

Status: Point in time view as at 10/06/1994.

Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, SCHEDULE 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 33.

SUPPLEMENTARY PROVISIONS RELATING TO MATERNITY

PART I

UNFAIR DISMISSAL

Introductory

- 1 References in this Part to provisions of this Act relating to unfair dismissal are references to those provisions as they apply by virtue of section 56.

Adaptation of unfair dismissal provisions

- 2 (1) Section 57 shall have effect as if for subsection (3) there were substituted the following subsection:—
- “(3) Where the employer has fulfilled the requirements of subsection (1), then, [F¹subject to [F²sections 57A to 61], and to sections 152, 153 and 238 of the Trade Union and Labour Relations (Consolidation) Act 1992 (provisions as to dismissal on ground of trade union membership or activities or in connection with industrial action),] the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether [F³in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer would have been acting reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee if she had not been absent from work; and that question shall be determined in accordance with equity and substantial merits of the case.]”
- (2) If in the circumstances described in [F⁴section 41(1)] no offer is made of such alternative employment as is referred to in that subsection, then the dismissal which by virtue of section 56 is treated as taking place shall, notwithstanding anything in section 57^{F5} . . . , be treated as an unfair dismissal for the purposes of Part V of this Act.
- (3) The following references shall be construed as references to the notified day of return, that is to say—
- references in Part V of this Act to the effective date of termination;
 - references in sections 69 and 70 to the date of termination of employment.

Status: Point in time view as at 10/06/1994.

Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, SCHEDULE 2. (See end of Document for details)

- (4) The following provisions of this Act shall not apply, that is to say, sections 55, ^{F5} . . . , 64(1), 65, 66, 73(5) and (6), 141(2), 142(1), [^{F6}and 144(2)], paragraph 11(1) of Schedule 13, paragraphs 7(1)(f) to (i) and (2) and 8(3) of Schedule 14 and paragraph 10 of Schedule 15.
- (5) For the purposes of Part II of Schedule 14 as it applies for the calculation of a week's pay for the purposes of section 71 or 73, the calculation date is the last day on which the employee worked under [^{F7}her contract of employment immediately before the beginning of her maternity leave period].

Textual Amendments

- F1** Words in Sch. 2 Pt. I para. 2(1) substituted (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(2), 302, Sch. 2 para. 22.
- F2** Words in Sch. 2 para. 2(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), Sch. 8 para. 26(a)(i); S.I. 1993/1908, art. 2(1), Sch. 1
- F3** Words substituted by Employment Act 1980 (c. 42, SIF 43:5), Sch. 1 para. 23
- F4** Words in Sch. 2 para. 2(2) substituted (10.6.1994) by 1993 c. 19, s. 49(2), Sch. 8 para. 26(a)(ii); S.I. 1994/1365, art. 2, Sch.
- F5** Words in Sch. 2 Pt. I para. 2(2)(4) 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).
- F6** "and 144(2)" substituted by Dock Work Act 1989 (c. 13, SIF 43:1), s. 7(4)(a)
- F7** Words in Sch. 2 para. 2(5) substituted (10.6.1994) by 1993 c. 19, s. 49(2), Sch. 8 para. 26(a)(iii); S.I. 1994/1365, art. 2, Sch.

PART II

REDUNDANCY PAYMENTS

Introductory

- 3 References in this Part to provisions of this Act relating to redundancy are references to those provisions as they apply by virtue of section 86.

Adaptation of redundancy payments provisions

- 4 (1) References in Part VI of this Act shall be adapted as follows, that is to say—
- (a) references to the relevant date, wherever they occur, shall be construed, except where the context otherwise requires, as references to the notified day of return;
 - (b) references in sections 82(4) and 84(1) to a renewal or re-engagement taking effect immediately on the ending of employment under the previous contract or after an interval of not more than four weeks thereafter, shall be construed as references to a renewal or re-engagement taking effect on the notified day of return or not more than four weeks after that day; and
 - [^{F8}(c) the reference in section 84(3) to the provisions of the previous contract shall be construed as a reference to the provisions of the contract under which the

Status: Point in time view as at 10/06/1994.

Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, SCHEDULE 2. (See end of Document for details)

employee worked immediately before the beginning of her maternity leave period.]

- (2) Nothing in section 86 shall prevent an employee from being treated, by reason of the operation of section 84(1), as not having been dismissed for the purposes of Part VI of this Act.
- (3) The following provisions of this Act shall not apply, that is to say, sections 81(1)(b), 82(1) and (2), 83(1) and (2), 85, 87 to 89, 90(3), 92, 93, 96, 110, 144(2), ^{F9}and 150, paragraph 4 of Schedule 4, Schedule 12 and paragraphs 7(1)(j) and (k) and 8(4) of Schedule 14.
- (4) For the purposes of Part II of Schedule 14 as it applies for the calculation of a week's pay for the purposes of Schedule 4, the calculation date is the last day on which the employee worked under [^{F10}her contract of employment immediately before the beginning of her maternity leave period].

Textual Amendments

- F8** Sch. 2 para. 4(1)(c) substituted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 26(b)(i)**; S.I. 1994/1365, art. 2, **Sch.**
- F9** Words repealed by **Employment Act 1982** (c. 46, SIF 43:5), s. 4(2)(b), **Sch. 4** with saving in S.I. 1982/1656, **Sch. 2**
- F10** Words in Sch. 2 para. 4(4) substituted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 26(b)(ii)**; S.I. 1994/1365, art. 2, **Sch.**

Prior redundancy

- 5 If, in proceedings arising out of a failure to permit an employee to return to work [^{F11}in accordance with section 42], the employer shows—
- (a) that the reason for the failure is that the employee is redundant; and
 - (b) that the employee was dismissed or, had she continued to be employed by him, would have been dismissed, by reason of redundancy [^{F12}on a day falling after the commencement of her maternity leave period and before the notified day of return],
- then, for the purposes of Part VI of this Act the employee—
- (i) shall not be treated as having been dismissed with effect from the notified day of return; but
 - (ii) shall, if she would not otherwise be so treated, be treated as having been continuously employed until that earlier day and as having been dismissed by reason of redundancy with effect from that day.

Textual Amendments

- F11** Words in Sch. 2 para. 5 inserted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 26(c)(i)**; S.I. 1994/1365, art. 2, **Sch.**
- F12** Words in Sch. 2 para. 5 substituted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 26(c)(ii)**; S.I. 1994/1365, art. 2, **Sch.**

Status: Point in time view as at 10/06/1994.

Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, SCHEDULE 2. (See end of Document for details)

PART III

GENERAL

Dismissal during period of absence

- 6 ^{F13}(1) This paragraph applies where an employee has the right to return to work under section 39 and either her maternity leave period ends by reason of dismissal or she is dismissed after her maternity leave period.]
- (2) For the purposes of sub-paragraph (1), an employee shall not be taken to be dismissed ^{F14}after her maternity leave period] if the dismissal occurs in the course of the employee's attempting to return to work in accordance with her contract in circumstances in which ^{F14}section 44] applies.
- (3) In the application of Part V of this Act to a dismissal to which this paragraph applies, the following provisions shall not apply, that is to say, sections ^{F15}. . . , 64, 65, 66, 141(2), ^{F16}and 144(2)].
- (4) Any such dismissal shall not affect the employee's right to return to work, but—
- (a) compensation in any unfair dismissal proceedings arising out of that dismissal shall be assessed without regard to the employee's right to return; and
 - (b) that right shall be exercisable only on her repaying any redundancy payment or compensation for unfair dismissal paid in respect of that dismissal, if the employer requests such repayment.

Textual Amendments

- F13** Sch. 2 para. 6(1) substituted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 26(d)(i)**; S.I. 1994/1365, art. 2, **Sch.**
- F14** Words in Sch. 2 para. 6(2) substituted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 26(d)(ii)**; S.I. 1994/1365, art. 2, **Sch.**
- F15** Words in Sch. 1 Pt. III para. 6(3) 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).
- F16** Words substituted by Dock Work Act 1989 (c. 13, SIF 43:1), **s. 7(4)(b)**

Power to amend or modify

- 7 (1) The Secretary of State may by order amend the provisions of this Schedule and ^{F17}section 44] or modify the application of those provisions to any description of case.
- (2) No order under this paragraph shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

Status: Point in time view as at 10/06/1994.

Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, SCHEDULE 2. (See end of Document for details)

.....

Textual Amendments

F17 Words in s. 7(1) substituted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 26(e)**; S.I. 1994/1365, art. 2, **Sch.**

Status:

Point in time view as at 10/06/1994.

Changes to legislation:

There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, SCHEDULE 2.