

EMPLOYMENT ACT

Principal Act

Act. No. 1932-16	<i>Commencement</i>	1.5.1954
	<i>Assent</i>	3.12.1953
		Commencement date
With which are consolidated the following Acts	1953-19	3.12.1953
	1955-04	
	1975-26	29.12.1975
	1976-37	15.12.1976
Amending enactments	Relevant current provisions	Commencement date
Act. 1935-08	s. 32(6)	
1948-05	ss.30(4), 31(2)-(4), 32(3)	
1952-07	ss.29, 30(1), 31(1)	
1956-08	s. 20(2)	
1957-15	ss. 2, 6-8, 9(3), 16(1), 34-37, 38(1), 39, 41, 43, 81(2), 82, 86	
1961-02	ss. 5(1), 18, 22(3), 28(2)	
1965-19	—	
1966-15	ss. 45(2), 47(1)	
1968-11	—	
1970-05	ss. 3-4, 21-22, Sch.1	
1970-21	ss. 52-56, 89	
1972-20	s. 18	
1974-15	ss. 45(2), 47(2), 53-56, 59-73, 80-83, 88-89	
1975-18	ss. 2, 47(3), 61, 63 and 70(4)	
1976-31	s. 6(4)	
LN. 1977/002	s. 76(2)	
Act. 1978-38	ss. 29, 30(1), 31(1), 32(2)	
1982-21	ss. 22(3), 23(1)-(2), 28(1)-(2)	
1983-12	ss. 20-21, 22(3), 23(1), 24-26, Sch.1	
1983-29	s. 18(2)	
1983-48	—	
1985-10	s. 3(1)(d)	28.3.1985
1987-23	ss. 18(1), 26A, 52(6)(a)	29.10.1987

1989-23	ss. 48-51, 52A-52G, 81(1)	10.8.1989
1989-33	s. 62(1)(a)-(c)	23.11.1989
1991-10	s. 21(3)(b)-(d)	8.8.1991
1991-35	ss. 28(1)-(2), 32(1)-(7), 43, 78, 81, 86, 89(3)	12.12.1991
1991-10	ss. 71(1), 72	9.4.1992
1992-03	ss. 86(1)(a), (e)-(h), 86(2)	1.7.1992
1993-07	ss. 6(5), 16, 76(3)(a)	1.1.1993
LN. 1994/011	ss. 52F(1)(b), (2), (3)(a), 52H	1.2.1994
Act. 1993-21	ss. 14-15, 18(1), 20-26	14.2.1994
LN. 1994/023	ss. 47(2)(ii), 52, 86(1)(b), 87, 89(3), Sch.1	14.2.1994
1994/098	ss. 2, 74(1), (3)-(5), 75(1)-(5), (7)-(8), 76(1)-(2), (8), 78A-78H, 78J-78K	24.6.1994
1994/103	s. 74(5)(a)(ii)	24.6.1994
Act. 1999-04	s. 89(1)	24.6.1994
LN. 2000/045	s. 17(6)(b)	24.6.1994
1994/098	ss. 26A, 61(1)(a)-(b)	22.9.1994
1996/014	ss. 60(1), (3)-(4), 62(1)(a), 65A-65C	1.1.1996
1996/027	ss. 52D(1)-(5), 52J-52R	1.3.1996
Act. 2001-27	ss. 52Q-52R, 52J-52R	2.8.2001
2001-20	ss. 2-5, 36(3), 38(1), 86(1)	31.10.2002
2004-18	s. 64(2)	17.8.2004
2005-49	s. 90	2.8.2005
LN. 2010/158	ss. 74-77, 77A-77F, 78, 78A-78P, 89(1)	4.11.2010
2011/108	s. 83A	7.7.2011
2012/065	ss. 78A, 78K(2A)	26.4.2012

English sources:

Truck Act 1831 (1 & 2 Will. 4 c. 37)

Employment of Women, Young Persons and Children Act 1920 (10 & II Geo. 5 c. 65)

Equal Pay Act 1970 (1970 c. 41)

Transposing:

Directive 77/187/EEC

Directive 86/378

Directives 89/391/EEC

Directive 91/533/EEC

Directive 92/56/EEC

Directives 92/85/EEC

Directive 98/49/EC

Directive 98/59/EC

Directive 2001/23/EC

This version is out of date

Directive 2008/52/EC
Directive 2008/104/EC
Regulation 1612/68

DERIVATION OF SECTIONS

Section	Source	Section	Source
2	Act. 1953-19 s.2	49	Act. 1975-26 5
3	Act. 1955-04 s.6A(1)	50	“ “ 4
	“ “ and (2)	51	“ “ 6
4	“ “ 6A(3)-(5)	52	Act. 1953-19 s.21
5	“ “ 9(3)-(6)	53	“ “ 22(1)
6	Act. 1953-19 s.3	54	“ “ 22(2)-(4)
7	“ “ 4	55	“ “ 22(5)-(7)
8	“ “ 5	56	“ “ 22(8), (9)
9	“ “ 10(1)-(3) and (6)	57	“ “ 23
10	“ “ 10(4)	58	“ “ 24
11	“ “ 10(5)	59	“ “ 28A
12	“ “ 28P	60	“ “ 28E and 28F(1)
13	“ “ 28Q	61	“ “ 28D
14	Act. 1955-04 s.3	62	“ “ 28F(2)
15	“ “ 4	63	“ “ 28G
16	Act. 1953-19 s.25(1)	64	“ “ 28B
17	“ “ 25(2)-(7)	65	“ “ 28C
18	Act. 1955-04 s.2	66	“ “ 28H
19	“ “ 5	67	“ “ 28I
20	“ “ 6	68	“ “ 28J
21	“ “ 7	69	“ “ 28O
22	“ “ 8	70	“ “ 28K
23	“ “ 9(1)-(2)	71	“ “ 28L
24	“ “ 10	72	“ “ 28M
25	“ “ 11	73	“ “ 28N
26	“ “ 12	74	Act. 1976-37 s.2
27	“ “ 13	75	“ “ 3
28	“ “ 15 and 18	76	“ “ 4
29	Act. 1932-16 s.2	77	“ “ 5
30	“ “ 4(1)-(4)	78	“ “ 6
31	“ “ 4(1) and (5)-(8)	79	Act. 1953-19 s.15
32	“ “ 4(9)	80	“ “ 29A
33	“ “ 3	81	“ “ s. 27(2) and (3)
34	Act. 1953-19 s.6	82	and 1932-16 s.5(2)
		83	Act. 1953-19 s.27(4)
			“ “ 29B

Employment

1932-16

This version is out of date

35	“	“	7	84	“	“	31
36	“	“	8	85	“	“	26
37	“	“	9	86	“	“	29
38	“	“	16	87	Act. 1975-26	s.8	
39	“	“	11	88	Act. 1953-19	s.28R	
40	“	“	12	89	“	“	s.28S & 30;
41	“	“	13		Act. 1955-04	s.19;	
42	“	“	14		Act. 1975-26	s.3(8)	
43	“	“	27(1)				
44	“	“	17				
45	“	“	19				
46	“	“	20				
47	“	“	18	Sch. 1 Act. 1955-04		Sch.	
48	Act. 1975-26		ss.2, 3	Sch. 2 Act. 1932-16		Sch.	

ARRANGEMENT OF SECTIONS.

Section

PART I.
PRELIMINARY.

1. Short title.
2. Interpretation.

PART II.
STATUTORY BODIES AND ADMINISTRATION.

3. *Repealed.*
4. *Repealed.*
5. *Repealed.*

The Conditions of Employment Board.

6. Establishment and membership of Conditions of Employment Board.
7. Functions.
8. Power to summon witnesses, etc.

Joint Industrial Councils.

9. Registration of Joint Industrial Councils.
10. Functions.
11. Duty to supply copies of records.

The Industrial Tribunal.

12. Power to establish an Industrial Tribunal.
13. Appeals.

Employment Exchanges.

14. *Repealed.*
15. Keeping of registers.
16. Appointment of inspectors.
17. Powers and duties of inspectors.

PART III.
RESTRICTIONS ON EMPLOYMENT.

18. Interpretation.
19. Application.

- 20. Requirement in respect of work permits.
- 21. *Repealed.*
- 22. *Repealed.*
- 23. *Repealed.*
- 24. Return of permits.
- 25. Issue of certificates of employment.
- 26. Surrender of certificates.
- 26A. *Repealed.*
- 27. Power to require returns.
- 28. Offences and penalties.

Women, Young Persons and Children.

- 29. Interpretation.
- 30. Restriction on employment in industrial undertakings.
- 31. Restriction on employment in ships.
- 32. Offences.
- 33. Saving.

PART IV.
CONDITIONS OF EMPLOYMENT.

Recommendations and Orders.

- 34. References to Conditions of Employment Board.
- 35. Investigation, etc.
- 36. Powers of Minister.
- 37. Scope of orders.
- 38. Exhibition of orders.

Recognised Conditions.

- 39. Recognised conditions of employment.
- 40. Exceptions for employer's family.
- 41. Authorization of overtime outside recognised conditions.
- 42. Special conditions for aged, disabled and infirm workers.
- 43. Offences.

Payment of Wages.

- 44. Wages to be paid to the employee.
- 45. Wages to be paid at regular intervals.

PART V.
CONTRACTS OF EMPLOYMENT.

Duration.

46. Duration of contracts.

Remuneration.

47. Remuneration other than wages.
48. *Repealed.*
49. *Repealed.*
50. *Repealed.*
51. *Repealed.*
52. *Repealed.*

PART VA.
SEX DISCRIMINATION.

- 52A. Principle of equal treatment.
52B. Application of the principle of equal treatment.
52C. Principle of equal pay.
52D. Laws, etc. contrary to the principles cease to have effect.
52E. Enforcement of the principles.
52F. Remedies on complaint.
52G. Employer's duty to bring principles to notice of employees.
52H. Interest on compensation.

PART VB.
**EQUAL TREATMENT AND NON-DISCRIMINATION IN
OCCUPATIONAL PENSION SCHEMES.**

- 52J. Interpretation of Part VB.
52K. The Equal Treatment Rule.
52L. Equal Treatment Rule: Supplementary.
52M. Equal Treatment Rule: Exceptions.
52N. Equal Treatment Rule: Consequential alteration of Schemes.
52P. Reference to the Industrial Tribunal.
52Q. Prohibition on different rules for overseas residents etc.
52R. Regulations.

PART VI.
TERMINATION OF EMPLOYMENT.

General.

53. Probationary employment.
54. Notice to terminate contract.
55. Compensation.
56. Exceptions to sections 54 and 55.

- 57. Incapacity of employee.
- 58. Certificates of service.

Right not to be Dismissed Unfairly.

- 59. Right not to be dismissed unfairly.
- 60. Qualifications as to length of service and age.
- 61. Exclusion of certain employments.
- 62. Modification of section 60.
- 63. Exclusion of contracts for fixed term.

Meaning of Fair and Unfair Dismissal and Onus of Proof.

- 64. Interpretation.
- 65. Onus on employer.
- 65A. Dismissal in maternity cases.
- 65B. Dismissal in health and safety cases.
- 65C. Dismissal in relevant and statutory right cases.
- 66. Pressure on employer to be disregarded.
- 67. Dismissal in connection with a lock-out.
- 68. Dismissal for participation in industrial action.
- 69. Safeguarding of national security.

Complaints to and Powers of the Industrial Tribunal.

- 70. Complaints and recommendations.
- 71. Basis for assessment of compensation.
- 72. Calculation of compensation.
- 73. Contribution by third party.

PART VIA
Collective redundancies

- 74. Part VIA: Application and scope.
- 75. Part VIA: Interpretation.
- 76. Duty of employer to consult employee representatives.
- 77. Election of employee representatives.
- 77A. Application to the Industrial Tribunal and protective award.
- 77B. Entitlement under protective award.
- 77C. Termination of employment during protected period.
- 77D. Application by employee to the Industrial Tribunal.
- 77E. Duty of employer to notify Director of certain redundancies.
- 77F. Prohibition of contracting out against Part VIA.
- 78. Offences.

PART VIB
Transfer of Undertakings

- 78A. Part VIB: Interpretation.
- 78B. Application of this Part and a relevant transfer.
- 78C. Effect of relevant transfer on contracts of employment.
- 78D. Effect of relevant transfer on collective agreements.
- 78E. Effect of relevant transfer on trade union recognition.
- 78F. Dismissal of employee because of relevant transfer
- 78G. Variations of contract where transferors are subject to relevant insolvency proceedings.
- 78H. Pensions.
- 78I. Notification of employee liability information.
- 78J. Remedy for failure to notify employee liability information.
- 78K. Duty to inform and consult representatives.
- 78L. Election of employee representatives.
- 78M. Failure to inform or consult.
- 78N. Failure to inform or consult : supplemental.
- 78P. Contracting out against Part VIB.

PART VII.
MISCELLANEOUS.

Records.

- 79. Records of employees.
- 80. Language.

Offences and Prosecution.

- 81. Miscellaneous offences.
- 82. Orders for payment of wages underpaid or withheld.
- 83. Limitation.
- 83A. Postponement of effect of expiry of limitation periods for certain mediated cross-border disputes.
- 84. Restriction on prosecutions.
- 85. Appearances.

Rules and Regulations.

- 86. Regulations.
- 87. *Repealed.*
- 88. Rules of court.

The Crown.

- 89. The Crown.
- 90. Jurisdiction of the Supreme Court.

This version is out of date

Schedule 1.

Repealed.

Schedule 2.

Conventions.

AN ACT TO CONTROL EMPLOYMENT AND TO REGULATE
CONDITIONS OF EMPLOYMENT

PART I.
PRELIMINARY.

Short title.

1. This Act may be cited as the Employment Act.

Interpretation.

2. In this Act, unless the context otherwise requires,—

“Board” means the Conditions of Employment Board established under section 6;

“conditions of employment” includes conditions affecting wages, redundancy compensation, the period of employment, the hours of work and leave, and sums which may be deducted from wages of employees (or be payable by employees under any agreement with their employer) in respect of the provision of food, accommodation or other allowances or privileges;

“conditions of employment recommendation” means a recommendation made by the Board under section 7;

“conditions of employment order” means an order made by the Minister under section 36;

“contract of service” means an agreement, whether express or implied, oral or in writing, in any form whereby a person binds himself to be or to become an employee in return for wages;

“Director” means the Director of Employment, or such other public officer as the Minister may designate to administer the provisions of this Act;

“employee” means any person who has entered into or works under a contract with an employer, whether the contract be for manual labour, clerical work or otherwise, be express or implied, oral or in writing and whether it be a contract of service or a contract personally to execute any work or labour, and includes an outworker but does not include—

- (a) a seaman as defined in the Merchant Shipping Act¹ except for the purposes of sections 74, 75, 76, 77 and 78;
- (b) any person who is employed casually and otherwise than for the purposes of the employer's business; or
- (c) a domestic worker in a private dwelling house;

“family” means the husband, wife and children;

“general minimum standard conditions of employment” means standard conditions of employment applicable to all employees in Gibraltar;

“hours of work” means the time in any day during which employees are at the disposal of the employer, exclusive of the intervals allowed for meals and rest;

“Industrial Tribunal” means the Industrial Tribunal established under the powers conferred by section 12;

“inspector” means an inspector appointed under section 16;

“leave” includes paid annual leave, paid public holidays and paid sick leave;

“Minister” means the Minister with responsibility for employment;

“outworker” means a person to whom articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for the purpose of the trade or business of that other person where the process is to be carried out either in the house of the outworker or in some other premises not being premises under the control and management of that other person;

“particular minimum standard conditions of employment” means standard conditions of employment applicable to any particular class or classes of employees in Gibraltar;

“period of employment” means the time in any day during which employees are at the disposal of the employer, inclusive of the intervals allowed for meals and rest;

“wages” means remuneration or earnings, payable in money by an employer to an employee.

¹ 1935-09

PART II.
STATUTORY BODIES AND ADMINISTRATION.

3. *Repealed.*

4. *Repealed.*

5. *Repealed.*

The Conditions of Employment Board.

Establishment and membership of Conditions of Employment Board.

6.(1) There is hereby established a board to be known as the Conditions of Employment Board, which shall be constituted as follows:—

- (a) a chairman, to be appointed by the Minister;
- (b) such representatives of employers as the Minister may appoint in that behalf;
- (c) such representatives of employees as the Minister may appoint in that behalf; and
- (d) such independent persons as the Minister may appoint.

(2) The number of persons appointed under paragraphs (b) and (c) of subsection (1) shall be equal.

(3) The term for which a member of the Board is to hold office shall be such as may be determined by the Minister at the time of his appointment and the conditions subject to which he is to hold office shall be such as may be prescribed.

(4) Notwithstanding anything contained in subsection (3), the Minister may, in his discretion, terminate the appointment of any member of the Board at any time.

(5) The Director shall appoint a person to be Secretary to the Board.

(6) Where the Board is considering a reference from the Minister under section 7(b) it shall have power to co-opt such persons of special knowledge as may serve the purposes of the Board:

Provided that—

- (a) the number of any such persons who are representatives of employers and of employees shall be equal; and
- (b) such co-opted members shall serve only in a consultative capacity.

(7) Subject to the provisions of this Act the Board shall regulate its own procedure.

Functions.

7. The functions of the Board shall be—

- (a) to make recommendations to the Minister as to any general minimum standard conditions of employment;
- (b) to make recommendations to the Minister as to any particular minimum standard conditions of employment on any matter referred to the Board by the Minister in accordance with the provisions of section 34;
- (c) to advise the Minister on any matter relating to conditions of employment, or on any matter referred to the Board by the Minister.

Power to summon witnesses, etc.

8.(1) The Board shall have power to require the attendance of witnesses and the production of documents.

(2) A person summoned to attend and give evidence or produce documents at any sitting of the Board shall be bound to obey the summons served upon him, and a person who refuses or fails without sufficient cause to attend at the time and place mentioned in the summons, or refuses without sufficient cause to answer or to answer fully and satisfactorily, to the best of his knowledge and belief, all questions put to him by or with the concurrence of the Board or to produce any documents, is guilty of an offence:

Provided always that no person shall be required to give evidence or produce documents tending to incriminate himself, and every person shall, in respect of any evidence given or documents produced by him before the Board be entitled to all the privileges to which a witness giving evidence before the magistrates' court is entitled in respect of evidence given by him before such court.

(3) Summonses shall be signed by the chairman or by the secretary of the Board and shall be in such form and shall be served in such manner as may be prescribed.

(4) The chairman of the Board may require any person (including a member of the Board) giving evidence before the Board, to give his evidence on oath and for such purpose shall have power to administer an oath.

Joint Industrial Councils.

Registration of Joint Industrial Councils.

9.(1) Where in the opinion of the Minister in respect of any group or class of employees adequate machinery exists for the regulation of conditions of employment, an application may be made jointly by the employer or employers or organizations representing the employers of those employees and by a trade union or trade unions representing those employees for the recognition by the Minister of that machinery as a Joint Industrial Council.

(2) On receipt of any such application the Minister shall ascertain the constitution, function, procedure and composition of that machinery, and if satisfied—

- (a) that the machinery is adequate; and
- (b) that it covers a substantial number of employees,

he may, in his discretion, register that machinery as a Joint Industrial Council.

(3) Upon such registration the group or class of employees to whom it relates shall be excluded from the field of any reference to the Board made in accordance with section 34 and the Minister shall take such action as may be necessary to abolish or modify any particular conditions of employment order in force affecting that group or class of employees.

(4) A Joint Industrial Council shall continue to be registered under such conditions as the Minister may impose up to such time as it continues to be, in the opinion of the Minister, adequate for the purpose of regulating wages and the conditions of employment of the employees to whom it relates.

Functions.

10. A registered Joint Industrial Council shall, without prejudice to other functions under its constitution, have the power to determine the conditions of employment of the employees under its jurisdiction subject to the provisions of this Act and of any other law in force from time to time and may vary any voluntary settlement or award made under any machinery for conciliation or arbitration in relation to such employees.

Duty to supply copies of records.

11. Every registered Joint Industrial Council shall supply the Director with an agreed true copy of all records of its proceedings and shall furnish such explanation and information as the Director may require.

The Industrial Tribunal.

Power to establish an Industrial Tribunal.

12.(1) The Governor may by rules establish an Industrial Tribunal and may by such rules provide for-

- (a) the constitution, membership and procedure of such tribunal;
- (b) the appointment of a chairman of the tribunal;
- (c) the powers of such tribunal; and
- (d) such other matters as appear to the Governor to be necessary or expedient.

(2) The Governor may make rules for the purposes of hearing complaints by the tribunal and for the enforcement of awards and without prejudice to the generality of the foregoing such rules may prescribe -

- (a) the form of complaint;
- (b) the form of defence;
- (c) the form of joinder of third parties;
- (d) the method by which awards made by the tribunal may be enforced and for the purpose of this paragraph an award made or varied by the Supreme Court on appeal from the tribunal shall be deemed to be an award of the tribunal.

Appeals.

13. An appeal shall lie on a question of law from the tribunal to the Supreme Court against any decision of the tribunal.

14. *Repealed.*

Keeping of registers.

15.(1) The Director may keep a register of employment vacancies in Gibraltar notified to him.

(2) The Director may, for the purposes of establishing the numbers of unemployed persons in Gibraltar, keep a register of those persons.

(3) The Minister may, by regulation, prescribe the method of keeping the registers, the persons by whom information may or shall, as the case may be, be provided for the purposes of inclusion in the registers, the form of the registers and matters necessary and incidental to the keeping of the registers.

Inspectors.

Appointment of inspectors.

16. The Director shall appoint such persons as he may think fit to be inspectors for the purposes of this Act.

Powers and duties of inspectors.

17.(1) Inspectors appointed under section 16 shall be empowered—

- (a) to enter at all reasonable times any premises, ship or other place liable to inspection under this Act;
- (b) to interrogate, alone or in the presence of witnesses, the employer or the employees on any matters under this Act;
- (c) to require the production of any books, registers or other documents the keeping of which is prescribed by this Act or by any order issued under this Act and to copy such documents or make extracts therefrom;
- (d) with the prior written authority of the Director to do anything necessary to ensure that this Act is complied with or to detect any breach of this Act.

Provided that no person shall be required under the provisions of paragraph (b) to give any information tending to incriminate himself.

(2) On the occasion of any inspection visit, an inspector shall notify the employer or his representative of his presence, unless he considers that such a notification may be prejudicial to the performance of his duties.

(3) The premises and places liable to inspection under this Act are any premises or places other than a private dwelling-house in respect of which any provisions of this Act or of any regulation or order thereunder of any recognised conditions of employment apply or any premises or places, other than a private dwelling-house, in respect of which an inspector has reasonable cause to believe that this Act or any regulations or orders thereunder or any recognised conditions of employment apply.

(4) Such inspectors—

- (a) shall be prohibited from having any direct or indirect interest in any premises or places which may be subject to inspection by them;
- (b) shall not reveal at any time even after ceasing to be inspectors any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties;
- (c) shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or a breach of the provisions of this Act or of any regulations or orders thereunder or of any recognised conditions of employment; and
- (d) shall not in any case give intimation to the employer or his representative that a visit of inspection was made as a consequence of the receipt of such a complaint.

(5) Every inspector shall be furnished with a certificate of his appointment signed by the Director and on applying for admission to any premises or place for the purpose of this Act shall, if so required, produce such certificate.

(6) A person shall not—

- (a) omit truly to answer or reply, or cause any other person to omit truly to answer or reply to any question which an inspector is authorised to ask under this Act; or
- (b) fail to produce any books, registers or other documents which, pursuant to paragraph (c) of subsection (1), he is required by an inspector to produce; or

- (c) directly or indirectly prevent any person from appearing before or being questioned by an inspector or prevent any inspector from exercising his powers under this section.

PART III.

RESTRICTIONS ON EMPLOYMENT.

Interpretation.

18.(1) In sections 20, 24, 25 and 26, unless the context otherwise requires,—

“certificate” means a certificate of employment issued under the provisions of section 25;

“permit” has the meaning assigned to it by section 20;

“worker” means any person to whom this Act applies employed whether by the Crown or any other person, as a servant or apprentice by way of manual labour, clerical work or otherwise and whether or not in receipt of any salary, wages or remuneration in respect of such employment except any person employed—

- (a) as a master or member of the crew of a ship to which the provisions of the Merchant Shipping Act apply;
- (b) as a member of the Gibraltar Police Force;
- (c) in the naval, military or air forces of the Crown;

“working day” means any day other than Sunday, or any public holiday.

(2) For the purposes of sections 20, 24, 25 and 26—

- (a) a person to whom this Act applies is a worker if he undertakes any work of a clerical or manual nature, or of any similar nature; and
- (b) a person to whom this Act applies, who undertakes any work specified in paragraph (a) of this subsection as a servant or as an apprentice for the Crown or for any other person, is employed as a worker, and, subject to subsection (5), it is immaterial—
 - (i) that he does or does not receive any salary, wages, or other remuneration in respect of that work; or

- (ii) that where he undertakes that work for or on behalf of a company or a firm, he is also a director or a principal of that company or firm; or
- (iii) that, while undertaking that work, he also holds any other position or performs any other function or work that is not the position or a function or work of a worker.

(3) Notwithstanding subsection (2), for the purposes of this Act a person employed as—

- (a) a master or member of the crew of a ship to which the Merchant Shipping Act applies; or
- (b) a member of the Gibraltar Police Force; or
- (c) a member of Her Majesty's Naval, Military or Air Forces—

is not by reason of that employment a worker or employed as a worker.

(4) In any proceedings for an offence against this Act, where the prosecution proves that a person is a worker, as defined in paragraph (a) of subsection (1), that person shall be presumed to be employed as a worker unless the defendant proves that the person was not at any material time employed as a worker.

(5) Notwithstanding subsection (2), in any proceedings for an offence against this Act, in which—

- (a) it is a material ingredient of the alleged offence that a person is employed as a worker; and
- (b) it is proved by the prosecution that the person was at the material time or times a worker, as defined in paragraph (a) of subsection (2)—

it shall be a defence to the charge if it is proved that the person undertook the work described in that paragraph only as a usual and reasonable incident of any other position, function or work held or performed by him (not being the position or a function or the work of a worker, as so defined).

Application.

19. Sections 20 and 24 to 28 apply to all persons except—

- (a) any British subject appointed or engaged outside Gibraltar for employment by the Crown in Gibraltar and whose emoluments

in respect of his service in Gibraltar are paid from funds of Her Majesty's Government in the United Kingdom;

- (b) any member of a class of persons or any person declared to be exempt from all or any of the provisions of this Act by the Minister.

Requirement in respect of work permits.

20.(1) The Director may require in circumstances prescribed by regulations and in relation to workers prescribed by regulations—

- (a) notification to him of any employment vacancy before that vacancy may be filled;
- (b) that an employer obtain permission from the Director prior to employing any worker (such permission hereinafter called “a permit”).

(2) Regulations made for the purposes of subsection (1) may—

- (a) make different provisions in respect of different circumstances and different categories of workers;
- (b) prescribe conditions to be met by employers and workers in respect of the filling of a vacancy;
- (c) prescribe conditions to be met prior to the Director granting a permit;
- (d) prescribe conditions to be met by an employer or a worker whilst the former is employing the latter under a permit;
- (e) prescribe the circumstances in which the Director may, in his discretion, refuse to grant a permit;
- (f) make provision for the period of validity of a permit and the circumstances in which and the period for which a permit may be renewed;
- (g) provide for the circumstances in which the Director may revoke a permit and the procedures to be followed in respect of the intention to revoke a permit and the revocation of the permit;
- (h) provide that a failure to comply with the requirements of any regulation, is an offence under this section;

- (i) generally make provision in respect of notification and filling of vacancies and matters related to permits:

Provided that no provision shall be made in regulations under this section which is contrary to the requirements of Regulation 1612/68 of the European Community.

21. *Repealed.*

22. *Repealed.*

23. *Repealed.*

Return of permits.

24. It is an offence for the employer of a worker to fail to return to the Director the permit of a worker—

- (a) whose employment has terminated, within seven working days of such termination; or
- (b) who has been absent without leave from work for seven working days, within three working days of the seventh day of absence.

Issue of certificates of employment.

25. Where a worker is engaged in pursuance of a permit the Director shall cause a certificate in the prescribed form to be issued .

Surrender of certificates.

26. It is an offence for a worker whose employment has terminated to fail to return his certificate and his civilian registration card issued under the Civilian Registration Act² to the Director not later than the next working day following that on which his employment terminated.

26A. *Repealed.*

Power to require returns.

27.(1) The Director may, whenever he thinks fit, by notice in writing, require any person to furnish him with a true and complete return of the names of all persons employed by that person, at any time or during any period specified in the notice with such particulars relating to those persons as may be specified.

² 1950-18

(2) A person who fails to furnish a return required of him under this section, or wilfully furnishes any such return which is incomplete or untrue in any material particular is guilty of an offence.

Offences and penalties.

28.(1) A person who wilfully makes any false statement for the purpose of obtaining a permit or certificate is guilty of an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

(2) A person guilty of an offence against section 20, 24 or 26 for which no penalty is provided is liable on summary conviction to a fine at level 4 on the standard scale.

Women, Young Persons and Children.

Interpretation.

29. In sections 30 to 33, unless the context otherwise requires,—

“child” means a person under the age of fifteen years;

“competent authority” means the Minister;

“duly authorised officer” means any officer authorised by the Minister by notice in the Gazette to act under the provisions of sections 30 to 32;

“industrial undertaking” has, with respect to the employment of children, young persons and women, the meanings respectively assigned thereto in the conventions set out in Parts I, II, and III of Schedule 2;

“members of the employer’s family” means his spouse, father, stepfather, mother, stepmother, grandfather, grandmother, father-in-law, mother-in-law, grandchild, brother, sister, son, or daughter;

“ship” means any sea-going ship or boat of any description which is registered in Gibraltar as a British ship;

“woman” means a woman of the age of eighteen years and upwards;

“young person” means a person who has ceased to be a child and who is under the age of eighteen years.

Restriction on employment in industrial undertakings.

(1920 c.65, s.1). 30.(1) No child shall be employed in any industrial undertaking:

Provided that a child may be employed in an industrial undertaking in which only members of the employer's family are employed unless such undertaking is by its nature or the circumstances in which it is carried on dangerous to life, health, or morals of the persons employed therein.

(2) No young persons or women shall be employed at night in any industrial undertaking, except to the extent to which and in the circumstances in which such employment is permitted under the conventions set out in Parts II and III respectively of Schedule 2.

(3) Where young persons are employed in any industrial undertaking, a register of the young persons so employed, and of the dates of their birth and of the dates on which they enter and leave the service of their employer, shall be kept, and shall at all times be open to inspection by any duly authorised officer.

(4) No woman or female young person shall be employed on underground work in any mine, quarry or other work for the extraction of minerals from under the surface of the earth.

Restriction on employment in ships.

31.(1) No child shall be employed in any ship.

(1920 c.65, s.1).

(2) There shall be included in every agreement with the crew entered into under the Merchant Shipping Act, or any Act amending or substituted for the same, a list of the young persons who are members of the crew, together with particulars of the dates of their births, and, in the case of a ship in which there is no such agreement, the master of the ship shall, if young persons are employed therein, keep a register of those persons with particulars of the dates of their birth and of the dates on which they become or cease to be members of the crew, and the register so kept shall at all times be open to inspection by any duly authorised officer.

(3)

(a) No young person shall be employed or work on any ship as a trimmer or a stoker:

Provided that if no person over the age of eighteen years is available for the work, two young persons each of not less than sixteen years of age may be employed to fill each single vacancy.

- (b) This subsection shall be reproduced in all articles of agreement in respect of service on a ship.

(4) No young person shall be employed on any ship except upon the production of a current certificate (which shall be expressed to expire at the end of a period of not more than one year from the execution thereof) by a medical practitioner who shall have been approved by the competent authority, attesting the young person's fitness for the work to be undertaken:

Provided that if such certificate shall expire in the course of a voyage it shall remain in force until the end of such voyage.

(5) This section, so far as it relates to employment in a ship, shall have effect as if it formed part of the Merchant Shipping Act or of any Act amending or substituted for the same.

Offences.

(1920 c.65, s.1). 32.(1) A person who employs a child or a young person in any industrial undertaking in contravention of this Act, is guilty of an offence and is liable on summary conviction for each offence to a fine at level 2 on the standard scale, or, in case of a second or subsequent offence, three times the amount at level 2 on the standard scale.

(2) Where a child is taken into employment in any industrial undertaking in contravention of this Act on the production, by or with the privity of the parent, of a false or forged certificate, or on the false representation of his parent that the child or young person is of an age at which such employment is not in contravention of this Act, that parent is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

(3) If any young person or child is employed in any ship in contravention of this Act or if the provisions of section 31 (3) (b) are contravened, the master of the ship is guilty of an offence and is liable on summary conviction for each offence to a fine at level 2 on the standard scale, or, in the case of a second or subsequent offence, three times the amount at level 2 on the standard scale.

(4) Where a young person or child is taken into employment in any ship in contravention of this Act, on the production, by or with the privity of the parent, of a false or forged certificate, or on the false representation of his parent that the young person or child is of an age at which such employment is not in contravention of this Act, that parent is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

(5) A person who, being the employer of a young person, fails to keep such a register so required to be kept by him, or refuses or neglects, when required, to produce it for inspection by a duly authorised officer, is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

(6) The master of a ship who fails to keep such a register so required to be kept by him, or refuses or neglects, when required, to produce it for inspection by a duly authorised officer, is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

(7) A person who employs a woman in contravention of this Act, is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

Saving.

33.(1) The provisions of sections 30 and 31 are in addition to and not in derogation of any of the provisions of any other Act restricting the employment of women, young persons and children. *(1920 c.65, s.3).*

(2) Sections 30(2), (3) and (4) and 31(2), (3), (4) and (5) do not apply to industrial undertakings or ships in which only members of the same family are employed.

PART IV.

CONDITIONS OF EMPLOYMENT.

Recommendations and Orders.

Reference to the Conditions of Employment Board.

34. Where the Minister is of the opinion that no adequate machinery exists for the effective regulation of the conditions of employment of any class or classes of employees and that having regard to the conditions of employment existing among such class or classes it is expedient that such conditions should be regulated, he may refer the matter to the Board for their recommendation thereon.

Investigation, etc.

35. Before submitting any conditions of employment recommendation to the Minister, the Board shall make such investigations as appear to it to be necessary and shall publish in the Gazette above the signatures of the chairman and secretary, a notice giving details of the proposed recommendation stating the period, which shall not be less than twenty-one

days from the date of the notice, within which written representations with respect to the proposals may be made to the Board; and the Board shall consider any representations made within that period and shall make any further inquiries it may consider necessary and may then submit the recommendation to the Minister either without amendment or with such amendments as it thinks fit having regard to the representations.

Powers of Minister.

36.(1) Where the Minister receives any conditions of employment recommendation from the Board, he may—

- (a) if he thinks fit, make an order giving effect to the recommendation from such future date as may be specified in the order; or
- (b) refer the matter back to the Board with any observations he may think fit to make, for further consideration by the Board.

(2) Where any recommendation has been referred back to the Board in accordance with the provisions of subsection (1) and the Board submits a further recommendation to the Minister in respect of the same matter such further recommendation shall for all purposes of this Act be treated as if it were the original recommendation on such matter.

(3) Notwithstanding any other provision of this Act, the Minister may make such orders as he thinks fit to make provision in relation to conditions of employment.

Scope of orders.

37.(1) Any conditions of employment order may make different provision for different cases, may contain provision for the amendment or revocation of previous orders and may contain any incidental, supplemental or consequential provisions which may appear necessary for carrying out the provisions of any conditions of employment order.

(2) No conditions of employment order shall have effect so as to prejudice any rights as to conditions of employment conferred on any employee by or under any law other than this Act or by or under any existing contract.

(3) If a contract between an employee to whom a conditions of employment order applies and his employer provides for conditions of employment less favourable to the employee than those specified in the order, it shall have effect as if for those conditions there were substituted the conditions specified in the order.

Exhibition of orders.

38.(1) A copy of every conditions of employment order applicable to his employees drawn up in English in a form approved by the Director shall be exhibited by the employer in a conspicuous position in all places of employment.

(2) On engagement of any employee, the employer shall explain to him the provisions of any recognised conditions of employment applicable in his case.

Recognised Conditions.

Recognised conditions of employment.

39. The conditions of employment prescribed in a conditions of employment order, or determined by a joint industrial council under this Act, or determined by voluntary settlement or award under any machinery for conciliation or arbitration shall be the recognised conditions of employment for the employees concerned.

Exception for employer's family.

40. The recognised conditions of employment shall not be applicable to members of the employer's family.

Authorization of overtime outside recognised conditions.

41. Notwithstanding any limitations in the hours of overtime specified in a conditions of employment order the Director may authorize in writing, as a temporary expedient, the working of daily or weekly overtime as the case may be in excess of the limits specified, if the period for which he may authorize overtime in no case exceeds fourteen days in any period of six months and any annual limit specified in such order is not thereby exceeded.

Special conditions for aged, disabled and infirm workers.

42.(1) Notwithstanding the provisions of this Act the Director may grant a licence to any aged, disabled or infirm person to work at a wage less than that laid down in the recognised conditions of employment applicable to his class.

(2) The Director shall not grant such licence until he is satisfied that the person concerned is, by reason of his age, disablement or infirmity, unable

to obtain employment at the wage fixed by the recognised conditions of employment.

- (3) Such a licence—
- (a) shall specify the wage at which such person is licensed to work;
 - (b) shall specify the name of the employer for whom the person is licensed to work at such wage;
 - (c) shall be in force for the period mentioned therein, but may be renewed;
 - (d) may be revoked at any time at the discretion of the Director; and
 - (e) may contain such other particulars as may be prescribed.

(4) The Director shall in his discretion, fix the number of licensed aged, disabled or infirm persons to be employed by any employer, so however that each employer shall be entitled to employ at least one such licensed person.

Offences.

43. An employer or person who contravenes any recognised conditions of employment prescribed by any conditions of employment order, or who employs an aged, disabled or infirm person under conditions of employment less favourable than the recognised conditions of employment and without a licence of the Director under section 42, or who contravenes the conditions of such a licence, is liable on summary conviction to a fine at level 4 on the standard scale.

Payment of Wages.

Wages to be paid to the employee.

44.(1) Wages shall be paid directly to the employees to whom they are due except as may otherwise be provided by any law or by virtue of an order made by a competent court or where the employee agrees to the contrary.

(2) Payment of wages shall be effected on week days only and, except for employees employed therein, shall not be made in any shop, public house or place of public entertainment.

Wages to be paid at regular intervals.

45.(1) Every employer shall pay or cause to be paid wages to his employees at regular intervals, and—

- (a) not less often than once a week in the case of employees whose wages are fixed by the hour or day or week;
- (b) not less than once a fortnight in the case of employees whose wages are calculated solely on a piecework or output basis;
- (c) not less than once a month in the case of employees whose wages are fixed on a monthly or annual basis;
- (d) in the case of employees whose wages consist of a share of profit, or of a commission on sales or payments made or received by the employer, not less often than once a month unless otherwise agreed by such employees and the employer:

Provided that the provisions of this subsection shall not apply where an agreement is entered into between an employer or employers or organization of employers on the one hand and trade union representatives of the employees concerned on the other, fixing other intervals for the payment of wages.

(2) Every employer shall, at every payment of wages furnish each employee with a statement of the wages due to him for his services for the period for which payment is made and such statements shall show clearly the amounts of and the reasons for any additions to, or deductions or other variations from, the normal wage for the period.

(3) On termination of a contract of service all wages lawfully due shall be paid by the date of the next pay day determined under subsection (1) as if the contract had not been terminated.

(4) A settlement of accounts shall be made at least once a year by the employer in respect of employees whose wages consist of a share of profits or of a commission on sales or payments made or received by the employer.

- (5) (a) Where an employee in any trade, being a person to whom a minimum rate of wages fixed under this Act applies, is an apprentice or learner, it shall not be lawful for his employer to receive directly or indirectly from him, or on his behalf or on his account, any payment by way of premium:

Provided that nothing in the foregoing provision shall apply to any such payment duly made in pursuance of any instrument of apprenticeship not later than four weeks after the commencement of the employment.

- (b) Where an employer is convicted of acts in contravention of this subsection the court may, in addition to imposing a fine in accordance with the provisions of this Act, order him to repay to the employee or other person by whom the payment was made the sum improperly received by way of premium.

PART V.
CONTRACTS OF EMPLOYMENT.

Duration.

Duration of contracts.

46. A person may bind himself to give his services for a time specified or indefinite, or in respect of a specified task, undertaking, work or service.

Remuneration.

Remuneration other than wages.

(1831 c.37, s.3). 47.(1) Subject to the provisions of this Act, nothing in this Act shall prevent the making of any contract of service by which an employee becomes entitled to food, a dwelling place or other allowances or privileges in addition to cash wages as a remuneration for his services:

Provided that—

- (a) such food, dwelling place, allowances or privileges shall be adequate for, and appropriate for the use of, the employee and his family and the cash value attributed to them shall be fair, reasonable and properly assessed; and
 - (b) no wages shall be paid in the form of noxious drugs or alcoholic liquor.
- (2) Where any part of an employee's remuneration is given in kind, the value ascribed thereto shall be entered in—
- (i) the contract of employment signed by the employee;
 - (ii) the statement of terms of employment required to be given under regulations made under sections 20 or 86 or in any written contract required by such regulations to be produced to the Director.

(iii) the wages register kept by the employer.

(3) Notwithstanding anything contained in subsection (1) no contract shall be valid to the extent that it provides for greater payments by an employee, whether by way of deduction from wages or otherwise, in respect of food, accommodation, or other allowances or privileges, than is authorised in an order made under section 36.

48. *Repealed.*

49. *Repealed.*

50. *Repealed.*

51. *Repealed.*

52. *Repealed.*

PART VA. **SEX DISCRIMINATION.**

Principle of equal treatment.

52A.(1) For the purposes of the provisions of this Part, the principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status.

(2) The said provisions shall not apply to those occupational activities and, where appropriate, the training leading thereto, for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor.

(3) The said provisions shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity.

(4) The said provisions shall be without prejudice to measures to promote equal opportunity for men and women, in particular by removing existing inequalities which affect women's opportunities as regards access to employment, including promotion, and to vocational training and as regards working conditions.

Application of the principle of equal treatment.

52B.(1) Application of the principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex in the conditions,

including selection criteria, for access to all jobs or posts, whatever the sector or branch of activity, and to all levels of the occupational hierarchy.

- (2) The principle of equal treatment shall apply–
 - (a) with regard to access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, and
 - (b) with regard to working conditions, including the conditions governing dismissal.
- (3) Except in such private training establishments, as the Minister may approve, vocational guidance, vocational training, advance vocational training and retraining shall be accessible on the basis of the same criteria and at the same levels without any discrimination on grounds of sex.

Principle of equal pay.

52C. For the purpose of the provisions of this Part the principle of equal pay, means, for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration.

In particular, where a job classification system is used for determining pay, it must be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

Laws, etc. contrary to the principles cease to have effect.

52D.(1) Subject to subsection (2), it is hereby declared that–

- (a) all laws, regulations and administrative provisions contrary to the principle of equal treatment or the principle of equal pay; and
- (b) all provisions contrary to the principle of equal treatment or the principle of equal pay which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions,

cease to have effect.

(2) Section 52A(1) and subsections (1) and (2) of section 52B do not render it unlawful for a person to discriminate against a woman in relation to her membership of, or rights under, an occupational pension scheme in

such a way that, were any term of the scheme to provide for discrimination in that way, then, by reason only of any provision made by or under sections 52K to 52M, an equal treatment rule would not operate in relation to that term.

(3) In subsection (2), “occupational pension scheme” has the same meaning as in section 52J and “equal treatment rule” has the meaning given by section 52K.

(4) Regulations may make provision—

- (a) for this Act to have effect, in relation to terms of employment relating to membership of, or rights under, an occupational pension scheme with prescribed modifications, and
- (b) for imposing requirements on employers as to the payment of contributions and otherwise in case of their failing or having failed to comply with any such terms.

(5) References in subsection (4) to terms of employment include (where the context permits) any collective agreement or pay structure.

Enforcement of the principles.

52E.(1) A complaint by any person (“the complainant”) that another person (“the respondent”) has committed against the complainant an act which is repugnant to the principle of equal treatment or the principle of equal pay (hereinafter called “an act of discrimination”) may be presented to an Industrial Tribunal.

(2) For the purposes of such complaint the provisions of the Industrial Tribunal Rules shall apply.

(3) An Industrial Tribunal shall not consider a complaint unless it is presented to the Tribunal within the period of six months beginning when the act complained of is alleged to have been done;

Provided that the tribunal may nevertheless consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

Remedies on complaint.

52F.(1) Where an Industrial Tribunal finds that a complaint presented to it under section 52E is well-founded the tribunal shall make such of the following as it considers just and equitable—

- (a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;
 - (b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered by the Supreme Court to pay to the complainant if the complaint had been dealt with by that court;
 - (c) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination to which the complaint relates.
- (2) Where an Industrial Tribunal makes an award under subsection (1)(b)–
- (a) it may, subject to the provisions of section 52H, include interest on the sums awarded; and
 - (b) it shall consider whether to do so, without the need for any application by a party in the proceedings:

Provided that nothing in this subsection shall prevent the tribunal from making an award or decision, with regard to interest, in terms which have been agreed between the parties.

- (3) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by an Industrial Tribunal under subsection (1)(c), then, if it thinks it just and equitable to do so–
- (a) the tribunal may increase the amount of compensation required to be paid to the complainant in respect of the complaint by an order made under subsection (1) (b), or
 - (b) if an order under subsection (1)(b) could have been made but was not, the tribunal may make such an order.

Employer's duty to bring principles to notice of employees.

52G. It shall be the duty of the employer to bring the provisions of this Part to the attention of employees by appropriate means, including posting at the place of employment.

Interest on compensation.

52H.(1) The provisions of this section shall apply for the purposes of determining interest under section 52F(2).

(2) Interest shall be calculated as simple interest which accrues from day to day.

(3) Subject to subsection (4), the rate of interest to be applied shall be the rate of interest prescribed in respect of judgments of the Supreme Court in the order, made under section 36 of the Supreme Court Act³, in force from time to time.

(4) Where the rate of interest in subsection (3) has varied during a period for which interest is to be calculated, the tribunal may, if it so desires in the interest of simplicity, apply such median or average of those rates as seem to it appropriate.

(5) No interest shall be included in respect of any sum awarded for a loss or matter which will occur after the date of calculation, or in respect of any time before the contravention or act of discrimination complained of.

(6) Subject to subsections (7) and (8)–

- (a) in the case of any sum for injury to feelings, interest shall be for the period beginning on the day of the contravention or act of discrimination complained of and ending on the day of calculation;
- (b) in the case of all other sums of damages or compensation in the award (other than any sum referred to in subsection (5)), and all arrears of remuneration, interest shall be for the period beginning on the mid point date and ending on the day of calculation.

(7) Where any payment has been made before the day of calculation to the complainant by or on behalf of the respondent in respect of the subject matter of the award, interest in respect of a corresponding part of the award shall be calculated as if the references in subsection (6) and in the definition of “mid point date” in subsection (12) to the day of calculation were to the date on which the payment was made.

(8) Where the tribunal is of the opinion that–

- (a) there are exceptional circumstances, whether relating to the case as a whole or to a particular sum in an award; and

³ 1960-02

- (b) those circumstances have the effect that serious injustice would be caused if interest were to be awarded in respect of the period or periods referred in subsection (6) or (7),

it may—

- (i) calculate interest, or as the case may be, interest on the particular sum, for such different period, or
- (ii) calculate interest for such different periods in respect of various sums in the award,

as it considers appropriate in the circumstances, having regard to the provisions of this section.

(9) The tribunal's written statement of reasons for its decision shall contain a statement of the total amount of any interest awarded under section 52F(2) and, unless this amount has been agreed between the parties, either a table showing how it has been calculated or a description of the manner in which it has been calculated.

(10) The tribunal's written statement of reasons shall include reasons for any decision not to award interest under section 52F(2).

(11) The provisions of section 36 of the Supreme Court Act³ shall apply to an award made by the tribunal under section 52F as if the reference in section 36 of the Supreme Court Act to a judgment debt is a reference to an award.

(12) In this section—

“day of calculation” means the day on which the amount of interest is calculated by the tribunal;

“the mid point date” means the date half way through the period beginning on the date of the contravention or act of discrimination complained of and ending on the day of calculation.

PART VB.

EQUAL TREATMENT AND NON-DISCRIMINATION IN OCCUPATIONAL PENSION SCHEMES.

Interpretation of Part VB.

³ 1960-02

52J.(1) In this Part unless the context shall otherwise require—

“active member” means a person who is in pensionable service under the scheme;

“actuary” means a Fellow of the Institute of Actuaries or the Faculty of Actuaries of Great Britain;

“auditor” means a person whose name appears on the Register of Auditors as defined by the Auditors Approval and Registration Act;

“deferred member” means a person (other than an active or pensioner member) who has accrued rights under the scheme;

“employer” means, subject to subsection (3), the employer of persons in the description or category of employment to which the scheme in question relates;

“firm” means a body corporate or a partnership;

“member” means, subject to subsection (4), any active, deferred or pensioner member;

“occupational pension scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of employed or self-employed persons with qualifying service in an employment of any such description or category;

“pensionable service”, in relation to a member of an occupational pension scheme, means service in any description or category of employment to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme;

“pensioner member” means a person who in respect of his pensionable service under the scheme or by reason of transfer credits, is entitled to the present payment of pension or other benefits;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Government;

“transfer credits” means rights allowed to a member under the rules of an occupational pension scheme by reference to a transfer to that scheme of his accrued rights from another scheme (including any transfer credits allowed by that scheme);

“trustees or managers” means—

- (a) in the case of a trust scheme, the trustees of the scheme and,
- (b) in any other case, the managers of the scheme;

“trust scheme” means an occupational pension scheme established under a trust.

(2) For every occupational pension scheme there shall be—

- (a) an individual, or a firm, appointed by the trustees or managers as auditor, and
- (b) an individual appointed by the trustees or managers as actuary.

(3) Regulations may, in relation to occupational pension schemes, extend for the purposes of this Part the meaning of “employer” to include persons who have been the employer in relation to the scheme.

(4) For any of the purposes of this Part, regulations may in relation to occupational pension schemes—

- (a) extend or restrict the meaning of “member”,
- (b) determine who is to be treated as a prospective member, and
- (c) determine the times at which a person is to be treated as becoming or as ceasing to be, a member or prospective member.

The Equal Treatment Rule.

52K.(1) An occupational pension scheme which does not contain an equal treatment rule shall be treated as including one.

(2) An equal treatment rule is a rule which relates to the terms on which—

- (a) persons become members of the scheme, and
- (b) members of the scheme are treated.

(3) Subject to subsection (6), an equal treatment rule has the effect that where—

- (a) a woman is employed on like work with a man in the same employment,
- (b) a woman is employed on work rated as equivalent with that of a man in the same employment, or
- (c) a woman is employed on work which, not being work in relation to which paragraph (a) or (b) applies, is, in terms of the demands made on her (for instance under such headings as effort, skill and decision) of equal value to that of a man in the same employment,

but (apart from the rule) any of the terms referred to in subsection (2) is or becomes less favourable to the woman than it is to the man, the terms shall be treated as so modified as not to be less favourable.

(4) An equal treatment rule does not operate in relation to any difference as between a woman and a man in the operation of any of the terms referred to in subsection (2) if the trustees or managers of the scheme prove that the difference is genuinely due to a material factor which—

- (a) is not the difference of sex, but
- (b) is a material difference between the woman's case and the man's case.

(5) References in subsection (4) and sections 52L to 52N to the terms referred to in subsection (2), or the effect of any of those terms, include—

- (a) a term which confers on the trustees or managers of an occupational pension scheme, or any other person, a discretion which, in a case within any of paragraphs (a) to (c) of subsection (3)—
 - (i) may be exercised so as to affect the way in which persons become members of the scheme or members of the scheme are treated, and
 - (ii) may (apart from the equal treatment rule) be so exercised in a way less favourable to the woman than to the man; and
- (b) the effect of any exercise of such a discretion;

and references to the terms on which members of the scheme are treated are to be read accordingly.

(6) In the case of a term within subsection (5)(a) the effect of an equal treatment rule is that the term shall be treated as so modified as not to permit the discretion to be exercised in a way less favourable to the woman than to the man.

Equal Treatment Rule: Supplementary.

52L.(1) The reference in section 52K(2) to the terms on which members of a scheme are treated includes those terms as they have effect for the benefit of dependants of members, and the reference in section 52K(5) to the way in which members of a scheme are treated includes the way they are treated as it has effect for the benefit of dependants of members.

(2) Where the effect of any of the terms referred to in section 52K(2) on persons of the same sex differs according to their family or marital status, the effect of the term is to be compared for the purposes of section 52K with its effect on persons of the other sex who have the same status.

(3) An equal treatment rule shall not prejudice provisions relating to the protection of women by reason of maternity and any provision which suspends the retention or acquisition of rights during periods of maternity leave or leave for family reasons which are granted by law or agreement and are paid for by the employer shall be construed as being contrary to the equal treatment rule.

(4) Section 52K shall be construed as one with section 52D and sections 52E and 52F shall have effect for the purposes of section 52K as if –

(a) references to the principle of equal treatment were to an equal treatment rule, and

(b) reference to section 52C were to section 52K(3)(c).

(5) Regulations may make provision for this Act to have effect, in relation to an equal treatment rule, with prescribed modifications and subsection (4) shall have effect subject to any regulations made by virtue of this subsection.

(6) Section 52K, so far as it relates to the terms on which members of a scheme are treated, is to be treated as having had effect in relation to any pensionable service on or after 17th May 1990.

Equal Treatment Rule: Exceptions.

52M.(1) An equal treatment rule does not operate in relation to any variation as between a woman and a man in the effect of any of the terms referred to in section 52K(2) if the variation is permitted by or under any of the provisions of this section.

- (2) A variation is permitted by this subsection if–
- (a) the variation consists of the application of actuarial factors which differ for men and women to the calculation of contributions to a scheme by employers, being factors which fall within a prescribed class or description, or
 - (b) the variation consists of the application of actuarial factors which differ for men and women to the determination of benefits falling within a prescribed class or description;

and in this subsection “benefits” include any payment or other benefit made to or in respect of a person as a member of the scheme.

- (3) Regulations may–
- (a) permit further variations, or
 - (b) amend or repeal subsection (2);

and regulations made by virtue of this subsection may have effect in relation to pensionable service on or after 17th May 1990 and before the date on which the regulations are made.

Equal Treatment Rule: Consequential alteration of Schemes.

52N.(1) The trustees or managers of an occupational pension scheme may, if–

- (a) they do not (apart from this section) have power to make such alterations to the scheme as may be required to secure conformity with an equal treatment rule, or
- (b) they have such power but the procedure for doing so–
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

by resolution make such alterations to the scheme.

(2) The alterations provided for in subsection (1) may have effect in relation to a period before the alterations are made.

Reference to the Industrial Tribunal.

52P.(1) Any interested person may refer to the Industrial Tribunal any question arising as to—

- (a) whether any provision of an occupational pension scheme does or does not comply with an equal treatment rule, or
- (b) whether, and with what effect, any such provision is overridden by section 52L(3).

(2) For the purposes of a reference under subsection (1) the provisions of the Industrial Tribunal Rules and the Industrial Tribunal (Appeal) Rules shall apply.

Prohibition on different rules for overseas residents, etc.

52Q.(1) This section applies where an occupational pension scheme contains provisions contravening subsection (2) or (3).

(2) Except so far as regulations otherwise provide, provisions of an occupational pension scheme contravene this subsection to the extent that they would (apart from this section) have an effect with respect to—

- (a) the entitlement of any person to benefits under the scheme, or
- (b) the payment to any person of benefits under the scheme,

which would be different according to whether or not a place outside Gibraltar is specified by that person as the place to which he requires payments of benefits under the scheme to be made to him.

(3) Except so far as regulations otherwise provide, provisions of an occupational pension scheme contravene this subsection to the extent that they would (apart from this section) have an effect with respect to—

- (a) the entitlement of any person to remain a member of the scheme,
- (b) the eligibility of any person to remain a person by or in respect of whom contributions are made towards or under the scheme, or

- (c) the making by or in respect of any person who is a member of the scheme of any contributions towards or under the scheme,

which would be different according to whether that person works wholly in Gibraltar or wholly or partly outside Gibraltar.

(4) Provisions contravening subsection (2) shall have effect, in relation to all times after the coming into force of section 2 of the Employment Act (Amendment) Act, 2001, as if they made the same provision in relation to a person who requires payments of benefits to be made to a place outside Gibraltar as they make in relation to a person in whose case all payments of benefits fall to be made to a place in Gibraltar.

(5) Provisions contravening subsection (3) shall have effect, in relation to all times after the coming into force of section 2 of the Employment Act (Amendment) Act 2001, as if they made the same provision in relation to persons working wholly or partly outside Gibraltar as they make in relation to persons working wholly in Gibraltar.

(6) This section—

- (a) shall be without prejudice to any enactment under which any amount is to be or may be deducted, or treated as deducted, from amounts payable by way of benefits under the scheme or treated as so payable; and
- (b) shall not apply in relation to so much of any provision of a scheme as is required for securing compliance with the conditions of any approval, exemption or relief given or available under the Income Tax Act.

Regulations.

52R. The Minister may make regulations prescribing anything that needs to be prescribed, and making such further provision as appears to him necessary or expedient for the purposes of carrying this Part into effect.

PART VI.

TERMINATION OF EMPLOYMENT.

General.

Probationary employment.

53. The first week of any employment under a contract of service shall be deemed to be probationary employment and may be terminated at the end of such week by either party without notice.

Notice to terminate contract.

54.(1) Notwithstanding any agreement for a lesser period of notice, the notice required to be given by an employer to terminate the contract of service of an employee, if this is for an indefinite time, shall be—

- (a) in the case of an employee whose wages are required to be paid not less often than once a fortnight in accordance with section 45(1)—
 - (i) not less than one week's notice if his period of continuous employment is less than 2 years;
 - (ii) not less than two weeks' notice if his period of continuous employment is 2 years or more but less than 5 years;
 - (iii) not less than four weeks' notice if his period of continuous employment is 5 years or more but less than 8 years;
 - (iv) not less than eight weeks' notice if his period of continuous employment is 8 years or more but less than 10 years;
 - (v) not less than thirteen weeks' notice if his period of continuous employment is 10 years or more;
- (b) in the case of any other employee—
 - (i) not less than one months notice if his period of employment is less than 8 years;
 - (ii) not less than two months' notice if his period of employment is 8 years or more but less than 10 years;
 - (iii) not less than three months' notice if his period of employment is 10 years or more.

(2) Notwithstanding any agreement for a lesser period of notice, the notice required to be given by an employee to terminate his contract of service, if this is for an indefinite time, shall be—

- (i) one week in the case of an employee whose wages are required to be paid not less often than once a fortnight in accordance with section 45(1);
 - (ii) one month in the case of all other employees.
- (3) The period of notice shall begin to run from the working day following the day on which notice is given.

Compensation.

55.(1) If an employee under a contract of service for an indefinite time fails to give notice as required by subsection (3) he shall be liable to pay to the employer a sum equal to the wages that would be payable in respect of the period of notice. If the employer fails to give the notice as required by subsection (2) he shall be liable to pay the employee a sum equal to the wages that would be payable in respect of the period of notice.

- (2) (i) An employer who dismisses an employee before the expiration of the time definitely specified by a contract of service, shall pay to the employee one half of the wages that would have accrued to the employee in respect of the remainder of the time specifically agreed upon;
 - (ii) An employee who abandons the service of his employer before the time definitely specified by the contract of service shall pay to his employer a sum equal to one-half of the wages to which he would have become entitled if he had continued in the service for the remainder of the time so specifically agreed upon.
- (3) In the case of an employee under a contract of service paid by the unit of work, or by a share in the profits, or by a commission on the sales or payments made or received by the employer, the amount payable in terms of subsections (1) and (2) shall be calculated on the average earnings of the employee during the three months immediately preceding the day on which notice is given or the abandonment or termination of employment takes place.

Exceptions to sections 54 and 55.

56.(1) Notwithstanding the provisions of sections 54 and 55 an employer may dismiss an employee and an employee may abandon the service of an employer, without giving notice and without any liability to make payment as provided in subsections (1) and (2) if there is good and sufficient cause for such dismissal or abandonment of service:

Provided that an employer shall not be entitled to set up as good and sufficient cause under this section—

- (a) that the employee's lack, loss or impairment of skill, ability or efficiency makes the fulfilment of the contract of service impossible; or
- (b) that the employee no longer enjoys the employer's confidence.

(2) Notwithstanding that an employer has given to an employee the appropriate notice required by section 54 he may still be liable to compensate the employee for unfair dismissal under sections 59 to 73.

Incapacity of employee.

57.(1) A contract of service shall not, except with the consent of the employee, be terminated by the employer during any period of incapacity for work of the employee caused by personal injury by accident arising out of and in the course of employment or by any of the occupational diseases compensable under the Social Security (Employment Injuries Insurance) Act⁴, in each case occurring in the service of that employer:

Provided that—

- (a) during such period of incapacity no right to wages or remuneration whether in cash or otherwise shall accrue in favour of the employee unless the contract of service otherwise specifies;
- (b) the provisions of this subsection shall not apply beyond the first twelve continuous calendar months of incapacity.

(2) On the cessation of the incapacity for work referred to in subsection (1) the employer shall, within twenty-one days from an application made by the employee, re-instate the employee in his former employment or, if the injury or disease has caused a disablement rendering the employee unfit for the former employment, in such other suitable employment as may be available:

Provided that the application for re-instatement by the employee shall be made in writing within seven days of the cessation of the incapacity for work.

Certificates of service.

⁴ 1952-10

58.(1) On the termination of a contract of service lasting over one month, the employer shall at the employee's request, give him a certificate stating the duration of the employment, the nature of the work or services performed and, if the employee so desires, the general reason for the termination of the contract, and the rate of wages paid.

(2) Such certificates shall be in such form as may be prescribed.

Right not to be Dismissed Unfairly.

Right not to be dismissed unfairly.

59.(1) In every employment to which this section applies every employee shall have the right not to be unfairly dismissed by his employer.

(2) This section applies to every employment except in so far as its application is excluded by or under any of sections 60 to 63.

Qualifications as to length of service and age.

60.(1) Subject to the provisions of subsections (2) to (4) and of section 62, section 59 shall not apply to the dismissal of an employee from any employment if the employee—

- (a) was not continuously employed for a period of not less than 52 weeks ending with the effective date of termination; or
- (b) on or before the effective date of termination attained the age which, in the undertaking in which he was employed, was the normal retiring age for an employee holding the position which he held, or, if a man, attained the age of sixty-five, or, if a woman, attained the age of sixty.

(2) Subsection (1) shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal was that the employee had exercised, or had indicated his intention to exercise the right—

- (a) to be a member of the trade union of his choice;
- (b) to be a member of no trade union or other organization of workers or to refuse to be a member of any particular trade union or other organization of workers; or
- (c) where he is a member of a trade union, to take part in the activities of the trade union (including any activities as, or with

a view to becoming, an official of the trade union) and the right to seek or accept appointment or election, and (if appointed or elected) to hold office as such official.

(3) Subsection (1) shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal, or in a redundancy case, for selecting the employee for dismissal, was one of those specified in section 65A(1)(a) to (e), 65B(1)(a) to (e) or 65C(1).

(4) Subsection (1) shall not apply to a case falling within section 65A(f).

Exclusion of certain employments.

61.(1) Section 59 shall not apply to—

- (a) any employment where the employer is the husband or wife or a close relative of the employee or his wife; or
- (b) *Omitted.*
- (c) any contract of employment where under his contract of employment the employee ordinarily works outside Gibraltar.

(2) In this section “close relative”, in relation to a person, means that person’s father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister.

Modification of section 60.

62.(1) Section 60(1) shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal was that the employee—

- (a) had made a claim against the employer under section 52A to 52D or under the Employment (Maternity and Health and Safety) Regulations 1995 whether such claim had been referred to the Industrial Tribunal or not;
- (b) had given evidence or information in connection with any claim referred to the Industrial Tribunal under any of those sections;
- (c) had alleged that the employer committed an act which (whether or not the allegation so states) would give rise to a claim under any of those sections;

- (d) is believed or suspected by the employer to have done or to be intending to do anything in paragraph (a), (b) or (c) hereof.

(2) Subsection (1) shall not apply if any allegation made by the employee was not made in good faith.

Exclusion of contracts for fixed term.

63. Section 59 shall not apply–

- (a) to dismissal from employment under a contract for a fixed term of one year or more, where the contract was made before the 1st day of August, 1975, and is not a contract of apprenticeship, and the dismissal consists only of the expiry of that term without its being renewed; or
- (b) to dismissal from employment under a contract for a fixed term of one year or more, where the dismissal consists only of the expiry of that term without its being renewed, if before the term so expires the employee had agreed in writing to exclude any claim in respect of rights under that section in relation to that contract.

Meaning of Fair and Unfair Dismissal and Onus of Proof.

Interpretation.

64.(1) In sections 65 to 68, unless the context otherwise requires,–

“claimant” means an employee who claims that he has been unfairly dismissed by his employer;

“dismiss” and “dismissal” shall be construed in accordance with the provisions of subsections (2), (3) and (4);

(2) Subject to the next following subsection, for the purposes of sections 65 to 68 an employee shall be taken to be dismissed by his employer if, but only if–

- (a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice;
- (b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract; or

- (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct

(3) Where an employer gives notice to an employee to terminate his contract of employment and, at a time within the obligatory period of that notice, the employee gives notice in writing to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire, the employee shall for the purposes of subsection (2) be taken to be dismissed by his employer, and the reasons for the dismissal shall be taken to be the reasons for which the employer's notice is given.

- (4) For the purpose of subsection (3)–

- (a) if the actual period of the employer's notice (that is to say, the period beginning at the time when the notice is given and ending with the time when it expires) is equal to the minimum period which (whether by virtue of this Act or otherwise) is required to be given by the employer to terminate the contract of employment; “the obligatory period”, in relation to that notice, means the actual period of the notice;
- (b) in any other case, “the obligatory period”, in relation to an employer's notice, means that period which, being equal to the minimum period referred to in the preceding paragraph, expires at the time when the employer's notice expires.

- (5) In this Part “the effective date of termination”–

- (a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which that notice expires;
- (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect; and
- (c) in relation to an employee who is employed under a contract for a fixed term, where that term expires without being renewed under the same contract, means the date on which that term expires.

Onus on employer.

65.(1) In determining for the purposes of sections 59 and 70 whether the dismissal of an employee was fair or unfair, it shall be for the employer to show—

- (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal; and
- (b) that it was a reason falling within the next following subsection, or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(2) In subsection (1)(b) the reference to a reason falling within this subsection is a reference to a reason which—

- (a) related to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do;
- (b) related to the conduct of the employee;
- (c) was that the employee was redundant;
- (d) was that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under any enactment.

(3) Where the employer has fulfilled the requirements of subsection (1) then, subject to sections 67 and 68 the question whether the dismissal was fair or unfair shall be determined in accordance with the following provisions of this section.

(4) For the purposes of sections 59 and 70 the dismissal of an employee by an employer shall be regarded as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee had exercised, or had indicated his intention to exercise, any of the rights specified in section 60(2) or section 62.

(5) Where the reason or principal reason for the dismissal of an employee was that he was redundant, but it is shown that the circumstances constituting the redundancy applies equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and either—

- (a) that the reason, (or, if more than one, the principal reason) for which he was selected for dismissal was that he had exercised,

or had indicated his intention to exercise, any of the rights specified in section 60(2) or section 62; or

- (b) that he was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in his case,

the dismissal shall be regarded as unfair.

(6) Subject to subsections (4) and (5) the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances he acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and that question shall be determined in accordance with equity and the substantial merits of the case.

(7) In this section, in relation to an employee,—

- (a) “capability” means capability assessed by reference to skill, aptitude, health or any other physical or mental quality;
- (b) “qualifications” means any degree, diploma or other academic, technical or professional qualifications relevant to the position which the employee held; and
- (c) any reference to redundancy or to being redundant shall be construed as a reference to the existence of one or other of the following—
 - (i) that the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased, or intends to cease, to carry on that business; or
 - (ii) that the requirements of that business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish.

Dismissal in maternity cases.

65A.(1) For the purposes of sections 59 and 70 the dismissal of an employee by an employer shall be regarded as having been unfair if—

- (a) the reason (or, if there is more than one, the principal reason) for her dismissal is that she is pregnant or any other reason connected with her pregnancy;

- (b) her maternity leave period is ended by the dismissal and the reason (or, if there is more than one, the principal reason) for her dismissal is that she has given birth to a child or any other reason connected with her having given birth to a child;
- (c) the reason (or, if there is more than one, the principal reason) for her dismissal, where her contract of employment was terminated after the end of her maternity leave period, is that she took, or availed herself of the benefits of, maternity leave;
- (d) the reason (or, if there is more than one, the principal reason) for her dismissal, where—
 - (i) before the end of her maternity leave period, she gave to her employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she would be incapable of work after the end of that period; and
 - (ii) her contract of employment was terminated within the four week period following the end of her maternity leave period in circumstances where she continued to be incapable to work and the certificate relating to her incapacity remained current,is that she has given birth to a child or any other reason connected with her having given birth to a child;
- (e) the reason (or, if there is more than one, the principal reason) for her dismissal is a requirement under any relevant statutory provision (as defined in section 6 of the Factories Act) having the consequence of requiring that the employee be suspended from work;
- (f) her maternity leave period is ended by the dismissal, and the reason (or, if there is more than one, the principal reason) for her dismissal is that she is redundant and regulation 9 of the Employment (Maternity and Health and Safety) Regulations, 1995 has not been complied with.

(2) For the purposes of subsection(1)(c) a woman “takes maternity leave” if she is absent from work during her maternity leave period and a woman “avails herself of the benefits of maternity leave” if, during her maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by regulation 3 of the

Employment (Maternity and Health and Safety) Regulations, 1996 during that period.

(3) Where an employee is dismissed during the period beginning with the date on which she notifies her employer that she is pregnant until the end of her maternity leave period, her employer shall cite duly substantiated grounds for her dismissal in writing.

(4) In this section, the expression “given birth” means delivered of a living child, or, after twenty-four weeks of pregnancy, a still born child.

Dismissal in health and safety cases.

65B.(1) The dismissal of an employee by an employer shall be regarded for the purposes of sections 59 and 70 as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—

- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, carried out, or proposed to carry out, any such activities;
- (b) being a representative of workers on matters of health and safety at work—
 - (i) in accordance with arrangements established under or by virtue of any law; or
 - (ii) by reason of being acknowledged as such by the employer,

performed, or proposed to perform, any functions as such a representative;

- (c) being an employee at a place where—
 - (i) there was no such representative; or
 - (ii) there was such a representative but it was not reasonably practicable for the employee to raise the matter by those means,

brought to his employer’s attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety;

- (d) in circumstances of danger which he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, left, or proposed to leave, or (while the danger persisted) refused to return to, his place of work or any dangerous part of his place of work; or
- (e) in circumstances of danger which he reasonably believed to be serious and imminent, took, or proposed to take, appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of subsection (1)(e) whether steps which an employee took, or proposed to take, were appropriate shall be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee was that specified in subsection (1)(e), the dismissal shall not be regarded as having been unfair if the employer shows that it was, or would have been, so negligent for the employee to take the steps which he took, or proposed to take, that a reasonable employer might have dismissed him for taking, or proposing to take, them.

(4) In this section “representative” in relation to a worker means any person elected, chosen or designated in accordance with any law or practice to represent employees in matters relating to the safety and health protection of such workers at work.

Dismissal in relevant statutory right cases.

65C.(1) For the purposes of sections 59 and 70 the dismissal of an employee by an employer shall be regarded as having been unfair if the reason for it (or if more than one, the principal reason) was that the employee—

- (a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right; or
- (b) alleged that the employer had infringed a right of his which is a relevant statutory right.

(2) It is immaterial for the purposes of subsection (1) whether the employee has the right or not and whether it has been infringed or not, but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It shall be sufficient for subsection (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

(4) For the purposes of this section any right conferred upon an employee by sections 65A and 65B and the Employment (Maternity and Health and Safety) Regulations 1995 is a relevant statutory right.

Pressure on employer to be disregarded.

66.(1) In determining, for the purposes of sections 59 and 70, any question as to the reason, or principal reason, for which a worker was dismissed, or any question whether the reason or principal reason for which a worker was dismissed was a reason fulfilling the requirements of section 65 or whether the employer acted reasonably in treating it as a sufficient reason for dismissing him—

- (a) no account shall be taken of any pressure which, by means of any action to which this section applies, was exercised on the employer to dismiss, penalise or otherwise discriminate against the worker; and
- (b) any such question shall be determined as if no such pressure had been exercised.

(2) This section applies to actions of any of the following descriptions, that is to say—

- (a) calling, organizing, procuring or financing a strike, or threatening to do so;
- (b) organizing, procuring or financing any irregular industrial action short of a strike, or threatening to do so.

(3) It shall be an unfair industrial practice for any person (including any trade union or other organization of workers or any official of a trade union or of such an organization) to take any action to which this section applies, if the purpose or principal purpose for which that action is taken is knowingly to induce an employer, or a person acting on behalf of an employer, to dismiss an employee unfairly.

(4) In this section and in section 68, “irregular industrial action short of a strike” means any concerted course of conduct (other than a strike) which, in contemplation or furtherance of an industrial dispute—

- (a) is carried on by a group of workers with the intention of preventing, reducing or otherwise interfering with the production of goods or the provision of services; and

- (b) in the case of some or all of them, is carried on in breach of their contracts of employment or (where they are not employees) in breach of their terms and conditions of service.

Dismissal in connection with a lock-out.

67.(1) The dismissal of an employee by way of a lock-out (whether the lock-out extends to all the employees of the employer or only to some of them, and whether the dismissal occurs at the beginning of the lock-out or during the course of it) shall not be regarded as unfair if the employee is offered re-engagement as from the date of resumption of work.

(2) Where an employee who has been so dismissed, and has not been offered re-engagement as from the date of resumption of work, claims that he was unfairly dismissed by his employer, the provisions of section 65 shall apply as if in that section, for any reference to the reason or principal reason for which the employee was dismissed by his employer, there were substituted a reference to the reason or principal reason for which he was not offered re-engagement as from that date.

(3) In this section any reference to an offer of re-engagement, in relation to an employee, is a reference to an offer (made either by the original employer or by a successor of that employer or by an associated employer) to re-engage that employee either in the position which he held immediately before the effective date of termination or in a different position which would be reasonably suitable to him.

(4) In this section—

- (a) “the date of resumption of work” means the date as from which, at or after the termination of the lock-out, the other comparable employees of the original employer, or a majority of those employees, were offered re-engagement; and
- (b) “the original employer” means the employer who dismissed the claimant,

and in this subsection “comparable employees” in relation to the claimant, means such of the employees of the original employer to whom the lock-out extended as, immediately before the effective date of termination, held positions similar to that held by the claimant.

Dismissal for participation in industrial action.

68.(1) The provisions of this section shall have effect in relation to an employee who claims that he has been unfairly dismissed by his employer,

where on the date of dismissal he was taking part in a strike or in any irregular industrial action short of a strike.

(2) If the reason or principal reason for the dismissal was that the claimant took part in the strike or other industrial action, the dismissal shall not be regarded as unfair unless it is shown—

- (a) that one or more employees of the same employer (in this section referred to as “the original employer”), who also took part in that action, were not dismissed for taking part in it; or
- (b) that one or more such employees, who were dismissed for taking part in it, were offered re-engagement on the termination of the industrial action and that the claimant was not offered such re-engagement,

and that the reason (or, if more than one, the principal reason) for which the claimant was selected for dismissal, or not offered re-engagement, was his having exercised or indicated his intention to exercise, any of the rights specified in section 60(2) or section 62.

(3) In this section any reference to the date of dismissal—

- (a) where the claimant’s contract of employment was terminated by notice, whether given by his employer or by him, is a reference to the date on which that notice was given; and
- (b) in any other case, is a reference to the effective date of termination,

and any reference to an offer of re-engagement, in relation to an employee, is a reference to an offer (made either by the original employer or by a successor of that employer or by an associated employer) to re-engage that employee, either in the position which he held immediately before the date of dismissal or in a different position which would be reasonably suitable to him.

Safeguarding of national security.

69.(1) If on a complaint under section 70 it is shown that the action to which the complaint relates was taken for the purpose of safeguarding national security, the tribunal shall dismiss the complaint.

(2) A certificate purporting to be signed by or on behalf of the Deputy Minister and certifying that action specified in the certificate was taken for the purpose of safeguarding national security shall for the purpose of this Act be conclusive evidence of the fact so certified.

Complaints to and Powers of the Industrial Tribunal.

Complaints and recommendations.

70.(1) A complaint may be presented to the Industrial Tribunal by an employee against an employer that—

- (a) action specified in the complaint has been taken by the employer or by a person acting on the employer's behalf;
- (b) that such action constituted a breach of section 59 on the part of the employer or of the person acting on the employer's behalf; and
- (c) the complainant is the person who was dismissed or was refused engagement, as the case may be.

(2) Where on a complaint relating to dismissal the tribunal—

- (a) finds that the grounds of the complaint (as specified in subsection (1)(a) to (c) are well-founded; and
- (b) considers that it would be practicable, and in accordance with equity, for the complainant to be re-engaged by the employer or to be engaged by a successor of the employer or by an associated employer,

the tribunal shall make a recommendation to that effect, stating the terms on which it considers that it would be reasonable for the complainant to be so re-engaged or engaged.

(3) Where in such a complaint the tribunal finds that the grounds of the complaint are well-founded, but—

- (a) does not make such a recommendation as is mentioned in subsection (2); or
- (b) makes such a recommendation, and (for whatever reason) the recommendation is not complied with,

the tribunal shall make an award of compensation, to be paid by the employer to the complainant, in respect of the dismissal.

(4) The tribunal shall not entertain a complaint presented under this section unless it is presented before the end of the period of three months

beginning with the effective date of termination unless the tribunal is satisfied that in the circumstances it was not practicable for the complaint to be presented within that period.

Basis for assessment of compensation.

71.(1) Where in any proceedings on a complaint brought under section 70, the tribunal makes an award of compensation to be paid by a party to the proceedings (in this section referred to as "the party in default") to another party (in this section referred to as "the aggrieved party") the amount of the compensation shall be calculated in accordance with the provisions of Section 72 and in relation to payments provided for in sub-section (2) of that Section shall be such amount as the tribunal considers just and equitable in all the circumstances, having regard to the loss sustained by the aggrieved party in consequence of the matters to which the complaint relates, in so far as that loss was attributable to action taken by or on behalf of the party in default.

(2) The loss sustained by the aggrieved party, as mentioned in the preceding subsection, shall be taken to include –

- (a) any expenses reasonably incurred by him in consequence of the matters to which the complaint relates; and
- (b) loss of any benefit which he might reasonably be expected to have had but for those matters,

subject, however, to the application of the same rule concerning the duty of a person to mitigate his loss as applies in relation to damages recoverable under the common law.

(3) Where the tribunal finds that the matters to which the complaint relates were to any extent caused or contributed to by any action of the aggrieved party in connection with those matters the tribunal shall reduce its assessment of his loss to such extent as, having regard to that finding, the tribunal considers just and equitable.

(4) Where, on a complaint under section 70 relating to dismissal, the tribunal has made a recommendation in accordance with subsection (2) of that section, and that recommendation is not complied with then –

- (a) if the tribunal finds that the reason for which it was not complied with was that the complainant refused an offer of re-engagement or engagement on the terms stated in the recommendation, and the tribunal considers that he acted unreasonably in doing so, the tribunal (without prejudice to the

generality of the rule mentioned in subsection (2) of this section) shall reduce the assessment of his loss; or

- (b) if the tribunal finds that the reason for which the recommendation was not complied with was that the employer in question refused or failed to make such an offer, and the tribunal considers that he acted unreasonably in doing so, the tribunal shall increase that assessment,

to such extent (in either case) as in the circumstances it considers just and equitable.

(5) In determining on a complaint under section 70 how far any loss sustained by the complainant was attributable to action taken by or on behalf of the employer, no account shall be taken of any pressure which was exercised on the employer as mentioned in section 66 and that question shall be determined as if no such pressure had been exercised.

Calculation of compensation.

72.(1) Where a tribunal has determined that compensation shall be awarded to a person who has presented a complaint under Section 70, the tribunal shall award a basic payment of the prescribed amount.

(2) Where in accordance with sub-section (1) a tribunal has determined that compensation shall be awarded, that tribunal may award an amount in compensation of any loss suffered by the person and in determining that loss in accordance with the relevant provisions of Section 71, no account shall be taken on any payment made by virtue of sub-section (1) of this section.

(3) The maximum amount of compensation that may be awarded by virtue of sub-section (2) shall not exceed the prescribed amount.

Contribution by third party.

73.(1) The provisions of this section shall have effect where, in any proceedings on a complaint under section 70, the tribunal makes an award of compensation to be paid by an employer in consequence of action taken by the employer or by a person acting on his behalf, and the employer claims—

- (a) that the action so taken by him or on his behalf was induced by pressure exercised on him by another person (in this section referred to as “the third party”) by means of action to which section 66 applies; and

- (b) that by virtue of subsection (3) of that section the action taken by the third party, whereby pressure was so exercised on the employer, constituted an unfair industrial practice.

(2) In the circumstances specified in the preceding subsection the employer may, in accordance with rules made under this Part, require the third party to be joined as a party to the proceedings; and if in the proceedings the tribunal finds that the claim of the employer is well-founded, then, subject to subsection (4) the tribunal may, if it considers that it would be just and equitable to do so, make an order requiring the third party to pay to the employer a contribution in respect of the compensation awarded against him.

(3) The amount of any contribution ordered to be paid under this section in respect of any compensation—

- (a) shall be such amount as the tribunal considers to be just and equitable in the circumstances; and
- (b) may, if the tribunal so determines, be such as to constitute a complete indemnity.

(4) Where the third party is an official of a trade union, and it is shown that, in taking the action in question, he was acting in his capacity as such an official and within the scope of his authority on behalf of the trade union the tribunal shall not order him to pay any contribution to the employer under this section, but may order a contribution to be paid by the trade union.

PART VIA

Collective redundancies

Part VIA: Application and scope.

74.(1) This Part shall not apply to any—

- (a) redundancy effected by the Crown;
- (b) crew of any seagoing ship; or
- (c) collective redundancy effected under a contract of employment for limited periods of time or for specific tasks except where such redundancy takes place prior to the date of expiry or the completion of the contract.

(2) An employer shall have the obligations provided for in this Part whether the decision leading to the proposed dismissals is that of the employer or that of a person controlling, directly or indirectly, the employer.

Part VIA: Interpretation.

75.(1) For the purpose of this Part—

“employee” means a person who has entered into, or works under or, where the employment has ceased, worked under a contract of employment; and

“contract of employment” means a contract of service or apprenticeship, whether express or implied, and if it is express, whether oral or in writing.”.

(2) In this Part references to—

- (a) dismissal as redundant are references to dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related;
- (b) representatives of a trade union, in relation to an employer, are to officials or other persons authorised by the trade union to carry on collective bargaining with the employer; and
- (c) affected employees are to employees who may be affected by the proposed dismissals or who may be affected by measures taken in connection with such dismissals.

(3) For the purposes of this Part—

- (a) if in any proceedings an employee is or is proposed to be dismissed it shall be presumed, unless the contrary is proved, that he is or is proposed to be dismissed as redundant; and
- (b) persons are employee representatives if—
 - (i) they have been elected by other employees for the specific purpose of being consulted by their employer about dismissals proposed by him, or
 - (ii) having been elected or appointed by the employees (whether before or after dismissals have been proposed by their employer) otherwise than for that specific purpose, it is appropriate (having regard to the purposes

for which they were elected) for the employer to consult them about dismissals proposed by him,

and (in either case) they are employed by the employer at the time when they are elected or appointed.

Duty of employer to consult employee representatives.

76.(1) Where an employer is proposing to dismiss as redundant five or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals.

(2) The consultation shall begin at the earliest opportunity and in any event at least 60 days before the first of the dismissals takes effect.

(3) For the purposes of this section the appropriate representatives of any affected employees are—

- (a) if the employees are of a description in respect of which a trade union is recognised by their employer, representatives of the trade union; or
- (b) in any other case, whichever of the following employee representatives the employer chooses—
 - (i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this section, who (having regard to the purposes for and the method by which they were appointed or elected) have authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf;
 - (ii) employee representatives elected by the affected employees, for the purposes of this section, in an election satisfying the requirements of section 77(1).

(4) The consultation—

- (a) shall include consultation about ways of—
 - (i) avoiding the dismissals;
 - (ii) reducing the numbers of employees to be dismissed; and

- (iii) mitigating the consequences of the dismissals; and
 - (b) shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives.
- (5) In determining how many employees an employer is proposing to dismiss as redundant no account shall be taken of employees in respect of whose proposed dismissals consultation has already begun.
- (6) For the purposes of the consultation the appropriate representatives may seek the assistance of the Ministry of Employment, which will seek to provide information available to it in respect of courses and employment opportunities which the employer may be able to make available or assist to make available to any employee who it is contemplated may be dismissed as redundant.
- (7) For the purposes of the consultation the employer shall disclose in writing to the appropriate representatives and to the Director—
 - (a) the reasons for his proposals;
 - (b) the number and description of employees whom it is proposed to dismiss as redundant;
 - (c) the total number of employees of any such description employed by the employer at the establishment in question;
 - (d) the proposed method of selecting the employees who may be dismissed;
 - (e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect; and
 - (f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by, or by virtue of, any enactment) to employees who may be dismissed.
- (8) The information referred to in subsection (7) shall be given by the employer to each of the appropriate representatives—
 - (a) at the time of the commencement of the consultation or, where the information is not available to the employer at that time, as soon as the information becomes available; and

- (b) by being delivered to them, or sent by post to an address notified by them to the employer, or (in the case of representatives of a trade union) sent by post to the union at the address of its head or main office.

(9) The employer shall allow the appropriate representatives access to the affected employees and shall afford to those representatives such accommodation and other facilities as may be appropriate.

(10) If in any case there are special circumstances which render it not reasonably practicable for the employer to comply with a requirement of subsection (2), (4) or (7), the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances.

(11) Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement.

(12) Where—

- (a) the employer has invited any of the affected employees to elect employee representatives; and
- (b) the invitation was issued long enough before the time when the consultation is required by subsection (2)(a) or (b) to begin to allow them to elect representatives by that time,

the employer shall be treated as complying with the requirements of this section in relation to those employees if he complies with those requirements as soon as is reasonably practicable after the election of the representatives.

(13) If, after the employer has invited affected employees to elect representatives, the affected employees fail to do so within a reasonable time, he shall give to each affected employee the information set out in subsection (7).

(14) This section does not confer any rights on a trade union, a representative or an employee except as provided by sections 77A to 77D.

Election of employee representatives.

77.(1) The requirements for the election of employee representatives under section 76(3)(b)(ii) are that—

- (a) the employer shall make such arrangements as are reasonably practical to ensure that the election is fair;
- (b) the employer shall determine the number of representatives to be elected so that there are sufficient representatives to represent the interests of all the affected employees having regard to the number and classes of those employees;
- (c) the employer shall determine whether the affected employees should be represented either by representatives of all the affected employees or by representatives of particular classes of those employees;
- (d) before the election the employer shall determine the term of office as employee representatives so that it is of sufficient length to enable information to be given and consultations under section 76 to be completed;
- (e) the candidates for election as employee representatives are affected employees on the date of the election;
- (f) no affected employee is unreasonably excluded from standing for election;
- (g) all affected employees on the date of the election are entitled to vote for employee representatives;
- (h) the employees entitled to vote may vote for as many candidates as there are representatives to be elected to represent them or, if there are to be representatives for particular classes of employees, may vote for as many candidates as there are representatives to be elected to represent their particular class of employee;
- (i) the election is conducted so as to secure that—
 - (i) so far as is reasonably practicable, those voting do so in secret, and
 - (ii) the votes given at the election are accurately counted.

(2) Where, after an election of employee representatives satisfying the requirements of subsection (1) has been held, one of those elected ceases to act as an employee representative and any of those employees are no longer represented, they shall elect another representative by an election satisfying the requirements of subsection (1)(a), (e), (f) and (i).

Application to the Industrial Tribunal and protective award.

77A.(1) Where an employer has failed to comply with a requirement of section 76 or section 77, an originating application may be presented to the secretary of the Industrial Tribunal on that ground—

- (a) in the case of a failure relating to the election of employee representatives, by any of the affected employees or by any of the employees who have been dismissed as redundant;
- (b) in the case of any other failure relating to employee representatives, by any of the employee representatives to whom the failure related;
- (c) in the case of failure relating to representatives of a trade union, by the trade union; and
- (d) in any other case, by any of the affected employees or by any of the employees who have been dismissed as redundant.

(2) If, on an originating application under subsection (1), a question arises as to whether or not any employee representative was an appropriate representative for the purposes of section 76, it shall be for the employer to show that the employee representative had the authority to represent the affected employees.

(3) On an originating application under subsection (1)(a) it shall be for the employer to show that the requirements in section 77 have been satisfied.

(4) If the Industrial Tribunal finds the originating application well-founded it shall make a declaration to that effect and may also make a protective award.

(5) A protective award is an award in respect of one or more descriptions of employees—

- (a) who have been dismissed as redundant, or whom it is proposed to dismiss as redundant; and
- (b) in respect of whose dismissal or proposed dismissal the employer has failed to comply with a requirement of section 76,

ordering the employer to pay remuneration for the protected period.

(6) The protected period—

- (a) begins with the date on which the first of the dismissals to which the originating application relates takes effect, or the date of the award, whichever is the earlier; and
- (b) is of such length as the tribunal determines to be just and equitable in all the circumstances having regard to the seriousness of the employer's default in complying with any requirement of section 76,

but shall not exceed 90 days.

(7) The Industrial Tribunal shall not consider an originating application under this section unless it is presented to it—

- (a) before the date on which the last of the dismissals to which the originating application relates takes effect;
- (b) during the period of three months beginning with that date; or
- (c) where the Industrial Tribunal is satisfied that it was not reasonably practicable for the originating application to be presented during the period of three months, within such further period as it considers reasonable.

(8) If on an originating application under this section a question arises whether—

- (a) there were special circumstances which rendered it not reasonably practicable for the employer to comply with any requirement of section 76; or
- (b) the employer took all such steps towards compliance with that requirement as were reasonably practicable in those circumstances,

it is for the employer to show that there were such circumstances and that he did take such steps.

Entitlement under protective award.

77B.(1) Where the Industrial Tribunal has made a protective award, every employee of a description to which the award relates is entitled, subject to the following provisions and to section 77C, to be paid remuneration by his employer for the protected period.

(2) The rate of remuneration payable is a week's pay for each week of the period; and remuneration in respect of a period less than one week shall be calculated by reducing proportionately the amount of a week's pay.

(3) An employee is not entitled to remuneration under a protective award in respect of a period during which he is employed by the employer unless he would be entitled to be paid by the employer in respect of that period by virtue of—

- (a) his contract of employment; or
- (b) sections 55 to 57 or any other provision of law,

if that period fell within the period of notice required to be given by section 54.

(4) Regulation 28 of the Employment (Information and Consultation of Employees) Regulations 2005 shall apply for calculating the amount of a week's pay for any employee for the purposes of this section and, for the purposes of that calculation, the calculation date shall be—

- (a) where a protective award has been made, the date of that award;
- (b) if the employee was dismissed before that date, the date on which the employment was terminated.

(5) If an employee of a description to which a protective award relates dies during the protected period, the award has effect in his case as if the protected period ended on his death.

Termination of employment during protected period.

77C.(1) Where the employee is employed by the employer during the protected period and he—

- (a) is fairly dismissed by his employer otherwise than as redundant;
or
- (b) unreasonably terminates the contract of employment,

then, subject to the provisions of this section, he is not entitled to remuneration under the protective award in respect of any period during which but for that dismissal or termination he would have been employed.

(2) If an employer makes an employee an offer (whether in writing or not and whether before or after the ending of his employment under the previous contract) to renew his contract of employment, or to re-engage him

under a new contract, so that the renewal or re-engagement would take effect before or during the protected period, and either—

- (a) the provisions of the contract as renewed, or of the new contract, as to the capacity in which he would be employed, and as to the other terms and conditions of his employment, would not differ from the corresponding provisions of the previous contract; or
- (b) the offer constitutes an offer of suitable employment in relation to the employee,

subsections (3) to (7) shall have effect.

(3) If the employee unreasonably refuses the offer, he is not entitled to remuneration under the protective award in respect of a period during which but for that refusal he would have been employed.

(4) If the employee's contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of such an offer as is referred to in subsection (2)(b), there shall be a trial period in relation to the contract as renewed, or the new contract (whether or not there has been a previous trial period under this section).

(5) The trial period begins with the ending of his employment under the previous contract and ends with the expiration of the period of four weeks beginning with the date on which he starts work under the contract as renewed, or the new contract, or such longer period as may be agreed in accordance with subsection (6) for the purpose of retraining the employee for employment under that contract.

(6) Any such contract shall—

- (a) be made between the employer and the employee or his representative before the employee starts work under the contract as renewed or, as the case may be, the new contract;
- (b) be in writing;
- (c) specify the date of the end of the trial period; and
- (d) specify the terms and conditions of employment which will apply in the employee's case after the end of that period.

(7) If during the trial period—

- (a) the employee, for whatever reason, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated; or
- (b) the employer, for a reason connected with or arising out of the change to the renewed, or new, employment, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated,

the employee remains entitled under the protective award unless, in a case falling within paragraph (a), he acted unreasonably in terminating or giving notice to terminate the contract.

Application by employee to the Industrial Tribunal.

77D.(1) An employee may present an originating application to the secretary of the Industrial Tribunal on the ground that he is an employee of a description to which a protective award relates and that his employer has failed, wholly or in part, to pay him remuneration under the award.

(2) The Industrial Tribunal shall not entertain an originating application under this section unless it is presented to it—

- (a) before the end of the period of three months beginning with the day (or, if the originating application relates to more than one day, the last of the days) in respect of which the originating application is made of failure to pay remuneration; or
- (b) where the Industrial Tribunal is satisfied that it was not reasonably practicable for the originating application to be presented within the period of three months, within such further period as it may consider reasonable.

(3) Where the Industrial Tribunal finds an originating application under this section well founded it shall order the employer to pay the complainant the amount of remuneration which it finds is due to him.

(4) The remedy of an employee for infringement of his right to remuneration under a protective award is by way of originating application under this section, and not otherwise.

Duty of employer to notify Director of certain redundancies.

77E.(1) An employer proposing to dismiss as redundant five or more employees at one establishment within a period of 90 days or less shall notify the Director, in writing, of his proposal—

- (a) before giving notice to terminate an employee's contract of employment in respect of any of those dismissals; and
 - (b) at least 60 days before the first of those dismissals takes effect.
- (2) In determining how many employees an employer is proposing to dismiss as redundant within the period mentioned in subsection (1), no account shall be taken of employees in respect of whose proposed dismissal notice has already been given to the Director.
- (3) A notice under this section shall—
 - (a) be given to the Director by delivery to him or by sending it by post to him, at such address as the Director may direct in relation to the establishment where the employees proposed to be dismissed are employed;
 - (b) where there are representatives to be consulted under section 76, identify them and state the date when consultation with them under that section began;
 - (c) contain the information referred to in section 76(7)(a) to (e); and
 - (d) be in such form and contain such particulars, in addition to those required by paragraphs (b) and (c), as the Director may direct.
- (4) After receiving a notice under this section from an employer the Director may by written notice require the employer to give him such further information as may be specified in the notice.
- (5) Where there are representatives to be consulted under section 76, the employer shall give to each of them a copy of any notice given under subsection (1) or (3) and of such further information that has been provided to the Director pursuant to subsection (4).
- (6) The copy of the notice and of the further information shall be delivered to the representatives or sent by post to an address notified by them to the employer, or (in the case of representatives of a trade union) sent by post to the union at the address of its head or main office and the representatives may send any comments on the employer's notice to the Director.
- (7) An employer who has given notice under this section and who is also required to comply with the provisions of section 76 shall, as soon as reasonably practical, inform the Director in writing of the result of the consultations.

(8) If in any case there are special circumstances rendering it not reasonably practicable for the employer to comply with any of the requirements of subsections (1) to (7), he shall take all such steps towards compliance with that requirement as are reasonably practicable in the circumstances.

(9) Where the decision leading to the proposed dismissals is that of a person controlling the employer, directly or indirectly, a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with any of those requirements.

Prohibition of contracting out against Part VIA.

77F. Any provision in an agreement, whether it be a contract of employment or not, is void in so far as it purports to exclude or limit the operation of any provision in this Part.

Offences.

78. An employer who fails to comply with any of the requirements of section 76 or 77E, commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART VIB

Transfer of Undertakings

Part VIB: Interpretation.

78A.(1) In this Part, unless the context otherwise requires—

“agency worker” has the same meaning as in regulation 3 of the Agency Workers Regulations 2012;

“assigned” means assigned other than on a temporary basis;

“associated employer” means an employer who is associated with another employer and, for the purposes of this Act, any two employers shall be treated as associated if one is a company of which the other (directly or indirectly) has control, or both are companies of which a third person (directly or indirectly) has control;

“contract of employment” means any agreement between an employee and his employer determining the terms and conditions of his employment;

“employee” means any individual who works for another person whether under a contract of service or apprenticeship or otherwise but does not include anyone who provides services under a contract for services and references to a person’s employer shall be construed accordingly;

“recognised”, in relation to a trade union, means recognised to any extent by an employer, or two or more associated employers, for the purpose of collective bargaining;

“relevant transfer” means a transfer to which this Part applies and “transferor” and “transferee” shall be construed accordingly;

“trade union” shall have the meaning assigned to it by section 2 of Trade Union and Trade Disputes Act;

“undertaking” includes any trade or business.

(2) For the purpose of this Part the representative of a trade union recognised by an employer is an official or other person authorised to carry on collective bargaining with that employer by that union.

(3) In this Part, references to “organised grouping of employees” shall include a single employee.

Application of this Part and a relevant transfer.

78B.(1) This Part applies to a transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in Gibraltar to another person where there is a transfer of an economic entity which retains its identity.

(2) In this section “economic entity” means an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.

(3) This Part shall not apply to seagoing ships.

(4) Subject to subsection (1), this Part applies to –

- (a) public and private undertakings engaged in economic activities whether or not they are operating for gain; and
- (b) a transfer of an undertaking, business or part of an undertaking or business where persons employed in the undertaking, business or part transferred ordinarily work outside Gibraltar.

(5) An administrative reorganisation of public administrative authorities or the transfer of administrative functions between public administrative authorities is not a relevant transfer.

(6) A relevant transfer—

- (a) may be effected by a series of two or more transactions; and
- (b) may take place whether or not any property is transferred to the transferee by the transferor.

(7) In this section references to “contractor” include a sub-contractor.

Effect of relevant transfer on contracts of employment.

78C.(1) Except where objection is made under subsection (7), a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer, which would otherwise be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee.

(2) Without prejudice to subsection (1), but subject to subsection (6) and section 78M(9), on the completion of a relevant transfer—

- (a) all the transferor’s rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this section to the transferee; and
- (b) any act or omission before the transfer is completed, of or in relation to the transferor in respect of that contract or a person assigned to that organised grouping of resources or employees, shall be deemed to have been an act or omission of or in relation to the transferee.

(3) Any reference in subsection (1) to a person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to a relevant transfer, is a reference to a person so employed immediately before the transfer, or who would have been so employed if he had not been dismissed in the circumstances described in section 78F(1), including, where the transfer is effected by a series of two or more transactions, a person so employed and assigned or who would have been so employed and assigned immediately before any of those transactions.

(4) Subject to section 78G, in respect of a contract of employment that is, or will be, transferred by subsection (1), any purported variation of the contract shall be void if the sole or principal reason for the variation is—

- (a) the transfer itself; or
- (b) a reason connected with the transfer that is not an economic, technical or organizational reason entailing changes in the workforce.

(5) Subsection (4) shall not prevent the employer and his employee, whose contract of employment is, or will be, transferred by subsection (1), from agreeing a variation of that contract if the sole or principal reason for the variation is—

- (a) a reason connected with the transfer that is an economic, technical or organizational reason entailing changes in the workforce; or
- (b) a reason unconnected with the transfer.

(6) Subsection (2) shall not transfer or otherwise affect the liability of any person to be prosecuted for, convicted of and sentenced for any offence.

(7) Subsections (1) and (2) shall not operate to transfer the contract of employment and the rights, powers, duties and liabilities under or in connection with it of an employee who informs the transferor or the transferee that he objects to becoming employed by the transferee.

(8) Subject to subsections (9) and (11), where an employee so objects, the relevant transfer shall operate so as to terminate his contract of employment with the transferor but he shall not be treated, for any purpose, as having been dismissed by the transferor.

(9) Subject to section 78G, where a relevant transfer involves or would involve a substantial change in working conditions to the material detriment of a person whose contract of employment is or would be transferred under subsection (1), such an employee may treat the contract of employment as having been terminated, and the employee shall be treated for any purpose as having been dismissed by the employer.

(10) No damages shall be payable by an employer as a result of a dismissal falling within subsection (9) in respect of any failure by the employer to pay wages to an employee in respect of a notice period which the employee has failed to work.

(11) Subsections (1), (7), (8) and (9) are without prejudice to any right of an employee arising apart from this Part to terminate his contract of employment without notice in acceptance of a repudiatory breach of contract by his employer.

Effect of relevant transfer on collective agreements.

78D. Where at the time of a relevant transfer there exists a collective agreement made by or on behalf of the transferor with a trade union recognised by the transferor in respect of any employee whose contract of employment is preserved by section 78C(1), then—

- (a) without prejudice to any enactment from time to time in force on collective agreements which are presumed to be unenforceable in specified circumstances, that agreement, in its application in relation to the employee, shall, after the transfer, have effect as if made by or on behalf of the transferee with that trade union, and accordingly anything done under or in connection with it, in its application in relation to the employee, by or in relation to the transferor before the transfer, shall, after the transfer, be deemed to have been done by or in relation to the transferee; and
- (b) any order made in respect of that agreement, in its application in relation to the employee, shall, after the transfer, have effect as if the transferee were a party to the agreement.

Effect of relevant transfer on trade union recognition.

78E.(1) This section applies where after a relevant transfer the transferred organised grouping of resources or employees maintains an identity distinct from the remainder of the transferee's undertaking.

(2) Where before such a transfer a trade union is recognised to any extent by the transferor in respect of employees of any description who in consequence of the transfer become employees of the transferee, then, after the transfer—

- (a) the trade union shall be deemed to have been recognised by the transferee to the same extent in respect of employees of that description so employed; and
- (b) any agreement for recognition may be varied or rescinded accordingly.

Dismissal of employee because of relevant transfer

78F.(1) Where either before or after a relevant transfer, any employee of the transferor or transferee is dismissed, that employee shall be treated for the purposes of this Act as unfairly dismissed if the sole or principal reason for his dismissal is—

- (a) the transfer itself; or
- (b) a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce.

(2) This subsection applies where the sole or principal reason for the dismissal is a reason connected with the transfer that is an economic, technical or organisational reason entailing changes in the workforce of either the transferor or the transferee before or after a relevant transfer.

(3) Where subsection (2) applies—

- (a) subsection (1) shall not apply; but
- (b) the dismissal shall for the purposes of section 65 be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(4) The provisions of this section apply irrespective of whether the employee in question is assigned to the organised grouping of resources or employees that is, or will be, transferred.

Variations of contract where transferors are subject to relevant insolvency proceedings.

78G.(1) If at the time of a relevant transfer the transferor is subject to relevant insolvency proceedings, this Part shall not prevent the transferor or transferee (or an insolvency practitioner) and appropriate representatives of assigned employees agreeing to permitted variations.

(2) For the purposes of this section “appropriate representatives” are—

- (a) if the employees are of a description in respect of which a trade union is recognised by their employer, representatives of the trade union; or
- (b) in any other case, whichever of the following employee representatives the employer chooses—

- (i) employee representatives appointed or elected by the assigned employees (whether they make the appointment or election alone or with others) otherwise than for the purposes of this section, who (having regard to the purposes for, and the method by which they were appointed or elected) have authority from those employees to agree permitted variations to contracts of employment on their behalf;
 - (ii) employee representatives elected by assigned employees (whether they make the appointment or election alone or with others) for these particular purposes, in an election satisfying requirements identical to those contained in section 78L except those in section 78L(1)(d).
- (3) An individual may be an appropriate representative for the purposes of both this section and section 78K provided that where the representative is not a trade union representative he is either elected by or has authority from assigned employees (within the meaning of this section) and affected employees (as described in section 78K(1)).
- (4) Where assigned employees are represented by non-trade union representatives—
 - (a) the agreement recording a permitted variation must be in writing and signed by each of the representatives who have made it or, where that is not reasonably practicable, by a duly authorised agent of that representative; and
 - (b) the employer must, before the agreement is made available for signature, provide all employees to whom it is intended to apply on the date on which it is to come into effect with copies of the text of the agreement and such guidance as those employees might reasonably require in order to understand it fully.
- (5) A permitted variation shall take effect as a term or condition of the assigned employee's contract of employment in place, where relevant, of any term or condition which it varies.
- (6) In this section—
 - “assigned employees” means those employees assigned to the organised grouping of resources or employees that are the subject of a relevant transfer;
 - “permitted variation” is a variation to the contract of employment of an assigned employee where-

- (a) the sole or principal reason for it is the transfer itself or a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce; and
- (b) it is designed to safeguard employment opportunities by ensuring the survival of the undertaking, business or part of the undertaking or business that is the subject of the relevant transfer;

“relevant insolvency proceedings” means insolvency proceedings which have been opened in relation to the transferor with a view to the liquidation of the assets of the transferor and which are under the supervision of an insolvency practitioner.

Pensions.

78H.(1) Sections 78C and 78D shall not apply–

- (a) to so much of a contract of employment or collective agreement as relates to an occupational pension scheme; or
- (b) to any rights, powers, duties or liabilities under or in connection with any such contract or subsisting by virtue of any such agreement and relating to such a scheme or otherwise arising in connection with that person’s employment and relating to such a scheme.

(2) For the purposes of subsections (1) and (3), any provision of an occupational pension scheme which does not relate to benefits for old age, invalidity or survivors shall not be treated as being part of the scheme.

(3) An employee whose contract of employment is transferred in the circumstances described in section 78C(1) shall not be entitled to bring a claim against the transferor for–

- (a) breach of contract; or
- (b) constructive unfair dismissal,

arising out of a loss or reduction in his rights under an occupational pension scheme in consequence of the transfer, save insofar as the alleged breach of contract or dismissal (as the case may be) occurred prior to the date on which this Part took effect.

Notification of employee liability information.

78I.(1) The transferor shall notify to the transferee the employee liability information of any person employed by him who is assigned to the organised grouping of resources or employees that is the subject of a relevant transfer—

- (a) in writing; or
- (b) by making it available to him in a readily accessible form.

(2) In this section and in section 78J “employee liability information” means—

- (a) the identity and age of the employee;
- (b) the employee’s conditions of employment and those particulars of employment that an employer is obliged to keep in a register pursuant to section 79(1) or to produce to the Director pursuant to section 79(2);
- (c) information of any disciplinary procedure taken against an employee within the previous two years;
- (d) information of any court or tribunal case, claim or action—
 - (i) brought by an employee against the transferor, within the previous two years;
 - (ii) that the transferor has reasonable grounds to believe that an employee may bring against the transferee, arising out of the employee’s employment with the transferor; and
- (e) information of any collective agreement which will have effect after the transfer, in its application in relation to the employee, pursuant to section 78D(a).

(3) Employee liability information shall contain information as at a specified date not more than fourteen days before the date on which the information is notified to the transferee.

(4) The duty to provide employee liability information in subsection (1) shall include a duty to provide employee liability information of any person who would have been employed by the transferor and assigned to the organised grouping of resources or employees that is the subject of a relevant transfer immediately before the transfer if he had not been dismissed in the circumstances described in section 78F(1), including, where the transfer is effected by a series of two or more transactions, a

person so employed and assigned or who would have been so employed and assigned immediately before any of those transactions.

(5) Following notification of the employee liability information in accordance with this section, the transferor shall notify the transferee in writing of any change in the employee liability information.

(6) A notification under this section shall be given not less than fourteen days before the relevant transfer or, if special circumstances make this not reasonably practicable, as soon as reasonably practicable thereafter.

(7) A notification under this section may be given—

- (a) in more than one instalment;
- (b) indirectly, through a third party.

Remedy for failure to notify employee liability information.

78J.(1) On or after a relevant transfer, the transferee may present an originating application to the secretary of the Industrial Tribunal that the transferor has failed to comply with any provision of section 78I.

(2) The Industrial Tribunal shall not consider the originating application under this section unless it is presented—

- (a) before the end of the period of three months beginning with the date of the relevant transfer;
- (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 originating application to be presented before the end of that period of three months.

(3) Where the Industrial Tribunal finds the originating application under subsection (1) well-founded, it—

- (a) shall make a declaration to that effect; and
- (b) may make an award of compensation to be paid by the transferor to the transferee.

(4) The amount of the compensation shall be such as the Industrial Tribunal considers just and equitable in all the circumstances, subject to subsection (5), having particular regard to—

- (a) any loss sustained by the transferee which is attributable to the matters complained of; and
- (b) the terms of any contract between the transferor and the transferee relating to the transfer under which the transferor may be liable to pay any sum to the transferee in respect of a failure to notify the transferee of employee liability information.

(5) Subject to subsection (6), the amount of compensation awarded under subsection (3) shall be not less than £500 per employee in respect of whom the transferor has failed to comply with a provision of section 78L, unless the Industrial Tribunal considers it just and equitable, in all the circumstances, to award a lesser sum.

(6) In ascertaining the loss referred to in subsection (4)(a) the Industrial Tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to any damages recoverable under the common law, as applicable.

(7) The provisions of the Trade Unions and Trade Disputes Act concerning conciliation and arbitration shall apply to the right conferred by this section and to proceedings under this section as it applies to the rights conferred by that Act and the Industrial Tribunal proceedings mentioned in that Act.

Duty to inform and consult representatives.

78K.(1) In this section and sections 78L and 78M references to affected employees, in relation to a relevant transfer, are to any employees of the transferor or the transferee (whether or not assigned to the organised grouping of resources or employees that is the subject of a relevant transfer) who may be affected by the transfer or may be affected by measures taken in connection with it; and references to the employer shall be construed accordingly.

(2) Long enough before a relevant transfer to enable the employer of any affected employees to consult the appropriate representatives of any affected employees, the employer shall inform those representatives of–

- (a) the fact that the transfer is to take place, the date or proposed date of the transfer and the reasons for it;
- (b) the legal, economic and social implications of the transfer for any affected employees;

- (c) the measures which he envisages he will, in connection with the transfer, take in relation to any affected employees or, if he envisages that no measures will be so taken, that fact; and
- (d) if the employer is the transferor, the measures, in connection with the transfer, which he envisages the transferee will take in relation to any affected employees who will become employees of the transferee after the transfer by virtue of section 78C or, if he envisages that no measures will be so taken, that fact.

(2A) Where the information is to be supplied under subsection (2) by an employer—

- (a) this must include suitable information relating to the use of agency workers (if any) by that employer; and
- (b) “suitable information relating to the use of agency workers” means—
 - (i) the number of agency workers working temporarily for and under the supervision and direction of the employer;
 - (ii) the parts of the employer’s undertaking in which those agency workers are working; and
 - (iii) the type of work those agency workers are carrying out.

(3) For the purposes of this section the appropriate representatives of any affected employees are—

- (a) if the employees are of a description in respect of which a trade union is recognised by their employer, representatives of the trade union; or
- (b) in any other case, whichever of the following employee representatives the employer chooses—
 - (i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this section, who (having regard to the purposes for, and the method by which they were appointed or elected) have authority from those employees to receive information and to be consulted about the transfer on their behalf;

- (ii) employee representatives elected by any affected employees, for the purposes of this section, in an election satisfying the requirements of section 78L(1).

(4) The transferee shall give the transferor such information at such a time as will enable the transferor to perform the duty imposed on him by virtue of subsection (2)(d).

(5) The information which is to be given to the appropriate representatives shall be given to each of them by being delivered to them, or sent by post to an address notified by them to the employer, or (in the case of representatives of a trade union) sent by post to the trade union at the address of its head or main office.

(6) An employer of an affected employee who envisages that he will take measures in relation to an affected employee, in connection with the relevant transfer, shall consult the appropriate representatives of that employee with a view to seeking their agreement to the intended measures.

(7) In the course of those consultations the employer shall—

- (a) consider any representations made by the appropriate representatives; and
- (b) reply to those representations and, if he rejects any of those representations, state his reasons.

(8) The employer shall allow the appropriate representatives access to any affected employees and shall afford to those representatives such accommodation and other facilities as may be appropriate.

(9) If in any case there are special circumstances which render it not reasonably practicable for an employer to perform a duty imposed on him by any of subsections (2) to (7), he shall take all such steps towards performing that duty as are reasonably practicable in the circumstances.

(10) Where—

- (a) the employer has invited any of the affected employees to elect employee representatives; and
- (b) the invitation was issued long enough before the time when the employer is required to give information under subsection (2) to allow them to elect representatives by that time,

the employer shall be treated as complying with the requirements of this section in relation to those employees if he complies with those

requirements as soon as is reasonably practicable after the election of the representatives.

(11) If, after the employer has invited any affected employees to elect representatives, they fail to do so within a reasonable time, he shall give to any affected employee the information set out in subsection (2).

(12) The duties imposed on an employer by this section shall apply irrespective of whether the decision resulting in the relevant transfer is taken by the employer or a person controlling the employer.

Election of employee representatives.

78L.(1) The requirements for the election of employee representatives under section 78K(3) are that–

- (a) the employer shall make such arrangements as are reasonably practicable to ensure that the election is fair;
- (b) the employer shall determine the number of representatives to be elected so that there are sufficient representatives to represent the interests of all affected employees having regard to the number and classes of those employees;
- (c) the employer shall determine whether the affected employees should be represented either by representatives of all the affected employees or by representatives of particular classes of those employees;
- (d) before the election the employer shall determine the term of office as employee representatives so that it is of sufficient length to enable information to be given and consultations under section 78K to be completed;
- (e) the candidates for election as employee representatives are affected employees on the date of the election;
- (f) no affected employee is unreasonably excluded from standing for election;
- (g) all affected employees on the date of the election are entitled to vote for employee representatives;
- (h) the employees entitled to vote may vote for as many candidates as there are representatives to be elected to represent them or, if there are to be representatives for particular classes of employees, may vote for as many candidates as there are

representatives to be elected to represent their particular class of employee;

- (i) the election is conducted so as to secure that—
 - (i) so far as is reasonably practicable, those voting do so in secret; and
 - (ii) the votes given at the election are accurately counted.

(2) Where, after an election of employee representatives satisfying the requirements of subsection (1) has been held, one of those elected ceases to act as an employee representative and as a result any affected employees are no longer represented, those employees shall elect another representative by an election satisfying the requirements of subsection (1)(a), (e), (f) and (i).

Failure to inform or consult.

78M.(1) Where an employer has failed to comply with a requirement of section 78K or section 78L, an originating application may be presented to the secretary of the Industrial Tribunal on that ground—

- (a) in the case of a failure relating to the election of employee representatives, by any of his employees who are affected employees;
- (b) in the case of any other failure relating to employee representatives, by any of the employee representatives to whom the failure related;
- (c) in the case of failure relating to representatives of a trade union, by the trade union; and
- (d) in any other case, by any of his employees who are affected employees.

(2) If on an originating application under subsection (1) a question arises whether or not it was reasonably practicable for an employer to perform a particular duty or as to what steps he took towards performing it, it shall be for him to show—

- (a) that there were special circumstances which rendered it not reasonably practicable for him to perform the duty; and
- (b) that he took all such steps towards its performance as were reasonably practicable in those circumstances.

(3) If on an originating application under subsection (1) a question arises as to whether or not an employee representative was an appropriate representative for the purposes of section 78K, it shall be for the employer to show that the employee representative had the necessary authority to represent the affected employees.

(4) On an originating application under subsection (1)(a) it shall be for the employer to show that the requirements in section 78L have been satisfied.

(5) On an originating application against a transferor that he had failed to perform the duty imposed upon him by virtue of section 78K(2)(d) or, so far as relating thereto, section 78K(9), he may not show that it was not reasonably practicable for him to perform the duty in question for the reason that the transferee had failed to give him the requisite information at the requisite time in accordance with section 78K(4) unless he gives the transferee notice of his intention to show that fact; and the giving of the notice shall make the transferee a party to the proceedings.

(6) In relation to any originating application under subsection (1), a failure on the part of a person controlling (directly or indirectly) the employer to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement.

(7) Where the Industrial Tribunal finds the originating application against a transferee under subsection (1) well-founded it shall make a declaration to that effect and may order the transferee to pay appropriate compensation to such descriptions of affected employees as may be specified in the award.

(8) Where the Industrial Tribunal finds the originating application against a transferor under subsection (1) well-founded it shall make a declaration to that effect and may—

- (a) order the transferor, subject to subsection (9), to pay appropriate compensation to such descriptions of affected employees as may be specified in the award; or
- (b) if the originating application is that the transferor did not perform the duty mentioned in subsection (5) and the transferor (after giving due notice) shows the facts so mentioned, order the transferee to pay appropriate compensation to such descriptions of affected employees as may be specified in the award.

(9) The transferee shall be jointly and severally liable with the transferor in respect of compensation payable under subsection (8)(a) or subsection (11).

(10) An employee may present an originating application to the secretary of the Industrial Tribunal on the ground that he is an employee of a description to which an order under subsection (7) or (8) relates and that—

- (a) in respect of an order under subsection (7), the transferee has failed, wholly or in part, to pay him compensation in pursuance of the order; or
- (b) in respect of an order under subsection (8), the transferor or transferee, as applicable, has failed, wholly or in part, to pay him compensation in pursuance of the order.

(11) Where the Industrial Tribunal finds an originating application under subsection (10) well-founded it shall order the transferor or transferee as applicable to pay the complainant the amount of compensation which it finds is due to him.

(12) The Industrial Tribunal shall not consider an originating application under subsection (1) or (10) unless it is presented to the tribunal before the end of the period of three months beginning with—

- (a) in respect of an originating application under subsection (1), the date on which the relevant transfer is completed; or
- (b) in respect of an originating application under subsection (10), the date of the tribunal's order under subsection (7) or (8),

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

(13) In this section “appropriate compensation” means such sum not exceeding four weeks pay for the employee in question as the Industrial Tribunal considers just and equitable having regard to the seriousness of the failure of the employer to comply with his duty.

(14) Regulation 28 of the Employment (Information and Consultation of Employees) Regulations 2005 shall apply for calculating the amount of a week's pay for any employee for the purposes of subsection (13) and, for the purposes of that calculation, the calculation date shall be—

- (a) in the case of an employee who is dismissed by reason of redundancy (within the meaning of section 58A) the date which

is the calculation date for the purposes of any entitlement of the employee to a redundancy payment or which would be that calculation date if the employee were so entitled;

- (b) in the case of an employee who is dismissed for any other reason, the effective date of termination of the employee's contract of employment;
- (c) in any other case, the date of the relevant transfer.

Failure to inform or consult : supplemental.

78N.(1) The Industrial Tribunal Rules made under section 12 shall, as nearly as may be, govern the presentation, hearing and determination of originating applications presented under section 78M.

(2) A person aggrieved by a determination made by the Industrial Tribunal under section 78M or by the dismissal by the Industrial Tribunal of an originating application made under that section, may appeal to the Supreme Court on any question of law.

(3) An appeal under subsection (2) shall be in writing, in such form as may be prescribed, if any, and shall be lodged within 14 days of the date on which the decision against which the appeal is brought was communicated to the appellant, or such further time as the court may, for sufficient reason, allow.

(4) On an appeal, the Supreme Court may give such directions and may make such decisions as it may think proper not including directions as to the costs of the appeal.

(5) The Industrial Tribunal (Appeals) Rules made under section 88 shall, subject to the provisions of section 78M and this section, apply as nearly as possible to any appeal brought under this section.

Contracting out against Part VIB.

78P. Any provision of any agreement (whether a contract of employment or not) shall be void in so far as it purports to exclude or limit the operation of sections 78C, 78F or 78K or to preclude any person from presenting an originating application to the secretary of the Industrial Tribunal under section 78M.

PART VII. MISCELLANEOUS.

Records.

Records of employees.

79.(1) Every employer shall keep a register containing such particulars as may be prescribed.

(2) The Director shall have power to require any employer to produce a declaration in writing showing any or all of the following information concerning his employees:—

- (a) the number employed;
- (b) their occupation;
- (c) their hours of work;
- (d) the wages paid to them.

Language.

80.(1) Every record and register required to be kept by an employer under the provisions of this Act shall be kept in the English language.

(2) The provisions of subsection (1) shall not preclude the keeping of a record or register in a language other than English in addition to its being kept in the English language.

Offences and Prosecution.

Miscellaneous offences.

81.(1) An employer or person who contravenes the provisions of section 38, 52G, 54, 57, 58 or 59 is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

(2) A person who contravenes the provisions of section 17(5) or (6), 44 or 45 or who knowingly makes a false entry in any record to be kept or produced under this Act is guilty of an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

(3) A person who—

- (a) wilfully obstructs or impedes an inspector or a duly authorised officer in the exercise of any power conferred by this Act; or

- (b) refuses or neglects to answer any question or to furnish any information when required to do so under any such power, is guilty of an offence and is liable on summary conviction to a fine at level 4 on the standard scale:

Provided that no person shall be required under such powers to answer any question tending to incriminate him.

Orders for payment of wages underpaid or withheld.

82. Where any employer has been convicted of paying wages at less than the minimum rate fixed by a conditions of employment order, or of making any illegal deductions or inflicting any fines other than those specifically permitted by the Truck Act, or of withholding any remuneration payable under this Act, the court by the same judgment may, on proof of the amount, order the employer so convicted to refund or pay the same to the employee concerned and any such order by the court shall be of the same force and effect and may be enforced in the same manner as if it had been given in a civil action duly instituted between the employer and the employee concerned:

Provided that nothing in this subsection shall derogate from any right of the employee to recover any amount due to him by any other means.

Limitation.

83.(1) Notwithstanding any provision in any other law, proceedings for an offence under this Act may be commenced at any time within the period of six months from the date on which evidence, sufficient in the opinion of the Attorney-General to justify a prosecution for the offence comes to his knowledge.

(2) For the purposes of subsection (1) of this section a certificate purporting to be signed by or on behalf of the Attorney-General as to the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence thereof.

Postponement of effect of expiry of limitation periods for certain mediated cross-border disputes.

83A.(1) In this section—

- (a) “Mediation Directive” means Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters as amended from time to time;

- (b) “mediation” has the meaning given to it by section 72B(1) of the Supreme Court Act;
- (c) “mediator” has the meaning given to it by section 72B(1) of the Supreme Court Act;
- (d) “cross-border dispute” has the meaning given to it by section 72C of the Supreme Court Act; and
- (e) “relevant dispute” is a cross-border dispute that is subject to the Mediation Directive.

(2) Where, but for this section, the last day of a period of limitation or a qualifying period prescribed by this Act that relates to the subject of the whole or part of a relevant dispute falls—

- (a) on or after a date when a mediation in relation to the relevant disputes starts but before the date that the mediation ends;
- (b) on the date that a mediation in relation to the relevant dispute ends; or
- (c) in the eight weeks after the date that a mediation in relation to the relevant dispute ends,

the expiry of that period is postponed in accordance with subsection (3).

(3) For the purposes of initiating any proceedings before the Industrial Tribunal, or initiating any judicial proceedings or arbitration, the expiry of that period of limitation is postponed until the date falling eight weeks after the date on which the mediation ends.

(4) For the purposes of this section, mediation starts on the date of the agreement to mediate that is entered into by the parties and the mediator.

- (5) For the purposes of this section, mediation ends on the earliest of the date that—
 - (a) the parties reach an agreement in resolution of the relevant dispute;
 - (b) a party notifies the other parties to the relevant dispute that it has withdrawn from the mediation of the relevant dispute;
 - (c) where there are two parties to the mediation of the relevant dispute, is 14 days after a party has requested the other to confirm that it is continuing with the mediation of the relevant

dispute, and has not received a response from that party within 14 days of the request being made;

- (d) where there are more than two parties to the mediation of the relevant dispute, is 14 days after a party has requested another party to the relevant dispute (the second party) to confirm to the requesting party and all the other parties to the relevant dispute that it is continuing with the mediation of the relevant dispute and the requesting, and other parties have not all received a response from the second party within 14 days of the request being made;
- (e) is 14 days after the parties are notified that the mediator's appointment has ended (whether by death, resignation or otherwise), if, within that 14 day period, the parties do not agree to seek to appoint a replacement mediator; or
- (f) the mediation of the relevant dispute otherwise comes to an end pursuant to the terms of the agreement to mediate the relevant dispute.

(6) For the purpose of subsection (5)–

- (a) notification, requests and confirmation may be oral or written; and
- (b) where the parties agree or a party notifies other parties on different dates or are notified on different dates, the relevant date is the date that the last party agrees or notifies or is notified.

(7) Where more than one period of limitation applies in relation to a relevant dispute, the expiry of one of those periods of limitation and the postponement of the effect of that expiry under subsection (3) does not affect the running of the other limitation periods.

(8) Where the court or Tribunal has the power under this Act to extend a period of limitation, the period of limitation is that period as extended by this section.

(9) This section is without prejudice to provisions on limitation periods in international agreements applicable to Gibraltar.

Restriction on prosecutions.

84. No proceedings shall be instituted under this Act except by or with the consent of the Attorney-General.

Appearances.

85. The Director, or any inspector if so authorised in writing under the hand of the Minister, may although he is not of counsel, or a solicitor, prosecute, conduct or defend before the magistrates' court any information, complaint or other proceeding arising under this Act or in the discharge of his duty as an inspector.

*Rules and Regulations.***Regulations.**

86.(1) The Minister may make regulations—

- (a) requiring the furnishing of information relating to the employment, and to contracts for the employment of workers, and specifying the persons required to furnish that information and the manner in which it is to be furnished;
- (b) providing for and regulating the issue and surrender of permits and certificates under sections 25, 26 and 58;
- (c) prescribing the procedure to be followed by the Board, the method of voting, the method of co-opting additional members and of filling casual vacancies in membership, and the quorum for and the method of transacting business;
- (d) prescribing the form and method of service of summonses for the attendance of witnesses before the Board;
- (e) prescribing anything requiring to be prescribed;
- (f) *Omitted*
- (g) to give effect to obligations resulting from the application to Gibraltar of international treaties and conventions and the law of the European Economic Community relating to any matters contained in this Act or having as their intention the regulation of any matters relating to employment, and regulations made under this paragraph may make provision for the repeal or modification of any provision of this Act where such provision is—
 - (a) in conflict with;
 - (b) made unclear by; or

- (c) rendered unnecessary by,
 - a regulation made hereunder; and
- (h) generally for carrying into effect the purposes and provisions of this Act.

87. *Repealed.*

Rules of court.

88. The Chief Justice may make rules of court providing for the hearing of appeals from the Industrial Tribunal, and without prejudice to the generality of the foregoing, such rules may prescribe the form in which appeals to the Supreme Court are to be made.

The Crown.

The Crown.

89.(1) The provisions of sections 20, 24 to 27 and 78A to 78P are binding on the Crown.

(2) The provisions of sections 35 to 47 and 53 to 58 are binding on the Crown in right of the Government of Gibraltar but not otherwise.

(3) The provisions of sections 52A to 52H and 59 to 73 are binding on the Crown, whether in right of the Government of Gibraltar or otherwise, except as regards members of the naval, military or air forces of the Crown or of any women's service administered by the Defence Council.

(4) Save as aforesaid, this Act is not binding on the Crown.

Jurisdiction of the Supreme Court.

90.(1) For the avoidance of doubt, the Supreme Court shall retain its inherent jurisdiction over matters arising under this Act notwithstanding that this Act confers jurisdiction in relation to such matters on the Industrial Tribunal.

(2) Notwithstanding subsection (1), the Supreme Court may, in its absolute discretion, decline jurisdiction where the only issue to be referred to the court is one over which the Industrial Tribunal has jurisdiction by virtue of this Act.

(3) Subsection (2) shall not apply where the relief sought by any party to the proceedings is not available in the Industrial Tribunal or where the Court does not consider it expedient or equitable for such relief to be sought from the Industrial Tribunal.

This version is out of date

SCHEDULE 1

Repealed

SCHEDULE 2.

Sections 29 and 30(2)

PART I.—CONVENTION FIXING MINIMUM AGE FOR ADMISSION OF CHILDREN TO INDUSTRIAL EMPLOYMENT ADOPTED BY THE INTERNATIONAL LABOUR ORGANIZATION AT WASHINGTON ON 28 NOVEMBER 1919, AS REVISED IN 1937.

ARTICLE 1.

1. For the purpose of this Convention, the term “industrial undertaking” includes particularly:—

- (a) Mines, quarries, and other works for the extraction of minerals from the earth;
- (b) Industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed; including shipbuilding, and the generation, transformation, and transmission of electricity and motive power of any kind;
- (c) Construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, water work, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure;
- (d) Transport of passengers or goods by road or rail or inland waterway, including the handling of goods at docks, quays, wharves and warehouses but excluding transport by hand.

2. The competent authority in each country shall define the line of division which separates industry from commerce and agriculture.

Employment

This version is out of date

ARTICLE 2.

1. Children under the age of fifteen years shall not be employed or work in any public or private industrial undertaking, or in any branch thereof.
2. Provided that, except in the case of employments which, by their nature or the circumstances in which they are carried on, are dangerous to the life, health or morals of the persons employed therein, national laws or regulations may permit such children to be employed in undertakings in which only members of the employer's family are employed.

ARTICLE 3.

The provisions of this Convention shall not apply to work done by children in technical schools, provided that such work is approved and supervised by public authority.

ARTICLE 4.

In order to facilitate the enforcement of the provisions of this Convention, every employer in an industrial undertaking shall be required to keep a register of all persons under the age of eighteen years employed by him, and of the dates of their births.

ARTICLE 5.

1. In respect of employments which, by their nature or the circumstances in which they are carried on are dangerous to the life, health or morals of the persons employed therein, national laws shall either—
 - (a) prescribe a higher age or ages than fifteen years for the admission thereto of young persons or adolescents; or
 - (b) empower an appropriate authority to prescribe a higher age or ages than fifteen years for the admission thereto of young persons or adolescents.
2. The annual reports to be submitted under Article 22 of the Constitution of the International Labour Organization shall include full information concerning the age or ages prescribed by national laws in pursuance of subparagraph (a) of the preceding paragraph or concerning the action taken by the appropriate authority in exercise of the powers conferred upon it in pursuance of subparagraph (b) of the preceding paragraph, as the case may be.

PART II.—CONVENTION CONCERNING THE NIGHT WORK OF YOUNG PERSONS EMPLOYED IN INDUSTRY, ADOPTED BY THE INTERNATIONAL LABOUR ORGANIZATION AT WASHINGTON ON 28 NOVEMBER 1919.

1. For the purpose of this Convention, the term “industrial undertaking” includes particularly:—

- (a) Mines, quarries and other works for the extraction of minerals from the earth.
- (b) Industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including shipbuilding, and the generation, transformation and transmission of electricity or motive power of any kind.
- (c) Construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gaswork, waterwork, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure.
- (d) Transport of passengers or goods by road or rail, including the handling of goods at docks, quays, wharves and warehouses, but excluding transport by hand.

The competent authority in each country shall define the line of division which separates industry from commerce and agriculture.

2. Young persons under eighteen years of age shall not be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed, except as hereinafter provided for.

Young persons over the age of sixteen may be employed during the night in the following industrial undertakings on work which by reason of the nature of the process is required to be carried on continuously day and night:—

- (a) Manufacture of iron and steel; process in which reverberatory or regenerative furnaces are used, and galvanizing of sheet metal or wire (except the pickling process).
- (b) Glass works.

- (c) Manufacture of paper.
- (d) Manufacture of raw sugar.
- (e) Gold mining reduction work.

3. For the purpose of this Convention, the term “night” signifies a period of at least eleven consecutive hours including the interval between ten o’clock in the evening and five o’clock in the morning.

In coal and lignite mines work may be carried on in the interval between ten o’clock in the evening and five o’clock in the morning, if an interval of ordinarily fifteen hours, and in no case of less than thirteen hours, separates two periods of work.

Where night work in the baking industry is prohibited for all workers, the interval between nine o’clock in the evening and four o’clock in the morning may be substituted in the baking industry for the interval between ten o’clock in the evening and five o’clock in the morning.

* * * *

4. The provisions of Articles 2 and 3 shall not apply to the night work of young persons between the ages of sixteen and eighteen years in cases of emergencies which could not have been controlled or foreseen, which are not of a periodical character, and which interfere with the normal working of the industrial undertaking.

* * * *

7. The prohibition of night work may be suspended by the Government, for young persons between the ages of sixteen and eighteen years, when in case of serious emergency the public interest demands it.

PART III.-CONVENTION CONCERNING THE NIGHT WORK OF WOMEN EMPLOYED IN INDUSTRY, ADOPTED BY THE INTERNATIONAL LABOUR ORGANIZATION AT WASHINGTON ON 28 NOVEMBER 1919.

1. For the purpose of this Convention the term “industrial undertaking” includes particularly:—

- (a) Mines, quarries and other works for the extraction of minerals from the earth.

- (b) Industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including shipbuilding and the generation, transformation and transmission of electricity or motive power of any kind.
- (c) Construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gaswork, waterwork or other work of construction, as well as the preparation for or laying the foundations of any such work or structure.

The competent authority in each country shall define the line of division which separates industry from commerce and agriculture.

2. For the purpose of this Convention, the term “night” signifies a period of at least eleven consecutive hours including the interval between ten o’clock in the evening and five o’clock in the morning.

3. Women, without distinction of age, shall not be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed.

4. Article 3 shall not apply—

- (a) in cases of force majeure, when in any undertaking there occurs an interruption of work which it was impossible to foresee, and which is not of a recurring character;
- (b) in cases where the work has to do with raw materials or materials in course of treatment which are subject to rapid deterioration when such night work is necessary to preserve the said materials from certain loss.

* * * *

6. In industrial undertakings which are influenced by the seasons and in all cases where exceptional circumstances demand it, the night period may be reduced to ten hours on sixty days of the year.

PART IV.—CONVENTION FIXING THE MINIMUM AGE FOR
ADMISSION OF CHILDREN TO EMPLOYMENT AT SEA ADOPTED

BY THE INTERNATIONAL LABOUR ORGANIZATION AT GENOA
ON 9 JULY 1920, AS REVISED IN 1936.

ARTICLE 1.

For the purpose of this Convention, the term, “vessel” includes all ships and boats, of any nature whatsoever, engaged in maritime navigation, whether publicly or privately owned; it excludes ships of war.

ARTICLE 2.

1. Children under the age of fifteen years shall not be employed or work on vessels, other than vessels upon which only members of the same family are employed.

2. Provided that national laws or regulations may provide for the issue in respect of children of not less than fourteen years of age of certificates permitting them to be employed in cases in which an educational or other appropriate authority designated by such laws or regulations is satisfied after having due regard to the health and physical condition of the child and to the prospective as well as to the immediate benefit to the child of the employment proposed, that such employment will be beneficial to the child.

ARTICLE 3.

The provisions of Article 2 shall not apply to work done by children on schoolships or training-ships, provided that such work is approved and supervised by public authority.

ARTICLE 4.

In order to facilitate the enforcement of the provisions of this Convention, every shipmaster shall be required to keep a register of all persons under the age of sixteen years employed on board his vessel or a list of them in the articles of agreement, and of the dates of their births.