



Pensions Act 1995

1995 CHAPTER 26

PART I

OCCUPATIONAL PENSIONS

Employee trustees

42 Time off for performance of duties and for training

- (1) The employer in relation to a trust scheme must permit any employee of his who is a trustee of the scheme to take time off during his working hours for the purpose of—
 - (a) performing any of his duties as such a trustee, or
 - (b) undergoing training relevant to the performance of those duties.
- (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 in particular to—
 - (a) how much time off is required for the performance of the duties of a trustee of the scheme and the undergoing of relevant training, and how much time off is required for performing the particular duty or, as the case may be, for undergoing the particular training, and
 - (b) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.
- (3) 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.
- (4) For the purposes of this section, the working hours of an employee are any time when in accordance with his contract of employment he is required to be at work.

43 Payment for time off

- (1) An employer who permits an employee to take time off under section 42 must pay him for the time taken off pursuant to the permission.
- (2) 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, he must be paid as if he had worked at that work for the whole of that time.
- (3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he must be paid an amount calculated by reference to the average hourly earnings for that work.
- (4) The average hourly earnings mentioned in subsection (3) are those 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) A right to be paid an amount under this section does not affect any right of an employee in relation to remuneration under his contract of employment, but—
 - (a) any contractual remuneration paid to an employee in respect of a period of time off to which this section applies shall go towards discharging any liability of the employer under this section in respect of that period, and
 - (b) any payment under this section in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.
- (6) An employee may present a complaint to an industrial tribunal that his employer has failed to pay him in accordance with this section.

44 Time limit for proceedings

An industrial tribunal must not consider a complaint under section 42 or 43 unless it is presented to the tribunal—

- (a) within three months of the date when the failure occurred, or
- (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

45 Remedies

- (1) Where the tribunal finds a complaint under section 42 is well-founded, it must make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee.
- (2) The amount of the compensation shall be such 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 43 the tribunal finds that the employer has failed to pay the employee in accordance with that section, it must order him to pay the amount which it finds to be due.

- (4) The remedy of an employee for infringement of the rights conferred on him by section 42 or 43 is by way of complaint to an industrial tribunal in accordance with this Part, and not otherwise.

46 Right not to suffer detriment in employment or be unfairly dismissed

- (1) Subject to subsection (2), an employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being a trustee of a trust scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.
- (2) Subsection (1) does not apply where the detriment in question amounts to dismissal, except where an employee is dismissed in circumstances in which, by virtue of section 142 of the Employment Protection (Consolidation) Act 1978 (“the 1978 Act”), section 54 of that Act does not apply to the dismissal.
- (3) Sections 22B and 22C of the 1978 Act (which relate to proceedings brought by an employee on the grounds that he has been subjected to a detriment in contravention of section 22A of that Act) shall have effect as if the reference in section 22B(1) to section 22A included a reference to subsection (1).
- (4) In the following provisions of the 1978 Act—
- (a) section 129 (remedy for infringement of certain rights),
 - (b) section 141(2) (employee ordinarily working outside Great Britain), and
 - (c) section 150 and Schedule 12 (death of employee or employer),
- any reference to Part II of that Act includes a reference to subsection (1).
- (5) The dismissal of an employee by an employer shall be regarded for the purposes of Part V of the 1978 Act as unfair if the reason (or, if more than one, the principal reason) for it is that, being a trustee of a trust scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.
- (6) Where the reason or the principal reason for which an employee was selected for dismissal was that he was redundant, but it is shown—
- (a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and
 - (b) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was that specified in subsection (5),
- then, for the purposes of Part V of the 1978 Act, the dismissal shall be regarded as unfair.
- (7) Section 54 of the 1978 Act (right of employee not to be unfairly dismissed) applies to a dismissal regarded as unfair by virtue of subsection (5) or (6) regardless of the period for which the employee has been employed and of his age; and accordingly section 64(1) of that Act (which provides a qualifying period and an upper age limit) does not apply to such a dismissal.
- (8) Any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—
- (a) to exclude or limit the operation of any provision of this section, or
 - (b) to preclude any person from presenting a complaint to an industrial tribunal by virtue of any provision of this section.

Status: This is the original version (as it was originally enacted).

- (9) Subsection (8) does not apply to an agreement to refrain from presenting or continuing with a complaint where—
- (a) a conciliation officer has taken action under section 133(2) or (3) of the 1978 Act (general provisions as to conciliation) or under section 134(1), (2) or (3) (conciliation in case of unfair dismissal) of that Act, or
 - (b) the conditions regulating compromise agreements under the 1978 Act (as set out in section 140(3) of that Act) are satisfied in relation to the agreement.
- (10) In this section, “dismissal” has the same meaning as in Part V of the 1978 Act.
- (11) Section 153 of the 1978 Act (general interpretation) has effect for the purposes of this section as it has effect for the purposes of that Act.