



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART VI

#### REDUNDANCY PAYMENTS

##### *Redundancy Fund*

<sup>F1</sup>103 .....

**Textual Amendments**

**F1** S. 103 repealed by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(2), [Sch. 3](#)

<sup>F2</sup>104 .....

**Textual Amendments**

**F2** S. 104 repealed by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), ss. 17(a), 29(4)(6), [Sch. 7 Pt.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>F3</sup>104A .....

*Status: Point in time view as at 16/10/1992.*

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

**Textual Amendments**

**F3** S. 104A inserted by [Wages Act 1986 \(c. 48, SIF 43:2\)](#), [s. 27\(3\)](#) and repealed by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), [ss. 17\(a\), 29\(4\)\(6\)](#), [Sch. 7 Pt.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](#)

**F4** 105 .....

**Textual Amendments**

**F4** S. 105 repealed by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), [ss. 13\(4\), 16\(2\)](#), [Sch. 3](#)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>F5</sup>(1A) In this Act “employer’s payment”, in relation to an employee, means—
  - (a) a redundancy payment which his employer is liable to pay to him under the foregoing provisions of this Part, or
  - (b) a payment which his employer is, under an agreement in respect of which an order is in force under section 96, liable to make to him on the termination of his contract of employment.

(1B) In relation to a case where, under section 85, 92 or 110, an industrial tribunal determines that an employer is liable to pay only part of a redundancy payment, the 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>F6</sup>of [<sup>F7</sup>subsection (1A)], the employee’s right to the payment arises by virtue of a [<sup>F8</sup>period of continuous employment] (computed in accordance with the provisions of the agreement in question) which is not less than [<sup>F8</sup>two years].

the Secretary of State shall pay to the employee out of [<sup>F9</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—

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- (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>F9</sup>the National Insurance Fund].

(4)

<sup>F10</sup>(5) For the purposes of this section an employer shall be taken to be insolvent if—

- [<sup>F11</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>F12</sup>421 of the Insolvency Act 1986]; or]
- (c) where the employer is a company, a winding-up order [<sup>F13</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>F13</sup> or [<sup>F12</sup>a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 is approved under that Part]].

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

- (a) an award of sequestration has been made on his estate, or he has executed a trust deed for his creditors or entered into a composition contract;
- (b) he has died and a judicial factor appointed under section [<sup>F14</sup>163 of the <sup>M1</sup>Bankruptcy (Scotland) Act 1913][<sup>F14</sup>11A of the Judicial Factors (Scotland) Act 1889] is required by the provisions of that section to divide his insolvent estate among his creditors; or
- (c) where the employer is a company, a winding-up order [<sup>F13</sup>or an administration order] has been made or a resolution for voluntary winding-up is passed with respect to it or a receiver of its undertaking is duly appointed [<sup>F13</sup> or [<sup>F12</sup>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

- F5** 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)
- F6** Words repealed by [Wages Act 1986 \(c. 48, SIF 43:2\)](#), s. 32(2), [Sch. 5 Pt. I](#)
- F7** Words substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(3)(6), Sch. 6 para. 21(3), [Sch. 9 para. 4\(1\)](#)

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- F8** Words substituted with saving by Employment Act 1982 (c. 46, SIF 43:5), s. 20, **Sch. 2 para. 6(4)**
- F9** Words substituted by Employment Act 1990 (c. 38, SIF 43:5), s. 16(1), **Sch. 2 para. 1(3)**
- F10** 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)**
- F11** S. 106(5)(a)(b) substituted by Insolvency Act 1985 (c. 65, SIF 66), s. 235, **Sch. 8 para. 31(2)(a)**
- F12** Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(2), **Sch. 14**
- F13** Words inserted by Insolvency Act 1985 (c. 65, SIF 66), s. 235, **Sch. 8 para. 31(2)(b)**
- F14** 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

- M1** 1913 c. 20.

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

- (1) Where an employee makes an application to the Secretary of State under section 106, the Secretary of State may, by notice in writing given to the employer, require the employer to provide the Secretary of State with such information, and to produce for examination on behalf of the Secretary of State documents in his custody or under his control of such descriptions, as the Secretary of State may reasonably require for the purpose of determining whether the application is well-founded.
- (2) If any person on whom a notice is served under this section fails without reasonable excuse to comply with a requirement imposed by the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding [<sup>F15</sup>level 3 on the standard scale].
- (3) Any person who—
  - (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 [<sup>F16</sup>section 32 of the <sup>M2</sup>Magistrates’ Courts Act 1980] (that is to say, £1,000 or another sum fixed by order under [<sup>F16</sup>section 143 of that Act] to take account of changes in the value of money);
  - (b) in Scotland, the prescribed sum within the meaning of section 289B of the <sup>M3</sup>Criminal Procedure (Scotland) Act 1975 (that is to say, £1,000 or another sum fixed by an order made under section 289D of that Act for that purpose).

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**Textual Amendments**

- F15** 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](#))
- F16** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), [Sch. 7 para. 175](#)

**Marginal Citations**

- M2** 1980 c. 43.  
**M3** 1975 c. 21.

[<sup>F17</sup>**108** **References to tribunal relating to payments under s. 106.**

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

**Textual Amendments**

- F17** [S. 108](#) substituted by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), [s. 29\(3\)\(6\)](#), [Sch. 6 para. 22](#), [Sch. 9 para. 4\(1\)](#)

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

- C1** [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](#)

<sup>F18</sup>**109** .....

**Textual Amendments**

- F18** [S. 109](#) repealed by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), [s. 16\(2\)](#), [Sch. 3](#)

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