



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART VI

#### REDUNDANCY PAYMENTS

##### *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
  - (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

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of the conditions specified in this subsection would be satisfied without so treating those businesses.

[<sup>F1</sup>(2A) For the purposes of subsection (2) the activities carried on by a local education authority with respect to the schools maintained by it and the activities carried on by the governors of those schools shall be treated as one business unless either of the conditions specified in subsection (2) would be satisfied without so treating them.]

(3) In subsection (2), “cease” means cease either permanently or temporarily and from whatsoever cause, and “diminish” has a corresponding meaning.

(4) For the purposes of subsection (1), the requisite period is the period of two years ending with the relevant date,<sup>F2</sup>

#### Textual Amendments

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

**F2** Words repealed with saving by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 20, [Sch. 2, para. 6\(2\)](#), **Sch. 4**

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

**C1** S. 81 excluded by [S.I. 1980/1052](#), **art. 3**; modified by [S.I. 1983/1160](#), **art. 3**, **Sch. 2 para. 1**

**C2** S. 81 excluded by [Dock Work Act 1989 \(c. 13, SIF 43:1\)](#), **s. 5(1)(2)**

**C3** S. 81 modified (13.1.1994) by [S.I. 1993/3167](#), **art. 3**, **Sch. 2 para.1**

**C4** 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>F3</sup>(1) An employee shall not be entitled to a redundancy payment if he has before the relevant date attained the following age, that is to say—

(a) in a case where—

(i) in the business for the purposes of which he was employed there was a normal retiring age of less than sixty-five for an employee holding the position which he held, and

(ii) the age was the same whether the employee holding that position was a man or a woman,

that normal retiring age; and

(b) in any other case, the age of sixty-five.]

(2) Except as provided by section 92, an employee shall not be entitled to a redundancy payment by reason of dismissal where his employer, being entitled to terminate his contract of employment without notice by reason of the employee’s conduct terminates it either—

(a) without notice, or

(b) by giving shorter notice than that which, in the absence of such conduct, the employer would be required to give to terminate the contract, or

(c) by giving notice (not being such shorter notice as is mentioned in paragraph (b)) which includes, or is accompanied by, a statement in writing

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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.

#### Textual Amendments

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

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

- C5** S. 82 modified by S.I. 1983/1160, art. 3, **Sch. 2 para. 2**
- C6** S. 82 modified (13.1.1994) by S.I. 1993/3167, art. 3, **Sch. 2 para.2**
- C7** 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**
- C8** S. 82(3) modified by S.I. 1985/1846, **reg. 5(5)**
- C9** S. 82(5)(6) modified by Local Government Act 1985 (c. 51, SIF 81:1), **s. 53(5)** and Education Reform Act 1988 (c. 40, SIF 41:1), **ss. 173(6)**, 231(7), 235(6)  
S. 82(5)(6) modified (4.1.1995) by 1994 c. 39, **ss. 7(2)**, 13(5)(6), 97(8), 137(5); S.I. 1994/2850, art. 3(a), **Sch. 2**  
S. 82(5)(6) modified (3.4.1995) by 1994 c. 19, **s. 43(6)(7)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/852, art. 7, **Sch. 3**

### **83 Dismissal by employer.**

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

### **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—
- 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
  - 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

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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)**

- C10** S. 84 modified by S.I. 1983/1160, art. 3, **Sch. 2 para. 3**
- C11** S. 84 modified (13.1.1994) by S.I. 1993/3167, art. 3, **Sch. 2 para. 3**
- C12** 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)**
- C13** 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**

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## **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;
  - (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

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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):

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

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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;
  - (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



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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 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.

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- (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.
- (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.

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### **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 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

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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)**

- C14** S. 94 modified by [New Towns Act 1981 \(c. 64, SIF 123:3\)](#), s. 54(6)
- C15** 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\(2\)\(a\)](#)
- C16** S. 94(1) modified by [Civil Aviation Act 1982 \(c. 16, SIF 9\)](#), s. 22, [Sch. 3 para. 8](#)
- C17** S. 94(3) modified by [S.I. 1985/1846](#), [reg. 5\(5\)](#)
- C18** S. 94(6) modified by [S.I. 1983/1160](#), art. 3, [Sch. 2 para. 4](#)

**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.

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- (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)**

**C19** S. 95 modified by S.I. 1985/1846, reg. 5(5)

**C20** 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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#### Textual Amendments

**F4** 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>M1</sup>Superannuation Act 1965, or
  - (b) whether by virtue of that Act or otherwise, is treated for the purposes of pensions and other superannuation benefits as service in the civil service of the State, [<sup>F5</sup>or]
  - [<sup>F6</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

**F5** Word repealed (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(2), [Sch. 10](#)

**F6** 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](#)

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

**C21** S. 99 excluded by [Civil Aviation Act 1982 \(c. 16, SIF 9\)](#), [Sch. 3 para. 6\(5\)\(6\)](#)

**Marginal Citations**

**M1** 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>F7</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**

**F7** 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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#### Modifications etc. (not altering text)

- C22** 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>F8</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>F9</sup>£20][<sup>F9</sup>level 3 on the standard scale], or
  - (b) in any other case, to a fine not exceeding [<sup>F10</sup>£100][<sup>F10</sup>level 3 on the standard scale].

#### Textual Amendments

- F8** 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)
- F9** 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)
- F10** 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)

- C23** 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
- C24** 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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