



# Reserve Forces (Safeguard of Employment) Act 1985

## 1985 CHAPTER 17

### *Reinstatement in civil employment after whole-time service*

#### **1 Obligation to reinstate.**

- [<sup>F1</sup>(1) This section applies to any person who is in permanent service under—
- (a) Part IV (special agreements for call out) or Part V (special members) of the Reserve Forces Act 1996;
  - (b) a call-out order under Part VI of that Act (orders authorising general call out of members of reserve forces); or
  - (c) a recall order under section 68 (recall of officers and former servicemen) of that Act.
- (1A) In this Act “whole-time service” means permanent service to which this section applies.]
- (2) Where such a person applies to his former employer to be taken into his employment, the former employer shall, so long as the application remains in force, be obliged to take the applicant into his employment—
- (a) in the occupation in which the applicant was last employed by the former employer before the beginning of his whole-time service and on terms and conditions not less favourable to him than those which would have been applicable to him in that occupation had he not entered on such service; or
  - (b) if it is not reasonable and practicable that the applicant should be taken into employment in that occupation and on those terms and conditions, in the most favourable occupation and on the most favourable terms and conditions which are reasonable and practicable in his case.
- (3) That obligation is to take the applicant into employment as mentioned above at the first opportunity (if any) at which it is reasonable and practicable for the former employer so to do on or after such date as may be notified to him in accordance with section 4 as the date on which the applicant will be available for employment.

*Changes to legislation:* There are currently no known outstanding effects for the Reserve Forces (Safeguard of Employment) Act 1985, Cross Heading: Reinstatement in civil employment after whole-time service. (See end of Document for details)

- (4) A former employer's obligation is discharged if after giving reasonable notice to the applicant he makes such employment available to him at that first opportunity, except that—
- (a) an opportunity for taking the applicant into his former employer's employment shall not be deemed for the purposes of subsection (3) and this subsection to have arisen if—
    - (i) the former employer makes employment available to the applicant, but the applicant has, or reasonably believes that he has, reasonable cause for not taking it; and
    - (ii) the facts on which the applicant relies as constituting the reasonable cause are notified in writing to the former employer by him or by some person acting with his authority as soon as may be after he has been notified by the former employer that the employment is being made available to him; and
  - (b) in no case shall the former employer be under any obligation under this section to take the applicant into his employment after six months have elapsed from the end of the applicant's whole-time service.
- (5) Any notice to be given under subsection (4) by the former employer to the applicant shall (without prejudice to any other mode for the giving of such notice) be deemed to have been duly given if it is sent to the applicant addressed to him—
- (a) at such address as may be provided by him for the purpose; or
  - (b) if no such address is so provided, at his last known place of abode.

#### Textual Amendments

**F1** S. 1(1) substituted (1.4.1997) by 1996 c. 14, ss. 122(2)(6) (with s. 72(5)); S.I. 1997/305, art. 2

## 2 “Former employer”.

- (1) In relation to a person who has entered on a period of whole-time service, in this Act “former employer” means the employer by whom he was last employed within the period of four weeks immediately preceding the beginning of his whole-time service.
- (2) The additional provisions contained in Schedule 1 have effect in relation to a former employer.

## 3 Application for reinstatement.

- (1) An application under section 1—
  - (a) is of no effect unless it is made in writing;
  - (b) may be made by the applicant or by some person acting with his authority.
- (2) Such application is of no effect unless it is made during the period—
  - (a) beginning with the end of the applicant's whole-time service, and
  - (b) ending with the third Monday after the end of the applicant's whole-time service,
 subject to subsection (3).

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- (3) Such an application made after the end of that period is not invalid because of subsection (2) if—
- (a) the applicant was prevented from making it within that period by his sickness or other reasonable cause; and
  - (b) the application was made as soon as reasonably may be after the expiry of that period.
- (4) Such an application ceases to have effect on the expiry of thirteen weeks from the date of its making, except that—
- (a) while the application is still in force it may from time to time be renewed in writing by the applicant or by some person acting with his authority, and, if it is so renewed, does not cease to have effect by virtue of this subsection until thirteen weeks from the date of the renewal, and
  - (b) if, at the time when the application would otherwise cease to have effect, proceedings for the determination of any question affecting the application are pending under this Act, the application does not cease to have effect by virtue of this subsection until fourteen days after those proceedings have ceased to be pending,

and for the purposes of paragraph (b) proceedings shall not be treated as having ceased to be pending until the time for appealing has expired or, where an appeal is brought, until the appeal is decided or withdrawn.

- (5) An application under section 1 or any renewal of such an application may be made either—
- (a) directly to the former employer, or
  - (b) in the prescribed manner, at any such local office as may be appointed by the Secretary of State, or, in Northern Ireland, by the Department of Economic Development,

and where any application or renewal is so made or given at such a local office it is the duty of the Secretary of State, or, in Northern Ireland, of the Department of Economic Development, to take such steps as may be practicable to forward it to the former employer.

#### **4 Applicant's availability.**

- (1) Where an application is made under section 1, the applicant or some person acting with his authority shall, at or after the time of making the application, but not later than 21 days from the latest date allowed by section 3 for its making, notify to the former employer in writing a date, not later than the expiry of the 21 days, on which the applicant will be available for employment.
- (2) If, owing to his sickness or other reasonable cause, the applicant is not available for employment until after the expiry of the 21 days, the date to be so notified may be a date as soon as reasonably may be after the expiry of the 21 days, and accordingly the notification shall not be invalid by reason only that it is given after the expiry of the 21 days.
- (3) Subsection (5) of section 3 applies to any notification under this section as it applies to an application under section 1.

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## 5 Priorities.

- (1) It shall not be treated for the purposes of the foregoing provisions of this Act as reasonable and practicable for the former employer to take the applicant into his employment, or to employ him as provided by section 7, either at all or in any particular occupation or on particular terms and conditions, if it can only be done by discharging some other person who—
- (a) was employed by the former employer before the relevant date, and
  - (b) had been so employed before the relevant date for a longer period than the applicant, and
  - (c) was so employed in employment of a kind that was not less permanent in character than the applicant's employment,
- or by refusing to take into employment, in accordance with section 1, some such other person as mentioned above who has entered upon a period of whole-time service and has duly made an application under section 1; and in this subsection "the relevant date" means the beginning of the applicant's whole-time service, or, where the other person as well as the applicant has entered on a period of whole-time service, the beginning of the other person's whole-time service, whichever is the earlier.
- (2) It shall not be treated for the purposes of the foregoing provisions of this Act as otherwise than reasonable and practicable for the former employer to take the applicant into his employment, or to employ him as provided by section 7, either at all or in any particular occupation, or on particular terms and conditions, by reason only that it can only be done by discharging some other person who is not such a person as is mentioned in paragraphs (a), (b) and (c) of subsection (1).

## 6 Waivers.

- (1) The provisions of this Act requiring a person who has entered upon a period of whole-time service, as a condition of obtaining his rights under this Act—
- (a) to make and renew an application to his former employer to be taken into employment, and
  - (b) to notify a date on which he will be available for employment,
- are for the protection of the former employer, and accordingly can be waived or dispensed with by the former employer, either in whole or in part and either expressly or by conduct, subject to subsection (2).
- (2) Except where the applicant has in fact been taken into the employment of his former employer since the end of his whole-time service, any requirement that anything should be done in writing shall not be deemed to be capable of being waived or dispensed with by the former employer otherwise than in writing.
- (3) Where—
- (a) a person who has entered upon a period of whole-time service has made an application under section 1 to be taken into the employment of his former employer and is so taken into employment before that application has expired, or
  - (b) a person who has entered upon such service is taken into the employment of his former employer under such circumstances that the application has been waived or dispensed with,

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and in either case the employment is not such as is specified in section 1(2), the rights of that person against his former employer shall not be less than they would have been if the employment into which he is taken were such employment.

## **7 Obligation after reinstatement.**

- (1) Where an applicant has been taken into the employment of his former employer in pursuance of section 1, the former employer is under an obligation to employ the applicant for the following 26 weeks, subject to subsection (2), or for so much of that time as is reasonable and practicable—
  - (a) in an occupation not less favourable to him than that in which, and on terms and conditions not less favourable to him than those on which, the applicant is so taken into employment; or
  - (b) if, at any time during the period for which he has under this section to be employed, it ceases to be reasonable and practicable for the applicant to be employed in that occupation and on those terms and conditions, in the most favourable occupation and on the most favourable terms and conditions which are for the time being reasonable and practicable in his case.
- (2) If, when the applicant last ceased to be employed by his former employer before the beginning of his whole-time service, he had been in the continuous employment of that former employer—
  - (a) for a consecutive period of not less than 52 weeks, then subsection (1) has effect as if 52 weeks were substituted for 26;
  - (b) for a consecutive period of less than 13 weeks, then subsection (1) has effect as if 13 weeks were substituted for 26.
- (3) In computing the period of continuous employment for the purposes of this section—
  - (a) where the employment is in an undertaking, and any change has taken place in the person carrying on that undertaking or any other undertaking has become comprised in that undertaking, periods in the employment of the person for the time being carrying on the undertaking or the other undertaking, as the case may be, shall be treated as periods of employment by the former employer;
  - (b) a person shall not be treated as otherwise than continuously employed by reason of any temporary absence from work.

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