

EMPLOYMENT ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Dispute resolution

Section 7: Compensation for financial loss

35. **Section 7** amends ERA 1996 so as to give employment tribunals the power to order employers to compensate workers for any financial loss sustained as a result of unlawful deduction from wages or payments made to the employer in contravention of sections 15 and 21(1) of ERA 1996, or non-payment of redundancy awards.

Unlawful deduction from or unauthorised payment of wages

36. Sections 13(1) and 15(1) of ERA 1996 provide that an employer may not make unauthorised deductions from a worker's wages and sections 18(1) and 21(1) of ERA 1996 provide for limits to authorised deductions. Where any of these provisions are contravened, a worker has a right to remedy by way of complaint to an employment tribunal under section 23(1) of ERA 1996.
37. Section 24 of ERA 1996 provides that, where an employment tribunal finds a complaint made under section 23(1) to be well founded, it will make a declaration to that effect and order the employer to pay or as the case may be repay the worker the amount of the deduction or payment.
38. The remedies available in sections 23 and 24 of ERA 1996 do not, however, extend to compensation for losses arising out of the non-payment or unauthorised deduction or payment, for example additional bank charges or interest charges. It is possible for a separate claim for such losses to be made by workers who are no longer employed by the defaulting employer, but only in the county court as part of an action for breach of contract by means of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994¹ or its equivalent in Scotland².
39. **Section 7** inserts a new provision into ERA 1996 (new section 24(2)) so as to empower employment tribunals to order an employer to make, in addition to the payment (or repayment) of the amount of the unauthorised deduction or payment, a compensatory payment to reflect any financial loss suffered by the worker as a result of the employer's default. The tribunal would calculate any such amount so as to be appropriate in all the circumstances. This is intended to enable workers to be fully compensated for their losses, and simplify the process of recovery for those whose employment relationship has ended by removing the need to make a separate county court claim.

¹ (SI 1994/1623)

² (SI 1994/1624)

Non-payment of redundancy payments

40. Section 163 of ERA 1996 provides that any questions relating to the right of an employee to a redundancy payment or the amount of the redundancy payment shall be referred to and determined by an employment tribunal.
41. [Section 7](#) inserts a new subsection (5) to section 163 of ERA 1996 which provides that, where an employment tribunal determines that an employee has a right to a redundancy payment, the tribunal can order that an additional payment be made to compensate the worker for any financial loss attributable to the non-payment of the redundancy payment.