



Employment Protection Act 1975

1975 CHAPTER 71

PART IV

PROCEDURE FOR HANDLING REDUNDANCIES

Modifications etc. (not altering text)

C1 Pt. IV (ss. 99–107) modified by S.I. 1981/1794, reg. 11(7)(a)

99 Duty of employer to consult trade union representatives on redundancy.

- (1) An employer proposing to dismiss as redundant an employee of a description in respect of which an independent trade union is recognised by him shall consult representatives of that trade union about the dismissal in accordance with the following provisions of this section.
- (2) In this section and sections 100 and 101 below, “trade union representative” in relation to a trade union means an official or other person authorised to carry on collective bargaining with the employer in question by that trade union.
- (3) The consultation required by this section shall begin at the earliest opportunity, and shall in any event begin—
 - (a) where the employer is proposing to dismiss as redundant 100 or more employees at one establishment within a period of 90 days or less, at least 90 days before the first of those dismissals takes effect; or
 - (b) where the employer is proposing to dismiss as redundant 10 or more employees at one establishment within a period of 30 days or less, [^{F1}at least 30 days] before the first of those dismissals takes effect.
- (4) In determining for the purpose of subsection (3) above whether an employer is proposing to dismiss as redundant 100 or more, or, as the case may be, 10 or more, employees within the periods mentioned in that subsection, no account shall be taken of employees whom he proposes to dismiss as redundant in respect of whose proposed dismissals consultation has already begun.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Employment Protection Act 1975, Part IV. (See end of Document for details)

- (5) For the purposes of the consultation required by this section the employer shall disclose in writing to trade union representatives—
- (a) the reasons for his proposals;
 - (b) the numbers and descriptions of employees whom it is proposed to dismiss as redundant;
 - (c) the total number of employees of any such description employed by the employer at the establishment in question;
 - (d) the proposed method of selecting the employees who may be dismissed; and
 - (e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect.
- (6) The information which is to be given to trade union representatives under this section shall be delivered to them, or sent by post to an address notified by them to the employer, or sent by post to the union at the address of its head or main office.
- (7) In the course of the consultation required by this section the employer shall—
- (a) consider any representations made by the trade union representatives; and
 - (b) reply to those representations and, if he rejects any of those representations, state his reasons.
- (8) If in any case there are special circumstances which render it not reasonably practicable for the employer to comply with any of the requirements of subsections (3), (5) or (7) above, the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances.
- (9) This section shall not be construed as conferring any rights on a trade union or an employee except as provided by sections 101 to 103 below.

Textual Amendments

F1 Words substituted by [S.I. 1979/958](#), [arts. 2\(a\), 3](#)

Modifications etc. (not altering text)

C2 [Ss. 17–21, 99–103, 105\(1\)–\(3\)](#) and [106](#) modified by [S.I. 1989/901](#), [art. 3\(1\)\(2\)](#), [Sch.](#)

C3 [Pt. IV](#) (ss. 99–107) modified by [S.I. 1981/1794](#), [reg. 11\(7\)\(a\)](#)

100 Duty of employer to notify Secretary of State of certain redundancies.

- (1) An employer proposing to dismiss as redundant—
- (a) 100 or more employees at one establishment within a period of 90 days or less; or
 - (b) 10 or more employees at one establishment within a period of 30 days or less,
- shall notify the Secretary of State, in writing, of his proposal—
- (i) in a case falling within paragraph (a) above, at least 90 days before the first of those dismissals takes effect; and
 - (ii) in a case falling within paragraph (b) above, [^{F2}at least 30 days] before the first of those dismissals takes effect,

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and where the notice relates to employees of any description in respect of which an independent trade union is recognised by him, he shall give a copy of the notice to representatives of that union.

- (2) In determining for the purpose of subsection (1) above whether an employer is proposing to dismiss as redundant 100 or more, or, as the case may be, 10 or more, employees within the periods mentioned in that subsection, no account shall be taken of employees whom he proposes to dismiss as redundant in respect of whose proposed dismissals notice has already been given to the Secretary of State.
- (3) A notice under this section shall—
 - (a) be given to the Secretary of State by delivery to him or by sending it by post to him, at such address as the Secretary of State may direct in relation to the establishment where the employees proposed to be dismissed are employed;
 - (b) in a case where consultation with trade union representatives is required by section 90 above, identify the trade union concerned and state the date when consultation began; and
 - (c) be in such form and contain such particulars, in addition to those required by paragraph (b) above, as the Secretary of State may direct.
- (4) The copy of the notice under this section which is to be given to trade union representatives shall be delivered to them, or sent by post to an address notified by them to the employer, or sent by post to the union at the address of its head or main office.
- (5) At any time after receiving a notice under this section from an employer the Secretary of State may by written notice require the employer to give him such further information as may be specified in the requirement.
- (6) If in any case there are special circumstances rendering it not reasonably practicable for the employer to comply with any of the requirements of subsections (1) to (5) above, he shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances.

Textual Amendments

F2 Words substituted by [S.I. 1979/958](#), [arts. 2\(b\), 3](#)

Modifications etc. (not altering text)

C4 [S. 100](#) restricted (prosp.) by [Dock Work Regulation Act 1976 \(c. 79\)](#), [ss. 14\(6\)](#), [17\(1\)](#)

C5 [Ss. 17–21](#), [99–103](#), [105\(1\)–\(3\)](#) and [106](#) modified by [S.I. 1989/901](#), [art. 3\(1\)\(2\)](#), [Sch.](#)

C6 [Pt. IV \(ss. 99–107\)](#) modified by [S.I. 1981/1794](#), [reg. 11\(7\)\(a\)](#)

101 Complaint by trade union and protective award.

- (1) An appropriate trade union may present a complaint to an industrial tribunal on the ground that an employer has dismissed as redundant or is proposing to dismiss as redundant one or more employees and has not complied with any of the requirements of section 99 above.
- (2) If on a complaint under this section a question arises as to the matters referred to in section 99(8) above, it shall be for the employer to show—

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- (a) that there were special circumstances which rendered it not reasonably practicable for him to comply with any requirement of section 99 above; and
 - (b) that he took all such steps towards compliance with that requirement as were reasonably practicable in those circumstances.
- (3) Where the tribunal finds a complaint under subsection (1) above well-founded it shall make a declaration to that effect and may also make a protective award in accordance with subsection (4) below.
- (4) A protective award is an award that in respect of such descriptions of employees as may be specified in the award, being employees who have been dismissed, or whom it is proposed to dismiss, as redundant, and in respect of whose dismissal or proposed dismissal the employer has failed to comply with any requirement of section 99 above, the employer shall pay remuneration for a protected period.
- (5) The protected period under an award under subsection (4) above shall be a period beginning with the date on which the first of the dismissals to which the complaint relates takes effect, or the date of the award, whichever is the earlier, of such length as the tribunal shall determine to be just and equitable in all the circumstances having regard to the seriousness of the employer's default in complying with any requirement of section 99 above, not exceeding—
- (a) in a case falling within section 99(3)(a) above, 90 days;
 - (b) in a case falling within section 99(3)(b) above, [^{F3}30 days]; or
 - (c) in any other case, 28 days.
- (6) An industrial tribunal shall not consider a complaint under subsection (1) above in respect of an employer's default in relation to a dismissal or proposed dismissal unless it is presented to the tribunal before the proposed dismissal takes effect or before the end of the period of three months beginning with the date on which the dismissal takes effect or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (7) "Appropriate trade union", in relation to an employee of any description, means an independent trade union recognised by his employer in respect of that description of employee.

Textual Amendments

F3 Words substituted by [S.I. 1979/958](#), [art. 2\(c\)](#)

Modifications etc. (not altering text)

C7 [Ss. 17–21, 99–103, 105\(1\)–\(3\)](#) and [106](#) modified by [S.I. 1989/901](#), [art. 3\(1\)\(2\)](#), [Sch.](#)

C8 [Pt. IV](#) (ss. 99–107) modified by [S.I. 1981/1794](#), [reg. 11\(7\)\(a\)](#)

102 Entitlement under protective award.

- (1) Where an industrial tribunal has made a protective award under section 101 above, every employee of a description to which the award relates shall be entitled, subject to the following provisions of this section, to be paid remuneration by his employer for the protected period specified in the award.

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- (2) The rate of remuneration payable under a protective award shall be a week's pay for each week of the protected period, and if remuneration falls to be calculated for a period less than one week the amount of a week's pay shall be reduced proportionately.
- (3) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of a period falling within a protected period, shall go towards discharging the employer's liability to pay remuneration under the protective award in respect of that first mentioned period, and conversely any payment of remuneration under a protective award in respect of any period shall go towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.
- (4) In respect of a period during which he is employed by the employer an employee shall not be entitled to remuneration under a protective award unless he would be entitled to be paid by the employer in respect of that period, either by virtue of his contract of employment or by virtue of [^{F4}Schedule 3 to the ^{M1}Employment Protection (Consolidation) Act 1978] (rights of employee in period of notice), if that period fell within the period of notice required to be given by [^{F4}section 49(1)] of that Act.
- (5) Where the employee is employed by the employer during the protected period and—
 - (a) he is fairly dismissed by his employer for a reason other than redundancy; or
 - (b) he unreasonably terminates the contract of employment,then, subject to the following provisions of this section, he shall not be entitled to remuneration under the protective award in respect of any period during which but for that dismissal or termination he would have been employed.
- (6) If an employer makes an employee an offer (whether in writing or not and whether before or after the ending of his employment under the previous contract) to renew his contract of employment, or to re-engage him under a new contract, so that the renewal or re-engagement would take effect before or during the protected period and either—
 - (a) the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would not differ from the corresponding provisions of the previous contract; or
 - (b) the first mentioned provisions would differ from those corresponding provisions, but the offer constitutes an offer of suitable employment in relation to the employee;the provisions of subsections (7) to (11) below shall effect.
- (7) If, in a case to which subsection (6) above applies, the employee unreasonably refuses that offer, then, he shall not be entitled to any remuneration under a protective award in respect of any period during which but for that refusal he would have been employed.
- (8) If an employee's contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of such an offer as is referred to in subsection (6) (b) above, there shall be a trial period in relation to the contract as renewed, or the new contract (whether or not there has been a previous trial period under this section).
- (9) The trial period shall begin with the ending of the employee's employment under the previous contract and end with the expiration of the period of four weeks beginning with the date on which the employee starts work under the contract as renewed, or the new contract, or such longer period as may be agreed in accordance with

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subsection (10) below for the purpose of retraining the employee for employment under that contract.

- (10) Any such agreement shall—
- (a) be made between the employer and the employee or his representative before the employee starts work under the contract as renewed or, as the case may be, the new contract;
 - (b) be in writing;
 - (c) specify the date of the end of the trial period; and
 - (d) specify the terms and conditions of employment which will apply in the employee's case after the end of that period.
- (11) If during the trial period—
- (a) the employee, for whatever reason, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated; or
 - (b) the employer, for a reason connected with or arising out of the change to the renewed, or new, employment, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated,
- then, the employee shall remain entitled under the protective award unless, in a case falling within paragraph (a) above, he acted unreasonably in terminating or giving notice to terminate the contract.

Textual Amendments

F4 Words substituted by [Employment Protection \(Consolidation\) Act 1978 \(c. 44\)](#), **Sch. 16 para. 23(1)(4)**

Modifications etc. (not altering text)

C9 Ss. 17–21, 99–103, 105(1)–(3) and 106 modified by [S.I. 1989/901](#), art. 3(1)(2), **Sch.**

C10 Pt. IV (ss. 99–107) modified by [S.I. 1981/1794](#), **reg. 11(7)(a)**

Marginal Citations

M1 1978 c. 44.

103 Complaint by employee to industrial tribunal.

- (1) An employee may present a complaint to an industrial tribunal on the ground that he is an employee of a description to which a protective award relates and that his employer has failed, wholly or in part, to pay him remuneration under that award.
- (2) An industrial tribunal shall not entertain a complaint under subsection (1) above unless it is presented to the tribunal before the end of the period of three months beginning with the day (or, if the complaint relates to more than one day, the last of the days) in respect of which the complaint is made of failure to pay remuneration, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (3) Where the tribunal finds a complaint under subsection (1) above well-founded it shall order the employer to pay the complainant the amount of remuneration which it finds is due to him.

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Modifications etc. (not altering text)

C11 Ss. 17–21, 99–103, 105(1)–(3) and 106 modified by S.I. 1989/901, art. 3(1)(2), **Sch.**

C12 Pt. IV (ss. 99–107) modified by S.I. 1981/1794, **reg. 11(7)(a)**

104 ^{F5}

Textual Amendments

F5 Ss. 104, 105(4)(5) repealed by **Wages Act 1986** (c. 48, SIF 43:2), s. 32(2), **Sch. 5 Pt. I**

105 Offence and proceedings.

- (1) If an employer fails to give notice to the Secretary of State in accordance with section 100 above, he shall be liable on summary conviction to a fine not exceeding [^{F6}level 5 on the standard scale]
- (2) Proceedings in England or Wales for an offence under subsection (1) above shall be instituted only by or with the consent of the Secretary of State or by an officer authorised for that purpose by special or general directions of the Secretary of State.
- (3) An officer so authorised may, although not of counsel or a solicitor, prosecute or conduct before a magistrates' court any proceedings for such an offence.
- (4) ^{F7}

Textual Amendments

F6 Words substituted by virtue of (E.W.) **Criminal Justice Act 1982** (c. 48, SIF 39:1), **ss. 38, 46** and (S.) **Criminal Procedure (Scotland) Act 1975** (c. 21, SIF 39:1), **ss. 289F, 289G**

F7 Ss. 104, 105(4)(5) repealed by **Wages Act 1986** (c. 48, SIF 43:2), s. 32(2), **Sch. 5 Pt. I**

Modifications etc. (not altering text)

C13 Pt. IV (ss. 99–107) modified by S.I. 1981/1794, **reg. 11(7)(a)**

C14 Ss. 17–21, 99–103, 105(1)–(3) and 106 modified by S.I. 1989/901, art. 3(1)(2), **Sch.**

106 Supplementary.

- (1) ^{F8}
- (2) For the purposes of any proceedings under this Part of this Act, the dismissal or proposed dismissal of an employee shall be presumed, unless the contrary is proved, to be by reason of redundancy.
- (3) [^{F9}Schedule 14 to the ^{M2}Employment Protection (Consolidation) Act 1978 shall apply for the calculation of a week's pay for the purposes of section 102 above, and, for the purposes of Part II of that Schedule, the calculation date is—
 - (a) in the case of an employee who was dismissed before the date on which the protective award was made, the date which by virtue of paragraph 7(1)(k) or (l) of the said Schedule 14] is the calculation date for the purpose of computing

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- the amount of a redundancy payment in relation to that dismissal (whether or not the employee concerned is entitled to any such payment); and
- (b) in any other case, the date on which the protective award was made.
- (4) The Secretary of State may by order vary the provisions of sections 99(3) and 100(1) above and the periods referred to in section 101(5)(a) to (c) above and may vary those provisions or periods either generally or in their application to any description of employees, but no such order shall be made which has the effect of reducing to less than 30 days the periods referred to in sections 99(3) and 100(1) as the periods which must elapse before the first of the dismissals takes effect.
- (5) No order shall be made under subsection (4) above unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

Textual Amendments

- F8** Ss. 106(1), Sch. 16 Pt. III paras. 4, 17, Sch. 17 para. 13 repealed by [Employment Act 1980 \(c. 42\)](#), [Sch. 2](#)
- F9** Words substituted by [Employment Protection \(Consolidation\) Act 1978 \(c. 44\)](#), [Sch. 16 para. 23\(1\)\(6\)](#)

Modifications etc. (not altering text)

- C15** Ss. 17–21, 99–103, 105(1)–(3) and 106 modified by [S.I. 1989/901](#), [art. 3\(1\)\(2\)](#), [Sch.](#)
- C16** [Pt. IV](#) (ss. 99–107) modified by [S.I. 1981/1794](#), [reg. 11\(7\)\(a\)](#)

Marginal Citations

- M2** [1978 c. 44](#).

107 Power to adapt foregoing provisions in case of collective agreements on redundancies.

- (1) If at any time there is in force a collective agreement which establishes—
- (a) arrangements for providing alternative employment for employees to whom the agreement relates if they are dismissed as redundant by an employer to whom it relates; or
 - (b) arrangements for the handling of redundancies;
- and on the application of all the parties to the agreement the Secretary of State, having regard to the provisions of the agreement, is satisfied that the arrangements are on the whole at least as favourable to those employees as the foregoing provisions of this Part of this Act, he may make an order under this section adapting, modifying or excluding any of those provisions both in their application to all or any of those employees and in their application to any other employees of any such employer.
- (2) The Secretary of State shall not make an order under this section in respect of an agreement unless—
- (a) the agreement provides for procedures to be followed (whether by arbitration or otherwise) in cases where an employee to whom the agreement relates claims that any employer or other person to whom it relates has not complied with the provisions of the agreement, and that those procedures include a right to arbitration or adjudication by an independent referee or body in cases where (by reason of an equality of votes or otherwise) a decision cannot otherwise be reached; or

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- (b) the agreement indicates that any such employee may present a complaint to an industrial tribunal that any such employer or other person has not complied with those provisions.
- (3) An order under this section may confer on an industrial tribunal to whom a complaint is presented as mentioned in subsection (2)(b) above such powers and duties as the Secretary of State considers appropriate.
- (4) Without prejudice to section 123 below, an order under this section may be varied or revoked by a subsequent order thereunder, whether in pursuance of an application made by all or any of the parties to the agreement in question or without any such application.

Modifications etc. (not altering text)

C17 Pt. IV (ss. 99–107) modified by S.I. 1981/1794, **reg. 11(7)(a)**

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