



Employment Protection Act 1975

1975 CHAPTER 71

PART V

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

108 General provisions as to industrial tribunals and conciliation officers

- (1) The remedy of an employee for infringement of any of the rights conferred on him by any provision of this Act shall, if provision is made for a complaint or for the reference of a question to an industrial tribunal, be by way of such complaint or reference in accordance with the relevant provisions of this Act and with tribunal regulations made under paragraph 21 of Schedule 1 to the 1974 Act, and not otherwise.
- (2) The provisions of subsections (3) to (7) below shall have effect in relation to industrial tribunal proceedings, or claims which could be the subject of tribunal proceedings.—
 - (a) arising out of a contravention, or alleged contravention, of the following provisions of this Act, that is to say, sections 22, 29, 35, 53, 57, 58, 59, 61, 70, 81, 99 and 102 ; or
 - (b) arising out of a contravention, or alleged contravention, of a provision of any other Act specified by an order under subsection (8) below; or
 - (c) which are proceedings or claims in respect of which an industrial tribunal has jurisdiction by virtue of an order under section 109 below.
- (3) Where a complaint has been presented to an industrial tribunal, and a copy of it has been sent to a conciliation officer, it shall be the duty of the conciliation officer—
 - (a) if he is requested to do so by the complainant and by the person against whom the complaint is presented, or
 - (b) if, in the absence of any such request, the conciliation officer considers that he could act under this subsection with a reasonable prospect of success, to endeavour to promote a settlement of the complaint without its being determined by an industrial tribunal.
- (4) Where at any time—

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- (a) a person claims that action has been taken in respect of which a complaint could be presented by him to an industrial tribunal, but
 - (b) before any complaint relating to that action has been presented by him,
- a request is made to a conciliation officer (whether by that person or by the person against whom the complaint could be made) to make his services available to them, the conciliation officer shall act in accordance with subsection (3) above as if a complaint has been presented to an industrial tribunal.
- (5) Subsections (3) and (4) above shall apply, with appropriate modifications, to the presentation of a claim and the reference of a question to an industrial tribunal as they apply to the presentation of a complaint.
 - (6) In proceeding under subsection (3) or (4) above a conciliation officer shall where appropriate have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.
 - (7) Anything communicated to a conciliation officer in connection with the performance of his functions under this section shall not be admissible in evidence in any proceedings before an industrial tribunal, except with the consent of the person who communicated it to that officer.
 - (8) The Secretary of State may by order—
 - (a) direct that further provisions of this Act be added to the list in subsection (2) (a) above ;
 - (b) specify a provision of any other Act as one to which subsection (2)(b) above applies.

109 Power to confer jurisdiction on industrial tribunals in respect of damages, etc., for breach of contract of employment

- (1) The appropriate Minister may by order provide that on any claim to which this section applies or any such claim of a description specified in the order, being in either case a claim satisfying the relevant condition or conditions mentioned in subsection (3) below, proceedings for the recovery of damages or any other sum, except damages or a sum due in respect of personal injuries, may be brought before an industrial tribunal.
- (2) Subject to subsection (3) below, this section applies to any of the following claims, that is to say—
 - (a) a claim for damages for breach of a contract of employment or any other contract connected with employment ;
 - (b) a claim for a sum due under such a contract;
 - (c) a claim for the recovery of a sum in pursuance of any enactment relating to the terms or performance of such a contract;

being in each case a claim such that a court in England and Wales or Scotland, as the case may be, would under the law for the time being in force have jurisdiction to hear and determine an action in respect of the claim.
- (3) An order under this section may make provision with respect to any such claim only if it satisfies either of the following conditions, that is to say—
 - (a) it arises or is outstanding on the termination of the employee's employment; or
 - (b) it arises in circumstances which also give rise to proceedings already or simultaneously brought before an industrial tribunal otherwise than by virtue of this section;

or, if the order so provides, it satisfies both those conditions.

- (4) Where on proceedings under this section an industrial tribunal finds that the whole or part of a sum claimed in the proceedings is due, the tribunal shall order the respondent to the proceedings to pay the amount which it finds due.
- (5) Without prejudice to the generality of the power to make supplementary, incidental or transitional provision in an order under this section, such an order may include provisions—
 - (a) as to the manner in which and time within which proceedings are to be brought by virtue of this section ; and
 - (b) modifying any other enactment.
- (6) Regulations under paragraph 21 of Schedule 1 to the 1974 Act may include provision for enabling an industrial tribunal to hear and determine proceedings brought by virtue of this section concurrently with proceedings brought before the tribunal otherwise than by virtue of this section.
- (7) Any jurisdiction conferred on an industrial tribunal by virtue of this section in respect of any claim shall be exercisable concurrently with any court in England and Wales or in Scotland, as the case may be, which has jurisdiction to hear and determine an action in respect of the claim.
- (8) In this section—

" appropriate Minister ", as respects a claim in respect of which an action could be heard and determined in England and Wales, means the Lord Chancellor and, as respects a claim in respect of which an action could be heard and determined by a court in Scotland, means the Secretary of State ;

" personal injuries " includes any disease and any impairment of a person's physical or mental condition ;

and any reference to breach of a contract includes a reference to breach of—

 - (a) a term implied in a contract by or under any enactment or otherwise;
 - (b) a term of a contract as modified by or under any enactment or otherwise; and
 - (c) a term which, although not contained in a contract, is incorporated in the contract by another term of the contract.
- (9) No order shall be made under this section unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.

110 Death of employee or employer

The provisions of Schedule 12 to this Act shall have effect in relation to the death of an employee or employer.

111 Disentitlement to unemployment benefit and supplementary benefit during trade dispute

- (1) In section 19(1) of the Social Security Act 1975 (disqualification for unemployment benefit where stoppage of work due to trade dispute)—
 - (a) in paragraph (a) the words "or financing" and the word " and ", and
 - (b) paragraph (b),are hereby repealed.

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- (2) In section 10(2) of the Supplementary Benefit Act 1966 (persons affected by trade disputes)—
- (a) in paragraph (a) the words " or financing " and the word " and ", and
 - (b) paragraph (b)
- are hereby repealed.

112 Entitlement to unemployment benefit and recoupment of that benefit and supplementary benefit

- (1) Section 139(1) of the Social Security Act 1975 (submission of regulations in draft to the National Insurance Advisory Committee) shall not apply to regulations made under that Act and contained in a statutory instrument which states that the regulations provide only that a day in respect of which there is payable a particular description of any payment to which this section applies shall not be treated as a day of unemployment for the purposes of entitlement to unemployment benefit.
- (2) The Secretary of State may by regulations make provision for all or any of the purposes mentioned in this subsection with respect to payments to which this section applies and which are the subject of proceedings before an industrial tribunal, that is to say—
- (a) enabling the Secretary of State to recover from an employer, by way of total or partial recoupment of unemployment benefit or supplementary benefit, a sum not exceeding the amount of the prescribed element of the monetary award ;
 - (b) requiring or authorising the tribunal to order the payment of such a sum, by way of total or partial recoupment of either benefit, to the Secretary of State instead of to the employee ;
 - (c) requiring the tribunal to order the payment to the employee of only the excess of the prescribed element of the monetary award over the amount of any unemployment benefit or supplementary benefit shown to the tribunal to have been paid to the employee, and enabling the Secretary of State to recover from the employer, by way of total or partial recoupment of the benefit, a sum not exceeding that amount.
- (3) Without prejudice to subsection (2) above, regulations under that subsection may—
- (a) be so framed as to apply to all payments to which this section applies or one or more classes of those payments and so as to apply both to unemployment benefit and supplementary benefit or only to one of those benefits;
 - (b) confer powers and impose duties on industrial tribunals, on the Supplementary Benefits Commission and on insurance officers and other persons;
 - (c) confer on an employee who is aggrieved by any decision of the Commission as to the total or partial recoupment of supplementary benefit in pursuance of the regulations (including any decision as to the amount of benefit) a right to appeal against the decision to an Appeal Tribunal constituted under the Supplementary Benefit Act 1966 and for that purpose apply section 18(2) and (3) of that Act (appeals) with or without modifications;
 - (d) provide for the proof in proceedings before industrial tribunals (whether by certificate or in any other manner) of any amount of unemployment benefit or supplementary benefit paid to an employee ; and
 - (e) make different provision for different cases.
- (4) It is hereby declared for the avoidance of doubt that the power to make regulations under section 114 of the Social Security Act 1975 for the determination of questions

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arising in connection with that Act includes power to make regulations for the determination of any question arising as to the total or partial recoupment of unemployment benefit in pursuance of regulations under subsection (2) above (including any decision as to the amount of benefit).

- (5) Where in pursuance of any regulations under that subsection a sum has been recovered by or paid to the Secretary of State by way of total or partial recoupment of unemployment benefit or supplementary benefit—
- (a) section 119(1) and (2) of the Social Security Act 1975 (repayment of benefit revised on review) shall not apply to the unemployment benefit recouped; and
 - (b) the following provisions of the Supplementary Benefit Act 1966, that is to say, section 23 (recovery of cost of supplementary benefit from persons liable for maintenance) and section 26 (recovery of benefit and other sums in cases of misrepresentation and non-disclosure), shall not apply to the supplementary benefit recouped.
- (6) Any amount found to have been duly recovered by or paid to the Secretary of State in pursuance of regulations under subsection (2) above by way of total or partial recoupment of unemployment benefit shall be paid into the National Insurance Fund.
- (7) This section applies—
- (a) to a payment of wages or compensation for loss of wages;
 - (b) to any payment under this Act by an employer to an employee or a payment by an employer to an employee of a nature similar to, or for a purpose corresponding to the purpose of, any payment under this Act.
- (8) In this section—
- " monetary award ", in relation to an industrial tribunal, means the amount which is awarded, or ordered to be paid, to the employee by the tribunal or would be so awarded or ordered apart from any provision of regulations under this section;
 - " the prescribed element ", in relation to any monetary award, means so much of that award as is attributable to such matters as may be prescribed by regulations under subsection (2) above ;
 - " supplementary benefit " means benefit under the Supplementary Benefit Act 1966; and
 - " unemployment benefit " means unemployment benefit under the Social Security Act 1975.

113 Payments which are to be treated as earnings for social security purposes

- (1) Where a payment to which this section applies is made by an employer to an employee, the payment and the period for which it is made shall, notwithstanding that the payment is made in respect of a period during which no contract of employment subsists, be respectively treated for the purposes of the Supplementary Benefit Act 1966 and the Social Security Act 1975 as earnings of that employee and a period of his employment by that employer.
- (2) This section applies to the following payments—
- (a) any amount paid in respect of arrears of pay in pursuance of an order for reinstatement or re-engagement under section 71 or 78 above ;
 - (b) any amount paid by way of pay in pursuance of an order for the continuation of a contract of employment under section 78 or 80 above ;

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- (c) any remuneration paid under a protective award under section 101 above.

114 Amendments of the Employment Agencies Act 1973

The Employment Agencies Act 1973 shall have effect subject to the amendments specified in Schedule 13 to this Act, being amendments which transfer the licensing functions under that Act from local authorities to the Secretary of State.

115 Amendments of the Employment and Training Act 1973

The Employment and Training Act 1973 shall have effect subject to the amendments specified in Schedule 14 to this Act, being amendments which provide for the status of the bodies established under section 1(1) of that Act and enlarge the powers of the Secretary of State to make arrangements for the purpose of providing or obtaining employment.

116 Amendments of the Health and Safety at Work etc. Act 1974

The Health and Safety at Work etc. Act 1974 shall have effect subject to the amendments specified in Schedule 15 to this Act, being amendments which restrict the appointment of safety representatives to those appointed by recognised trade unions, remove the special provisions relating to health and safety at work in agriculture and enable certain statements to be given notwithstanding the restrictions on disclosure of information obtained under that Act.

117 Offences by bodies corporate

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

118 Restrictions on contracting out

- (1) Except as provided by subsection (2) below, any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—
 - (a) to exclude or limit the operation of any provision of this Act; or
 - (b) to preclude any person from presenting a complaint to, or bringing any proceedings under this Act before, an industrial tribunal, or for making any reference, claim, complaint or application under this Act to the Service or the Committee.
- (2) Subsection (1) above shall not apply—
 - (a) to any provision in a collective agreement excluding rights under section 22 above or Part IV of this Act, if an order under section 28 or, as the case may be, section 107 above is for the time being in force in respect of it;

- (b) to any union membership agreement so far as it affects the rights of an employee under section 53 above in accordance with subsection (4) of that section;
- (c) to any agreement to refrain from instituting or continuing any proceedings before an industrial tribunal where a conciliation officer has taken action in accordance with section 108(3) or (4) above ;
- (d) to any agreement such as is referred to in section 16(7)(b) or (c), or 21(6)(b) or (c) above, or paragraph 11(6) or (c) of Schedule 11 to this Act, to the extent that it varies or supersedes an award under section 16 or 21 above, or, as the case may be, paragraph 10 of the said Schedule 11.

119 Excluded classes of employment

- (1) Subject to the following provisions of this section, Parts II and IV of this Act apply to every employment.
- (2) The following provisions of this Act do not apply to employment where the employer is the has band or wife of the employee, that is to say. sections 22, 29, 35, 53, 57, 58, 59, 61, 64, 65,70 and 81.
- (3) The following provisions of this Act do not apply to employment as a registered dock worker, as defined by any scheme for the time being in force under the Dock Workers (Regulation of Employment) Act 1946, not being employment by virtue of which the employee is wholly or mainly engaged in work which is not dock work as defined by the scheme, that is to say, sections 22, 29, 61, 64, 65, 70, 99 and 100.
- (4) The following provisions of this Act do not apply to employment as master or as a member of the crew of a fishing vessel, where the employee is not remunerated otherwise than by a share in the profits or gross earnings of the vessel, that is to say, sections 22, 29, 35, 53, 57, 58, 59, 61, 64. 65, 70, 81, 99 and 100.
- (5) The following provisions of this Act do not apply to employment where under his contract of employment the employee ordinarily works outside Great Britain, that is to say, sections 22, 29, 35, 53, 57, 58, 59, 61, 64, 65, 70, 81, 99 and 100.
- (6) For the purposes of subsection (5) above, a person employed to work on board a ship registered in the United Kingdom (not being a ship registered at a port outside Great Britain) shall, unless—
 - (a) the employment is wholly outside Great Britain or
 - (b) he is not ordinarily resident in Great Britain,be regarded as a person who under his contract ordinarily works in Great Britain.
- (7) The following provisions of this Act do not apply to employment under a contract for a fixed term of 12 weeks or less or to employment under a contract made in contemplation of the performance of a specific task which is not expected to last for more than 12 weeks, unless in either case the employee has been continuously employed for a period of more than 12 weeks, that is to say, sections 22,29,99 and 100.
- (8) Subject to subsections (9), (10) and (11) below, the following provisions of this Act (which confer rights which do not depend upon an employee having a qualifying period of continuous employment) do not apply to employment under a contract which normally involves employment for less than 16 hours weekly, that is to say, sections 57, 58, 59 and 81.

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- (9) If the employee's relations with his employer cease to be governed by a contract which normally involves work for 16 hours or more weekly and become governed by a contract which normally involves employment for 8 hours or more, but less than 16 hours, weekly, the employee shall nevertheless for a period of 26 weeks computed in accordance with subsection (10) below be treated for the purposes of subsection (8) above as if his contract normally involved employment for 16 hours or more weekly.
- (10) In computing the said period of 26 weeks no account shall be taken of any week—
- (a) during which the employee is in fact employed for 16 hours or more;
 - (b) during which the employee takes part in a strike, or is absent from work because of a lock-out by his employer; or
 - (c) during which there is no contract of employment but which, by virtue of paragraph 5(1) of Schedule 1 to the Contracts of Employment Act 1972, counts in computing a period of continuous employment.
- (11) An employee whose relations with his employer are governed by a contract of employment which normally involves employment for 8 hours or more, but less than 16 hours, weekly shall nevertheless, if he has been continuously employed for a period of five years or more be treated for the purposes of subsection (8) above as if his contract normally involved employment for 16 hours or more weekly.
- (12) The following provisions of this Act do not apply to employment as a merchant seaman, that is to say, sections 59,61,64, 65,81,99 and 100.
- (13) Subject to subsection (14) below, employment as a merchant seaman does not include employment in the fishing industry or employment on board a ship otherwise than by the owner, manager or charterer of that ship except employment as a radio officer but save as aforesaid includes employment as master or a member of the crew of any ship, as an apprentice to the sea service, and as a trainee undergoing training for the sea service, and employment in or about a ship in port by the owner, manager or charterer of the ship to do work of the kind ordinarily done by a merchant seaman on such a ship while it is in port.
- (14) For the purposes of subsection (12) above as it applies in relation to sections 99 and 100, employment as a merchant seaman means employment as master or as a member of the crew of a sea-going ship, including an apprentice or trainee employed on any such ship and employment as a radio officer on such a ship.
- (15) The Secretary of State may by order—
- (a) provide that any enactment contained in this Act which is specified in the order shall not apply to persons or to employments of such classes as may be prescribed by the order, or shall apply to persons or employments of such classes as may be prescribed by the order subject to such exceptions and modifications as may be so prescribed;
 - (b) vary or revoke any of the provisions of subsections (1) to (14) of this section.
- (16) No order under subsection (15) above shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

120 Transfers to and from Crown employment

- (1) In Schedule 1 to the Contracts of Employment Act 1972 (computation of period of employment) after paragraph 10 there shall be inserted the following paragraph:—

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- “10A (1) Subject to the following provisions of this paragraph, the provisions of this Schedule shall have effect (for the purpose of computing an employee's period of employment, but not for any other purpose) in relation to Crown employment and to persons in Crown employment as they have effect in relation to other employment and to other employees, and accordingly, except where the context otherwise requires, references to an employer shall be construed as including a reference to the Crown.
- (2) In this paragraph, subject to the next following sub-paragraph, " Crown employment " means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by any enactment.
- (3) This paragraph does not apply to service as a member of the naval, military or air forces of the Crown, or of any women's service administered by the Defence Council, but does apply to employment by any association established for the purposes of the Auxiliary Forces Act 1953.
- (4) In so far as a person in Crown employment is employed otherwise than under a contract of employment, references in this Schedule to an employee's relations with his employer being governed by a contract of employment which normally involves employment for a certain number of hours weekly shall be modified accordingly.
- (5) The reference in paragraph 9(2) of this Schedule to an undertaking shall be construed as including a reference to any function of (as the case may require) a Minister of the Crown, a government department, or any other officer or body performing functions on behalf of the Crown.”.
- (2) After section 13 of the Redundancy Payments Act 1965 (change of ownership of business) there shall be inserted the following section—

“13A Transfer to Crown employment.

- (1) Section 13 of this Act shall apply to a transfer of functions from a person not acting on behalf of the Crown (in this section referred to as the transferor) to a Minister of the Crown, a government department or any other officer or body exercising functions on behalf of the Crown (in this section referred to as the transferee) as that section applies to a transfer of a business, but with the substitution for references to the previous owner and new owner of references to the transferor and transferee respectively.
- (2) In so far as the renewal or re-engagement of the employee by the transferee is in employment otherwise than under a contract of employment—
- (a) references in section 13 of this Act (and in sections 2(4) to (6) and 3(3) to (10) of this Act as they apply by virtue of that section) to a contract of employment or to the terms of such a contract shall be construed as references to employment otherwise than under such a contract and to the terms of such employment; and
- (b) references in subsection (4) of that section, as modified by subsection (1) of this section, to the substitution of the transferee for the transferor shall be construed as references to the substitution

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of employment by the transferee otherwise than under a contract of employment for employment by the transferor under such a contract.”

- (3) After section 24 of the said Act of 1965 (modification of right to redundancy payment where previous redundancy payment has been paid) there shall be inserted the following section—

“24A Modification of right to redundancy payment where payment equivalent to redundancy payment has previously been paid.

- (1) The provisions of this section shall have effect where—
- (a) a payment has been made, whether in respect of the termination of any person's employment or in respect of lay-off or short-time.—
 - (i) in accordance with any provisions of a scheme under section 1 of the Superannuation Act 1972 ; or
 - (ii) in accordance with any such arrangements as are mentioned in section 41(3) of this Act:
 - (b) he commences new, or renewed, employment : and
 - (c) the circumstances of the commencement of the new, or renewed, employment are such that, in determining for the purposes of section 1(1) of, or Schedule 1 to, this Act whether at any subsequent time he has been continuously employed for the requisite period, or for what period he has been continuously employed, the continuity of his period of employment would, apart from this section, be treated as not having been broken by the termination of the previous employment and the commencement of the new, or renewed, employment.
- (2) Where the conditions mentioned in the preceding subsection are fulfilled, then in determining, for the purposes of section 1(1) of, or Schedule 1 to, this Act, whether at any subsequent time he has been continuously employed for the requisite period, or for what period he has been continuously employed, the continuity of the period of employment shall be treated as having been broken—
- (a) in so far as the employment was under a contract of employment, at the date which was the relevant date in relation to the payment mentioned in paragraph (a) of the preceding subsection; or
 - (b) in so far as the employment was otherwise than under a contract of employment, at the date which would have been the relevant date in relation to that payment had the employment been under a contract of employment,
- and accordingly no account shall be taken of any time before that date.”.

121 Application to Crown

- (1) Subject to the following provisions of this section, the provisions of this Act (except sections 16, 20, 21, 47, 63 to 69, 90 to 96 and 98 to 107) shall have effect in relation to Crown employment and to persons in Crown employment as they have effect in relation to other employment and to other employees.

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- (2) In this section, subject to subsections (3) to (5) below, " Crown employment" means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by any enactment.
- (3) This section does not apply to service as a member of the naval, military or air forces of the Crown, or of any women's service administered by the Defence Council, but does apply to employment by any association established for the purposes of the Auxiliary Forces Act 1953.
- (4) For the purposes of this section, Crown employment does not include any employment in respect of which there is in force a certificate issued by or on behalf of a Minister of the Crown certifying that employment of a description specified in the certificate, or the employment of a particular person so specified, is (or, at a time specified in the certificate, was) required to be excepted from this section for the purpose of safeguarding national security; and any document purporting to be a certificate so issued shall be received in evidence and shall, unless the contrary is proved, be deemed to be such a certificate.
- (5) For the purposes of this Act (except sections 47(3) and (4), 68(3) and (4), 90 to 96 and 105), none of the bodies referred to in Schedule 3 to the Redundancy Payments Act 1965 (national health service employers) shall be regarded as performing functions on behalf of the Crown, and accordingly employment by any such body shall not be Crown employment within the meaning of this section.
- (6) For the purposes of the application of the provisions of this Act in relation to employment by any such body as is referred to in subsection (5) above, any reference to redundancy shall be construed as a reference to the existence of such circumstances as, in accordance with any arrangements for the time being in force as mentioned in section 41(3) of the Redundancy Payments Act 1965, are treated as equivalent to redundancy in relation to such employment.
- (7) For the purposes of the application of the provisions of this Act in relation to Crown employment in accordance with subsection (1) above—
 - (a) any reference to an employee shall be construed as a reference to a person in Crown employment;
 - (b) any reference to a contract of employment shall be construed as a reference to the terms of employment of a person in Crown employment;
 - (c) any reference to dismissal shall be construed as a reference to the termination of Crown employment;
 - (d) any reference to redundancy shall be construed as a reference to the existence of such circumstances as, in accordance with any arrangements for the time being in force as mentioned in section 41(3) of the Redundancy Payments Act 1965, are treated as equivalent to redundancy in relation to Crown employment;
 - (e) the reference in section 18(1)(e) above to the employer's undertaking shall be construed as a reference to the national interest; and
 - (f) any other reference to an undertaking shall be construed, in relation to a Minister of the Crown, as a reference to his functions or (as the context may require) to the department of which he is in charge and, in relation to a government department, officer or body, shall be construed as a reference to the functions of the department, officer or body or (as the context may require) to the department, officer or body.

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- (8) Where the terms of employment of a person in Crown employment restrict his right to take part in—
- (a) certain political activities ; or
 - (b) activities which may conflict with his official functions,
- nothing in section 59 above shall require him to be allowed time off work for public duties connected with any such activities.

122 Application of employment legislation to House of Commons staff

- (1) The provisions of this Act, Schedule 1 to the Contracts of Employment Act 1972 and Parts I and II of Schedule 1 to the 1974 Act shall apply to relevant members of House of Commons staff as they apply to persons in Crown employment within the meaning of section 121 above, and accordingly for the purposes of the application of those provisions in relation to any such members—
- (a) any reference to an employee shall be construed as a reference to any such member;
 - (b) any reference to a contract of employment shall be construed as a reference to the terms of employment of any such member;
 - (c) any reference to dismissal shall be construed as a reference to the termination of any such member's employment ;
 - (d) the references in paragraph 21(5)(c) of Schedule 1 to the 1974 Act and section 18(1)(e) above to any person's undertaking or any undertaking in which he works shall be construed as a reference to the national interest or, if the case so requires, the interests of the House of Commons; and
 - (e) any other reference to an undertaking shall be construed as a reference to the House of Commons.
- (2) The provisions of section 1 of the Equal Pay Act 1970 and Parts II and IV of the Sex Discrimination Act 1975 shall apply to an act done by an employer of a relevant member of House of Commons staff and to service as such a member as they apply to an act done by, and to service for the purposes of, a Minister of the Crown or Government department, and accordingly shall so apply as if references in those provisions to a contract of employment included references to the terms of service of such a member.
- (3) Nothing in any rule of law or the law or practice of Parliament shall prevent proceedings under any enactment applied by subsection (1) or (2) above being instituted before an industrial tribunal.
- (4) In this section " relevant member of House of Commons staff" means any person employed in or for the purposes of the House of Commons as follows:—
- (a) in the Department of the Clerk of that House;
 - (b) in Mr. Speaker's Department;
 - (c) in the Department of the Serjeant at Arms ;
 - (d) in the Department of the Library ;
 - (e) in the administration department;
 - (f) in the refreshment department.
- (5) It is hereby declared that in this section " relevant member of House of Commons staff " does not include the Clerk of that House or any Clerk Assistant or the Serjeant at Arms of that House.

- (6) For the purposes of the enactments applied by subsection (1) and (2) above, Mr. Speaker shall be deemed to be the employer of House of Commons staff, except that in relation to any description of members of the staff for the time being designated by Mr. Speaker a person so designated shall be deemed to be the employer of members of that description for those purposes or, if it is so stated in the designation, such of those purposes as are so designated.
- (7) Where any proceedings are brought by virtue of this section against Mr. Speaker or any person designated under subsection (6) above, the person against whom the proceedings are brought may apply to the industrial tribunal to have some other person against whom the proceedings could have been properly brought so substituted for him as a party to those proceedings.
- (8) If the House of Commons resolves at any time that any provision of subsections (4) to (6) above should be amended in its application to any member of the staff of that House, Her Majesty may by Order in Council amend that provision accordingly.
- (9) It is hereby declared that the powers of nominating or appointing and suspending or removing members of House of Commons staff conferred by sections 14 and 15 of the House of Commons (Offices) Act 1812 (clerks, attendants and messengers) and the power of Mr. Speaker to require the suspension or removal of any such member conferred by section 16 of that Act are exercisable subject to the provisions of the enactments applied by subsections (1) and (2) above to such members.

123 Orders, rules and regulations

- (1) Any power conferred by any provision of this Act to make an order (other than an Order in Council) or to make rules or regulations shall be exercisable by statutory instrument.
- (2) Any statutory instrument made under any power conferred by this Act to make an Order in Council or other order or to make rules or regulations, except—
 - (a) an instrument required to be laid before Parliament in draft; and
 - (b) an order under section 28 or 107 above or section 129 below,shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any such power shall include power to make such incidental, supplementary or transitional provisions as appear to the authority exercising the power to be necessary or expedient.
- (4) Any such power to make an order shall, except in the case of an order made under Part III of this Act, include power to revoke or vary the order by a subsequent order made under that provision.

124 Financial provisions

- (1) Subject to the following provisions of this section, there shall be defrayed out of moneys provided by Parliament—
 - (a) all expenses incurred by the Secretary of State or any other Minister of the Crown or any government department in consequence of the provisions of this Act;

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- (b) any expenses incurred by Mr. Speaker or by any person designated by him under section 122 above, in consequence of any enactment which is applied by that section; and
 - (c) any increase attributable to the provisions of this Act in the sums payable out of moneys so provided under any other enactment.
- (2) The expenses to be so defrayed shall not include—
- (a) any sums payable out of the National Loans Fund under section 41 above ;
 - (b) any increase in the sums payable out of that Fund under section 35 of the Redundancy Payments Act 1965 which is attributable to paragraph 17 of Part I of Schedule 16 to this Act,
- and any such sums or increase shall be payable out of that Fund.
- (3) There shall be paid out of the Maternity Pay Fund into the Consolidated Fund sums equal to the amount of any expenses incurred by the Secretary of State in exercising his functions under the provisions of this Act relating to maternity pay.
- (4) There shall be paid out of the Redundancy Fund into the Consolidated Fund sums equal to the amount of—
- (a) any expenses incurred by the Secretary of State (including expenses incurred by persons acting on his behalf) in exercising his functions under sections 64 to 68 above;
 - (b) any increase attributable to provisions of this Act in the sums falling to be so paid under section 55(5) of the Redundancy Payments Act 1965.
- (5) There shall be paid into the Consolidated Fund any sums received by a Minister of the Crown by virtue of this Act, except sums which are expressly required to be paid into the Maternity Pay Fund, the Redundancy Fund or the National Insurance Fund.
- (6) As respect any increase attributable to the provisions of this Act in the expenses which under section 135(3)(a) of the Social Security Act 1975 are to be paid out of moneys provided by Parliament, subsection (1)(c) above is without prejudice to the provision made by subsection (5) of that section for reimbursement out of the National Insurance Fund.

125 Minor and consequential amendments, transitional provisions and repeals

- (1) The provisions of the Redundancy Payments Act 1965 specified in Part I of Schedule 16 to this Act, the provisions of the Contracts of Employment Act 1972 specified in Part II of that Schedule, the provisions of the 1974 Act specified in Part III of that Schedule and the enactments specified in Part IV of that Schedule, shall have effect subject to the amendments so specified respectively, being minor amendments and amendments consequential on any provisions of this Act.
- (2) The transitional provisions in Schedule 17 to this Act shall have effect.
- (3) The enactments specified in Schedule 18 to this Act are hereby repealed to the extent specified in column 3 of that Schedule.

126 Interpretation

- (1) In this Act, except so far as the context otherwise requires—

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" associated employer ", " collective agreement ", " employee ", " employer ", " independent trade union " and " independence " and " independent " (in relation to a trade union), " official ", " successor ", " trade dispute ", " trade union ", " union membership agreement " and " worker " have the same meanings respectively as in the 1974 Act;

" business " includes a trade or profession and includes any activity carried on by a body of persons, whether corporate or unincorporate;

" collective bargaining " means negotiations relating to or connected with one or more of the matters specified in section 29(1) of the 1974 Act;

" Committee " has the meaning assigned to it by section 10. above;

" dismiss ", " dismissal " and " effective date of termination " shall be construed in accordance with paragraph 5 of Schedule 1 to the 1974 Act;

" guarantee payment " has the meaning assigned to it by section 22 above ;

" maternity pay " has the meaning assigned to it by section 35 above;

" the 1974 Act " means the Trade Union and Labour Relations Act 1974;

" recognition " has the meaning assigned to it by section 11. above and cognate expressions shall be construed accordingly;

" Service " has the meaning assigned to it by section 1 above.

- (2) " Employers' associations", except in Part III of this Act, has the same meaning as in the 1974 Act and in the said Part III and in any enactment thereby amended means any organisation representing employers and any association of such organisations or of employers and such organisations.
- (3) Without prejudice to subsection (1) above, expressions used in the provisions of this Act relating to unfair dismissal and in provisions of the 1974 Act relating to unfair dismissal have the same meaning in this Act as in that Act.
- (4) For the purposes of this Act employees are to be treated, in relation to a union membership agreement, as belonging to the same class if they have been identified as such by the parties to the agreement, and employees may be so identified by reference to any characteristics or circumstances whatsoever.
- (5) The provisions of Schedule 1 to the Contracts of Employment Act 1972 (computation of period of employment) and, so far as they modify that Schedule, the provisions of any order under section 10 of that Act and any regulations under paragraph 30(3) of Schedule 1 to the 1974 Act shall have effect for the purposes of this Act in determining for what period an employee has been continuously employed; and, for the purposes of any proceedings brought under or by virtue of this Act, a person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.
- (6) In this Act references to redundancy or to being redundant, in relation to an employee, are references to—
 - (a) the fact that the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee is or was employed by him, or has ceased, or intends to cease, to carry on that business in the place where the employee is or was so employed, or
 - (b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he is or was so employed, have ceased or diminished or are expected to cease or diminish.

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- (7) In subsection (6) above, " cease" means cease either permanently or temporarily and from whatsoever cause, and " diminish " has a corresponding meaning.
- (8) For the purposes of this Act it is immaterial whether the law which (apart from this Act) governs any person's employment is the law of the United Kingdom, or a part of the United Kingdom, or not.
- (9) Except so far as the context otherwise requires, any reference in this Act to any enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.

127 Power to extend employment legislation

- (1) Her Majesty may by Order in Council provide that the provisions of—
 - (a) the Wages Councils Act 1959 ;
 - (b) the Industrial Training Act 1964 ;
 - (c) the Redundancy Payments Act 1965 ;
 - (d) the Contracts of Employment Act 1972 ;
 - (e) the 1974 Act;
 - (f) this Act; and
 - (g) any legislation (that is to say any enactment of the Parliament of Northern Ireland and any provision made by or under a Measure of the Northern Ireland Assembly) for the time being in force in Northern Ireland which makes provision for purposes corresponding to any of the purposes of any of the Acts mentioned in paragraphs (a) to (f) above,
 shall, to such extent and for such purposes as may be specified in the Order, apply (with or without modification) to or in relation to any person in employment to which this section applies.
- (2) This section applies to employment for the purposes of any activities—
 - (a) in the territorial waters of the United Kingdom; or
 - (b) connected with the exploration of the sea bed or subsoil or the exploitation of their natural resources in any area designated by order under section 1(7) of the Continental Shelf Act 1964.
- (3) An Order in Council under subsection (1) above—
 - (a) may make different provision for different cases;
 - (b) may provide that all or any of the provisions of any Act mentioned in that subsection, as applied by such an Order, shall apply to individuals whether or not they are British subjects and to bodies corporate whether or not they are incorporated under the law of any part of the United Kingdom (notwithstanding that the application may affect their activities outside the United Kingdom);
 - (c) may make provision for conferring jurisdiction on any court or class of court specified in the Order, or on industrial tribunals, in respect of offences, causes of action or of matters arising in connection with employment to which this section applies ;
 - (d) without prejudice to the generality of subsection (1) above or of paragraph (d) above, may provide that the enactments referred to in that subsection shall apply in relation to any person in employment for the purposes of such

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- activities as are referred to in subsection (2) above in any part of the areas specified in paragraphs (d) and (b) of that subsection ;
- (e) may exclude from the operation of section 3 of the Territorial Waters Jurisdiction Act 1878 (consents required for prosecutions) proceedings for offences under the enactments referred to in subsection (1) above in connection with employment to which this section applies;
 - (f) may provide that such proceedings shall not be brought without such consent as may be required by the Order ;
 - (g) may, without prejudice to the generality of the power under subsection (1) above to modify the enactments referred to in that subsection in their application for the purposes of this section, modify or exclude the operation of the following provisions (which relate to mariners and to employment wholly or partly outside Great Britain)—
 - (i) sections 17 and 20 of the Redundancy Payments Act 1965 ;
 - (ii) sections 9(2) and 12 of the Contracts of Employment Act 1972;
 - (iii) sub-paragraphs (2) and (3) of paragraph 9 of Schedule 1 to the 1974 Act;and also of section 119 above and of any corresponding provision in any such Northern Irish legislation as is referred to in subsection (1)(g) above.
- (4) Any jurisdiction conferred on any court or tribunal under this section shall be without prejudice to jurisdiction exercisable apart from this section by that or any other court or tribunal.

128 Northern Ireland

- (1) If provision is made by Northern Irish legislation (that is to say by or under a Measure of the Northern Ireland Assembly) for purposes corresponding to any of the purposes of this Act, or of the 1974 Act so far as it relates to unfair dismissal, the Secretary of State may, with the consent of the Treasury make reciprocal arrangements with the appropriate Northern Irish authority for co-ordinating the relevant provisions of this Act and the 1974 Act with the corresponding provisions of the Northern Irish legislation, so as to secure that they operate, to such extent as may be provided by the arrangements, as a single system.
- (2) For the purpose of giving effect to any such arrangements the Secretary of State shall have power, in conjunction with the appropriate Northern Irish authority—
 - (a) where the arrangements relate to the provisions of this Act relating to maternity pay, to make any necessary financial adjustments between the Maternity Pay Fund and any fund established under Northern Irish legislation; and
 - (b) where the arrangements relate to the provisions of sections 64 to 68 above, to make any necessary financial adjustments between the Redundancy Fund and the Northern Ireland Redundancy Fund.
- (3) The Secretary of State may make regulations for giving effect in Great Britain to any such arrangements, and any such regulations may make different provision for different cases, and may provide that this Act and the relevant provisions of the 1974 Act shall have effect in relation to persons affected by the arrangements subject to such modifications and adaptations as may be specified in the regulations, including provision—

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- (a) for securing that acts, omissions and events having any effect for the purposes of the Northern Irish legislation shall have a corresponding effect for the purposes of this Act and the relevant provisions of the 1974 Act (but not so as to confer a right to double payment in respect of the same act, omission or event); and
 - (b) for determining, in cases where rights accrue both under this Act or the relevant provisions of the 1974 Act and under the Northern Irish legislation, which of those rights shall be available to the person concerned.
- (4) In this section " the appropriate Northern Irish authority " means such authority as may be specified in that behalf in the Northern Irish legislation.

129 Short title, commencement and extent

- (1) This Act may be cited as the Employment Protection Act 1975.
- (2) Sections 87 and 88 above and Schedule 6 to this Act shall come into operation on such day as the Lord Chancellor may by order appoint, and different days may be so appointed for different purposes.
- (3) The other provisions of this Act shall come into operation on such day as the Secretary of State may by order appoint, and different days may be so appointed for different purposes.
- (4) Any reference in this Act to the commencement of any provision of this Act shall be construed as a reference to the day appointed under this section for the coming into operation of that provision.
- (5) Without prejudice to the generality of section 123(3) above, an order under this section may contain such transitional provision or savings as appear to the Lord Chancellor or, as the case may be, the Secretary of State to be necessary or expedient in connection with the provisions of this Act which are thereby brought (wholly or in part) into operation, including such adaptations of those provisions then in force as appear to the Lord Chancellor or, as the case may be, the Secretary of State to be necessary or expedient in consequence of their partial operation (whether before, on or after the day appointed by the order).
- (6) Sections 127 and 128 above and any provision of this Act which amends or repeals any provision of the House of Commons Disqualification Act 1975 or the Northern Ireland Assembly Disqualification Act 1975 shall extend to Northern Ireland, but except as aforesaid this Act shall not extend there.