



Employment Protection (Consolidation) Act 1978

1978 CHAPTER 44

PART VI

REDUNDANCY PAYMENTS

Redundancy Fund

103 Establishment and maintenance of fund

- (1) The Secretary of State shall continue to have the control and management of the Redundancy Fund established under section 26 of the Redundancy Payments Act 1965 (in this Part referred to as "the fund"), and payments shall be made out of the fund in accordance with the provisions of sections 104 to 109 and 156 and Part VII.
- (2) The Secretary of State shall prepare accounts of the fund in such form as the Treasury may direct, and shall send them to the Comptroller and Auditor General not later than the end of the month of November following the end of the financial year to which the accounts relate; and the Comptroller and Auditor General shall examine and certify the accounts and shall lay copies thereof, together with his report thereon, before Parliament.
- (3) Any moneys forming part of the fund may from time to time be paid over to the National Debt Commissioners and by them invested, in accordance with such directions as may be given by the Treasury, in such manner as may be specified by an order of the Treasury for the time being in force under section 22(1) of the National Savings Bank Act 1971.

104 Redundancy rebates

- (1) Subject to the provisions of this section, the Secretary of State shall make a payment (in this Part referred to as a " redundancy rebate ") out of the fund to any employer who—

Status: This is the original version (as it was originally enacted).

- (a) is liable under the foregoing provisions of this Part to pay, and has paid, a redundancy payment to an employee, or
 - (b) under an agreement in respect of which an order is in force under section 96, is liable to make, and has made, a payment to an employee on the termination of his contract of employment, or
 - (c) by virtue of any award made by the Central Arbitration Committee as mentioned in section 97(2) in relation to an agreement in respect of which such an order is in force, is liable to make, and has made, a payment to an employee on the termination of his contract of employment.
- (2) No redundancy rebate shall be payable by virtue of this section in a case falling within paragraph (b) or paragraph (c) of subsection (1) if the employee's right to the payment referred to in that paragraph arises by virtue of a period of employment (computed in accordance with the provisions of the agreement in question) which is less than one hundred and four weeks.
- (3) The Secretary of State may if he thinks fit pay a redundancy rebate to an employer who has paid an employee a redundancy payment in circumstances in which, owing to section 101, the employee had no right to, and the employer had no liability for, the payment, if the Secretary of State is satisfied that it would be just and equitable to do so having regard to all the relevant circumstances.
- (4) The amount of any redundancy rebate shall (subject to subsection (7)) be calculated in accordance with Schedule 6.
- (5) The Secretary of State shall make provision by regulations as to the making of claims for redundancy rebates; and any such regulations may in particular—
 - (a) require any claim for a redundancy rebate to be made at or before a time prescribed by the regulations ;
 - (b) in such cases as may be so prescribed, require prior notice that such a claim may arise to be given at or before a time so prescribed, so however that, where the claim would relate to an employer's payment in respect of dismissal, the regulations shall not require the notice to be given more than four weeks before the date on which the termination of the contract of employment takes effect; and
 - (c) for the purpose of determining the right of any person to, and the amount of, any redundancy rebate, require a person at any time when he makes a claim or gives prior notice as mentioned in paragraph (a) or paragraph (b) to provide such evidence and such other 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 may be determined in accordance with the regulations.
- (6) 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, the reference in subsection (1)(a) to a redundancy payment shall be construed as a reference to that part of the redundancy payment.
- (7) If any employer who, in accordance with subsection (1), would be entitled to a redundancy rebate fails to give prior notice as required by any such regulations in accordance with paragraph (b) of subsection (5) and it appears to the Secretary of State that he has so failed without reasonable excuse, the Secretary of State may, subject to section 108, reduce the amount of the rebate by such proportion (not exceeding one-tenth) as appears to the Secretary of State to be appropriate in the circumstances.

- (8) Any person who—
- (a) in providing any information required by regulations 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 regulations a document which to his knowledge has been wilfully falsified,
- shall be guilty of an offence.
- (9) A person guilty of an offence under subsection (8) 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.
- (10) In subsection (9) above " the prescribed sum " means—
- (a) in England and Wales, the prescribed sum within the meaning of section 28 of the Criminal Law Act 1977 (that is to say, £1,000 or another sum fixed by order under section 61 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 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).

105 Payments out of fund to employers in other cases

- (1) The Secretary of State may make payments out of the fund to employers in respect of employees to whom this section applies.
- (2) This section applies to employees to whom, by virtue of section 144(2), 145 or 149, section 81 does not apply.
- (3) The Secretary of State may determine the classes of employees to whom this section applies in respect of whom payments are to be made by virtue of this section, and, with the approval of the Treasury, may determine the amounts of the payments which may be so made in respect of any class of such employees.
- (4) The payments made to an employer by virtue of this section shall not, in respect of any period, exceed the amount appearing to the Secretary of State to be equal to the amount paid into the fund from the appropriate employment protection allocation (under section 134 of the Social Security Act 1975) from all secondary Class 1 contributions paid by that employer under Part I of that Act.

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.

Status: This is the original version (as it was originally enacted).

- (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) or paragraph (c) of section 104(1), the employee's right to the payment arises by virtue of a period of employment (computed in accordance with the provisions of the agreement in question) which is not less than one hundred and four weeks,

the Secretary of State shall pay to the employee out of the 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 the fund.

- (4) Where the Secretary of State pays a sum under this section in respect of an employer's payment, then (subject to the following provisions of this subsection) section 104 shall apply as if that sum had been paid by the employer to the employee on account of that payment; but if, in a case falling within paragraph (a) of subsection (1), it appears to the Secretary of State that the refusal or failure of the employer to pay the employer's payment, or part of it, as the case may be, was without reasonable excuse, the Secretary of State may, subject to section 108, withhold any redundancy rebate to which the employer would otherwise be entitled in respect of the employer's payment, or may reduce the amount of any such rebate to such extent as the Secretary of State considers appropriate.

- (5) For the purposes of this section an employer shall be taken to be insolvent if—
- (a) he has become bankrupt or has made a composition or arrangement with his creditors or a receiving order is made against him;
 - (b) he has died and an order has been made under section 130 of the Bankruptcy Act 1914 for the administration of his estate according to the law of bankruptcy, or by virtue of an order of the court his estate is being administered in accordance with the rules set out in Part I of Schedule 1 to the Administration of Estates Act 1925; or
 - (c) where the employer is a company, a winding-up 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.

- (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 163 of the Bankruptcy (Scotland) Act 1913 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 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.
- (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.

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 £100.
- (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 section 28 of the Criminal Law Act 1977 (that is to say, £1,000 or another sum fixed by order under section 61 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 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).

108 References and appeals to tribunal relating to payments out of fund

- (1) Subsections (2) and (3) shall have effect where
 - (a) a claim is made for a redundancy rebate on the grounds that an employer is liable to pay, and has paid, an employer's payment, or prior notice that such a claim may arise is given in accordance with regulations made under section 104(5)(M), or
 - (b) an application is made to the Secretary of State for a payment under section 106, where it is claimed that an employer is liable to pay an employer's payment.
- (2) Where any such claim or application is made or such prior notice is given, there shall be referred to an industrial tribunal—
 - (a) any question as to the liability of the employer to pay the employer's payment;
 - (b) in a case falling within paragraph (a) of subsection (1), any question as to the amount of the rebate payable in accordance with Schedule 6 ;
 - (c) in a case falling within paragraph (b) of subsection (1), any question as to the amount of the sum payable in accordance with Schedule 7.
- (3) For the purposes of any reference under subsection (2), 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.
- (4) Where, in any case to which section 104(3) applies, the Secretary of State refuses to pay a redundancy rebate, the employer may appeal to an industrial tribunal; and if on any such appeal the tribunal is satisfied that it is just and equitable having regard to all the relevant circumstances that a redundancy rebate should be paid, the tribunal shall determine accordingly, and the Secretary of State shall comply with any such determination of a tribunal.
- (5) In any case where the Secretary of State withholds, or reduces the amount of, a redundancy rebate in pursuance of section 104(7) or section 106(4), the employer may appeal to an industrial tribunal; and if on any such appeal the tribunal is satisfied—
 - (a) in a case where the rebate was withheld, that it should be paid in full, or should be reduced instead of being withheld, or
 - (b) in a case where the rebate was reduced, that it should not be reduced, or should be reduced by a smaller or larger proportion than that which the Secretary of State has applied,the tribunal shall determine accordingly, and the Secretary of State shall comply with any such determination.

109 Financial provisions relating to the fund

- (1) Subject to the following provisions of this section, the Treasury may from time to time advance out of the National Loans Fund to the Secretary of State for the purposes of the fund such sums as the Secretary of State may request; and any sums advanced to the Secretary of State under this section shall be paid into the fund.
- (2) The aggregate amount outstanding by way of principal in respect of sums advanced to the Secretary of State under this section shall not at any time exceed £16 million or such larger sum not exceeding £40 million as the Secretary of State may by order made with the consent of the Treasury determine.

- (3) Any sums advanced to the Secretary of State under this section shall be repaid by the Secretary of State out of the fund into the National Loans Fund in such manner and at such times, and with interest thereon at such rate, as the Treasury may direct.
- (4) An order shall not 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.