



Employment Protection (Consolidation) Act 1978

1978 CHAPTER 44

PART IX

MISCELLANEOUS AND SUPPLEMENTAL

Crown employment

138 Application of Act to Crown employment.

- (1) Subject to the following provisions of this section, Parts I^{F1} . . . , II, III^{F2}, V, VIII and this Part and section 53 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.
- (2) In this section, [^{F3}subject to subsections (3) to (5),] “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,^{F4} but does apply to employment by any association established for the purposes of [^{F5}Part VI of the^{M1} Reserve Forces Act 1980]
- (4) [^{F6}Part I (so far as it relates to itemised pay statements), Part II (except sections 22A to 22C and 31A), section 53 (apart from subsection (2A)), Part V (except so far as relating to a dismissal which is regarded as unfair by reason of section 57A, 59(1)(a) or 60) and Part VIII and this Part (so far as relating to any of those provisions) shall not have effect in relation to any Crown employment] in respect of which there is 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

Status: Point in time view as at 10/06/1994.

Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Cross Heading: Crown employment. (See end of Document for details)

puproorting 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.

- [^{F7}(5) For the purposes of Parts I (so far as it relates to itemised pay statements), II, III (except section 44(3) and (4)), V, VII (except section 126(3) and (4)), VIII and this Part and section 53, none of the bodies referred to in Schedule 5 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), 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 111(3), 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)—
- (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 111(3), are treated as equivalent to redundancy in relation to Crown employment;
 - (e) the reference in paragraph 1(5)(c) of Schedule 9 to a person's undertaking or any undertaking in which he works 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.
- (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 29 shall require him to be allowed time off work for public duties connected with any such activities.

Textual Amendments

- F1** Words in s. 138(1) repealed (30.11.1993) by 1993 c. 19, ss. 49(1), 51, Sch. 7 para. 3(a), **Sch.10**; S.I. 1993/2503, art. 2(2), **Sch.2**
- F2** Words repealed by **Social Security Act 1986 (c. 50, SIF 113:1)**, s. 86(2), **Sch. 11**
- F3** Words in s. 138(2) repealed (30.11.1993) so far as they relate to s. 138(4)(5) and otherwise *prosp.*) by 1993 c. 19, ss. 51, 52, **Sch.10**; S.I. 1993/2503, art. 2(2), **Sch.2**
- F4** Words repealed with saving by **Armed Forces Act 1981 (c. 55, SIF 7:1)**, s. 28(2), **Sch. 5 Pt. I**

Status: Point in time view as at 10/06/1994.

Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Cross Heading: Crown employment. (See end of Document for details)

- F5** Words substituted by Reserve Forces Act 1980 (c. 9, SIF 7:2), **Sch. 9 para. 17**
- F6** Words in s. 138(4) substituted (30.11.1993 for specified purposes and otherwise 10.6.1994) by 1993 c. 19, s. 49(1), **Sch. 7 para. 3**; S.I. 1993/2503, art. 2(2), **Sch. 2**; S.I. 1994/1365, art. 2, **Sch.**
- F7** S. 138(5) repealed (1.4.1991) by National Health and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**

Marginal Citations

- M1** 1980 c. 9.

[^{F8}138A Application of Act to armed forces.

- (1) The provisions of this Act which apply, by virtue of section 138, to service as a member of the naval, military or air forces of the Crown are—
- Part I;
 - in Part II, sections 19 to 22 and 31A;
 - Part III;
 - in Part IV, section 53;
 - Part V, except sections 57A and 80;
 - Part VIII; and
 - this Part.
- (2) Her Majesty may, by Order in Council,—
- (a) amend subsection (1) above by making additions to, or omissions from, the provisions for the time being specified in that subsection by an Order under this subsection; and
 - (b) make any provision apply to service as a member of the naval, military or air forces of the Crown subject to such exceptions and modifications as may be specified in the Order.
- (3) Subject to subsection (5) below, modifications made under subsection (2) above may include provision precluding the making of a complaint or reference to any industrial tribunal unless the person aggrieved has availed himself of the service procedures for the redress of complaints applicable to him.
- (4) Where modifications include the provision authorised by subsection (3) above the Order in Council shall also include provision designed to secure that the service procedures for the redress of complaints result in a determination, or what is to be treated under the Order as a determination, in sufficient time to enable a complaint or reference to be made to an industrial tribunal.
- (5) No provision shall be made by virtue of subsection (3) above which has the effect of substituting, for any period specified as the normal period for a complaint or reference on any matter to an industrial tribunal, a period longer than six months.
- (6) No recommendation shall be made to Her Majesty to make an Order in Council under subsection (2) above unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.
- (7) In this section—
- “the normal period for a complaint or reference”, in relation to any matter within the jurisdiction of an industrial tribunal, means the period specified in the relevant enactment as the period within which the complaint or reference

Status: Point in time view as at 10/06/1994.

Changes to legislation: *There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Cross Heading: Crown employment. (See end of Document for details)*

must be made, disregarding any provision permitting an extension of that period at the discretion of the tribunal; and

“the service procedures for the redress of complaints” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in sections 180 and 181 of the ^{M2}Army Act 1955, sections 180 and 181 of the ^{M3}Air Force Act 1955 and section 130 of the ^{M4}Naval Discipline Act 1957.]

Textual Amendments

F8 S. 138A inserted (10.6.1994) by 1993 c. 19, s. 31(2); S.I. 1994/1365, art. 2, Sch.

Marginal Citations

M2 1955 c. 18.

M3 1955 c. 19.

M4 1957 c. 53.

Status:

Point in time view as at 10/06/1994.

Changes to legislation:

There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Cross Heading: Crown employment.