

1989 No. 1111

HARBOURS, DOCKS, PIERS AND FERRIES

**The Dock Work (Compensation Payments Scheme)
Regulations 1989**

<i>Made</i> - - - -	<i>5th July 1989</i>
<i>Laid before Parliament</i>	<i>5th July 1989</i>
<i>Coming into force</i>	<i>6th July 1989</i>

The Secretary of State for Transport in exercise of the powers conferred on him by section 5 of, and paragraph 4(5) of Schedule 2 to, the Dock Work Act 1989(a) and of all other powers enabling him in that behalf hereby makes the following Regulations with the consent, so far as paragraphs 7 and 9 of the Schedule thereto are concerned, of the Treasury:

1. These Regulations may be cited as the Dock Work (Compensation Payments Scheme) Regulations 1989 and shall come into force on 6th July 1989.
2. The Scheme set out in the Schedule to these Regulations shall have effect.

4th July 1989 *Paul Channon*
Secretary of State for Transport

We consent to paragraphs 7 and 9 of the Schedule to these Regulations

5th July 1989 *David Lightbown*
David MacLean
Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE Regulation 2
COMPENSATION PAYMENTS SCHEME

Definitions

1. In this Scheme:-
 - "the Act" means the Dock Work Act 1989;
 - "employee" means a person who immediately before 3rd July 1989 was a permanent worker or a temporarily unattached worker as defined in the Dock Workers Employment Scheme 1967(b);
 - "employer" except in the phrase "successor employer" means a former registered employer as defined in section 5(13) of the Act;
 - "the relevant purposes" means for the purposes of section 5 of the Act and of the Scheme;

(a) 1989 c.13.
(b) Set out in S.I. 1967/1252, Schedule 2.

"service" means any period in which the employee's name was entered in any statutory register of dock workers (whether or not he was in the employment of an employer) immediately prior to 3rd July 1989 together with the period in which he was continuously employed (within the meaning of Schedule 13 of the Employment Protection (Consolidation) Act 1978(a)) by his employer immediately thereafter and any period of continuous employment by a successor employer from the date of the employee ceasing to be employed by his employer;

"successor employer" has the same meaning as in section 5(3)(a) of the Act.

Prescribed period

2. The period prescribed for the purposes of section 5(2)(b) of the Act is the period starting on 3rd July 1989 and ending at the end of 31st July 1992.

Dismissed by reason of redundancy

3.—(1) For the relevant purposes an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to—

- (a) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased, or intends to cease to carry on that business in the place where the employee was so employed, or
- (b) the fact that the requirements of that business for employees to carry out work of a particular kind or for employees to carry out work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or diminish.

In this sub-paragraph "cease" means cease either permanently or temporarily and from whatsoever cause, and "diminish" has a corresponding meaning.

(2) For the relevant purposes an employee shall be taken to be dismissed if, but only if—

- (a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice, or
- (b) the employee terminates that contract with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct.

(3) For the relevant purposes an employee given notice to terminate his contract of employment before 1st August 1992 in a case where the notice does not take effect until on or after that date shall be taken to be dismissed immediately prior to 1st August 1992 notwithstanding that the notice does not take effect until after that date.

(4) An employee to whom paragraph 4(4) of Schedule 2 of the Act applies is not by virtue thereof to be taken to be dismissed by reason of redundancy by his previous employer if the dismissal was justified for reasons other than redundancy.

Dismissal by successor employer

4. For the relevant purposes:—

- (a) an employee dismissed by reason of redundancy within the period prescribed by paragraph 2 by a successor employer shall be treated as if he were a person to whom section 5 of the Act applies; and
- (b) where sub-paragraph (a) above applies the successor employer shall be treated as if he were the employer of that employee and accordingly shall be liable to pay him compensation; and, in such case, any reference in paragraphs 6 to 9 to the employer shall be construed as a reference to the successor employer.

Age limit

5. An employee aged 65 or over when dismissed shall not be entitled to compensation.

Compensation

6.—(1) Subject to sub-paragraph (2), employers shall pay to employees dismissed by reason of redundancy compensation calculated in accordance with column 2 in the

(a) 1978 c.44.

following table depending on the period in which dismissal takes place as specified in column 1, provided that in no case shall compensation amount to more than the maximum specified in column 3.

(1)	(2) <i>Amount of compensation</i>	(3) <i>Maximum</i>
Dismissal taking place between 3rd July 1989 and 31st January 1991, inclusive	£5000 plus £2000 for every full year of service	£35,000
Dismissal taking place between 1st February 1991 and 31st July 1992, inclusive	£5000 plus £1000 for every full year of service	£20,000

(2) In the case of employees aged over 62 years and 6 months on dismissal the compensation payable under sub-paragraph (1) above shall be reduced by the percentage amount set out in column 2 of the following table, in relation to an employee whose age on dismissal is set out in column 1 of the table.

(1)	(2)
More than 62 years and 6 months, but not more than 62 years and 9 months	10%
More than 62 years and 9 months, but not more than 63 years	20%
More than 63 years, but not more than 63 years and 3 months	30%
More than 63 years and 3 months, but not more than 63 years and 6 months	40%
More than 63 years and 6 months, but not more than 63 years and 9 months	50%
More than 63 years and 9 months, but not more than 64 years	60%
More than 64 years, but not more than 64 years and 3 months	70%
More than 64 years and 3 months, but not more than 64 years and 6 months	80%
More than 64 years and 6 months, but not more than 65 years.	90%

Contribution by Secretary of State

7. Subject to the Secretary of State being satisfied that any requirement under paragraph 8 has been complied with, the Secretary of State shall pay to an employer one half of any payment the employer makes in accordance with this Scheme.

Secretary of State's power to obtain information

8. Where an employer applies to the Secretary of State for a contribution under paragraph 7 the Secretary of State may, by notice in writing given to the employer, require the employer to provide the Secretary of State with such information, and to produce for examination on behalf of the Secretary of State documents in his custody or under his control of such descriptions, as the Secretary of State may reasonably require for the purpose of determining whether the application is well-founded.

Insolvent employer

9.—(1) Where an employee claims that his employer is liable to pay him compensation and that the employer is insolvent and that the whole or part of the compensation remains unpaid, the employee may apply to the Secretary of State for a payment under this regulation.

(2) If on an application under this paragraph the Secretary of State is satisfied—
 (a) that the employee is entitled to a compensation payment; and
 (b) that the remaining conditions specified in sub-paragraph (1) are fulfilled;
 the Secretary of State shall pay to the employee a sum calculated in accordance with paragraph 6 reduced by so much (if any) of the compensation payment as has been paid.

(3) Where the Secretary of State pays a sum to an employee in respect of a compensation payment—

- (a) all rights and remedies of the employee with respect to the employer's payment, or (if the Secretary of State has paid only part of it) all his rights and remedies with respect to that part of the employer's payment, shall be transferred to and vest in the Secretary of State; and
- (b) any decision of an industrial tribunal requiring the employer's payment to be paid to the employee shall have effect as if it required that payment, or, as the case may be, that part of it which the Secretary of State has paid, to be paid to the Secretary of State.

(4) For the purposes of this paragraph an employer shall be taken to be insolvent if—

- (a) he has become bankrupt or has made a composition or arrangement with his creditors; or
- (b) he has died and his estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986(a); or
- (c) where the employer is a company, a winding-up order or an administration order has been made with respect to it or a resolution for voluntary winding-up has been passed with respect to it, or a receiver or manager of its undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge or a composition or scheme proposed for the purposes of Chapter II of Part II of the Insolvency Act 1985(b);

(5) In the application of this paragraph to Scotland, for sub-paragraphs (4)(a), (b) and (c) above there shall be substituted the following sub-paragraphs:—

- (a) an award of sequestration has been made on his estate, or he has executed a trust deed for his creditors or entered into a composition contract or in the case of a deceased debtor, alternatively a judicial factor has been appointed under section 11A of the Judicial Factors (Scotland) Act 1889(c);
- (b) where the employer is a company, a winding-up order has been made or a resolution for voluntary winding-up has been passed with respect to it or a receiver of its undertaking has been duly appointed.

(6) Where an employer has become insolvent and an employee makes an application to the Secretary of State under sub-paragraph (1), the Secretary of State shall have the like powers as he has under paragraph 8 in the circumstances there mentioned but, for the purposes hereof, any reference in that paragraph to the employer shall include a reference to an officer appointed in connection with the employer's insolvency, that is to say—

- a trustee in bankruptcy;
- an interim or permanent trustee in sequestration;
- a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889;
- an administrator, a liquidator, a receiver or manager, or a trustee under composition or arrangement between the employer or his creditors or under a trust deed for his creditors executed by the employer; and "trustee", in relation to a composition or arrangement, includes the supervisor of a voluntary arrangement proposed for the purposes of, and approved under, Part I or VIII of the Insolvency Act 1986.

Disputes

10.—(1) Any dispute

- (i) as to the right of any person to a payment of compensation or contribution, or
- (ii) as to the amount of such a payment

under the Scheme may be referred to an industrial tribunal by any party to the dispute and determined by the tribunal.

(2) On any such reference, an employee who has been dismissed shall, unless the contrary is proved, be presumed to have been dismissed by reason of redundancy.

Form of application

11. The Secretary of State may give directions, either generally or specially, as to the form in which any application or return for the purposes of or in connection with this Scheme shall be made.

-
- (a) 1986 c.45.
 - (b) 1985 c.65.
 - (c) 1889 c.39.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide a scheme of compensation for former registered dock workers dismissed by reason of redundancy on the passing of the Act, or at any time thereafter until the end of 31st July 1992. The Scheme, set out in the Schedule to the Regulations, defines what is meant by "dismissed by reason of redundancy" (paragraph 3) and makes provision for dismissal by a subsequent employer when a registered employer's business is transferred in circumstances where the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794) apply (paragraph 4). There is an upper age limit of 65 for entitlement to compensation (paragraph 5).

The Scheme provides for employers to pay compensation of up to £35,000 for employees aged under 65 dismissed before 1st February 1991, and of up to £20,000 for those dismissed within the next eighteen months. However for employees aged 62 years and 6 months or over on dismissal there is a tapering-off of compensation (paragraph 6).

The Secretary of State will contribute to employers one half of the compensation (paragraph 7). The Secretary of State can require employers to provide information, or produce documents, to determine whether applications for his contribution are well founded (paragraph 8).

If an employer is insolvent the employee can apply to the Secretary of State for him to pay the full amount of compensation or the balance if the employer has paid part. The Secretary of State can obtain information or documents from the employer, or relevant officers appointed in connection with the employer's insolvency (paragraph 9).

Disputes may be referred to an industrial tribunal (paragraph 10).