



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART II

#### RIGHTS ARISING IN COURSE OF EMPLOYMENT

##### *Guarantee payments*

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

- (1) Where an employee throughout a day during any part of which he would normally be required to work in accordance with his contract of employment is not provided with work by his employer by reason of—
  - (a) a diminution in the requirements of the employer's business for work of the kind which the employee is employed to do, or
  - (b) any other occurrence affecting the normal working of the employer's business in relation to work of the kind which the employee is employed to do,he shall, subject to the following provisions of this Act, be entitled to be paid by his employer a payment, referred to in this Act as a guarantee payment, in respect of that day, and in this section and sections 13 and 16—
  - (i) such a day is referred to as a "workless day", and
  - (ii) "workless period" has a corresponding meaning.
- (2) In this section and sections 13 to 17, "day" means the period of twenty-four hours from midnight to midnight, and where a period of employment begun on any day extends over midnight into the following day, or would normally so extend, then—
  - (a) if the employment before midnight is, or would normally be, of longer duration than that after midnight, that period of employment shall be treated as falling wholly on the first day; and
  - (b) in any other case, that period of employment shall be treated as falling wholly on the second day.

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

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

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

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

**Textual Amendments**

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

**14 Calculation of guarantee payment.**

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

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

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

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

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

#### Textual Amendments

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

## 16 Supplementary provisions relating to guarantee payments.

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

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## **17 Complaint to industrial tribunal.**

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

## **18 Exemption orders.**

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

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

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

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**Textual Amendments**

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

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

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