

2009 No. 603 (C. 41)

EMPLOYMENT

The Employment Act 2008 (Commencement No. 2, Transitional Provisions and Savings) Order 2009

Made - - - -

10th March 2009

The Secretary of State, in exercise of the powers conferred by section 22 of the Employment Act 2008(a), makes the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Employment Act 2008 (Commencement No. 2, Transitional Provisions and Savings) Order 2009.

(2) In this Order:

“the 1948 Act” means the Agricultural Wages Act 1948(b);

“the 1973 Act” means the Employment Agencies Act 1973(c);

“the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992(d);

“the 1998 Act” means the National Minimum Wage Act 1998(e); and

“the Act” means the Employment Act 2008.

Commencement

2. Subject to article 3, sections 8, 9, 11, 12, 18 and 19 of, and Parts 2 and 4 of the Schedule to, the Act shall come into force on 6th April 2009.

Transitional provisions and savings

3. The transitional provisions and savings in the Schedule to this Order shall have effect.

Pat McFadden

Minister of State for Employment Relations and Postal Affairs
Department for Business, Enterprise and Regulatory Reform

10th March 2009

(a) 2008 c. 24.

(b) 1948 c. 47. Amended by the National Minimum Wage Act 1998 (c.39) and the Employment Relations Act 1999 (c.24); there are other amendments not relevant to this Order.

(c) 1973 c. 35. To which there are amendments not relevant to this Order.

(d) 1992 c. 52. Amended by the Trade Union Reform and Employment Rights Act 1993 (c.19) and the Employment Relations Act 2004 (c. 24); there are other amendments not relevant to this Order.

(e) 1998 c. 39. To which there are amendments not relevant to this Order.

SCHEDULE

Article 3

Transitional provisions and savings

1.—(1) Subject to subparagraph (2), the amendments to sections 17 and 19 to 22F of the 1998 Act and to section 3A of the 1948 Act, made by section 8(6) and 9 of the Act, do not apply where an officer acting for the purposes of the 1948 Act required any person to produce records or provide information or explanations under section 14(1) of the 1998 Act before 6th April 2009.

(2) Subparagraph (1) above does not apply where an enforcement notice under section 19 of the 1998 Act is served after 6th April 2011.

2. The amendments to sections 19 to 22F of the 1998 Act, made by section 9 of the Act, do not apply where an enforcement notice under section 19 of the 1998 Act is served before 6th April 2009.

3. The amendments to section 15 of the 1998 Act, made by section 18 of the Act, do not apply to any information obtained by an officer under section 15 before 6th April 2009.

4. The amendments to section 9 of the 1973 Act, made by section 18 of the Act, do not apply to any information obtained by an officer where he exercised his powers under section 9 before 6th April 2009.

5. The amendments to section 174 of the 1992 Act, made by section 19 of the Act, do not apply in the case of any decision by a union to exclude or expel an individual which is taken before 6th April 2009.

6. The amendments to section 176 of the 1992 Act, made by section 19 of the Act, do not apply to any complaint presented by an individual under section 174 of that Act which relates to a decision to exclude or expel the individual which was taken before 6th April 2009.

7. For the purposes of paragraphs 5 and 6, in determining whether a decision has been taken by a union before 6th April 2009, in the absence of evidence of a decision, regard may be had to the period within which it might reasonably be expected that a decision would be taken.

EXPLANATORY NOTE

(This note is not part of the Order)

This is the second Commencement Order made under the Employment Act 2008 (2008 c.24) (“the Act”) and brings into force the remaining provisions of the Act. Those provisions come into force on 6th April 2009.

Sections 8, 9, 11 and 12 make certain changes to the law relating to the enforcement of the national minimum wage. Section 8 introduces a new method of calculating arrears of the national minimum wage. Section 9 replaces enforcement and penalty notices with a single notice of underpayment which includes a penalty for failing to pay a worker the national minimum wage. Sections 11 and 12 make offences under the National Minimum Wage Act 1998 (1998 c.39) capable of being tried in a Crown court or a Magistrates’ court and increase the criminal investigative powers available to officers enforcing the national minimum wage. Parts 2 and 4 of the Schedule to the Act contain repeals relating to sections 9 and 11 of that Act.

Section 18 allows officers appointed under the National Minimum Wage Act 1998 and officers appointed under the Employment Agencies Act 1973 (1973 c.35) to share information with each other for the purpose of their respective enforcement functions.

Section 19 amends the Trade Union and Labour Relations (Consolidation) Act 1992 (1992 c.52) to enable trade unions to apply membership rules which prohibit individuals who belong, or have belonged, to a particular political party from membership of the trade union provided certain conditions are satisfied.

This Order also contains transitional provisions, detailed in the Schedule to the Order.

Paragraph 1(1) of the Schedule to this Order provides that where an officer acting for the purposes of the Agricultural Wages Act 1948 (1948 c.47) has required a person to produce records or provide information or explanations under section 14 of the National Minimum Wage Act 1998 (1998 c.39) before 6th April 2009, sections 8 and 9 of the Act relating to arrears of the National Minimum Wage and notices of underpayment do not apply. Paragraph 1(2) provides that where an enforcement notice under section 19 of the National Minimum Wage Act 1998 is served after 6th April 2011, the saving provision at paragraph 1(1) does not apply.

Paragraph 2 of the Schedule to this Order provides that section 9 of the Act does not apply where an enforcement notice under section 19 of the National Minimum Wage Act 1998 is served before 6th April 2009.

Paragraphs 3 and 4 of the Schedule to this Order provide that the information-sharing provisions in section 18 of the Act do not apply in relation to any information obtained under the National Minimum Wage Act 1998 before 6th April 2009 or any information obtained under powers exercised under the Employment Agencies Act 1973 before 6th April 2009.

Paragraphs 5 to 7 of the Schedule to this Order provide that section 19 of the Act, relating to exclusion or expulsion from a trade union for membership of a political party, does not apply where a decision has been made by a trade union to exclude or expel an individual before 6th April 2009, or where a complaint has been presented by an individual relating to such a decision made before 6th April 2009.

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STATUTORY INSTRUMENTS

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