



Statutory Document No. 72/07

THE EMPLOYMENT ACT 2006

THE EMPLOYMENT ACT 2006 (APPOINTED DAY) ORDER 2007

In exercise of the powers conferred on the Department of Trade and Industry by sections 174(3) and 177(2) and (3) of, and paragraphs 15 to 18 of Schedule 7 to, the Employment Act 2006¹, and of all other enabling powers, the following Order is hereby made:—

1. Citation and interpretation

- (1) This Order may be cited as the Employment Act 2006 (Appointed Day) Order 2007.
- (2) In this Order "the Act" means the Employment Act 2006.

2. Commencement of the Act

- (1) The provisions of the Act specified in Part 1 of Schedule 1 shall come into operation on 26th February 2007.
- (2) The provisions of the Act specified in Part 2 of Schedule 1 shall come into operation on 26th February 2007 for the purpose of —
 - (a) making any appointment,
 - (b) making any order, rules or regulations,
 - (c) issuing or approving any code of practice, or
 - (d) prescribing any matter.
- (3) The provisions of the Act specified in Part 3 of Schedule 1 shall come into operation on 1st April 2007 for the purposes of —
 - (a) regulations 16 (protection from detriment) and 17 (unfair dismissal) of the Maternity Leave Regulations 2007²;
 - (b) regulations 25 (protection from detriment) and 26 (unfair dismissal) of the Adoption Leave Regulations 2007³; and
 - (c) regulations 11 (protection from detriment) and 12 (unfair dismissal) of the Paternity Leave Regulations 2007⁴.

¹ 2006 c.21

² SD 76/07

³ SD 77/07

⁴ SD 78/07

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- (4) Except as provided by paragraph (1), (2) or (3) —
 - (a) the provisions of the Act specified in Part 4 of Schedule 1 shall come into operation on 1st May 2007;
 - (b) the provisions of the Act specified in Part 5 of Schedule 1 shall come into operation on 1st December 2007;
 - (c) the rest of the Act shall come into operation on 30th September 2007.

3. Prescribed date

30th September 2007 is prescribed for the purpose of the following provisions of Schedule 7 to the Act (transitional provisions) —

- (a) paragraph 15(ii) (redundancy payments — husband and wife);
- (b) paragraph 16(2) (unfair dismissal — expiry of fixed-term contract);
- (c) paragraph 17 (employment rights — husband and wife);
- (d) paragraph 18 (redundancy and employment rights — part-time employees).

4. Transitional provisions

The transitional provisions in Schedule 2 shall have effect.

Article 2.

SCHEDULE 1

COMMENCEMENT OF THE ACT

PART 1

PROVISIONS COMING INTO OPERATION ON 26TH FEBRUARY 2007

Section 156(1) and Part I of Schedule 3 (Employment Tribunal)

Section 173 (interpretation)

Section 174 (subordinate legislation)

Section 175 (Tynwald control over orders &c)

Section 176(1) and Schedule 7 (transitional provisions)

Section 176(3) and Schedule 9 (repeals), in relation to the repeal of section 75(1) of, and Part 1 of Schedule 4 to, the Employment Act 1991⁵

Section 177 (short title and commencement)

PART 2

PROVISIONS COMING INTO OPERATION ON 26TH FEBRUARY 2007 FOR CERTAIN PURPOSES

Section 21 (restriction on deductions)

Section 33 (inducements: remedies)

Section 54 (disclosure to prescribed persons)

Section 65 (leave for family and domestic reasons)

Section 70 (assertion of statutory rights)

Sections 79 to 83 (maternity leave)

Section 84 to 88 (parental leave)

Sections 90 to 94 (paternity leave)

Sections 95 to 98 (adoption leave)

Sections 99 to 102 (flexible working)

Section 114 (leave for family reasons)

Section 144 (limit of award etc.)

Section 156(2) to (8) and Part II of Schedule 3 (Employment Tribunal)

Section 158 (recoupment of benefit)

Section 161 (application to territorial waters)

Section 162 (power to confer rights on individuals)

Section 165 (part-time work)

Section 166 (limited-term employment)

Section 167 (annual leave and working time)

Section 168 (death of employer or employee)

Section 170 (normal working hours and a week's pay), in relation to the provisions of Schedule 6 mentioned below.

Section 171 (codes of practice)

⁵ 1991 c.19

Section 172(2) (publication)

In Schedule 6 (normal working hours and a week's pay), paragraphs 10 and 11

PART 3

PROVISIONS COMING INTO OPERATION ON 1ST APRIL 2007 FOR CERTAIN PURPOSES

Section 65 (detriment — leave for family reasons)

Sections 71 and 72 (detriment — complaints and remedies)

Part X (unfair dismissal), except sections 115 to 128

Section 157 (conciliation), for the purpose of other provisions of the Act brought into operation by this Part and proceedings under those provisions (but subject to paragraph 15 of Schedule 2 below)

Section 164 (restriction on contracting out), for the purpose of other provisions of the Act brought into operation by this Part and proceedings under those provisions

Section 169 and Schedule 5 (computation of period of employment), for the purpose of other provisions of the Act brought into operation by this Part

Section 170 and Schedule 6 (normal working hours and a week's pay), for the purpose of other provisions of the Act brought into operation by this Part

Section 176(3) and Schedule 9 (repeals), in relation to the repeal of Part III and sections 43 and 47 of the Employment Act 1991

PART 4

PROVISIONS COMING INTO OPERATION ON 1ST MAY 2007

Part I (discrimination at recruitment on trade union grounds)

Part II (rights during employment), except any provisions specified in Part 5 below

Sections 21 to 28 (deductions from wages etc.)

Sections 35 to 44 and 48 (time off)

Section 110 (statement of reasons for dismissal)

Part XI (insolvency and cessation of business of employer)

Section 157 (conciliation), for the purpose of other provisions of the Act brought into operation by this Part and proceedings under those provisions (but subject to paragraph 15 of Schedule 2 below)

Section 164 (restriction on contracting out), for the purpose of other provisions of the Act brought into operation by this Part and proceedings under those provisions

Section 169 and Schedule 5 (computation of period of employment), for the purpose of other provisions of the Act brought into operation by this Part

Section 170 and Schedule 6 (normal working hours and a week's pay), for the purpose of other provisions of the Act brought into operation by this Part

Section 176(2) and Schedule 8 (amendments), so far as they amend section 15 of the Minimum Wage Act 2001⁶

Section 176(3) and Schedule 9 (repeals), in relation to the repeal of the following enactments —

- (a) in the Redundancy Payments Act 1990⁷, sections 17 and 19;
- (b) in the Employment Act 1991 —
 - (i) sections 1 to 20;

⁶ 2001 c.25

⁷ 1990 c.18

- (ii) sections 26 to 32;
- (iii) Part VI (except section 66(1) and Part I of Schedule 3);
- (iv) paragraphs 2, 6, 7 and 8 of Schedule 5;
- (c) in the Employment (Amendment) Act 1996⁸, sections 1 to 7;
- (d) in the Employment (Sex Discrimination) Act 2000⁹, section 46 (in part).

PART 5

PROVISIONS COMING INTO OPERATION ON 1ST DECEMBER 2007

In section 17(8)(b) (statements of particulars and pay statements: Tribunal award), sub-paragraph (ii)
Section 18 and Schedule 1 (statements of particulars and pay statements: award in other proceedings)
Section 176(2) and Schedule 8 (amendments), so far as they amend sections 3, 3A and 4 of the Trade
Disputes Act 1985¹⁰

Article 4.

SCHEDULE 2

TRANSITIONAL PROVISIONS

1. A complaint under section 1 or 2 of the Act (refusal of employment etc.: trade union membership or activities) shall not be considered where —
 - (a) the date of the conduct to which it relates (within the meaning of section 3(2) or (3)) was before 1st May 2007, and
 - (b) the employment or services were refused on grounds other than those specified in section 1(1) or 2(1), as the case may be, of the Employment (Amendment) Act 1996.
2. (1) This paragraph applies to employment which normally involves, or is treated for the purposes of Schedule 5 to the Act as if it normally involved, employment for less than 16 hours weekly.
 - (2) In relation to employment to which this paragraph applies sections 8 to 13 (written particulars of employment) shall not apply except —
 - (a) in relation to such employment entered into on or after 1st May 2007;
 - (b) upon any change in the terms of employment notified to the employee under section 10 on or after 1st May 2007; and
 - (c) on or after 1st May 2007 upon request in writing made by the employee to the employer to provide the particulars required by those provisions within 14 days.
3. (1) A complaint under section 25 of the Act (deductions from wages) shall not be considered where —
 - (a) the date of payment of the wages, or the date when the payment was received by the employer, was before 1st May 2007, and
 - (b) either —
 - (i) on that date the complainant was not an employee, or
 - (ii) the deduction complained of falls within section 21(1) of the Act (employment agency fee).

⁸ 1996 c.18

⁹ 2000 c.16

¹⁰ 1985 c.18

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(2) On such a complaint, no order may be made under section 25(4)(c) of the Act where the date of payment of the wages, or the date when the payment was received by the employer, was before 1st May 2007.

4. A complaint under section 29(5) or 30(5) of the Act (inducements) shall not be considered where the offer was —

- (a) made before 30th September 2007, or
- (b) part of a series of similar offers made to the complainant where the first offer in the series was made to him before that date.

5. (1) Subject to sub-paragraph (2), a complaint under section 71 of the Act (detriment) shall not be considered where the act, or failure to act, complained of occurred before 30th September 2007.

(2) Sub-paragraph (1) does not apply to a complaint of a breach of the right conferred by section 69 of the Act (protected industrial action), but such a complaint shall not be considered where the employee became involved in the protected industrial action before 30th September 2007.

(3) Notwithstanding the repeal of sections 21 to 25 of the Employment Act 1991, a complaint under section 22 of that Act (action short of dismissal: trade union membership or activities) may be made on or after 30th September 2007 where —

- (a) the action complained of, or
- (b) where that action was part of a series of similar actions, the last of those actions,

occurred before that date.

6. A complaint under section 78 of the Act (suspension from work on maternity grounds) shall not be considered unless the complainant's expected week of childbirth begins on or after 30th September 2007.

7. (1) Where an employee's expected week of childbirth begins before 30th September 2007 —

- (a) sections 79 to 83 of the Act (maternity leave) do not apply to her, and
- (b) sections 33 to 35 and 43 of, and Schedule 2 to, the Employment Act 1991 (right to return to work) shall continue to apply to her —
 - (i) as if the references in section 43 and Schedule 2 to Part V of that Act were references to Part X of the Act, and
 - (ii) with any other necessary modifications.

(2) Notwithstanding the repeal of section 47 (dismissal on ground of pregnancy) of the Employment Act 1991, that section shall apply to a complaint of unfair dismissal where —

- (a) the effective date of termination (within the meaning of section 112 of the Act) was before 1st April 2007, or
- (b) the employee's expected week of childbirth begins before 30th September 2007,

as if the references in that section to Part V of that Act were references to Part X of the Act.

8. A complaint under section 104 of the Act (right to be accompanied) shall not be considered where —

- (a) the disciplinary or grievance hearing takes place on or after 30th September 2007, but
- (b) the worker was required or invited to attend the hearing before that date.

9. Where the effective date of termination was before 1st May 2007, section 110 of the Act (written statement of reasons for dismissal) has effect with the substitution for subsection (2) of the following —

"(2) An employee is not entitled to a written statement under subsection (1) unless on the effective date of termination he or she has been continuously employed for a period of 4 weeks ending with that date."

10. Section 124 (unfair dismissal: protected industrial action) does not apply to a complaint of unfair dismissal where the first day of protected industrial action was before 30th September 2007.

11. Section 130 of the Act shall not apply, and (notwithstanding its repeal) section 49 of the Employment Act 1991 shall apply, to a complaint of unfair dismissal where the date of dismissal (as defined in section 130(6)(a)) was before 30th September 2007.

12. (1) Where a complaint is made to the Employment Tribunal, and the Tribunal is constituted to hear the complaint, before 26th February 2007, it shall be, or continue to be, heard and determined by the Tribunal as so constituted.

(2) Where a complaint is made to the Employment Tribunal before the appropriate commencement date, Part VII of the Employment Act 1991, and any rules under Part II of Schedule 4 to that Act, shall apply, or continue to apply, to any proceedings on the complaint (in the case of a complaint under a provision specified in Part 3 or 4 of Schedule 1, as if the provision were a provision of that Act).

(3) In this paragraph —

(a) "the appropriate commencement date" means —

(i) in relation to a provision of the Act specified in Part 3 of Schedule 1, or proceedings under such a provision, 1st April 2007;

(ii) in relation to a provision of the Act specified in Part 4 of Schedule 1, or proceedings under such a provision, 1st May 2007;

(iii) otherwise, 30th September 2007.

(b) "complaint" includes an application or reference.

13. Until the 30th September 2007, in relation to any proceedings before the Tribunal under a provision specified in Part 3 or Part 4 of Schedule 1, section 79 (appeals) of the Employment Act 1991 shall have effect as if subsection (1) included a reference to the Act.

14. Section 163(1) of the Act (illegality) does not apply to proceedings before the Employment Tribunal which were commenced before 30th September 2007.

15. (1) Section 164 of the Act (restriction on contracting-out) applies to an agreement made before the appropriate commencement date with the modification that, in subsection (2)(a), for "section 157" there is substituted "section 76 of the Employment Act 1991".

(2) In sub-paragraph (1) "the appropriate commencement date" has the same meaning as in paragraph 12.

16. Where any right is infringed, but a complaint relating to the infringement is precluded by any provision of this Schedule, the right shall not be treated as a relevant statutory right for the purpose of section 70 or 119 of the Act (assertion of statutory right).

17. For the purpose of section 1 of the Redundancy Payments Act 1990 —

(a) Schedules 5 and 6 of the Act do not apply, and

(b) Schedule 7 and 8 of the Employment Act 1991 (as modified by Schedule 7 of the Redundancy Payments Act 1990) continue to apply,

where the relevant date was before 30th September 2007.

18. (1) Section 23(2A) of the Redundancy Payments Act 1990 (inserted by Schedule 8 to the Act) does not apply where the relevant date was before 30th September 2007.

(2) The amendments of section 13 of the Trade Unions Act 1991¹¹ made by Schedule 8 to the Act do not apply where the notification under subsection (3)(a) of that section was made before 30th September 2007.

19. (1) No period of employment before 30th September 2007 during which the employer was the husband or wife of the employee shall be counted towards a period of continuous employment for the purpose of section 1 of the Redundancy Payments Act 1990.

¹¹ 1991 c.20

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(2) No period of employment before 30th September 2007 during which the employee's relations with the employer were governed by a contract of employment which normally involved, or was treated for the purposes of Schedule 5 to the Employment Act 1991 as if it normally involved, employment for less than 16 hours weekly shall be counted towards a period of continuous employment for the purpose of section 1 of the Redundancy Payments Act 1990 or section 132 of the Act (qualifying period: unfair dismissal).

(3) No period of employment before 1st May 2007 during which the employee was employed under a contract for a fixed term of 2 years or more shall be counted towards a period of continuous employment for the purpose of section 1 of the Redundancy Payments Act 1990, where the dismissal consists only of the expiry of the term without its being renewed, if before that date the employee agreed in writing to exclude any right to a redundancy payment in that event.

(4) No period of employment before 30th September 2007 during which the employee was employed under a contract for a fixed term of one year or more shall be counted towards a period of continuous employment for the purpose of section 132 of the Act, where the dismissal consists only of the expiry of the term without its being renewed, if before that date the employee agreed in writing to exclude any claim in respect of rights under Part X of the Act or Part V of the Employment Act 1991 in relation to that contract.

20. The following provisions of the Act —

sections 8 to 13 (written particulars of terms of employment);

section 106 (minimum period of notice);

section 107 (rights during period of notice); and

section 110 (written statement of reasons for dismissal);

Part X (unfair dismissal); and

Part XI (insolvency and cessation of business of employer);

do not apply to a person who, on the date on which the relevant provision comes into operation, is employed under a contract to perform a specific task which was not expected to last for more than 12 weeks, unless on or after that date he has been continuously employed for more than 12 weeks.

MADE 31 | 01 2007

Deborah F. H. M.

Minister for Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order brings the Employment Act 2006 into operation as follows.

Under article 2 —

- (a) the provisions specified in Parts 1 and 2 of Schedule 1 are brought into force on 26th February 2007 (as to those specified in Part 2, only for the purpose of making appointments and subordinate legislation);
- (b) the provisions specified in Part 3 of Schedule 1, which relate to protection from detriment and unfair dismissal, are brought into force on 1st April 2007 for the purposes of provisions of the Maternity Leave Regulations 2007, the Adoption Leave Regulations 2007 and the Paternity Leave Regulations 2007 which confer such protection;
- (c) the provisions specified in Part 4 of Schedule 1, which relate to certain rights on recruitment and during employment, are brought into force on 1st May 2007;
- (d) the provisions specified in Part 5 of Schedule 1, which relate to certain Tribunal awards and to courts of inquiry, are brought into force on 1st December 2007;
- (e) the rest of the Act is brought into force on 30th September 2007.

Article 3 prescribes 30th September 2007 for the purpose of certain transitional provisions of the Act. Further transitional provisions are made by article 4 and Schedule 2.

