



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART II

#### RIGHTS ARISING IN COURSE OF EMPLOYMENT

##### *Guarantee payments*

#### **12 Right to guarantee payment.**

(1) Where an employee throughout a day during any part of which he would normally be required to work in accordance with his contract of employment is not provided with work by his employer by reason of—

- (a) a diminution in the requirements of the employer's business for work of the kind which the employee is employed to do, or
- (b) any other occurrence affecting the normal working of the employer's business in relation to work of the kind which the employee is employed to do,

he shall, subject to the following provisions of this Act, be entitled to be paid by his employer a payment, referred to in this Act as a guarantee payment, in respect of that day, and in this section and sections 13 and 16—

- (i) such a day is referred to as a "workless day", and
- (ii) "workless period" has a corresponding meaning.

(2) In this section and sections 13 to 17, "day" means the period of twenty-four hours from midnight to midnight, and where a period of employment begun on any day extends over midnight into the following day, or would normally so extend, then—

- (a) if the employment before midnight is, or would normally be, of longer duration than that after midnight, that period of employment shall be treated as falling wholly on the first day; and
- (b) in any other case, that period of employment shall be treated as falling wholly on the second day.

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

#### Modifications etc. (not altering text)

- C1** S. 12 excluded by S.I. 1979/1403, art. 3, 1981/6, art. 2, 1989/1326, art. 4, 1989/1575, art. 2, 1989/2163, art. 3, 1990/2330, art. 2, 1990/927, art. 2  
 S. 12 excluded (1.7.1994) by S.I. 1994/1409, art. 2

### [<sup>F1</sup>13] General exclusions from right under s. 12.

- (1) An employee shall not be entitled to a guarantee payment unless he has been continuously employed for a period of not less than one month ending with the day before that in respect of which the guarantee payment is claimed.
- (2) An employee who is employed—
- (a) under a contract for a fixed term of three months or less, or
  - (b) under a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months,
- shall not be entitled to a guarantee payment unless he has been continuously employed for a period of more than three months ending with the day before that in respect of which the guarantee payment is claimed.]
- [<sup>F2</sup>(3)] An employee shall not be entitled to a guarantee payment in respect of a workless day if the failure to provide him with work occurs in consequence of a [<sup>F3</sup>strike, lock-out or other industrial action] involving any employee of his employer or of an associated employer.
- [<sup>F2</sup>(4)] An employee shall not be entitled to a guarantee payment in respect of a workless day if—
- (a) his employer has offered to provide alternative work for that day which is suitable in all the circumstances whether or not work which the employee is under his contract employed to perform, and the employee has unreasonably refused that offer; or
  - (b) he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

#### Textual Amendments

- F1** S. 13(1)(2) inserted with saving by Employment Act 1982 (c.46, SIF 43:5), s. 20, Sch. 2 para. 1  
**F2** S. 13(1)(2) as originally enacted renumbered as s. 13(3)(4) with saving by Employment Act 1982 (c.46, SIF 43:5), s. 20, Sch. 2 para. 1  
**F3** Words substituted by Employment Act 1982 (c.46, SIF 43:5), Sch. 3 para. 15

### 14 Calculation of guarantee payment.

- (1) Subject to the limits set by section 15, the amount of a guarantee payment payable to an employee in respect of any day shall be the sum produced by multiplying the number of normal working hours on that day by the guaranteed hourly rate, and, accordingly, no guarantee payment shall be payable to an employee in whose case there are no normal working hours on the day in question.
- (2) Subject to subsection (3), the guaranteed hourly rate in relation to an employee shall be the amount of one week's pay divided by—

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- (a) the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day in respect of which the guarantee payment is payable; or
  - (b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day in respect of which the guarantee payment is payable; or
  - (c) in a case falling within paragraph (b) but where the employee has not been employed for a sufficient period to enable the calculation to be made under that paragraph, a number which fairly represents the number of normal working hours in a week having regard to such of the following considerations as are appropriate in the circumstances, that is to say,—
    - (i) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract;
    - (ii) the average number of such hours of other employees engaged in relevant comparable employment with the same employer.
- (3) If in any case an employee's contract has been varied, or a new contract has been entered into, in connection with a period of short-time working, subsection (2) shall have effect as if for the reference to the day in respect of which the guarantee payment is payable there was substituted a reference to the last day on which the original contract was in force.

## **15 Limits on amount of and entitlement to guarantee payment.**

- (1) The amount of a guarantee payment payable to an employee in respect of any day shall not exceed [<sup>F4</sup>£14.10].
- (2) An employee shall not be entitled to guarantee payments in respect of more than the specified number of days in [<sup>F5</sup>any period of three months].
- (3) The specified number of days for the purposes of subsection (2) shall be, subject to subsection (4),—
  - (a) the number of days, not exceeding five, on which the employee normally works in a week under the contract of employment in force on the day in respect of which the guarantee payment is claimed; or
  - (b) where that number of days varies from week to week or over a longer period, the average number of such days, not exceeding five, calculated by dividing by twelve the total number of such days during the period of twelve weeks ending with the last complete week before the day in respect of which the guarantee payment is claimed, and rounding up the resulting figure to the next whole number; or
  - (c) in a case falling within paragraph (b) but where the employee has not been employed for a sufficient period to enable the calculation to be made under that paragraph, a number which fairly represents the number of the employee's normal working days in a week, not exceeding five, having regard to such of the following considerations as are appropriate in the circumstances, that is to say,—
    - (i) the average number of normal working days in a week which the employee could expect in accordance with the terms of his contract;

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- (ii) the average number of such days of other employees engaged in relevant comparable employment with the same employer.
- (4) If in any case an employee's contract has been varied, or a new contract has been entered into, in connection with a period of short-time working, subsection (3) shall have effect as if for the references to the day in respect of which the guarantee payment is claimed there were substituted references to the last day on which the original contract was in force.
- (5) The Secretary of State may vary any of the limits referred to in this section, and may in particular vary the <sup>F6</sup>length of the period referred to in subsection (2), after a review under section 148, by order made in accordance with that section.

#### Textual Amendments

- F4** Words in s. 15(1) substituted (1.4.1992) by virtue of S.I. 1992/312, art.2 (with effect as specified in art. 3).
- F5** Words substituted by Employment Act 1980 (c. 42, SIF 43:5), s. 14 save in relation to workless days (within the meaning of s. 12 of this Act) falling before 1.10.1980 except so far as they are relevant in determining entitlement to guarantee payments in respect of days falling after 1.10.1980
- F6** Words substituted by Employment Act 1980 (c. 42, SIF 43:5), Sch. 1 para. 8

## 16 Supplementary provisions relating to guarantee payments.

- (1) Subject to subsection (2), a right to a guarantee payment shall not affect any right of an employee in relation to remuneration under his contract of employment (in this section referred to as “contractual remuneration”).
- (2) Any contractual remuneration paid to an employee in respect of a workless day shall go towards discharging any liability of the employer to pay a guarantee payment in respect of that day, and conversely any guarantee payment paid in respect of a day shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that day.
- (3) For the purposes of subsection (2), contractual remuneration shall be treated as paid in respect of a workless day—
- where it is expressed to be calculated or payable by reference to that day or any part of that day, to the extent that it is so expressed; and
  - in any other case, to the extent that it represents guaranteed remuneration, rather than remuneration for work actually done, and is referable to that day when apportioned rateably between that day and any other workless period falling within the period in respect of which the remuneration is paid.
- (4) The Secretary of State may by order provide that in relation to any description of employees the provisions of sections 12(2), 14 and 15(3) (as originally enacted or as varied under section 15(5)) and of subsections (1) to (3), and, so far as they apply for the purposes of those provisions, the provisions of Schedule 14 shall have effect subject to such modifications and adaptations as may be prescribed by the order.

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## 17 Complaint to industrial tribunal.

- (1) An employee may present a complaint to an industrial tribunal that his employer has failed to pay the whole or any part of a guarantee payment to which the employee is entitled.
- (2) An industrial tribunal shall not entertain a complaint relating to a guarantee payment in respect of any day unless the complaint is presented to the tribunal before the end of the period of three months beginning with that day 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 complaint to be presented within the period of three months.
- (3) Where an industrial tribunal finds a complaint under subsection (1) well-founded, the tribunal shall order the employer to pay the complainant the amount of guarantee payment which it finds is due to him.

## 18 Exemption orders.

- (1) If at any time there is in force a collective agreement, or a wages order, whereby employees to whom the agreement or order relates have a right to guaranteed remuneration and on the application of all the parties to the agreement or, as the case may be, of the council or Board making the order, the appropriate Minister, having regard to the provisions of the agreement or order, is satisfied that section 12 should not apply to those employees, he may make an order under this section excluding those employees from the operation of that section.
- (2) In subsection (1), a wages order means an order made under any of the following provisions, that is to say—
  - [<sup>F7</sup>(a) section 14 of the <sup>M1</sup>Wages Act 1986;]
  - (b) section 3 of the <sup>M2</sup>Agricultural Wages Act 1948;
  - (c) section 3 of the <sup>M3</sup>Agricultural Wages (Scotland) Act 1949.
- (3) In subsection (1), “the appropriate Minister” means—
  - (a) as respects a collective agreement or such an order as is referred to in subsection (2)(a) or (c), the Secretary of State;
  - (b) as respects such an order as is referred to in subsection (2)(b), the Minister of Agriculture, Fisheries and Food.
- (4) The Secretary of State shall not make an order under this section in respect of an agreement unless—
  - (a) the agreement provides for procedures to be followed (whether by arbitration or otherwise) in cases where an employee claims that his employer has failed to pay the whole or any part of any guaranteed remuneration to which the employee is entitled under the agreement, and that those procedures include a right to arbitration or adjudication by an independent referee or body in cases where (by reason of an equality of votes or otherwise) a decision cannot otherwise be reached; or
  - (b) the agreement indicates that an employee to whom the agreement relates may present a complaint to an industrial tribunal that his employer has failed to pay the whole or any part of any guaranteed remuneration to which the employee is entitled under the agreement;

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and where an order under this section is in force in respect of such an agreement as is described in paragraph (b) an industrial tribunal shall have jurisdiction over such a complaint as if it were a complaint falling within section 17.

- (5) Without prejudice to section 154(4), an order under this section may be varied or revoked by a subsequent order thereunder, whether in pursuance of an application made by all or any of the parties to the agreement in question, or, as the case may be, by the council or Board which made the order in question, or without any such application.

**Textual Amendments**

- F7** S. 18(2)(a) substituted (with saving) by virtue of [Wages Act 1986 \(c. 48, SIF 43:2\)](#), s. 32(1)(3), Sch. 4 para. 7, [Sch. 6 para. 7](#)

**Marginal Citations**

- M1** 1986 c. 48.  
**M2** 1948 c. 47.  
**M3** 1949 c. 30.

*Suspension from work on medical grounds*

**19 Right to remuneration on suspension on medical grounds.**

- (1) An employee who is suspended from work by his employer on medical grounds in consequence of—
- (a) any requirement imposed by or under any provision of any enactment or of any instrument made under any enactment, or
  - (b) any recommendation in any provision of a code of practice issued or approved under section 16 of the <sup>M4</sup>Health and Safety at Work etc. Act 1974,
- which is a provision for the time being specified in Schedule 1 shall, subject to the following provisions of this Act, be entitled to be paid by his employer remuneration while he is so suspended for a period not exceeding twenty-six weeks.
- (2) For the purposes of this section and sections 20 to 22 and 61, an employee shall be regarded as suspended from work only if, and so long as, he continues to be employed by his employer, but is not provided with work or does not perform the work he normally performed before the suspension.
- (3) The Secretary of State may by order add provisions to or remove provisions from the list of specified provisions in Schedule 1.

**Marginal Citations**

- M4** 1974 c. 37.

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## 20 General exclusions from right under s. 19.

[<sup>F8</sup>(1) An employee shall not be entitled to remuneration under section 19 unless he has been continuously employed for a period of not less than one month ending with the day before that on which the suspension begins.

(2) An employee who is employed—

- (a) under a contract for a fixed term of three months or less, or
- (b) under a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months,

shall not be entitled to remuneration under section 19 unless he has been continuously employed for a period of more than three months ending with the day before that on which the suspension begins.]

[<sup>F9</sup>(3)] An employee shall not be entitled to remuneration under section 19 in respect of any period during which he is incapable of work by reason of disease or bodily or mental disablement.

[<sup>F9</sup>(4)] An employee shall not be entitled to remuneration under section 19 in respect of any period during which—

- (a) his employer has offered to provide him with suitable alternative work, whether or not work which the employee is under his contract, or was under the contract in force before the suspension, employed to perform, and the employee has unreasonably refused to perform that work; or
- (b) he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

### Textual Amendments

- F8** S. 20(1)(2) inserted with saving by [Employment Act 1982 \(c.46, SIF 43:5\)](#), s. 20, **Sch. 2 para. 2**
- F9** S. 20(1)(2) as originally enacted renumbered as s. 20(3)(4) with saving by [Employment Act 1982 \(c.46, SIF 43:5\)](#), s. 20, **Sch. 2 para. 2**

### Modifications etc. (not altering text)

- C2** S. 20(1)(2) modified (1.4.1996) [S.I. 1996/1023](#), **arts. 3, 4** (with art. 5)

## 21 Calculation of remuneration.

(1) The amount of remuneration payable by an employer to an employee under section 19 shall be a week's pay in respect of each week of the period of suspension referred to in subsection (1) of that section, and if in any week remuneration is payable in respect only of part of that week the amount of a week's pay shall be reduced proportionately.

(2) Subject to subsection (3), a right to remuneration under section 19 shall not affect any right of an employee in relation to remuneration under his contract of employment (in this section referred to as “contractual remuneration”).

(3) Any contractual remuneration paid by an employer to an employee in respect of any period shall go towards discharging the employer's liability under section 19 in respect of that period, and conversely any payment of remuneration in discharge of an employer's liability under section 19 in respect of any period shall go towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.

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**22 Complaint to industrial tribunal.**

- (1) An employee may present a complaint to an industrial tribunal that his employer has failed to pay the whole or any part of remuneration to which the employee is entitled under section 19.
- (2) An industrial tribunal shall not entertain a complaint relating to remuneration under section 19 in respect of any day unless the complaint is presented to the tribunal before the end of the period of three months beginning with that day, 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 complaint to be presented within the period of three months.
- (3) Where an industrial tribunal finds a complaint under subsection (1) well-founded the tribunal shall order the employer to pay the complainant the amount of remuneration which it finds is due to him.

VALID FROM 30/08/1993

*[<sup>F10</sup> Right not to suffer detriment in health and safety cases]*

**Textual Amendments**

**F10** Ss. 22A-22C and cross heading inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.1**; S.I. 1993/1908, art. 2(1), **Sch.1**.

VALID FROM 22/08/1996

<sup>F11F12</sup>**22A**.....

**Textual Amendments**

**F11** Ss. 22A-22C and cross heading inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.1**; S.I. 1993/1908, art. 2(1), **Sch.1**.

**F12** S. 22A repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

<sup>F47</sup>**22A Right not to suffer detriment in health and safety cases. E+W+S**

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that—
  - (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, he carried out, or proposed to carry out, any such activities,
  - (b) being a representative of workers on matters of health and safety at work, or a member of a safety committee—
    - (i) in accordance with arrangements established under or by virtue of any enactment, or



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- (ii) by reason of being acknowledged as such by the employer, he performed, or proposed to perform, any functions as such a representative or a member of such a committee,
  - (c) being an employee at a place where—
    - (i) there was no such representative or safety committee, or
    - (ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,he 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, he 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, he 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) An employee shall not be regarded as having been subjected to any detriment on the ground specified in subsection (1)(e) 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 treated him as the employer did.
- (4) Except where an employee is dismissed in circumstances in which, by virtue of section 142, section 54 does not apply to the dismissal, this section shall not apply where the detriment in question amounts to dismissal.

**Textual Amendments**

**F47** Ss. 22A-22C inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.1**; S.I. 1993/1908, art. 2(1), **Sch. 1**

VALID FROM 22/08/1996

**F13** 22AA.....

**Textual Amendments**

**F11** Ss. 22A-22C and cross heading inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.1**; S.I. 1993/1908, art. 2(1), **Sch.1**.

**F13** S. 22AA repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

Status: Point in time view as at 16/05/1992. This version of this part contains provisions that are not valid for this point in time.

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**<sup>F48</sup>22AA Right of employee representatives not to suffer detriment. E+W+S**

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being—
  - (a) an employee representative for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981, or
  - (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,
 he performed, or proposed to perform, any functions or activities as such an employee representative or candidate.
- (2) Except where an employee is dismissed in circumstances in which, by virtue of section 142, section 54 does not apply to the dismissal, this section shall not apply where the detriment in question amounts to dismissal.]

**Textual Amendments**

**F48** S. 22AA inserted (26.10.1995) by S.I. 1995/2587, art. 12(1)

VALID FROM 22/08/1996

**<sup>F14</sup>22B .....**

**Textual Amendments**

- F11** Ss. 22A-22C and cross heading inserted (30.8.1993) by 1993 c. 19, s. 28, Sch. 5 para.1; S.I. 1993/1908, art. 2(1), Sch.1.
- F14** S. 22B repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 3 Pt. I (with ss. 191-195, 202) and subject to an amendment (1.8.1998) by 1998 c. 8, s. 1(2) (with s. 16(2)); S.I. 1998/1658, art. 2, Sch. 1

**<sup>F49</sup>22B Proceedings for contravention of section 22A. E+W+S**

- (1) An employee may present a complaint to an industrial tribunal on the ground that he has been subjected to a detriment in contravention of section 22A.
- (2) On such a complaint it shall be for the employer to show the ground on which any act, or deliberate failure to act, was done.
- (3) An industrial tribunal shall not consider a complaint under this section unless it is presented—
  - (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
  - (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.

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- (4) For the purposes of subsection (3)—
- (a) where an act extends over a period, the “date of the act” means the last day of that period, and
  - (b) a deliberate failure to act shall be treated as done when it was decided on; and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

**Textual Amendments**

**F49** Ss. 22A-22C inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.1**; S.I. 1993/1908, art. 2(1), **Sch. 1**

**Modifications etc. (not altering text)**

**C10** S. 22B extended (E.W.) (26.8.1994) by 1994 c. 20, s. 4, **Sch. 4 para. 16**; S.I. 1994/1841, **art. 2**  
S. 22B extended (3.1.1995) by 1994 c. 40, ss. 20, 82(2)(c), **Sch. 8 para. 16**  
S. 22B extended (*prosp.*) by 1995 c. 26, **ss. 46(3)**, 180(1)

VALID FROM 22/08/1996

**F15** 22C] .....

**Textual Amendments**

**F11** Ss. 22A-22C and cross heading inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.1**; S.I. 1993/1908, art. 2(1), **Sch.1**.

**F15** S. 22C repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202) and subject to an amendment (1.8.1998) by 1998 c. 8, **s. 1(2)** (with s. 16(2)); S.I. 1998/1658, art. 2, **Sch. 1**

**F50** 22C Remedies. **E+W+S**

- (1) Where the industrial tribunal finds that a complaint under section 22B is well-founded, it shall make a declaration to that effect and may make an award of compensation to be paid to the complainant in respect of the act or failure to act complained of.
- (2) The amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to the infringement complained of and to any loss which is attributable to the act or failure which infringed his right.
- (3) The loss shall be taken to include—
  - (a) any expenses reasonably incurred by the complainant in consequence of the act or failure complained of, and
  - (b) loss of any benefit which he might reasonably be expected to have had but for that act or failure.

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- (4) In ascertaining the loss, the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or Scotland.
- (5) Where the tribunal finds that the act or failure complained of was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

**Textual Amendments**

**F50** Ss. 22A-22C inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para. 1**; S.I. 1993/1908, art. 2(1), **Sch. 1**

**Modifications etc. (not altering text)**

**C11** S. 22C extended (E.W.) (26.8.1994) by 1994 c. 20, s. 4, **Sch. 4 para. 16**; S.I. 1994/1841, **art. 2**  
 S. 22C extended (E.W.) (3.1.1995) by 1994 c. 40, ss. 20, 82(2)(c), **Sch. 8 para. 16**  
 S. 22C extended (*prosp.*) by 1995 c. 26, **ss. 46(3)**, 180(1)

*Trade union membership and activities*

**23 Trade union membership and activities.**

- (1) <sup>F16</sup>every employee shall have the right not to have action (short of dismissal) taken against him as an individual by his employer for the purpose of—
- (a) preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so; or
  - (b) preventing or deterring him from taking part in the activities of an independent trade union at any appropriate time, or penalising him for doing so; or
  - (c) compelling him to be or become a member of [<sup>F17</sup>any trade union or of a particular trade union or of one of a number of particular trade unions]

[<sup>F18</sup>(1A) Every employee shall also have the right not to have action (short of dismissal) taken against him for the purpose of enforcing a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his failure to become or his ceasing to remain a member of any trade union or of a particular trade union or of one of a number of particular trade unions, he must make one or more payments.

(1B) For the purposes of this section any deduction made by an employer from the remuneration payable to an employee of his in respect of that employee's employment shall, if the deduction is attributable to the employee's failure to become or his ceasing to remain a member of any trade union or of a particular trade union or of one of a number of particular trade unions, be treated as if it were action (short of dismissal) taken against the employee for the purpose of enforcing a requirement of a kind mentioned in subsection (1A).]

- (2) In this section “appropriate time”, in relation to an employee taking part in any activities of a trade union, means time which either—
- (a) is outside his working hours, or

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(b) is a time within his working hours at which, in accordance with arrangements agreed with, or consent given by his employer, it is permissible for him to take part in those activities;

and in this subsection “working hours”, in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

(2A)

<sup>F19</sup>(3)

[<sup>F20F21</sup>(7) In this section references to being, becoming or ceasing to remain a member of a trade union shall include references to being, becoming or ceasing to remain a member of a particular branch or section of that union and to being, becoming or ceasing to remain a member of one of a number of particular branches or sections of that union, and references to taking part in the activities of a trade union shall be similarly construed.]

#### Textual Amendments

**F16** Words repealed by [Employment Act 1988 \(c. 19, SIF 43:5\)](#), s. 33(2), [Sch. 4](#)

**F17** Words substituted by [Employment Act 1982 \(c.46, SIF 43:5\)](#), s. 10(4) with saving in [S.I. 1982/1656](#), [Sch. 2](#)

**F18** [S. 23\(1A\)\(1B\)](#) inserted by [Employment Act 1982 \(c.46, SIF 43:5\)](#), s. 10(3) with saving in [S.I. 1982/1656](#), [Sch. 2](#)

**F19** [S. 23\(2A\)\(2B\)](#) repealed by [Employment Act 1988 \(c. 19, SIF 43:5\)](#), ss. 11(a), 33(2), [Sch. 4](#)

**F20** [S. 23\(7\)](#) substituted by [Employment Act 1988 \(c. 19, SIF 43:5\)](#), s. 33(1), [Sch. 3 Pt. I para. 2\(1\)](#)

**F21** [S. 23\(3\)–\(6\)](#) repealed with saving by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 2](#) and [S.I. 1980/1170](#), art. 4, [Sch. 3](#)

#### Modifications etc. (not altering text)

**C3** [S. 23](#) amended (temp. until 1.11.1984) by [S.I. 1982/1656](#), art. 3, [Sch. 2](#)

**C4** [S. 23](#) modified by [S.I. 1989/901](#), art. 3, [Sch.](#)

## 24 Complaint to industrial tribunal.

- (1) An employee may present a complaint to an industrial tribunal on the ground that action has been taken against him by his employer in contravention of section 23.
- (2) An industrial tribunal shall not entertain a complaint under subsection (1) unless it is presented to the tribunal before the end of the period of three months beginning with the date on which there occurred the action complained of, or where that action is part of a series of similar actions, the last of those actions, 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 complaint to be presented within the period of three months.
- (3) Where the tribunal finds the complaint well-founded it shall make a declaration to that effect and may make an award of compensation, calculated in accordance with section 26, to be paid by the employer to the employee in respect of the action complained of.

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#### Modifications etc. (not altering text)

C5 S. 24 modified by S.I. 1989/901, art. 3, Sch.

## 25 Supplementary provisions relating to complaints under s. 24.

- (1) On a complaint under section 24 it shall be for the employer to show—
- (a) the purpose for which action was taken against the complainant; and <sup>F22</sup>
  - (b)
- <sup>F22</sup>(2) In determining on a complaint under section 24, any question as to whether action was taken by the complainant's employer or the purpose for which it was taken, no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to take the action complained of, and that question shall be determined as if no such pressure had been exercised.

#### Textual Amendments

F22 Word and s. 25(1)(b) repealed with saving by Employment Act 1980 (c. 42, SIF 43:5), Sch. 2 and S.I. 1980/1170, art. 4, Sch. 3

## 26 Assessment of compensation on a complaint under s. 24.

- (1) The amount of the compensation awarded by a tribunal on a complaint under section 24 shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the complainant's right under section 23 by the employer's action complained of and to any loss sustained by the complainant which is attributable to that action.
- (2) The said loss shall be taken to include—
  - (a) any expenses reasonably incurred by the complainant in consequence of the action complained of, and
  - (b) loss of any benefit which he might reasonably be expected to have had but for that action.
- (3) In ascertaining the said loss the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or of Scotland, as the case may be.
- (4) In determining the amount of compensation to be awarded under subsection (1), no account shall be taken of any pressure as is referred to in section 25(2), and that question shall be determined as if no such pressure had been exercised.
- (5) Where the tribunal finds that the action complained of was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

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## [<sup>F23</sup>26A Awards against third parties.

(1) Where—

- (a) a complaint is presented to an industrial tribunal under section 24 on the ground that action has been taken against the complainant by his employer for the purpose of compelling him to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions, and
- (b) either the employer or the complainant claims in proceedings before the tribunal that the employer was induced to take the action by pressure which a trade union or other person exercised on the employer by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so,

the employer or the complainant may request the tribunal to direct that the person who he claims exercised the pressure be joined, or in Scotland sisted, as a party to the proceedings.

(2) A request under subsection (1) shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made a declaration under section 24(3).

(3) Where a person has been joined, or in Scotland sisted, as a party to proceedings before an industrial tribunal by virtue of subsection (1), and the tribunal—

- (a) makes an award of compensation, but
- (b) finds that the claim mentioned in subsection (1) is well-founded,

the award may be made against that person instead of against the employer, or partly against that person and partly against the employer, as the tribunal may consider just and equitable in the circumstances.]

### Textual Amendments

**F23** S. 26A substituted by [Employment Act 1982 \(c.46, SIF 43:5\)](#), s. 11 with saving in [S.I. 1982/1656, Sch. 2](#)

### *Time off work*

## 27 Time off for carrying out trade union duties.

(1) An employer shall permit an employee of his who is an official of an independent trade union recognised by him to take time off, subject to and in accordance with subsection (2), during the employee's working hours for the purpose of enabling him

[<sup>F24</sup>(a) to carry out—

- (i) any duties of his, as such an official, which are concerned with negotiations with the employer that are related to or connected with any matters which fall within section 29(1) of the Trade Union and Labour Relations Act 1974 and in relation to which the trade union is recognised by the employer, or
- (ii) any other duties of his, as such an official, which are concerned with the performance, on behalf of employees of the employer, of any functions that are related to or connected with any matters falling

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- within that provision and that the employer has agreed may be so performed by the trade union; or]
- (b) to undergo training in aspects of industrial relations which is—
- (i) relevant to the carrying out of [<sup>F25</sup>any such duties as are mentioned in paragraph (a)]; and
  - (ii) approved by the Trades Union Congress or by the independent trade union of which he is an official.
- (2) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by the Advisory, Conciliation and Arbitration Service under section 6 of the <sup>M5</sup>Employment Protection Act 1975.
- (3) An employer who permits an employee to take time off under this section for any purpose shall, subject to the following provisions of this section, pay him for the time taken off for that purpose in accordance with the permission—
- (a) where the employee’s remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, as if he had worked at that work for the whole of that time;
  - (b) where the employee’s remuneration for that work varies with the amount of work done, an amount calculated by reference to the average hourly earnings for that work.
- (4) The average hourly earnings referred to in subsection (3)(b) shall be the average hourly earnings of the employee concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.
- (5) Subject to subsection (6), a right to be paid any amount under subsection (3) shall not affect any right of an employee in relation to remuneration under his contract of employment (in this section referred to as “contractual remuneration”).
- (6) Any contractual remuneration paid to an employee in respect of a period of time off to which subsection (1) applies shall go towards discharging any liability of the employer under subsection (3) in respect of that period, and conversely any payment of any amount under subsection (3) in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.
- (7) An employee who is an official of an independent trade union recognised by his employer may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by this section or to pay him the whole or part of any amount so required to be paid.

#### **Textual Amendments**

**F24** S. 27(1)(a) substituted (with saving) by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), ss. 14, 29(6), Sch. 9 paras. 2, 4

**F25** Words substituted (with saving) by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), ss. 14, 29(6), Sch. 9 paras. 2, 4



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#### Marginal Citations

M5 1975 c. 71.

### 28 Time off for trade union activities.

- (1) An employer shall permit an employee of his who is a member of an appropriate trade union to take time off, subject to and in accordance with subsection (3), during the employee's working hours for the purpose of taking part in any trade union activity to which this section applies.
- (2) In this section "appropriate trade union", in relation to an employee of any description, means an independent trade union which is recognised by his employer in respect of that description of employee, and the trade union activities to which this section applies are—
  - (a) any activities of an appropriate trade union of which the employee is a member; and
  - (b) any activities, whether or not falling within paragraph (a), in relation to which the employee is acting as a representative of such a union,excluding activities which themselves consist of industrial action whether or not in contemplation or furtherance of a trade dispute.
- (3) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by the Advisory, Conciliation and Arbitration Service under section 6 of the <sup>M6</sup>Employment Protection Act 1975.
- (4) An employee who is a member of an independent trade union recognised by his employer may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by this section.

#### Marginal Citations

M6 1975 c. 71.

### 29 Time off for public duties.

- (1) An employer shall permit an employee of his who is—
  - (a) a justice of the peace;
  - (b) a member of a local authority;
  - <sup>F26</sup>(bb) a member of the Broads Authority;
  - (c) a member of any statutory tribunal;
  - <sup>F27</sup>(cc) a member of, in England and Wales, a board of visitors appointed under section 6(2) of the <sup>M7</sup>Prison Act 1952 or, in Scotland, a visiting committee appointed under section 19(3) of the Prisons (Scotland) Act <sup>M8</sup>1989 or constituted by virtue of rules made under section 39, as read with section 8(1), of that Act;
  - (d) a member of [<sup>F28</sup>a National Health Service Trust or], in England and Wales, a Regional Health Authority [<sup>F29</sup>an Area Health Authority or a District] Health

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Authority [<sup>F30</sup>or a Family Practitioner Committee] or, in Scotland, a Health Board;

- (e) a member of, in England and Wales, the managing or governing body of an educational establishment maintained by a local education authority, or, in Scotland, a school <sup>F31</sup> . . . council or the governing body of a [<sup>F32</sup>designated institution or a central institution]; <sup>F33</sup>
- <sup>F34</sup>(ee) a member of the governing body of a grant-maintained school;]
- <sup>F35</sup>(ef) a member of the governing body of a higher education corporation; or]
- <sup>F36</sup>(ef) a member of a school board or of the board of management of a self-governing school;]
- <sup>F37</sup>(eg) a member of the board of management of a college of further education; or]
- (f) a member of, in England and Wales, [<sup>F38</sup>the National Rivers Authority or, in Scotland, a] river purification board,

to take time off, subject to and in accordance with subsection (4), during the employee's working hours for the purposes of performing any of the duties of his office or, as the case may be, his duties as such a member.

(2) In subsection (1)—

- (a) “local authority” in relation to England and Wales includes the Common Council of the City of London but otherwise has the same meaning as in the <sup>M9</sup>Local Government Act 1972, and in relation to Scotland has the same meaning as in the <sup>M10</sup>Local Government (Scotland) Act 1973;
- (b) “Regional Health Authority” <sup>F39</sup> “Area Health Authority” [<sup>F40</sup>and District Health Authority][<sup>F41</sup>and “Family Practitioner Committee”] have the same meaning as in the <sup>M11</sup>National Health Service Act 1977, and “Health Board” has the same meaning as in [<sup>F42</sup>the <sup>M12</sup>National Health Service (Scotland) Act 1978];
- (c) “local education authority” means the authority designated by section 192(1) of the <sup>M13</sup>Local Government Act 1972, [<sup>F43</sup>“school council” means a body appointed under section 125(1) of the Local Government (Scotland) Act 1973, “board of management”, where it appears in paragraph (ef) as inserted by the Self-Governing Schools etc. (Scotland) Act 1989, “central institution” and “self-governing school” have the same meanings as in section 135(1) of the Education (Scotland) Act 1980, “school board” has the same meaning as in section 1(1) of the School Boards (Scotland) Act 1988, “board of management”, where it appears and “college of further education” have the same meanings as in section 36(1) of the Further and Higher Education (Scotland) Act 1992 and “designated institution” has the same meaning as in Part II of that Act of 1992]; and
- (d) “river purification board” means a board established under section 135 of the Local Government (Scotland) Act 1973.

(3) For the purposes of subsection (1) the duties of a member of a body referred to in paragraphs (b) to (f) of that subsection are:—

- (a) attendance at a meeting of the body or any of its committees or sub-committees;
- (b) the doing of any other thing approved by the body, or anything of a class so approved, for the purpose of the discharge of the functions of the body or of any of its committees or sub-committees.

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- (4) The amount of time off which an employee is to be permitted to take under this section and the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard, in particular, to the following:—
- (a) how much time off is required for the performance of the duties of the office or as a member of the body in question, and how much time off is required for the performance of the particular duty;
  - (b) how much time off the employee has already been permitted under this section or sections 27 and 28;
  - (c) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.
- (5) The Secretary of State may by order—
- (a) modify the provisions of subsection (1) by adding any office or body to, or removing any office or body from, that subsection or by altering the description of any office or body in that subsection; and
  - (b) modify the provisions of subsection (3).
- (6) An employee may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by this section.

#### Textual Amendments

- F26** S. 29(1)(bb) inserted (E.W.) by Norfolk and Suffolk Broads Act 1988 (c. 4, SIF 81:1), s. 21, **Sch. 6 para. 19**
- F27** S. 29(1)(cc) inserted by S.I. 1990/1870, **art. 2**
- F28** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 20**
- F29** Words substituted by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 1 para. 84**
- F30** Words inserted by S.I. 1985/39, **art. 8(a)(i)**
- F31** Words in s. 29(1)(e) repealed (16.5.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62(3), **Sch.10**; S.I. 1992/817, art. 3(2), **Sch.1**.
- F32** Words in s. 29(1)(e) substituted (16.5.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62(2), **Sch. 9 para. 6(a)**; S.I. 1992/817, art. 3(2), **Sch.1**.
- F33** Word repealed by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1)(2), Sch. 12 Pt. I para. 23(a), **Sch. 13 Pt. II**
- F34** S. 29(1)(ee) inserted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 23(b)**
- F35** S. 29(1)(ef) inserted (E.W.S.) by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 80**
- F36** S. 29(1)(ef) inserted (S.) by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(1), **Sch. 10 para. 7(a)**
- F37** S. 29(1)(eg) inserted (16.5.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62(2), **Sch. 9 para. 6(b)**; S.I. 1992/817, art. 3(2), **Sch.1**.
- F38** Words substituted by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 25 para. 56** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F39** Word repealed by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 1 para. 84**
- F40** Words inserted by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 1 para. 84**
- F41** Words inserted by S.I. 1985/39, **art. 8(a)(ii)**
- F42** Words substituted by virtue of National Health Service (Scotland) Act 1978 (c. 29, SIF 113:2), **Sch. 15 para. 2**

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**F43** Words in s. 29(2)(c) substituted (16.5.1992) by [Further and Higher Education \(Scotland\) Act 1992](#) (c. 37), s. 62(2), [Sch. 9 para. 6\(c\)](#); S.I. 1992/817, [art. 3\(2\) Sch.1](#).

**Modifications etc. (not altering text)**

**C6** S. 29(3) applied by [Local Government and Housing Act 1989](#) (c. 42, SIF 81:1,2), [s. 10\(2\)](#)

**C7** S. 29(4) excluded by [Local Government and Housing Act 1989](#) (c. 42, SIF 81:1,2), [s. 10\(1\)](#)

**Marginal Citations**

**M7** 1952 c.52(39:1).

**M8** 1989 c.45(39:1).

**M9** 1972 c. 70.

**M10** 1973 c. 65.

**M11** 1977 c. 49.

**M12** 1978 c. 29.

**M13** 1972 c. 70.

**30 Provisions as to industrial tribunals.**

- (1) An industrial tribunal shall not consider—
- (a) a complaint under section 27, 28 or 29 that an employer has failed to permit an employee to take time off; or
  - (b) a complaint under section 27 that an employer has failed to pay an employee the whole or part of any amount required to be paid under that section;
- unless it is presented within three months of the date when the failure occurred 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 complaint to be presented within the period of three months.
- (2) Where an industrial tribunal finds any complaint mentioned in subsection (1)(a) well-founded, the tribunal shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee which shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to permit time off to be taken by the employee and to any loss sustained by the employee which is attributable to the matters complained of.
- (3) Where on a complaint under section 27 an industrial tribunal finds that the employer has failed to pay the employee the whole or part of the amount required to be paid under that section, the tribunal shall order the employer to pay the employee the amount which it finds due to him.

**31 Time off to look for work or make arrangements for training.**

- (1) An employee who is given notice of dismissal by reason of redundancy shall, subject to the following provisions of this section, be entitled before the expiration of his notice to be allowed by his employer reasonable time off during the employee's working hours in order to look for new employment or make arrangements for training for future employment.
- (2) An employee shall not be entitled to time off under this section unless, on whichever is the later of the following dates, that is to say,—
- (a) the date on which the notice is due to expire; or

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- (b) the date on which it would expire were it the notice required to be given by section 49(1),
- he will have been or, as the case may be, would have been continuously employed for a period of two years or more.
- (3) An employee who is allowed time off during his working hours under subsection (1) shall, subject to the following provisions of this section, be entitled to be paid remuneration by his employer for the period of absence at the appropriate hourly rate.
- (4) The appropriate hourly rate in relation to an employee shall be the amount of one week's pay divided by—
- (a) the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when notice was given; or
- (b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which notice was given.
- (5) If an employer unreasonably refuses to allow an employee time off from work under this section, the employee shall, subject to subsection (9), be entitled to be paid an amount equal to the remuneration to which he would have been entitled under subsection (3) if he had been allowed the time off.
- (6) An employee may present a complaint to an industrial tribunal on the ground that his employer has unreasonably refused to allow him time off under this section or has failed to pay the whole or any part of any amount to which the employee is entitled under subsection (3) or (5).
- (7) An industrial tribunal shall not entertain a complaint under subsection (6) unless it is presented to the tribunal within the period of three months beginning with the day on which it is alleged that the time off should have been allowed, 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 complaint to be presented within the period of three months.
- (8) If on a complaint under subsection (6) the tribunal finds the grounds of the complaint well-founded it shall make a declaration to that effect and shall order the employer to pay to the employee the amount which it finds due to him.
- (9) The amount—
- (a) of an employer's liability to pay remuneration under subsection (3); or
- (b) which may be ordered by a tribunal to be paid by an employer under subsection (8),
- or, where both paragraphs (a) and (b) are applicable, the aggregate amount of the liabilities referred to in those paragraphs, shall not exceed, in respect of the notice period of any employee, two-fifths of week's pay of that employee.
- (10) Subject to subsection (11), a right to any amount under subsection (3) or (5) shall not affect any right of an employee in relation to remuneration under the contract of employment (in this section referred to as "contractual remuneration").

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- (11) Any contractual remuneration paid to an employee in respect of a period when he takes time off for the purposes referred to in subsection (1) shall go towards discharging any liability of the employer to pay remuneration under subsection (3) in respect of that period, and conversely any payment of remuneration under subsection (3) in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

**Modifications etc. (not altering text)**

C8 S. 31(2) modified (1.4.1996) by S.I. 1996/1023, arts. 3, 4

**[<sup>F44</sup>31A Time off for ante-natal care.**

- (1) An employee who is pregnant and who has, on the advice of a registered medical practitioner, registered midwife or registered health visitor, made an appointment to attend at any place for the purpose of receiving ante-natal care shall, subject to the following provisions of this section, have the right not to be unreasonably refused time off during her working hours to enable her to keep the appointment.
- (2) Subject to subsection (3), an employer shall not be required by virtue of this section to permit an employee to take time off to keep an appointment unless, if he requests her to do so, she produces for his inspection—
- (a) a certificate from a registered medical practitioner, registered midwife or registered health visitor stating that the employee is pregnant, and
  - (b) an appointment card or some other document showing that the appointment has been made.
- (3) Subsection (2) shall not apply where the employee's appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with subsection (1).
- (4) An employee who is permitted to take time off during her working hours in accordance with subsection (1) shall be entitled to be paid remuneration by her employer for the period of absence at the appropriate hourly rate.
- (5) The appropriate hourly rate in relation to an employee shall be the amount of one week's pay divided by—
- (a) the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when time off is taken; or
  - (b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken; or
  - (c) in a case falling within paragraph (b) but where the employee has not been employed for a sufficient period to enable the calculation to be made under that paragraph, a number which fairly represents the number of normal working hours in a week having regard to such of the following considerations as are appropriate in the circumstances, that is to say,—

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- (i) the average number of normal working hours in a week which the employee could expect in accordance with the terms of her contract;
  - (ii) the average number of such hours of other employees engaged in relevant comparable employment with the same employer.
- (6) An employee may present a complaint to an industrial tribunal that her employer has unreasonably refused her time off as required by this section or that he has failed to pay her the whole or part of any amount to which she is entitled under subsection (4).
- (7) An industrial tribunal shall not entertain a complaint under subsection (6) unless it is presented within the period of three months beginning with the day of the appointment concerned, 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 complaint to be presented within the period of three months.
- (8) Where on a complaint under subsection (6) the tribunal finds the complaint well-founded it shall make a declaration to that effect; and—
- (a) if the complaint is that the employer has unreasonably refused the employee time off, the tribunal shall order the employer to pay to the employee an amount equal to the remuneration to which she would have been entitled under subsection (4) if the time off had not been refused; and
  - (b) if the complaint is that the employer has failed to pay the employee the whole or part of any amount to which she is entitled under subsection (4), the tribunal shall order the employer to pay to the employee the amount which it finds due to her.
- (9) Subject to subsection (10), a right to any amount under subsection (4) shall not affect any right of an employee in relation to remuneration under her contract of employment (in this section referred to as “contractual remuneration”).
- (10) Any contractual remuneration paid to an employee in respect of a period of time off under this section shall go towards discharging any liability of the employer to pay remuneration under subsection (4) in respect of that period, and conversely any payment of remuneration under subsection (4) in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.
- (11) Until the coming into operation of section 10 of the <sup>M14</sup>Nurses, Midwives and Health Visitors Act 1979, this section shall have effect as if for any reference to a registered midwife or registered health visitor there substituted a reference to a certified midwife.]

#### Textual Amendments

**F44** S. 31A inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), **s. 13**

#### Modifications etc. (not altering text)

**C9** 1.7.1983 appointed for coming into operation of [Nurses, Midwives and Health Visitors Act 1979 \(c. 36, SIF 83:1\)](#), **s. 10: S.I. 1983/668**

#### Marginal Citations

**M14** 1979 c. 36.

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VALID FROM 22/08/1996

<sup>F45</sup>**31AA** .....

**Textual Amendments**

**F45** S. 31AA repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 3 Pt. I (with ss. 191-195, 202)

[<sup>F51</sup>**31AA** **Time off for employee representatives.** **E+W+S**

- (1) An employee who is—
- (a) an employee representative for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981, or
  - (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,
- shall be entitled to be allowed by his employer reasonable time off during the employee's working hours in order to perform his functions as such an employee representative or candidate.
- (2) Subject to subsection (3), subsections (4) to (10) of section 31A shall apply to an employee who is allowed time off in accordance with this section as they apply to an employee who is permitted to take time off in accordance with subsection (1) of that section.
- (3) In its application by virtue of subsection (2)—
- (a) subsection (4) of section 31A shall have effect as if for the reference to the period of absence there were substituted a reference to the time taken off, and
  - (b) subsection (7) of that section shall have effect as if for the reference to the day of the appointment concerned there were substituted a reference to the day on which it is alleged that the time off should have been allowed or the day on which the time off was taken.]

**Textual Amendments**

**F51** S. 31AA inserted (26.10.1995) by S.I. 1995/2587, reg. 13(1)

[<sup>F46</sup>**32** **Provisions supplementary to ss. 27 to 31A.**

- (1) For the purposes of sections 27 to 31A the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, he is required to be at work.
- (2) For the purposes of sections 27 and 28 a trade union shall be taken to be recognised by an employer if it is recognised by him, to any extent, for the purpose of collective bargaining, that is to say, negotiations related to or connected with one or more of the matters specified in section 29(1) of the Trade Union and Labour Relations Act 1974.]



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### Textual Amendments

**F46** S. 32 substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(3)(b), Sch. 6 para. 19, Sch. 9 para. 4(1)

**Status:**

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**Changes to legislation:**

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