



Employment Protection (Consolidation) Act 1978

1978 CHAPTER 44

PART VI

REDUNDANCY PAYMENTS

Miscellaneous and supplemental

110 Strike during currency of employer's notice to terminate contract

- (1) The provisions of this section shall have effect where, after an employer has given notice to an employee to terminate his contract of employment (in this section referred to as a "notice of termination")—
 - (a) the employee begins to take part in a strike of employees of the employer, and
 - (b) the employer serves on him a notice in writing (in this section referred to as a "notice of extension") requesting him to agree to extend the contract of employment beyond the time of expiry by an additional period comprising as many available days as the number of working days lost by striking (in this section referred to as "the proposed period of extension").
- (2) A notice of extension shall indicate the reasons for which the employer makes the request contained in the notice, and shall state that unless either—
 - (a) the employee complies with the request, or
 - (b) the employer is satisfied that, in consequence of sickness, injury or otherwise, he is unable to comply with it, or that (notwithstanding that he is able to comply with it) in the circumstances it is reasonable for him not to do so,the employer will contest any liability to pay him a redundancy payment in respect of the dismissal effected by the notice of termination.
- (3) For the purposes of this section an employee shall be taken to comply with the request contained in a notice of extension if, but only if, on each available day within the proposed period of extension, he attends at his proper or usual place of work and is

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ready and willing to work, whether he has signified his agreement to the request in any other way or not.

- (4) Where an employee on whom a notice of extension has been served—
- (a) complies with the request contained in the notice, or
 - (b) does not comply with it, but attends at his proper or usual place of work and is ready and willing to work on one or more (but not all) of the available days within the proposed period of extension,
- the notice of termination shall have effect, and shall be deemed at all material times to have had effect, as if the period specified in it had (in a case falling within paragraph (a)) been extended beyond the time of expiry by an additional period equal to the proposed period of extension or (in a case falling within paragraph (b)) had been extended beyond the time of expiry up to the end of the day (or, if more than one, the last of the days) on which he so attends and is ready and willing to work; and section 50 and Schedule 3 shall apply accordingly as if (the period of notice required by section 49 were extended to a corresponding extent.
- (5) Subject to subsection (6), if an employee on whom a notice of extension is served in pursuance of subsection (1) does not comply with the request contained in the notice, he shall not be entitled to a redundancy payment by reason of the dismissal effected by the notice of termination, unless the employer agrees to pay such a payment to him notwithstanding that the request has not been complied with.
- (6) Where a notice of extension has been served, and on a reference to an industrial tribunal it appears to the tribunal that the employee has not complied with the request contained in the notice and the employer has not agreed to pay a redundancy payment in respect of the dismissal in question, but that the employee was unable to comply with the request, or it was reasonable for him not to comply with it, as mentioned in subsection (2)(b) the tribunal may determine that the employer shall be liable to pay to the employee—
- (a) the whole of any redundancy payment to which the employee would have been entitled apart from subsection (5), or
 - (b) such part of any such redundancy payment as the tribunal thinks fit
- (7) The service of a notice of extension, and any extension, by virtue of subsection (4) of the period specified in a notice of termination.—
- (a) shall not affect any right either of the employer or of the employee to terminate the contract of employment (whether before, at or after the time of expiry) by a further notice or without notice, and
 - (b) shall not affect the operation of sections 81 to 102 in relation to any such termination of the contract of employment.
- (8) In this section any reference to the number of working days lost by striking is a reference to the number of working days in the period beginning with the date of service of the notice of termination and ending with the time of expiry which are days on which the employee in question takes part in a strike of employees of the employer.
- (9) In this section, " strike " has the meaning given by paragraph 24 of Schedule 13, "time of expiry", in relation to a notice of termination, means the time at which the notice would expire apart from this section, " working day ", in relation to an employee, means a day on which, in accordance with his contract of employment, he is normally required to work, " available day ", in relation to an employee, means a working day beginning at or after the time of expiry which is a day on which he is not taking part in

a strike of employees of the employer, and " available day within the proposed period of extension " means an available day which begins before the end of that period.

111 Payments equivalent to redundancy rebates in respect of civil servants, etc.

- (1) The provisions of this section shall have effect with respect to employment of any of the following descriptions, that is to say—
 - (a) any such employment as is mentioned in paragraph (a), paragraph (b) or paragraph (c) of subsection (1) of section 99 (whether as originally enacted or as modified by any order under section 149(D));
 - (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;
 - (d) any employment remunerated out of Her Majesty's Privy Purse.
- (2) Where the Secretary of State is satisfied that a payment has been, or will be, made in respect of the termination of any person's employment of any description specified in subsection (1), and that the payment has been, or will be, so made to or in respect of him—
 - (a) in accordance with the Superannuation Act 1965, as that Act continues to have effect by virtue of section 23(1) of the Superannuation Act 1972,
 - (b) in accordance with any provision of a scheme made under section 1 of the Superannuation Act 1972, or
 - (c) in accordance with any such arrangements as are mentioned in subsection (3),the Secretary of State shall pay the appropriate sum out of the fund to the appropriate fund or authority.
- (3) The arrangements referred to in paragraph (c) of subsection (2) are any arrangements made with the approval of the Minister for the Civil Service for securing that payments by way of compensation for loss of any such employment as is mentioned in subsection (1) will be made—
 - (a) in circumstances which in the opinion of the Minister for the Civil Service correspond (subject to the appropriate modifications) to those in which a right to a redundancy payment would have accrued if section 81 had applied, and
 - (b) on a scale which in the opinion of the Minister for the Civil Service, taking into account any sums which are payable as mentioned in subsection (2) (a) or (b) 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 section 81 had applied.
- (4) For the purposes of subsection (2) the appropriate sum is the sum appearing to the Secretary of State to be equal to the amount of the redundancy rebate which would have been payable under section 104 if such a right as is mentioned in paragraph (a) of subsection (3) had accrued, and such a redundancy payment as is mentioned in paragraph (b) of subsection (3) had been payable and had been paid.
- (5) Any accounts prepared by the Secretary of State under section 103(2) shall show as a separate item the aggregate amount of sums paid under subsection (2) during the period to which the accounts relate.
- (6) In this section " the appropriate fund or authority "—

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- (a) in relation to employment of any description falling within paragraph 7 of subsection (1) of section 39 of the Superannuation Act 1965 (whether as originally enacted or as modified by any order under that section), means the fund out of which, or the body out of whose revenues, the employment is remunerated;
- (b) in relation to any employment remunerated out of the revenues of the Duchy of Lancaster, means the Chancellor of the Duchy, and, in relation to any employment remunerated out of the revenues of the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;
- (c) in relation to any employment remunerated out of the Queen's Civil List or out of Her Majesty's Privy Purse, means the Civil List or the Privy Purse, as the case may be; and
- (d) in any other case, means the Consolidated Fund.

112 References to tribunal relating to equivalent payments

- (1) This section applies to any such payment as is mentioned in subsection (3) of section 111 which is payable in accordance with any such arrangements as are mentioned in that subsection.
- (2) Where the terms and conditions (whether constituting a contract of employment or not) on which any person is employed in any such employment as is mentioned in subsection (1) of section 111 include provision—
 - (a) for the making of any payment to which this section applies, and
 - (b) for referring to a tribunal any such question as is mentioned in the following provisions of this subsection,

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 shall be referred to and determined by an industrial tribunal.

113 Employment under Government of overseas territory

- (1) Where the Secretary of State is satisfied that, in accordance with any such arrangements as are mentioned in subsection (3), a payment has been, or will be, made in respect of the termination of a person's employment in any capacity under the Government of an overseas territory (in this section referred to as "the relevant Government"), and that in respect of the whole or part of the period during which that person was in that employment, employer's contributions were paid in respect of him, the Secretary of State shall pay the appropriate sum out of the fund to such other fund or authority as may be designated in that behalf by the relevant Government.
- (2) The reference in subsection (1) to employer's contributions is a reference to secondary Class 1 contributions paid in respect of the person in question by persons who were in relation to him secondary Class 1 contributors by virtue of section 4(4)(a) of the Social Security Act 1975, and in relation to any period before 6th April 1975, to employer's contributions within the meaning of the National Insurance Act 1965.
- (3) The arrangements referred to in subsection (1) are any arrangements made by or on behalf of the relevant Government for securing that payments by way of compensation for loss of employment in the capacity in question will be made—

- (a) in circumstances which in the opinion of the Secretary of State correspond (subject to the appropriate modifications) to those in which a right to a redundancy payment would have accrued if section 81 had applied, and
 - (b) on a scale which in the opinion of the Secretary of State corresponds (subject to the appropriate modifications) to that on which a redundancy payment would have been payable if that section had applied.
- (4) For the purposes of subsection (1) the appropriate sum (subject to subsection (5)) is the sum appearing to the Secretary of State to be equal to the amount of the redundancy rebate which would have been payable under section 104 if such a right as is mentioned in paragraph (a) of subsection (3) had accrued, and such a redundancy payment as is mentioned in paragraph (b) of that subsection had been payable and had been paid.
- (5) Where it appears to the Secretary of State that such contributions as are mentioned in subsection (1) were paid in respect of part (but not the whole) of the period of employment in question, the rebate which would have been payable as mentioned in subsection (4) shall be calculated as if the employment had been limited to that part of the period.
- (6) Any accounts prepared by the Secretary of State under section 103(2) shall show as a separate item the aggregate amount of sums paid under subsection (1) during the period to which the accounts relate.

114 Meaning of " Government of overseas territory "

In this Part " overseas territory " means any territory or country outside the United Kingdom; and any reference to the Government of an overseas territory includes a reference to a Government constituted for two or more overseas territories and to any authority established for the purpose of providing or administering services which are common to, or relate to matters of common interest to, two or more such territories.

115 Application of Part VI to employment not under contract of employment

- (1) This section applies to employment of any description which—
- (a) is not employment under a contract of service or of apprenticeship, and
 - (b) is not employment of any description falling within paragraphs (a) to (d) of section 111(1),
- but is employment such that secondary Class 1 contributions are payable under Part I of the Social Security Act 1975 in respect of persons engaged therein.
- (2) The Secretary of State may by regulations under this section provide that, subject to such exceptions and modifications as may be prescribed by the regulations, this Part and the provisions of this Act supplementary thereto shall have effect in relation to any such 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, and
 - (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.
- (3) Without prejudice to the generality of subsection (2), regulations made under this section may provide that section 105 shall apply to persons engaged in any such

employment of a description to which this section applies as may be prescribed by the regulations, as if those persons were employees to whom that section applies.

116 Provision for treating termination of certain employments by statute as equivalent to dismissal

- (1) The Secretary of State may by regulations under this section provide that, subject to such exceptions and modifications as may be prescribed by the regulations, the provisions of this Part shall have 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) shall be exercisable whether membership of the body in question constitutes employment within the meaning of section 153 or not; and, where that membership does not constitute such employment, that power may be exercised in addition to any power exercisable by virtue of section 115.

117 Employees paid by person other than employer

- (1) This section applies to any employee whose remuneration is, by virtue of any statutory provision, payable to him by a person other than his employer.
- (2) For the purposes of the operation, in relation to employees to whom this section applies, of the provisions of this Part and Schedule 13 specified in column 1 of Schedule 8, any reference to the employer which is specified in column 2 of Schedule 8 shall be construed as a reference to the person responsible for paying the remuneration.
- (3) In relation to employees to whom this section applies, section 119 shall have effect as if—
 - (a) any reference in subsection (1) or subsection (2) of that section to a notice required or authorised to be given by or to an employer included a reference to a notice which, by virtue of subsection (2), is required or authorised to be given by or to the person responsible for paying the remuneration;
 - (b) in relation to a notice required or authorised to be given to that person, any reference to the employer in paragraph (a) or paragraph (b) of subsection (2) of that section were a reference to that person ; and
 - (c) the reference to the employer in subsection (5) of that section included a reference to that person.
- (4) In this section and in Schedule 8, " the person responsible for paying the remuneration " means the person by whom the remuneration is payable as mentioned in subsection (1).

118 Statutory compensation schemes

- (1) This section applies to any statutory provision which was in force immediately before 6th December 1965, whereby 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 therein.

- (2) The Secretary of State may make provision by regulations for seeming that where apart from this section a person is entitled to compensation under a statutory provision to which this section applies, and 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.

119 Provisions as to 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 in that behalf have been made by the employer, may be given by being delivered to a person designated by the employer in pursuance of the arrangements, or 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 the preceding provisions of this section, any reference to the delivery of a notice shall, in relation to a notice which is not required by this Part to be in writing, be construed as including 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 subsection (2) shall be construed as affecting 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.

120 Offences

- (1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or 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 shall be guilty of that offence and shall be 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.