

*These notes refer to the Tax Credits Act 1999 (c.10)
which received Royal Assent on 30 June 1999*

TAX CREDITS ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 3: Rights not to suffer unfair dismissal or other detriment

Paragraph 1(1) provides an employee with the right not to suffer detriment as a result of any act, or failure to act, by his employer done on the ground that (a) the employee has taken action to enforce the rights conferred on him by regulations under section 6(2)(a) or (c) of the Bill; or (b) the employer has incurred a penalty under section 9 or penalty proceedings have been brought against the employer; or (c) the employee is entitled, or will or may in future be entitled, to a tax credit.

Paragraph 1(2) protects the employee from detrimental action whether or not he has the right which he is claiming and whether or not this right has been infringed, as long as his claim to the right is made in good faith.

Paragraph 1(3) disapplies the paragraph in cases where the detrimental action taken against an employee amounts to dismissal because dismissal is dealt with separately in paragraph 3. There is an exception where an employee is dismissed in circumstances where he is employed under a fixed term contract and he has agreed in advance to exclude his right to claim unfair dismissal. In those circumstances the employee can rely upon this paragraph.

Paragraph 2 provides an employee with the right to complain to an Employment Tribunal (or in Northern Ireland to an Industrial Tribunal) to enforce the right not to suffer detriment contained in paragraph 1. A complaint is to be made in the same way as a complaint under section 48 of the Employment Rights Act 1996 (ERA) or Article 71 of the Employment Rights (Northern Ireland) Order 1996. This means that a complaint must be made within three months of the alleged detrimental act (or deliberate failure to act) unless the tribunal considers that it was not reasonably practicable to do so.

Paragraph 3(1) inserts a new section 104B into ERA so as to provide that an employee will be regarded as having been unfairly dismissed if the dismissal arises because (a) the employee has taken action to enforce the rights conferred on him by regulations under section 6(2)(a) or (c) of the Act; or (b) the employer has incurred a penalty under section 9 or penalty proceedings have been brought against the employer; or (c) the employee is entitled, or will or may in future be entitled, to a tax credit.

Paragraph 3(2) inserts a new subsection (7B) into section 105 of ERA which provides that selecting an employee for redundancy on certain grounds amounts to unfair dismissal. The new subsection ensures that selecting an employee for redundancy because he has enforced or attempted to enforce any of the rights referred to in the new section 104B(1) of ERA amounts to unfair dismissal.

Paragraph 3(3) inserts a new subsection (3)(gh) into section 108 of ERA. This means that the right not to be dismissed for enforcing a right under the Bill will be one of the rights set out in section 108(3) which apply from the day the employee starts

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work. Without this amendment, section 108(1) would mean that the right would not apply until an employee had been continuously employed for two years.

Paragraph 3(4) inserts a new subsection (2)(gh) into section 109 of ERA. This means that the right not to be dismissed for enforcing a right under the Bill will be one of the rights set out in section 109(2) which apply without any age limit. Without this amendment, section 109(1) would mean that the right would not apply to those over their normal age of retirement.

Paragraph 4 serves exactly the same function in relation to employment rights in Northern Ireland as paragraph 3 serves in relation to Great Britain.

Paragraph 5 inserts a new paragraph (fg) into section 21(1) of the Employment Tribunals Act 1996 to enable appeals from the Employment Tribunal to the Employment Appeal Tribunal on question of law in relation to the provisions of the Bill.