

Status: Point in time view as at 16/10/1992.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, Part III. (See end of Document for details)

SCHEDULES

SCHEDULE 12

DEATH OF EMPLOYEE OR EMPLOYER

Modifications etc. (not altering text)

- C1** Sch. 12 extended (E.W.) (3.1.1995) by 1994 c. 40, ss. 20, 82(2), **Sch. 8 para. 22**
Sch. 12 extended (*prosp.*) by 1995 c. 26, ss. **46(4)(c)**, 180(1) (with s. 121(5))
Sch. 12 extended (E.W.) (26.8.1994) by 1994 c. 20, s. 4, **Sch. 4 para. 22**; S.I. 1994/1841, **art. 2**

PART III

REDUNDANCY PAYMENTS: DEATH OF EMPLOYER

Introductory

- 12 The provisions of this Part shall have effect in relation to an employee where his employer (in this Part referred to as “the deceased employer”) dies.
- 13 Section 94 shall not apply to any change whereby the ownership of the business, for the purposes of which the employee was employed by the deceased employer, passes to a personal representative of the deceased employer.

Dismissal

- 14 Where by virtue of subsection (1) of section 93 the death of the deceased employer is to be treated for the purposes of Part VI of this Act as a termination by him of the contract of employment, section 84 shall have effect subject to the following modifications:—
- (a) for subsection (1) there shall be substituted the following subsection—
- “(1) If an employee’s contract of employment is renewed, or he is re-engaged under a new contract of employment, by a personal representative of the deceased employer and the renewal or re-engagement takes effect not later than eight weeks after the death of the deceased employer, then, subject to subsections (3) and (6), the employee shall not be regarded as having been dismissed by reason of the ending of his employment under the previous contract.”
- (b) in subsection (2), paragraph (a) shall be omitted and in paragraph (b) for the words “four weeks” there shall be substituted the words “eight weeks”;

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- (c) in subsections (5) and (6), references to the employer shall be construed as references to the personal representative of the deceased employer.

15 Where by reason of the death of the deceased employer the employee is treated for the purpose of Part VI of this Act as having been dismissed by him, section 82 shall have effect subject to the following modifications—

- (a) for subsections (3) there shall be substituted the following subsection—

“(3) If a personal representative of the deceased employer makes an employee an offer (whether in writing or not) 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 not later than eight weeks after the death of the deceased employer the provisions of subsections (5) and (6) shall have effect.”

- (b) in subsection (4), paragraph (a) shall be omitted and in paragraph (b) for the words “four weeks” there shall be substituted the words “eight weeks”;
- (c) in subsection (5), the references to the employer shall be construed as a reference to the personal representative of the deceased employer.

16 For the purposes of section 82 as modified by paragraph 15—

- (a) an 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 death of the deceased employer by reason only that the personal representative would be substituted as the employer for the deceased 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.

Lay-off and short-time

17 Where the employee has before the death of the deceased employer been laid off or kept on short-time for one or more weeks, but has not given to the deceased employer notice of intention to claim, then if after the death of the deceased employer—

- (a) his contract of employment is renewed, or he is re-engaged under a new contract by a personal representative of the deceased employer, and
- (b) after the renewal or re-engagement, he is laid off or kept on short-time for one or more weeks by the personal representative of the deceased employer,

the provisions of sections 88 and 89 shall apply as if the week in which the deceased employer died and the first week of the employee’s employment by the personal representative were consecutive weeks, and any reference in those sections to four weeks or thirteen weeks shall be construed accordingly.

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- 18 The provisions of paragraph 19 or (as the case may be) paragraph 20 shall have effect where the employee has given to the deceased employer notice of intention to claim, and—
- (a) the deceased employer has died before the end of the next four weeks after the service of that notice, and
 - (b) the employee has not terminated the contract of employment by notice expiring before the death of the deceased employer.
- 19 If in the circumstances specified in paragraph 18 the employee's contract of employment is not renewed by a personal representative of the deceased employer before the end of the next four weeks after the service of the notice of intention to claim, and he is not re-engaged under a new contract by such a personal representative before the end of those four weeks, section 88(1) and (2) and (in relation to subsection (1) of that section) section 89(2) and (3) shall apply as if—
- (a) the deceased employer had not died, and
 - (b) the employee had terminated the contract of employment by a week's notice (or, if under the contract he is required to give more than a week's notice to terminate the contract, he had terminated it by the minimum notice which he is so required to give) expiring at the end of those four weeks, but sections 88(3) and (4) and 89(1) and (4) shall not apply.
- 20 (1) The provisions of this paragraph shall have effect where, in the circumstances specified in paragraph 18, the employee's contract of employment is renewed by a personal representative of the deceased employer before the end of the next four weeks after the service of the notice of intention to claim, or he is re-engaged under a new contract by such a personal representative before the end of those four weeks, and—
- (a) he was laid off or kept on short-time by the deceased employer for one or more of those weeks, and
 - (b) he is laid off or kept on short-time by the personal representative for the week, or for the next two or more weeks, following the renewal or re-engagement.
- (2) Where the conditions specified in sub-paragraph (1) are fulfilled, sections 88 and 89 shall apply as if—
- (a) all the weeks for which the employee was laid off or kept on short-time as mentioned in sub-paragraph (1) were consecutive weeks during which he was employed (but laid off or kept on short-time) by the same employer, and
 - (b) each of the periods specified in paragraphs (a) and (b) of subsection (5) of section 89 were extended by any week or weeks any part of which was after the death of the deceased employer and before the date on which the renewal or re-engagement took effect.

Continuity of period of employment

- 21 For the purposes of the application, in accordance with section 100(1), of any provisions of Part VI of this Act in relation to an employee who was employed as a

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domestic servant in a private household, any reference to a personal representative in—

- (a) this Part of this Schedule, or
- (b) paragraph 17 of Schedule 13,

shall be construed as including a reference to any person to whom, otherwise than in pursuance of a sale or other disposition for valuable consideration, the management of the household has passed in consequence of the death of the deceased employer.

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