



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART VI

#### REDUNDANCY PAYMENTS

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

- C1** Pt. VI (ss. 81–120) modified by Local Government Act 1985 (c. 51, SIF 81:1), **s. 59(1)**  
Pt. VI modified (3.4.1995) by 1994 c. 19, **s. 44(1)(a)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/852, art. 7, **Sch. 3**
- C2** Pt. VI (ss. 81–120) excluded (S.) by Legal Aid (Scotland) Act 1986 (c. 47, SIF 77:2), s. 1, **Sch. 1 para. 10(2)**, Housing (Scotland) Act 1988 (c. 43, SIF 61), s. 1(2), **Sch. 1 para. 12(2)** and Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), s. 1, **Sch. 1 para. 17(2)**
- C3** Pt. VI (ss. 81–120) excluded by Legal Aid Act 1988 (c. 34, SIF 77:1), **s. 45(4) Sch. 7 para. 7(3)(b)**, Housing Act 1988 (c. 50, SIF 61), s. 46(2), **Sch. 5 para. 10(2)**, Electricity Act 1989 (c. 29, SIF 44:1), ss. 56(2), 113(2), **Sch. 17 para. 35** and Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 137(4), **Sch. 10 para. 16**
- C4** Pt. VI (ss. 81–120) excluded (S.) (27. 11. 1991) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), s. 14, **Sch. 4 para. 5**; S.I. 1991/2633, **art. 3**, Sch.
- C5** Pt. VI (ss. 81–120): certain functions, rights and liabilities of the London Residuary Body in relation to redundancy payments payable under Part VI of this Act, transferred (1.4.1992) to the London Pensions Fund Authority by S.I. 1992/331, **arts. 2(1)(g)(4)**, 3.

#### *Right to redundancy payment*

### **81 General provisions as to right to redundancy payment.**

- (1) Where an employee who has been continuously employed for the requisite period—
- (a) is dismissed by his employer by reason of redundancy, or

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- (b) is laid off or kept on short-time to the extent specified in subsection (1) of section 88 and complies with the requirements of that section, then, subject to the following provisions of this Act, the employer shall be liable to pay to him a sum (in this Act referred to as a “redundancy payment”) calculated in accordance with Schedules 4, 13 and 14.
- (2) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to—
- (a) the fact that his 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 in the place where the employee was so employed, or
- (b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or diminish.

For the purposes of this subsection, the business of the employers together with the business or businesses of his associated employers shall be treated as one unless either of the conditions specified in this subsection would be satisfied without so treating those businesses.

- [<sup>F1</sup>(2A) For the purposes of subsection (2) the activities carried on by a local education authority with respect to the schools maintained by it and the activities carried on by the governors of those schools shall be treated as one business unless either of the conditions specified in subsection (2) would be satisfied without so treating them.]
- (3) In subsection (2), “cease” means cease either permanently or temporarily and from whatsoever cause, and “diminish” has a corresponding meaning.
- (4) For the purposes of subsection (1), the requisite period is the period of two years ending with the relevant date,<sup>F2</sup>

#### Textual Amendments

- F1** S. 81(2A) inserted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 2\(1\)](#) with saving in [S.I. 1982/1656](#), [Sch. 2](#)
- F2** Words repealed with saving by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 20, [Sch. 2, para. 6\(2\)](#), [Sch. 4](#)

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

- C6** S. 81 excluded by [S.I. 1980/1052](#), [art. 3](#); modified by [S.I. 1983/1160](#), [art. 3](#), [Sch. 2 para. 1](#)
- C7** S. 81 excluded by [Dock Work Act 1989 \(c. 13, SIF 43:1\)](#), [s. 5\(1\)\(2\)](#)
- C8** S. 81 modified (13.1.1994) by [S.I. 1993/3167](#), [art. 3](#), [Sch. 2 para.1](#)
- C9** S. 81(4) modified by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), [s. 59\(2\)](#) and [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), [ss. 178\(2\)\(b\)](#), 231(7), 235(6)
- S. 81(4) modified (3.4.1995) by [1994 c. 19, s. 44\(4\)](#) (with [ss. 54\(5\)\(7\)](#), [55\(5\)](#), [Sch. 17 paras. 22\(1\)](#), [23\(2\)](#)); [S.I. 1995/852](#), [art. 7](#), [Sch. 3](#)

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## **82 General exclusions from right to redundancy payment.**

- [<sup>F3</sup>(1) An employee shall not be entitled to a redundancy payment if he has before the relevant date attained the following age, that is to say—
- (a) in a case where—
    - (i) in the business for the purposes of which he was employed there was a normal retiring age of less than sixty-five for an employee holding the position which he held, and
    - (ii) the age was the same whether the employee holding that position was a man or a woman,that normal retiring age; and
  - (b) in any other case, the age of sixty-five.]
- (2) Except as provided by section 92, an employee shall not be entitled to a redundancy payment by reason of dismissal where his employer, being entitled to terminate his contract of employment without notice by reason of the employee's conduct terminates it either—
- (a) without notice, or
  - (b) by giving shorter notice than that which, in the absence of such conduct, the employer would be required to give to terminate the contract, or
  - (c) by giving notice (not being such shorter notice as is mentioned in paragraph (b)) which includes, or is accompanied by, a statement in writing that the employer would, by reason of the employee's conduct, be entitled to terminate the contract without notice.
- (3) If an employer makes an employee an offer (whether in writing or not) before the ending of his employment under the previous contract to renew his contract of employment, or to re-engage him under a new contract of employment, so that the renewal or re-engagement would take effect either immediately on the ending of his employment under the previous contract or after an interval of not more than four weeks thereafter, the provisions of subsections (5) and (6) shall have effect.
- (4) For the purposes of the application of subsection (3) to a contract under which the employment ends on a Friday, Saturday or Sunday—
- (a) the renewal or re-engagement shall be treated as taking effect immediately on the ending of the employment under the previous contract if it takes effect on or before the next Monday after that Friday, Saturday or Sunday; and
  - (b) the interval of four weeks shall be calculated as if the employment had ended on that Monday.
- (5) If an employer makes an employee such an offer as is referred to in subsection (3) and either—
- (a) the provisions of the contract as renewed, or of the new contract, as to the capacity and place 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 first-mentioned provisions would differ (wholly or in part) from those corresponding provisions, but the offer constitutes an offer of suitable employment in relation to the employee;
- and in either case the employee unreasonably refuses that offer, he shall not be entitled to a redundancy payment by reason of his dismissal.

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- (6) If an 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 (3), and the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which he is employed and as to the other terms and conditions of his employment, differ (wholly or in part) from the corresponding provisions of the previous contract but the employment is suitable in relation to the employee, and during the trial period referred to in section 84 the employee unreasonably terminates the contract, or unreasonably gives notice to terminate it and the contract is thereafter, in consequence, terminated, he shall not be entitled to a redundancy payment by reason of his dismissal from employment under the previous contract.
- (7) Any reference in this section to re-engagement by the employer shall be construed as including a reference to re-engagement by the employer or by any associated employer, and any reference in this section to an offer made by the employer shall be construed as including a reference to an offer made by an associated employer.

#### Textual Amendments

- F3** S. 82(1) substituted (with saving) by Employment Act 1989 (c. 38, SIF 43:1), ss. 16(1), 29(6), Sch. 9 paras. 3, 4

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

- C10** S. 82 modified by S.I. 1983/1160, art. 3, **Sch. 2 para. 2**
- C11** S. 82 modified (13.1.1994) by S.I. 1993/3167, art. 3, **Sch. 2 para.2**
- C12** S. 82(1) modified by Local Government Act 1985 (c. 51, SIF 81:1), **s. 59(2)** and Education Reform Act 1988 (c. 40, SIF 41:1), **ss. 178(2)(b)**, 231(7), 235(6)  
 S. 82(1) modified (3.4.1995) by 1994 c. 19, **s. 44(4)** (with ss. 54(5)(7), 55(5), Sch. 17 para. 22(1), 23(2)); S.I. 1995/852, art. 7, **Sch. 3**
- C13** S. 82(3) modified by S.I. 1985/1846, **reg. 5(5)**
- C14** S. 82(5)(6) modified by Local Government Act 1985 (c. 51, SIF 81:1), **s. 53(5)** and Education Reform Act 1988 (c. 40, SIF 41:1), **ss. 173(6)**, 231(7), 235(6)  
 S. 82(5)(6) modified (4.1.1995) by 1994 c. 39, **ss. 7(2)**, 13(5)(6), 97(8), 137(5); S.I. 1994/2850, art. 3(a), **Sch. 2**  
 S. 82(5)(6) modified (3.4.1995) by 1994 c. 19, **s. 43(6)(7)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/852, art. 7, **Sch. 3**

### 83 Dismissal by employer.

- (1) In this Part, except as respects a case to which section 86 applies, "dismiss" and "dismissal" shall, subject to sections 84, 85 and 93, be construed in accordance with subsection (2).
- (2) An employee shall be treated as dismissed by his employer if, but only if,—
- 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, or
  - where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract, or
  - the employee terminates that contract with or without notice, in circumstances (not falling within section 92(4)) such that he is entitled to terminate it without notice by reason of the employer's conduct.

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## **84 Renewal of contract or re-engagement.**

- (1) If an employee's contract of employment is renewed, or he is re-engaged under a new contract of employment in pursuance of an offer (whether in writing or not) made by his employer before the ending of his employment under the previous contract, and the renewal or re-engagement takes effect either immediately on the ending of that employment or after an interval of not more than four weeks thereafter, then, subject to subsections (3) to (6), the employee shall not be regarded as having been dismissed by his employer by reason of the ending of his employment under the previous contract.
- (2) For the purposes of the application of subsection (1) to a contract under which the employment ends on a Friday, Saturday or Sunday—
  - (a) the renewal or re-engagement shall be treated as taking effect immediately on the ending of the employment if it takes effect on or before the Monday after that Friday, Saturday or Sunday, and
  - (b) the interval of four weeks referred to in that subsection shall be calculated as if the employment had ended on that Monday.
- (3) If, in a case to which subsection (1) applies, the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which the employee is employed, and as to the other terms and conditions of his employment, differ (wholly or in part) from the corresponding provisions of the previous contract, 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).
- (4) The trial period shall begin with the ending of the employee's employment under the previous contract and end with the expiration of the period of four weeks beginning with the date on which the employee starts work under the contract as renewed, or the new contract, or such longer period as may be agreed in accordance with the next following subsection for the purpose of retraining the employee for employment under that contract.
- (5) Any such agreement 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.
- (6) 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,

then, unless the employee's contract of employment is again renewed, or he is again re-engaged under a new contract of employment, in circumstances such that subsection (1) again applies, he shall be treated as having been dismissed on the date on which his employment under the previous contract or, if there has been more than one trial period, the original contract ended for the reason for which he was then dismissed or would have been dismissed had the offer (or original offer) of renewed, or new,

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employment not been made, or, as the case may be, for the reason which resulted in that offer being made.

- (7) Any reference in this section to re-engagement by the employer shall be construed as including a reference to re-engagement by the employer or by any associated employer, and any reference in this section to an offer made by the employer shall be construed as including a reference to an offer made by an associated employer.

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

- C15** S. 84 modified by S.I. 1983/1160, art. 3, **Sch. 2 para. 3**
- C16** S. 84 modified (13.1.1994) by S.I. 1993/3167, art. 3, **Sch. 2 para. 3**
- C17** S. 84 modified (28.7.1995 so far as it relates to s. 3 of the amending Act and 12.10.1995 so far as it relates to s. 22 of the amending Act) by 1995 c. 25, ss. 3(8), 22(9), **Sch. 2 Pt. I para. 3(6)(a)**; S.I. 1995/1983, **art. 2**; S.I. 1995/2649, **art. 2(c)**
- C18** S. 84(3) modified by Local Government Act 1985 (c. 51, SIF 81:1), **s. 53(5)** and Education Reform Act 1988 (c. 40, SIF 41:1), **ss. 173(6)**, 231(7), 235(6)  
 S. 84(3) modified (4.1.1995) by 1994 c. 39, **ss. 7(2)**, 13(5)(6), 97(8), 137(5); S.I. 1994/2850, art. 3(a), **Sch. 2**  
 S. 84(3) modified (3.4.1995) by 1994 c. 19, **s. 43(6)(7)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/852, art. 7, **Sch. 3**

**85 Employee anticipating expiry of employer's notice.**

- (1) The provisions of this section shall have effect where—
- (a) an employer gives notice to an employee to terminate his contract of employment, and
  - (b) 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.
- (2) Subject to the following provisions of this section, in the circumstances specified in subsection (1) the employee shall, for the purposes of this Part, be taken to be dismissed by his employer.
- (3) If, before the employee's notice is due to expire, the employer gives him notice in writing—
- (a) requiring him to withdraw his notice terminating the contract of employment as mentioned in subsection (1)(b) and to continue in the employment until the date on which the employer's notice expires, and
  - (b) stating that, unless he does so, the employer will contest any liability to pay to him a redundancy payment in respect of the termination of his contract of employment,
- but the employee does not comply with the requirements of that notice, the employee shall not be entitled to a redundancy payment by virtue of subsection (2) except as provided by subsection (4).
- (4) Where, in the circumstances specified in subsection (1), the employer has given notice to the employee under subsection (3), and on a reference to a tribunal it appears to the tribunal, having regard both to the reasons for which the employee seeks to leave the employment and those for which the employer requires him to continue in it, to be just and equitable that the employee should receive the whole or part of any redundancy

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payment to which he would have been entitled apart from subsection (3), the tribunal may determine that the employer shall be liable to pay to the employee—

- (a) the whole of the redundancy payment to which the employee would have been so entitled, or
- (b) such part of that redundancy payment as the tribunal thinks fit.

(5) In this section—

- (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 at the time when it expires) is equal to the minimum period which (whether by virtue of any enactment 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 paragraph (a), expires at the time when the employer's notice expires.

## **86 Failure to permit woman to return to work after confinement treated as dismissal.**

Where an employee is entitled to return to work and has exercised her right to return in accordance with section 47 but is not permitted to return to work, then she shall be treated for the purposes of the provisions of this Part as if she had been employed until the notified day of return, and, if she would not otherwise be so treated, as having been continuously employed until that day, and as if she had been dismissed with effect from that day for the reason for which she was not permitted to return.

## **87 Lay-off and short-time.**

- (1) Where an employee is employed under a contract on such terms and conditions that his remuneration thereunder depends on his being provided by the employer with work of the kind which he is employed to do, he shall, for the purposes of this Part, be taken to be laid off for any week in respect of which, by reason that the employer does not provide such work for him, he is not entitled to any remuneration under the contract.
- (2) Where by reason of a diminution in the work provided for an employee by his employer (being work of a kind which under his contract the employee is employed to do) the employee's remuneration for any week is less than half a week's pay, he shall for the purposes of this Part be taken to be kept on short-time for that week.

## **88 Right to redundancy payment by reason of lay-off or short-time.**

- (1) An employee shall not be entitled to a redundancy payment by reason of being laid off or kept on short-time unless he gives notice in writing to his employer indicating (in whatsoever terms) his intention to claim a redundancy payment in respect of lay-off or short-time (in this Act referred to as a "notice of intention to claim") and, before the service of that notice, either—
  - (a) he has been laid off or kept on short-time for four or more consecutive weeks of which the last before the service of the notice ended on the date of service thereof or ended not more than four weeks before that date, or
  - (b) he has been laid off or kept on short-time for a series of six or more weeks (of which not more than three were consecutive) within a period of thirteen

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weeks, where the last week of the series before the service of the notice ended on the date of service thereof or ended not more than four weeks before that date.

- (2) Where an employee has given notice of intention to claim,—
- (a) he shall not be entitled to a redundancy payment in pursuance of that notice unless he terminates his contract of employment by a week's notice which (whether given before or after or at the same time as the notice of intention to claim) is given before the end of the period allowed for the purposes of this paragraph (as specified in subsection (5) of section 89), and
  - (b) he shall not be entitled to a redundancy payment in pursuance of the notice of intention to claim if he is dismissed by his employer (but without prejudice to any right to a redundancy payment by reason of the dismissal):

Provided that, if the employee is required by his contract of employment to give more than a week's notice to terminate the contract, the reference in paragraph (a) to a week's notice shall be construed as a reference to the minimum notice which he is so required to give.

- (3) Subject to subsection (4), an employee shall not be entitled to a redundancy payment in pursuance of a notice of intention to claim if, on the date of service of that notice, it was reasonably to be expected that the employee (if he continued to be employed by the same employer) would, not later than four weeks after that date, enter upon a period of employment of not less than thirteen weeks during which he would not be laid off or kept on short-time for any week.
- (4) Subsection (3) shall not apply unless, within seven days after the service of the notice of intention to claim, the employer gives to the employee notice in writing that he will contest any liability to pay to him a redundancy payment in pursuance of the notice of intention to claim.

## **89 Supplementary provisions relating to redundancy payments in respect of lay-off or short-time.**

- (1) If, in a case where an employee gives notice of intention to claim and the employer gives notice under section 88(4) (in this section referred to as a "counter-notice"), the employee continues or has continued, during the next four weeks after the date of service of the notice of intention to claim, to be employed by the same employer, and he is or has been laid off or kept on short-time for each of those weeks, it shall be conclusively presumed that the condition specified in subsection (3) of section 88 was not fulfilled.
- (2) For the purposes of both subsection (1) of section 88 and subsection (1) of this section, it is immaterial whether a series of weeks (whether it is four weeks, or four or more weeks, or six or more weeks) consists wholly of weeks for which the employee is laid off or wholly of weeks for which he is kept on short-time or partly of the one and partly of the other.
- (3) For the purposes mentioned in subsection (2), no account shall be taken of any week for which an employee is laid off or kept on short-time where the lay-off or short-time is wholly or mainly attributable to a strike or a lock-out (within the meaning of paragraph 24 of Schedule 13) whether the strike or lock-out is in the trade or industry in which the employee is employed or not and whether it is in Great Britain or elsewhere.



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- (4) Where the employer gives a counter-notice within seven days after the service of a notice of intention to claim, and does not withdraw the counter-notice by a subsequent notice in writing, the employee shall not be entitled to a redundancy payment in pursuance of the notice of intention to claim except in accordance with a decision of an industrial tribunal.
- (5) The period allowed for the purposes of subsection (2)(a) of section 88 is as follows, that is to say,—
- (a) if the employer does not give a counter-notice within seven days after the service of the notice of intention to claim, that period is three weeks after the end of those seven days;
  - (b) if the employer gives a counter-notice within those seven days, but withdraws it by a subsequent notice in writing, that period is three weeks after the service of the notice of withdrawal;
  - (c) if the employer gives a counter-notice within those seven days and does not so withdraw it, and a question as to the right of the employee to a redundancy payment in pursuance of the notice of intention to claim is referred to a tribunal, that period is three weeks after the tribunal has notified to the employee its decision on that reference.
- (6) For the purposes of paragraph (c) of subsection (5) no account shall be taken of any appeal against the decision of the tribunal, or of any requirement to the tribunal to state a case for the opinion of the High Court or the Court of Session, or of any proceedings or decision in consequence of such an appeal or requirement.

## **90 The relevant date.**

- (1) Subject to the following provisions of this section, for the purposes of the provisions of this Act so far as they relate to redundancy payments, “the relevant date”, in relation to the dismissal of an employee—
- (a) where his 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) where his contract of employment is terminated without notice, means the date on which the termination takes effect;
  - (c) where he is employed under a contract for a fixed term and that term expires as mentioned in subsection (2)(b) of section 83, means the date on which that term expires;
  - (d) where he is treated, by virtue of subsection (6) of section 84, as having been dismissed on the termination of his employment under a previous contract, means—
    - (i) for the purposes of section 101, the date which is the relevant date as defined by paragraph (a), (b) or (c) in relation to the renewed, or new, contract, or, where there has been more than one trial period under section 84, the last such contract; and
    - (ii) for the purposes of any other provision, the date which is the relevant date as defined by paragraph (a), (b) or (c) in relation to the previous contract, or, where there has been more than one trial period under section 84, the original contract; and
  - (e) where he is taken to be dismissed by virtue of section 85(2), means the date on which the employee’s notice to terminate his contract of employment expires.

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- (2) “The relevant date”, in relation to a notice of intention to claim or a right to a redundancy payment in pursuance of such a notice,—
- (a) in a case falling within paragraph (a) of subsection (1) of section 8, means the date on which the last of the four or more consecutive weeks before the service of the notice came to an end, and
  - (b) in a case falling within paragraph (b) of that subsection means the date on which the last of the series of six or more weeks before the service of the notice came to an end.
- (3) Where the notice required to be given by an employer to terminate a contract of employment by section 49(1) would, if duly given when notice of termination was given by the employer, or (where no notice was given) when the contract of employment was terminated by the employer, expire on a date later than the relevant date as defined by subsection (1), then for the purposes of section 81(4) and paragraph 1 of Schedule 4 and paragraph 8(4) of Schedule 14, that later date shall be treated as the relevant date in relation to the dismissal.

## **91 Reference of questions to tribunal.**

- (1) Any question arising under this Part as to the right of an employee to a redundancy payment, or as to the amount of a redundancy payment, shall be referred to and determined by an industrial tribunal.
- (2) For the purposes of any such reference, an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy.
- (3) In relation to lay-off or short-time, the questions which may be referred to and determined by an industrial tribunal, as mentioned in subsection (1), shall include any question whether an employee will become entitled to a redundancy payment if he is not dismissed by his employer and he terminates his contract of employment as mentioned in subsection (2)(a) of section 88; and any such question shall for the purposes of this Part be taken to be a question as to the right of the employee to a redundancy payment.

## **92 Special provisions as to termination of contract in cases of misconduct or industrial dispute.**

- (1) Where at any such time as is mentioned in subsection (2), an employee who—
  - (a) has been given notice by his employer to terminate his contract of employment, or
  - (b) has given notice to his employer under subsection (1) of section 88,
 takes part in a strike, in such circumstances that the employer is entitled, by reason of his taking part in the strike, to treat the contract of employment as terminable without notice, and the employer for that reason terminates the contract as mentioned in subsection (2) of section 82, that subsection shall not apply to that termination of the contract.
- (2) The times referred to in subsection (1) are—
  - (a) in a case falling within paragraph (a) of that subsection any time within the obligatory period of the employer’s notice (as defined by section 85(5)), and

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

- (b) in a case falling within paragraph (b) of subsection (1), any time after the service of the notice mentioned in that paragraph.
- (3) Where at any such time as is mentioned in subsection (2) an employee's contract of employment, otherwise than by reason of his taking part in a strike, is terminated by his employer in the circumstances specified in subsection (2) of section 82, and is so terminated as mentioned therein, and on a reference to an industrial tribunal it appears to the tribunal, in the circumstances of the case, to be just and equitable that the employee should receive the whole or part of any redundancy payment to which he would have been entitled apart from section 82(2), the tribunal may determine that the employer shall be liable to pay to the employee—
  - (a) the whole of the redundancy payment to which the employee would have been so entitled, or
  - (b) such part of that redundancy payment as the tribunal thinks fit.
- (4) Where an employee terminates his contract of employment without notice, being entitled to do so by reason of a lock-out by his employer, section 83(2)(c) shall not apply to that termination of the contract.
- (5) In this section “strike” and “lock-out” each has the meaning given by paragraph 24 of Schedule 13.

### **93 Implied or constructive termination of contract.**

- (1) Where in accordance with any enactment or rule of law—
  - (a) any act on the part of an employer, or
  - (b) any event affecting an employer (including, in the case of an individual, his death),operates so as to terminate a contract under which an employee is employed by him, that act or event shall for the purposes of this Part be treated as a termination of the contract by the employer, if apart from this subsection it would not constitute a termination of the contract by him and, in particular, the provisions of sections 83, 84 and 90 shall apply accordingly.
- (2) Where subsection (1) applies, and the employee's contract of employment is not renewed, and he is not re-engaged under a new contract of employment, so as to be treated, by virtue of section 84(1), as not having been dismissed, he shall, without prejudice to section 84(6), be taken for the purposes of this Part to be dismissed by reason of redundancy if the circumstances in which his contract is not so renewed and he is not so re-engaged are wholly or mainly attributable to one or other of the facts specified in paragraphs (a) and (b) of section 81(2).
- (3) For the purposes of subsection (2), section 81(2)(a), in so far as it relates to the employer ceasing or intending to cease to carry on the business, shall be construed as if the reference to the employer included a reference to any person to whom, in consequence of the act or event in question, power to dispose of the business has passed.

<sup>F4</sup>(4) . . . . .

#### **Textual Amendments**

**F4** S. 93(4) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

*Status: Point in time view as at 30/11/1993.*

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

F<sup>5</sup>94 .....

**Textual Amendments**  
F5 S. 94 repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch.10** (with Sch. 9 para. 4); S.I. 1993/1908, art. 2(1), **Sch.1**

F<sup>6</sup>95 .....

**Textual Amendments**  
F6 S. 95 repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch.1**

**96 Exemption orders.**

- (1) If at any time there is in force an agreement between one or more employers or organisations of employers and one or more trade unions representing employees, whereby employees to whom the agreement applies have a right in certain circumstances to payments on the termination of their contracts of employment, and, on the application of all the parties to the agreement, the Secretary of State, having regard to the provisions of the agreement, is satisfied that section 81 should not apply to those employees, he may make an order under this section in respect of that agreement.
- (2) The Secretary of State shall not make an order under this section in respect of an agreement unless the agreement indicates (in whatsoever terms) the willingness of the parties to it to submit to an industrial tribunal such questions as are mentioned in paragraph (b) of subsection (3).
- (3) Where an order under this section is in force in respect of an agreement—
  - (a) section 81 shall not have effect in relation to any employee who immediately before the relevant date is an employee to whom the agreement applies, but
  - (b) section 91 shall have effect in relation to any question arising under the agreement as to the right of an employee to a payment on the termination of his employment, or as to the amount of such a payment, as if the payment were a redundancy payment and the question arose under this Part.
- (4) Any order under this section may be 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 without any such application.

F<sup>7</sup>97 .....

**Textual Amendments**  
F7 S. 97 repealed by Employment Act 1980 (c. 42, SIF 43:5), **Sch. 2**

*Status: Point in time view as at 30/11/1993.*

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

## **98 Exclusion or reduction of redundancy payment on account of pension rights.**

- (1) The Secretary of State shall by regulations make provision for excluding the right to a redundancy payment, or reducing the amount of any redundancy payment, in such cases as may be prescribed by the regulations, being cases in which an employee has (whether by virtue of any statutory provision or otherwise) a right or claim (whether legally enforceable or not) to a periodical payment or lump sum by way of pension, gratuity or superannuation allowance which is to be paid by reference to his employment by a particular employer and is to be paid, or to begin to be paid, at the time when he leaves that employment or within such period thereafter as may be prescribed by the regulations.
- (2) Provision shall be made by any such regulations for securing that the right to a redundancy payment shall not be excluded, and that the amount of a redundancy payment shall not be reduced, by reason of any right or claim to a periodical payment or lump sum, in so far as that payment or lump sum represents such compensation as is mentioned in section 118(1) and is payable under a statutory provision, whether made or passed before, on or after the passing of this Act.
- (3) In relation to any case where, under section 85 or 92 or 110, an industrial tribunal determines that an employer is liable to pay part (but not the whole) of a redundancy payment, any reference in this section to a redundancy payment, or to the amount of a redundancy payment, shall be construed as a reference to that part of the redundancy payment, or to the amount of that part, as the case may be.

## **99 Public offices, etc.**

- (1) Without prejudice to any exemption or immunity of the Crown, section 81 shall not apply to any person in respect of any employment which—
  - (a) is employment in a public office for the purposes of section 38 of the <sup>M1</sup>Superannuation Act 1965, or
  - (b) whether by virtue of that Act or otherwise, is treated for the purposes of pensions and other superannuation benefits as service in the civil service of the State, [<sup>F8</sup>or]
  - [<sup>F9</sup>(c) is employment by any such body as is specified in Schedule 5.]
- (2) Without prejudice to any exemption or immunity of the Crown, section 81 shall not apply to any person in respect of his employment in any capacity under the Government of an overseas territory (as defined by section 114).

### **Textual Amendments**

**F8** Word repealed (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(2), [Sch. 10](#)

**F9** [S. 99\(1\)\(c\)](#) repealed (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(2), [Sch. 10](#)

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

**C19** [S. 99](#) excluded by [Civil Aviation Act 1982 \(c. 16, SIF 9\)](#), [Sch. 3 para. 6\(5\)\(6\)](#)

### **Marginal Citations**

**M1** 1965 c. 74.

*Status: Point in time view as at 30/11/1993.*

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

## 100 Domestic servants.

- (1) For the purposes of the application of the provisions of this Part to an employee who is employed as a domestic servant in a private household, those provisions<sup>F10</sup> . . . shall apply as if the household were a business and the maintenance of the household were the carrying on of that business by the employer.
- (2)<sup>F11</sup> section 81 shall not apply to any person in respect of employment as a domestic servant in a private household, where the employer is the father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, or half-sister of the employee.

### Textual Amendments

**F10** Words in s. 100(1) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch.1**

**F11** Word repealed by **Employment Act 1982** (c. 46, SIF 43:5), **Sch. 4**

## 101 Claims for redundancy payments.

- (1) Notwithstanding anything in the preceding provisions of this Part, an employee shall not be entitled to a redundancy payment unless, before the end of the period of six months beginning with the relevant date—
  - (a) the payment has been agreed and paid, or
  - (b) the employee has made a claim for the payment by notice in writing given to the employer, or
  - (c) a question as to the right of the employee to the payment, or as to the amount of the payment, has been referred to an industrial tribunal or
  - (d) a complaint relating to his dismissal has been presented by the employee under section 67.
- (2) An employee shall not by virtue of subsection (1) lose his right to a redundancy payment if, during the period of six months immediately following the period mentioned in that subsection, the employee—
  - (a) makes such a claim as is referred to in paragraph (b) of that subsection,
  - (b) refers to a tribunal such a question as is referred to in paragraph (c) of that subsection, or
  - (c) makes such a complaint as is referred to in paragraph (d) of that subsection,
 and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment having regard to the reason shown by the employee for his failure to take any such step as is referred to in paragraph (a), (b) or (c) of this subsection within the period mentioned in subsection (1), and to all the other relevant circumstances.

### Modifications etc. (not altering text)

**C20** S. 101 modified by **Local Government Act 1985** (c. 51, SIF 81:1), s. 59(2) and **Education Reform Act 1988** (c. 40, SIF 41:1), ss. 178(2)(a)(b), 231(7), 235(6)

S. 101 modified (3.4.1995) by 1994 c. 19, s. 44(3)(4) (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/852, art. 7, **Sch. 3**

*Status: Point in time view as at 30/11/1993.*

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

## 102 Written particulars of redundancy payment.

- (1) On making any redundancy payment, otherwise than in pursuance of a decision of a tribunal which specifies the amount of the payment to be made, the employer shall give to the employee a written statement indicating how the amount of the payment has been calculated.
- (2) Any employer who without reasonable excuse fails to comply with subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding [<sup>F12</sup>level 1 on the standard scale].
- (3) If an employer fails to comply with the requirements of subsection (1), then (without prejudice to any proceedings for an offence under subsection (2)) the employee may by notice in writing to the employer require him to give to the employee a written statement complying with those requirements within such period (not being less than one week beginning with the day on which the notice is given) as may be specified in the notice; and if the employer without reasonable excuse fails to comply with the notice he shall be guilty of an offence under this subsection and liable on summary conviction—
  - (a) if it is his first conviction of an offence under this subsection, to a fine not exceeding [<sup>F13</sup>£20][<sup>F13</sup>level 3 on the standard scale], or
  - (b) in any other case, to a fine not exceeding [<sup>F14</sup>£100][<sup>F14</sup>level 3 on the standard scale].

### Textual Amendments

- F12** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46** and [Criminal Procedure \(Scotland\) Act 1972 \(c. 21, SIF 39:1\)](#), **ss. 289F, 289G** (as inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **s. 54**)
- F13** Words “level 3 on the standard scale” substituted (S.) for words “£20” by virtue of [Criminal Procedure \(Scotland\) Act 1972 \(c. 21, SIF 39:1\)](#), **ss. 289E-289G** (as inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **s. 54**)
- F14** Words “level 3 on the standard scale” substituted (S.) for words “£100” by virtue of [Criminal Procedure \(Scotland\) Act 1972 \(c. 21, SIF 39:1\)](#), **ss. 289E-289G** (as inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **s. 54**)

### Modifications etc. (not altering text)

- C21** [S. 102](#) modified by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), **s. 59(2)** and [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), **ss. 178(2)(a), 231(7), 235(6)**  
[S. 102](#) modified (3.4.1995) by [1994 c. 19 s. 44\(3\)](#) (with [ss. 54\(5\)\(7\), 55\(5\)](#), [Sch. 17 paras. 22\(1\), 23\(2\)](#)); [S.I. 1995/852](#), [art. 7](#), **Sch. 3**
- C22** [S. 102\(3\)](#): [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 35** (in relation to liability on first and subsequent convictions), **38** (increase of fines) and **46** (substitution of references to levels on the standard scale) apply E.W.

## Redundancy Fund

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**Textual Amendments**

**F15** S. 103 repealed by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(2), **Sch. 3**

<sup>F16</sup>**104** .....

**Textual Amendments**

**F16** S. 104 repealed by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), ss. 17(a), 29(4)(6), Sch. 7 Pt. II, **Sch. 9 para. 4**

<sup>F17</sup>**104A**.....

**Textual Amendments**

**F17** S. 104A inserted by [Wages Act 1986 \(c. 48, SIF 43:2\)](#), s. 27(3) and repealed by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), ss. 17(a), 29(4)(6), Sch. 7 Pt. II, **Sch. 9 para. 4**

<sup>F18</sup>**105** .....

**Textual Amendments**

**F18** S. 105 repealed by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), ss. 13(4), 16(2), **Sch. 3**

**106 Payments out of fund to employees.**

- (1) Where an employee claims that his employer is liable to pay to him an employer’s payment, and either—
  - (a) that the employee has taken all reasonable steps (other than legal proceedings) to recover the payment from the employer and that the employer has refused or failed to pay it, or has paid part of it and has refused or failed to pay the balance, or
  - (b) that the employer is insolvent and that the whole or part of the payment remains unpaid,

the employee may apply to the Secretary of State for a payment under this section.

[<sup>F19</sup>(1A) In this Act “employer’s payment”, in relation to an employee, means—

- (a) a redundancy payment which his employer is liable to pay to him under the foregoing provisions of this Part, or
- (b) a payment which his employer is, under an agreement in respect of which an order is in force under section 96, liable to make to him on the termination of his contract of employment.

(1B) In relation to a case where, under section 85, 92 or 110, an industrial tribunal determines that an employer is liable to pay only part of a redundancy payment, the



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reference in subsection (1A)(a) above to a redundancy payment shall be construed as a reference to that part of the redundancy payment.]

- (2) If on an application under this section the Secretary of State is satisfied—
- (a) that the employee is entitled to the employer's payment;
  - (b) that either of the conditions specified in subsection (1) is fulfilled; and
  - (c) that, in a case where the employer's payment is such a payment as is mentioned in paragraph (b) <sup>F20</sup>of [<sup>F21</sup>subsection (1A)], the employee's right to the payment arises by virtue of a [<sup>F22</sup>period of continuous employment] (computed in accordance with the provisions of the agreement in question) which is not less than [<sup>F22</sup>two years].

the Secretary of State shall pay to the employee out of [<sup>F23</sup>the National Insurance Fund] a sum calculated in accordance with Schedule 7, reduced by so much (if any) of the employer's payment as has been paid.

- (3) Where the Secretary of State pays a sum to an employee in respect of an employer's payment—
- (a) all rights and remedies of the employee with respect to the employer's payment, or (if the Secretary of State has paid only part of it) all his rights and remedies with respect to that part of the employer's payment, shall be transferred to and vest in the Secretary of State; and
  - (b) any decision of an industrial tribunal requiring the employer's payment to be paid to the employee shall have effect as if it required that payment, or, as the case may be, that part of it which the Secretary of State has paid, to be paid to the Secretary of State;

and any moneys recovered by the Secretary of State by virtue of this subsection shall be paid into [<sup>F23</sup>the National Insurance Fund].

(4)

- <sup>F24</sup>(5) For the purposes of this section an employer shall be taken to be insolvent if—
- <sup>F25</sup>(a) he has been adjudged bankrupt or has made a composition or arrangement with his creditors;
  - (b) he has died and his estate falls to be administered in accordance with an order under section [<sup>F26</sup>421 of the Insolvency Act 1986]; or]
  - (c) where the employer is a company, a winding-up order [<sup>F27</sup>or an administration order] has been made with respect to it or a resolution for voluntary winding-up has been passed with respect to it, or a receiver or manager of its undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge [<sup>F27</sup>or [<sup>F26</sup>a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 is approved under that Part]].

(6) In the application of this section to Scotland, for paragraphs (a), (b) and (c) of subsection (5) there shall be substituted the following paragraphs:—

- (a) an award of sequestration has been made on his estate, or he has executed a trust deed for his creditors or entered into a composition contract;
- (b) he has died and a judicial factor appointed under section [<sup>F28</sup>163 of the <sup>M2</sup>Bankruptcy (Scotland) Act 1913][<sup>F28</sup>11A of the Judicial Factors (Scotland) Act 1889] is required by the provisions of that section to divide his insolvent estate among his creditors; or

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- (c) where the employer is a company, a winding-up order [<sup>F27</sup>or an administration order] has been made or a resolution for voluntary winding-up is passed with respect to it or a receiver of its undertaking is duly appointed [<sup>F27</sup>or [<sup>F26a</sup>voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 is approved under that Part]].

- (7) In this section “legal proceedings” does not include any proceedings before an industrial tribunal, but includes any proceedings to enforce a decision or award of an industrial tribunal.

#### Textual Amendments

- F19** S. 106(1A)(1B) inserted by Employment Act 1989 (c. 38, SIF 43:1) s. 29(3)(6), Sch. 6 para. 21(2), Sch. 9 para. 4(1)
- F20** Words repealed by Wages Act 1986 (c. 48, SIF 43:2), s. 32(2), **Sch. 5 Pt. I**
- F21** Words substituted by Employment Act 1989 (c. 38, SIF 43:1), s. 29(3)(6), Sch. 6 para. 21(3), **Sch. 9 para. 4(1)**
- F22** Words substituted with saving by Employment Act 1982 (c. 46, SIF 43:5), s. 20, **Sch. 2 para. 6(4)**
- F23** Words substituted by Employment Act 1990 (c. 38, SIF 43:5), s. 16(1), **Sch. 2 para. 1(3)**
- F24** S. 106(4) repealed by Employment Act 1989 (c. 38, SIF 43:1), s. 29(3)(4)(6), Sch. 6 para. 21(4), Sch. 7 Pt. II, **Sch. 9 para. 4(1)**
- F25** S. 106(5)(a)(b) substituted by Insolvency Act 1985 (c. 65, SIF 66), s. 235, **Sch. 8 para. 31(2)(a)**
- F26** Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(2), **Sch. 14**
- F27** Words inserted by Insolvency Act 1985 (c. 65, SIF 66), s. 235, **Sch. 8 para. 31(2)(b)**
- F28** Words from “11A” to “1889” substituted (S.) for words from “163” to “1913” by Bankruptcy (Scotland) Act 1985 (c. 66, SIF 66), s. 75(1), **Sch. 7 Pt. I para. 14(1)**

#### Marginal Citations

- M2** 1913 c. 20.

### 107 Supplementary provisions relating to applications under s. 106.

- (1) Where an employee makes an application to the Secretary of State under section 106, the Secretary of State may, by notice in writing given to the employer, require the employer to provide the Secretary of State with such information, and to produce for examination on behalf of the Secretary of State documents in his custody or under his control of such descriptions, as the Secretary of State may reasonably require for the purpose of determining whether the application is well-founded.
- (2) If any person on whom a notice is served under this section fails without reasonable excuse to comply with a requirement imposed by the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding [<sup>F29</sup>level 3 on the standard scale].
- (3) Any person who—
- in providing any information required by a notice under this section, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, or
  - produces for examination in accordance with any such notice a document which to his knowledge has been wilfully falsified,
- shall be guilty of an offence under this subsection.

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- (4) A person guilty of an offence under subsection (3) shall be liable on summary conviction to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding three months or both, or on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or both.
- (5) In subsection (4) above “the prescribed sum” means—
- (a) in England and Wales, the prescribed sum within the meaning of [<sup>F30</sup>section 32 of the <sup>M3</sup>Magistrates’ Courts Act 1980] (that is to say, £1,000 or another sum fixed by order under [<sup>F30</sup>section 143 of that Act] to take account of changes in the value of money);
  - (b) in Scotland, the prescribed sum within the meaning of section 289B of the <sup>M4</sup>Criminal Procedure (Scotland) Act 1975 (that is to say, £1,000 or another sum fixed by an order made under section 289D of that Act for that purpose).

#### Textual Amendments

**F29** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#) and [Criminal Procedure \(Scotland\) Act 1972 \(c. 21, SIF 39:1\)](#), [ss. 289F, 289G](#) (as inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [s. 54](#))

**F30** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), [Sch. 7 para. 175](#)

#### Marginal Citations

**M3** 1980 c. 43.

**M4** 1975 c. 21.

### [<sup>F31</sup>108] **References to tribunal relating to payments under s. 106.**

- (1) Where on an application made to the Secretary of State for a payment under section 106 it is claimed that an employer is liable to pay an employer’s payment, there shall be referred to an industrial tribunal—
- (a) any question as to the liability of the employer to pay the employer’s payment; and
  - (b) any question as to the amount of the sum payable in accordance with Schedule 7.
- (2) For the purposes of any reference under this section an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy.]

#### Textual Amendments

**F31** [S. 108](#) substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), [s. 29\(3\)\(6\)](#), [Sch. 6 para. 22](#), [Sch. 9 para. 4\(1\)](#)

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

**C23** [S. 108](#) modified by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), [s. 59\(2\)](#) and [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), [ss. 178\(2\)\(a\)](#), [231\(7\)](#), [235\(6\)](#)

[S. 108](#) modified (3.4.1995) by [1994 c. 19, s. 44\(3\)](#) (with [ss. 54\(5\)\(7\)](#), [55\(5\)](#), [Sch. 17 paras. 22\(1\)](#), [23\(2\)](#)); [S.I. 1995/852, art. 7 Sch. 3](#)

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

F32 109 .....

**Textual Amendments**

**F32** S. 109 repealed by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(2), [Sch. 3](#)

*Miscellaneous and supplemental*

**110 Strike during currency of employer’s notice to terminate contract.**

- (1) The provisions of this section shall have effect where, after an employer has given notice to an employee to terminate his contract of employment (in this section referred to as a “notice of termination”)—
- (a) the employee begins to take part in a strike of employees of the employer, and
  - (b) the employer serves on him a notice in writing (in this section referred to as “notice of extension”) requesting him to agree to extend the contract of employment beyond the time of expiry by an additional period comprising as many available days as the number of working days lost by striking (in this section referred to as “the proposed period of extension”).
- (2) A notice of extension shall indicate the reasons for which the employer makes the request contained in the notice, and shall state that unless either—
- (a) the employee complies with the request, or
  - (b) the employer is satisfied that, in consequence of sickness, injury or otherwise, he is unable to comply with it, or that (notwithstanding that he is able to comply with it) in the circumstances it is reasonable for him not to do so,
- the employer will contest any liability to pay him a redundancy payment in respect of the dismissal effected by the notice of termination.
- (3) For the purposes of this section an employee shall be taken to comply with the request contained in a notice of extension if, but only if, on each available day within the proposed period of extension, he attends at his proper or usual place of work and is ready and willing to work, whether he has signified his agreement to the request in any other way or not.
- (4) Where an employee on whom a notice of extension has been served—
- (a) complies with the request contained in the notice, or
  - (b) does not comply with it, but attends at his proper or usual place of work and is ready and willing to work on one or more (but not all) of the available days within the proposed period of extension,
- the notice of termination shall have effect, and shall be deemed at all material times to have had effect, as if the period specified in it had (in a case falling within paragraph (a)) been extended beyond the time of expiry by an additional period equal to the proposed period of extension or (in a case falling within paragraph (b)) had been extended beyond the time of expiry up to the end of the day (or, if more than one, the last of the days) on which he so attends and is ready and willing to work; and section 50 and Schedule 3 shall apply accordingly as if the period of notice required by section 49 were extended to a corresponding extent.

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

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- (5) Subject to subsection (6), if an employee on whom a notice of extension is served in pursuance of subsection (1) does not comply with the request contained in the notice, he shall not be entitled to a redundancy payment by reason of the dismissal effected by the notice of termination, unless the employer agrees to pay such a payment to him notwithstanding that the request has not been complied with.
- (6) Where a notice of extension has been served, and on a reference to an industrial tribunal it appears to the tribunal that the employee has not complied with the request contained in the notice and the employer has not agreed to pay a redundancy payment in respect of the dismissal in question, but that the employee was unable to comply with the request, or it was reasonable for him not to comply with it, as mentioned in subsection (2)(b) the tribunal may determine that the employer shall be liable to pay to the employee—
- (a) the whole of any redundancy payment to which the employee would have been entitled apart from subsection (5), or
  - (b) such part of any such redundancy payment as the tribunal thinks fit.
- (7) The service of a notice of extension, and any extension, by virtue of subsection (4) of the period specified in a notice of termination,—
- (a) shall not affect any right either of the employer or of the employee to terminate the contract of employment (whether before, at or after the time of expiry) by a further notice or without notice, and
  - (b) shall not affect the operation of sections 81 to 102 in relation to any such termination of the contract of employment.
- (8) In this section any reference to the number of working days lost by striking is a reference to the number of working days in the period beginning with the date of service of the notice of termination and ending with the time of expiry which are days on which the employee in question takes part in a strike of employees of the employer.
- (9) In this section, “strike” has the meaning given by paragraph 24 of Schedule 13, “time of expiry”, in relation to a notice of termination, means the time at which the notice would expire apart from this section, “working day”, in relation to an employee, means a day on which, in accordance with his contract of employment, he is normally required to work, “available day”, in relation to an employee, means a working day beginning at or after the time of expiry which is a day on which he is not taking part in a strike of employees of the employer, and “available day within the proposed period of extension” means an available day which begins before the end of that period.

## **111 Payments equivalent to redundancy rebates in respect of civil servants, etc.**

- (1) The provisions of this section shall have effect with respect to employment of any of the following descriptions, that is to say—
- (a) any such employment as is mentioned in paragraph (a), paragraph (b) <sup>F33</sup>or paragraph (c)] of subsection (1) of section 99 (whether as originally enacted or as modified by any order under section 149(1));
  - (b) any employment remunerated out of the revenue of the Duchy of Lancaster or the Duchy of Cornwall;
  - (c) any employment remunerated out of the Queen’s Civil List;
  - (d) any employment remunerated out of Her Majesty’s Privy Purse.

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- (2) Where the Secretary of State is satisfied that a payment has been, or will be, made in respect of the termination of any person's employment of any description specified in subsection (1), and that the payment has been, or will be, so made to or in respect of him—
- (a) in accordance with the <sup>M5</sup>Superannuation Act 1965, as that Act continues to have effect by virtue of section 23(1) of the <sup>M6</sup>Superannuation Act 1972,
  - (b) in accordance with any provision of a scheme made under section 1 of the Superannuation Act 1972, or
  - (c) in accordance with any such arrangements as are mentioned in subsection (3),
- the Secretary of State shall pay the appropriate sum out of the fund to the appropriate fund or authority.
- (3) The arrangements referred to in paragraph (c) of subsection (2) are any arrangements made with the approval of [<sup>F34</sup>the Treasury] for securing that payments by way of compensation for loss of any such employment as is mentioned in subsection (1) will be made—
- (a) in circumstances which in the opinion of [<sup>F34</sup>the Treasury] correspond (subject to the appropriate modifications) to those in which a right to a redundancy payment would have accrued if section 81 had applied, and
  - (b) on a scale which in the opinion of the [<sup>F34</sup>the Treasury], taking into account any sums which are payable as mentioned in subsection (2)(a) or (b) to or in respect of the person losing the employment in question, corresponds (subject to the appropriate modifications) to that on which a redundancy payment would have been payable if section 81 had applied.
- (4) For the purposes of subsection (2) the appropriate sum is the sum appearing to the Secretary of State to be equal to the amount of the redundancy rebate which would have been payable under section 104 if such a right as is mentioned in paragraph (a) of subsection (3) had accrued, and such a redundancy payment as is mentioned in paragraph (b) of subsection (3) had been payable and had been paid.
- (5) Any accounts prepared by the Secretary of State under section 103(2) shall show as a separate item the aggregate amount of sums paid under subsection (2) during the period to which the accounts relate.
- (6) In this section “the appropriate fund or authority”—
- (a) in relation to employment of any description falling within paragraph 7 of subsection (1) of section 39 of the <sup>M7</sup>Superannuation Act 1965 (whether as originally enacted or as modified by any order under that section), means the fund out of which, or the body out of whose revenues, the employment is remunerated;
  - (b) in relation to any employment remunerated out of the revenues of the Duchy of Lancaster, means the Chancellor of the Duchy, and, in relation to any employment remunerated out of the revenues of the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;
  - (c) in relation to any employment remunerated out of the Queen's Civil List or out of Her Majesty's Privy Purse, means the Civil List or the Privy Purse, as the case may be; and
  - (d) in any other case, means the Consolidated Fund.

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**Textual Amendments**

**F33** Words repealed (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(2), [Sch. 10](#)

**F34** Words substituted by virtue of [S.I. 1981/1670](#), [arts. 2\(1\)\(d\)](#), 3(5)

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

**C24** [S. 111\(2\)](#) restricted by [Wages Act 1986 \(c. 48, SIF 43:2\)](#), ss. 28(a), 32(3), [Sch. 6 para. 10\(1\)](#)

**Marginal Citations**

**M5** [1965 c. 74](#).

**M6** [1972 c. 11](#).

**M7** [1965 c. 74](#).

**112 References to tribunal relating to equivalent payments.**

(1) This section applies to any such payment as is mentioned in subsection (3) of section 111 which is payable in accordance with any such arrangements as are mentioned in that subsection.

(2) Where the terms and conditions (whether constituting a contract of employment or not) on which any person is employed in any such employment as is mentioned in subsection (1) of section 111 include provision—

- (a) for the making of any payment to which this section applies, and
- (b) for referring to a tribunal any such question as is mentioned in the following provisions of this subsection,

any question as to the right of any person to such a payment in respect of that employment, or as to the amount of such a payment shall be referred to and determined by an industrial tribunal.

<sup>F35</sup> **113** .....

**Textual Amendments**

**F35** [S. 113](#) repealed by [Wages Act 1986 \(c. 48, SIF 43:2\)](#), ss. 28, 32(2)(3), [Sch. 5 Pt. I](#), [Sch. 6 para. 10](#)

**114 Meaning of “Government of overseas territory”.**

In this Part “overseas territory” means any territory or country outside the United Kingdom; and any reference to the Government of an overseas territory includes a reference to a Government constituted for two or more overseas territories and to any authority established for the purpose of providing or administering services which are common to, or relate to matters of common interest to, two or more such territories.

**115 Application of Part VI to employment not under contract of employment.**

(1) This section applies to employment of any description which—

- (a) is not employment under a contract of service or of apprenticeship, and

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- (b) is not employment of any description falling within paragraphs (a) to (d) of section 111(1),  
but is employment such that secondary Class 1 contributions are payable under Part I of the <sup>M8</sup>Social Security Act 1975 in respect of persons engaged therein.
- (2) The Secretary of State may by regulations under this section provide that, subject to such exceptions and modifications as may be prescribed by the regulations, this Part and the provisions of this Act supplementary thereto shall have effect in relation to any such employment of a description to which this section applies as may be so prescribed as if—
- (a) it were employment under a contract of employment, and
- (b) any person engaged in employment of that description were an employee, and
- (c) such person as may be determined by or under the regulations were his employer.
- (3) Without prejudice to the generality of subsection (2), regulations made under this section may provide that section 105 shall apply to persons engaged in any such employment of a description to which this section applies as may be prescribed by the regulations, as if those persons were employees to whom that section applies.

#### Marginal Citations

M8 1975 c. 14.

### 116 Provision for treating termination of certain employments by statute as equivalent to dismissal.

- (1) The Secretary of State may by regulations under this section provide that, subject to such exceptions and modifications as may be prescribed by the regulations, the provisions of this Part shall have effect in relation to any person who, by virtue of any statutory provisions,—
- (a) is transferred to, and becomes a member of, a body specified in those provisions, but
- (b) at a time so specified ceases to be a member of that body unless before that time certain conditions so specified have been fulfilled,
- as if the cessation of his membership of that body by virtue of those provisions were dismissal by his employer by reason of redundancy.
- (2) The power conferred by subsection (1) shall be exercisable whether membership of the body in question constitutes employment within the meaning of section 153 or not; and, where that membership does not constitute such employment, that power may be exercised in addition to any power exercisable by virtue of section 115.

### 117 Employees paid by person other than employer.

- (1) This section applies to any employee whose remuneration is, by virtue of any statutory provision, payable to him by a person other than his employer.
- (2) For the purposes of the operation in relation to employees to whom this section applies, of the provisions of this Part and Schedule 13 specified in column 1 of Schedule 8,



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any reference to the employer which is specified in column 2 of Schedule 8 shall be construed as a reference to the person responsible for paying the remuneration.

(2A)

<sup>F36</sup>(3) In relation to employees to whom this section applies, section 119 shall have effect as if—

- (a) any reference in subsection (1) or subsection (2) of that section to a notice required or authorised to be given by or to an employer included a reference to a notice which, by virtue of subsection (2), is required or authorised to be given by or to the person responsible for paying the remuneration;
- (b) in relation to a notice required or authorised to be given to that person, any reference to the employer in paragraph (a) or paragraph (b) of subsection (2) of that section were a reference to that person; and
- (c) the reference to the employer in subsection (5) of that section included a reference to that person.

(4) In this section and in Schedule 8, “the person responsible for paying the remuneration” means the person by whom the remuneration is payable as mentioned in subsection (1).

#### Textual Amendments

**F36** S. 117(2A)(2B) inserted by [Wages Act 1986 \(c. 48, SIF 43:2\)](#) s. 27(4) and repealed by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(4), [Sch. 7 Pt. II](#)

### 118 Statutory compensation schemes.

- (1) This section applies to any statutory provision which was in force immediately before 6th December 1965, whereby the holders of such situations, places or employments as are specified in that provision are, or may become, entitled to compensation for loss of employment, or for loss of diminution of emoluments or of pension rights, in consequence of the operation of any other statutory provision referred to therein.
- (2) The Secretary of State may make provision by regulations for securing that where apart from this section a person is entitled to compensation under a statutory provision to which this section applies, and the circumstances are such that he is also entitled to a redundancy payment, the amount of the redundancy payment shall be set off against the compensation to which he would be entitled apart from this section; and any statutory provision to which any such regulations apply shall have effect subject to the regulations.

### 119 Provisions as to notices.

- (1) Any notice which under this Part is required or authorised to be given by an employer to an employee may be given by being delivered to the employee, or left for him at his usual or last-known place of residence, or sent by post addressed to him at that place.
- (2) Any notice which under this Part is required or authorised to be given by an employee to an employer may be given either by the employee himself or by a person authorised by him to act on his behalf, and, whether given by or on behalf of the employee,—
  - (a) may be given by being delivered to the employer, or sent by post addressed to him at the place where the employee is or was employed by him, or

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- (b) if arrangements on that behalf have been made by the employer, may be given by being delivered to a person designated by the employer in pursuance of the arrangements, or left for such a person at a place so designated, or sent by post to such a person at an address so designated.
- (3) In the preceding provisions of this section, any reference to the delivery of a notice shall, in relation to a notice which is not required by this Part to be in writing, be construed as including a reference to the oral communication of the notice.
- (4) Any notice which, in accordance with any provision of this section, is left for a person at a place referred to in that provision shall, unless the contrary is proved, be presumed to have been received by him on the day on which it was left there.
- (5) Nothing in subsection (1) or subsection (2) shall be construed as affecting the capacity of an employer to act by a servant or agent for the purposes of any provision of this Part, including either of those subsections.

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

- C25** S. 119 modified by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), [s. 59\(2\)](#) and [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), [ss. 178\(2\)\(a\)](#), 231(7), 235(6)
- S. 119 modified (3.4.1995) by [1994 c. 19, s. 44\(3\)](#) (with [ss. 54\(5\)\(7\)](#), [55\(5\)](#), [Sch. 17 paras. 22\(1\)](#), [23\(2\)](#)); [S.I. 1995/852](#), [art. 7 Sch. 3](#)

**120 Offences.**

- (1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act on any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) In this section “director”, in relation to a body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

**Status:**

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**Changes to legislation:**

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