



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART XI

#### REDUNDANCY PAYMENTS ETC.

### CHAPTER II

#### RIGHT ON DISMISSAL BY REASON OF REDUNDANCY

##### *Dismissal by reason of redundancy*

#### **136 Circumstances in which an employee is dismissed.**

- (1) Subject to the provisions of this section and sections 137 and 138, for the purposes of this Part an employee is dismissed by his employer if (and only if)—
  - (a) the contract under which he is employed by the employer is terminated by the employer (whether with or without notice),
  - [<sup>F1</sup>(b) he is employed under a limited term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or]
  - (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.
- (2) Subsection (1)(c) does not apply if the employee terminates the contract without notice in circumstances in which he is entitled to do so by reason of a lock-out by the employer.
- (3) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—
  - (a) the employer gives notice to the employee to terminate his contract of employment, and

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- (b) at a time within the obligatory period of 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.
- (4) In this Part the “obligatory period of notice”, in relation to notice given by an employer to terminate an employee’s contract of employment, means—
  - (a) the actual period of the notice in a case where 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 (by virtue of any enactment or otherwise) is required to be given by the employer to terminate the contract of employment, and
  - (b) the period which—
    - (i) is equal to the minimum period referred to in paragraph (a), and
    - (ii) ends at the time when the notice expires,
 in any other case.
- (5) Where in accordance with any enactment or rule of law—
  - (a) an act on the part of an employer, or
  - (b) an event affecting an employer (including, in the case of an individual, his death),

operates to terminate a contract under which an employee is employed by him, the act or event shall be taken for the purposes of this Part to be a termination of the contract by the employer.

**Textual Amendments**

**F1** S. 136(1)(b) substituted (1.10.2002) by The Fixed-term [Employees \(Prevention of Less Favourable Treatment\) Regulations 2002 \(S.I. 2002/2034\)](#), reg. 11, **Sch. 2 Pt. 1 para. 3(13)** (with regs. 13-20 and subject to transitional provisions in **Sch. 2 Pt. 2**)

**F2** 137 .....

**Textual Amendments**

**F2** S. 137 repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, **Sch. 4 Pt. III para. 25, Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), **Sch. 1 Pt. II, Sch. 2 Pt. II** (with transitional provisions in **Sch. 3 paras. 10, 11**)

**138 No dismissal in cases of renewal of contract or re-engagement.**

- (1) Where—
  - (a) 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 before the end of his employment under the previous contract, and
  - (b) the renewal or re-engagement takes effect either immediately on, or after an interval of not more than four weeks after, the end of that employment,
 the employee shall not be regarded for the purposes of this Part as dismissed by his employer by reason of the ending of his employment under the previous contract.
- (2) Subsection (1) does not apply if—

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- (a) the provisions of the contract as renewed, or of the new contract, as to—
    - (i) the capacity and place in which the employee is employed, and
    - (ii) the other terms and conditions of his employment,differ (wholly or in part) from the corresponding provisions of the previous contract, and
  - (b) during the period specified in subsection (3)—
    - (i) the employee (for whatever reason) terminates the renewed or new contract, or gives notice to terminate it and it is in consequence terminated, or
    - (ii) the employer, for a reason connected with or arising out of any difference between the renewed or new contract and the previous contract, terminates the renewed or new contract, or gives notice to terminate it and it is in consequence terminated.
- (3) The period referred to in subsection (2)(b) is the period—
- (a) beginning at the end of the employee’s employment under the previous contract, and
  - (b) ending with—
    - (i) the period of four weeks beginning with the date on which the employee starts work under the renewed or new contract, or
    - (ii) such longer period as may be agreed in accordance with subsection (6) for the purpose of retraining the employee for employment under that contract;and is in this Part referred to as the “trial period”.

(4) Where subsection (2) applies, for the purposes of this Part—

    - (a) the employee shall be regarded as 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, and
    - (b) the reason for the dismissal shall be taken to be the reason for which the employee was then dismissed, or would have been dismissed had the offer (or original offer) of renewed or new employment not been made, or the reason which resulted in that offer being made.

(5) Subsection (2) does not apply if 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.

(6) For the purposes of subsection (3)(b)(ii) a period of retraining is agreed in accordance with this subsection only if the agreement—

    - (a) is made between the employer and the employee or his representative before the employee starts work under the contract as renewed, or the new contract,
    - (b) is in writing,
    - (c) specifies the date on which the period of retraining ends, and
    - (d) specifies the terms and conditions of employment which will apply in the employee’s case after the end of that period.

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### 139 Redundancy.

- (1) 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 wholly or mainly attributable to—
- (a) the fact that his employer has ceased or intends to cease—
    - (i) to carry on the business for the purposes of which the employee was employed by him, or
    - (ii) to carry on that business in the place where the employee was so employed, or
  - (b) the fact that the requirements of that business—
    - (i) for employees to carry out work of a particular kind, or
    - (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,
 have ceased or diminished or are expected to cease or diminish.
- (2) For the purposes of subsection (1) the business of the employer together with the business or businesses of his associated employers shall be treated as one (unless either of the conditions specified in paragraphs (a) and (b) of that subsection would be satisfied without so treating them).
- (3) For the purposes of subsection (1) the activities carried on by a [<sup>F3</sup>local authority] with respect to the schools maintained by it, and the activities carried on by the [<sup>F4</sup>governing bodies] of those schools, shall be treated as one business (unless either of the conditions specified in paragraphs (a) and (b) of that subsection would be satisfied without so treating them).
- (4) Where—
- (a) the contract under which a person is employed is treated by section 136(5) as terminated by his employer by reason of an act or event, and
  - (b) the employee's contract is not renewed and he is not re-engaged under a new contract of employment,
- he shall be taken for the purposes of this Act to be dismissed by reason of redundancy if the circumstances in which his contract is not renewed, and he is not re-engaged, are wholly or mainly attributable to either of the facts stated in paragraphs (a) and (b) of subsection (1).
- (5) In its application to a case within subsection (4), paragraph (a)(i) of subsection (1) has effect as if the reference in that subsection to the employer included a reference to any person to whom, in consequence of the act or event, power to dispose of the business has passed.
- (6) In subsection (1) “cease” and “diminish” mean cease and diminish either permanently or temporarily and for whatever reason.
- [<sup>F5</sup>(7) In subsection (3) “local authority” has the meaning given by section 579(1) of the Education Act 1996.]

#### Textual Amendments

- F3** Words in s. 139(3) substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 41(4)(a)**

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- F4** Words in s. 139(3) substituted (1.10.2002 except in relation to W. and otherwise 19.12.2002) by Education Act 2002 (c. 32), s. 215(1), **Sch. 21 para. 31** (with ss. 210(8), 214(4)); S.I. 2002/2439, **art. 3**; S.I. 2002/3185, **art. 4**, Sch. Pt. 1
- F5** S. 139(7) inserted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 41(4)(b)**

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

- C1** S. 139 applied (1.4.1999) by 1998 c. 31, **s. 57(6)(7)**; S.I. 1999/1016, art. 2(1), **Sch. 1**  
S. 139 applied (21.5.2001) by S.I. 2001/1185, arts. 2, 3, **Sch. para. 129(i)**
- C2** S. 139 applied (1.10.2002 except in relation to W.) by Education Act 2002 (c. 32), **s. 37(6)** (with ss. 210(8), 214(4)); S.I. 2002/2439, **art. 3**
- C3** S. 139(3) extended (temp. from 1.4.1999 to 1.9.1999) by S.I. 1999/638, **reg. 4**

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