



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART I

#### PARTICULARS OF TERMS OF EMPLOYMENT

##### *Written particulars of terms of employment*

#### **1 Written particulars of terms of employment.**

- (1) Not later than thirteen weeks after [<sup>F1</sup>the beginning of an employee's employment] with an employer, the employer shall give to the employee a written statement in accordance with the following provisions of this section.
- (2) An employer shall in a statement under this section—
  - (a) identify the parties;
  - (b) specify the date when the employment began;
  - [<sup>F2</sup>(c) specify the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).]
- (3) A statement under this section shall contain the following particulars of the terms of employment as at a specified date not more than one week before the statement is given, that is to say—
  - (a) the scale or rate of remuneration, or the method of calculating remuneration,
  - (b) the intervals at which remuneration is paid (that is, whether weekly or monthly or by some other period),
  - (c) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),
  - (d) any terms and conditions relating to—

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- (i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),
- (ii) incapacity for work due to sickness or injury, including any provision for sick pay,
- (iii) pensions and pension schemes,
- (e) the length of notice which the employee is obliged to give and entitled to receive to determine his contract of employment, and
- (f) the title of the job which the employee is employed to do:

Provided that paragraph (d)(iii) shall not apply to the employees of any body or authority if the employees' pension rights depend on the terms of a pension scheme established under any provision contained in or having effect under an Act of Parliament and the body or authority are required by any such provision to give to new employees information concerning their pension rights, or concerning the determination of questions affecting their pension rights.

- (4) Subject to subsection (5) [<sup>F3</sup>and section 2A(1)], every statement given to an employee under this section shall include a note—
- (a) specifying any disciplinary rules applicable to the employee, or referring to a document which is reasonably accessible to the employee and which specifies such rules;
  - (b) specifying, by description or otherwise—
    - (i) a person to whom the employee can apply if he is dissatisfied with any disciplinary decision relating to him; and
    - (ii) a person to whom the employee can apply for the purpose of seeking redress of any grievance relating to his employment, and the manner in which any such application should be made;
  - (c) where there are further steps consequent upon any such application, explaining those steps or referring to a document which is reasonably accessible to the employee and which explains them; and
  - (d) stating whether a contracting-out certificate is in force for the employment in respect of which the statement is given.
- (5) The provisions of paragraphs (a) to (c) of subsection (4) shall not apply to rules, disciplinary decisions, grievances or procedures relating to health or safety at work.
- (6) The definition of week given by section 153(1) does not apply for the purposes of this section.

#### Textual Amendments

- F1** Words substituted with saving by [Employment Act 1982 \(c.46, SIF 43:5\)](#), s. 20, **Sch. 2 para. 8(1)(a)**
- F2** [S. 1\(2\)\(c\)](#) substituted with saving by [Employment Act 1982 \(c.46, SIF 43:5\)](#), s. 20, **Sch. 2 para. 8(1)(b)**
- F3** Words inserted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(3), Sch. 6 para. 18, **Sch. 9 para. 4(1)**

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

- C1** [S. 1](#) modified by [Dock Work Act 1989 \(c. 13, SIF 43:1\)](#), s. **6(2)**

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## 2 Supplementary provisions relating to statements under s. 1.

- (1) If there are no particulars to be entered under any of the heads of paragraph (d) of subsection (3) of section 1, or under any of the other provisions of section 1(2) and (3), that fact shall be stated.
- (2) If the contract is for a fixed term, the statement given under section 1 shall state the date when the contract expires.
- (3) A statement given under section 1 may, for all or any of the particulars to be given by the statement, refer the employee to some document which the employee has reasonable opportunities of reading in the course of his employment or which is made reasonably accessible to him in some other way.

[<sup>F4</sup>(4) No statement need be given under section 1 where—

- (a) the employee's employment began not more than six months after the end of earlier employment with the same employer,
- (b) a statement under that section, and any information subsequently required under section 4, was duly given to the employee in respect of his earlier employment, and
- (c) the terms of his present employment are the same as those of his earlier employment and any other matters falling within section 1(4) of which particulars were to be given by that statement are also unchanged,

but without prejudice to the operation of subsection (1) of section 4 if there is subsequently a change in his terms of employment or in any of those matters.]

### Textual Amendments

**F4** S. 2(4) substituted (subject to a saving in S.I. 1990/189, art. 3) by Employment Act 1989 (c. 38, SIF 43:1), s. 13(2), Sch. 9 para. 4(1)

## [<sup>F5</sup>2A Particulars of disciplinary procedures not required where less than 20 employees.

- (1) The note which, by virtue of subsection (4) of section 1, is required to be included in a statement given to an employee under that section need not comply with the following provisions of that subsection, namely—
  - (a) paragraph (a),
  - (b) in paragraph (b), sub-paragraph (i) and the words following sub-paragraph (ii) so far as relating to sub-paragraph (i), and
  - (c) paragraph (c),if on the date when the employee's employment began the relevant number of employees was less than twenty.
- (2) In subsection (1) "the relevant number of employees", in relation to an employee, means the number of employees employed by his employer added to the number of employees employed by any associated employer.]

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**Textual Amendments**

**F5** S. 2A inserted (subject to a saving in S.I. 1990/189, **art. 3**) by **Employment Act 1989 (c. 38, SIF 43:1)**, s. 13(3), **Sch. 9 para. 4(1)**

**3**

<sup>F6</sup> .....

**Textual Amendments**

**F6** Ss. 3, 7 repealed by **Employment Act 1982 (c. 46, SIF 43:5)**, **Sch. 4**

**4 Changes in terms of employment.**

- (1) If after the date to which a statement given under section 1 relates there is a change in the terms of employment to be included, or referred to, in that statement the employer shall, not more than one month after the change, inform the employee of the nature of the change by a written statement and, if he does not leave a copy of the statement with the employee, shall preserve the statement and ensure that the employee has reasonable opportunities of reading it in the course of his employment, or that it is made reasonably accessible to him in some other way.
- (2) A statement given under subsection (1) may, for all or any of the particulars to be given by the statement, refer the employee to some document which the employee has reasonable opportunities of reading in the course of his employment, or which is made reasonably accessible to him in some other way.
- (3) If, in referring in the statement given under section 1 or under subsection (1) of this section to any such document, the employer indicates to the employee that future changes in the terms of which the particulars are given in the document will be entered up in the document (or recorded by some other means for the information of persons referring to the document), the employer need not under subsection (1) inform the employee of any such change if it is duly entered up or recorded not later than one month after the change is made.
- (4) Where, after an employer has given to an employee a written statement in accordance with section 1—
  - (a) the name of the employer (whether an individual or a body corporate or partnership) is changed, without any change in the identity of the employer, or
  - (b) the identity of the employer is changed, in such circumstances that, . . . <sup>F7</sup>the continuity of the employee’s period of employment is not broken,
 and (in either case) the change does not involve any change in the terms (other than the names of the parties) included or referred to in the statement, then, the person who, immediately after the change, is the employer shall not be required to give to the employee a statement in accordance with section 1, but, subject to subsection (5), the change shall be treated as a change falling within subsection (1) of this section.
- (5) A written statement under this section which informs an employee of such a change in his terms of employment as is referred to in subsection (4)(b) shall specify the date on which the employee’s [<sup>F8</sup>period of continuous employment] began.

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[<sup>F9</sup>(6) Any reference in subsection (1), (3) or (4) to the terms of employment which were to be, or were, included or referred to in a statement given under section 1 shall be construed as including a reference to any other matters falling within section 1(2)(c) and (4) of which particulars were to be given by that statement.]

#### Textual Amendments

- F7** Words repealed with saving by [Employment Act 1982 \(c.46, SIF 43:5\)](#), s. 20, [Sch. 2 para. 8\(3\)\(a\)](#), [Sch. 4](#)
- F8** Words substituted with saving by [Employment Act 1982 \(c.46, SIF 43:5\)](#), s. 20, [Sch. 2 para. 8\(3\)\(b\)](#)
- F9** [S. 4\(6\)](#) added by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 13(4), [Sch. 9 para. 4\(1\)](#)

## 5 Exclusion of certain contracts in writing.

[<sup>F10</sup>(1)] Sections 1 and 4 shall not apply to an employee if and so long as the following conditions are fulfilled in relation to him, that is to say—

- (a) the employee’s contract of employment is a contract which has been reduced to writing in one or more documents and which contains express terms affording the particulars to be given under each of the paragraphs in subsections (3) of section 1, and under each head of paragraph (d) of that subsection;
- (b) there has been given to the employee a copy of the contract (with any variations made from time to time), or he has reasonable opportunities of reading such a copy in the course of his employment, or such a copy is made reasonably accessible to him in some other way; and
- (c) such a note as is mentioned in section 1(4) has been given to the employee or he has reasonable opportunities of reading such a note in the course of his employment or such a note is made reasonably accessible to him in some other way:

F11

[<sup>F12</sup>(2) If on the date when the employee’s employment began the relevant number of employees was less than twenty, any reference in subsection (1)(c) to such a note as is there mentioned shall be construed as including a reference to such a note as is mentioned in section 1(4) as it has effect with the omission of the provisions specified in section 2A(1)(a) to (c).

(3) In subsection (2) “the relevant number of employees” has the meaning given by section 2A(2).]

#### Textual Amendments

- F10** [S. 5\(1\)](#) renumbered from s. 5 by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), ss. 13(5), 29(6), [Sch. 9 para. 4\(1\)](#) (subject to a saving in [S.I. 1990/189, art. 3](#))
- F11** [S. 5](#) proviso repealed by [Employment Act 1982 \(c.46, SIF 43:5\)](#), [Sch. 4](#)
- F12** [S. 5\(2\)\(3\)](#) added (subject to a saving in [S.I. 1990/189, art. 3](#)) by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), ss. 13(5), 29(6), [Sch. 9 para. 4\(1\)](#)

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**[<sup>F13</sup>5A Employees becoming or ceasing to be excluded from ss. 1 to 4.**

- (1) Sections 1 to 4 shall apply to an employee who at any time comes or ceases to come within the exceptions from those sections provided for by section 5, 141, 144, 145 or 146(4) to (7), or under section 149, as if his employment with his employer terminated or began at that time.
- (2) Subsection (1) of section 1 shall apply to an employee who ceases to come within the exception provided by section 5 with the substitution for the words “thirteen weeks” of the words “one month”.
- (3) The fact that section 1 is directed to apply to an employee as if his employment began on his ceasing to come within one of the exceptions referred to in subsection (1) shall not affect the obligation under subsection (2)(b) of that section to specify the date on which his employment actually began.]

**Textual Amendments**

**F13** S. 5A inserted with saving by [Employment Act 1982 \(c.46, SIF 43:5\)](#), s. 20, [Sch. 2 para. 8\(4\)](#)

**6 Power of Secretary of State to require further particulars.**

The Secretary of State may by order provide that section 1 shall have effect as if such further particulars as may be specified in the order were included in the particulars to be included in a statement under that section, and, for that purpose, the order may include such provisions amending section 1(1), (2) and (3) as appear to the Secretary of State to be expedient.

<sup>F147</sup> .....

**Textual Amendments**

**F14** Ss. 3, 7 repealed by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 4](#)

*Itemised pay statements*

**8 Right to itemised pay statement.**

Every employee shall have the right to be given by his employer at or before the time at which any payment of wages or salary is made to him an itemised pay statement, in writing, containing the following particulars, that is to say,—

- (a) the gross amount of the wages or salary;
- (b) the amounts of any variable and, subject to section 9, any fixed deductions from that gross amount and the purposes for which they are made;
- (c) the net amount of wages or salary payable; and
- (d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

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## **9 Standing statement of fixed deductions.**

- (1) A pay statement given in accordance with section 8 need not contain separate particulars of a fixed deduction if it contains instead an aggregate amount of fixed deductions, including that deduction, and the employer has given to the employee, at or before the time at which that pay statement is given, a standing statement of fixed deductions, in writing, which contains the following particulars of each deduction comprised in that aggregate amount, that is to say,—
  - (a) the amount of the deduction;
  - (b) the intervals at which the deduction is to be made; and
  - (c) the purpose for which it is made,and which, in accordance with subsection (4), is effective at the date on which the pay statement is given.
- (2) A standing statement of fixed deductions may be amended, whether by addition of a new deduction or by a change in the particulars or cancellation of an existing deduction, by notice in writing, containing particulars of the amendment, given by the employer to the employee.
- (3) An employer who has given to an employee a standing statement of fixed deductions shall, within the period of twelve months beginning with the date on which the first standing statement was given and at intervals of not more than twelve months thereafter, re-issue it in a consolidated form incorporating any amendments notified in accordance with subsection (2).
- (4) A standing statement of fixed deductions shall become effective, for the purposes of subsection (1), on the date on which it is given to the employee and shall cease to have effect on the expiration of the period of twelve months beginning with that date, or, where it is re-issued in accordance with subsection (3), the expiration of the period of twelve months beginning with the date on which it was last re-issued.

## **10 Power to amend ss. 8 and 9.**

The Secretary of State may by order—

- (a) vary the provisions of section 8 and 9 as to the particulars which must be included in a pay statement or a standing statement of fixed deductions by adding items to or removing items from the particulars listed in those sections or by amending any such particulars; and
- (b) vary the provisions of section 9(3) and (4) so as to shorten or extend the periods of twelve months referred to in those subsections, or those periods as varied from time to time under this section.

### *Enforcement of rights under Part I*

## **11 References to industrial tribunals.**

- (1) Where an employer does not give an employee a statement as required by section 1 or 4(1) or 8, the employee may require a reference to be made to an industrial tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the relevant section.
- (2) Where—

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- (a) a statement purporting to be a statement under section 1 or 4(1), or
  - (b) a pay statement, or a standing statement of fixed deductions, purporting to comply with section 8 or 9(1),
- has been given to an employee, and a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of this Part, either the employer or the employee may require that question to be referred to and determined by an industrial tribunal.
- (3) Where a statement under section 1 or 4(1) given by an employer to an employee contains such an indication as is mentioned in section 4(3), and
- (a) any particulars purporting to be particulars of a change to which that indication relates are entered up or recorded in accordance with that indication, and
  - (b) a question arises as to the particulars which ought to have been so entered up or recorded,
- either the employer or the employee may require that question to be referred to and determined by an industrial tribunal.
- (4) In this section, a question as to the particulars which ought to have been included—
- (a) in a pay statement, or in a standing statement of fixed deductions, does not include a question solely as to the accuracy of an amount stated in any such particulars;
  - (b) in a note under section 1(4), does not include any question whether the employment is, has been or will be contracted-out employment for the purposes of Part III of the <sup>M1</sup>Social Security Pensions Act 1975.
- (5) Where, on a reference under subsection (1), an industrial tribunal determines particulars as being those which ought to have been included or referred to in a statement given under section 1 or 4(1) the employer shall be deemed to have given to the employee a statement in which those particulars were included, or referred to, as specified in the decision of the tribunal.
- (6) On determining a reference under subsection (2)(a), an industrial tribunal may either confirm the particulars as included or referred to in the statement given by the employer, or may amend those particulars, or may substitute other particulars for them, as the tribunal may determine to be appropriate; and the statement shall be deemed to have been given by the employer to the employee in accordance with the decision of the tribunal.
- (7) On determining a reference under subsection (3), an industrial tribunal may either confirm the particulars to which the reference relates, or may amend those particulars or may substitute other particulars for them, as the tribunal may determine to be appropriate; and particulars of the change to which the reference relates shall be deemed to have been entered up or recorded in accordance with the decision of the tribunal.
- (8) Where on a reference under this section an industrial tribunal finds that an employer has failed to give an employee any pay statement in accordance with section 8 or that a pay statement or standing statement of fixed deductions does not, in relation to a deduction, contain the particulars required to be included in that statement by that section or section 9(1)—
- (a) the tribunal shall make a declaration to that effect; and
  - (b) where the tribunal further finds that any unnotified deductions have been made from the pay of the employee during the period of thirteen weeks



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immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay the employee a sum not exceeding the aggregate of the unnotified deductions so made.

In this subsection “unnotified deduction” means a deduction made without the employer giving the employee, in any pay statement or standing statement of fixed deductions, the particulars of that deduction required by section 8 or 9(1).

- (9) An industrial tribunal shall not entertain a reference under this section in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made was made before the end of the period of three months beginning with the date on which the employment ceased.

#### Marginal Citations

M1 1975 c. 60.

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

- C2** 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>F15</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>F16</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>F17</sup>strike, lock-out or other industrial action] involving any employee of his employer or of an associated employer.
- [<sup>F16</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**

- F15** S. 13(1)(2) inserted with saving by Employment Act 1982 (c.46, SIF 43:5), s. 20, Sch. 2 para. 1  
**F16** 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  
**F17** 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>F18</sup>£12.65].
- (2) An employee shall not be entitled to guarantee payments in respect of more than the specified number of days in [<sup>F19</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>F20</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**

- F18** Words substituted by virtue of S.I. 1990/384, **arts. 2, 3** (which S.I. is revoked (1.4.1991) by S.I. 1991/464, **art. 1(2)** (with **art. 3**)
- F19** 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
- F20** 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—
- (a) 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
  - (b) 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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*Changes to legislation:* There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978. (See end of Document for details)

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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>F21</sup>(a) section 14 of the <sup>M2</sup>Wages Act 1986;
  - (b) section 3 of the <sup>M3</sup>Agricultural Wages Act 1948;
  - (c) section 3 of the <sup>M4</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

- F21** 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

- M2** 1986 c. 48.  
**M3** 1948 c. 47.  
**M4** 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—
- any requirement imposed by or under any provision of any enactment or of any instrument made under any enactment, or
  - any recommendation in any provision of a code of practice issued or approved under section 16 of the <sup>M5</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

- M5** 1974 c. 37.

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

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

[<sup>F22</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>F23</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>F23</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

- F22** S. 20(1)(2) inserted with saving by [Employment Act 1982 \(c.46, SIF 43:5\)](#), s. 20, **Sch. 2 para. 2**
- F23** 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)

- C3** 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>F24</sup> Right not to suffer detriment in health and safety cases]*

### Textual Amendments

- F24** 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>F25F26</sup> 22A. ....*

### Textual Amendments

- F25** 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**.
- F26** S. 22A repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

<sup>F320</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**

**F320** 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

<sup>F27</sup>**22AA**.....

**Textual Amendments**

**F25** 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**.

**F27** S. 22AA repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

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**<sup>F321</sup>22A 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**

**F321** S. 22AA inserted (26.10.1995) by S.I. 1995/2587, art. 12(1)

VALID FROM 22/08/1996

**<sup>F28</sup>22B .....**

**Textual Amendments**

- F25** 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.
- F28** 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>F322</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**

**F322** 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)**

**C85** 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

**F29** 22C] .....

**Textual Amendments**

**F25** 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**.

**F29** 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**

**F323** 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**

**F323** 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)**

**C86** 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>F30</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>F31</sup>any trade union or of a particular trade union or of one of a number of particular trade unions]

[<sup>F32</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>F33</sup>(3)

- [<sup>F34F35</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

- F30** Words repealed by Employment Act 1988 (c. 19, SIF 43:5), s. 33(2), **Sch. 4**
- F31** Words substituted by Employment Act 1982 (c.46, SIF 43:5), s. 10(4) with saving in S.I. 1982/1656, **Sch. 2**
- F32** 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**
- F33** S. 23(2A)(2B) repealed by Employment Act 1988 (c. 19, SIF 43:5), ss. 11(a), 33(2), **Sch. 4**
- F34** S. 23(7) substituted by Employment Act 1988 (c. 19, SIF 43:5), s. 33(1), **Sch. 3 Pt. I para. 2(1)**
- F35** 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)

- C4** S. 23 amended (temp. until 1.11.1984) by S.I. 1982/1656, art. 3, **Sch. 2**
- C5** 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)

C6 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>F36</sup>
  - (b)

<sup>F36</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

F36 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>F37</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

**F37** 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>F38</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>F39</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>M6</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.

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#### **Textual Amendments**

**F38** 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

**F39** 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

M6 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>M7</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

M7 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>[F40]</sup>(bb) a member of the Broads Authority;
  - (c) a member of any statutory tribunal;
  - <sup>[F41]</sup>(cc) a member of, in England and Wales, a board of visitors appointed under section 6(2) of the <sup>M8</sup>Prison Act 1952 or, in Scotland, a visiting committee appointed under section 19(3) of the Prisons (Scotland) Act <sup>M9</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>[F42]</sup>a National Health Service Trust or, in England and Wales, a Regional Health Authority <sup>[F43]</sup>an Area Health Authority or a District Health

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Authority [<sup>F44</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 or college council or the governing body of a central institution or a college of education; <sup>F45</sup>

[<sup>F46</sup>(ee) a member of the governing body of a grant-maintained school;]

[<sup>F47X1</sup>(ef) a member of the governing body of a higher education corporation; or]

[<sup>F48X2</sup>(ef) a member of a school board or of the board of management of a self-governing school;]

(f) a member of, in England and Wales, [<sup>F49</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>M10</sup>Local Government Act 1972, and in relation to Scotland has the same meaning as in the <sup>M11</sup>Local Government (Scotland) Act 1973;

(b) “Regional Health Authority” <sup>F50</sup> “Area Health Authority” [<sup>F51</sup>and District Health Authority][<sup>F52</sup>and “Family Practitioner Committee”] have the same meaning as in the <sup>M12</sup>National Health Service Act 1977, and “Health Board” has the same meaning as in [<sup>F53</sup>the <sup>M13</sup>National Health Service (Scotland) Act 1978];

(c) “local education authority” means the authority designated by section 192(1) of the <sup>M14</sup>Local Government Act 1972, “school or college council” means a body appointed under section 125(1) of the <sup>M15</sup>Local Government (Scotland) Act 1973, [<sup>F54</sup>and “central institution” and “college of education”][<sup>F54</sup>“board of management”, “central institution”, “college of education” and “self-governing school”] have the meanings assigned to them by [<sup>F55</sup>section 135(1) of the <sup>M16</sup>Education (Scotland) Act 1980][<sup>F56</sup>and “school board” has the meaning assigned by section 1(1) of the School Boards (Scotland) Act 1988]; 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.

(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:—

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- (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.

#### Editorial Information

- X1** S. 29(1)(ef) inserted by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 80**
- X2** 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)**

#### Textual Amendments

- F40** 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**
- F41** S. 29(1)(cc) inserted by S.I. 1990/1870, **art. 2**
- F42** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), **Sch. 9 para. 20**
- F43** Words substituted by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), **Sch. 1 para. 84**
- F44** Words inserted by S.I. 1985/39, **art. 8(a)(i)**
- F45** 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**
- F46** 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)**
- F47** S. 29(1)(ef) inserted by [Education Reform Act 1988 \(c. 40, SIF 41:1\)](#), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 80**
- F48** 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)**
- F49** 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)
- F50** Word repealed by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), **Sch. 1 para. 84**
- F51** Words inserted by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), **Sch. 1 para. 84**
- F52** Words inserted by S.I. 1985/39, **art. 8(a)(ii)**
- F53** Words substituted by virtue of [National Health Service \(Scotland\) Act 1978 \(c. 29, SIF 113:2\)](#), **Sch. 15 para. 2**
- F54** Words commencing “board of management” substituted (S.) for words commencing “and “central institution”...” by [Self-Governing Schools etc. \(Scotland\) Act 1989 \(c. 39, SIF 41:2\)](#), s. 82(1), **Sch. 10 para. 7(b)**
- F55** Words substituted by virtue of [Interpretation Act 1978 \(c. 30, SIF 115\)](#), s. 17(2)(a)

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**F56** Words added (S.) by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(1), **Sch. 10 para. 7(b)**

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

**C7** S. 29(3) applied by Local Government and Housing Act 1989 (c. 42, SIF 81:1,2), **s. 10(2)**

**C8** S. 29(4) excluded by Local Government and Housing Act 1989 (c. 42, SIF 81:1,2), **s. 10(1)**

**Marginal Citations**

**M8** 1952 c.52(39:1).

**M9** 1989 c.45(39:1).

**M10** 1972 c. 70.

**M11** 1973 c. 65.

**M12** 1977 c. 49.

**M13** 1978 c. 29.

**M14** 1972 c. 70.

**M15** 1973 c. 65.

**M16** 1980 c. 44.

**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.

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- (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
  - (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.

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- (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”).
- (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)**

**C9** S. 31(2) modified (1.4.1996) by S.I. 1996/1023, arts. 3, 4

**[<sup>F57</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

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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 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>M17</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

**F57** S. 31A inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), s. 13

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

**C10** 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

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### Marginal Citations

M17 1979 c. 36.

VALID FROM 22/08/1996

<sup>F58</sup> 31AA .....

### Textual Amendments

F58 S. 31AA repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 3 Pt. I (with ss. 191-195, 202)

[<sup>F324</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

F324 S. 31AA inserted (26.10.1995) by S.I. 1995/2587, reg. 13(1)

[<sup>F59</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.



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- (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.]

#### Textual Amendments

**F59** 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)

### [<sup>F60</sup>PART III

#### MATERNITY]

#### Textual Amendments

**F60** Pt. III (ss. 33–48) repealed so far as relating to maternity pay by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 49(3), Sch. 4 Pt. III paras. 15, 16 (with saving in S.I. 1987/406, [reg. 2\(i\)](#))

VALID FROM 10/06/1994

### [<sup>F61</sup>General right to maternity leave]

#### Textual Amendments

**F61** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by [1993 c. 19, ss.23, 25, Schs.2,3](#); S.I. 1994/1365, art. 2, [Sch.](#)

#### <sup>F62</sup>34 Commencement of maternity leave period.

- (1) Subject to subsection (2), an employee's maternity leave period commences with—
- (a) the date which, in accordance with section 36, she notifies to her employer as the date on which she intends her period of absence from work in exercise of her right to maternity leave to commence, or
  - (b) if earlier, the first day on which she is absent from work wholly or partly because of pregnancy or childbirth after the beginning of the sixth week before the expected week of childbirth.
- (2) Where childbirth occurs before the day with which the employee's maternity leave period would otherwise commence, her maternity leave period shall commence with the day on which childbirth occurs.
- (3) The Secretary of State may by order vary either of the provisions of subsections (1) and (2).
- (4) No order shall be made under subsection (3) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

*Status: Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.*

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

#### Textual Amendments

**F62** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss.23, 25, Schs. 2, 3; S.I. 1994/1365, art. 2, Sch.

#### <sup>F63</sup>35 Duration of maternity leave period.

- (1) Subject to subsections (2) and (3), an employee's maternity leave period shall continue for the period of fourteen weeks from its commencement or until the birth of the child, if later.
- (2) Subject to subsection (3), where any requirement imposed by or under any provision of any enactment or of any instrument made under any enactment, other than a provision for the time being specified in an order made under section 45(3), prohibits her working for any period after the end of the period mentioned in subsection (1) by reason of her having recently given birth, her maternity leave period shall continue until the expiry of that later period.
- (3) Where an employee is dismissed after the commencement of her maternity leave period but before the time when (apart from this subsection) that period would end, the period ends at the time of the dismissal.
- (4) The Secretary of State may by order vary any of the provisions of this section.
- (5) No order shall be made under subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

#### Textual Amendments

**F63** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss.23, 25, Schs. 2, 3; S.I. 1994/1365, art. 2, Sch.

#### <sup>F64</sup>36 Notice of commencement of leave.

- (1) An employee shall not have the right conferred by section 33 unless—
  - (a) she notifies her employer of the date (within the restriction imposed by subsection (2)) (“the notified leave date”) on which she intends her period of absence from work in exercise of her right to maternity leave to commence—
    - (i) not less than twenty-one days before that date, or
    - (ii) if that is not reasonably practicable, as soon as is reasonably practicable,
  - (b) where she is first absent from work wholly or partly because of pregnancy or childbirth before the notified leave date or before she has notified such a date and after the beginning of the sixth week before the expected week of childbirth, she notifies her employer as soon as is reasonably practicable that she is absent for that reason, or
  - (c) where childbirth occurs before the notified leave date or before she has notified such a date, she notifies her employer that she has given birth as soon as is reasonably practicable after the birth,
 and any notice she is required to give under paragraphs (a) to (c) shall, if her employer so requests, be given in writing.

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

- (2) No date may be notified under subsection (1)(a) which occurs before the beginning of the eleventh week before the expected week of childbirth.
- (3) Where, in the case of an employee, either paragraph (b) or (c) of subsection (1) has fallen to be satisfied, and has been so satisfied, nothing in paragraph (a) of that subsection shall impose any requirement on the employee.

#### Textual Amendments

**F64** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss.23, 25, Schs. 2, 3; S.I. 1994/1365, art. 2, Sch.

#### <sup>F65</sup>37 Requirement to inform employer of pregnancy etc.

- (1) An employee shall not have the right conferred by section 33 unless she informs her employer in writing at least twenty-one days before her maternity leave period commences or, if that is not reasonably practicable, as soon as is reasonably practicable—
  - (a) that she is pregnant, and
  - (b) of the expected week of childbirth or, if the childbirth has occurred, the date on which it occurred.
- (2) An employee shall not have the right conferred by section 33 unless, if requested to do so by her employer, she produces for his inspection a certificate from a registered medical practitioner or a registered midwife stating the expected week of childbirth.

#### Textual Amendments

**F65** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss.23, 25, Schs. 2, 3; S.I. 1994/1365, art. 2, Sch.

#### <sup>F66</sup>37A Requirement to inform employer of return during maternity leave period.

- (1) An employee who intends to return to work earlier than the end of her maternity leave period shall give to her employer not less than seven days notice of the date on which she intends to return.
- (2) If an employee returns to work as mentioned in subsection (1) without notifying her employer of her intention to do so or without giving him the notice required by that subsection her employer shall be entitled to postpone her return to a date such as will secure, subject to subsection (3), that he has seven days notice of her return.
- (3) An employer is not entitled under subsection (2) to postpone an employee's return to work to a date after the end of her maternity leave period.
- (4) If an employee who has been notified under subsection (2) that she is not to return to work before the date specified by her employer does return to work before that date the employer shall be under no contractual obligation to pay her remuneration until the date specified by him as the date on which she may return.

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

#### Textual Amendments

**F66** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss.23, 25, Schs. 2, 3; S.I. 1994/1365, art. 2, Sch.

#### <sup>F67</sup>38 Special provision where redundancy during maternity leave period.

- (1) Where during an employee's maternity leave period it is not practicable by reason of redundancy for the employer to continue to employ her under her existing contract of employment, she shall be entitled, where there is a suitable available vacancy, to be offered (before the ending of her employment under that contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with subsection (2) (and takes effect immediately on the ending of her employment under the previous contract).
- (2) The new contract of employment must be such that—
  - (a) the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
  - (b) the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had continued to be employed under the previous contract.

#### Textual Amendments

**F67** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss.23, 25, Schs. 2, 3; S.I. 1994/1365, art. 2, Sch

#### <sup>F68</sup>38A Contractual right to maternity leave.

- (1) An employee who has the right to maternity leave under section 33 and a right to maternity leave under a contract of employment or otherwise may not exercise the two rights separately but may, in taking maternity leave, take advantage of whichever right is, in any particular respect, the more favourable.
- (2) The provisions of sections 34 to 38 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in subsection (1) as they apply to the exercise of the right under section 33.

#### Textual Amendments

**F68** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs. 2, 3; S.I. 1994/1365, art. 2, Sch.

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

VALID FROM 10/06/1994

*[F69] Right to return to work*

**Textual Amendments**

**F69** Pt. III (ss. 33-38A, 39-44 and cross heading) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, Sch.

VALID FROM 22/08/1996

**F70** 39] .....

**Textual Amendments**

**F70** S. 39 repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 3 Pt. I (with ss. 191-195, 202)

**F325** 39 **Right to return to work.** **E+W+S**

- (1) An employee who—
  - (a) has the right conferred by section 33, and
  - (b) has, at the beginning of the eleventh week before the expected week of childbirth, been continuously employed for a period of not less than two years,

shall also have the right to return to work at any time during the period beginning at the end of her maternity leave period and ending twenty-nine weeks after the beginning of the week in which childbirth occurs.
- (2) An employee’s right to return to work under this section is the right to return to work with the person who was her employer before the end of her maternity leave period, or (where appropriate) his successor, in the job in which she was then employed—
  - (a) on terms and conditions as to remuneration not less favourable than those which would have been applicable to her had she not been absent from work at any time since the commencement of her maternity leave period,
  - (b) with her seniority, pension rights and similar rights as they would have been if the period or periods of her employment prior to the end of her maternity leave period were continuous with her employment following her return to work (but subject to the requirements of paragraph 5 of Schedule 5 to the <sup>M70</sup>Social Security Act 1989 (credit for the period of absence in certain cases)), and
  - (c) otherwise on terms and conditions no less favourable than those which would have been applicable to her had she not been absent from work after the end of her maternity leave period.
- (3) The Secretary of State may by order vary the period of two years specified in subsection (1) or that period as so varied.

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- (4) No order shall be made under subsection (3) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

#### Textual Amendments

**F325** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, Sch.

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

**C87** S. 39(1) modified (1.4.1996) by S.I. 1996/1023, arts. 3, 4

#### Marginal Citations

**M70** 1989 c. 24.

### <sup>F71</sup>**40 Requirement to give notice of return to employer.**

- (1) An employee shall not have the right to return to work under section 39 unless she includes with the information required by section 37(1) the information that she intends to exercise the right.
- (2) Where, not earlier than twenty-one days before the end of her maternity leave period, an employee is requested in accordance with subsection (3) by her employer, or a successor of his, to give him written confirmation that she intends to exercise the right to return to work under section 39, the employee shall not be entitled to that right unless she gives the requested confirmation within fourteen days of receiving the request or, if that is not reasonably practicable, as soon as is reasonably practicable.
- (3) A request under subsection (2) shall be—
  - (a) made in writing, and
  - (b) accompanied by a written statement of the effect of that subsection.

#### Textual Amendments

**F71** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, Sch

### <sup>F72</sup>**41 Special provision where redundancies occur before return to work.**

- (1) Where an employee has the right to return to work under section 39, but it is not practicable by reason of redundancy for the employer to permit her to return in accordance with that right, she shall be entitled, where there is a suitable available vacancy, to be offered alternative employment with her employer (or his successor), or an associated employer, under a new contract of employment complying with subsection (2).
- (2) The new contract of employment must be such that—
  - (a) the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and

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- (b) the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work pursuant to her right to return.

#### Textual Amendments

**F72** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, Sch.

#### <sup>F73</sup>42 Exercise of right to return to work.

- (1) An employee shall exercise the right to return to work under section 39 by giving written notice to the employer (who may be her employer before the end of her maternity leave period or a successor of his) at least twenty-one days before the day on which she proposes to return of her proposal to return on that day (the “notified day of return”).
- (2) An employer may postpone an employee’s return to work until a date not more than four weeks after the notified day of return if he notifies her before that day that for specified reasons he is postponing her return until that date, and accordingly she will be entitled to return to work with him on that date.
- (3) Subject to subsection (4), an employee may—
  - (a) postpone her return to work until a date not exceeding four weeks from the notified day of return, notwithstanding that that date falls after the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred; and
  - (b) where no day of return has been notified to the employer, extend the time during which she may exercise her right to return in accordance with subsection (1), so that she returns to work not later than four weeks from the end of that period of twenty-nine weeks;
 if, before the notified day of return (or the end of the period of twenty-nine weeks), she gives the employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she will be incapable of work on the notified day of return (or the end of that period).
- (4) Where an employee has once exercised a right of postponement or extension under subsection (3)(a) or (b), she shall not again be entitled to exercise a right of postponement or extension under that subsection in connection with the same return to work.
- (5) If an employee has notified a day of return but there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work on the notified day of return, she may instead return to work when work resumes after the interruption or as soon as reasonably practicable afterwards.
- (6) If—
  - (a) no day of return has been notified,
  - (b) there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return

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to work before the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred, or which appears likely to have that effect, and

(c) in consequence, the employee does not notify a day of return,

the employee may exercise her right to return in accordance with subsection (1) so that she returns to work at any time before the end of the period of twenty-eight days from the end of the interruption notwithstanding that she returns to work outside the period of twenty-nine weeks.

(7) Where the employee has either—

(a) exercised the right under subsection (3)(b) to extend the period during which she may exercise her right to return; or

(b) refrained from notifying the day of return in the circumstances described in subsection (6),

the other of those subsections shall apply as if for the reference to the end of the period of twenty-nine weeks there were substituted a reference to the end of the further period of four weeks or, as the case may be, of the period of twenty-eight days from the end of the interruption of work.

#### Textual Amendments

**F73** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, **Sch.**

#### <sup>F74</sup>**43** Supplementary.

(1) Schedule 2 shall have effect for the purpose of supplementing the preceding sections in relation to an employee's right to return to work under section 39.

(2) Sections 56 and 86 also have effect for that purpose.

(3) Subject to subsection (4), in sections 56 and 86 and Schedule 2 "notified day of return" has the same meaning as in section 42.

(4) Where—

(a) an employee's return is postponed under subsection (2) or (3)(a) of section 42, or

(b) the employee returns to work on a day later than the notified day of return in the circumstances described in subsection (5) of that section,

then, subject to subsection (4) of that section, references in those subsections and in sections 56 and 86 and Schedule 2 to the notified day of return shall be construed as references to the day to which the return is postponed or that later day.

#### Textual Amendments

**F74** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, **Sch.**



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**[<sup>F75</sup>44 Contractual rights.**

- (1) An employee who has the right to return to work under section 39 and a right to return to work after absence because of pregnancy or childbirth under a contract of employment or otherwise may not exercise the two rights separately but may, in returning to work, take advantage of whichever right is, in any particular respect, the more favourable.
- (2) The provisions of sections 39, 41 to 43, 56 and 86 and paragraphs 1 to 4 and 6 of Schedule 2 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in subsection (1) as they apply to the exercise of the right to return to work under section 39.]

**Textual Amendments**

**F75** Pt. III (ss. 33-38A, 39-44) substituted for Pt. III (ss. 33-48) and ss. 45-47 added as provisions of Pt. III (10.6.1994) by 1993 c. 19, ss. 23, 25, Schs.2, 3; S.I. 1994/1365, art. 2, Sch.

*General provisions*

**33 Rights of employee in connection with pregnancy and confinement.**

- (1) An employee who is absent from work wholly or partly because of pregnancy or confinement shall, subject to the following provisions of this Act,—
  - (a) .....<sup>F76</sup>
  - (b) be entitled to return to work.
- (2) Schedule 2 shall have effect for the purpose of supplementing the following provisions of this Act in relation to an employee’s right to return to work.
- (3) An employee shall be entitled to the [<sup>F77</sup>right] referred to in subsection (1) whether or not a contract of employment subsists during the period of her absence but, subject to subsection (4), she shall not be so entitled unless—
  - (a) she continues to be employed by her employer (whether or not she is at work) until immediately before the beginning of the eleventh week before the expected week of confinement;
  - (b) she has at the beginning of that eleventh week been continuously employed for a period of not less than two years;. . .
  - (c) .....<sup>F78</sup>
  - [<sup>F79</sup>(d) .....<sup>F80</sup>
    - (iii) of the expected week of confinement or, if the confinement has occurred, the date of confinement.]

[<sup>F81</sup>(3A) Where not earlier than forty-nine days after the beginning of the expected week of confinement (or the date of confinement) notified under subsection (3)(d) an employee is requested in accordance with subsection (3B) by her employer or a successor of his to give him written confirmation that she intends to return to work, she shall not be entitled to the right to return unless she gives that confirmation within fourteen days of receiving the request or, if that is not reasonably practicable, as soon as reasonably practicable.

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(3B) A request under subsection (3A) shall be made in writing and shall be accompanied by a written statement of the effect of that subsection.]

(4) An employee who has been dismissed by her employer for a reason falling within section 60(1)(a) or (b) and has not been re-engaged in accordance with that section, shall be entitled to the [F82 right] referred to in subsection (1) of this section notwithstanding that she has thereby ceased to be employed before the beginning of the eleventh week before the expected week of confinement if, but for that dismissal, she would at the beginning of that eleventh week have been continuously employed for a period of not less than two years, but she shall not be entitled to the right. . . F83 unless she informs her employer (in writing if he so requests), before or as soon as reasonably practicable after the dismissal takes effect, that she intends to return to work with him.

In this subsection “dismiss” and “dismissal” have the same meaning as they have for the purposes of Part V.

(5) An employee shall not be entitled to the [F84 right] referred to in subsection (1) unless, if requested to do so by her employer, she produces for his inspection a certificate from a registered medical practitioner or a [F85 registered midwife] stating the expected week of her confinement.

(6) The Secretary of State may by order vary the periods of two years referred to in subsections (3) and (4), or those periods as varied from time to time under this subsection, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.

#### Textual Amendments

**F76** S. 33(1)(a) and the word "and" immediately following it repealed by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(2), **Sch. 11**

**F77** Word substituted by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(1), **Sch. 10 para. 75**

**F78** S. 33(3)(c) repealed by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(2), **Sch. 11**

**F79** S. 33(3)(d) substituted with saving for s. 33(3)(c) by Employment Act 1980 (c. 42, SIF 43:5), **s. 11(1)** and S.I. 1980/1170, art. 4, **Sch. 3**

**F80** Words repealed by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(2), **Sch. 11**

**F81** S. 33(3A)(3B) inserted with saving by Employment Act 1980 (c. 42, SIF 43:5), **s. 11(2)** and S.I. 1980/1170, art. 4, **Sch. 3**

**F82** Word substituted by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(1), **Sch. 10 para. 75**

**F83** Words repealed by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(2), **Sch. 11**

**F84** Words substituted by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(1), **Sch. 10 para. 75**

**F85** Words substituted by Nurses, Midwives and Health Visitors Act 1979 (c. 36, SIF 83:1), s. 24(2), **Sch. 7 para. 31**

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

**C11** S. 33 modified by S.I. 1989/901, art. 3, **Sch.**

**C12** Word repealed with saving by Employment Act 1980 (c. 42, SIF 43:5), **Sch. 2** and S.I. 1980/1170, art. 4, **Sch. 3**

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### Textual Amendments

**F86** Ss. 34-44 repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), ss. 49, 86(2), Sch. 4 paras. 15, 16, [Sch. 11](#)

## 45 Right to return to work.

- (1) The right to return to work of an employee who has been absent from work wholly or partly because of pregnancy or confinement is, subject to the following provisions of this Act, a right to return to work with her original employer, or, where appropriate, his successor, at any time before the end of the period of twenty-nine weeks beginning with the week in which the date of confinement falls, in the job in which she was employed under the original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her if she had not been so absent.
- (2) In subsection (1) terms and conditions not less favourable than those which would have been applicable to her if she had not been so absent means, as regards seniority, pension rights and other similar rights, that the period or periods of employment prior to the employee's absence shall be regarded as continuous with her employment following that absence [<sup>F87</sup>but subject to the requirements of paragraph 5 of Schedule 5 to the Social Security Act 1989 (credit for the period of absence in certain cases)].
- (3) If an employee is entitled to return to work in accordance with subsection (1), but it is not practicable by reason of redundancy for the employer to permit her so to return to work she shall be entitled, where there is a suitable available vacancy, to be offered alternative employment with her employer (or his successor), or an associated employer, under a new contract of employment complying with subsection (4).
- (4) The new contract of employment must be such that—
  - (a) the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
  - (a) the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work in accordance with subsection (1).

### Textual Amendments

**F87** Words added (prosp.) by [Social Security Act 1989 \(c. 24, SIF 113:1\)](#), ss. 23, 33(2), [Sch. 5 Pt. II para. 15](#)

### Modifications etc. (not altering text)

**C13** S. 45 modified by [S.I. 1985/1846, reg. 5\(9\)](#) and [S.I. 1989/901, art. 3, Sch.](#)

## 46 Enforcement of rights under s. 45.

he remedies of an employee for infringement of either of the rights mentioned in section 45 are those conferred by or by virtue of the provisions of sections 47, 56 and 86 and Schedule 2.

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

C14 Ss. 46-48 modified by S.I. 1989/901, art. 3, Sch.

**47 Exercise of right to return to work.**

- (1) An employee shall exercise her right to return to work by [<sup>F88</sup>giving written notice to] the employer (who may be her original employer or a successor of that employer) at least [<sup>F89</sup>twenty-one ]days before the day on which she proposes to return of her proposal to return on that day (in this section referred to as the notified day of return).
- (2) An employer may postpone an employee's return to work until a date not more than four weeks after the notified day of return if he notifies her before that day that for specified reasons he is postponing her return until that date, and accordingly she will be entitled to return to work with him on that date.
- (3) Subject to subsection (4), an employee may—
  - (a) postpone her return to work until a date not exceeding four weeks from the notified day of return, notwithstanding that that date falls after the end of the period of twenty-nine weeks mentioned in section 45(1); and
  - (b) where no day of return has been notified to the employer, extend the time during which she may exercise her right to return in accordance with subsection (1), so that she returns to work not later than four weeks from the expiration of the said period of twenty-nine weeks;
 

if before the notified day of return or, as the case may be, the expiration of the period of twenty-nine weeks she gives the employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she will be incapable of work on the notified day of return or the expiration of that period, as the case may be.
- (4) Where an employee has once exercised a right of postponement or extension under subsection (3)(a) or (b), she shall not again be entitled to exercise a right of postponement or extension under that subsection in connection with the same return to work.
- (5) If an employee has notified a day of return but there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work on the notified day of return, she may instead return to work when work resumes after the interruption or as soon as reasonably practicable thereafter.
- (6) If no day of return has been notified and there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work before the expiration of the period of twenty-nine weeks referred to in section 45(1), or which appears likely to have that effect and in consequence the employee does not notify a day of return, the employee may exercise her right to return in accordance with subsection (1) so that she returns to work at any time before the end of the period of [<sup>F90</sup>twenty-eight days ]from the end of the interruption notwithstanding that she returns to work outside the said period of twenty-nine weeks.
- (7) Where the employee has either—

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

- (a) exercised the right under subsection (3)(b) to extend the period during which she may exercise her right to return; or
- (b) refrained from notifying the day of return in the circumstances described in subsection (6),

the other of those subsections shall apply as if for the reference to the expiration of the period of twenty-nine weeks there were substituted a reference to the expiration of the further period of four weeks or, as the case may be, of the period of <sup>F91</sup>twenty-eight days from the end of the interruption of work.

(8) Where—

- (a) an employee's return is postponed under subsection (2) or (3)(a), or
- (b) the employee returns to work on a day later than the notified day of return in the circumstances described in subsection (5),

then, subject to subsection (4), references in those subsections and in sections 56 and 86 and Schedule 2 to the notified day of return shall be construed as references to the day to which the return is postponed or, as the case may be, that later day.

#### Textual Amendments

**F88** Words substituted with saving by [Employment Act 1980 \(c. 42, SIF 43:5\), s. 11\(3\)](#) and [S.I. 1980/1170, art. 4, Sch. 3](#)

**F89** Words substituted with saving by [Employment Act 1980 \(c. 42, SIF 43:5\), s. 11\(3\)](#) and [S.I. 1980/1170, art. 4, Sch. 3](#)

**F90** Words substituted by [Employment Act 1980 \(c. 42, SIF 43:5\), s. 11\(3\)](#)

**F91** Words substituted by [Employment Act 1980 \(c. 42, SIF 43:5\), s. 11\(3\)](#)

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

**C15** [Ss. 46-48](#) modified by [S.I. 1989/901, art. 3, Sch.](#)

## 48 Contractual right to return to work.

- (1) An employee who has a right both under this Act and under a contract of employment, or otherwise, to return to work, may not exercise the two rights separately but may in returning to work take advantage of whichever right is, in any particular respect, the more favourable.
- (2) The provisions of sections 45, 46, 47, 56 and 86 and paragraphs 1 to 4 and 6 of Schedule 2 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in subsection (1) as they apply to the exercise of the right to return conferred solely by this Part.

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

**C16** [Ss. 46-48](#) modified by [S.I. 1989/901, art. 3, Sch.](#)

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## PART IV

### TERMINATION OF EMPLOYMENT

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

**C17** Pt. IV 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

#### 49 Rights of employer and employee to a minimum period of notice.

- (1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for [<sup>F92</sup>one month] or more—
  - (a) shall be not less than one week's notice if his period of continuous employment is less than two years;
  - (b) shall be not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years; and
  - (c) shall be not less than twelve weeks' notice if his period of continuous employment is twelve years or more.
- (2) The notice required to be given by an employee who has been continuously employed for [<sup>F92</sup>one month] or more to terminate his contract of employment shall be not less than one week.
- (3) Any provision for shorter notice in any contract of employment with a person who has been continuously employed for [<sup>F92</sup>one month] or more shall have effect subject to the foregoing subsections, but this section shall not be taken to prevent either party from waiving his right to notice on any occasion, or from accepting a payment in lieu of notice.
- (4) Any contract of employment of a person who has been continuously employed for [<sup>F93</sup>three months] or more which is a contract for a term certain of [<sup>F93</sup>one month] or less shall have effect as if it were for an indefinite period and, accordingly, subsections (1) and (2) shall apply to the contract.
- [<sup>F94</sup>(4A) Subsections (1) and (2) do not apply to a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months unless the employee has been continuously employed for a period of more than three months.]
- (5) It is hereby declared that this section does not affect any right of either party to treat the contract as terminable without notice by reason of such conduct by the other party as would have enabled him so to treat it before the passing of this Act.
- (6) The definition of week given by section 153(1) does not apply for the purposes of this section.

#### Textual Amendments

**F92** Words substituted with saving by Employment Act 1982 (c. 46, SIF 43:5), s. 20, Sch. 2 para. 3(1)

**F93** Words substituted with saving by Employment Act 1982 (c. 46, SIF 43:5), s. 20, Sch. 2 para. 3(2)

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

**F94** S. 49(4A) inserted with saving by Employment Act 1982 (c. 46, SIF 43:5), s. 20, **Sch. 2 para. 3(3)**

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

**C18** Ss. 49–51 excluded by Dock Work Act 1989 (c. 13, SIF 43:5), s. 7(5), **Sch. 2 para. 6**

**C19** S. 49(1)-(4A) modified (1.4.1996) by S.I. 1996/1023, **arts. 3, 4**

**50 Rights of employee in period of notice.**

- (1) If an employer gives notice to terminate the contract of employment of a person who has been continuously employed for [<sup>F95</sup>one month] or more, the provisions of Schedule 3 shall have effect as respects the liability of the employer for the period of notice required by section 49(1).
- (2) If an employee who has been continuously employed for [<sup>F95</sup>one month] or more gives notice to terminate his contract of employment, the provisions of Schedule 3 shall have effect as respects the liability of the employer for the period of notice required by section 49(2).
- (3) This section shall not apply in relation to a notice given by the employer or the employee if the notice to be given by the employer to terminate the contract must be at least one week more than the notice required by section 49(1).

**Textual Amendments**

**F95** Words substituted with saving by Employment Act 1982 (c. 46, SIF 43:5), s. 20, **Sch. 2 para. 3(1)**

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

**C20** Ss. 49–51 excluded by Dock Work Act 1989 (c. 13, SIF 43:5), s. 7(5), **Sch. 2 para. 6**

**51 Measure of damages in proceedings against employers.**

If an employer fails to give the notice required by section 49, the rights conferred by section 50 (with Schedule 3) shall be taken into account in assessing his liability for breach of the contract.

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

**C21** Ss. 49–51 excluded by Dock Work Act 1989 (c. 13, SIF 43:5), s. 7(5), **Sch. 2 para. 6**

**52 Statutory contracts.**

Sections 49 and 50 shall apply in relation to a contract all or any of the terms of which are terms which take effect by virtue of any provision contained in or having effect under an Act of Parliament, whether public or local, as they apply in relation to any other contract; and the reference in this section to an Act of Parliament includes, subject to any express provision to the contrary, an Act passed after this Act.

**53 Written statement of reasons for dismissal.**

- (1) An employee shall be entitled—

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- (a) if he is given by his employer notice of termination of his contract of employment;
  - (b) if his contract of employment is terminated by his employer without notice; or
  - (c) if, where he is employed under a contract for a fixed term, that term expires without being renewed under the same contract,
- to be provided by his employer, on request, within fourteen days of that request, with a written statement giving particulars of the reasons for his dismissal.
- (2) An employee shall not be entitled to a written statement under subsection (1) unless on the effective date of termination he has been, or will have been, continuously employed for a period of [<sup>F96</sup>[<sup>F97</sup>not less than two years] ending with that date].
  - (3) A written statement provided under this section shall be admissible in evidence in any proceedings.
  - (4) A complaint may be presented to an industrial tribunal by an employee against his employer on the ground that the employer unreasonably refused to provide a written statement under subsection (1) or that the particulars of reasons given in purported compliance with that subsection are inadequate or untrue, and if the tribunal finds the complaint well-founded—
    - (a) it may make a declaration as to what it finds the employer's reasons were for dismissing the employee; and
    - (b) it shall make an award that the employer pay to the employee a sum equal to the amount of two weeks' pay.
  - (5) An industrial tribunal shall not entertain a complaint under this section relating to the reasons for a dismissal unless it is presented to the tribunal at such a time that the tribunal would, in accordance with section 67(2) or (4), entertain a complaint of unfair dismissal in respect of that dismissal presented at the same time.

#### Textual Amendments

**F96** Words substituted with saving by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 20, [Sch. 2 para. 4](#)

**F97** Words substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), ss. 15(1), 29(6), [Sch. 9 para. 4\(1\)](#) (subject to a saving in [S.I. 1990/189](#), [art. 3\(2\)](#))

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

**C22** [S. 53](#) modified by [S.I. 1989/901](#), arts. 3, 4(a), [Sch.](#)

## PART V

### UNFAIR DISMISSAL

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

**C23** [Pt. V](#) modified by [S.I. 1981/1794](#), [regs. 8\(1\)\(4\)](#), 13

[Pt. V](#) (ss. 54-80) 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](#)

[Pt. V](#) modified (E.W.) (ss. 54-80) (26.8.1994) by [1994 c. 20](#), s. 4, [Sch. 4 para. 7\(1\)\(3\)](#); [S.I. 1994/1841](#), [art. 2](#)



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

- Pt. V modified (ss. 54-80) (*prosp.*) by 1995 c. 26, **ss. 46(5)(6)**, 180(1) (which c. 46 was repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202))
- C24** Pt. V (ss. 54–80) modified by S.I. 1989/901, arts. 3, 4(b), **Sch.**
- C25** Pt. V (ss. 54-80) modified (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), **ss.152(1)**, 153, 302.
- Pt. V (ss. 54-80) excluded (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), **ss. 167(1)**, 302.
- Pt. V: by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), **ss. 167(1)(2)(3)**, 302 it is provided (16.10.1992) that Pt. V of this Act shall have effect subject to the provisions of ss. 152-166 of that 1992 Act and that those sections shall be construed as one with this Part.

### *Right not to be unfairly dismissed*

#### **54 Right of employee not to be unfairly dismissed.**

- (1) In every employment to which this section applies every employee shall have the right not to be unfairly dismissed by his employer.
- (2) This section applies to every employment except in so far as its application is excluded by or under any provision of this Part or by section 141 to 149.

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

- C26** S. 54 modified (E.W.) (26.8.1994) by 1994 c. 20, s. 4, **Sch. 4 para. 9**: S.I. 1994/1841, **art. 2**
- S. 54 modified (E.W.) (3.1.1995) by 1994 c. 40, ss. 20, 82(2), **Sch. 8 para. 9**
- S. 54 modified (*prosp.*) by 1995 c. 26, **ss. 46(7)**, 180(1)

### *Meaning of unfair dismissal*

#### **55 Meaning of “dismissal”.**

- (1) In this Part, except as respects a case to which section 56 applies, “dismissal” and “dismiss” shall be construed in accordance with the following provisions of this section.
- (2) Subject to subsection (3), an employee shall be treated as dismissed by his employer if, but only if,—
  - (a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice, or
  - (b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract, or
  - (c) the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer’s conduct.
- (3) Where an employer gives notice to an employee to terminate his contract of employment and, at a time within the period of that notice, the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer’s notice is due to expire, the employee shall for the purposes of this Part be taken to be dismissed by his employer, and the reasons for this dismissal shall be taken to be the reasons for which the employer’s notice is given.

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(4) In this Part “the effective date of termination”—

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

[<sup>F98</sup>(5) Where the contract of employment is terminated by the employer and the notice required by section 49 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by subsection (4)) then, for the purposes of sections 53(2), 64(1)(a), 64A and 73(3) and paragraph 8(3) of Schedule 14, the later date shall be treated as the effective date of termination in relation to the dismissal.

(6) Where the contract of employment is terminated by the employee and—

- (a) the material date does not fall during a period of notice given by the employer to terminate that contract; and
- (b) had the contract been terminated not by the employee but by notice given on the material date by the employer, that notice would have been required by section 49 to expire on a date later than the effective date of termination (as defined by subsection (4)),

then, for the purposes of sections 64(1)(a), 64A and 73(3) and paragraph 8(3) of Schedule 14, the later date shall be treated as the effective date of termination in relation to the dismissal.

(7) “Material date” means—

- (a) in subsection (5), the date when notice of termination was given by the employer or (where no notice was given) the date when the contract of employment was terminated by the employer; and
- (b) in subsection (6), the date when notice of termination was given by the employee or (where no notice was given) the date when the contract of employment was terminated by the employee.]

#### Textual Amendments

**F98** S. 55(5)–(7) substituted for s. 55(5) by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 1](#) with saving in [S.I. 1982/1656](#), [Sch. 2](#)

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

**C27** S. 55(2)–(7) applied (1.7.1992) by [Social Security Contributions and Benefits Act 1992 \(c. 4\)](#), [ss. 171\(1\)](#), [177\(4\)](#).

## 56 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 [<sup>F99</sup>subject to section 56A] she shall be treated for the purposes of this Part as if she had been

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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.

#### Textual Amendments

**F99** Words inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 11](#)

#### [<sup>F100</sup>56A Exclusion of s. 56 in certain cases.

- (1) Section 56 shall not apply in relation to an employee if—
  - (a) immediately before her absence began the number of employees employed by her employer, added to the number employed by any associated employer of his, did not exceed five, and
  - (b) it is not reasonably practicable for the employer (who may be the same employer or a successor of his) to permit her to return to work in accordance with section 45(1), or for him or an associated employer to offer her employment under a contract of employment satisfying the conditions specified in subsection (3).
- (2) Section 56 shall not apply in relation to an employee if—
  - (a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit her to return to work in accordance with section 45(1), and
  - (b) he or an associated employer offers her employment under a contract of employment satisfying the conditions specified in subsection (3), and
  - (c) she accepts or unreasonably refuses that offer.
- (3) the conditions referred to in subsections (1) and (2) are—
  - (a) that the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
  - (b) that the provisions of the contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work in accordance with section 45(1).
- (4) Where on complaint of unfair dismissal any question arises as to whether the operation of section 56 is excluded by subsection (1) or (2), it shall be for the employer to show that the provisions of that subsection were satisfied in relation to the complainant.]

#### Textual Amendments

**F100** [S. 56A](#) inserted with saving by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [s. 12](#) and [S.I. 1980/1170, art. 4, Sch. 3](#)

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

**C28** [S. 56A\(1\)](#) excluded by [S.I. 1981/847, art. 2\(1\)](#)

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## 57 General provisions relating to fairness of dismissal.

- (1) In determining for the purposes of this Part whether the dismissal of an employee was fair or unfair, it shall be for the employer to show—
- (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal, and
  - (b) that it was a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.
- (2) In subsection (1)(b) the reference to a reason falling within this subsection is a reference to a reason which—
- (a) related to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do, or
  - (b) related to the conduct of the employee, or
  - (c) was that the employee was redundant, or
  - (d) was that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
- (3) Where the employer has fulfilled the requirements of subsection (1), then, subject to sections 58 to 62, the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether [F101 in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and that question shall be determined in accordance with equity and the substantial merits of the case].
- (4) In this section, in relation to an employee,—
- (a) “capability” means capability assessed by reference to skill, aptitude, health or any other physical or mental quality;
  - (b) “qualifications” means any degree, diploma or other academic, technical or professional qualification relevant to the position which the employee held.

### Textual Amendments

**F101** Words substituted with saving by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [s. 6](#) and [S.I. 1980/1170, art. 4, Sch. 3](#)

### Modifications etc. (not altering text)

**C29** [S. 57\(1\)\(b\)](#) modified by [S.I. 1981/1794, regs. 8\(2\)\(b\)](#), 13

VALID FROM 22/08/1996

<sup>F102</sup>57A .....

### Textual Amendments

**F102** [S. 57A](#) 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 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.

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<sup>F326</sup> **57A Dismissal in health and safety cases.** **E+W+S**

- (1) The dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—
- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, carried out, or proposed to carry out, any such activities,
  - (b) being a representative of workers on matters of health and safety at work, or a member of a safety committee—
    - (i) in accordance with arrangements established under or by virtue of any enactment, or
    - (ii) by reason of being acknowledged as such by the employer, 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,
 

brought to his employer’s attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,
  - (d) in circumstances of danger which he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, left, or proposed to leave, or (while the danger persisted) refused to return to, his place of work or any dangerous part of his place of work, or
  - (e) in circumstances of danger which he reasonably believed to be serious and imminent, took, or proposed to take, appropriate steps to protect himself or other persons from the danger.
- (2) For the purposes of subsection (1)(e) whether steps which an employee took, or proposed to take, were appropriate shall be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.
- (3) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee was that specified in subsection (1)(e), the dismissal shall not be regarded as having been unfair if the employer shows that it was, or would have been, so negligent for the employee to take the steps which he took, or proposed to take, that a reasonable employer might have dismissed him for taking, or proposing to take, them.]

**Textual Amendments**

**F326** S. 57A inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.3**; S.I. 1993/1908, art. 2(1), **Sch. 1**

*Status: Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.*

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

VALID FROM 26/10/1995

**[<sup>F103</sup>57A Dismissal of employee representatives.**

The dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee, 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,

performed, or proposed to perform, any functions or activities as such an employee representative or candidate.]

**Textual Amendments**

**F103** S. 57AA inserted (26.10.1995) by S.I. 1995/2587, reg. 14(1)

**[<sup>F104</sup>58 Dismissal relating to trade union membership.**

(1) <sup>F105</sup>the dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—

- (a) was, or proposed to become, a member of an independent trade union, or
- (b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time, or
- (c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused or proposed to refuse to become or remain a member.

(2) In subsection (1) “an appropriate time”, in relation to an employee taking part in the activities of a trade union, means a time which either—

- (a) is outside his working hours, or
- (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.

(3)

<sup>F106</sup>(13) Where the reason, or one of the reasons, for the dismissal of an employee was—

- (a) his refusal, or proposed refusal, to comply with 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; or

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

- (b) his objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his contract of employment or in writing) under which, in the event mentioned in paragraph (a), his employer is entitled to deduct one or more sums from the remuneration payable to him in respect of his employment;

that reason shall be treated as falling within [<sup>F107</sup>subsection (1)(c).]

[ In this section references to being, becoming or ceasing to remain a member of a trade <sup>F108</sup>(14) 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**

- F104** S. 58 substituted by Employment Act 1982 (c. 46, SIF 43:5), s. 3 with saving in S.I. 1982/1656, Sch. 2
- F105** Words repealed by Employment Act 1988 (c. 19, SIF 43:5), s. 33(2), Sch. 4
- F106** S. 58(3)–(12) repealed by Employment Act 1988 (c. 19, SIF 43:5), ss. 11(b), 33(2), Sch. 4
- F107** Words substituted by Employment Act 1988 (c. 19, SIF 43:5), s. 33(1), Sch. 3 Pt. I para. 2(2)(a)
- F108** S. 58(14) substituted by Employment Act 1988 (c. 19, SIF 43:5), s. 33(1), Sch. 3 Pt. I para. 2(2)(b)

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

- C30** S. 58 amended (temp. until 1.11.1984) by S.I. 1982/1656, art. 3, Sch. 2

<sup>F109</sup>58A .....

**Textual Amendments**

- F109** S. 58A repealed by Employment Act 1988 (c. 19, SIF 43:5), s. 33(2), Sch. 4

**59 Dismissal on ground of redundancy.**

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

- (a) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was [<sup>F110</sup>one of those specified in section 58(1)]; or
- (b) that he was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in his case,

then, for the purposes of this Part, the dismissal shall be regarded as unfair.

**Textual Amendments**

- F110** Words substituted by Employment Act 1982 (c. 46, SIF 43:5), Sch. 3 para. 17, with saving in S.I. 1982/1656, Sch. 2

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## 60 Dismissal on ground of pregnancy.

- (1) An employee shall be treated for the purposes of this Part as unfairly dismissed if the reason or principal reason for her dismissal is that she is pregnant or is any other reason connected with her pregnancy, except one of the following reasons—
  - (a) that at the effective date of termination she is or will have become, because of her pregnancy, incapable of adequately doing the work which she is employed to do;
  - (b) that, because of her pregnancy, she cannot or will not be able to continue after that date to do that work without contravention (either by her or her employer) of a duty or restriction imposed by or under any enactment.
- (2) An employee shall be treated for the purposes of this Part as unfairly dismissed if her employer dismisses her for a reason mentioned in subsection (1)(a) or (b), but neither he nor any successor of his, where there is a suitable available vacancy, makes her an offer before or on the effective date of termination to engage her under a new contract of employment complying with subsection (3).
- (3) The new contract of employment must—
  - (a) take effect immediately on the ending of employment under the previous contract, or, where that employment ends on a Friday, Saturday or Sunday, on or before the next Monday after that Friday, Saturday or Sunday;
  - (b) be such that the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
  - (c) be such that the provision of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than the corresponding provisions of the previous contract.
- (4) On a complaint of unfair dismissal on the ground of failure to offer to engage an employee as mentioned in subsection (2), it shall be for the employer to show that he or a successor made an offer to engage her in compliance with subsections (2) and (3) or, as the case may be, that there was no suitable available vacancy for her.
- (5) Section 55(3) shall not apply in a case where an employer gives notice to an employee to terminate her contract of employment for a reason mentioned in subsection (1)(a) or (b).

### Modifications etc. (not altering text)

**C31** Ss. 57-61 modified (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), [ss. 239\(3\)\(a\)](#), 302.

## [<sup>F111</sup>60A Dismissal on grounds of assertion of statutory right.

- (1) The dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—
  - (a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right; or



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- (b) alleged that the employer had infringed a right of his which is a relevant statutory right.
- (2) It is immaterial for the purposes of subsection (1) whether the employee has the right or not and whether it has been infringed or not, but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.
- (3) It shall be sufficient for subsection (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.
- (4) The following statutory rights are relevant for the purposes of this section, namely—
- (a) any right conferred by—
    - (i) this Act, or  
[ Schedule 5A to the Betting, Gaming and Lotteries Act 1963, or]  
<sup>F112</sup>(ia)
    - (ii) the <sup>M18</sup>Wages Act 1986, [<sup>F113</sup>or
    - <sup>F113</sup>(iii) Schedule 4 to the Sunday Trading Act 1994]for which the remedy for its infringement is by way of a complaint or reference to an industrial tribunal;
  - (b) the right conferred by section 49 (minimum notice);
  - (c) the rights conferred by the following provisions of the <sup>M19</sup>Trade Union and Labour Relations (Consolidation) Act 1992, namely, sections 68, 86, 146, 168, 169 and 170 (deductions from pay, union activities and time off).]
  - <sup>F114</sup>(d) the rights conferred by sections 42, 43 and 46 of the Pensions Act 1995.]

#### Textual Amendments

- F111** S. 60A added (30.8.1993) by 1993 c. 19, s. 29(1); S. I. 1993/1908, art. 2(1), **Sch. 1**
- F112** S. 60A(4)(a)(ia) inserted (E.W.) (3.1.1995) by 1994 c. 40, ss. 20, 82(2), **Sch. 8 para. 19**
- F113** S. 60A(4)(a)(iii) and the preceding “or” inserted (E.W.) (26.8.1994) by 1994 c. 20, s. 4, **Sch. 4 para. 19**; S.I. 1994/1841, **art. 2**
- F114** Words in s. 60A(4)(d) inserted (*prosp.*) by 1995 c. 26, ss. 122, 180(1), **Sch. 3 para. 2**

#### Marginal Citations

- M18** 1986 c. 48.
- M19** 1992 c. 52.

## 61 Dismissal of replacement.

- (1) Where an employer—
- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the return to work of another employee who is, or will be, absent wholly or partly because of pregnancy or confinement; and
  - (b) dismisses the first-mentioned employee in order to make it possible to give work to the other employee;
- then, for the purposes of section 57(1)(b), but without prejudice to the application of section 57(3), the dismissal shall be regarded as having been for a substantial reason

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of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(2) Where an employer—

- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the end of a suspension such as is referred to in section 19 of another employee; and
- (b) dismisses the first-mentioned employee in order to make it possible to allow the other employee to resume his original work;

then, for the purposes of section 57(1)(b), but without prejudice to the application of section 57(3), the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

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

**C32** Ss. 57-61 modified (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 239(3)(a), 302.

**62 Dismissal in connection with a lock-out, strike or other industrial action.**

- (1) The provisions of this section shall have effect in relation to an employee [<sup>F115</sup>(the “complainant”)] who claims that he has been unfairly dismissed by his employer where at the date of dismissal—
  - (a) the employer was conducting or instituting a lock-out, or
  - (b) the [<sup>F116</sup>complainant] was taking part in a strike or other industrial action.
- (2) In such a case an industrial tribunal shall not determine whether the dismissal was fair or unfair unless it is shown—
  - (a) that one or more relevant employees of the same employer have not been dismissed, or
  - [<sup>F117</sup>(b) that any such employee has, before the expiry of the period of three months beginning with that employee’s date of dismissal, been offered re-engagement and that the complainant has not been offered re-engagement.]
- (3) Where it is shown that the condition referred to in paragraph (b) of subsection (2) is fulfilled, the provisions of sections 57 to 60 shall have effect as if in those sections for any reference to the reason or principal reason for which the [<sup>F116</sup>complainant] was dismissed there were substituted a reference to the reason or principal reason for which he has not been offered re-engagement.
- (4) In this section—
  - (a) “date of dismissal” means—
    - (i) where the employee’s contract of employment was terminated by notice, the date on which the employer’s notice was given, and
    - (ii) in any other case, the effective date of termination;
  - (b) “relevant employees” means—
    - (i) in relation to a lock-out, employees who were directly interested in the [<sup>F118</sup>[<sup>F119</sup>dispute]] in contemplation or furtherance of which the lock-out occurred, and

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[<sup>F120</sup>(ii) in relation to a strike or other industrial action, those employees at the establishment who were taking part in the action at the complainant's date of dismissal;

“establishment”, in sub-paragraph (ii), meaning that establishment of the employer at or from which the complainant works; and]

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

[<sup>F121</sup>(5) The provisions of this section do not apply to an employee who by virtue of section 62A below has no right to complain of unfair dismissal; but nothing in that section affects the question who are relevant employees in relation to an employee to whom the provisions of this section do apply.]

#### Textual Amendments

- F115** Words inserted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [s. 9\(4\)](#) with saving in [S.I. 1982/1656](#), [Sch. 2](#)
- F116** Word substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [s. 9\(4\)](#) with saving in [S.I. 1982/1656](#), [Sch. 2](#)
- F117** [S. 62\(2\)\(b\)](#) substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [s. 9\(2\)](#) with saving in [S.I. 1982/1656](#), [Sch. 2](#)
- F118** Word repealed by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 4](#)
- F119** Word substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 18](#)
- F120** [S. 62\(4\)\(b\) \(ii\)](#) substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [s. 9\(3\)](#) with saving in [S.I. 1982/1656](#), [Sch. 2](#)
- F121** [S. 62\(5\)](#) added by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), [s. 16\(1\)](#), [Sch. 2 para. 1\(2\)](#)

#### [<sup>F122</sup>62A Dismissal of those taking part in unofficial industrial action.

- (1) An employee has no right to complain of unfair dismissal if at the time of dismissal he was taking part in an unofficial strike or other unofficial industrial action.
- (2) A strike or other industrial action is unofficial in relation to an employee unless—
  - (a) he is a member of a trade union and the action is authorised or endorsed by that union, or
  - (b) he is not a member of a trade union but there are among those taking part in the industrial action members of a trade union by which the action has been authorised or endorsed.

Provided that, a strike or other industrial action shall not be regarded as unofficial if none of those taking part in it are members of a trade union.

- (3) The provisions of subsections (3) to (7) of section 15 of the Employment Act 1982 apply for the purpose of determining whether industrial action is to be taken to have been authorised or endorsed by a trade union.
- (4) The question whether industrial action is to be so taken in any case shall be determined by reference to the facts as at the time of dismissal.

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Provided that, where an act is repudiated as mentioned in subsection (4) of that section, industrial action shall not thereby be treated as unofficial before the end of the next working day after the day on which the repudiation takes place.

- (5) In this section the “time of dismissal” means—
- (a) where the employee’s contract of employment is terminated by notice, when the notice is given,
  - (b) where the employee’s contract of employment is terminated without notice, when the termination takes effect, and
  - (c) where the employee is employed under a contract for a fixed term which expires without being renewed under the same contract, when that term expires;

and a “working day” means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971.

- (6) For the purposes of this section membership of a trade union for purposes unconnected with the employment in question shall be disregarded; but an employee who was a member of a trade union when he began to take part in industrial action shall continue to be treated as a member for the purpose of determining whether that action is unofficial in relation to him or another notwithstanding that he may in fact have ceased to be a member.]

#### Textual Amendments

F122 S. 62A inserted by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 9(1)

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

C33 S. 62A excluded by [S.I. 1990/2378](#), art. 8(1)(2)

### 63 Pressure on employer to dismiss unfairly.

In determining, for the purposes of this Part any question as to the reason, or principal reason, for which an employee was dismissed or any question whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirements of section 57(1)(b) or whether the employer acted reasonably in treating it as a sufficient reason for dismissing him,—

- (a) no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee, and
- (b) any such question shall be determined as if no such pressure had been exercised.

*Exclusion of section 54*

### 64 Qualifying period and upper age limit.

- (1) Subject to subsection (3), section 54 does not apply to the dismissal of an employee from any employment if the employee—
- (a) was not continuously employed for a period of not less than [<sup>F123</sup>two years] ending with the effective date of termination, or

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- [<sup>F124</sup>(b) attained the following age on or before the effective date of termination, that is to say—
- (i) if in the undertaking in which he was employed there was a normal retiring age for an employee holding the position which he held and the age was the same whether the employee holding that position was a man or a woman, that normal retiring age; and
  - (ii) in any other case, the age of sixty-five.]
- (2) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in section 19(1), subsection (1)(a) shall have effect in relation to that dismissal as if for the words [<sup>F125</sup>two years] there were substituted the words [<sup>F126</sup>one month].
- (3) Subsection (1) shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal was [<sup>F127</sup>one of those specified in section 58(1)].

#### Textual Amendments

**F123** Words substituted (with saving) by virtue of S.I. 1985/782, **arts. 3(1), 5**

**F124** S. 64(1)(b) substituted by Sex Discrimination Act 1986 (c. 59, SIF 106:1), **s. 3(1)**

**F125** Words substituted (with saving) by virtue of S.I. 1985/782, **arts. 4, 5**

**F126** Words substituted with saving by Employment Act 1982 (c. 46, SIF 43:5), s. 20, **Sch. 2 para. 5(1)**

**F127** Words substituted by Employment Act 1982 (c. 46, SIF 43:5), **Sch. 3 para. 19** with saving in S.I. 1982/1656, **Sch. 2**

#### [<sup>F128</sup>64A Extended qualifying period where no more than twenty employees.

- (1) Subject to subsection (2), section 54 does not apply to the dismissal of an employee from any employment if—
- (a) the period (ending with the effective date of termination) during which the employee was continuously employed did not exceed two years; and
  - (b) at no time during that period did the number of employees employed by the employer for the time being of the dismissed employee, added to the number employed by any associated employer, exceed twenty
- (2) Subsection (1) shall not apply to the dismissal of an employee by reason of any such requirement or recommendation as is referred to in section 19(1), or if it is shown that the reason (or, if more than one, the principal reason) for the dismissal was [<sup>F129</sup>one of those specified in section 58(1)].

#### Textual Amendments

**F128** S. 64A inserted with saving by Employment Act 1980 (c. 42, SIF 43:5), **s. 8(1)** and S.I. 1980/1170, art. 4, **Sch. 3**

**F129** Words substituted by Employment Act 1982 (c. 46, SIF 43:5), **Sch. 3 para. 20** with saving in S.I. 1982/1656, **Sch. 2**

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

**C34** S. 64A excluded by S.I. 1981/847, **art. 2(2)**

**C35** S. 64A(1) excluded by S.I. 1985/782, **arts. 3(2), 5**

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## **65 Exclusion in respect of dismissal procedures agreement.**

- (1) An application may be made jointly to the Secretary of State by all the parties to a dismissal procedures agreement to make an order designating that agreement for the purposes of this section.
- (2) On any such application the Secretary of State may make such an order if he is satisfied—
  - (a) that every trade union which is a party to the dismissal procedures agreement is an independent trade union;
  - (b) that the agreement provides for procedures to be followed in cases where an employee claims that he has been, or is in the course of being, unfairly dismissed;
  - (c) that those procedures are available without discrimination to all employees falling within any description to which the agreement applies;
  - (d) that the remedies provided by the agreement in respect of unfair dismissal are on the whole as beneficial as (but not necessarily identical with) those provided in respect of unfair dismissal by this Part;
  - (e) that the procedures provided by the agreement include a right to arbitration or adjudication by an independent referee, or by a tribunal or other independent body, in cases where (by reason of an equality of votes or for any other reason) a decision cannot otherwise be reached; and
  - (f) that the provisions of the agreement are such that it can be determined with reasonable certainty whether a particular employee is one to whom the agreement applies or not.
- (3) Where a dismissal procedures agreement is designated by an order under this section which is for the time being in force, the provisions of that agreement relating to dismissal shall have effect in substitution for any rights under section 54; and accordingly that section shall not apply to the dismissal of an employee from any employment if it is employment to which, and he is an employee to whom, those provisions of the agreement apply.
- (4) Subsection (3) shall not apply to the right not to be unfairly dismissed for any reason mentioned in subsection (1) or (2) of section 60.

## **66 Revocation of exclusion order under s. 65.**

- (1)
- <sup>F130</sup>(2) If [<sup>F131</sup>at any time when an order under section 65 is in force, in respect of a dismissal procedures agreement the Secretary of State is satisfied, whether on an application by any of the parties to the agreement or otherwise,] either—
  - (a) that it is the desire of all the parties to the dismissal procedures agreement that the order should be revoked, or
  - (b) that the agreement has ceased to fulfil all the conditions specified in section 65(2),
 the Secretary of State shall revoke the order by a further order made under this section.
- (3) Any order made under this section may contain such transitional provisions as appear to the Secretary of State to be appropriate in the circumstances, and, in particular, may direct—

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- (a) that, notwithstanding section 65(3), an employee shall not be excluded from his rights under section 54 where the effective date of termination falls within a transitional period which is specified in the order and is a period ending with the date on which the order under this section takes effect and shall have an extended time for presenting a complaint under section 67 in respect of a dismissal where the effective date of termination falls within that period, and
- (b) that in determining any complaint of unfair dismissal presented by an employee to whom the dismissal procedures agreement applies, where the effective date of terminations falls within that transitional period, an industrial tribunal shall have regard to such considerations (in addition to those specified in this Part and paragraph 2 of Schedule 9) as may be specified in the order.

#### Textual Amendments

**F130** S. 66(1) repealed by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 2](#)

**F131** Words substituted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 13\(b\)](#)

### *Remedies for unfair dismissal*

#### **67 Complaint to industrial tribunal.**

- (1) A complaint may be presented to an industrial tribunal against an employer by any person (in this Part referred to as the complainant) that he was unfairly dismissed by the employer.
- (2) Subject to subsection (4), an industrial tribunal shall not consider a complaint under this section unless it is presented to the tribunal before the end of the period of three months beginning with the effective date of termination 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 before the end of the period of three months.
- [<sup>F132</sup>(3) Subsection (2) shall apply in relation to a complaint to which section 62(3) applies as if—
  - (a) for the references to three months there were substituted, in each case, a reference to six months; and
  - (b) as if for the reference to the effective date of termination there were submitted a reference to the complainant's date of dismissal (within the meaning of section 62(4)).]
  - (4) An industrial tribunal shall consider a complaint under this section if, where the dismissal is with notice, the complaint is presented after the notice is given notwithstanding that it is presented before the effective date of termination and in relation to such a complaint the provisions of this Act, so far as they relate to unfair dismissal, shall have effect—
    - (a) as if references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such circumstances that he will be unfairly dismissed when the notice expires;
    - (b) as if references to reinstatement included references to the withdrawal of the notice by the employer;

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- (c) as if references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice; and
- (d) as if references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

#### Textual Amendments

**F132** S. 67(3) substituted by Employment Act 1982 (c. 46, SIF 43:5), s. 9(5) with saving in S.I. 1982/1656, Sch. 2

### 68 Remedies for unfair dismissal.

- (1) Where on a complaint under section 67 an industrial tribunal finds that the grounds of the complaint are well-founded, it shall explain to the complainant what orders for reinstatement or re-engagement may be made under section 69 and in what circumstances they may be made, and shall ask him whether he wishes the tribunal to make such an order, and if he does express such a wish the tribunal may make an order under section 69.
- (2) If on a complaint under section 67 the tribunal finds that the grounds of the complaint are well-founded and no order is made under section 69, the tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with [F133 sections 72 to 76], to be paid by the employer to the employee.

#### Textual Amendments

**F133** Words substituted by Employment Act 1982 (c. 46, SIF 43:5), Sch. 3 para. 21 with saving in S.I. 1982/1656, Sch. 2

### 69 Order for reinstatement or re-engagement.

- (1) An order under this section may be an order for reinstatement (in accordance with subsections (2) and (3)) or an order for re-engagement (in accordance with subsection (4)), as the industrial tribunal may decide, and in the latter case may be on such terms as the tribunal may decide.
- (2) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed, and on making such an order the tribunal shall specify—
  - (a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal, including arrears of pay, for the period between the date of termination of employment and the date of reinstatement;
  - (b) any rights and privileges, including seniority and pension rights, which must be restored to the employee; and
  - (c) the date by which the order must be complied with.
- (3) Without prejudice to the generality of subsection (2), if the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had



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benefited from that improvement from the date on which he would have done so but for being dismissed.

- (4) An order for re-engagement is an order that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment, and on making such an order the tribunal shall specify the terms on which re-engagement is to take place including—
- (a) the identity of the employer;
  - (b) the nature of the employment;
  - (c) the remuneration for the employment;
  - (d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal, including arrears of pay, for the period between the date of termination of employment and the date of re-engagement;
  - (e) any rights and privileges, including seniority and pension rights, which must be restored to the employee; and
  - (f) the date by which the order must be complied with.
- (5) In exercising its discretion under this section the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account the following considerations, that is to say—
- (a) whether the complainant wishes to be reinstated;
  - (b) whether it is practicable for the employer to comply with an order for reinstatement;
  - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.
- (6) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and if so on what terms; and in so doing the tribunal shall take into account the following considerations, that is to say—
- (a) any wish expressed by the complainant as to the nature of the order to be made;
  - (b) whether it is practicable for the employer or, as the case may be, a successor or associated employer to comply with an order for re-engagement;
  - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and if so on what terms;
- and except in a case where the tribunal takes into account contributory fault under paragraph (c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.

## **70 Supplementary provisions relating to s. 69.**

- (1) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining, for the purposes of subsection (5)(b) or (6)(b) of section 69, whether it is practicable to comply with an order for reinstatement or re-engagement unless the employer shows—
- (a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement; or
  - (b) that he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he wished to be reinstated or

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

re-engaged, and that when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

- (2) In calculating for the purpose of subsection (2)(a) or (4)(d) of section 69 any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement or re-engagement by way of—
- (a) wages in lieu of notice or ex gratia payments paid by the employer;
  - (b) remuneration paid in respect of employment with another employer;
- and such other benefits as the tribunal thinks appropriate in the circumstances.

## 71 Enforcement of s. 69 order and compensation.

- (1) If an order under section 69 is made and the complainant is reinstated or, as the case may be, re-engaged but the terms of the order are not fully complied with, then, subject to section 75, an industrial tribunal shall make an award of compensation, to be paid by the employer to the employee, of such amount as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.
- (2) Subject to subsection (1), if an order under section 69 is made but the complainant is not reinstated or, as the case may be, re-engaged in accordance with the order—
  - (a) the tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with <sup>F134</sup>sections 72 to 76], to be paid by the employer to the employee; and
  - (b) <sup>F135</sup>except in a case in which the dismissal is to be regarded as unfair by virtue of section 58 or 59(a) or in which] the employer satisfies the tribunal that it was not practicable to comply with the order, the tribunal shall make an additional award of compensation to be paid by the employer to the employee of an amount—
    - (i) where the dismissal is of a description referred to in subsection (3), not less than twenty-six nor more than fifty-two weeks' pay, or
    - (ii) in any other case, not less than thirteen nor more than twenty-six weeks' pay.
- (3) The descriptions of dismissal in respect of which an employer may incur a higher additional award in accordance with subsection (2)(b)(i) are the following, that is to say,—
  - (a)
  - <sup>F136</sup>(b) a dismissal which is an act of discrimination within the meaning of the <sup>M20</sup>Sex Discrimination Act 1975 which is unlawful by virtue of that Act;
  - (c) a dismissal which is an act of discrimination within the meaning of the <sup>M21</sup>Race Relations Act 1976 which is unlawful by virtue of that Act.
- (4) Where in any case an employer has engaged a permanent replacement for a dismissed employee the tribunal shall not take that fact into account in determining, for the purposes of subsection (2)(b) whether it was practicable to comply with the order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement.

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- (5) Where in any case an industrial tribunal makes an award of compensation for unfair dismissal, calculated in accordance with [F137 sections 72 to 76], and the tribunal finds that the complainant has unreasonably prevented an order under section 69 from being complied with, it shall, without prejudice to the generality of section 74(4), take that conduct into account as a failure on the part of the complainant to mitigate his loss.

#### Textual Amendments

- F134** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 22](#) with saving in S.I. 1982/1656, [Sch. 2](#)
- F135** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [s. 5\(1\)](#) with saving in S.I. 1982/1656, [Sch. 2](#)
- F136** S. 71(3)(a) repealed by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 4](#) with saving in S.I. 1982/1656, [Sch. 2](#)
- F137** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 22](#) with saving in S.I. 1982/1656, [Sch. 2](#)

#### Marginal Citations

- M20** 1975 c. 65.  
**M21** 1976 c. 74.

### *Amount of compensation*

#### [F138] 72 Compensation for unfair dismissal.

Where a tribunal makes an award of compensation for unfair dismissal under section 68(2) or 71(2)(a) the award shall consist of—

- (a) a basic award (calculated in accordance with section 73), and
- (b) a compensatory award (calculated in accordance with section 74), and
- (c) where the dismissal is to be regarded as unfair by virtue of section 58 or 59(a), a special award (calculated in accordance with section 75A);

but paragraph (c) shall not apply unless the complainant requested the tribunal to make an order under section 69, and shall not in any event apply in a case within section 73(2).]

#### Textual Amendments

- F138** S. 72 substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [s. 5\(2\)](#) with saving in S.I. 1982/1656, [Sch. 2](#)

#### [F139] 72A Reduction of compensation: matters to be disregarded.

- (1) This section applies in any case where a tribunal makes an award of compensation for unfair dismissal under section 68(2) or 71(2)(a) and the dismissal is to be regarded as unfair by virtue of section 58 or 59(a).
- (2) In such a case the tribunal, in considering whether it would be just and equitable to reduce, or further reduce, the amount of any part of the award, shall disregard any conduct or action of the complainant in so far as it constitutes—

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- (a) a breach, or proposed breach, of any requirement falling within subsection (3);
  - (b) a refusal, or proposed refusal, to comply with a requirement of a kind mentioned in section 58(13)(a); or
  - (c) an objection, or proposed objection, (however expressed) to the operation of a provision of a kind mentioned in section 58(13)(b).
- (3) A requirement falls within this subsection if it is imposed on the complainant in question by or under any arrangement or contract of employment or other agreement and requires him—
- (a) 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;
  - (b) to cease to be, or refrain from becoming, a member of any trade union or of a particular trade union or of one of a number of particular trade unions; or
  - (c) not to take part in the activities of any trade union or of a particular trade union or of one of a number of particular trade unions.]

#### Textual Amendments

**F139** S. 72A inserted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 6 with saving in [S.I. 1982/1656, Sch. 2](#)

### 73 Calculation of basic award.

- (1) The amount of the basic award shall be the amount calculated in accordance with subsections (3) to (6), subject to—
- (a) subsection (2) of this section (which provides for an award of two weeks' pay in certain redundancy cases);
  - (b) <sup>F140F141</sup>(ba) subsection (7A) (which provides for the amount of the award to be reduced where the employee has unreasonably refused an offer of reinstatement);
  - (bb) subsection (7B) (which provides for the amount of the award to be reduced because of the employee's conduct);]
  - (c) <sup>F142</sup>(d) subsection (9) (which provides for the amount of the award to be reduced where the employee received a payment in respect of redundancy); and
  - (e) section 76 (which prohibits compensation being awarded under this Part and under the <sup>M22</sup>Sex Discrimination Act 1975 or the <sup>M23</sup>Race Relations Act 1976 in respect of the same matter).
- (2) The amount of the basic award shall be two weeks' pay where the tribunal finds that the reason or principal reason for the dismissal of the employee was that he was redundant and the employee—
- (a) by virtue of section 82(5) or (6) is not, or if he were otherwise entitled would not be, entitled to a redundancy payment; or
  - (b) by virtue of the operation of section 84(1) is not treated as dismissed for the purposes of Part VI.
- (3) The amount of the basic award shall be calculated by reference to the period, ending with the effective date of termination, during which the employee has been continuously employed, by starting at the end of that period and reckoning backwards the numbers of years of employment falling within that period, and allowing—

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- (a) one and a half weeks' pay for each such year of employment <sup>F143</sup>in which the employee was not below the age of forty-one;
  - [<sup>F144</sup>(b) one week's pay for each year of employment not falling within paragraph (a) <sup>F143</sup>in which the employee was not below the age of twenty-two; and
  - (c) half a week's pay for each such year of employment not falling within either of paragraphs (a) and (b).]
- (4) Where, in reckoning the number of years of employment in accordance with subsection (3), twenty years of employment have been reckoned no account shall be taken of any year of employment earlier than those twenty years.
- [<sup>F145</sup>(4A) Where the dismissal is to be regarded as unfair by virtue of section 58 or 59(a), the amount of the basic award (before any reduction under the following provisions of this section) shall not be less than £2,000.
- (4B) The Secretary of State may by order increase or further increase the minimum award provided for by subsection (4A), but no order shall be made under this subsection unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.]
- (5) Where in the case of an employee the effective date of termination is after the specified anniversary the amount of the basic award calculated in accordance with subsections (3) and (4) shall be reduced by the appropriate fraction.
- (6) In subsection (5) [<sup>F146</sup>“the specified anniversary” in relation to an employee means the sixty-fourth anniversary of the day of his birth], and “the appropriate fraction” means the fraction of which—
- (a) the numerator is the number of whole months reckoned from the specified anniversary in the period beginning with that anniversary and ending with the effective date of termination; and
  - (b) the denominator is twelve.
- (7)
- [<sup>F147</sup><sup>F148</sup>(7A) Where the tribunal finds that the complainant has unreasonably refused an offer by the employer which if accepted would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed, the tribunal shall reduce or further reduce the amount of the basic award to such an extent as it considers just and equitable having regard to that finding.
- (7B) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given), <sup>F149</sup> was such that it would be just and equitable to reduce or further reduce that amount of the basic award to any extent, the tribunal shall reduce or further reduce the amount accordingly.]
- [<sup>F150</sup>(7C) Subsection (7B) shall not apply where the reason or principal reason for the dismissal was that the employee was redundant unless the dismissal is to be regarded as unfair by virtue of section 59(a), and in that event shall apply only to so much of the basic award as is payable because of subsection (4A).]
- (8)
- <sup>F151</sup>(9) The amount of the basic award shall be reduced or, as the case may be, be further reduced, by the amount of any redundancy payment awarded by the tribunal under Part VI in respect of the same dismissal or of any payment made by the employer to

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the employee on the ground that the dismissal was by reason of redundancy, whether in pursuance of Part VI or otherwise.

#### Textual Amendments

- F140** S. 73(1)(ba)(bb) inserted with saving by Employment Act 1980 (c. 42, SIF 43:5), s. 9(1)(2) and S.I. 1980/1170, art. 4, Sch. 3
- F141** S. 73(1)(b) repealed by Employment Act 1982 (c. 46, SIF 43:5), Sch. 4 with saving in S.I. 1982/1656, Sch. 2
- F142** S. 73(1)(c) repealed with saving by Employment Act 1980 (c. 42, SIF 43:5), Sch. 2 and S.I. 1980/1170, art. 4, Sch. 3
- F143** Words repealed with saving by Employment Act 1982 (c. 46, SIF 43:5), s. 20, Sch. 2 para. 5(2), Sch. 4
- F144** S. 73(3)(b)(c) substituted with saving by Employment Act 1980 (c. 42, SIF 43:5), s. 9(1)(3) and S.I. 1980/1170, art. 4, Sch. 3
- F145** S. 73(4A)(4B) inserted by Employment Act 1982 (c. 46, SIF 43:5), s. 4(1) with saving in S.I. 1982/1656, Sch. 2
- F146** Words substituted by Sex Discrimination Act 1986 (c. 59, SIF 106:1), s. 3(2)(3)
- F147** S. 73(7A)(7B) inserted with saving by Employment Act 1980 (c. 42, SIF 43:5), s. 9(1)(4) and S.I. 1980/1170, art. 4, Sch. 3
- F148** S. 73(7) repealed by Employment Act 1982 (c. 46, SIF 43:5), s. 4(2)(a), Sch. 4 with saving in S.I. 1982/1656, Sch. 2
- F149** Words repealed by Employment Act 1982 (c. 46, SIF 43:5), s. 4(2)(b), Sch. 4 with saving in S.I. 1982/1656, Sch. 2
- F150** S. 73(7C) added by Employment Act 1982 (c. 46, SIF 43:5), s. 4(2) with saving in S.I. 1982/1656, Sch. 2
- F151** S. 73(8) 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)

- C36** The minimum award provided for by s. 73(4A) is increased to £2,520 by S.I. 1989/528, arts. 2(1), 3 (which S.I. is revoked (1.4.1991) by S.I. 1991/467, art. 1(2) (with art. 3(2))

#### Marginal Citations

- M22** 1975 c. 65.  
**M23** 1976 c. 74.

## 74 Calculation of compensatory award.

- (1) Subject to sections 75 and 76, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.
- (2) The said loss shall be taken to include—
  - (a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and
  - (b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.
- (3) The said loss, in respect of any loss of any entitlement or potential entitlement to, or expectation of, a payment on account of dismissal by reason of redundancy, whether in pursuance of Part VI or otherwise, shall include only the loss referable to the amount,

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if any, by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under <sup>F152</sup>section 73(7A) to (9)) in respect of the same dismissal.

- (4) 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.
- (5) In determining, for the purposes of subsection (1), how far any loss sustained by the complainant was attributable to action taken by the employer 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 dismiss the employee, and that question shall be determined as if no such pressure had been exercised.
- (6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.
- (7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy, whether in pursuance of Part VI or otherwise, exceeds the amount of the basic award which would be payable but for section 73(9) that excess shall go to reduce the amount of the compensatory award.

#### Textual Amendments

**F152** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 23](#) with saving in [S.I. 1982/1656](#), [Sch. 2](#)

## 75 Limit on compensation.

- (1) The amount of compensation awarded to a person under section 71(1) or of a compensatory award to a person calculated in accordance with section 74 shall not exceed <sup>F153</sup>£8,925].
- (2) The Secretary of State may by order increase the said limit of £5,200 or that limit as from time to time increased under this subsection, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.
- (3) It is hereby declared for the avoidance of doubt that the limit imposed by this section applies to the amount which the industrial tribunal would, apart from this section, otherwise award in respect of the subject matter of the complaint after taking into account any payment made by the respondent to the complainant in respect of that matter and any reduction in the amount of the award required by any enactment or rule of law.

#### Textual Amendments

**F153** "£8,925" substituted by virtue of [S.I. 1989/527](#), [arts. 2, 3](#) (which S.I. is revoked (1.4.1991) by [S.I. 1991/466](#), [art. 1\(2\)](#) (with [art. 3\(2\)](#))

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## [<sup>F154</sup>75A Calculation of special award.

- (1) Subject to the following provisions of this section, the amount of the special award shall be—
  - (a) one week’s pay multiplied by 104, or
  - (b) [<sup>F155</sup>£12,550],
 whichever is the greater, but shall not exceed [<sup>F156</sup>£25,040].
- (2) If the award of compensation is made under section 71(2)(a) then, unless the employer satisfies the tribunal that it was not practicable to comply with the preceding order under section 69, the amount of the special award shall be increased to—
  - (a) one week’s pay multiplied by 156, or
  - (b) [<sup>F157</sup>£18,795],
 whichever is the greater, but subject to the following provisions of this section.
- (3) In a case where the amount of the basic award is reduced under section 73(5), the amount of the special award shall be reduced by the same fraction.
- (4) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the special award to any extent, the tribunal shall reduce or further reduce that amount accordingly.
- (5) Where the tribunal finds that the complainant has unreasonably—
  - (a) prevented an order under section 69 from being complied with; or
  - (b) refused an offer by the employer (made otherwise than in compliance with such an order) which if accepted would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed;
 the tribunal shall reduce or further reduce the amount of the special award to such extent as it considers just and equitable having regard to that finding.
- (6) Where the employer has engaged a permanent replacement for the complainant, the tribunal shall not take that fact into account in determining, for the purposes of subsection (2), whether it was practicable to comply with an order under section 69 unless the employer shows that it was not practicable for him to arrange for the complainant’s work to be done without engaging a permanent replacement.
- (7) The Secretary of State may by order increase any of the sums of £10,000, £20,000 and £15,000 specified in subsections (1) and (2), or any of those sums as from time to time increased under this subsection, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.]

### Textual Amendments

**F154** S. 75A inserted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 5(3), with saving in [S.I. 1982/1656](#), Sch. 2

**F155** “£12,550” substituted by virtue of [S.I. 1989/528](#), arts. 2(2), 3 (which S.I. is revoked (1.4.1991) by [S.I. 1991/467](#), art. 1(2) (with art. 3(2))

**F156** “£25,040” substituted by virtue of [S.I. 1989/528](#), arts. 2(3), 3 (which S.I. is revoked (1.4.1991) by [S.I. 1991/467](#), art. 1(2) (with art. 3(2))

**F157** “£18,795” substituted by virtue of [S.I. 1989/528](#), arts. 2(4), 3 (which S.I. is revoked (1.4.1991) by [S.I. 1991/467](#), art. 1(2) (with art. 3(2))



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## 76 Compensation for act which is both sex or racial discrimination (or both) and unfair dismissal.

- (1) Where compensation falls to be awarded in respect of any act both under the provisions of this Act relating to unfair dismissal and under one or both of the following Acts, namely the <sup>M24</sup>Sex Discrimination Act 1975 and the <sup>M25</sup>Race Relations Act 1976, an industrial tribunal shall not award compensation under any one of those two or, as the case may be, three Acts in respect of any loss or other matter which is or has been taken into account under the other or any other of them by the tribunal or another industrial tribunal in awarding compensation on the same or another complaint in respect of that act.
- (2) Without prejudice to section 75 (whether as enacted or as applied by section 65 of the Sex Discrimination Act 1975 or section 56 of the Race Relations Act 1976) in a case to which subsection (1) applies, the aggregate of the following amounts of compensation awarded by an industrial tribunal, that is to say—
  - (a) any compensation awarded under the said Act of 1975; and
  - (b) any compensation awarded under the said Act of 1976; and
  - (c) any compensation awarded under section 71(1) or, as the case may be, which is calculated in accordance with section 74.shall not exceed the limit for the time being imposed by section 75.

### Marginal Citations

M24 1975 c. 65.

M25 1976 c. 74.

## <sup>F158</sup>76A Awards against third parties.

- (1) If in proceedings before an industrial tribunal on a complaint against an employer under section 67 either the employer or the complainant claims—
  - (a) that the employer was induced to dismiss the complainant 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, and
  - (b) that the pressure was exercised because the complainant was not a member of any trade union or of a particular trade union or of one of a number of particular trade unions,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 an award under section 68(2) or an order under section 69.
- (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 under section 68(2) or 71(2)(a) or (b), but
  - (b) finds that the claim mentioned in subsection (1) is well-founded,

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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

**F158** S. 76A substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **s. 7** with saving in [S.I. 1982/1656](#), **Sch. 2**

**F159** **76B**,.....  
**76C**

#### Textual Amendments

**F159** Ss. 76B, 76C repealed by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **Sch. 4** with saving in [S.I. 1982/1656](#), **Sch. 2** and expressed to be repealed (22.8.1996) by [1996 c. 18, ss. 242, 243](#), **Sch. 3 Pt. I** (with [ss. 191-195, 202](#))

### *Interim relief*

#### **77 Interim relief pending determination of complaint of unfair dismissal.**

[<sup>F160</sup>(1) An employee who presents a complaint to an industrial tribunal under section 67 alleging that the dismissal is to be regarded as unfair by virtue of section 58 may apply to the tribunal for an order under the following provisions of this section.]

- (2) An industrial tribunal shall not entertain an application under this section unless—
- (a) it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date); and
  - (b) [<sup>F161</sup>in a case in which the employee relies on section 58(1)(a) or (b)] before the end of that period there is also so presented a certificate in writing signed by an authorised official of the independent trade union of which the employee was or had proposed to become a member stating that on the date of the dismissal the employee was or had proposed to become a member of the union and that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.
- (3) An industrial tribunal shall determine an application under this section as soon as practicable after receiving the application and [<sup>F162</sup>(where appropriate)] the relevant certificate, but shall [<sup>F163</sup>give at the appropriate time—
- (a) to the employer; and
  - (b) in the case of a section 76A request made at least three days before the date of the hearing, to the person to whom the request relates;
- a copy of the application and certificate (if any) together with notice of the date, time and place of the hearing.

(3A) In subsection (3)—  
“appropriate time” means—

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**Status:** Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.

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

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- (a) in relation to paragraph (a), not later than seven days before the date of the hearing;
  - (b) in relation to paragraph (b), as soon as reasonably practicable; and  
“section 76A request” means a request made under section 76A(1) for the tribunal to direct a person to be joined or sisted as a party to the proceedings]
- (4) An industrial tribunal shall not exercise any power it has of postponing the hearing in the case of an application under this section except where the tribunal is satisfied that special circumstances exist which justify it in doing so.
- (5) If on hearing an application under this section it appears to an industrial tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find that the complainant [<sup>F164</sup>is by virtue of section 58 to be regarded as having been unfairly dismissed], the tribunal shall announce its findings and explain to both parties (if present) what powers the tribunal may exercise on an application under this section and in what circumstances it may exercise them, and shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—
- (a) to reinstate the employee, that is to say, to treat the employee in all respects as if he had not been dismissed; or
  - (b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.
- (6) In subsection (5) “terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed” means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal shall be regarded as continuous with his employment following the dismissal.
- (7) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.
- (8) If the employer states that he is willing to re-engage the employee in another job and specifies the terms and conditions on which he is willing to do so, the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions, and—
- (a) if the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect; and
  - (b) if the employee is unwilling to accept the job on those terms and conditions, then, if the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, but otherwise the tribunal shall make no order under this section.
- (9) If, on the hearing of an application under this section, the employer fails to attend before the tribunal or he states that he is unwilling either to reinstate the employee or re-engage him as mentioned in subsection (5), the tribunal shall make an order for the continuation of the employee’s contract of employment.
- (10) In this section—  
<sup>F165</sup>“authorised official”, in relation to a trade union, means an official of the union authorised by the union to act for the purposes of this section; and any reference to the date of dismissal is a reference—

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

- (a) where the employee’s contract of employment was terminated by notice (whether given by his employer or by him), to the date on which the employer’s notice was given; and
  - (b) in any other case, to the effective date of termination.
- (11) A document purporting to be an authorisation of an official by a trade union to act for the purposes of this section and to be signed on behalf of the union shall be taken to be such an authorisation unless the contrary is proved, and a document purporting to be a certificate signed by such an official shall be taken to be signed by him unless the contrary is proved.

#### Textual Amendments

- F160** S. 77(1) substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **s. 8(1)** with saving in S.I. 1982/1656, **Sch. 2**
- F161** Words inserted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **Sch. 3 para. 24(1)** with saving in S.I. 1982/1656, **Sch. 2**
- F162** Words inserted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **Sch. 3 para. 24(2)** with saving in S.I. 1982/1656, **Sch. 2**
- F163** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **s. 8(2)** with saving in S.I. 1982/1656, **Sch. 2**
- F164** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **Sch. 3 para. 24(3)** with saving in S.I. 1982/1656, **Sch. 2**
- F165** Definition of “appropriate time” repealed by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **Sch. 4** with saving in SIF 1982/1656, Sch. 2

#### 77A <sup>F166</sup>Procedure on hearing of application and making of order.

- (1) If on hearing an employee’s application for interim relief it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find that the reason (or, if more than one, the principal reason) for his dismissal was one of those specified in section 57A(1)(a) and (b) [<sup>F167</sup>or section 57AA]<sup>F168</sup> of this Act or section 46 of the Pensions Act 1995] the following provisions shall apply.
- (2) The tribunal shall announce its findings and explain to both parties (if present) what powers the tribunal may exercise on the application and in what circumstances it will exercise them, and shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—
  - (a) to reinstate the employee, that is to say, to treat him in all respects as if he had not been dismissed, or
  - (b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.
- (3) For this purpose “terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed” means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal should be regarded as continuous with his employment following the dismissal.
- (4) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.

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- (5) If the employer states that he is willing to re-engage the employee in another job and specifies the terms and conditions on which he is willing to do so, the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions; and—
- (a) if the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect, and
  - (b) if he is not, then, if the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, but otherwise the tribunal shall make no order.
- (6) If on the hearing of an application for interim relief the employer fails to attend before the tribunal, or states that he is unwilling either to reinstate the employee or re-engage him as mentioned in subsection (2), the tribunal shall make an order for the continuation of the employee's contract of employment.

#### Textual Amendments

**F166** Ss. 77-79 inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1** (previous versions of ss. 77-79 having been repealed (16.10.1992) by 1992 c. 52, **Sch. 1**)

**F167** Words in s. 77A(1) inserted (26.10.1995) by S.I. 1995/2587, **reg. 14(3)**

**F168** Words in s. 77A(1) inserted (*prosp.*) by 1995 c. 26, ss. 122, 180(1), **Sch. 3 para. 7**

## 78 Orders for continuation of contract of employment.

- (1) An order for the continuation of a contract of employment under section 77 shall be an order that the contract of employment, if it has been terminated, shall continue in force as if it had not been terminated and if not, shall on its termination, continue in force, in either case until the determination or settlement of the complaint and only for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters and for the purpose of determining for any purpose the period for which the employee has been continuously employed.
- (2) Where the tribunal makes any such order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period or part of any such period falling between the date of the dismissal and the determination or settlement of the complaint and, subject to subsection (5), the amount so specified shall be that which the employee could reasonably have been expected to earn during that period or part, and shall be paid, in the case of a payment for any such period falling wholly or partly after the order, on the normal pay day for that period and, in the case of a payment for any past period, within a time so specified.
- (3) If an amount is payable by way of pay in pursuance of any such order in respect only of part of a normal pay period the amount shall be calculated by reference to the whole period and be reduced proportionately.
- (4) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of any normal pay period or part of any such period shall go towards discharging the employer's liability in respect of that period under subsection (2), and conversely any payment under subsection (2) in respect of any period shall go towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.

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- (5) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.
- (6) For the purposes of this section the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

VALID FROM 22/08/1996

[<sup>F169F170</sup>78A].....

#### Textual Amendments

- F169** Ss. 77-79 and cross heading inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.10**; S.I. 1993/1908, art. 2(1), **Sch.1** (previous versions of ss. 77-79 having been repealed (16.10.1992) by 1992 c. 52, **Sch. 1**).
- F170** S. 78A 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**

#### 78A <sup>F327</sup> Application for variation or revocation of order. **E+W+S**

- (1) At any time between the making of an order under section 77A and the determination or settlement of the complaint, the employer or the employee may apply to an industrial tribunal for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order.
- (2) Sections 77 and 77A apply in relation to such an application as in relation to an original application for interim relief except that, in the case of an application by the employer, section 77(4) has effect with the substitution of a reference to the employee for the reference to the employer.

#### Textual Amendments

- F327** Ss. 77-79 inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.10**; S.I. 1993/1908, art. 2(1), **Sch.1** (previous versions of ss. 77-79 having been repealed (16.10.1992) by 1992 c. 52, **Sch. 1**)

#### 79 Supplementary provisions relating to interim relief.

- (1) At any time between the making of an order by an industrial tribunal under section 77 and the determination or settlement of the complaint to which it relates, the employer or the employee may apply to the tribunal for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order, and that section shall apply to the application as it applies to an application for an order under that section except that—

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- (a) no certificate need be presented to the tribunal under subsection (2)(b), and no copy of the certificate need be given to the employer under subsection (3), of that section; and
  - (b) in the case of an application by an employer, for the reference in the said subsection (3) to the employer there shall be substituted a reference to the employee.
- (2) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under section 77(7) or (8),—
- (a) the tribunal shall make an order for the continuation of the employee's contract of employment and section 78 shall apply to an order under this subsection as it applies to an order for the continuation of a contract of employment under section 77; and
  - (b) the tribunal shall also order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order under section 77(7) or (8) and to any loss suffered by the employee in consequence of the non-compliance.
- (3) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment, then—
- (a) if the non-compliance consists of a failure to pay an amount by way of pay specified in the order, the tribunal shall determine the amount of pay owed by the employer to the employee on the date of the determination, and, if on that date the tribunal also determines the employee's complaint that he has been unfairly dismissed by his employer, the tribunal shall specify that amount separately from any other sum awarded to the employee; and
  - (b) in any other case, the tribunal shall order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.

#### *Teachers in aided schools*

### **80 Teacher in aided school dismissed on requirement of local education authority.**

- (1) Where a teacher in an aided school is dismissed by the governors<sup>F171</sup> of the school in pursuance of a requirement of the local education authority under paragraph (a) of the proviso to section 24(2) of the<sup>M26</sup> Education Act 1944, this Part shall have effect in relation to the dismissal as if—
- (a) the local education authority had at all material times been the teacher's employer, and
  - (b) the local education authority had dismissed him, and the reason or principal reason for which they did so had been the reason or principal reason for which they required his dismissal.
- (2) For the purposes of a complaint under section 67 as applied by this section—

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- (a) section 71(2)(b) shall have effect as if for the words “not practicable to comply” there were substituted the words “not practicable for the local education authority to permit compliance”; and
- (b) section 74(5) shall have effect as if any reference to the employer were a reference to the local education authority.

#### Textual Amendments

**F171** Words repealed by [Education Act 1980 \(c. 20, SIF 41:1\)](#), [Sch. 1 para. 30](#)

#### Marginal Citations

**M26** [1944 c. 31.](#)

## PART VI

### REDUNDANCY PAYMENTS

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

**C37** Pt. VI (ss. 81–120) modified by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), [s. 59\(1\)](#)

**C38** 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\(2\)](#)

**C39** 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](#)

#### *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
  - (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



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- (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>F172</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>F173</sup>

#### Textual Amendments

**F172** 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**

**F173** 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)

**C40** S. 81 excluded by S.I. 1980/1052, **art. 3**; modified by S.I. 1983/1160, art. 3, **Sch. 2 para. 1**

**C41** S. 81 excluded by Dock Work Act 1989 (c. 13, SIF 43:1), **s. 5(1)(2)**

**C42** S. 81 modified (13.1.1994) by S.I. 1993/3167, art. 3, **Sch. 2 para.1**

**C43** 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**

## 82 General exclusions from right to redundancy payment.

[<sup>F174</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

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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.
- (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.

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### Textual Amendments

**F174** 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)

**C44** S. 82 modified by [S.I. 1983/1160](#), art. 3, [Sch. 2 para. 2](#)

**C45** S. 82 modified (13.1.1994) by [S.I. 1993/3167](#), art. 3, [Sch. 2 para. 2](#)

**C46** 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](#)

**C47** S. 82(3) modified by [S.I. 1985/1846](#), reg. 5(5)

**C48** 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,—
  - (a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice, or
  - (b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract, or
  - (c) the employee terminates 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.

## 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

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- (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, 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)**

**C49** S. 84 modified by S.I. 1983/1160, art. 3, Sch. 2 para. 3

**C50** S. 84 modified (13.1.1994) by S.I. 1993/3167, art. 3, Sch. 2 para. 3

**C51** 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)

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

- C52** 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 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;

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- (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 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):

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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.
- (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;

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- (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.
- (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



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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
  - (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.

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- (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.
- (4) In this section, any reference to section 84(1) includes a reference to that subsection as applied by section 94(2) or as so applied and (where appropriate) modified by section 95(2), and where section 84(1) applies as so modified the references in subsection (2) of this section to renewal of or re-engagement under a contract of employment shall be construed as including references to renewal of or re-engagement in employment otherwise than under a contract of employment.

### **94 Change of ownership of business.**

- (1) The provisions of this section shall have effect where—
  - (a) a change occurs (whether by virtue of a sale or other disposition or by operation of law) in the ownership of a business for the purposes of which a person is employed, or of a part of such a business, and
  - (b) in connection with that change the person by whom the employee is employed immediately before the change occurs (in this section referred to as “the previous owner”) terminates the employee’s contract of employment, whether by notice or without notice.
- (2) If, by agreement with the employee, the person who immediately after the change occurs is the owner of the business, or of the part of the business in question, as the case

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may be (in this section referred to as “the new owner”), renews the employee’s contract of employment (with the substitution of the new owner for the previous owner) or re-engages him under a new contract of employment, sections 84 and 90 shall have effect as if the renewal or re-engagement had been a renewal or re-engagement by the previous owner (without any substitution of the new owner for the previous owner).

- (3) If the new owner offers to renew the employee’s contract of employment (with the substitution of the new owner for the previous owner) or to re-engage him under a new contract of employment, subsections (3) to (6) of section 82 shall have effect, subject to subsection (4), in relation to that offer as they would have had effect in relation to the like offer made by the previous owner.
- (4) For the purposes of the operation, in accordance with subsection (3), of subsections (3) to (6) of section 82 in relation to an offer made by the new owner—
- (a) the offer shall not be treated as one whereby the provisions of the contract as renewed, or of the new contract, as the case may be, would differ from the corresponding provisions of the contract as in force immediately before the dismissal by reason only that the new owner would be substituted for the previous owner as the employer, and
  - (b) no account shall be taken of that substitution in determining whether the refusal of the offer was unreasonable or, as the case may be, whether the employee acted reasonably in terminating the renewed, or new, employment during the trial period referred to in section 84.
- (5) The preceding provisions of this section shall have effect (subject to the necessary modifications) in relation to a case where—
- (a) the person by whom a business, or part of a business, is owned immediately before a change is one of the persons by whom (whether as partners, trustees or otherwise) it is owned immediately after the change, or
  - (b) the persons by whom a business, or part of a business, is owned immediately before a change (whether as partners, trustees or otherwise) include the person by whom, or include one or more of the persons by whom, it is owned immediately after the change,
- as those provisions have effect where the previous owner and the new owner are wholly different persons.
- (6) Sections 82(7) and 84(7) shall not apply in any case to which this section applies.
- (7) Nothing in this section shall be construed as requiring any variation of a contract of employment by agreement between the parties to be treated as constituting a termination of the contract.

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

**C53** S. 94 modified by [New Towns Act 1981 \(c. 64, SIF 123:3\)](#), s. 54(6)

**C54** S. 94 modified (E.W.) by [Housing \(Consequential Provisions\) Act 1985 \(c. 71, SIF 61\)](#), s. 5(2), [Sch. 4 para. 7\(2\)\(a\)](#) and (S.) by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), s. 339(1), [Sch. 22 Pt. II para. 10\(2\)\(a\)](#)

**C55** S. 94(1) modified by [Civil Aviation Act 1982 \(c. 16, SIF 9\)](#), s. 22, [Sch. 3 para. 8](#)

**C56** S. 94(3) modified by [S.I. 1985/1846](#), [reg. 5\(5\)](#)

**C57** S. 94(6) modified by [S.I. 1983/1160](#), art. 3, [Sch. 2 para. 4](#)

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## 95 Transfer to Crown employment.

- (1) Section 94 shall apply to a transfer of functions from a person not acting on behalf of the Crown (in this section referred to as the transferor) to a government department or any other officer or body exercising functions on behalf of the Crown (in this section referred to as the transferee) as that section applies to a transfer of a business, but with the substitution for references to the previous owner and new owner of references to the transferor and transferee respectively.
- (2) In so far as the renewal or re-engagement of the employee by the transferee is in employment otherwise than under a contract of employment—
  - (a) references in section 94 (and in sections 82(4) to (6), 84 and 90 as they apply by virtue of that section) to a contract of employment or to the terms of such a contract shall be construed as references to employment otherwise than under such a contract and to the terms of such employment; and
  - (b) references in subsection (4) of section 94, as modified by subsection (1) of this section, to the substitution of the transferee for the transferor shall be construed as references to the substitution of employment by the transferee otherwise than under a contract of employment for employment by the transferor under such a contract.

### Modifications etc. (not altering text)

**C58** S. 95 modified by S.I. 1985/1846, reg. 5(5)

**C59** S. 95 extended (E.W.) by Prosecution of Offences Act 1985 (c. 23, SIF 39:1), ss. 15(6), 31(2)

## 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.

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F175 97 .....

**Textual Amendments**

F175 S. 97 repealed by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 2](#)

**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>M27</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>F176</sup>or]
  - [<sup>F177</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**

F176 Word repealed (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(2), [Sch. 10](#)

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**F177** 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)**

**C60** S. 99 excluded by [Civil Aviation Act 1982 \(c. 16, SIF 9\)](#), **Sch. 3 para. 6(5)(6)**

**Marginal Citations**

**M27** 1965 c. 74.

**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 (except section 94) 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>F178</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**

**F178** 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.

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

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

- C61** 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

## 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>F179</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>F180</sup>£20][<sup>F180</sup>level 3 on the standard scale], or
  - (b) in any other case, to a fine not exceeding [<sup>F181</sup>£100][<sup>F181</sup>level 3 on the standard scale].

#### Textual Amendments

- F179** 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)
- F180** 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)
- F181** 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)

- C62** 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
- C63** 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.

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*Redundancy Fund*

<sup>F182</sup>**103** .....

**Textual Amendments**

**F182** S. 103 repealed by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(2), **Sch. 3**

<sup>F183</sup>**104** .....

**Textual Amendments**

**F183** 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>F184</sup>**104A** .....

**Textual Amendments**

**F184** 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>F185</sup>**105** .....

**Textual Amendments**

**F185** 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>F186</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



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- (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 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>F187</sup> of <sup>F188</sup> subsection (1A)], the employee's right to the payment arises by virtue of a <sup>F189</sup> period of continuous employment] (computed in accordance with the provisions of the agreement in question) which is not less than <sup>F189</sup> two years].
- the Secretary of State shall pay to the employee out of <sup>F190</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>F190</sup> the National Insurance Fund].
- (4)
- <sup>F191</sup>(5) For the purposes of this section an employer shall be taken to be insolvent if—
- <sup>F192</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>F193</sup> 421 of the Insolvency Act 1986]; or]
  - (c) where the employer is a company, a winding-up order <sup>F194</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>F194</sup> or <sup>F193</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:—

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- (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 [F195]163 of the M28 Bankruptcy (Scotland) Act 1913[[F195]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
  - (c) where the employer is a company, a winding-up order [F194] 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 [F194] or [F193] a 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

- F186** 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)
- F187** Words repealed by [Wages Act 1986 \(c. 48, SIF 43:2\)](#), s. 32(2), **Sch. 5 Pt. I**
- F188** 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)**
- F189** Words substituted with saving by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 20, **Sch. 2 para. 6(4)**
- F190** Words substituted by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(1), **Sch. 2 para. 1(3)**
- F191** 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)**
- F192** S. 106(5)(a)(b) substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235, **Sch. 8 para. 31(2)(a)**
- F193** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), **Sch. 14**
- F194** Words inserted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235, **Sch. 8 para. 31(2)(b)**
- F195** 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

- M28** 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 [F196]level 3 on the standard scale].
- (3) Any person who—

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- (a) 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
- (b) 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.
- (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 [F197 section 32 of the M29 Magistrates’ Courts Act 1980] (that is to say, £1,000 or another sum fixed by order under [F197 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 M30 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

**F196** 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)

**F197** Words substituted by Magistrates' Courts Act 1980 (c. 43, SIF 82), Sch. 7 para. 175

#### Marginal Citations

**M29** 1980 c. 43.

**M30** 1975 c. 21.

#### [F198] 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

**F198** 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)

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

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

- C64** 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

**F199** 109 .....

**Textual Amendments**

- F199** 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

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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.

- (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) [F200 or paragraph (c)] of subsection (1) of section 99 (whether as originally enacted or as modified by any order under section 149(1));

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- (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.
- (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>M31</sup>Superannuation Act 1965, as that Act continues to have effect by virtue of section 23(1) of the <sup>M32</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>F201</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>F201</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>F201</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>M33</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;

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- (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.

**Textual Amendments**

**F200** Words repealed (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(2), [Sch. 10](#)

**F201** Words substituted by virtue of [S.I. 1981/1670](#), [arts. 2\(1\)\(d\)](#), 3(5)

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

**C65** [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**

**M31** 1965 c. 74.

**M32** 1972 c. 11.

**M33** 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.

**F202** **113** .....

**Textual Amendments**

**F202** [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.

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## **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
  - (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>M34</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**

M34 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.



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- (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, 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>F203</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

**F203** 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,—

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- (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
  - (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)

**C66** 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.

## PART VII

### INSOLVENCY OF EMPLOYER

<sup>F204</sup>121 .....

#### Textual Amendments

**F204** S. 121 repealed by Insolvency Act 1985 (c. 65, SIF 66), s. 235, Sch. 10 Pt. IV

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## 122 Employee's rights on insolvency of employer.

- (1) If on an application made to him in writing by an employee the Secretary of State is satisfied—
- (a) that the employer of that employee has become insolvent; and
  - [<sup>F205</sup>(aa) that the employment of the employee has been terminated; and]
  - (b) that on the relevant date the employee was entitled to be paid the whole or part of any debt to which this section applies,
- the Secretary of State shall, subject to the provisions of this section, pay the employee out of [<sup>F206</sup>the National Insurance Fund] the amount to which in the opinion of the Secretary of State the employee is entitled in respect of that debt.
- [<sup>F207</sup>(2) In this section “the relevant date”—
- (a) in relation to arrears of pay (not being remuneration under a protective award made under section 101 of the Employment Protection Act <sup>M35</sup>1975) and to holiday pay, means the date on which the employer became insolvent;
  - (b) in relation to such an award and to a basic award of compensation for unfair dismissal, means whichever is the latest of—
    - (i) the date on which the employer became insolvent;
    - (ii) the date of the termination of the employee's employment; and
    - (iii) the date on which the award was made;
  - (c) in relation to any other debt to which this section applies, means whichever is the later of the dates mentioned in sub-paragraphs (i) and (ii) of paragraph (b).]
- (3) This section applies to the following debts:—
- [<sup>F208</sup>(a) any arrears of pay in respect of one or more (but not more than eight) weeks;]
  - (b) any amount which the employer is liable to pay the employee for the period of notice required by section 49(1) or (2) or for any failure of the employer to give the period of notice required by section 49(1);
  - [<sup>F209</sup>(c) any holiday pay—
    - (i) in respect of a period or periods of holiday not exceeding six weeks in all; and
    - (ii) to which the employee became entitled during the twelve months ending with the relevant date;]
  - (d) any basic award of compensation for unfair dismissal (within the meaning of section 72);
  - (e) any reasonable sum by way of reimbursement of the whole or part of any fee or premium paid by an apprentice or articed clerk.
- [<sup>F210</sup>(4) For the purposes of this section, the following amounts shall be treated as arrears of pay, namely—
- (a) a guarantee payment;
  - (b) remuneration on suspension on medical grounds under section 19;
  - (c) any payment for time off under section 27(3) or 31(3) or 31A(4);
  - (d) remuneration under a protective award made under section 101 of the Employment Protection Act <sup>M36</sup>1975;
  - (e)]
- [<sup>F211</sup>(5) The total amount payable to an employee in respect of any debt mentioned in subsection (3), where the amount of that debt is referable to a period of time, shall not exceed [<sup>F212</sup>£184.00] in respect of any one week or, in respect of a shorter period,

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- an amount bearing the same proportion to [<sup>F212</sup>£184.00] as that shorter period bears to a week.
- (6) The Secretary of State may vary the limit referred to in subsection (5) after a review under section 148, by order made in accordance with that section.
- (7) A sum shall be taken to be reasonable for the purposes of subsection (3)(e) in a case where a trustee in bankruptcy or liquidator has been or is required to be appointed if it is admitted to be reasonable by the trustee in bankruptcy or liquidator under [<sup>F213</sup>section][<sup>F214</sup>348 of the <sup>M37</sup> Insolvency Act 1986] (effect of bankruptcy on apprenticeships etc.), whether as originally enacted or as applied to the winding up of a company by rules under [<sup>F214</sup>section 411 of that Act].
- (8) Subsection (7) shall not apply to Scotland, but in Scotland a sum shall be taken to be reasonable for the purposes of subsection (3)(e) in a case where a trustee in bankruptcy or liquidator has been or is required to be appointed if it is [<sup>F215</sup>admitted][<sup>F215</sup>accepted] by the trustee in bankruptcy or the liquidator for the purposes of the bankruptcy or winding up.
- (9) The provisions of subsections (10) and (11) shall apply in a case where one of the following officers (hereafter in this section referred to as the “relevant officer”) has been or is required to be appointed in connection with the employer’s insolvency, that is to say, a trustee in bankruptcy, a liquidator, [<sup>F216</sup>an administrator,] a receiver or manager, or a trustee under a composition or arrangement between the employer and his creditors or under a trust deed for his creditors executed by the employer; and in this subsection [<sup>F217</sup>“trustee”, in relation to a composition or arrangement, includes the supervisor of a][<sup>F214</sup>voluntary arrangement proposed for the purposes of, and approved under, Part I or VIII of the Insolvency Act 1986].
- (10) Subject to subsection (11), the Secretary of State shall not in such a case make any payment under this section in respect of any debt until he has received a statement from the relevant officer of the amount of that debt which appears to have been owed to the employee on the relevant date and to remain unpaid; and the relevant officer shall, on request by the Secretary of State, provide him, as soon as reasonably practicable, with such a statement.
- [<sup>F218</sup>(11) If the Secretary of State is satisfied that he does not require such a statement in order to determine the amount of the debt that was owed to the employee on the relevant date and remains unpaid, he may make a payment under this section in respect of the debt without having received such a statement.]

#### Textual Amendments

- F205** S. 122(1)(aa) inserted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 218(2)
- F206** Words substituted by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(1), [Sch. 2 para. 1\(4\)](#)
- F207** S. 122(2) substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 218(3)
- F208** S. 122(3)(a) substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 4\(2\)](#) with saving in S.I. 1982/1656, [Sch. 2](#)
- F209** S. 122(3)(c) substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 4\(3\)](#) with saving in S.I. 1982/1656, [Sch. 2](#)
- F210** S. 122(4) substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 218(4)
- F211** Words repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(2), [Sch. 11](#)
- F212** “£145.00” substituted by virtue of S.I. 1990/384, [arts. 2, 3](#) (which S.I. is revoked (1.4.1991) by S.I. 1991/464, [art. 1\(2\)](#) (with [art. 3](#)))
- F213** Words substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 218(5)

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- F214** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), [Sch. 14](#)
- F215** Word “accepted” substituted (S.) for “admitted” by [Bankruptcy \(Scotland\) Act 1985 \(c. 66, SIF 66\)](#), s. 75(1), [Sch. 7 para. 14\(2\)](#)
- F216** Words inserted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 218(6)(a)
- F217** Words substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 218(6)(b)
- F218** S. 122(11) substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), ss. 18(2), 29(6), [Sch. 9 para. 4\(1\)](#)

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

- C67** S. 122 restricted by [Dock Work Act 1989 \(c. 13, SIF 43:5\)](#), s. 7(5), [Sch. 2 para. 7\(2\)](#)
- C68** S. 122 modified by [Dock Work Act 1989 \(c. 13, SIF 43:5\)](#), s. 7(5), [Sch. 2 para. 7\(2\)\(a\)](#)

**Marginal Citations**

- M35** [1975 c.71\(43:1\)](#).
- M36** [1975 c.71\(43:1\)](#).
- M37** [1986 c. 45](#)

**123 Payment of unpaid contributions to occupational pension scheme.**

- (1) If, on application made to him in writing by the persons competent to act in respect of an occupational pension scheme [<sup>F219</sup>or a personal pension scheme], the Secretary of State is satisfied that an employer has become insolvent and that at the time that he did so there remained unpaid relevant contributions falling to be paid by him to the scheme, the Secretary of State shall, subject to the provisions of this section, pay into the resources of the scheme out of [<sup>F220</sup>the National Insurance Fund] the sum which in his opinion is payable in respect of the unpaid relevant contributions.
- (2) In this section “relevant contributions” means contributions falling to be paid by an employer [<sup>F221</sup>to an occupational pension scheme or a personal pension scheme], either on his own account or on behalf of an employee; and for the purposes of this section a contribution of any amount shall not be treated as falling to be paid on behalf of an employee unless a sum equal to that amount has been deducted from the pay of the employee by way of a contribution from him.
- (3) The sum payable under this section in respect of unpaid contributions of an employer on his own account to an occupational pension scheme [<sup>F219</sup>or a personal pension scheme] shall be the least of the following amounts—
- the balance of relevant contributions remaining unpaid on the date when he became insolvent and payable by the employer on his own account to the scheme in respect of the twelve months immediately preceding that date;
  - the amount certified by an actuary to be necessary for the purpose of meeting the liability of the scheme on dissolution to pay the benefits provided by the scheme to or in respect of the employees of the employer;
  - an amount equal to ten per cent. of the total amount of remuneration paid or payable to those employees in respect of the twelve months immediately preceding the date on which the employer became insolvent.
- (4) For the purposes of subsection (3)(c), “remuneration” includes holiday pay, [<sup>F222</sup>statutory sick pay, statutory maternity pay under Part V of the Social Security Act 1986, maternity pay under Part III of this Act] and any such payment as is referred to in [<sup>F223</sup>section 122(4)].
- (5) Any sum payable under this section in respect of unpaid contributions on behalf of an employee shall not exceed the amount deducted from the pay of the employee in

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respect of the employee's contributions to the <sup>F224</sup>scheme during the twelve months immediately preceding the date on which the employer became insolvent

- (6) The provisions of subsections (7) to (9) shall apply in a case where one of the following officers (hereafter in this section referred to as the “relevant officer”) has been or is required to be appointed in connection with the employer's insolvency, that is to say, a trustee in bankruptcy, a liquidator [<sup>F225</sup>an administrator], a receiver or manager, or a trustee under a composition or arrangement between the employer and his creditors or under a trust deed for his creditors executed by the employer; and in this subsection [<sup>F226</sup>“trustee”, in relation to a composition or arrangement, includes the supervisor of a [<sup>F227</sup>voluntary arrangement proposed for the purposes of, and approved under, Part I or VIII of the Insolvency Act 1986]].
- (7) Subject to subsection (9), the Secretary of State shall not in such a case make any payment under this section in respect of unpaid relevant contributions until he has received a statement from the relevant officer of the amount of relevant contributions which appear to have been unpaid on the date on which the employer became insolvent and to remain unpaid; and the relevant officer shall, on request by the Secretary of State provide him, as soon as reasonably practicable, with such a statement.
- (8) Subject to subsection (9), an amount shall be taken to be payable, paid or deducted as mentioned in subsection (3)(a) or (c) or subsection (5), only if it is so certified by the relevant officer.

[<sup>F228</sup>(9) If the Secretary of State is satisfied—

- (a) that he does not require a statement under subsection (7) in order to determine the amount of relevant contributions that was unpaid on the date on which the employer became insolvent and remains unpaid, or
- (b) that he does not require a certificate under subsection (8) in order to determine the amounts payable, paid or deducted as mentioned in subsections (3)(a) and (c) and (5),

he may make a payment under this section in respect of the contributions in question without having received such a statement or (as the case may be) such a certificate.]

#### Textual Amendments

**F219** Words inserted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(1), **Sch. 10 Pt. I para. 31(1)(a)**

**F220** Words substituted by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(1), **Sch. 2 para. 1(4)**

**F221** Words inserted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(1), **Sch. 10 Pt. I para. 31(2)**

**F222** Words substituted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(1), **Sch. 10 Pt. IV para. 76**

**F223** Words substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(1), **Sch. 8 para. 31(3)**

**F224** Words repealed by [Social Security Act 1986 \(c. 50 SIF 113:1\)](#), s. 86(2), **Sch. 11**

**F225** Words inserted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(1), **Sch. 8 para. 31(3)(b)(i)**

**F226** Words substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235, **Sch. 8 para. 31(3)(b)(ii)**

**F227** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), **Sch. 14**

**F228** [S. 123\(9\)](#) substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), ss. 18(3), 29(6), **Sch. 9 para. 4(1)**

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

**C69** [S. 123](#) restricted by [Dock Work Act 1989 \(c. 13, SIF 43:5\)](#), s. 7(5), **Sch. 2 para. 7(2)**

**C70** [S. 123](#) modified by [Dock Work Act 1989 \(c. 13, SIF 43:5\)](#), s. 7(5), **Sch. 2 para. 7(2)(b)**

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## 124 Complaint to industrial tribunal.

- (1) A person who has applied for a payment under section 122 may, within the period of three months beginning with the date on which the decision of the Secretary of State on that application was communicated to him or, if that is not reasonably practicable, within such further period as is reasonable, present a complaint to an industrial tribunal that—
  - (a) the Secretary of State has failed to make any such payment; or
  - (b) any such payment made by the Secretary of State is less than the amount which should have been paid.
- (2) Any persons who are competent to act in respect of an occupational pension scheme [<sup>F229</sup>or a personal pension scheme] and who have applied for a payment to be made under section 123 into the resources of the scheme may, within the period of three months beginning with the date on which the decision of the Secretary of State on that application was communicated to them, or, if that is not reasonably practicable, within such further period as is reasonable, present a complaint to an industrial tribunal that—
  - (a) the Secretary of State has failed to make any such payment; or
  - (b) any such payment made by him is less than the amount which should have been paid.
- (3) Where an industrial tribunal finds that the Secretary of State ought to make a payment under section 122 or 123, it shall make a declaration to that effect and shall also declare the amount of any such payment which it finds the Secretary of State ought to make.

### Textual Amendments

**F229** Words inserted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(1), [Sch. 10 Pt. I para. 31\(1\)\(b\)](#)

## 125 Transfer to Secretary of State of rights and remedies.

- (1) Where, in pursuance of section 122, the Secretary of State makes any payment to an employee in respect of any debt to which that section applies—
  - (a) any rights and remedies of the employee in respect of that debt (or, if the Secretary of State has paid only part of it, in respect of that part) shall, on the making of the payment, become rights and remedies of the Secretary of State; and
  - (b) any decision of an industrial tribunal requiring an employer to pay that debt to the employee shall have the effect that the debt or, as the case may be, that part of it which the Secretary of State has paid, is to be paid to the Secretary of State.
- [<sup>F230</sup>(2) Where a debt or any part of a debt in respect of which the Secretary of State has made a payment in pursuance of section 122 constitutes—
  - (a) a preferential debt within the meaning of the Insolvency Act 1986 for the purposes of any provision of that Act (including any such provision as applied by any order made under that Act) or any provision of the Companies Act 1985; or
  - (b) a preferred debt within the meaning of the Bankruptcy (Scotland) Act 1985 for the purposes of any provision of that Act (including any such provision as applied by section 11A of the Judicial Factors (Scotland) Act 1889),

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then, without prejudice to the generality of subsection (1) above, there shall be included among the rights and remedies which become rights and remedies of the Secretary of State in accordance with that subsection any right arising under any such provision by reason of the status of the debt or that part of it as a preferential or preferred debt.

(2A) In computing for the purposes of any provision mentioned in subsection (2)(a) or (b) above the aggregate amount payable in priority to other creditors of the employer in respect of—

(a) any claim of the Secretary of State to be so paid by virtue of subsection (2) above; and

(b) any claim by the employee to be so paid made in his own right,

any claim falling within paragraph (a) above shall be treated as if it were a claim of the employee; but the Secretary of State shall be entitled, as against the employee, to be so paid in respect of any such claim of his (up to the full amount of the claim) before any payment is made to the employee in respect of any claim falling within paragraph (b) above.]

(3) Where in pursuance of section 123 the Secretary of State makes any payment into the resources of an occupational pension scheme [<sup>F231</sup>or a personal pension scheme] in respect of any contributions to the scheme, any rights and remedies in respect of those contributions belonging to the persons competent to act in respect of the scheme shall, on the making of the payment, become rights and remedies of the Secretary of State.

[<sup>F232</sup>(3A) Where the Secretary of State makes any such payment as is mentioned in subsection (3) above and the sum (or any part of the sum) falling to be paid by the employer on account of the contributions in respect of which the payment is made constitutes—

(a) a preferential debt within the meaning of the Insolvency Act 1986 for the purposes of any provision mentioned in subsection (2)(a) above; or

(b) a preferred debt within the meaning of the Bankruptcy (Scotland) Act 1985 for the purposes of any provision mentioned in subsection (2)(b) above,

then, without prejudice to the generality of subsection (3) above, there shall be included among the rights and remedies which become rights and remedies of the Secretary of State in accordance with that subsection any right arising under any such provision by reason of the status of that sum (or that part of it) as a preferential or preferred debt.

(3B) In computing for the purposes of any provision referred to in subsection (3A)(a) or (b) above the aggregate amount payable in priority to other creditors of the employer in respect of—

(a) any claim of the Secretary of State to be so paid by virtue of subsection (3A) above; and

(b) any claim by the persons competent to act in respect of the scheme,

any claim falling within paragraph (a) above shall be treated as if it were a claim of those persons; but the Secretary of State shall be entitled, as against those persons, to be so paid in respect of any such claim of his (up to the full amount of the claim) before any payment is made to them in respect of any claim falling within paragraph (b) above.]



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- (4) Any sum recovered by the Secretary of State in exercising any right or pursuing any remedy which is his by virtue of this section shall be paid into [<sup>F233</sup>the National Insurance Fund].

#### Textual Amendments

- F230** S. 125(2)(2A) substituted (with saving) for s. 125(2), by Employment Act 1989 (c. 38, SIF 43:1), ss. 19(1), 29(6), Sch. 9 paras. 4(1), 5
- F231** Words inserted by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(1), Sch. 10 Pt. I para. 31(1)(c)
- F232** S. 125(3A)(3B) inserted by Employment Act 1989 (c. 38, SIF 43:1), ss. 19(2), 29(6), Sch. 9 paras. 4(1), 5
- F233** Words substituted by Employment Act 1990 (c. 38, SIF 43:5), s. 16(1), Sch. 2 para. 1(4)

## 126 Power of Secretary of State to obtain information in connection with applications.

- (1) Where an application is made to the Secretary of State under section 122 or 123 in respect of a debt owed, or contributions to an occupational pension scheme [<sup>F234</sup>or a personal pension scheme] falling to be made, by an employer, the Secretary of State may require—
- the employer to provide him with such information as the Secretary of State may reasonably require for the purpose of determining whether the application is well-founded; and
  - any person having the custody or control of any relevant records or other documents to produce for examination on behalf of the Secretary of State any such document in that person's custody or under his control which is of such a description as the Secretary of State may require.
- (2) Any such requirement shall be made by notice in writing given to the person on whom the requirement is imposed and may be varied or revoked by a subsequent notice so given.
- (3) If a person refuses or wilfully neglects to furnish any information or produce any document which he has been required to furnish or produce by a notice under this section he shall be liable on summary conviction to a fine not exceeding [<sup>F235</sup>level 3 on the standard scale].
- (4) If a person, in purporting to comply with a requirement of a notice under this section, knowingly or recklessly makes any false statement he shall be liable on summary conviction to a fine not exceeding [<sup>F235</sup>level 5 on the standard scale].

#### Textual Amendments

- F234** Words inserted by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(1), Sch. 10 Pt. I para. 31(1)(d)
- F235** 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)

*Status: Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.*

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

## 127 Interpretation of ss. 122 to 126.

(1) For the purposes of sections 122 to 126, an employer shall be taken to be insolvent if, but only if, in England and Wales,—

- [<sup>F236</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>F237</sup>421 of the Insolvency Act 1986]; or
- (c) where the employer is a company, a winding up order [<sup>F238</sup>or an administration order] is made or a resolution for voluntary winding up is passed with respect to it, or a receiver or manager of its undertaking is duly appointed, or possession is 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>F238</sup>or a [<sup>F237</sup>voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 is approved under that Part]].

(2) For the purposes of sections 122 to 126, an employer shall be taken to be insolvent if, but only if, in Scotland,—

- (a) [<sup>F239</sup>sequestration of his estate is awarded] or he executes a trust deed for his creditors or enters into a composition contract;
- (b) he has died and a judicial factor appointed under section [<sup>F240</sup>163 of the <sup>M38</sup>Bankruptcy (Scotland) Act 1913][<sup>F240</sup>11A of the Judicial Factors (Scotland) Act 1889] is required by that section to divide his insolvent estate among his creditors; or
- (c) where the employer is a company, a winding-up order [<sup>F238</sup>or an administration order] is made or a resolution for voluntary winding up is passed with respect to it or a receiver of its undertaking is duly appointed [<sup>F238</sup>or a [<sup>F237</sup>voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 is approved under that Part ]].

(3) In sections 122 to 126—

“holiday pay” means—

- (a) pay in respect of a holiday actually taken; or
- (b) any accrued holiday pay which under the employee’s contract of employment would in the ordinary course have become payable to him in respect of the period of a holiday if his employment with the employer had continued until he became entitled to a holiday;

“occupational pension scheme” means any scheme or arrangement which provides or is capable of providing, in relation to employees in any description of employment, benefits (in the form of pensions or otherwise) payable to or in respect of any such employees on the termination of their employment or on their death or retirement;

[<sup>F241</sup>“personal pension scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect so as to provide benefits, in the form of pensions or otherwise, payable on death or retirement to or in respect of employees who have made arrangements with the trustees or managers of the scheme for them to become members of the scheme;]

and any reference in those sections to the resources of <sup>F242</sup>a scheme is a reference to the funds out of which the benefits provided by the scheme are from time to time payable.

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

#### Textual Amendments

- F236** S. 127(1)(a)(b) substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(1), **Sch. 8 Pt. I para. 31(5)(a)**
- F237** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), **Sch. 14**
- F238** Words inserted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235, **Sch. 8 Pt. I para. 31(5)(b)**
- F239** Words substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(3), (6), Sch. 6 para. 23, Sch. 9 para. 4(1)
- F240** 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 para. 14(4)**
- F241** Definition inserted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(1), **Sch. 10 Pt. I para. 31(3)**
- F242** Word repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(2), **Sch. 11**

#### Marginal Citations

- M38** 1913 c. 20.

## PART VIII

### RESOLUTION OF DISPUTES RELATING TO EMPLOYMENT

#### *Industrial tribunals*

#### 128 Industrial tribunals.

- (1) The Secretary of State may by regulations make provision for the establishment of tribunals, to be known as industrial tribunals, to exercise the jurisdiction conferred on them by or under this Act or any other Act, whether passed before or after this Act.
- (2) Regulations made wholly or partly under section 12 of the <sup>M39</sup>Industrial Training Act 1964 and in force immediately before the date on which this section comes into force shall, so far as so made, continue to have effect as if they had been made under subsection (1), and tribunals established in accordance with such regulations shall continue to be known as industrial tribunals.
- (3) Schedule 9, which makes provision, among other things, with respect to proceedings before industrial tribunals, shall have effect.
- (4) Complaints, references [<sup>F243</sup>applications] and appeals to industrial tribunals shall be made in accordance with regulations made under paragraph 1 of Schedule 9.

#### Textual Amendments

- F243** Word inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), **Sch. 1 para. 16**

#### Marginal Citations

- M39** 1964 c. 16.

*Status: Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.*

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

## 129 Remedy for infringement of certain rights under this Act.

The remedy of an employee for infringement of any of the rights conferred on him by sections 8 and 53 and Parts II, III, V and VII shall, if provision is made for a complaint or for the reference of a question to an industrial tribunal, be by way of such complaint or reference and not otherwise.

### Modifications etc. (not altering text)

- C71** S. 129 extended by S.I. 1981/1794, regs. 11(9), 13  
 S. 129 extended (E.W.) (26.8.1994) by 1994 c. 20, s. 4, Sch. 4 para. 22; S.I. 1994/1841, art. 2  
 S. 129 extended (E.W.) (3.1.1995) by 1994 c. 40, ss. 20, 82(2), Sch. 8 para. 22  
 S. 129 extended (*prosp.*) by 1995 c. 26, s. 46(4)(a), 180(1) (with s. 121(5))

## 130 Jurisdiction of referees to be exercised by tribunals.

- (1) There shall be referred to and determined by an industrial tribunal any question which by any statutory provision is directed (in whatsoever terms) to be determined by a referee or board of referees constituted under any of the statutory provisions specified in Schedule 10 or which is so directed to be determined in the absence of agreement to the contrary.
- (2) The transfer of any jurisdiction by this section shall not affect the principles on which any question is to be determined or the persons on whom the determination is binding, or any provision which requires particular matters to be expressly dealt with or embodied in the determination, or which relates to evidence.

## 131 Power to confer jurisdiction on industrial tribunals in respect of damages, etc., for breach of contract of employment.

- (1) The appropriate Minister may by order provide that on any claim to which this section applies or any such claim of a description specified in the order, being in either case a claim satisfying the relevant condition or conditions mentioned in subsection (3), proceedings for the recovery of damages or any other sum, except damages or a sum due in respect of personal injuries, may be brought before an industrial tribunal.
- (2) Subject to subsection (3), this section applies to any of the following claims, that is to say—
  - (a) a claim for damages for breach of a contract of employment or any other contract connected with employment;
  - (b) a claim for a sum due under such a contract;
  - (c) a claim for the recovery of a sum in pursuance of any enactment relating to the terms or performance of such a contract;
 being in each case a claim such that a court in England and Wales or Scotland, as the case may be, would under the law for the time being in force have jurisdiction to hear and determine an action in respect of the claim.
- (3) An order under this section may make provision with respect to any such claim only if it satisfies either of the following conditions, that is to say—
  - (a) it arises or is outstanding on the termination of the employee's employment; or

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- (b) it arises in circumstances which also give rise to proceedings already or simultaneously brought before an industrial tribunal otherwise than by virtue of this section;
- or, if the order so provides, it satisfies both those conditions.
- (4) Where on proceedings under this section an industrial tribunal finds that the whole or part of a sum claimed in the proceedings is due, the tribunal shall order the respondent to the proceedings to pay the amount which it finds due.
- (5) Without prejudice to section 154(3), an order under this section may include provisions—
- (a) as to the manner in which and time within which proceedings are to be brought by virtue of this section; and
- (b) modifying any other enactment.
- (6) Any jurisdiction conferred on an industrial tribunal by virtue of this section in respect of any claim shall be exercisable concurrently with any court in England and Wales or in Scotland, as the case may be, which has jurisdiction to hear and determine an action in respect of the claim.
- (7) In this section—
- “appropriate Minister”, as respects a claim in respect of which an action could be heard and determined in England and Wales, means the Lord Chancellor and, as respects a claim in respect of which an action could be heard and determined by a court in Scotland, means the Secretary of State;
- “personal injuries” includes any disease and any impairment of a person’s physical or mental condition;
- and any reference to breach of a contract includes a reference to breach of—
- (a) a term implied in a contract by or under any enactment or otherwise;
- (b) a term of a contract as modified by or under any enactment or otherwise; and
- (c) a term which, although not contained in a contract, is incorporated in the contract by another term of the contract.
- (8) No order shall be made under this section unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.

#### *Recoupment of certain benefits*

### **132 Recoupment of unemployment benefit and supplementary benefit.**

- (1) This section applies to payments which are the subject of proceedings before industrial tribunals, and which are—
- (a) payments of wages or compensation for loss of wages; or
- (b) payments by employers to employees, under Part II <sup>F244</sup> or V or section 53 or in pursuance of an award under section 103 of the <sup>M40</sup>Employment Protection Act 1975; or
- (c) payments by employers to employees, of a nature similar to, or for a purpose corresponding to the purpose of, such payments as are mentioned in paragraph (b);
- and to payments of remuneration in pursuance of a protective award under section 101 of the said Act of 1975.

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- (2) The Secretary of State may by regulations make provision with respect to payments to which this section applies for all or any of the following purposes—
- (a) enabling the Secretary of State to recover from an employer, by way of total or partial recoupment of unemployment benefit or [<sup>F245</sup>income support], a sum not exceeding the amount of the prescribed element of the monetary award or, in the case of a protective award, the amount of the remuneration;
  - (b) requiring or authorising the tribunal to order the payment of such a sum, by way of total or partial recoupment of either benefit, to the Secretary of State instead of to the employee;
  - (c) requiring the tribunal to order the payment to the employee of only the excess of the prescribed element of the monetary award over the amount of any unemployment benefit or [<sup>F245</sup>income support] shown to the tribunal to have been paid to the employee, and enabling the Secretary of State to recover from the employer, by way of total or partial recoupment of the benefit, a sum not exceeding that amount.
- (3) Without prejudice to subsection (2), regulations under that subsection may—
- (a) be so framed as to apply to all payments to which this section applies or one or more classes of those payments, and so as to apply both to unemployment benefit and [<sup>F246</sup>income support] or only to one of those benefits;
  - (b) confer powers and impose duties on industrial tribunals, on [<sup>F247</sup>a benefit officer within the meaning of the <sup>M41</sup>Supplementary Benefits Act 1976] and on insurance officers and other persons;
  - (c) impose, on an employer to whom a monetary award or protective award relates, a duty to furnish particulars connected with the award and to suspend payments in pursuance of the award during any period prescribed by the regulations;
  - (d) provide for an employer who pays a sum to the Secretary of State in pursuance of this section to be relieved from any liability to pay the sum to another person;
  - (e) confer on an employee [<sup>F248</sup>a right of appeal to a social security appeal tribunal against any decision of an adjudication officer as to the total or partial recoupment of income support in pursuance of the regulations;]
  - (f) provide for the proof in proceedings before industrial tribunals (whether by certificate or in any other manner) of any amount of unemployment benefit or [<sup>F246</sup>income support] paid to an employee; and
  - (g) make different provision for different cases.
- (4) Where in pursuance of any regulations under subsection (2) a sum has been recovered by or paid to the Secretary of State by way of total or partial recoupment of unemployment benefit or [<sup>F249</sup>income support, no sum shall be recoverable under the Social Security Act 1986, and no abatement, payment or reduction shall be made by reference to the income support recouped.]
- (5) Any amount found to have been duly recovered by or paid to the Secretary of State in pursuance of regulations under subsection (2) by way of total or partial recoupment of unemployment benefit shall be paid into National Insurance Fund.
- (6) In this section—
- “monetary award” means the amount which is awarded, or ordered to be paid, to the employee by the tribunal or would be so awarded or ordered apart from any provision of regulations under this section;

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“the prescribed element”, in relation to any monetary award, means so much of that award as is attributable to such matters as may be prescribed by regulations under subsection (2);

<sup>F250</sup>“unemployment benefit” means unemployment benefit under the <sup>M42</sup>Social Security Act 1975.

#### Textual Amendments

**F244** “, III” repealed by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(2), Sch. 11

**F245** Words substituted by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(1), Sch. 10 Pt. II para. 50(a)

**F246** Words substituted by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(1), Sch. 10 Pt. II para. 50(b)

(i)

**F247** Words substituted by Social Security Act 1980 (c. 30, SIF 113:1), Sch. 4 para. 13(1)

**F248** Words substituted by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(1), Sch. 10 Pt. II para. 50(b)

(ii)

**F249** Words substituted by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(1), Sch. 10 Pt. II para. 50(c)

**F250** Definition repealed by Social Security Act 1986 (c. 50 SIF 113:1), s. 86(2), Sch. 11

#### Marginal Citations

**M40** 1975 c. 71.

**M41** 1976 c. 71.

**M42** 1975 c. 14.

### Conciliation officers

#### 133 General provisions as to conciliation officers.

- (1) The provisions of subsections (2) to (6) shall have effect in relation to industrial tribunal proceedings, or claims which could be the subject of tribunal proceedings,—
- (a) arising out of a contravention, or alleged contravention, of any of the following provisions of this Act, that is to say, sections 8, 12, 19, 23, 27, 28, 29, 31, [<sup>F251</sup>31A] and 53; or
  - (b) arising out of a contravention, or alleged contravention, of section 99 or 102 of the <sup>M43</sup>Employment Protection Act 1975 or of a provision of any other Act specified by an order under subsection (7) as one to which this paragraph applies; or
  - (c) which are proceedings or claims in respect of which an industrial tribunal has jurisdiction by virtue of an order under section 131; [<sup>F252</sup>or
  - (d) arising out of a contravention, or alleged contravention, of section 4 of the <sup>M44</sup>Employment Act 1980.][<sup>F253</sup>; or]
  - [<sup>F254</sup>(e) arising out of a contravention, or alleged contravention, of section 1(1) or (2) or section 2(1) or 3(4) of the Wages Act 1986.][<sup>F255</sup>; or]
  - [<sup>F256</sup>(f) arising out of an infringement, or alleged infringement, of the right conferred by section 3 of the Employment Act 1988.]
  - [<sup>F257</sup>(g) under section 1 or 2 of the Employment Act 1990.]
- (2) Where a complaint has been presented to an industrial tribunal, and a copy of it has been sent to a conciliation officer, it shall be the duty of the conciliation officer—
- (a) if he is requested to do so by the complainant and by the person against whom the complaint is presented, or

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- (b) if, in the absence of any such request, the conciliation officer considers that he could act under this subsection with a reasonable prospect of success, to endeavour to promote a settlement of the complaint without its being determined by an industrial tribunal.
- (3) Where at any time—
- (a) a person claims that action has been taken in respect of which a complaint could be presented by him to an industrial tribunal, but
- (b) before any complaint relating to that action has been presented by him, a request is made to a conciliation officer (whether by that person or by the person against whom the complaint could be made) to make his services available to them, the conciliation officer shall act in accordance with subsection (2) as if a complaint has been presented to an industrial tribunal.
- (4) Subsections (2) and (3) shall apply, with appropriate modifications, to the presentation of a claim and the reference of a question to an industrial tribunal as they apply to the presentation of a complaint.
- (5) In proceeding under subsection (2) or (3) a conciliation officer shall, where appropriate, have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.
- (6) Anything communicated to a conciliation officer in connection with the performance of his functions under this section shall not be admissible in evidence in any proceedings before an industrial tribunal, except with the consent of the person who communicated it to that officer.
- (7) The Secretary of State may by order—
- (a) direct that further provisions of this Act be added to the list in subsection (1)(a);
- (b) specify a provision of any other Act as one to which subsection (1)(b) applies.

#### **Textual Amendments**

- F251** Words inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), **Sch. 1 para. 17**
- F252** [S. 133\(1\)\(d\)](#) inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), **Sch. 1 para. 17**
- F253** “; or” inserted by [Wages Act 1986 \(c. 48, SIF 43:2\)](#), s. 32(1), **Sch. 4 para. 9**
- F254** [S. 133\(1\)\(e\)](#) inserted by [Wages Act 1986 \(c. 48, SIF 43:2\)](#), s. 32(1), **Sch. 4 para. 9**
- F255** “; or” inserted by [Employment Act 1988 \(c. 19, SIF 43:5\)](#), s. 33, **Sch. 3 para. 2(3)**
- F256** [S. 133\(1\)\(f\)](#) inserted by [Employment Act 1988 \(c. 19, SIF 43:5\)](#), s. 33, **Sch. 3 para. 2(3)**
- F257** [S. 133\(1\)\(g\)](#) inserted by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 3(5), [Sch. 1 paras. 1, 4](#) (with application in relation to a complaint under ss. 1 or 2 of that 1990 Act)

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

- C72** [S. 133](#) extended by [S.I. 1981/1794](#), **regs. 11(9), 13**

#### **Marginal Citations**

- M43** [1975 c. 71](#).
- M44** [1980 c. 42](#).



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### 134 Functions of conciliation officers on complaint under s. 67.

- (1) Where a complaint has been presented to an industrial tribunal under section 67 by a person (in this section referred to as the complainant) and a copy of it has been sent to a conciliation officer, it shall be the duty of the conciliation officer—
  - (a) if he is requested to do so by the complainant and by the employer against whom it was presented, or
  - (b) if, in the absence of any such request, the conciliation officer considers that he could act under this section with a reasonable prospect of success,to endeavour to promote a settlement of the complaint without its being determined by an industrial tribunal.
- (2) For the purpose of promoting such a settlement, in a case where the complainant has ceased to be employed by the employer against whom the complaint was made,—
  - (a) the conciliation officer shall in particular seek to promote the reinstatement or re-engagement of the complainant by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the conciliation officer to be equitable; but
  - (b) where the complainant does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, and the parties desire the conciliation officer to act under this section, he shall seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to the complainant.
- [<sup>F258</sup>(3) Where—
  - (a) a person claims that action has been taken in respect of which a complaint could be presented by him under section 67, and
  - (b) before any complaint relating to that action has been so presented, a request is made to a conciliation officer (whether by that person or by the employer) to make his services available to them,the conciliation officer shall act in accordance with subsections (1) and (2) above as if a complaint had been presented.]
- (4) In proceeding under subsections (1) to (3), a conciliation officer shall where appropriate have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.
- (5) Anything communicated to a conciliation officer in connection with the performance of his functions under this section shall not be admissible in evidence in any proceedings before an industrial tribunal, except with the consent of the person who communicated it to that officer.

#### Textual Amendments

**F258** S. 134(3) substituted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 18](#)

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### *Employment Appeal Tribunal*

#### **135 Employment Appeal Tribunal.**

- (1) The Employment Appeal Tribunal established under section 87 of the <sup>M45</sup>Employment Protection Act 1975 shall continue in existence by that name <sup>F259</sup>
- (2) The Employment Appeal Tribunal (in this Act referred to as “the Appeal Tribunal”) shall consist of—
  - (a) such number of judges as may be nominated from time to time by the Lord Chancellor from among the judges (other than the Lord Chancellor) of the High Court and the Court of Appeal;
  - (b) at least one judge of the Court of Session nominated from time to time by the Lord President of that Court; and
  - (c) such number of other members as may be appointed from time to time by Her Majesty on the joint recommendation of the Lord Chancellor and the Secretary of State.
- (3) The members of the Appeal Tribunal appointed under subsection (2)(c) shall be persons who appear to the Lord Chancellor and the Secretary of State to have special knowledge or experience of industrial relations, either as representatives of employers or as representatives of workers (within the meaning of the <sup>M46</sup>Trade Union and Labour Relations Act 1974).
- (4) The Lord Chancellor shall, after consultation with the Lord President of the Court of Session, appoint one of the judges nominated under subsection (2) to be President of the Appeal Tribunal.
- (5) No judge shall be nominated a member of the Appeal Tribunal except with his consent.
- (6) The provisions of Schedule 11 shall have effect with respect to the Appeal Tribunal and proceedings before the Tribunal.

#### **Textual Amendments**

**F259** Words repealed by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 2](#)

#### **Marginal Citations**

**M45** 1975 c. 71.

**M46** 1974 c. 52.

#### **136 Appeals to Tribunal from industrial tribunals and Certification Officer.**

- (1) An appeal shall lie to the Appeal Tribunal on a question of law arising from any decision of, or arising in any proceedings before, an industrial tribunal under, or by virtue of, the following Acts—
  - (a) the <sup>M47</sup>Equal Pay Act 1970;
  - (b) the <sup>M48</sup>Sex Discrimination Act 1975;
  - (c) the <sup>M49</sup>Employment Protection Act 1975;
  - (d) the <sup>M50</sup>Race Relations Act 1976;
  - (e) this Act.
  - <sup>F260</sup>(f) the Wages Act 1986.]

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[<sup>F261</sup>(g) the Employment Act 1990.]

- (2) The Appeal Tribunal shall hear appeals on questions of law arising in any proceedings before, or arising from any decision of, the Certification Officer under the following enactments—
- (a) sections 3, 4 and 5 of the <sup>M51</sup>Trade Union Act 1913;
  - (b) section 4 of the <sup>M52</sup>Trade Union (Amalgamations, etc.) Act 1964.
- (3) The Appeal Tribunal shall hear appeals on questions of fact or law arising in any proceedings before, or arising from any decision of, the Certification Officer under the following enactments—
- (a) section 8 of the Trade Union and Labour Relations Act 1974;
  - (b) section 8 of the Employment Protection Act 1975.
- (4) Without prejudice to section 13 of the <sup>M53</sup>Administration of Justice Act 1960 (appeal in case of contempt of court), an appeal shall lie on any question of law from any decision or order of the Appeal Tribunal with the leave of the Tribunal or of the Court of Appeal or, as the case may be, the Court of Session,—
- (a) in the case of proceedings in England and Wales, to the Court of Appeal;
  - (b) in the case of proceedings in Scotland, to the Court of Session.
- (5) No appeal shall lie except to the Appeal Tribunal from any decision of an industrial tribunal under the Acts listed in subsection (1) [<sup>F262</sup>or under section 2, 4 or 5 of the <sup>M54</sup>Employment Act 1980][<sup>F263</sup>or section 4 or 5 of the Employment Act 1988] or from any decision under the enactments listed in subsections (2) and (3) of the Certification Officer appointed under section 7 of the <sup>M55</sup>Employment Protection Act 1975.

#### Textual Amendments

**F260** S. 136(1)(f) inserted by Wages Act 1986 (c. 48, SIF 43:2), s. 32(1), **Sch. 4 para. 10**

**F261** S. 136(1)(g) inserted by Employment Act 1990 (c. 38, SIF 43:5), s. 3(5), Sch. 1 paras. 1, **8** (with application in relation to a complaint under ss. 1 or 2 of that 1990 Act)

**F262** Words inserted by Employment Act 1980 (c. 42 SIF 43:5), Sch. 1 para. 19

**F263** Words inserted by Employment Act 1988 (c. 19, SIF 43:5), s. 33(1), **Sch. 3 para. 2(4)**

#### Marginal Citations

**M47** 1970 c. 41.

**M48** 1975 c. 65.

**M49** 1975 c. 71.

**M50** 1976 c. 74.

**M51** 1913 c. 30 (2 & 3 Geo. 5).

**M52** 1964 c. 24.

**M53** 1960 c. 65.

**M54** 1980 c. 42.

**M55** 1975 c. 71.

VALID FROM 22/08/1996

<sup>F264</sup>**136A** .....

*Status: Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.*

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

### Textual Amendments

**F264** S. 136A repealed (22.8.1996) by 1996 c. 17, ss. 45, 46, **Sch. 3 Pt. 1** (with s. 38) 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>F328</sup> 136A Restriction of vexatious proceedings. **E+W+S**

- (1) If, on an application made by the Attorney General or the Lord Advocate under this section, the Appeal Tribunal is satisfied that any person has habitually and persistently and without any reasonable ground—
  - (a) instituted vexatious proceedings, whether in an industrial tribunal or before the Appeal Tribunal, and whether against the same person or against different persons; or
  - (b) made vexatious applications in any proceedings, whether in an industrial tribunal or before the Appeal Tribunal,
 the Appeal Tribunal may, after hearing that person or giving him an opportunity of being heard, make a restriction of proceedings order.
- (2) A “restriction of proceedings order” is an order that—
  - (a) no proceedings shall without the leave of the Appeal Tribunal be instituted in any industrial tribunal or before the Appeal Tribunal by the person against whom the order is made;
  - (b) any proceedings instituted by him in any industrial tribunal or before the Appeal Tribunal before the making of the order shall not be continued by him without the leave of the Appeal Tribunal; and
  - (c) no application (other than one for leave under this section) shall be made by him in any proceedings in any industrial tribunal or in the Appeal Tribunal without the leave of the Appeal Tribunal.
- (3) A restriction of proceedings order may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.
- (4) Leave for the institution or continuance of, or for the making of an application in, any proceedings in an industrial tribunal or before the Appeal Tribunal by a person who is the subject of a restricted proceedings order shall not be given unless the Appeal Tribunal is satisfied that the proceedings or application are not an abuse of the process of the tribunal in question and that there are reasonable grounds for the proceedings or application.
- (5) No appeal shall lie from a decision of the Appeal Tribunal refusing leave for the institution or continuance of, or for the making of an application in, proceedings by a person who is the subject of a restriction of proceedings order.
- (6) A copy of a restriction of proceedings order shall be published in the London Gazette and in the Edinburgh Gazette.]

### Textual Amendments

**F328** S. 136A inserted (30.11.1993) by 1993 c. 19, **s.42**; S.I. 1993/2503, art. 2(2), **Sch.2**

*Status:* Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.

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

## PART IX

### MISCELLANEOUS AND SUPPLEMENTAL

#### *Extension of employment protection legislation*

#### **137 Power to extend employment protection legislation.**

(1) Her Majesty may by Order in Council provide that—

- (a) the provisions of this Act; and
- (b) any legislation (that is to say any enactment of the Parliament of Northern Ireland and any provision made by or under a Measure of the Northern Ireland Assembly) for the time being in force in Northern Ireland which makes provision for purposes corresponding to any of the purposes of this Act,

shall, to such extent and for such purposes as may be specified in the Order, apply (with or without modification) to or in relation to any person in employment to which this section applies.

[<sup>F265</sup>(2) This section applies to employment for the purposes of—

- (a) any activities in the territorial waters of the United Kingdom; or
- (b) any activities which, if paragraphs (a) and (d) of subsection (6) of section 23 of the <sup>M56</sup>Oil and Gas (Enterprise) Act 1982 (application of civil law to certain offshore activities) were omitted, would nevertheless fall within subsection (2) of that section.]

(3) An Order in Council under subsection (1)—

- (a) may make different provision for different cases;
- (b) may provide that all or any of the enactments referred to in subsection (1), as applied by such an Order, shall apply to individuals whether or not they are British subjects and to bodies corporate whether or not they are incorporated under the law of any part of the United Kingdom (notwithstanding that the application may affect their activities outside the United Kingdom);
- (c) may make provision for conferring jurisdiction on any court or class of court specified in the Order, or on industrial tribunals, in respect of offences, causes of action or other matters arising in connection with employment to which this section applies;
- (d) without prejudice to the generality of subsection (1) or of paragraph (a), may provide that the enactments referred to in subsection (1), as applied by the Order, shall apply in relation to any person in employment for the purposes of such activities as are referred to in subsection (2) in any part of the areas specified in paragraphs (a) and (b) of that subsection;
- (e) may exclude from the operation of section 3 of the <sup>M57</sup>Territorial Waters Jurisdiction Act 1878 (consents required for prosecutions) proceedings for offences under the enactments referred to in subsection (1) in connection with employment to which this section applies;
- (f) may provide that such proceedings shall not be brought without such consent as may be required by the Order;
- (g) may, without prejudice to the generality of the power under subsection (1) to modify the enactments referred to in that subsection in their application for the purposes of this section, modify or exclude the operation of sections 141

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and 144 or paragraph 14 of Schedule 13 or of any corresponding provision in any such Northern Irish legislation as is referred to in subsection (1)(b).

- (4) Any jurisdiction conferred on any court or tribunal under this section shall be without prejudice to jurisdiction exercisable apart from this section by that or any other court or tribunal.

(5)<sup>F266</sup>

#### Textual Amendments

**F265** S. 137(2) substituted by Oil and Gas (Enterprise) Act 1982 (c. 23, SIF 86), **Sch. 3 para. 40(1)**

**F266** S. 137(5) repealed by Oil and Gas (Enterprise) Act 1982 (c. 23, SIF 86), **Sch. 4**

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

**C73** S. 137 applied (with modifications) (E.W.S.) by Wages Act 1986 (c. 48, SIF 43:2), **ss. 9(4), 10(1), 30**

**C74** S. 137 applied (with modifications) by Employment Act 1990 (c. 38, SIF 43:5), s. 3(5), **Sch. 1 para. 17**

**C75** S. 137 extended (7.2.1994) by 1993 c. 48, **s. 165(7)**; S.I. 1994/86, **art. 2**

**C76** S. 137 extended (N.I.) (7.2.1994) by 1993 c. 49, **s. 161(6)**; S.R. 1994/17, **art. 2**

#### Marginal Citations

**M56** 1982 c. 23.

**M57** 1878 c. 73.

### *Crown employment*

#### **138 Application of Act to Crown employment.**

- (1) Subject to the following provisions of this section, Parts I (so far as it relates to itemised pay statements), II, III<sup>F267</sup>, V, VIII and this Part and section 53 shall have effect in relation to Crown employment and to persons in Crown employment as they have effect in relation to other employment and to other employees.
- (2) In this section, subject to subsections (3) to (5), “Crown employment” means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by any enactment.
- (3) This section does not apply to service as a member of the naval, military or air forces of the Crown,<sup>F268</sup> but does apply to employment by any association established for the purposes of [<sup>F269</sup>Part VI of the<sup>M58</sup> Reserve Forces Act 1980]
- (4) For the purposes of this section, Crown employment does not include any employment in respect of which there is in force a certificate issued by or on behalf of a Minister of the Crown certifying that employment of a description specified in the certificate, or the employment of a particular person so specified, is (or, at a time specified in the certificate, was) required to be excepted from this section for the purpose of safeguarding national security; and any document purporting to be a certificate so issued shall be received in evidence and shall, unless the contrary is proved, be deemed to be such a certificate.

[<sup>F270</sup>(5) For the purposes of Parts I (so far as it relates to itemised pay statements), II, III (except section 44(3) and (4)), V, VII (except section 126(3) and (4)), VIII and this Part and

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section 53, none of the bodies referred to in Schedule 5 shall be regarded as performing functions on behalf of the Crown and accordingly employment by any such body shall not be Crown employment within the meaning of this section.]

- (6) For the purposes of the application of the provisions of this Act in relation to employment by any such body as is referred to in subsection (5), any reference to redundancy shall be construed as a reference to the existence of such circumstances as, in accordance with any arrangements for the time being in force as mentioned in section 111(3), are treated as equivalent to redundancy in relation to such employment.
- (7) For the purposes of the application of the provisions of this Act in relation to Crown employment in accordance with subsection (1)—
- (a) any reference to an employee shall be construed as a reference to a person in Crown employment;
  - (b) any reference to a contract of employment shall be construed as a reference to the terms of employment of a person in Crown employment;
  - (c) any reference to dismissal shall be construed as a reference to the termination of Crown employment;
  - (d) any reference to redundancy shall be construed as a reference to the existence of such circumstances as, in accordance with any arrangements for the time being in force as mentioned in section 111(3), are treated as equivalent to redundancy in relation to Crown employment;
  - (e) the reference in paragraph 1(5)(c) of Schedule 9 to a person's undertaking or any undertaking in which he works shall be construed as a reference to the national interest; and
  - (f) any other reference to an undertaking shall be construed, in relation to a Minister of the Crown, as a reference to his functions or (as the context may require) to the department of which he is in charge and, in relation to a government department, officer or body, shall be construed as a reference to the functions of the department, officer or body or (as the context may require) to the department, officer or body.
- (8) Where the terms of employment of a person in Crown employment restrict his right to take part in—
- (a) certain political activities; or
  - (b) activities which may conflict with his official functions,
- nothing in section 29 shall require him to be allowed time off work for public duties connected with any such activities.

#### Textual Amendments

**F267** Words repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(2), [Sch. 11](#)

**F268** Words repealed with saving by [Armed Forces Act 1981 \(c. 55, SIF 7:1\)](#), s. 28(2), [Sch. 5 Pt. I](#)

**F269** Words substituted by [Reserve Forces Act 1980 \(c. 9, SIF 7:2\)](#), [Sch. 9 para. 17](#)

**F270** [S. 138\(5\)](#) repealed (1.4.1991) by [National Health and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(2), [Sch. 10](#)

#### Marginal Citations

**M58** [1980 c. 9.](#)

*Status:* Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.

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

VALID FROM 01/08/1998

**[<sup>F271</sup>138] Application of Act to armed forces.**

- (1) The provisions of this Act which apply, by virtue of section 138, to service as a member of the naval, military or air forces of the Crown are—
- Part I;
  - in Part II, sections 19 to 22 and 31A;
  - Part III;
  - in Part IV, section 53;
  - Part V, except sections 57A [<sup>F272</sup>57AA,] and 80;
  - Part VIII; and
  - this Part.
- (2) Her Majesty may, by Order in Council,—
- (a) amend subsection (1) above by making additions to, or omissions from, the provisions for the time being specified in that subsection by an Order under this subsection; and
  - (b) make any provision apply to service as a member of the naval, military or air forces of the Crown subject to such exceptions and modifications as may be specified in the Order.
- (3) Subject to subsection (5) below, modifications made under subsection (2) above may include provision precluding the making of a complaint or reference to any [<sup>F273</sup>employment tribunal] unless the person aggrieved has availed himself of the service procedures for the redress of complaints applicable to him.
- (4) Where modifications include the provision authorised by subsection (3) above the Order in Council shall also include provision designed to secure that the service procedures for the redress of complaints result in a determination, or what is to be treated under the Order as a determination, in sufficient time to enable a complaint or reference to be made to an [<sup>F273</sup>employment tribunal].
- (5) No provision shall be made by virtue of subsection (3) above which has the effect of substituting, for any period specified as the normal period for a complaint or reference on any matter to an [<sup>F273</sup>employment tribunal], a period longer than six months.
- (6) No recommendation shall be made to Her Majesty to make an Order in Council under subsection (2) above unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.
- (7) In this section—
- “the normal period for a complaint or reference”, in relation to any matter within the jurisdiction of an [<sup>F273</sup>employment tribunal], means the period specified in the relevant enactment as the period within which the complaint or reference must be made, disregarding any provision permitting an extension of that period at the discretion of the tribunal; and
  - “the service procedures for the redress of complaints” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in sections 180 and 181 of the <sup>M59</sup>Army



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Act 1955, sections 180 and 181 of the <sup>M60</sup>Air Force Act 1955 and section 130 of the <sup>M61</sup>Naval Discipline Act 1957.]

#### Textual Amendments

**F271** S. 138A inserted (10.6.1994) by 1993 c. 19, s. 31(2); S.I. 1994/1365, art. 2, Sch.

**F272** Words in s. 138A(1) inserted (26.10.1995) by S.I. 1995/2587, reg. 14(5)

**F273** Words in s. 138A(3)-(5)(7) substituted (1.8.1998) by 1998 c. 8, s. 1(2) (with s. 16(2)); S.I. 1998/1658, art. 2, Sch. 1

#### Marginal Citations

**M59** 1955 c. 18.

**M60** 1955 c. 19.

**M61** 1957 c. 53.

#### [<sup>F329</sup>138A Application of Act to armed forces. **E+W+S**

- (1) The provisions of this Act which apply, by virtue of section 138, to service as a member of the naval, military or air forces of the Crown are—
  - Part I;
  - in Part II, sections 19 to 22 and 31A;
  - Part III;
  - in Part IV, section 53;
  - Part V, except sections 57A and 80;
  - Part VIII; and
  - this Part.
- (2) Her Majesty may, by Order in Council,—
  - (a) amend subsection (1) above by making additions to, or omissions from, the provisions for the time being specified in that subsection by an Order under this subsection; and
  - (b) make any provision apply to service as a member of the naval, military or air forces of the Crown subject to such exceptions and modifications as may be specified in the Order.
- (3) Subject to subsection (5) below, modifications made under subsection (2) above may include provision precluding the making of a complaint or reference to any industrial tribunal unless the person aggrieved has availed himself of the service procedures for the redress of complaints applicable to him.
- (4) Where modifications include the provision authorised by subsection (3) above the Order in Council shall also include provision designed to secure that the service procedures for the redress of complaints result in a determination, or what is to be treated under the Order as a determination, in sufficient time to enable a complaint or reference to be made to an industrial tribunal.
- (5) No provision shall be made by virtue of subsection (3) above which has the effect of substituting, for any period specified as the normal period for a complaint or reference on any matter to an industrial tribunal, a period longer than six months.

**Status:** Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.

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

(6) No recommendation shall be made to Her Majesty to make an Order in Council under subsection (2) above unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

(7) In this section—

“the normal period for a complaint or reference”, in relation to any matter within the jurisdiction of an industrial tribunal, means the period specified in the relevant enactment as the period within which the complaint or reference must be made, disregarding any provision permitting an extension of that period at the discretion of the tribunal; and

“the service procedures for the redress of complaints” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in sections 180 and 181 of the <sup>M71</sup>Army Act 1955, sections 180 and 181 of the <sup>M72</sup>Air Force Act 1955 and section 130 of the <sup>M73</sup>Naval Discipline Act 1957.]

#### Textual Amendments

**F329** S. 138A inserted (10.6.1994) by 1993 c. 19, s. 31(2); S.I. 1994/1365, art. 2, Sch.

#### Marginal Citations

**M71** 1955 c. 18.

**M72** 1955 c. 19.

**M73** 1957 c. 53.

### *House of Commons staff*

#### **139 Provisions as to House of Commons staff.**

(1) The provisions of Parts I (so far as it relates to itemised pay statements), II, III <sup>F274</sup>, V and VIII, and this Part and section 53 shall apply to relevant members of House of Commons staff as they apply to persons in Crown employment within the meaning of section 138 and accordingly for the purposes of the application of those provisions in relation to any such members—

- (a) any reference to an employee shall be construed as a reference to any such member;
- (b) any reference to a contract of employment shall be construed as including a reference to the terms of employment of any such member;
- (c) any reference to dismissal shall be construed as including a reference to the termination of any such member’s employment;
- (d) the reference in paragraph 1(5)(c) of Schedule 9 to a person’s undertaking or any undertaking in which he works shall be construed as a reference to the national interest or, if the case so requires, the interests of the House of Commons; and
- (e) any other reference to an undertaking shall be construed as a reference to the House of Commons.

(2) Nothing in any rule of law or the law or practice of Parliament shall prevent a relevant member of the House of Commons staff from bringing a civil employment claim

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before the court or from bringing before an industrial tribunal proceedings of any description which could be brought before such a tribunal by any person who is not such a member.

(3) In this section—

“relevant member of the House of Commons staff” means—

- (a) any person appointed by the House of Commons Commission (in this section referred to as the Commission) or employed in the refreshment department; and
- (b) any member of Mr. Speaker’s personal staff;

“civil employment claim” means a claim arising out of or relating to a contract of employment or any other contract connected with employment, or a claim in tort arising in connection with a person’s employment; and

“the court” means the High Court or the county court.

(4) It is hereby declared that for the purposes of the enactments applied by subsection (1) and of Part VI (where applicable to relevant members of House of Commons staff) and for the purposes of any civil employment claim—

- (a) the Commission is the employer of staff appointed by the Commission; and
- (b) Mr. Speaker is the employer of his personal staff and of any person employed in the refreshment department and not falling within paragraph (a);

but the foregoing provision shall have effect subject to subsection (5).

(5) The Commission or, as the case may be, Mr. Speaker may designate for all or any of the purposes mentioned in subsection (4)—

- (a) any description of staff other than Mr. Speaker’s personal staff; and
- (b) in relation to staff so designated, any person;

and where a person is so designated he, instead of the Commission or Mr. Speaker, shall be deemed for the purposes to which the designation relates to be the employer of the persons in relation to whom he is so designated.

(6) Where any proceedings are brought by virtue of this section against the Commission or Mr. Speaker or any person designated under subsection (5), the person against whom the proceedings are brought may apply to the court or the industrial tribunal, as the case may be, to have some other person against whom the proceedings could at the time of the application be properly brought substituted for him as a party to those proceedings.

(7) For the purposes mentioned in subsection (4) a person’s employment in or for the purposes of the House of Commons shall not, provided he continues to be employed in such employment, be treated as terminated by reason only of a change (whether effected before or after the passing of the <sup>M62</sup>House of Commons (Administration) Act 1978, and whether effected by virtue of that Act or otherwise) in his employer and (provided he so continues) his first appointment to such employment shall be deemed after the change to have been made by his employer for the time being, and accordingly—

- (a) he shall be treated for the purposes so mentioned as being continuously employed by that employer from the commencement of such employment until its termination; and
- (b) anything done by or in relation to his employer for the time being in respect of such employment before the change shall be so treated as having been done

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by or in relation to the person who is his employer for the time being after the change.

- (8) In subsection (7) “employer for the time being”, in relation to a person who has ceased to be employed in or for the purposes of the House of Commons, means the person who was his employer immediately before he ceased to be so employed, except that where some other person would have been his employer for the time being if he had not ceased to be so employed, it means that other person.
- (9) If the House of Commons resolves at any time that any provision of subsections (3) to (6) should be amended in its application to any member of the staff of that House, Her Majesty may by Order in Council amend that provision accordingly.

**Textual Amendments**

**F274** Words repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(2), [Sch. 11](#)

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

**C77** [S. 139\(4\)-\(9\)](#) applied (with modifications) (16.10.1992) by [Sex Discrimination Act 1975 \(c. 65\)](#), s. **85A(2)** (as inserted by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), ss. 278(6), 300(2), 302, [Sch. 2 para.6](#)).

[S. 139\(4\)-\(9\)](#) applied (with modifications) (16.10.1992) by [Race Discrimination Act 1976 \(c. 74\)](#), s. **75A(2)** (as inserted by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), ss. 278(6), 300(2), 302, [Sch. 2 para.7](#)).

**Marginal Citations**

**M62** [1978 c. 36](#).

VALID FROM 30/11/1993

*<sup>F275</sup> House of Lords staff*

**Textual Amendments**

**F275** [S. 139A](#) and cross heading inserted (30.11.1993) by [1993 c. 19](#), s. 49(1), [Sch. 7 para.11](#); [S.I. 1993/2503](#), art. 2(2), [Sch.2](#)

VALID FROM 22/08/1996

**139A** <sup>F276</sup> **Provisions as to House of Lords staff.**

<sup>F277</sup>(1) .....

<sup>F277</sup>(2) .....

(3) For the purposes of the application of the enactments applied by subsection (1) in relation to a relevant member of the House of Lords staff—

<sup>F278</sup>(a) .....

<sup>F277</sup>(b) .....

**Status:** Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.

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F277 (4) .....

F277 (5) .....

F277 (6) .....]

#### Textual Amendments

**F276** S. 139A inserted (30.11.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para. 11**; S.I. 1993/2503, art. 2(2), **Sch. 2**

**F277** S. 139A(1)(2)(3)(b)(4)-(6) 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 to s. 139A(2) (1.8.1998) by 1998 c. 8, s. 1(2) (with s. 16(2)); S.I. 1998/1658, art. 2, **Sch. 1**

**F278** S. 139A(3)(a) repealed (22.8.1996) by 1996 c. 17, ss. 45, 46, **Sch. 3 Pt. I** (with s. 38)

#### 139A <sup>F330</sup> Provisions as to House of Lords staff. **E+W+S**

- (1) The provisions of Parts I, II, III, V and VIII, and this Part and section 53 shall apply in relation to employment as a relevant member of the House of Lords staff as they apply to other employment.
- (2) Nothing in any rule of law or the law or practice of Parliament shall prevent a relevant member of the House of Lords staff from bringing a civil employment claim before the court or from bringing before an industrial tribunal proceedings of any description which could be brought before such a tribunal by a person who is not such a member.
- (3) For the purposes of the application of the enactments applied by subsection (1) in relation to a relevant member of the House of Lords staff—
  - (a) the reference in paragraph 1(5)(c) of Schedule 9 to a person’s undertaking or any undertaking in which he works shall be construed as a reference to the national interest or, if the case so requires, the interests of the House of Lords; and
  - (b) any other reference to an undertaking shall be construed as a reference to the House of Lords.
- (4) Where the terms of his contract of employment restrict the right of a relevant member of the House of Lords staff to take part in—
  - (a) certain political activities, or
  - (b) activities which may conflict with his official functions,nothing in section 29 shall require him to be allowed time off work for public duties connected with any such activities.
- (5) In this section—

“relevant member of the House of Lords staff” means any person who is employed under a contract of employment with the Corporate Officer of the House of Lords;

“civil employment claim” means a claim arising out of or relating to a contract of employment or any other contract connected with employment, or a claim in tort arising in connection with a person’s employment; and

“the court” means the High Court or the county court.

*Status: Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.*

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

- (6) For the purposes of the application of the enactments applied by subsection (1) and of any civil employment claim in relation to a person continuously employed in or for the purposes of the House of Lords up to the time when he became so employed under a contract of employment with the Corporate Officer of the House of Lords, his employment shall not be treated as having been terminated by reason only of a change in his employer before or at that time.

**Textual Amendments**

**F330** S. 139A inserted (30.11.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para.11**; S.I. 1993/2503, art. 2(2), **Sch. 2**

*Contracting out of provisions of Act*

**140 Restrictions on contracting out.**

- (1) Except as provided by the following provisions of this section, any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—
- (a) to exclude or limit the operation of any provision of this Act; or
  - (b) to preclude any person from presenting a complaint to, or bringing any proceedings under this Act before, an industrial tribunal.
- (2) Subsection (1) shall not apply—
- (a) to any provision in a collective agreement excluding rights under section 12 if an order under section 18 is for the time being in force in respect of it;
  - (b)
  - <sup>F279</sup>(c) to any provision in a dismissal procedures agreement excluding rights under section 54 if that provision is not to have effect unless an order under section 65 is for the time being in force in respect of it;
  - (d) to any agreement to refrain from presenting a complaint under section 67, where in compliance with a request under section 134(3) a conciliation officer has taken action in accordance with that subsection;
  - (e) to any agreement to refrain from proceeding with a complaint presented under section 67 where a conciliation officer has taken action in accordance with section 134(1) and (2);
  - (f) to any provision in an agreement if an order under section 96 is for the time being in force in respect of it;
  - (g) to any agreement to refrain from instituting or continuing any proceedings before an industrial tribunal where a conciliation officer has taken action in accordance with section 133(2) or (3);
  - (h) to any provision of an agreement relating to dismissal from employment such as is mentioned in section 142(1) or (2).

**Textual Amendments**

**F279** S. 140(2)(b) repealed by **Employment Act 1980 (c. 42, SIF 43:5)**, **Sch. 2**

*Status:* Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.

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

### *Excluded classes of employment*

#### **141 Employment outside Great Britain.**

- (1) Sections 1 to 4 and 49 to 51 do not apply in relation to employment during any period when the employee is engaged in work wholly or mainly outside Great Britain unless the employee ordinarily works in Great Britain and the work outside Great Britain is for the same employer.
- (2) Sections 8 and 53 and Parts II, III, <sup>F280</sup>and V] do not apply to employment where under his contract of employment the employee ordinarily works outside Great Britain.
- <sup>F281</sup>(2) Part VII does not apply to employment where under his contract of employment the employee ordinarily works outside the territory of the Member States of the European Communities.]
- (3) An employee shall not be entitled to a redundancy payment if on the relevant date he is outside Great Britain, unless under his contract of employment he ordinarily worked in Great Britain.
- (4) An employee who under his contract of employment ordinarily works outside Great Britain shall not be entitled to a redundancy payment unless on the relevant date he is in Great Britain in accordance with instruction given to him by his employer.
- (5) For the purpose of subsection (2), a person employed to work on board a ship registered in the United Kingdom (not being a ship registered at a port outside Great Britain) shall, unless—
  - (a) the employment is wholly outside Great Britain, or
  - (b) he is not ordinarily resident in Great Britain,be regarded as a person who under his contract ordinarily works in Great Britain.

#### **Textual Amendments**

**F280** Words “and V” substituted for words “V and VII” by [S.I. 1983/624, regs. 2-4](#) where “the relevant date” (within the meaning of s. 122(2) of the Act) falls on or after 1.6.1983

**F281** [S. 141\(2\)\(A\)](#) inserted by [S.I. 1983/624, regs. 2-4](#) where “the relevant date” (within the meaning of s. 122(2) of the Act) falls on or after 1.6.1983

#### **142 Contracts for a fixed term.**

- (1) Section 54 does not apply to dismissal from employment under a contract for a fixed term of <sup>F282</sup>one year] or more, where the dismissal consists only of the expiry of that term without its being renewed, if before the term so expires the employee has agreed in writing to exclude any claim in respect of rights under that section in relation to that contract.
- (2) An employee employed under a contract of employment for a fixed term of two years or more entered into after 5th December 1965 shall not be entitled to a redundancy payment in respect of the expiry of that term without its being renewed (whether by the employer or by an associated employer of his), if before the term so expires he has agreed in writing to exclude any right to a redundancy payment in that event.

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- (3) Such an agreement as is mentioned in subsection (1) or (2) may be contained either in the contract itself or in a separate agreement.
- (4) Where an agreement under subsection (2) is made during the currency of a fixed term, and that term is renewed, the agreement under that subsection shall not be construed as applying to the term as renewed, but without prejudice to the making of a further agreement under that subsection in relation to the term so renewed.

#### Textual Amendments

**F282** Words substituted with saving by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [s. 8\(2\)](#) and [S.I. 1980/1170, art. 4, Sch. 3](#)

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

**C78** [S. 142 restricted \(E.W.\) \(26.8.1994\)](#) by [1994 c. 20, s. 4, Sch. 4 para. 7\(4\)](#); [S.I. 1994/1841, art. 2](#)  
[S. 142 restricted \(E.W.\) \(3.1.1995\)](#) by [1994 c. 40, ss. 20, 82\(2\), Sch. 8 para. 7\(4\)](#)

**F283** **143** .....

#### Textual Amendments

**F283** [S. 143](#) repealed by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 4](#)

### 144 **Mariners.**

- (1) Sections 1 to 6 and 49 to 51 do not apply to—
  - (a) a person employed as a master of or a seaman on a sea-going British ship having a gross registered tonnage of eighty tons or more, including a person ordinarily employed as a seaman who is employed in or about such a ship in port by the owner or charterer of the ship to do work of a kind ordinarily done by a seaman on such a ship while it is in port, or
  - (b) a person employed as a skipper of or a seaman on a fishing boat for the time being [<sup>F284</sup>registered under Part II of the Merchant Shipping Act 1988].
- (2) Sections 8 and 53 and Parts II, III and V to VII do not apply to employment as master or as a member of the crew of a fishing vessel where the employee is remunerated only by a share in the profits or gross earnings of the vessel.
- (3) Section 141(3) and (4) do not apply to an employee, and section 142(2) does not apply to a contract of employment, if the employee is employed as a master or seaman in a British ship and is ordinarily resident in Great Britain.
- (4) Sections 8, 29, 31, 122 and 123 do not apply to employment as a merchant seaman.
- (5) Employment as a merchant seaman does not include employment in the fishing industry or employment on board a ship otherwise than by the owner, manager or charterer of that ship except employment as a radio officer, but, save as aforesaid, it includes employment as master or a member of the crew of any ship and as a trainee undergoing training for the sea service, and employment in or about a ship in port by



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the owner, manager or charterer of the ship to do work of the kind ordinarily done by a merchant seaman on a ship while it is in port.

**Textual Amendments**

**F284** Words substituted by [Merchant Shipping Act 1988 \(c. 12, SIF 111\)](#), s. 57(4), **Sch. 6**

**F285** 145 .....

**Textual Amendments**

**F285** S. 145 repealed by [Dock Work Act 1989 \(c. 13, SIF 43:5\)](#), s. 7(1), **Sch. 1 Pt. I**

**146 Miscellaneous classes of employment.**

(1)

**F286** (2) Parts II, III, [**F287** and V] and sections 8, 9, 53 and 86 do not apply to employment under a contract of employment in police service or to persons engaged in such employment.

(3) In subsection (2), “police service” means service—

- (a) as a member of any constabulary maintained by virtue of any enactment, or
- (b) in any other capacity by virtue of which a person has the powers of privileges of a constable.

(4) Subject to subsections (5), (6) and (7), the following provisions of this Act (which confer rights which do not depend upon an employee having a qualifying period of continuous employment) do not apply to employment under a contract which normally involves employment for less than sixteen hours weekly, that is to say, sections [**F288** 1, 4,] 8, 27, 28 and 29.

(5) If the employee’s relations with his employer cease to be governed by a contract which normally involves work for sixteen hours or more weekly and become governed by a contract which normally involves employment for eight hours or more, but less than sixteen hours, weekly, the employee shall nevertheless for a period of twenty-six weeks, computed in accordance with subsection (6), be treated for the purposes of subsection (4) as if his contract normally involved employment for sixteen hours or more weekly.

(6) In computing the said period of twenty-six weeks no account shall be taken of any week—

- (a) during which the employee is in fact employed for sixteen hours or more;
- (b) during which the employee takes part in a strike (as defined by paragraph 24 of Schedule 13) or is absent from work because of a lock-out (as so defined) by his employer; or
- (c) during which there is no contract of employment but which, by virtue of paragraph 9(1) of Schedule 13, counts in computing a period of continuous employment.

(7) An employee whose relations with his employer are governed by a contract of employment which normally involves employment for eight hours or more, but less

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than sixteen hours, weekly shall nevertheless, if he has been continuously employed for a period of five years or more be treated for the purposes of subsection (4) as if his contract normally involved employment for sixteen hours or more weekly.

[<sup>F289</sup>(8) References in subsections (4) to (7) to weeks are to weeks within the meaning of Schedule 13.]

#### Textual Amendments

**F286** S. 146(1) repealed by Employment Act 1982 (c. 46, SIF 43:5), **Sch. 4** with saving in S.I. 1982/1656, **Sch. 2**

**F287** Words “and V” substituted for words “V and VII” by S.I. 1983/624, **regs. 2-4** where “the relevant date” (within the meaning of s. 122(2) of the Act) falls on or after 1.6.1983

**F288** Words inserted with saving by Employment Act 1982 (c. 46, SIF 43:5), s. 20, **Sch. 2 para. 8(5)(a)**

**F289** S. 146(8) added with saving by Employment Act 1982 (c. 46, SIF 43:5), s. 20, **Sch. 2 para. 8(5)(b)**

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

**C79** S. 146 modified (E.W.) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 7(2)(d)**

**C80** S. 146 modified by National Health Service (Scotland) Act 1978 (c. 29, SIF 123:2), **s. 12C** (as added by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 31**)

VALID FROM 22/08/1996

<sup>F290</sup>**146A** .....

#### Textual Amendments

**F290** S. 146A repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

[<sup>F331</sup>**146A** National Security. **E+W+S**

- (1) Where in the opinion of any Minister of the Crown the disclosure of any information would be contrary to the interests of national security—
- (a) nothing in any of the provisions to which this section applies shall require any person to disclose the information, and
  - (b) no person shall disclose the information in any proceedings in any court or tribunal relating to any of those provisions.
- (2) This section applies to—
- (a) Part I so far as it relates to employment particulars,
  - (b) sections 22A to 22C and section 31A,
  - (c) Part III,
  - (d) section 53(2A),
  - (e) Part V so far as relating to a dismissal which is regarded as unfair by reason of section 57A, 59(1)(a) or 60, and
  - (f) Part VIII and this Part so far as relating to any of the provisions in paragraphs (a) to (e).]

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#### Textual Amendments

**F331** S. 146A inserted (30.11.1993 for specified purposes and otherwise 10.6.1994) by 1993 c. 19, ss. 49(1), 52, **Sch. 7 para.5**; S.I. 1993/2503, art. 2(2), **Sch.2**; S.I. 1994/1365, art. 2, **Sch.**

**F291** 147 .....

#### Textual Amendments

**F291** S. 147 repealed by **Employment Act 1982 (c. 46, SIF 43:5)**, **Sch. 4**

### *Supplementary provisions*

#### **148 Review of limits.**

- (1) The Secretary of State shall in each calendar year review—
  - (a) the limits referred to in section 15;
  - (b) the limit referred to in section 122(5); and
  - (c) the limits imposed by paragraph 8(1) of Schedule 14 on the amount of a week's pay for the purposes of those provisions;and shall determine whether any of those limits should be varied.
- (2) In making a review under this section the Secretary of State shall consider—
  - (a) the general level of earnings obtaining in Great Britain at the time of the review;
  - (b) the national economic situation as a whole; and
  - (c) such other matters as he thinks relevant.
- (3) If on a review under this section the Secretary of State determines that, having regard to the considerations mentioned in subsection (2), any of those limits should be varied, he shall prepare and lay before each House of Parliament the draft of an order giving effect to his decision.
- (4) Where a draft of an order under this section is approved by resolution of each House of Parliament the Secretary of State shall make an order in the form of the draft.
- (5) If, following the completion of an annual review under this section, the Secretary of State determines that any of the limits referred to in subsection (1) shall not be varied, he shall lay before each House of Parliament a report containing a statement of his reasons for that determination.
- (6) The Secretary of State may at any time, in addition to the annual review provided for in subsection (1), conduct a further review of the limits mentioned in subsection (1) so as to determine whether any of those limits should be varied, and subsections (2) to (4) shall apply to such a review as if it were a review under subsection (1).

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## 149 General power to amend Act.

- (1) Subject to the following provisions of this section, the Secretary of State may by order—
- (a) provide that any enactment contained in this Act which is specified in the order shall not apply to persons or to employments of such classes as may be prescribed in the order;
  - (b) provide that any such enactment shall apply to persons or employments of such classes as may be prescribed in the order subject, except in relation to section 54 (but without prejudice to paragraph (a)), to such exceptions and modifications as may be so prescribed;
  - (c) vary, or exclude the operation of, any of the following provisions of this Act, that is to say, sections <sup>F292</sup>13(2), 20(2), 49(4A), <sup>F293</sup>53(2), <sup>F294</sup>64(1), <sup>F294</sup>64A(1) <sup>F295</sup>99, 141(2) and (5) <sup>F295</sup>144(1), (2), (4) and (5), <sup>F296</sup>and 146 <sup>F295</sup>(4) to (7);
  - (d) add to, vary or delete any of the provisions of Schedule 5.
- (2) Subsection (1) does not apply to the following provisions of this Act, namely, sections <sup>F295</sup>52, 55, 57, 58, <sup>F294</sup>58A <sup>F297</sup>59, 62, 63, 65, 66, 67, <sup>F297</sup>73(4B), 75, 75A(7), 80, 103 to 120, 128, 134, 141(1) <sup>F298</sup>142(1) and 151 and Schedules 3, 9 and 13, and, in addition, paragraph (b) of subsection (1) does not apply to sections 1 to 6 and 49 to 51 <sup>F299</sup>
- (3) The provisions of this section are without prejudice to any other power of the Secretary of State to amend, vary or repeal any provision of this Act or to extend or restrict its operation in relation to any person or employment.
- (4) No order under subsection (1) shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

### Textual Amendments

- F292** Words inserted with saving by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 20, **Sch. 2 para. 9(1)(a)**
- F293** “53(2),” inserted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), ss. 15(2), 29(6), **Sch. 9 para. 4**
- F294** Words inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), **Sch. 1 para. 21**
- F295** Word repealed by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **Sch. 4**
- F296** “145(1), (2) and (3)” repealed by [Dock Work Act 1989 \(c. 13, SIF 43:1\)](#), s. 7(1), **Sch. 1 Pt. I**
- F297** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **Sch. 3 para. 25**
- F298** Words substituted with saving by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 20, **Sch. 2 para. 9(1)(b)**
- F299** Word repealed by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **Sch. 4**

## 150 Death of employee or employer.

Schedule 12 shall have effect for the purpose of supplementing and modifying the provisions of Part I (so far as it relates to itemised pay statements), section 53 and Parts II, III, and V to VII as respects the death of an employee or employer.

### Modifications etc. (not altering text)

- C81** [S. 150](#) extended (E.W.) (26.8.1994) by [1994 c. 20, s. 4, Sch. 4 para. 22](#); [S.I. 1994/1841, art. 2](#)
- [S. 150](#) extended (E.W.) (3.1.1995) by [1994 c. 40, ss. 20, 82\(2\)\(c\), Sch. 8 para. 22](#)
- [S. 150](#) extended (*prosp.*) by [1995 c. 26, ss. 46\(4\)\(c\), 180\(1\)](#) (with s. 121(5))

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## **[<sup>F300F301</sup>13] Computation of period of continuous employment.**

- (1) References in any provision of this Act to a period of continuous employment are, except where provision is expressly made to the contrary, to a period computed in accordance with the provisions of this section and Schedule 13; and in any such provision which refers to a period of continuous employment expressed in months or years a month means a calendar month and a year means a year of twelve calendar months.
- (2) In computing an employee's period of continuous employment any question arising as to—
  - (a) whether the employee's employment is of a kind counting towards a period of continuous employment, or
  - (b) whether periods (consecutive or otherwise) are to be treated as forming a single period of continuous employment,shall be determined in accordance with Schedule 13 (that is to say, week by week), but the length of an employee's period of employment shall be computed in months and years of twelve months in accordance with the following rules.
- (3) Subject to the following provisions of this section, an employee's period of continuous employment for the purposes of any provision of this Act begins with the day on which he starts work and ends with the day by reference to which the length of his period of continuous employment falls to be ascertained for the purposes of the provision in question.
- (4) For the purposes of section 81 and Schedule 4 an employee's period of continuous employment shall be treated as beginning on his eighteenth birthday if that date is later than the starting date referred to in subsection (3).
- (5) If an employee's period of continuous employment includes one or more periods which, by virtue of any provision of Schedule 13, do not count in computing the length of the period but do not break continuity, the beginning of the period shall be treated as postponed by the number of days falling within that intervening period or, as the case may be, by the aggregate number of days falling within those periods.
- (6) The number of days falling within such an intervening period is—
  - (a) in the case of a period to which paragraph 14(3) of Schedule 13 applies, seven days for each week within that sub-paragraph;
  - (b) in the case of a period to which paragraph 15(2) or (4) of that Schedule applies, the number of days between the last working day before the strike or lock-out and the day on which work was resumed;
  - (c) in the case of a period to which paragraph 16(1) of that Schedule applies, the number of days between the employee's last day of employment before service under Part I of the <sup>M63</sup>National Service Act 1948 and the day on which he resumed employment in accordance with Part II of that Act.]

### **Textual Amendments**

**F300** S. 151 substituted with saving by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 20, [Sch. 2 para. 7\(1\)](#)

**F301** S. 151 applied by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), [ss. 281\(5\)](#), 302.

S. 151 applied by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), [ss. 282\(2\)](#), 302.

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

- C82** S. 151 extended by Employment Protection Act 1975 (c. 71, SIF 43:1), s. 119(7) (as amended with saving by Employment Act 1982 (c. 46, SIF 43:5), s. 20, Sch. 2 para. 6(1))
- C83** S. 151(1)(2) applied (with modifications) (E.W.) (26.8.1994) by 1994 c. 20, s. 4, Sch. 4 para. 1(4)(5); S.I. 1994/1841, art. 2
- S. 151(1)(2) applied (with modifications) (E.W.) (3.1.1995) by 1994 c. 40, ss. 20, 82(2), Sch. 8 para. 1(2)

#### **Marginal Citations**

- M63** 1948 c. 64.

### **152 Calculation of normal working hours and a week's pay.**

Schedule 14 shall have effect for the purposes of this Act for calculating the normal working hours and the amount of a week's pay of any employee.

### **153 Interpretation.**

(1) In this Act, except so far as the context otherwise requires—

“act” and “action” each includes omission and references to doing an act or taking action shall be construed accordingly;

“business” includes a trade or profession and includes any activity carried on by a body of persons, whether corporate or unincorporate;

<sup>F302</sup>“collective agreement” has the meaning given by section 30(1) of the <sup>M64</sup>Trade Union and Labour Relations Act 1974;

“confinement” means the birth of a living child or the birth of a child whether living or dead after twenty-eight weeks of pregnancy;

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

“dismissal procedures agreement” means an agreement in writing with respect to procedures relating to dismissal made by or on behalf of one or more independent trade unions and one or more employers or employers' associations;

“effective date of termination” has the meaning given by section 55(4) [<sup>F303</sup>to (6)];

“employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment;

“employer”, in relation to an employee, means the person by whom the employee is (or, in a case where the employment has ceased, was) employed;

“employers' association” has the same meaning as it has for the purposes of the <sup>M65</sup>Trade Union and Labour Relations Act 1974;

[<sup>F304</sup>“employer's payment” has the meaning given by section 106(1A) and (1B);]

“employment”, except for the purposes of sections 111 to 115, means employment under a contract of employment;

“expected week of confinement” means the week, beginning with midnight between Saturday and Sunday, in which it is expected that confinement will take place;

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“government department”, except in section 138 and paragraph 19 of Schedule 13, includes a Minister of the Crown;

“guarantee payment” has the meaning given by section 12(1);

<sup>F305</sup>“independent trade union” means a trade union which—

- (a) is not under the domination or control of an employer or a group of employers or of one or more employers’ associations; and
- (b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control;

and, in relation to a trade union, “independent” and “independence” shall be construed accordingly;

“job”, in relation to an employee, means the nature of the work which he is employed to do in accordance with his contract and the capacity and place in which he is so employed;

<sup>F306</sup>“notice of intention to claim” has the meaning given by section 88;

“notified day of return” has the meaning given by section 47(1) and (8);

“official”, in relation to a trade union, has the meaning given by section 30(1) of the <sup>M66</sup>Trade Union and Labour Relations Act 1974;

“original contract of employment”, in relation to an employee who is absent from work wholly or partly because of pregnancy or confinement, means the contract under which she worked immediately before the beginning of her absence or, if she entered into that contract during her pregnancy by virtue of section 60(2) or otherwise by reason of her pregnancy, the contract under which she was employed immediately before she entered into the later contract or, if there was more than one later contract, the first of the later contracts;

“position”, in relation to an employee, means the following matters taken as a whole, that is to say, his status as an employee, the nature of his work and his terms and conditions of employment;

<sup>F307</sup>“redundancy payment” has the meaning given by section 81(1);

<sup>F308</sup>“relevant date”, for the purposes of the provisions of this Act which relate to redundancy payments, has the meaning given by section 90;

“renewal” includes extension, and any reference to renewing a contract or a fixed term shall be construed accordingly;

“statutory provision” means a provision, whether of a general or a special nature, contained in, or in any document made or issued under, any Act, whether of a general or special nature;

“successor” has the meaning given by section 30(3) and (4) of the <sup>M67</sup>Trade Union and Labour Relations Act 1974;

“trade dispute” has the meaning given by section 29 of the said Act of 1974;

“trade union” has the meaning given by section 28 of the said Act of 1974;

<sup>F309</sup>“week” means, in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day, and in relation to any other employee, a week ending with Saturday.

- (2) References in this Act to dismissal by reason of redundancy, and to cognate expressions, shall be construed in accordance with section 81.

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- (3) In sections 33, 47, 56, 61 and 86 and Schedule 2, except where the context otherwise requires, “to return to work” means to return to work in accordance with section 45(1), and cognate expressions shall be construed accordingly.
- (4) For the purposes of this Act, any two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control; and the expression “associated employer” shall be construed accordingly.
- (5) For the purposes of this Act it is immaterial whether the law which (apart from this Act) governs any person’s employment is the law of the United Kingdom, or of a part of the United Kingdom, or not.
- (6) In this Act, except where otherwise indicated—
- (a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered, and
  - (b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered, and
  - (c) a reference in a section, subsection or Schedule to a numbered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered, and
  - (d) a reference to any provision of an Act (including this Act) includes a Schedule incorporated in the Act by that provision.
- (7) Except so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.

#### **Textual Amendments**

- F302** Definition repealed by [Nurses, Midwives and Health Visitors Act 1979 \(c. 36, SIF 83:1\)](#), **Sch. 8**
- F303** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **Sch. 3 para. 26**
- F304** Definition substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(3)(6), Sch. 6 para. 24, **Sch. 9 para. 4(1)**
- F305** Definition of “inadmissible reason” repealed by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **Sch. 4** with saving in [S.I. 1982/1656](#), **Sch. 2**
- F306** Definitions repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(2), **Sch. 11**
- F307** Definition repealed by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(2), **Sch. 3**
- F308** Definition repealed by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(4), **Sch. 7 Pt. II**
- F309** Definition repealed by [Employment Act 1988 \(c. 19, SIF 43:5\)](#), s. 33(2), **Sch. 4**

#### **Marginal Citations**

- M64** 1974 c. 52.
- M65** 1974 c. 52.
- M66** 1974 c. 52.
- M67** 1974 c. 52.

## **154 Orders, rules and regulations.**

- (1) Any power conferred by any provision of this Act to make an order (other than an Order in Council <sup>F310</sup>) or to make rules or regulations shall be exercisable by statutory instrument.



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

- (2) Any statutory instrument made under any power conferred by this Act to make an Order in Council or other order or to make rules or regulations, except—
  - (a) an instrument required to be laid before Parliament in draft; and
  - (b) an order under section 18,shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any power conferred by this Act which is exercisable by statutory instrument shall include power to make such incidental, supplementary or transitional provisions as appear to the authority exercising the power to be necessary or expedient.
- (4) An order made by statutory instrument under any provision of this Act may be revoked or varied by a subsequent order made under that provision.

This subsection does not apply to an order under [<sup>F311</sup>section 65, 66 or 96].

#### Textual Amendments

**F310** Words repealed by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 2](#)

**F311** Words substituted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 22\(b\)](#)

### 155 Offences by bodies corporate.

- (1) Where an offence under section <sup>F312</sup>126 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 in 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) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

#### Textual Amendments

**F312** Words repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(2), [Sch. 11](#)

### 156 Payments into the Consolidated Fund.

- (1)
- <sup>F313</sup>(2) There shall be paid out of [<sup>F314</sup>the National Insurance Fund] into the Consolidated Fund sums equal to the amount of any expenses incurred—
  - (a) by the Secretary of State in consequence of Part VI, except expenses incurred in the payment of sums in accordance with any such arrangements as are mentioned in section 111(3);
  - (b) by the Secretary of State (or by persons acting on his behalf) in exercising his functions under sections 122 to 126.

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- (3) There shall be paid out of [<sup>F314</sup>the National Insurance Fund] into the Consolidated Fund such sums as the Secretary of State may estimate in accordance with directions given by the Treasury to be the amount of any expenses incurred by any government department other than the Secretary of State in consequence of the provisions of [<sup>F315</sup>sections 106 to 108].

#### Textual Amendments

**F313** S. 156(1) repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(2), [Sch. 11](#)

**F314** Words substituted by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(1), [Sch. 2 para. 1\(5\)\(a\)](#)

**F315** Words substituted by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(1), [Sch. 2 para. 1\(5\)\(b\)](#)

### 157 Northern Ireland.

- (1) If provision is made by Northern Irish legislation (that is to say by or under a Measure of the Northern Ireland Assembly) for purposes corresponding to any of the purposes of this Act, except [<sup>F316</sup>sections 1 to 6] and 49 to 51, the Secretary of State may, with the consent of the Treasury, make reciprocal arrangements with the appropriate Northern Irish authority for co-ordinating the relevant provisions of this Act with the corresponding provisions of the Northern Irish legislation, so as to secure that they operate, to such extent as may be provided by the arrangements, as a single system.
- (2)
- <sup>F317</sup>(3) The Secretary of State may make regulations for giving effect in Great Britain to any such arrangements, and any such regulations may make different provision for different cases, and may provide that the relevant provisions of this Act shall have effect in relation to persons affected by the arrangements subject to such modifications and adaptations as may be specified in the regulations, including provision—
- (a) for securing that acts, omissions and events having any effect for the purposes of the Northern Irish legislation shall have a corresponding effect for the purposes of this Act (but not so as to confer a right to double payment in respect of the same act, omission or event); and
  - (b) for determining, in cases where rights accrue both under this Act and under the Northern Irish legislation, which of those rights shall be available to the person concerned.
- (4) In this section “the appropriate Northern Irish authority” means such authority as may be specified in that behalf in the Northern Irish legislation.

#### Textual Amendments

**F316** Words substituted with saving by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 20, [Sch. 2 para. 9\(2\)](#)

**F317** S. 157(2) repealed by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(2), [Sch. 3](#)

### 158 The Isle of Man.

- (1) If an Act of Tynwald is passed for purposes similar to the purposes of Part VI, the Secretary of State may, with the consent of the Treasury, make reciprocal arrangements with the appropriate Isle of Man authority for co-ordinating the provisions of Part VI

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with the corresponding provisions of the Act of Tynwald so as to secure that they operate, to such extent as may be provided by the arrangements, as a single system.

- (2) For the purpose of giving effect to any such arrangements, the Secretary of State shall have power, in conjunction with the appropriate Isle of Man authority, to make any necessary financial adjustments between [<sup>F318</sup>the National Insurance Fund] and any fund established under the Act of Tynwald.
- (3) The Secretary of State may make regulations for giving effect in Great Britain to any such arrangements, and any such regulations may provide that Part VI shall have effect in relation to persons affected by the arrangements subject to such modifications and adaptations as may be specified in the regulations, including provision—
  - (a) for securing that acts, omissions and events having any effect for the purposes of the Act of Tynwald shall have a corresponding effect for the purposes of Part VI (but not so as to confer a right to double payment in respect of the same act, omission or event); and
  - (b) for determining, in cases where rights accrue both under this Act and under the Act of Tynwald, which of those rights shall be available to the person concerned.
- (4) In this section “the appropriate Isle of Man authority” means such authority as may be specified in that behalf in an Act of Tynwald.

#### Textual Amendments

**F318** Words substituted by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(1), [Sch. 2 para. 1\(6\)](#)

### 159 Transitional provisions, savings, consequential amendments and repeals.

- (1) The transitional provisions and savings in Schedule 15 shall have effect but nothing in that Schedule shall be construed as prejudicing [<sup>F319</sup>sections 16(1) and 17(2)(a) of the <sup>M68</sup>Interpretation Act 1978] (effect of repeals).
- (2) The enactments specified in Schedule 16 shall have effect subject to the amendments specified in that Schedule.
- (3) The enactments specified in the first column of Schedule 17 are hereby repealed to the extent specified in column 3 of that Schedule.

#### Textual Amendments

**F319** Words substituted by virtue of [Interpretation Act 1978 \(c. 30, SIF 115:1\)](#), s. 25(2)

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

**C84** The text of s. 159(2)(3) and Sch. 17 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

#### Marginal Citations

**M68** 1978 c. 30.

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

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## **160 Citation, commencement and extent.**

- (1) This Act may be cited as the Employment Protection (Consolidation) Act 1978.
- (2) This Act, except section 139(2) to (9) and the repeals in section 122 of the <sup>M69</sup>Employment Protection Act 1975 provided for in Schedule 17 to this Act, shall come into force on 1st November 1978, and section 139(2) to (9) and those repeals shall come into force on 1st January 1979.
- (3) This Act, except sections 137 and 157 and paragraphs 12 and 28 of Schedule 16, shall not extend to Northern Ireland.

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### **Marginal Citations**

**M69** 1975 c. 71.

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978.