



Employment Protection (Consolidation) Act 1978

1978 CHAPTER 44

PART II

RIGHTS ARISING IN COURSE OF EMPLOYMENT

Guarantee payments

12 Right to guarantee payment

- (1) Where an employee throughout a day during any part of which he would normally be required to work in accordance with his contract of employment is not provided with work by his employer by reason of—
 - (a) a diminution in the requirements of the employer's business for work of the kind which the employee is employed to do, or
 - (b) any other occurrence affecting the normal working of the employer's business in relation to work of the kind which the employee is employed to do,he shall, subject to the following provisions of this Act, be entitled to be paid by his employer a payment, referred to in this Act as a guarantee payment, in respect of that day, and in this section and sections 13 and 16—
 - (i) such a day is referred to as a "workless day", and
 - (ii) "workless period" has a corresponding meaning.
- (2) In this section and sections 13 to 17, "day" means the period of twenty-four hours from midnight to midnight, and where a period of employment begun on any day extends over midnight into the following day, or would normally so extend, then—
 - (a) if the employment before midnight is, or would normally be, of longer duration than that after midnight, that period of employment shall be treated as falling wholly on the first day; and
 - (b) in any other case, that period of employment shall be treated as falling wholly on the second day.

13 General exclusions from right under s. 12

- (1) An employee shall not be entitled to a guarantee payment in respect of a workless day if the failure to provide him with work occurs in consequence of a trade dispute involving any employee of his employer or of an associated employer.
- (2) An employee shall not be entitled to a guarantee payment in respect of a workless day if—
 - (a) his employer has offered to provide alternative work for that day which is suitable in all the circumstances whether or not work which the employee is under his contract employed to perform, and the employee has unreasonably refused that offer; or
 - (b) he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

14 Calculation of guarantee payment

- (1) Subject to the limits set by section 15, the amount of a guarantee payment payable to an employee in respect of any day shall be the sum produced by multiplying the number of normal working hours on that day by the guaranteed hourly rate, and, accordingly, no guarantee payment shall be payable to an employee in whose case there are no normal working hours on the day in question.
- (2) Subject to subsection (3), the guaranteed 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 in respect of which the guarantee payment is payable ; 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 in respect of which the guarantee payment is payable; 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 his contract;
 - (ii) the average number of such hours of other employees engaged in relevant comparable employment with the same employer.
- (3) If in any case an employee's contract has been varied, or a new contract has been entered into, in connection with a period of short-time working, subsection (2) shall have effect as if for the reference to the day in respect of which the guarantee payment is payable there was substituted a reference to the last day on which the original contract was in force.

15 Limits on amount of and entitlement to guarantee payment

- (1) The amount of a guarantee payment payable to an employee in respect of any day shall not exceed £6.60.

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- (2) An employee shall not be entitled to guarantee payments in respect of more than the specified number of days in any one of the relevant periods, that is to say, the periods of three months commencing on 1st February, 1st May, 1st August and 1st November in each year.
- (3) The specified number of days for the purposes of subsection (2) shall be, subject to subsection (4).—
 - (a) the number of days, not exceeding five, on which the employee normally works in a week under the contract of employment in force on the day in respect of which the guarantee payment is claimed ; or
 - (b) where that number of days varies from week to week or over a longer period, the average number of such days, not exceeding five, calculated by dividing by twelve the total number of such days during the period of twelve weeks ending with the last complete week before the day in respect of which the guarantee payment is claimed, and rounding up the resulting figure to the next whole number; 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 the employee's normal working days in a week, not exceeding five, 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 days in a week which the employee could expect in accordance with the terms of his contract;
 - (ii) the average number of such days of other employees engaged in relevant comparable employment with the same employer.
- (4) If in any case an employee's contract has been varied, or a new contract has been entered into, in connection with a period of short-time Working, subsection (3) shall have effect as if for the references to the day in respect of which the guarantee payment is claimed there were substituted references to the last day on which the original contract was in force.
- (5) The Secretary of State may vary any of the limits referred to in this section, and may in particular vary the relevant periods referred to in subsection (2), after a review under section 148, by order made in accordance with that section.

16 Supplementary provisions relating to guarantee payments

- (1) Subject to subsection (2), a right to a guarantee payment shall not affect any right of an employee in relation to remuneration under his contract of employment (in this section referred to as "contractual remuneration").
- (2) Any contractual remuneration paid to an employee in respect of a workless day shall go towards discharging any liability of the employer to pay a guarantee payment in respect of that day, and conversely any guarantee payment paid in respect of a day shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that day.
- (3) For the purposes of subsection (2), contractual remuneration shall be treated as paid in respect of a workless day—
 - (a) where it is expressed to be calculated or payable by reference to that day or any part of that day, to the extent that it is so expressed ; and

- (b) in any other case, to the extent that it represents guaranteed remuneration, rather than remuneration for work actually done, and is referable to that day when apportioned rateably between that day and any other workless period falling within the period in respect of which the remuneration is paid.
- (4) The Secretary of State may by order provide that in relation to any description of employees the provisions of sections 12(2), 14 and 15(3) (as originally enacted or as varied under section 15(5)) and of subsections (1) to (3), and, so far as they apply for the purposes of those provisions, the provisions of Schedule 14 shall have effect subject to such modifications and adaptations as may be prescribed by the order.

17 Complaint to industrial tribunal

- (1) An employee may present a complaint to an industrial tribunal that his employer has failed to pay the whole or any part of a guarantee payment to which the employee is entitled.
- (2) An industrial tribunal shall not entertain a complaint relating to a guarantee payment in respect of any day unless the complaint is presented to the tribunal before the end of the period of three months beginning with that day 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 an industrial tribunal finds a complaint under subsection (1) well-founded, the tribunal shall order the employer to pay the complainant the amount of guarantee payment which it finds is due to him.

18 Exemption orders

- (1) If at any time there is in force a collective agreement,
 - or a wages order, whereby employees to whom the agreement or order relates have a right to guaranteed remuneration and on the application of all the parties to the agreement or, as the case may be, of the council or Board making the order, the appropriate Minister, having regard to the provisions of the agreement or order, is satisfied that section 12 should not apply to those employees, he may make an order under this section excluding those employees from the operation of that section.
- (2) In subsection (1), a wages order means an order made under any of the following provisions, that is to say—
 - (a) section 11 of the Wages Councils Act 1959;
 - (b) section 3 of the Agricultural Wages Act 1948;
 - (c) section 3 of the Agricultural Wages (Scotland) Act 1949.
- (3) In subsection (1), "the appropriate Minister" means—
 - (a) as respects a collective agreement or such an order as is referred to in subsection (2)(a) or (c), the Secretary of State;
 - (b) as respects such an order as is referred to in subsection (2)(b), the Minister of Agriculture, Fisheries and Food.
- (4) 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 claims that his employer has failed

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to pay the whole or any part of any guaranteed remuneration to which the employee is entitled under 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

- (b) the agreement indicates that an employee to whom the agreement relates may present a complaint to an industrial tribunal that his employer has failed to pay the whole or any part of any guaranteed remuneration to which the employee is entitled under the agreement ;

and where an order under this section is in force in respect of such an agreement as is described in paragraph (b) an industrial tribunal shall have jurisdiction over such a complaint as if it were a complaint falling within section 17.

- (5) Without prejudice to section 154(4), 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, as the case may be, by the council or Board which made the order in question, or without any such application.

Suspension from work on medical grounds

19 Right to remuneration on suspension on medical grounds

- (1) An employee who is suspended from work by his employer on medical grounds in consequence of—

- (a) any requirement imposed by or under any provision of any enactment or of any instrument made under any enactment, or
- (b) any recommendation in any provision of a code of practice issued or approved under section 16 of the Health and Safety at Work etc. Act 1974,

which is a provision for the time being specified in Schedule 1 shall, subject to the following provisions of this Act, be entitled to be paid by his employer remuneration while he is so suspended for a period not exceeding twenty-six weeks.

- (2) For the purposes of this section and sections 20 to 22 and 61, an employee shall be regarded as suspended from work only if, and so long as, he continues to be employed by his employer, but is not provided with work or does not perform the work he normally performed before the suspension.
- (3) The Secretary of State may by order add provisions to or remove provisions from the list of specified provisions in Schedule 1.

20 General exclusions from right under s. 19

- (1) An employee shall not be entitled to remuneration under section 19 in respect of any period during which he is incapable of work by reason of disease or bodily or mental disablement.
- (2) An employee shall not be entitled to remuneration under section 19 in respect of any period during which—
 - (a) his employer has offered to provide him with suitable alternative work, whether or not work which the employee is under his contract, or was under

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the contract in force before the suspension, employed to perform, and the employee has unreasonably refused to perform that work ; or

- (b) he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

21 Calculation of remuneration

- (1) The amount of remuneration payable by an employer to an employee under section 19 shall be a week's pay in respect of each week of the period of suspension referred to in subsection (1) of that section, and if in any week remuneration is payable in respect only of part of that week the amount of a week's pay shall be reduced proportionately.
- (2) Subject to subsection (3), a right to remuneration under section 19 shall not affect any right of an employee in relation to remuneration under his contract of employment (in this section referred to as "contractual remuneration").
- (3) Any contractual remuneration paid by an employer to an employee in respect of any period shall go towards discharging the employer's liability under section 19 in respect of that period, and conversely any payment of remuneration in discharge of an employer's liability under section 19 in respect of any period shall go towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.

22 Complaint to industrial tribunal

- (1) An employee may present a complaint to an industrial tribunal that his employer has failed to pay the whole or any part of remuneration to which the employee is entitled under section 19.
- (2) An industrial tribunal shall not entertain a complaint relating to remuneration under section 19 in respect of any day unless the complaint is presented to the tribunal before the end of the period of three months beginning with that day, 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 an industrial tribunal finds a complaint under subsection (1) well-founded the tribunal shall order the employer to pay the complainant the amount of remuneration which it finds is due to him.

Trade union membership and activities

23 Trade union membership and activities

- (1) Subject to the following provisions of this section, every employee shall have the right not to have action (short of dismissal) taken against him as an individual by his employer for the purpose of—
 - (a) preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so; or
 - (b) preventing or deterring him from taking part in the activities of an independent trade union at any appropriate time, or penalising him for doing so; or

- (c) compelling him to be or become a member of a trade union which is not independent.
- (2) In this section " appropriate time", in relation to an employee taking part in any activities of a trade union, means time which either—
- (a) is outside his working hours, or
 - (b) is a time within his working hours at which, in accordance with arrangements agreed with, or consent given by his employer, it is permissible for him to take part in those activities;
- and in this subsection "working hours", in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.
- (3) The provisions of subsection (4) shall have effect in relation to an employee—
- (a) of the same class as employees for whom it is the practice in accordance with a union membership agreement to belong to a specified independent trade union or to one of a number of specified independent trade unions; or
 - (b) not of the same class as described in paragraph (a) but of the same grade or category as such employees as are referred to in that paragraph.
- (4) In relation to such an employee the right conferred by subsection (1)(b) in relation to the activities of an independent trade union shall extend to activities on the employer's premises only if that union is a specified union.
- (5) For the purposes of this section a trade union—
- (a) shall be taken to be specified for the purposes of, or in relation to, a union membership agreement if it is specified in the agreement or is accepted by the parties to the agreement as being the equivalent of a union so specified; and
 - (b) shall also be treated as so specified if—
 - (i) the Advisory, Conciliation and Arbitration Service has made a recommendation for recognition of that union covering the employee in question which is operative within the meaning of section 15 of the Employment Protection Act 1975 ; or
 - (ii) the union has referred a recognition issue covering that employee to the Advisory, Conciliation and Arbitration Service under section 11 of the said Act of 1975 and the Service has not declined to proceed on the reference under section 12 of that Act, the union has not withdrawn the reference, or from the reference, and the issue has not been settled or reported on under that section.
- (6) An employee who genuinely objects on grounds of religious belief to being a member of any trade union whatsoever shall have the right not to have action (short of dismissal) taken against him by his employer for the purpose of compelling him to belong to a trade union.
- (7) In this section, unless the context otherwise requires, references to a trade union include references to a branch or section of a trade union.

24 Complaint to industrial tribunal

- (1) An employee may present a complaint to an industrial tribunal on the ground that action has been taken against him by his employer in contravention of section 23.

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- (2) An industrial tribunal shall not entertain a complaint under subsection (1) unless it is presented to the tribunal before the end of the period of three months beginning with the date on which there occurred the action complained of, or where that action is part of a series of similar actions, the last of those actions, 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 the complaint well-founded it shall make a declaration to that effect and may make an award of compensation, calculated in accordance with section 26, to be paid by the employer to the employee in respect of the action complained of.

25 Supplementary provisions relating to complaints under s.24

- (1) On a complaint under section 24 it shall be for the employer to show—
 - (a) the purpose for which action was taken against the complainant; and
 - (b) that the purpose was not such a purpose as is referred to in section 23(1)(a) to (c) or (6).
- (2) In determining on a complaint under section 24, any question as to whether action was taken by the complainant's employer or the purpose for which it was taken, no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to take the action complained of, and that question shall be determined as if no such pressure had been exercised.

26 Assessment of compensation on a complaint under s. 24

- (1) The amount of the compensation awarded by a tribunal on a complaint under section 24 shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the complainant's right under section 23 by the employer's action complained of and to any loss sustained by the complainant which is attributable to that action.
- (2) The said loss shall be taken to include—
 - (a) any expenses reasonably incurred by the complainant in consequence of the action complained of, and
 - (b) loss of any benefit which he might reasonably be expected to have had but for that action.
- (3) In ascertaining the said loss the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or of Scotland, as the case may be.
- (4) In determining the amount of compensation to be awarded under subsection (1), no account shall be taken of any pressure as is referred to in section 25(2), and that question shall be determined as if no such pressure had been exercised.
- (5) Where the tribunal finds that the action complained of was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

Time off work

27 Time off for carrying out trade union duties

- (1) An employer shall permit an employee of his who is an official of an independent trade union recognised by him to take time off, subject to and in accordance with subsection (2), during the employee's working hours for the purpose of enabling him—
 - (a) to carry out those duties of his as such an official which are concerned with industrial relations between his employer and any associated employer, and their employees; or
 - (b) to undergo training in aspects of industrial relations which is—
 - (i) relevant to the carrying out of those duties; and
 - (ii) approved by the Trades Union Congress or by the independent trade union of which he is an official.
- (2) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, 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 to any relevant provisions of a Code of Practice issued by the Advisory, Conciliation and Arbitration Service under section 6 of the Employment Protection Act 1975.
- (3) An employer who permits an employee to take time off under this section for any purpose shall, subject to the following provisions of this section, pay him for the time taken off for that purpose in accordance with the permission—
 - (a) where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, as if he had worked at that work for the whole of that time;
 - (b) where the employee's remuneration for that work varies with the amount of work done, an amount calculated by reference to the average hourly earnings for that work.
- (4) The average hourly earnings referred to in subsection (3)(b) shall be the average hourly earnings of the employee concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.
- (5) Subject to subsection (6), a right to be paid any amount under subsection (3) shall not affect any right of an employee in relation to remuneration under his contract of employment (in this section referred to as "contractual remuneration").
- (6) Any contractual remuneration paid to an employee in respect of a period of time off to which subsection (1) applies shall go towards discharging any liability of the employer under subsection (3) in respect of that period, and conversely any payment of any amount 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.
- (7) An employee who is an official of an independent trade union recognised by his employer 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 or to pay him the whole or part of any amount so required to be paid.

28 Time off for trade union activities

- (1) An employer shall permit an employee of his who is a member of an appropriate trade union to take time off, subject to and in accordance with subsection (3), during the employee's working hours for the purpose of taking part in any trade union activity to which this section applies.
- (2) In this section "appropriate trade union", in relation to an employee of any description, means an independent trade union which is recognised by his employer in respect of that description of employee, and the trade union activities to which this section applies are—
- (a) any activities of an appropriate trade union of which the employee is a member; and
 - (b) any activities, whether or not falling within paragraph (a), in relation to which the employee is acting as a representative of such a union,
- excluding activities which themselves consist of industrial action whether or not in contemplation or furtherance of a trade dispute.
- (3) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, 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 to any relevant provisions of a Code of Practice issued by the Advisory, Conciliation and Arbitration Service under section 6 of the Employment Protection Act 1975.
- (4) An employee who is a member of an independent trade union recognised by his employer 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.

29 Time off for public duties

- (1) An employer shall permit an employee of his who is—
- (a) a justice of the peace;
 - (b) a member of a local authority;
 - (c) a member of any statutory tribunal;
 - (d) a member of, in England and Wales, a Regional Health Authority or Area Health Authority 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 or college council or the governing body of a central institution or a college of education ; or
 - (f) a member of, in England and Wales, a water authority or, in Scotland, 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 Local Government Act 1972, and in relation to Scotland has the same meaning as in the Local Government (Scotland) Act 1973 ;

- (b) "Regional Health Authority" and "Area Health Authority " have the same meaning as in the National Health Service Act 1977, and "Health Board" has the same meaning as in the National Health Service (Scotland) Act 1972;
 - (c) " local education authority " means the authority designated by section 192(1) of the Local Government Act 1972, " school or college council" means a body appointed under section 125(1) of the Local Government (Scotland) Act 1973, and "central institution" and " college of education " have the meanings assigned to them by section 145(10) and (14) respectively of the Education (Scotland) Act 1962 ; and
 - (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 sections 27 and 28;
 - (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.

30 Provisions as to industrial tribunals

- (1) An industrial tribunal shall not consider—
- (a) a complaint under section 27, 28 or 29 that an employer has failed to permit an employee to take time off; or
 - (b) a complaint under section 27 that an employer has failed to pay an employee the whole or part of any amount required to be paid under that section;
- 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 any complaint mentioned in subsection (1)(a) 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.
- (3) Where on a complaint under section 27 an industrial tribunal finds that the employer has failed to pay the employee the whole or part of the amount required to be paid under that section, the tribunal shall order the employer to pay the employee the amount which it finds due to him.

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 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.

32 Provisions supplementary to ss. 27 to 31

- (1) For the purposes of sections 27 to 31—
- (a) a trade union shall be treated as recognised not only if it is recognised for the purposes of collective bargaining, but also if the Advisory, Conciliation and Arbitration Service has made a recommendation for recognition which is operative within the meaning of section 15 of the Employment Protection Act 1975 ; and
 - (b) 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.
- (2) In subsection (1)—
- " collective bargaining " means negotiations related to or connected with one or more of the matters specified in section 29(1) of the Trade Union and Labour Relations Act 1974;
 - " recognised " means recognised by an employer, or two or more associated employers, to any extent for the purposes of collective bargaining.