



Civil Servants: Employment Rights

Standard Note: SN/BT/3698

Last updated: 30 June 2005

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For historical reasons, servants of the Crown are treated in common law as a separate category of employee and are not regarded as having a “contract of service” in the normal sense. The main difference is that theoretically a Crown servant is dismissible at any time at the will of the Crown. However, various aspects of employment legislation have been extended to “Crown employment,” particularly in the areas of employment protection, trade union rights and discrimination.

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A. Employment Protection and Trade Unions

For the purposes of employment protection legislation civil servants are entitled to most of the employment rights accorded to private sector employees by the *Employment Rights Act 1996* (ERA) and *Trade Union and Labour Relations (Consolidation) Act 1992* with the exception of the right to statutory minimum redundancy pay under Part XI ERA (legislation uses the term “Crown employment”).¹

Harvey on Industrial Relations and Employment Law explains:

Historically, one of the privileges of the Crown was immunity from suit. The King could not be impleaded before his own Court, therefore, in the eyes of the Courts, the King could do no wrong. The King's servant could never sue him in contract (or otherwise) and therefore, in practice, and probably in theory, the Crown servant was regarded as having no contract. In particular, he was employed only during the good pleasure of the Crown, and could never sue for wrongful dismissal.

¹ Sections 191, 192 & 193 of the *Employment Rights Act 1996*

The Crown Proceedings Act 1947 removed much of the Crown's immunity from suit. Nevertheless, a Crown servant is still employed only at the good pleasure of the Crown and can at common law be dismissed at will ... In practice, as is well known, employment as an established civil servant is most secure. (...)

More recently the law has been edging away from the idea that a Crown servant has no contract and towards what may be submitted is a more modern analysis that indeed he or she does, albeit one which differs somewhat from the norm (...)

Whilst it may remain unclear whether an employee of the Crown is to be regarded as having a contract with his employer, it is clear that if he does have a contract it is not, as explained above, a contract of service in the strict meaning of that expression. The Crown employee is not therefore an employee as defined in the [*Employment Rights Act 1996*], but, that said, much of the employment legislation has nevertheless been extended to the Crown employee by s 191.²

Sub-sections 191(1) to (3) ERA read as follows:

(1) Subject to sections 192 and 193, the provisions of this Act to which this section applies have effect in relation to Crown employment and persons in Crown employment as they have effect in relation to other employment and other employees or workers.

(2) This section applies to—
(a) Parts I to III,
[(aa) Part IVA,]
(b) Part V, apart from section 45,
[(c) Parts VI to VIIIA,]
(d) in Part IX, sections 92 and 93,
(e) Part X, apart from section 101, and
(f) this Part and Parts XIV and XV.

(3) In this Act “Crown employment” means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision.

Sub-section (5) concerns time off for public duties:

(5) Where the terms of employment of a person in Crown employment restrict his right to take part in—
(a) certain political activities, or
(b) activities which may conflict with his official functions,
nothing in section 50 requires him to be allowed time off work for public duties connected with any such activities.

² Paras CI [1145, 1146, 1147, 1164]

Section 192 ERA deals with the position of members of the armed forces. Section 193 creates exemptions for the intelligence services from the provisions inserted into the ERA by the *Public Interest Disclosure Act 1998* (protection for whistleblowing):

[193 National security]

[Part IVA and section 47B of this Act do not apply in relation to employment for the purposes of—

- (a) the Security Service,
- (b) the Secret Intelligence Service, or
- (c) the Government Communications Headquarters.]

B. Discrimination

The *Employment Rights Act 1996* (ERA) is concerned with rights such as the right to claim unfair dismissal, redundancy payments and maternity leave. However, anti-discrimination legislation includes similar provisions ensuring that they cover Crown employment.

Section 75 of the RRA is the key provision. (Part II of the Act is the part covering employment):

75 Application to Crown etc

(1) This Act applies—

- (a) to an act done by or for purposes of a Minister of the Crown or government department; or
- (b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,

as it applies to an act done by a private person.

(2) Parts II and IV apply to—

- (a) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office; or
- (b) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body; or
- (c) service in the armed forces,

as they apply to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of service.

The wording is identical to that in section 85 of the *Sex Discrimination Act 1975* (SDA):

85 Application to Crown

(1) This Act applies—

- (a) to an act done by or for purposes of a Minister of the Crown or government department, or
- (b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,

as it applies to an act done by a private person.

(2) Parts II and IV apply to—

- (a) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office, or
- (b) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body,[or
- (c) service in the armed forces,]

as they apply to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of service.³

And section 64 of the *Disability Discrimination Act 1995*:

64 Application to Crown etc

(1) This Act applies—

- (a) to an act done by or for purposes of a Minister of the Crown or government department, or
- (b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,

as it applies to an act done by a private person.

(2) Subject to subsection (5), Part II applies to service—

³ SDA

- (a) for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office, or
- (b) on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body,

as it applies to employment by a private person.⁴

C. Terms of employment

Where statutory employment rights do not apply civil servants frequently have similar rights under their terms of employment. General details are set out in the *Civil Service Management Code*.⁵ The Code sets out regulations and instructions to departments and agencies regarding the terms and conditions of service of civil servants:

3. Ministers and office holders in charge of departments, the First Minister of the Scottish Executive and the National Assembly for Wales have been given the authority:

- a. to prescribe the qualifications (so far as they relate to age, knowledge, ability, professional attainment, aptitude and potential, health and coping with the demands of the job) for the appointment of home civil servants (with the exception of the Fast Stream Development Programme) in their respective departments; and
- b. to determine the number and grading of posts outside the Senior Civil Service in their respective departments and the terms and conditions of employment of Home civil servants in so far as they relate to the following:
 - i. classification of staff, with the exception of the Senior Civil Service;
 - ii. remuneration, with the exception of the Senior Civil Service;
 - iii. allowances;
 - iv. expenses;
 - v. holidays, hours of work and attendance;
 - vi. part-time and other working arrangements;
 - vii. performance and promotion;
 - viii. retirement age, with the exception of the Senior Civil Service;
 - ix. redundancy;
 - x. re-deployment and lateral transfer of staff within the Home Civil Service.

Standards of proper behaviour for local government officials (including also elected members as well as employees) are provided for by Part III, sections 49 to 83 of the *Local Government Act 2000* and regulations made thereunder (for example the *Relevant Authorities (General Principles) Order 2001*, SI No.1401).

⁴ DDA

⁵ http://www.civilservice.gov.uk/management_information/management/management_code/index.asp

D. Draft Civil Service Bill

The Government published a draft Bill in November 2004.⁶ The background and further detail are contained in the following Library standard note:

- [SN/PC/2863 The Civil Service Bill 2003-4](#)

In the consultation document the Government have outlined the general features of the Bill. At present it does not appear likely that there will be substantial changes in the employment status or terms and conditions of civil servants (emphasis added):

20. The Government thinks that any such Bill should have the following general characteristics.

1. It should not change the constitutional and practical role of civil servants whose accountability will continue to be to their Ministers who, in their turn, are accountable to Parliament for their stewardship of the Civil Service and their custodianship of its values.

2. It should command cross-party support by ensuring that the Civil Service is capable of serving with equal dedication and commitment future duly elected and constituted governments, whatever their political complexion.

3. It should leave civil servants subject to general employment practices, with very similar statutory employment rights to other employees.

4. It should not diminish the flexibility and responsiveness with which the service can be managed or interfere with the arrangements whereby Departments and devolved administrations are granted delegated responsibility from the centre for the pay, grading and management of their staff.

5. It should not make the Civil Service immune to change, but should provide a framework within which it can continue its 150-year evolution into the era of globalisation.

⁶ Cabinet Office, *A Draft Civil Service Bill*, 15 November 2004 (Cm 6373): <http://www.archive2.official-documents.co.uk/document/cm63/6373/6373.pdf>