



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART II

#### RIGHTS ARISING IN COURSE OF EMPLOYMENT

##### *Time off work*

**F1**27 .....

#### Textual Amendments

**F1** Ss. 23-28 repealed (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(1), 302, **Sch.1** (with savings in Sch. 3 para. 2) and subject to an amendment (1.8.1998) by 1998 c. 8, **s. 1(2)** (with s. 16(2)); S.I. 1998/1658, art. 2, **Sch. 1**

**F2**28 .....

#### Textual Amendments

**F2** Ss. 23-28 repealed (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(1), 302, **Sch.1** (with savings in Sch. 3 para. 2) and subject to an amendment (1.8.1998) by 1998 c. 8, **s. 1(2)** (with s. 16(2)); S.I. 1998/1658, art. 2, **Sch. 1**

### 29 Time off for public duties.

- (1) An employer shall permit an employee of his who is—  
(a) a justice of the peace;

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- (b) a member of a local authority;
- [<sup>F3</sup>(bb) a member of the Broads Authority;]
- (c) a member of any statutory tribunal;
- [<sup>F4</sup>(cc) a member of, in England and Wales, a board of visitors appointed under section 6(2) of the <sup>M1</sup>Prison Act 1952 or, in Scotland, a visiting committee appointed under section 19(3) of the Prisons (Scotland) Act <sup>M2</sup>1989 or constituted by virtue of rules made under section 39, as read with section 8(1), of that Act;]
- (d) a member of [<sup>F5</sup>a National Health Service Trust or], in England and Wales, a Regional Health Authority [<sup>F6</sup>an Area Health Authority or a District] Health Authority [<sup>F7</sup>or a Family Practitioner Committee] or, in Scotland, a Health Board;
- (e) a member of, in England and Wales, the managing or governing body of an educational establishment maintained by a local education authority, or, in Scotland, a school <sup>F8</sup> . . . council or the governing body of a [<sup>F9</sup>designated institution or a central institution]; <sup>F10</sup>
- [<sup>F11</sup>(ee) a member of the governing body of a grant-maintained school;]
- [<sup>F12</sup>(ef) a member of the governing body of a [<sup>F13</sup>further education corporation or] higher education corporation; or]
- [<sup>F14</sup>(ef) a member of a school board or of the board of management of a self-governing school;]
- [<sup>F15</sup>(eg) a member of the board of management of a college of further education; or]
- (f) a member of, in England and Wales, [<sup>F16</sup>the National Rivers Authority or, in Scotland, a] river purification board,

to take time off, subject to and in accordance with subsection (4), during the employee's working hours for the purposes of performing any of the duties of his office or, as the case may be, his duties as such a member.

(2) In subsection (1)—

- (a) “local authority” in relation to England and Wales includes the Common Council of the City of London but otherwise has the same meaning as in the <sup>M3</sup>Local Government Act 1972, and in relation to Scotland has the same meaning as in the <sup>M4</sup>Local Government (Scotland) Act 1973;
- (b) “Regional Health Authority” <sup>F17</sup> “Area Health Authority” [<sup>F18</sup>and District Health Authority][<sup>F19</sup>and “Family Practitioner Committee”] have the same meaning as in the <sup>M5</sup>National Health Service Act 1977, and “Health Board” has the same meaning as in [<sup>F20</sup>the <sup>M6</sup>National Health Service (Scotland) Act 1978];
- (c) “local education authority” means the authority designated by section 192(1) of the <sup>M7</sup>Local Government Act 1972, [<sup>F21</sup>“school council” means a body appointed under section 125(1) of the Local Government (Scotland) Act 1973, “board of management”, where it appears in paragraph (ef) as inserted by the Self-Governing Schools etc. (Scotland) Act 1989, “central institution” and “self-governing school” have the same meanings as in section 135(1) of the Education (Scotland) Act 1980, “school board” has the same meaning as in section 1(1) of the School Boards (Scotland) Act 1988, “board of management”, where it appears and “college of further education” have the same meanings as in section 36(1) of the Further and Higher Education (Scotland) Act 1992 and “designated institution” has the same meaning as in Part II of that Act of 1992]; and

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- (d) “river purification board” means a board established under section 135 of the Local Government (Scotland) Act 1973.
- (3) For the purposes of subsection (1) the duties of a member of a body referred to in paragraphs (b) to (f) of that subsection are:—
- (a) attendance at a meeting of the body or any of its committees or sub-committees;
- (b) the doing of any other thing approved by the body, or anything of a class so approved, for the purpose of the discharge of the functions of the body or of any of its committees or sub-committees.
- (4) The amount of time off which an employee is to be permitted to take under this section and the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard, in particular, to the following:—
- (a) how much time off is required for the performance of the duties of the office or as a member of the body in question, and how much time off is required for the performance of the particular duty;
- (b) how much time off the employee has already been permitted under this section or [F22sections 168 and 170 of the Trade Union and Labour Relations (Consolidation) Act 1992 (time off for trade union duties and activities)];
- (c) the circumstances of the employer’s business and the effect of the employee’s absence on the running of that business.
- (5) The Secretary of State may by order—
- (a) modify the provisions of subsection (1) by adding any office or body to, or removing any office or body from, that subsection or by altering the description of any office or body in that subsection; and
- (b) modify the provisions of subsection (3).
- (6) An employee may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by this section.

#### Textual Amendments

- F3** S. 29(1)(bb) inserted (E.W.) by Norfolk and Suffolk Broads Act 1988 (c. 4, SIF 81:1), s. 21, **Sch. 6 para. 19**
- F4** S. 29(1)(cc) inserted by S.I. 1990/1870, **art. 2**
- F5** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 20**
- F6** Words substituted by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 1 para. 84**
- F7** Words inserted by S.I. 1985/39, **art. 8(a)(i)**
- F8** Words in s. 29(1)(e) repealed (16.5.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62(3), **Sch. 10: S.I. 1992/817, art. 3(2) Sch. 1.**
- F9** Words in s. 29(1)(e) substituted (16.5.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62(2), **Sch. 9 para. 6(a): S.I. 1992/817, art. 3(2) Sch. 1.**
- F10** Word repealed by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1)(2), Sch. 12 Pt. I para. 23(a), **Sch. 13 Pt. II**
- F11** S. 29(1)(ee) inserted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 23(b)**
- F12** S. 29(1)(ef) inserted (E.W.S.) by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 80**

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- F13** Words in s. 29(1)(ef) inserted (30.9.1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. II para. 89**; S.I. 1992/831, **art. 2 Sch. 2**.
- F14** S. 29(1)(ef) inserted (S.) by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(1), **Sch. 10 para. 7(a)**
- F15** S. 29(1)(eg) inserted (16.5.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62(2), **Sch. 9 para. 6(b)**; S.I. 1992/817, **art. 3(2) Sch. 1**.
- F16** Words substituted by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 25 para. 56** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F17** Word repealed by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 1 para. 84**
- F18** Words inserted by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 1 para. 84**
- F19** Words inserted by S.I. 1985/39, **art. 8(a)(ii)**
- F20** Words substituted by virtue of National Health Service (Scotland) Act 1978 (c. 29, SIF 113:2), **Sch. 15 para. 2**
- F21** Words in s. 29(2)(c) substituted (16.5.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62(2), **Sch. 9 para. 6(c)**; S.I. 1992/817, **art. 3(2) Sch. 1**.
- F22** Words in s. 29(4)(b) substituted (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(2), 302, **Sch. 2 para.11**.

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

- C1** S. 29(1) applied (E.W.) (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt. I**  
 S. 29(1) applied (E.W.) (9.5.1994) by S.I. 1994/1084, reg. 8(1), **Sch. 2 Pt. I**
- C2** S. 29(3) applied by Local Government and Housing Act 1989 (c. 42, SIF 81:1,2), **s. 10(2)**
- C3** S. 29(4) excluded by Local Government and Housing Act 1989 (c. 42, SIF 81:1,2), **s. 10(1)**

#### Marginal Citations

- M1** 1952 c.52(39:1).
- M2** 1989 c.45(39:1).
- M3** 1972 c. 70.
- M4** 1973 c. 65.
- M5** 1977 c. 49.
- M6** 1978 c. 29.
- M7** 1972 c. 70.

### 30 Provisions as to industrial tribunals.

- (1) An industrial tribunal shall not consider [<sup>F23</sup>a complaint under section 29 that an employer has failed to permit an employee to take time off] unless it is presented within three months of the date when the failure occurred 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.
- (2) Where an industrial tribunal finds [<sup>F24</sup>such a complaint] well-founded, the tribunal shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee which shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to permit time off to be taken by the employee and to any loss sustained by the employee which is attributable to the matters complained of.

<sup>F25</sup>(3) .....

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### Textual Amendments

- F23** Words in s. 30(1) substituted (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), ss. 300(2), 302, [Sch. 2 para. 12\(a\)](#).
- F24** Words in s. 30(2) substituted (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), ss. 300(2), 302, [Sch. 2 para. 12\(b\)](#).
- F25** S. 30(3) repealed (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), ss. 300(1)(2), 302, [Schs. 1, 2](#) para. 12(c) (with savings in [Sch. 3](#) para. 2).

## 31 Time off to look for work or make arrangements for training.

- (1) An employee who is given notice of dismissal by reason of redundancy shall, subject to the following provisions of this section, be entitled before the expiration of his notice to be allowed by his employer reasonable time off during the employee's working hours in order to look for new employment or make arrangements for training for future employment.
- (2) An employee shall not be entitled to time off under this section unless, on whichever is the later of the following dates, that is to say,—
  - (a) the date on which the notice is due to expire; or
  - (b) the date on which it would expire were it the notice required to be given by section 49(1),he will have been or, as the case may be, would have been continuously employed for a period of two years or more.
- (3) An employee who is allowed time off during his working hours under subsection (1) shall, subject to the following provisions of this section, be entitled to be paid remuneration by his employer for the period of absence at the appropriate hourly rate.
- (4) The appropriate hourly rate in relation to an employee shall be the amount of one week's pay divided by—
  - (a) the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when notice was given; or
  - (b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which notice was given.
- (5) If an employer unreasonably refuses to allow an employee time off from work under this section, the employee shall, subject to subsection (9), be entitled to be paid an amount equal to the remuneration to which he would have been entitled under subsection (3) if he had been allowed the time off.
- (6) An employee may present a complaint to an industrial tribunal on the ground that his employer has unreasonably refused to allow him time off under this section or has failed to pay the whole or any part of any amount to which the employee is entitled under subsection (3) or (5).
- (7) An industrial tribunal shall not entertain a complaint under subsection (6) unless it is presented to the tribunal within the period of three months beginning with the day on which it is alleged that the time off should have been allowed, or within such further

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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.

- (8) If on a complaint under subsection (6) the tribunal finds the grounds of the complaint well-founded it shall make a declaration to that effect and shall order the employer to pay to the employee the amount which it finds due to him.
- (9) The amount—
- (a) of an employer's liability to pay remuneration under subsection (3); or
  - (b) which may be ordered by a tribunal to be paid by an employer under subsection (8),
- or, where both paragraphs (a) and (b) are applicable, the aggregate amount of the liabilities referred to in those paragraphs, shall not exceed, in respect of the notice period of any employee, two-fifths of week's pay of that employee.
- (10) Subject to subsection (11), a right to any amount under subsection (3) or (5) shall not affect any right of an employee in relation to remuneration under the contract of employment (in this section referred to as "contractual remuneration").
- (11) Any contractual remuneration paid to an employee in respect of a period when he takes time off for the purposes referred to in subsection (1) shall go towards discharging any liability of the employer to pay remuneration under subsection (3) in respect of that period, and conversely any payment of remuneration under subsection (3) in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

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

C4 S. 31(2) modified (1.4.1996) by S.I. 1996/1023, arts. 3, 4

**[<sup>F26</sup>31A Time off for ante-natal care.**

- (1) An employee who is pregnant and who has, on the advice of a registered medical practitioner, registered midwife or registered health visitor, made an appointment to attend at any place for the purpose of receiving ante-natal care shall, subject to the following provisions of this section, have the right not to be unreasonably refused time off during her working hours to enable her to keep the appointment.
- (2) Subject to subsection (3), an employer shall not be required by virtue of this section to permit an employee to take time off to keep an appointment unless, if he requests her to do so, she produces for his inspection—
  - (a) a certificate from a registered medical practitioner, registered midwife or registered health visitor stating that the employee is pregnant, and
  - (b) an appointment card or some other document showing that the appointment has been made.
- (3) Subsection (2) shall not apply where the employee's appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with subsection (1).

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- (4) An employee who is permitted to take time off during her working hours in accordance with subsection (1) shall be entitled to be paid remuneration by her employer for the period of absence at the appropriate hourly rate.
- (5) The appropriate hourly rate in relation to an employee shall be the amount of one week's pay divided by—
  - (a) the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when time off is taken; or
  - (b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken; or
  - (c) in a case falling within paragraph (b) but where the employee has not been employed for a sufficient period to enable the calculation to be made under that paragraph, a number which fairly represents the number of normal working hours in a week having regard to such of the following considerations as are appropriate in the circumstances, that is to say,—
    - (i) the average number of normal working hours in a week which the employee could expect in accordance with the terms of her contract;
    - (ii) the average number of such hours of other employees engaged in relevant comparable employment with the same employer.
- (6) An employee may present a complaint to an industrial tribunal that her employer has unreasonably refused her time off as required by this section or that he has failed to pay her the whole or part of any amount to which she is entitled under subsection (4).
- (7) An industrial tribunal shall not entertain a complaint under subsection (6) unless it is presented within the period of three months beginning with the day of the appointment concerned, 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.
- (8) Where on a complaint under subsection (6) the tribunal finds the complaint well-founded it shall make a declaration to that effect; and—
  - (a) if the complaint is that the employer has unreasonably refused the employee time off, the tribunal shall order the employer to pay to the employee an amount equal to the remuneration to which she would have been entitled under subsection (4) if the time off had not been refused; and
  - (b) if the complaint is that the employer has failed to pay the employee the whole or part of any amount to which she is entitled under subsection (4), the tribunal shall order the employer to pay to the employee the amount which it finds due to her.
- (9) Subject to subsection (10), a right to any amount under subsection (4) shall not affect any right of an employee in relation to remuneration under her contract of employment (in this section referred to as “contractual remuneration”).
- (10) Any contractual remuneration paid to an employee in respect of a period of time off under this section shall go towards discharging any liability of the employer to pay remuneration under subsection (4) in respect of that period, and conversely any payment of remuneration under subsection (4) in respect of a period shall go towards

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discharging any liability of the employer to pay contractual remuneration in respect of that period.

- (11) Until the coming into operation of section 10 of the <sup>M8</sup>Nurses, Midwives and Health Visitors Act 1979, this section shall have effect as if for any reference to a registered midwife or registered health visitor there substituted a reference to a certified midwife.]

**Textual Amendments**  
**F26** S. 31A inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), **s. 13**

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**Modifications etc. (not altering text)**  
**C5** 1.7.1983 appointed for coming into operation of [Nurses, Midwives and Health Visitors Act 1979 \(c. 36, SIF 83:1\)](#), **s. 10: S.I. 1983/668**

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**Marginal Citations**  
**M8** 1979 c. 36.

VALID FROM 22/08/1996

<sup>F27</sup>**31AA** .....

**Textual Amendments**

**F27** S. 31AA repealed (22.8.1996) by [1996 c. 18, ss. 242, 243, Sch. 3 Pt. I](#) (with [ss. 191-195, 202](#))

<sup>F29</sup>**31AA** **Time off for employee representatives.** **E+W+S**

- (1) An employee who is—
  - (a) an employee representative for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981, or
  - (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

shall be entitled to be allowed by his employer reasonable time off during the employee’s working hours in order to perform his functions as such an employee representative or candidate.

- (2) Subject to subsection (3), subsections (4) to (10) of section 31A shall apply to an employee who is allowed time off in accordance with this section as they apply to an employee who is permitted to take time off in accordance with subsection (1) of that section.
- (3) In its application by virtue of subsection (2)—
  - (a) subsection (4) of section 31A shall have effect as if for the reference to the period of absence there were substituted a reference to the time taken off, and



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(b) subsection (7) of that section shall have effect as if for the reference to the day of the appointment concerned there were substituted a reference to the day on which it is alleged that the time off should have been allowed or the day on which the time off was taken.]

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**Textual Amendments**

**F29** S. 31AA inserted (26.10.1995) by S.I. 1995/2587, reg. 13(1)

**[32** <sup>F28</sup> **Meaning of “working hours”.**

For the purposes of sections 29 to 31A the working hours of an employee shall be taken to be any time when in accordance with his contract of employment he is required to be at work.]

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**Textual Amendments**

**F28** S. 32 substituted (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(2), 302, Sch. 2 para.13.

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