

TAX CREDITS ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Tax Credits

Schedule 1: Rights of employees

112. *Paragraph 1* amends the Employment Rights Act 1996 (ERA).
113. *Paragraph 1(2)* inserts a new section 47D into ERA. It provides an employee with the right not to suffer detriment as a result of any act, or failure to act, by his employer done on the ground that:
- the employee had taken action to enforce the rights conferred on him by regulations under section 25 of the Tax Credits Act 2002 (payments of working tax credit to be made by employers);
 - the employer had incurred a penalty or penalty proceedings had been brought against the employer under the Tax Credits Act 2002; or
 - the employee was entitled, or will or may in future be entitled, to working tax credit.
114. New section 47D(2) protects the employee from detrimental action whether or not he has the right which he is claiming and whether or not his right has been infringed, as long as his claim to the right and its infringement is made in good faith. New section 47D(3) brings within the scope of subsections (1) and (2) those who are employees for the purposes of the Tax Credits Act 2002 but not for the purposes of ERA. The purpose of subsection (4) is to preclude those who are employees for the purposes of ERA from claiming under section 47D when the detriment they suffer is termination of their employment contract. Such a termination will always be a dismissal within the meaning of Part 10 of ERA.
115. *Paragraph 1(3)* amends section 48 of ERA to give an employee the right to complain to an employment tribunal if he has been subjected to detriment in contravention of new section 47D of ERA.
116. *Paragraph 1(4)* amends section 49 of ERA to ensure that, where a complaint is made under section 48, any compensation must not exceed the amount that would have been payable if the employee had been dismissed for the reasons specified in section 104B of ERA (inserted by *paragraph 3* of the Schedule).
117. *Paragraph 1(5)* extends the right under section 47D to members of the armed forces and *paragraph 1(6)* extends it to staff of the House of Lords and House of Commons.
118. *Paragraph 2* makes equivalent amendments to the Employment Rights (Northern Ireland) Order 1996.
119. *Paragraph 3* amends the provisions of ERA relating to unfair dismissal.

*These notes refer to the Tax Credits Act 2002
(c.21) which received Royal Assent on 8 July 2002*

120. *Paragraph 3(2)* inserts a new section 104B into ERA so as to provide that an employee will be regarded as having been unfairly dismissed if the dismissal arises because:
- the employee has taken action to enforce the rights conferred on him by regulations under section 25 of the Tax Credits Act 2002;
 - the employer has incurred a penalty or penalty proceedings have been brought against the employer under the Tax Credits Act 2002; or
 - the employee is entitled, or will or may in future be entitled, to working tax credit.
121. *Paragraph 3(3)* inserts a new subsection (7B) into section 105 of ERA, which provides that selecting an employee for redundancy on certain grounds amounts to unfair dismissal. The new subsection ensures that selecting an employee for redundancy because he has enforced or attempted to enforce any of the rights referred to in the new section 104B(1) of ERA amounts to unfair dismissal.
122. *Paragraph 3(4)* inserts a new paragraph (gh) into section 108(3) and section 109(2) of ERA. This means that the right not to be dismissed for enforcing a right to payment of tax credits under the Tax Credits Act 2002 will be one of the rights which apply from the day an employee starts work and without any age limit. Without these amendments, section 108(1) would mean that the right would not apply until an employee had been continuously employed for two years and section 109(1) would mean that the right would not apply to those over their normal age of retirement.
123. *Paragraph 4* serves exactly the same function in relation to employment rights in Northern Ireland as *paragraph 3* serves in relation to Great Britain.