



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART XI

#### REDUNDANCY PAYMENTS ETC.

### CHAPTER VII

#### SUPPLEMENTARY

#### *Application of Part to particular cases*

#### **171 Employment not under contract of employment.**

- (1) The Secretary of State may by regulations provide that, subject to such exceptions and modifications as may be prescribed by the regulations, this Part and the provisions of this Act supplementary to this Part have effect in relation to any employment of a description to which this section applies as may be so prescribed as if—
  - (a) it were employment under a contract of employment,
  - (b) any person engaged in employment of that description were an employee, and
  - (c) such person as may be determined by or under the regulations were his employer.
- (2) This section applies to employment of any description which—
  - (a) is employment in the case of which secondary Class 1 contributions are payable under Part I of the <sup>M1</sup>Social Security Contributions and Benefits Act 1992 in respect of persons engaged in it, but
  - (b) is not employment under a contract of service or of apprenticeship or employment of any description falling within subsection (3).
- (3) The following descriptions of employment fall within this subsection—
  - (a) any employment such as is mentioned in section 159 (whether as originally enacted or as modified by an order under section 209(1)),

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- (b) any employment remunerated out of the revenue of the Duchy of Lancaster or the Duchy of Cornwall,
- (c) any employment remunerated out of the Queen’s Civil List, and
- (d) any employment remunerated out of Her Majesty’s Privy Purse.

**Marginal Citations**

M1 1992 c. 4.

**172 Termination of employment by statute.**

- (1) The Secretary of State may by regulations provide that, subject to such exceptions and modifications as may be prescribed by the regulations, this Part has effect in relation to any person who by virtue of any statutory provisions—
  - (a) is transferred to, and becomes a member of, a body specified in those provisions, but
  - (b) at a time so specified ceases to be a member of that body unless before that time certain conditions so specified have been fulfilled,
 as if the cessation of his membership of that body by virtue of those provisions were dismissal by his employer by reason of redundancy.
- (2) The power conferred by subsection (1) is exercisable whether or not membership of the body in question constitutes employment within the meaning of section 230(5); and, where that membership does not constitute such employment, that power may be exercised in addition to any power exercisable under section 171.

**173 Employees paid by person other than employer.**

- (1) For the purposes of the operation of the provisions of this Part (and Chapter I of Part XIV) in relation to any employee whose remuneration is, by virtue of any statutory provision, payable to him by a person other than his employer, each of the references to the employer specified in subsection (2) shall be construed as a reference to the person by whom the remuneration is payable.
- (2) The references referred to in subsection (1) are the first reference in section 135(1), the third reference in section 140(3), the first reference in section 142(3) and the first reference in section 143(2)(c) and the references in sections 142(2)(b), 143(4) and (5), 149(a) and (b), 150(3), 152(1)(b), 158(4), 162(6), 164 to 169, 170(1) and 214(5).

*Death of employer or employee*

**174 Death of employer: dismissal.**

- (1) Where the contract of employment of an employee is taken for the purposes of this Part to be terminated by his employer by reason of the employer’s death, this Part has effect in accordance with the following provisions of this section.
- (2) Section 138 applies as if—
  - (a) in subsection (1)(a), for the words “in pursuance” onwards there were substituted “ by a personal representative of the deceased employer ”,

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- (b) in subsection (1)(b), for the words “either immediately” onwards there were substituted “ not later than eight weeks after the death of the deceased employer ”, and
  - (c) in subsections (2)(b) and (6)(a), for the word “employer” there were substituted “ personal representative of the deceased employer ”.
- (3) Section 141(1) applies as if—
- (a) for the words “before the end of his employment” there were substituted “ by a personal representative of the deceased employer ”, and
  - (b) for the words “either immediately” onwards there were substituted “ not later than eight weeks after the death of the deceased employer. ”
- (4) For the purposes of section 141—
- (a) provisions of the contract as renewed, or of the new contract, do not differ from the corresponding provisions of the contract in force immediately before the death of the deceased employer by reason only that the personal representative would be substituted for the deceased employer as the employer, and
  - (b) no account shall be taken of that substitution in determining whether refusal of the offer was unreasonable or whether the employee acted reasonably in terminating or giving notice to terminate the new or renewed employment.
- (5) Section 146 has effect as if—
- (a) subsection (1) were omitted, and
  - (b) in subsection (2), paragraph (a) were omitted and, in paragraph (b), for the word “four” there were substituted “ eight ”.
- (6) For the purposes of the application of this Part (in accordance with section 161(2)) in relation to an employee who was employed as a domestic servant in a private household, references in this section and sections 175 and 218(4) and (5) to a personal representative include a person to whom the management of the household has passed, otherwise than in pursuance of a sale or other disposition for valuable consideration, in consequence of the death of the employer.

## **175 Death of employer: lay-off and short-time.**

- (1) Where an employee is laid off or kept on short-time and his employer dies, this Part has effect in accordance with the following provisions of this section.
- (2) Where the employee—
- (a) has been laid off or kept on short-time for one or more weeks before the death of the employer,
  - (b) has not given the deceased employer notice of intention to claim before the employer’s death,
  - (c) after the employer’s death has his contract of employment renewed, or is re-engaged under a new contract, by a personal representative of the deceased employer, and
  - (d) after renewal or re-engagement is laid off or kept on short-time for one or more weeks by the personal representative,
- the week in which the employer died and the first week of the employee’s employment by the personal representative shall be treated for the purposes of Chapter III as

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consecutive weeks (and references to four weeks or thirteen weeks shall be construed accordingly).

- (3) The following provisions of this section apply where—
- (a) the employee has given the deceased employer notice of intention to claim before the employer's death,
  - (b) the employer's death occurred before the end of the period of four weeks after the service of the notice, and
  - (c) the employee has not terminated his contract of employment by notice expiring before the employer's death.
- (4) If the contract of employment is not renewed, and the employee is not re-engaged under a new contract, by a personal representative of the deceased employer before the end of the period of four weeks after the service of the notice of intention to claim—
- (a) sections 149 and 152 do not apply, but
  - (b) (subject to that) Chapter III applies as if the employer had not died and the employee had terminated the contract of employment by a week's notice, or by the minimum notice which he is required to give to terminate the contract (if longer than a week), expiring at the end of that period.
- (5) If—
- (a) the contract of employment is renewed, or the employee is re-engaged under a new contract, by a personal representative of the deceased employer before the end of the period of four weeks after the service of the notice of intention to claim, and
  - (b) the employee was laid off or kept on short-time by the deceased employer for one or more of those weeks and 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,
- subsection (6) has effect.
- (6) Where this subsection has effect Chapter III applies as if—
- (a) all the weeks mentioned in subsection (5) were consecutive weeks during which the employee was employed (but laid off or kept on short-time) by the same employer, and
  - (b) the periods specified by section 150(3)(a) and (b) as the relevant period were extended by any week or weeks any part of which was after the death of the employer and before the date on which the renewal or re-engagement took effect.

## **176 Death of employee.**

- (1) Where an employee whose employer has given him notice to terminate his contract of employment dies before the notice expires, this Part applies as if the contract had been duly terminated by the employer by notice expiring on the date of the employee's death.
- (2) Where—
- (a) an employee's contract of employment has been terminated by the employer,
  - (b) (by virtue of subsection (5) of section 145) a date later than the relevant date as defined by the previous provisions of that section is the relevant date for the purposes of certain provisions of this Act, and

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- (c) the employee dies before that date,  
that subsection applies as if the notice to which it refers would have expired on the employee's death.
- (3) Where—
- (a) an employer has given notice to an employee to terminate his contract of employment and has offered to renew his contract of employment or to re-engage him under a new contract, and
- (b) the employee dies without having accepted or refused the offer and without the offer having been withdrawn,  
section 141(2) applies as if for the words “he unreasonably refuses” there were substituted “it would have been unreasonable on his part to refuse”.
- (4) Where an employee's contract of employment has been renewed or he has been re-engaged under a new contract—
- (a) if he dies during the trial period without having terminated, or given notice to terminate, the contract, section 141(4) applies as if for paragraph (d) there were substituted—
- “(d) it would have been unreasonable for the employee during the trial period to terminate or give notice to terminate the contract.”, and
- (b) if during that trial period he gives notice to terminate the contract but dies before the notice expires, sections 138(2) and 141(4) apply as if the notice had expired (and the contract had been terminated by its expiry) on the date of the employee's death.
- (5) Where in the circumstances specified in paragraphs (a) and (b) of subsection (3) of section 136 the employee dies before the notice given by him under paragraph (b) of that subsection expires—
- (a) if he dies before his employer has given him a notice such as is specified in subsection (2) of section 142, subsections (3) and (4) of that section apply as if the employer had given him such a notice and he had not complied with it, and
- (b) if he dies after his employer has given him such a notice, that section applies as if the employee had not died but did not comply with the notice.
- (6) Where an employee has given notice of intention to claim—
- (a) if he dies before he has given notice to terminate his contract of employment and before the relevant period (as defined in subsection (3) of section 150) has expired, that section does not apply, and
- (b) if he dies within the period of seven days after the service of the notice of intention to claim, and before the employer has given a counter-notice, Chapter III applies as if the employer had given a counter-notice within that period of seven days.
- (7) Where a claim for a redundancy payment is made by a personal representative of a deceased employee—
- (a) if the employee died before the end of the period of six months beginning with the relevant date, subsection (1) of section 164, and
- (b) if the employee died after the end of the period of six months beginning with the relevant date but before the end of the following period of six months, subsection (2) of that section,  
applies as if for the words “six months” there were substituted “one year”.

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### *Equivalent payments*

#### **177 References to [F1 employment tribunals].**

- (1) Where the terms and conditions (whether or not they constitute a contract of employment) on which a person is employed in employment of any description mentioned in section 171(3) include provision—
  - (a) for the making of a payment to which this section applies, and
  - (b) for referring to an [F1 employment tribunal] any question as to the right of any person to such a payment in respect of that employment or as to the amount of such a payment,
 the question shall be referred to and determined by an [F1 employment tribunal].
- (2) This section applies to any payment by way of compensation for loss of employment of any description mentioned in section 171(3) which is payable in accordance with arrangements falling within subsection (3).
- (3) The arrangements which fall within this subsection are arrangements made with the approval of the Treasury (or, in the case of persons whose service is for the purposes of pensions and other superannuation benefits treated as service in the civil service of the State, of the Minister for the Civil Service) for securing that a payment will be made—
  - (a) in circumstances which in the opinion of the Treasury (or Minister) correspond (subject to the appropriate modifications) to those in which a right to a redundancy payment would have accrued if the provisions of this Part (apart from section 159 and this section) applied, and
  - (b) on a scale which in the opinion of the Treasury (or Minister), taking into account any sums payable in accordance with—
    - (i) a scheme made under section 1 of the <sup>M2</sup>Superannuation Act 1972, or
    - (ii) the <sup>M3</sup>Superannuation Act 1965 as it continues to have effect by virtue of section 23(1) of the <sup>M4</sup>Superannuation Act 1972,
 to or in respect of the person losing the employment in question, corresponds (subject to the appropriate modifications) to that on which a redundancy payment would have been payable if those provisions applied.

#### **Textual Amendments**

**F1** Words in s. 177(1) and sidenote to s. 177 substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a)(b) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

#### **Marginal Citations**

**M2** 1972 c. 11.  
**M3** 1965 c. 74.  
**M4** 1972 c. 11.

### *Other supplementary provisions*

#### **178 Old statutory compensation schemes.**

- (1) The Secretary of State may make provision by regulations for securing that where—

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- (a) (apart from this section) a person is entitled to compensation under a statutory provision to which this section applies, and
  - (b) the circumstances are such that he is also entitled to a redundancy payment, the amount of the redundancy payment shall be set off against the compensation to which he would be entitled apart from this section; and any statutory provision to which any such regulations apply shall have effect subject to the regulations.
- (2) This section applies to any statutory provision—
- (a) which was in force immediately before 6th December 1965, and
  - (b) under which the holders of such situations, places or employments as are specified in that provision are, or may become, entitled to compensation for loss of employment, or for loss or diminution of emoluments or of pension rights, in consequence of the operation of any other statutory provision referred to in that provision.

## **179 Notices.**

- (1) Any notice which under this Part is required or authorised to be given by an employer to an employee may be given by being delivered to the employee, or left for him at his usual or last-known place of residence, or sent by post addressed to him at that place.
- (2) Any notice which under this Part is required or authorised to be given by an employee to an employer may be given either by the employee himself or by a person authorised by him to act on his behalf, and (whether given by or on behalf of the employee)—
  - (a) may be given by being delivered to the employer, or sent by post addressed to him at the place where the employee is or was employed by him, or
  - (b) if arrangements have been made by the employer, may be given by being delivered to a person designated by the employer in pursuance of the arrangements, left for such a person at a place so designated or sent by post to such a person at an address so designated.
- (3) In this section any reference to the delivery of a notice includes, in relation to a notice which is not required by this Part to be in writing, a reference to the oral communication of the notice.
- (4) Any notice which, in accordance with any provision of this section, is left for a person at a place referred to in that provision shall, unless the contrary is proved, be presumed to have been received by him on the day on which it was left there.
- (5) Nothing in subsection (1) or (2) affects the capacity of an employer to act by a servant or agent for the purposes of any provision of this Part (including either of those subsections).
- (6) In relation to an employee to whom section 173 applies, this section has effect as if—
  - (a) any reference in subsection (1) or (2) to a notice required or authorised to be given by or to an employer included a reference to a notice which, by virtue of that section, is required or authorised to be given by or to the person by whom the remuneration is payable,
  - (b) in relation to a notice required or authorised to be given to that person, any reference to the employer in paragraph (a) or (b) of subsection (2) were a reference to that person, and
  - (c) the reference to an employer in subsection (5) included a reference to that person.

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## **180 Offences.**

- (1) Where an offence under this Part committed by a body corporate is proved—
- (a) to have been committed with the consent or connivance of, or
  - (b) to be attributable to any neglect on the part of,
- any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In this section “director”, in relation to a body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

## **181 Interpretation.**

- (1) In this Part—
- “counter-notice” shall be construed in accordance with section 149(a),
  - “dismissal” and “dismissed” shall be construed in accordance with sections 136 to 138,
  - “employer’s payment” has the meaning given by section 166,
  - “notice of intention to claim” shall be construed in accordance with section 148(1),
  - “obligatory period of notice” has the meaning given by section 136(4), and
  - “trial period” shall be construed in accordance with section 138(3).
- (2) In this Part—
- (a) references to an employee being laid off or being eligible for a redundancy payment by reason of being laid off, and
  - (b) references to an employee being kept on short-time or being eligible for a redundancy payment by reason of being kept on short-time,
- shall be construed in accordance with sections 147 and 148.



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