partner if the amount that is payable in his case—
  - (a) is more than it would be if the person concerned was not a member of a couple; or
  - (b) includes an increase of benefit for his partner as an adult dependant of his.
- (4) Regulations under this section may, in particular, make provision—
  - (a) for securing, where the partner of the claimant would otherwise be required to take part in work-focused interviews relating to two or more benefits—
    - (i) that the partner is required instead to take part in only one such interview; and

**Status:** Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (ii) that the interview is capable of counting for the purposes of all those benefits;
  - (b) in a case where the claimant has more than one partner, for determining which of those partners is required to take part in the work-focused interview or requiring each of them to take part in such an interview;
  - (c) for determining the persons by whom work-focused interviews are to be conducted;
  - (d) conferring power on such persons or the designated authority to determine when and where work-focused interviews are to take place (including power in prescribed circumstances to determine that they are to take place in the homes of those being interviewed);
  - (e) prescribing the circumstances in which partners attending work-focused interviews are to be regarded as having or not having taken part in them;
  - (f) for securing that if—
    - (i) a partner who has been notified of a requirement to take part in a work-focused interview fails to take part in it, and
    - (ii) it is not shown (by him or by the claimant), within the prescribed period, that he had good cause for that failure,the amount payable to the claimant in respect of the benefit in relation to which the requirement applied is to be reduced by the specified amount until the specified time;
  - (g) prescribing—
    - (i) matters which are or are not to be taken into account in determining whether a partner does or does not have good cause for any failure to comply with the regulations; or
    - (ii) circumstances in which a partner is or is not to be regarded as having or not having good cause for any such failure.
- (5) Regulations under this section may, in relation to a reduction under subsection (4)(f), provide—
- (a) for the amount of the reduction to be calculated in the first instance by reference to such amount as may be prescribed;
  - (b) for the amount as so calculated to be restricted, in prescribed circumstances, to the prescribed extent;
  - (c) where the claimant is entitled to two or more benefits in relation to each of which a requirement to take part in a work-focused interview applied, for determining the extent to, and the order in, which those benefits are to be reduced in order to give effect to the reduction required in his case.
- (6) Regulations under this section may provide that any requirement to take part in a work-focused interview that would otherwise apply to a partner by virtue of the regulations—
- (a) is, in any prescribed circumstances, either not to apply or not to apply until the specified time;
  - (b) is not to apply if the designated authority determines that such an interview would not be of assistance to him or appropriate in the circumstances;

*Status: Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) is not to apply until such time as the designated authority determines (if that authority determines that such an interview would not be of assistance to him or appropriate in the circumstances until that time); and the regulations may make provision for treating a partner to whom any such requirement does not apply, or does not apply until a particular time, as having complied with that requirement to such extent and for such purposes as are specified.

(7) In this section—

“couple” means a married or unmarried couple (within the meaning of Part 7 of the Contributions and Benefits Act);

“designated authority” means such of the following as may be specified, namely—

- (a) the Secretary of State,
- (b) a person providing services to the Secretary of State,
- (c) a local authority, and
- (d) a person providing services to, or authorised to exercise any function of, a local authority;

“partner” means a person who is a member of the same couple as the claimant;

“specified” means prescribed by or determined in accordance with regulations; and

“work-focused interview” has the same meaning as in section 2A above.”

VALID FROM 09/09/2002

## **50 Use of information for, or relating to, employment and training**

Schedule 6 (which contains provision for the use of information for, or relating to, employment and training) has effect.

### *General*

## **51 Orders and regulations**

- (1) Any power of the Secretary of State to make orders or regulations under this Act includes power—
  - (a) to make different provision for different cases or circumstances;
  - (b) to make such incidental, supplementary, consequential or transitional provision as the Secretary of State thinks fit.
- (2) Any power of the Secretary of State to make orders or regulations under this Act is exercisable by statutory instrument.
- (3) No order may be made under this Act unless a draft of the order has been laid before and approved by resolution of each House of Parliament.



*Status:* Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (4) No regulations may be made under section 30, 31, 32, 33 or 45 unless a draft of the regulations has been laid before and approved by resolution of each House of Parliament.
- (5) A statutory instrument containing regulations under any other provision of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) This section does not apply to orders under section 55(2).

## 52 Financial provisions

- (1) There shall be paid out of money provided by Parliament—
  - (a) any expenses incurred by a Minister of the Crown or government department in consequence of this Act, and
  - (b) any increase attributable to this Act in the sums so provided under any other Act.
- (2) There shall be paid into the Consolidated Fund any increase attributable to this Act in the sums payable into that Fund under any other Act.

VALID FROM 31/07/2002

## 53 Minor and consequential amendments

Schedule 7 (which makes minor and consequential amendments) has effect.

### Commencement Information

- I2** S. 53 in force for specified purposes at 31.7.2002 by [S.I. 2002/1989, art. 2](#); s. 53 in force for specified purposes at 9.9.2002 by [S.I. 2002/2256, art. 2\(b\)](#); s. 53 in force for specified purposes at 24.11.2002, 8.12.2002 and 6.4.2003 by [S.I. 2002/2866, art. 2\(1\)-\(3\), Sch. 1 \(with Sch. 3\)](#)

VALID FROM 09/09/2002

## 54 Repeals and revocations

The enactments and instruments specified in Schedule 8 are hereby repealed or revoked to the extent specified there.

### Commencement Information

- I3** S. 54 in force for specified purposes at 9.9.2002 by [S.I. 2002/2256, art. 2\(c\)\(d\)](#); s. 54 in force for specified purposes at 24.11.2002 and 6.4.2003 by [S.I. 2002/2866, art. 2\(4\)\(5\), Sch. 2 \(with Sch. 3\)](#)

*Status:* Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## 55 Short title etc.

- (1) This Act may be cited as the Employment Act 2002.
- (2) This Act, except sections 45, 46, 51 and 52 and this section, shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be so appointed for different purposes.
- (3) An order under subsection (2) may contain such transitional provisions and savings as the Secretary of State considers necessary or expedient in connection with the coming into force of any of the provisions of this Act.
- (4) The Secretary of State may by regulations make such transitional provisions and savings as he considers necessary or expedient for the purposes of or in connection with—
  - (a) the coming into force of section 19 or 48, or Schedule 7 so far as relating to any amendment made in consequence of either of those sections; or
  - (b) the operation of any enactment amended by any of those provisions during any period when the amendment is not wholly in force.
- (5) Subject to subsections (6) and (7), this Act extends to England and Wales and Scotland only.
- (6) The following provisions also extend to Northern Ireland—
  - (a) section 5;
  - (b) sections 13 to 15, and section 16 so far as relating thereto;
  - (c) paragraphs 1, 4, 9 and 10 of Schedule 6, and section 50 so far as relating thereto;
  - (d) sections 51 and 52;
  - (e) paragraphs 1, 50, 52 and 53 of Schedule 7, and section 53 so far as relating thereto;
  - (f) Schedule 8, so far as relating to the repeal of section 3(3) of the Social Security Act 1998 (c. 14), and section 54 so far as relating thereto;
  - (g) this section.
- (7) The following provisions extend to Northern Ireland only—
  - (a) sections 21(2) and 46;
  - (b) paragraphs 7, 8, 12 and 14 of Schedule 6, and section 50 so far as relating thereto;
  - (c) paragraph 17 of Schedule 7, and section 53 so far as relating thereto;
  - (d) Schedule 8, so far as relating to—
    - (i) the repeal in the Social Security Administration (Northern Ireland) Act 1992 (c. 8), and
    - (ii) the revocations in the Social Security Administration (Fraud) (Northern Ireland) Order 1997 (S.I. 1997/1182 (N.I. 11)) and the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671),
 and section 54 so far as relating thereto.
- (8) In sections 5 and 13 to 15 and paragraph 53 of Schedule 7, references to statutory paternity pay or statutory adoption pay include statutory pay under Northern Ireland legislation corresponding to Part 12ZA or Part 12ZB of the Social Security Contributions and Benefits Act 1992 (c. 4).

---

**Status:** Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

---

#### **Subordinate Legislation Made**

- P1** S. 55(2) power partly exercised: 31.7.2002 appointed for specified provisions by S.I. {2002/1989};  
S. 55(2) power partly exercised: 9.9.2002 appointed for specified provisions by S.I. {2002/2256}
- P2** S. 55(2)(3) power partly exercised: different dates appointed for specified provisions by S.I.  
{2002/2866} (with transitional and saving provisions in Sch. 3)
- P3** S. 55(2)(3) power partly exercised: different dates appointed for specified provisions by S.I.  
{2002/2866} (with transitional and saving provisions in Sch. 3)

**Status:**

Point in time view as at 08/07/2002. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

Employment Act 2002, Part 4 is up to date with all changes known to be in force on or before 25 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.