



# Employment Protection Act 1975

## 1975 CHAPTER 71

### PART II

#### RIGHTS OF EMPLOYEES

##### *Guarantee payments*

#### **22 Right to guarantee payment**

- (1) Where an employee throughout a day during any part of which he would normally be required to work in accordance with his contract of employment is not provided with work by his employer by reason of—
- (a) a diminution in the requirements of the employer's business for work of the kind which the employee is employed to do, or
  - (b) any other occurrence affecting the normal working of the employer's business in relation to work of the kind which the employee is employed to do,
- he shall, subject to the following provisions of this Act, be entitled to be paid by his employer a payment, referred to in this Act as a guarantee payment, in respect of that day and hereafter in this section and sections 23 to 26 below—
- (i) such a day is referred to as a "workless day", and
  - (ii) "workless period" has a corresponding meaning.
- (2) In this section and sections 23 to 27 below "day" means the period of 24 hours from midnight to midnight, and where a period of employment begun on any day extends over midnight into the following day, or would normally so extend, then—
- (a) if the employment before midnight is, or would normally be, of longer duration than that after midnight, that period of employment shall be treated as falling wholly on the first day; and
  - (b) in any other case, that period of employment shall be treated as falling wholly on the second day.

- (3) An employee shall not be entitled to a guarantee payment under subsection (1) above in respect of a workless day unless he has been continuously employed for a period of four weeks ending with the last complete week before that day.

### **23 General exclusions from right under s. 22**

- (1) An employee shall not be entitled to a guarantee payment in respect of a workless day if the failure to provide him with work occurs in consequence of a trade dispute involving any employee of his employer or of an associated employer.
- (2) An employee shall not be entitled to a guarantee payment in respect of a workless day if—
- (a) his employer has offered to provide alternative work for that day which is suitable in all the circumstances, whether or not work which the employee is under his contract employed to perform, and the employee has unreasonably refused that offer; or
  - (b) he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

### **24 Calculation of guarantee payment**

- (1) Subject to the limits set by section 25 below, the amount of a guarantee payment payable to an employee in respect of any day shall be the sum produced by multiplying the number of normal working hours on that day by the guaranteed hourly rate, and accordingly no guarantee payment shall be payable to an employee in whose case there are no normal working hours on the day in question.
- (2) Subject to subsection (4) below, the guaranteed hourly rate in relation to an employee shall be the amount of one week's pay divided by—
- (a) the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day in respect of which the guarantee payment is payable ; or
  - (b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such hours calculated by dividing by 12 the total number of the employee's normal working hours during the period of 12 weeks ending with the last complete week before the day in respect of which the guarantee payment is payable; or
  - (c) in a case falling within paragraph (b) above but where the employee has not been employed for a sufficient period to enable the calculation to be made under that paragraph, a number which fairly represents the number of normal working hours in a week having regard to such of the following considerations as are appropriate in the circumstances, that is to say,—
    - (i) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract;
    - (ii) the average number of such hours of other employees engaged in relevant comparable employment with the same employer.
- (3) For the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purposes of this section, the calculation date is, subject to subsection (4) below, the day in respect of which the guarantee payment is payable.

- (4) If in any case an employee's contract has been varied, or a new contract has been entered into, in connection with a period of short-time working, subsections (2) and (3) above shall have effect as if for the references in those subsections to the day in respect of which the guarantee payment is payable there were substituted references to the last day on which the original contract was in force.
- (5) In this section and section 25 below "week ", in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, means a week ending with that other day, and in relation to other employees, means a week ending with Saturday.

## **25 Limits on amount of and entitlement to guarantee payment**

- (1) The amount of guarantee payment payable to an employee in respect of any day shall not exceed £6.
- (2) An employee shall not be entitled to guarantee payments in respect of more than the specified number of days in any one of the relevant periods, that is to say, the periods of three months commencing on 1st February, 1st May, 1st August and 1st November in each year.
- (3) The specified number of days for the purposes of subsection (2) above shall be, subject to subsection (4) below.—
  - (a) the number of days, not exceeding five, on which the employee normally works in a week under the contract of employment in force on the day in respect of which the guarantee payment is claimed ; or
  - (b) where that number of days varies from week to week or over a longer period, the average number of such days, not exceeding five, calculated by dividing by 12 the total number of such days during the period of 12 weeks ending with the last complete week before the day in respect of which the guarantee payment is claimed, and rounding up the resulting figure to the next whole number; or
  - (c) in a case falling within paragraph (b) above but where the employee has not been employed for a sufficient period to enable the calculation to be made under that paragraph, a number which fairly represents the number of the employee's normal working days in a week, not exceeding five, having regard to such of the following considerations as are appropriate in the circumstances, that is to say.—
    - (i) the average number of normal working days in a week which the employee could expect in accordance with the terms of his contract;
    - (ii) the average number of such days of other employees engaged in relevant comparable employment with the same employer.
- (4) If in any case an employee's contract has been varied, or a new contract has been entered, into, in connection with a period of short-time working, subsection (3) above shall have effect as if for the references to the day in respect of which the guarantee payment is claimed there were substituted references to the last day on which the original contract was in force.
- (5) The Secretary of State may vary any of the limits referred to in this section, and may in particular vary the relevant periods referred to in subsection (2) above, after a review under section 86 below, by order made in accordance with that section.

## 26 Supplementary

- (1) Subject to subsection (2) below, a right to a guarantee payment shall not affect any right of an employee in relation to remuneration under his contract of employment (hereafter in this section referred to as "contractual remuneration").
- (2) Any contractual remuneration paid to an employee in respect of a workless day shall go towards discharging any liability of the employer to pay a guarantee payment in respect of that day, and conversely any guarantee payment paid in respect of a day shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that day.
- (3) For the purposes of subsection (2) above, contractual remuneration shall be treated as paid in respect of a workless day—
  - (a) where it is expressed to be calculated or payable by reference to that day or any part of that day, to the extent that it is so expressed ; and
  - (b) in any other case, to the extent that it represents guaranteed remuneration, rather than remuneration for work actually done, and is referable to that day when apportioned rateably between that day and any other workless period falling within the period in respect of which the remuneration is paid.
- (4) The Secretary of State may by order provide that in relation to any description of employees the provisions of sections 22(2), 24 and 25(3) above, as originally enacted or as varied under section 25(5) above, and of subsections (1) to (3) above, and, so far as they apply for the purposes of those provisions, the provisions of Schedule 4 to this Act, shall have effect subject to such modifications and adaptations as may be prescribed by the order.

## 27 Complaint to industrial tribunal

- (1) An employee may present a complaint to an industrial tribunal that his employer has failed to pay the whole or any part of a guarantee payment to which the employee is entitled.
- (2) An industrial tribunal shall not entertain a complaint relating to a guarantee payment in respect of any day unless the complaint is presented to the tribunal before the end of the period of three months beginning with that day or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (3) Where an industrial tribunal finds a complaint under subsection (1) above well-founded the tribunal shall order the employer to pay the complainant the amount of guarantee payment which it finds is due to him.

## 28 Exemption orders

- (1) If at any time there is in force a collective agreement, or a wages order, whereby employees to whom the agreement or order relates have a right to guaranteed remuneration and on the application of all the parties to the agreement, or as the case may be, of the council or Board making the order, the appropriate Minister, having regard to the provisions of the agreement or order is satisfied that section 22 above should not apply to those employees, he may make an order under this section excluding those employees from the operation of that section.

- (2) In subsection (1) above a wages order means an order made under any of the following provisions, that is to say—
- (a) section 11 of the Wages Councils Act 1959 ;
  - (b) section 3 of the Agricultural Wages Act 1948 ;
  - (c) section 3 of the Agricultural Wages (Scotland) Act 1949.
- (3) In subsection (1) above the appropriate Minister means—
- (a) as respects a collective agreement or such an order as is referred to in subsection (2)(a) or (c) above, the Secretary of State;
  - (b) as respects such an order as is referred to in subsection (2)(b) above, the Minister of Agriculture, Fisheries and Food.
- (4) The Secretary of State shall not make an order under this section in respect of an agreement unless—
- (a) the agreement provides for procedures to be followed (whether by arbitration or otherwise) in cases where an employee claims that his employer has failed to pay the whole or any part of any guaranteed remuneration to which the employee is entitled under the agreement, and that those procedures include a right to arbitration or adjudication by an independent referee or body in cases where (by reason of an equality of votes or otherwise) a decision cannot otherwise be reached; or
  - (b) the agreement indicates that an employee to whom the agreement relates may present a complaint to an industrial tribunal that his employer has failed to pay the whole or any part of any guaranteed remuneration to which the employee is entitled under the agreement ;
- and where an order under this section is in force in respect of such an agreement as is described in paragraph (b) above an industrial tribunal shall have jurisdiction over such a complaint as if it were a complaint falling within section 27 above.
- (5) Without prejudice to section 123(4) below, an order under this section may be varied or revoked by a subsequent order thereunder, whether in pursuance of an application made by all or any of the parties to the agreement in question, or, as the case may be, by the council or Board which made the order in question, or without any such application:

#### *Suspension from work on medical grounds*

### **29 Right to remuneration on suspension on medical grounds**

- (1) An employee who is suspended from work by his employer on medical grounds in consequence of—
- (a) any requirement imposed by or under any provision of any enactment or of any instrument made under any enactment, or
  - (b) any recommendation in any provision of a code of practice issued or approved under section 16 of the Health and Safety at Work etc. Act 1974,
- which is a provision for the time being specified in Schedule 2 to this Act, shall, subject to the following provisions of this Act, be entitled to be paid by his employer remuneration while he is so suspended for a period not exceeding 26 weeks.
- (2) For the purposes of this section and sections 30 to 33 below an employee shall be regarded as suspended from work only if, and so long as, he continues to be employed

by his employer, but is not provided with work or does not perform the work he normally performed before the suspension.

- (3) The Secretary of State may by order add provisions to or remove provisions from the list of specified provisions in Schedule 2 to this Act.
- (4) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in subsection (1) above, paragraph 10(a) of Schedule 1 to the 1974 Act (qualifying period for right not to be unfairly dismissed) shall have effect in relation to that dismissal as if for the words " 26 weeks" there were substituted the words " 4 weeks ".

### **30 General exclusions from right under s. 29**

- (1) An employee shall not be entitled to remuneration under section 29 above unless he has been continuously employed for a period of four weeks ending with the last complete week before the day on which the suspension begins.
- (2) An employee shall not be entitled to remuneration under section 29 above in respect of any period during which he is incapable of work by reason of disease or bodily or mental disablement.
- (3) An employee shall not be entitled to remuneration under section 29 above in respect of any period during which—
  - (a) his employer has offered to provide him with suitable alternative work, whether or not work which the employee is under his contract, or was under the contract in force before the suspension, employed to perform, and the employee has unreasonably refused to perform that work ; or
  - (b) he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

### **31 Calculation of remuneration**

- (1) The amount of remuneration payable by an employer to an employee under section 29 above shall be a week's pay in respect of each week of the period of suspension referred to in subsection (1) of that section, and if in any week remuneration is payable in respect only of part of that week the amount of a week's pay shall be reduced proportionately.
- (2) For the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purposes of this section the calculation date is the day before that on which the suspension begins.
- (3) Subject to subsection (4) below, a right to remuneration under section 29 above shall not affect any right of an employee in relation to remuneration under his contract of employment (hereafter in this section referred to as "contractual remuneration").
- (4) Any contractual remuneration paid by an employer to an employee in respect of any period shall go towards discharging the employer's liability under section 29 above in respect of that period, and conversely any payment of remuneration in discharge of an employer's liability under section 29 above in respect of any period shall go towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.

- (5) In this section " week ", in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday means a week ending with that other day, and in relation to any other employee means a week ending on Saturday.

### **32 Complaint to industrial tribunal**

- (1) An employee may present a complaint to an industrial tribunal that his employer has failed to pay the whole or any part of remuneration to which the employee is entitled under section 29 above.
- (2) An industrial tribunal shall not entertain a complaint relating to remuneration under section 29 above in respect of any day unless the complaint is presented to the tribunal before the end of the period of three months beginning with that day, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (3) Where an industrial tribunal finds a complaint under subsection (1) above well-founded the tribunal shall order the employer to pay the complainant the amount of remuneration which it finds is due to him.

### **33 Dismissal of replacement**

Where an employer—

- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the end of a suspension such as is referred to in section 29(1) above of another employee; and
- (b) dismisses the first mentioned employee in order to make it possible to allow the other employee to resume his original work;

then, for the purposes of paragraph 6(1)(b) of Schedule 1 to the 1974 Act (employer to show substantial reason for dismissal), but without prejudice to the application of paragraph 6(8) of that Schedule (whether dismissal fair or unfair to depend on whether employer acted reasonably), the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

### *Maternity*

### **34 Dismissal on grounds of pregnancy**

- (1) An employee shall be treated for the purposes of Schedule 1 to the 1974 Act as unfairly dismissed if the reason or principal reason for her dismissal is that she is pregnant or is any other reason connected with her pregnancy, except one of the following reasons—
- (a) that at the effective date of termination she is or will have become, because of her pregnancy, incapable of adequately doing the work which she is employed to do;
- (b) that, because of her pregnancy, she cannot or will not be able to continue after that date to do that work without contravention (either by her or her employer) of a duty or restriction imposed by or under any enactment.

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- (2) An employee shall be treated for the purposes of Schedule 1 to the 1974 Act as unfairly dismissed if her employer dismisses her for a reason mentioned in subsection (1)(d) or (b) above, but neither he nor any successor of his, where there is a suitable available vacancy, makes her an offer before or on the effective date of termination to engage her under a new contract of employment complying with subsection (3) below.
- (3) The new contract of employment must—
  - (a) take effect immediately on the ending of employment under the previous contract, or, where that employment ends on a Friday, Saturday or Sunday, on or before the next Monday after that Friday, Saturday or Sunday;
  - (b) be such that the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
  - (c) be such that the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than the corresponding provisions of the previous contract.
- (4) On a complaint of unfair dismissal on the ground of failure to offer to engage an employee as mentioned in subsection (2) above, it shall be for the employer to show that he or a successor made an offer to engage her in compliance with subsections (2) and (3) above or, as the case may be, that there was no suitable available vacancy for her.
- (5) Paragraph 5(3) of Schedule 1 to the 1974 Act (employee treated as dismissed where he gives notice to the employer within the period of the employer's notice) shall not apply in a case where an employer gives notice to an employee to terminate her contract of employment for a reason mentioned in subsection (1)(a) or (b) above.
- (6) In paragraph 12 of Schedule 1 to the 1974 Act (exclusion of certain fixed term contracts) as it applies to an employee treated as unfairly dismissed by virtue of subsection (1) or (2) above, for the reference to 28th February 1972 there shall be substituted a reference to the commencement of this section.
- (7) Paragraph 13(3) of Schedule 1 to the 1974 Act (exclusion of right not to be unfairly dismissed and remedy for breach of that right where a dismissal procedures agreement is in force) shall not apply to the right not to be unfairly dismissed for any reason mentioned in subsection (1) or (2) above.

### **35 Rights of employee in connection with pregnancy and confinement**

- (1) An employee who is absent from work wholly or partly because of pregnancy or confinement shall, subject to the following provisions of this Act, be entitled—
  - (a) in accordance with sections 36 to 38 below, to be paid by her employer a sum to be known as maternity pay ; and
  - (b) in accordance with sections 48 to 50 below and Schedule 3 to this Act, to return to work.
- (2) An employee shall be entitled to the rights referred to in subsection (1) above whether or not a contract of employment subsists during the period of her absence but, subject to subsection (3) below, she shall not be so entitled unless—



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- (a) she continues to be employed by her employer (whether or not she is at work) until immediately before the beginning of the 11th week before the expected week of confinement;
  - (b) she has at the beginning of that 11th week been continuously employed for a period of not less than two years; and
  - (c) she informs her employer (in writing if he so requests) at least three weeks before her absence begins or, if that is not reasonably practicable, as soon as reasonably practicable.—
    - (i) that she will be (or is) absent from work wholly or partly because of pregnancy or confinement, and
    - (ii) in the case of the right to return, that she intends to return to work with her employer.
- (3) An employee who has been dismissed by her employer for a reason falling within section 34(1)(a) or (b) above and has not been re-engaged in accordance with that section, shall be entitled to the rights referred to in subsection (1) above notwithstanding that she has thereby ceased to be employed before the beginning of the 11th week before the expected week of confinement if, but for that dismissal, she would at the beginning of that 11th week have been continuously employed for a period of not less than two years, but she shall not be entitled to the right to return unless she informs her employer (in writing if he so requests), before or as soon as reasonably practicable after the dismissal takes effect, that she intends to return to work with him.
- (4) An employee shall not be entitled to either of the rights referred to in subsection (1) above unless, if requested to do so by her employer, she produces for his inspection a certificate from a registered medical practitioner or a certified midwife stating the expected week of her confinement.
- (5) The Secretary of State may by order vary the periods of two years referred to in subsections (2) and (3) above, or those periods as varied from time to time under this section, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.

## **36 Maternity pay**

- (1) Maternity pay shall be paid in respect of a period not exceeding, or periods not exceeding in the aggregate, six weeks during which the employee is absent from work wholly or partly because of pregnancy or confinement (hereafter in this section and sections 37 and 38 below referred to as the payment period or payment periods).
- (2) An employee shall not be entitled to maternity pay for any absence before the beginning of the 11th week before the expected week of confinement, and her payment period or payment periods shall be the first six weeks of absence starting on or falling after the beginning of that 11th week.
- (3) The Secretary of State may by order vary the periods of six weeks referred to in subsections (1) and (2) above, or those periods as varied from time to time under this section, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.
- (4) Where an employee gives her employer the information required by section 35(2)(c) above or produces any certificate requested under section 35(4) above after the beginning of the payment period or the first of the payment periods, she shall not be

entitled to maternity pay for any part of that period until she gives him that information or certificate, but on giving him the information or as the case may be producing the certificate, she shall be entitled to be paid in respect of that part of the period or periods which fell before the giving of the information or the production of the certificate.

### **37 Calculation of maternity pay**

- (1) The amount of maternity pay to which an employee is entitled as respects any week shall be 9/10ths of a week's pay reduced by the amount of maternity allowance payable for that week under Part I of Schedule 4 to the Social Security Act 1975, whether or not the employee in question is entitled to the whole or any part of that allowance.
- (2) Maternity pay shall accrue due to an employee from day to day and in calculating the amount of maternity pay payable for any day—
  - (a) there shall be disregarded Sunday or such other day in each week as may be prescribed in relation to that employee under section 22(10) of the Social Security Act 1975 for the purpose of calculating the daily rate of maternity allowance under that Act; and
  - (b) the amount payable for any other day shall be taken as 1/6th of the amount of the maternity pay for the week in which the day falls.
- (3) Subject to subsection (4) below, a right to maternity pay shall not affect any right of an employee in relation to remuneration under any contract of employment (hereafter in this section referred to as "contractual remuneration").
- (4) Any contractual remuneration paid to an employee in respect of a day within a payment period shall go towards discharging any liability of the employer to pay maternity pay in respect of that day, and conversely any maternity pay paid in respect of a day shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that day.
- (5) For the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purposes of this section, the calculation date is the last day on which the employee worked under the contract of employment in force immediately before the beginning of her absence.

### **38 Complaint to industrial tribunal of failure to pay maternity pay**

- (1) A complaint may be presented to an industrial tribunal by an employee against her employer that he has failed to pay her the whole or any part of the maternity pay to which she is entitled.
- (2) An industrial tribunal shall not entertain a complaint under subsection (1) above unless it is presented to the tribunal before the end of the period of three months beginning with the last day of the payment period or, as the case may be, the last of the payment periods, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (3) Where an industrial tribunal finds a complaint under subsection (1) above well founded the tribunal shall order the employer to pay the complainant the amount of maternity pay which it finds is due to her.

### **39 Maternity Pay Fund**

- (1) There shall be established under the control and management of the Secretary of State a fund to be called the Maternity Pay Fund out of which payments shall be made in accordance with the following provisions of this Act.
- (2) The Secretary of State shall prepare accounts of the Maternity Pay Fund in such form as the Treasury may direct and shall send them to the Comptroller and Auditor General not later than the end of the month of November following the end of the financial year to which the accounts relate; and the Comptroller and Auditor General shall examine and certify every such account and shall lay copies thereof, together with his report thereon, before Parliament.
- (3) Any money in the Maternity Pay Fund may from time to time be paid over to the National Debt Commissioners and invested by them, in accordance with such directions as may be given by the Treasury, in any such manner as may be specified by an order of the Treasury for the time being in force under section 22(1) of the National Savings Bank Act 1971.

### **40 Financing of Maternity Pay Fund**

- (1) In the Social Security Act 1975 for the words "appropriate allocation to the Redundancy Fund", wherever they occur, substitute the words " appropriate employment protection allocation ".
- (2) In section 1(1) of that Act (outline of contributory system), after the words " Redundancy Fund " insert the words " and the Maternity Pay Fund ".
- (3) In section 4(6)(b) of that Act (amount of secondary Class 1 contribution), for the words " 8-5 per cent." substitute the words " 8-55 per cent. ".
- (4) In section 122(4) of that Act (power to alter contributions), after the words " the Redundancy Fund " insert the words " or the Maternity Pay Fund ", and for the words " that Fund" substitute the words " either or both those Funds ".
- (5) In section 134 of that Act (destination of contributions etc.)—
  - (a) in subsection (4), for the words " 0.2 per cent." substitute the words " 0.25 per cent. "; and
  - (b) in subsection (5)(b), for the words " that Fund " substitute the words " the Redundancy Fund and the Maternity Pay Fund in such shares as the Secretary of State may, with the consent of the Treasury, determine. "
- (6) In Schedule 20 to that Act (glossary of expressions), at the appropriate place in alphabetical order insert in the first column the entry " Appropriate employment protection allocation " and against it in the second column insert the entry " See section 134(4). ".

### **41 Advances out of National Loans Fund**

- (1) Subject to the provisions of subsections (2) to (4) below, the Treasury may from time to time advance out of the National Loans Fund to the Secretary of State for the purposes of the Maternity Pay Fund such sums as the Secretary of State may request; and any sums advanced to the Secretary of State under this section shall be paid into that Fund.

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- (2) The aggregate amount outstanding by way of principal in respect of sums advanced to the Secretary of State under subsection (1) above shall not at any time exceed £4 million, or such larger sum, not exceeding £10 million, as the Secretary of State may by order made with the consent of the Treasury determine.
- (3) No order under subsection (2) above shall be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.
- (4) Any sums advanced to the Secretary of State under subsection (1) above shall be repaid by the Secretary of State out of the Maternity Pay Fund into the National Loans Fund in such manner and at such times, and with interest thereon at such rate, as the Treasury may direct.

#### **42 Maternity pay rebate**

- (1) Subject to any regulations made under this section, the Secretary of State shall pay out of the Maternity Pay Fund to every employer who makes a claim under this section and who, being liable to pay, has paid maternity pay to an employee, an amount equal to the full amount of maternity pay so paid (in this section and sections 45 and 46 below referred to as a "rebate").
- (2) The Secretary of State may if he thinks fit, and if he is satisfied that it would be just and equitable to do so having regard to all the relevant circumstances, pay such a rebate to an employer who makes a claim under this section and who has paid maternity pay to an employee in circumstances in which, by reason of the time limit provided for in section 38(2) above, a complaint by the employee has been dismissed, or would not be entertained, by an industrial tribunal.
- (3) For the purposes of subsections (1) and (2) above, a payment of contractual remuneration by an employer shall be treated as a payment of maternity pay to the extent that, by virtue of section 37(4) above.—
  - (a) it extinguishes the employer's liability to pay maternity pay; or
  - (b) in a case falling within subsection (2) above, it would extinguish that liability if a complaint by the employee were not time-barred as described in that subsection.
- (4) The Secretary of State shall make provision by regulations as to the making of claims for rebates under this section and such regulations may in particular—
  - (a) require a claim to be made within such time limit as may be prescribed; and
  - (b) require a claim to be supported by such evidence as may be prescribed.

#### **43 Payments to employees out of Maternity Pay Fund**

- (1) Where an employee claims that her employer is liable to pay her maternity pay and—
  - (a) that she has taken all reasonable steps (other than: proceedings to enforce a tribunal award) to recover payment from the employer; or
  - (b) that her employer is insolvent (as defined in section 69 below for the purposes of sections 64 to 68 below);

and that the whole or part of the maternity pay remains unpaid, the employee may apply to the Secretary of State under this section.

- (2) If the Secretary of State is satisfied that the claim is well founded the Secretary of State shall pay the employee out of the Maternity Pay Fund the amount of the maternity pay which appears to the Secretary of State to be unpaid.
- (3) A payment made by the Secretary of State to an employee under this section shall be treated for the purpose of discharging any liability of the employer to the employee as if it had been made by the employer.

#### **44 Unreasonable default by employer**

- (1) Where the Secretary of State makes a payment to an employee in respect of unpaid maternity pay in a case falling within section 43(1)(a) above and it appears to the Secretary of State that the employer's default in payment was without reasonable excuse, the Secretary of State may recover from the employer such amount as the Secretary of State considers appropriate, not exceeding the amount of maternity pay which the employer failed to pay.
- (2) Where a sum is recovered by the Secretary of State by virtue of this section that sum shall be paid into the Maternity Pay Fund.

#### **45 Supplementary provisions in relation to employer's insolvency**

- (1) Where the Secretary of State makes a payment to an employee under section 64 below (which provides for payments out of the Redundancy Fund in respect of certain debts where an employer is insolvent) and that payment, in whole or in part, represents arrears of pay, then, in ascertaining for the purpose of section 43 above the amount of any unpaid maternity pay, section 37(4) above shall apply as if the arrears of pay in question had been duly paid by the employer to the employee in accordance with the contract of employment.
- (2) Where the Secretary of State makes a payment to an employee out of the Redundancy Fund under section 64 below which, if it had been made by the employer to the employee, would have attracted a rebate from the Maternity Pay Fund in accordance with section 42 above, then, the Secretary of State shall make a payment out of the Maternity Pay Fund into the Redundancy Fund of an amount corresponding to the amount of rebate which would have been so payable.

#### **46 Complaint and appeals to industrial tribunal**

- (1) A person who has—
  - (a) made a claim for a rebate under section 42 above, in a case to which subsection (1) of that section applies; or
  - (b) applied for a payment under section 43 above,may, subject to subsection (5) below, present a complaint to an industrial tribunal that—
  - (i) the Secretary of State has failed to make any such payment; or
  - (ii) any such payment made by the Secretary of State is less than the amount which should have been paid.
- (2) Where an industrial tribunal finds that the Secretary of State ought to make any such payment or further payment, it shall make a declaration to that effect and shall also

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declare the amount of any such payment which it finds the Secretary of State ought to make.

- (3) An employer who has made a claim for a rebate under section 42 above, in a case to which subsection (2) of that section applies, may, subject to subsection (5) below, appeal to an industrial tribunal on the ground that—

- (a) the Secretary of State has refused to pay a rebate ; or
- (b) any rebate paid by the Secretary of State is less than the amount which should have been paid,

and if on any such appeal the tribunal is satisfied that it is just and equitable having regard to all the relevant circumstances that a rebate should be paid or, as the case may be, finds that a further payment by way of rebate should be made, the tribunal shall determine accordingly, and the Secretary of State shall comply with the determination.

- (4) Where the Secretary of State determines that an amount is recoverable from an employer under section 44 above, the employer may, subject to subsection (5) below, appeal to an industrial tribunal; and if on any such appeal the tribunal is satisfied that no amount should be recovered from the employer, or that a lesser or greater amount should be recovered (but in any case not exceeding the amount of maternity pay which the employer failed to pay) the tribunal shall determine accordingly and the amount, if any, so determined shall be the amount recoverable from the employer by the Secretary of State.
- (5) An industrial tribunal shall not entertain a complaint or appeal under this section unless it is presented to the tribunal within the period of three months beginning with the date on which the relevant decision of the Secretary of State was communicated to the complainant or appellant or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint or appeal to be presented within the period of three months.

#### **47 Provisions as to information**

- (1) Where an application is made to the Secretary of State by an employee under section 43 above, the Secretary of State may require—
- (a) the employer to provide him with such information as the Secretary of State may reasonably require for the purpose of determining whether the employee's application is well founded; and
  - (b) any person having the custody or control of any relevant records or other documents to produce for examination on behalf of the Secretary of State any such document in that person's custody or under his control which is of such a description as the Secretary of State may require.
- (2) Any such requirement shall be made by a notice in writing given to the person on whom the requirement is imposed and may be varied or revoked by a subsequent notice so given.
- (3) If a person refuses or wilfully neglects to furnish any information or produce any document which he has been required to furnish or produce by a notice under this section he shall be liable on summary conviction to a fine not exceeding £100.
- (4) If any person in making a claim under section 42 above or an application under section 43 above or in purporting to comply with a requirement of a notice under this section knowingly or recklessly makes any false statement he shall be liable on summary conviction to a fine not exceeding £400.

#### **48 Right to return to work**

- (1) The right to return to work of an employee who has been absent from work wholly or partly because of pregnancy or confinement is, subject to the following provisions of this Act, a right to return to work with her original employer, or, where appropriate, his successor, at any time before the end of the period of 29 weeks beginning with the week in which the date of confinement falls, in the job in which she was employed under the original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her if she had not been so absent.
- (2) In subsection (1) above—
  - (a) " job ", in relation to an employee, means the nature of the work which she is employed to do in accordance with her contract and the capacity and place in which she is so employed ; and
  - (b) " terms and conditions not less favourable than those which would have been applicable to her if she had not been so absent" means, as regards seniority, pension rights and other similar rights, that the period or periods of employment prior to the employee's absence shall be regarded as continuous with her employment following that absence.
- (3) In sections 35 and 49 to 51 of, and Schedule 3 to, this Act, except where the context otherwise requires, " to return to work " means to return to work in accordance with subsection (1) above, and cognate expressions shall be construed accordingly.
- (4) If an employee is entitled to return to work in accordance with subsection (1) above, but it is not practicable by reason of redundancy for the employer to permit her so to return to work, she shall be entitled, where there is a suitable available vacancy, to be offered alternative employment with her employer (or his successor), or an associated employer, under a new contract of employment complying with subsection (5) below.
- (5) The new contract of employment must be such that—
  - (a) the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances : and
  - (b) the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work in accordance with subsection (1) above.
- (6) The remedies of an employee for infringement of either of the rights mentioned in this section are those conferred by or by virtue of the provisions of sections 49 and 50 below and Schedule 3 to this Act.

#### **49 Exercise of right to return**

- (1) An employee shall exercise her right to return to work by notifying the employer (who may be her original employer or a successor of that employer) at least one week before the day on which she proposes to return of her proposal to return on that day (hereafter in this section and section 50 below and Schedule 3 to this Act referred to as the " notified day of return ").
- (2) An employer may postpone an employee's return to work until a date not more than four weeks after the notified day of return if he notifies her before that day that for

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specified reasons he is postponing her return until that date, and accordingly she will be entitled to return to work with him on that date.

- (3) Subject to subsection (4) below, an employee may—
- (a) postpone her return to work until a date not exceeding four weeks from the notified day of return, notwithstanding that that date falls after the end of the period of 29 weeks mentioned in section 48(1) above ; and
  - (b) where no day of return has been notified to the employer, extend the time during which she may exercise her right to return in accordance with subsection (1) above, so that she returns to work not later than four weeks from the expiration of the said period of 29 weeks;

if before the notified day of return or, as the case may be, the expiration of the period of 29 weeks she gives the employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she will be incapable of work on the notified day of return or the expiration of that period, as the case may be.

- (4) Where an employee has once exercised a right of postponement or extension under subsection (3)(a) or (b) above, she shall not again be entitled to exercise a right of postponement or extension under that subsection in connection with the same return to work.
- (5) If an employee has notified a day of return but there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work on the notified day of return, she may instead return to work when work resumes after the interruption or as soon as reasonably practicable thereafter.
- (6) If no day of return has been notified and there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work before the expiration of the period of 29 weeks referred to in section 48(1) above, or which appears likely to have that effect, and in consequence the employee does not notify a day of return, the employee may exercise her right to return in accordance with subsection (1) above so that she returns to work at any time before the end of the period of 14 days from the end of the interruption notwithstanding that she returns to work outside the said period of 29 weeks.
- (7) Where the employee has either—
- (a) exercised the right under subsection (3)(b) above to extend the period during which she may exercise her right to return; or
  - (b) refrained from notifying the day of return in the circumstances described in subsection (6) above,

the other of those subsections shall apply as if for the reference to the expiration of the period of 29 weeks there were substituted a reference to the expiration of the further period of four weeks or, as the case may be, of the period of 14 days from the end of the interruption of work.

- (8) Where—
- (a) an employee's return is postponed under subsection (2) or (3) above, or
  - (b) the employee returns to work on a day later than the notified day of return in the circumstances described in subsection (5) above,

then, subject to subsection (4) above, references in those subsections and in section 50 below and Schedule 3 to this Act to the notified day of return shall be construed as



references to the day to which the return is postponed or, as the case may be, that later day.

## **50 Failure to permit to return treated as dismissal**

- (1) Where an employee is entitled to return to work and has exercised her right to return in accordance with section 49 above but is not permitted to return to work, then, she shall be treated for the purposes of—
  - (a) the provisions of this Act and the 1974 Act relating to unfair dismissal; and
  - (b) the Redundancy Payments Act 1965 ;as if she had been employed until the notified day of return, and, if she would not otherwise be so treated, as having been continuously employed until that day, and as if she had been dismissed with effect from that day for the reason for which she was not permitted to return.
- (2) The provisions of Schedule 3 to this Act shall have effect for the purpose of supplementing the foregoing provisions of this Act relating to an employee's right to return to work.

## **51 Dismissal of replacement**

Where an employer—

- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the return to work of another employee who is, or will be, absent wholly or partly because of pregnancy or confinement; and
- (b) dismisses the first-mentioned employee in order to make it possible to give work to the other employee;

then, for the purposes of paragraph 6(1)(b) of Schedule 1 to the 1974 Act (employer to show substantial reason for dismissal), but without prejudice to the application of paragraph 6(8) of that Schedule (whether dismissal fair or unfair to depend on whether employer acted reasonably), the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

## **52 Interpretation of ss. 35 to 51**

In sections 35 to 51 above, this section and Schedule 3 to this Act, except so far as the context otherwise requires.—

" certified midwife " means a midwife certified under the Mid wives Act 1951 or the Mid wives (Scotland) Act 1951;

" confinement " means the birth of a living child or the birth of a child whether living or dead after 28 weeks of pregnancy;

" expected week of confinement " means the week in which it is expected that confinement will take place ;

" original contract of employment ", in relation to an employee who is absent from work wholly or partly because of pregnancy or confinement, means the contract under which she worked immediately before the beginning of her absence or, if she entered into that contract during her pregnancy by virtue of section 34(2) above or otherwise by reason of her pregnancy, the contract under

which she was employed immediately before she entered into the later contract or, if there was more than one later contract, the first of the later contracts;

" week "—

- (a) in sections 35(2)(c) and 49(1) above, means a period of seven days;
- (b) in the expression " expected week of confinement ", means a period of seven days beginning with midnight between Saturday and Sunday; and
- (c) in any other case, means, in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day, and in relation to any other employee, a week ending with Saturday.

### *Trade union membership and activities*

## **53 Trade union membership and activities**

- (1) Subject to the following provisions of this section, every employee shall have the right not to have action (short of dismissal) taken against him as an individual by his employer for the purpose of—
  - (a) preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so; or
  - (b) preventing or deterring him from taking part in the activities of an independent trade union at any appropriate time, or penalising him for doing so ; or
  - (c) compelling him to be or become a member of a trade union which is not independent.
- (2) In this section " appropriate time", in relation to an employee taking part in any activities of a trade union, means time which either—
  - (a) is outside his working hours, or
  - (b) is a time within his working hours at which, in accordance with arrangements agreed with, or consent given by his employer, it is permissible for him to take part in those activities ;

and in this subsection "working hours", in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.
- (3) The provisions of subsection (4) below shall have effect in relation to an employee—
  - (a) of the same class as employees for whom it is the practice in accordance with a union membership agreement to belong to a specified independent trade union or to one of a number of specified independent trade unions; or
  - (b) not of the same class as described in paragraph (a) above but of the same grade or category as such employees as are referred to in that paragraph.
- (4) In relation to such an employee the right conferred by subsection (1)(b) above in relation to the activities of an independent trade union shall extend to activities on the employer's premises only if that union is a specified union.
- (5) For the purposes of this section a trade union—
  - (a) shall be taken to be specified for the purposes of, or in relation to, a union membership agreement if it is specified in the agreement or is accepted by the parties to the agreement as being the equivalent of a union so specified; and
  - (b) shall also be treated as so specified if—

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- (i) the Service has made a recommendation for recognition of that union covering the employee in question which is operative within the meaning of section 15 above ; or
  - (ii) the union has referred a recognition issue covering that employee to the Service under section 11 above and the Service has not declined to proceed on the reference under section 12 above, the union has not withdrawn the reference, or from the reference, and the issue has not been settled or reported on under that section.
- (6) An employee who genuinely objects on grounds of religious belief to being a member of any trade union whatsoever shall have the right not to have action (short of dismissal) taken against him by his employer for the purpose of compelling him to belong to a trade union.
- (7) In this section, unless the context otherwise requires, references to a trade union include references to a branch or section of a trade union.

#### **54 Complaint to industrial tribunal**

- (1) An employee may present a complaint to an industrial tribunal on the ground that action has been taken against him by his employer in contravention of section 53 above.
- (2) An industrial tribunal shall not entertain a complaint under subsection (1) above unless it is presented to the tribunal before the end of the period of three months beginning with the date on which there occurred the action complained of, or where that action is part of a series of similar actions, the last of those actions, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (3) Where the tribunal finds the complaint well-founded it shall make a declaration to that effect and may make an award of compensation, calculated in accordance with section 56 below, to be paid by the employer to the employee in respect of the action complained of.

#### **55 Supplementary**

- (1) On a complaint under section 54 above it shall be for the employer to show—
- (a) the purpose for which action was taken against the complainant; and
  - (b) that the purpose was not such a purpose as is referred to in section 53(1)(a) to (c) or (6) above.
- (2) In determining, on a complaint under section 54 above, any question as to whether action was taken by the complainant's employer or the purpose for which it was taken, no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to take the action complained of, and that question shall be determined as if no such pressure had been exercised.
- (3) If on a complaint under section 54 above it is shown that the action complained of was taken for the purpose of safeguarding national security, the industrial tribunal shall dismiss the complaint.

- (4) A certificate signed by or on behalf of a Minister of the Crown, and certifying that the action specified in the certificate was taken for the purpose of safeguarding national security, shall for the purposes of this section be conclusive evidence of that fact; and a document purporting to be such a certificate shall be taken to be such a certificate unless the contrary is proved.

## **56 Assessment of compensation on complaint under s. 54**

- (1) The amount of the compensation awarded by a tribunal on a complaint under section 54 above shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the complainant's right under section 53 above by the employer's action complained of and to any loss sustained by the complainant which is attributable to that action.
- (2) The said loss shall be taken to include—
- (a) any expenses reasonably incurred by the complainant in consequence of the action complained of, and
  - (b) loss of any benefit which he might reasonably be expected to have had but for that action.
- (3) In ascertaining the said loss the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or of Scotland, as the case may be.
- (4) In determining the amount of compensation to be awarded under subsection (1) above no account shall be taken of any pressure as is referred to in section 55(2) above, and that question shall be determined as if no such pressure had been exercised.
- (5) Where the tribunal finds that the action complained of was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

### *Time off work*

## **57 Time off for carrying out trade union duties**

- (1) An employer shall permit an employee of his who is an official of an independent trade union recognised by him to take time off, subject to and in accordance with subsection (2) below, during the employee's working hours for the purpose of enabling him—
- (a) to carry out those duties of his as such an official which are concerned with industrial relations between his employer and any associated employer, and their employees; or
  - (b) to undergo training in aspects of industrial relations which is—
    - (i) relevant to the carrying out of those duties; and
    - (ii) approved by the Trades Union Congress or by the independent trade union of which he is an official.
- (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

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having regard to any relevant provisions of a Code of Practice issued by the Service under section 6 above.

- (3) In the Code of Practice referred to in section 6(2)(b)(i) above the Service shall in particular provide practical guidance on the circumstances in which a trade union official is to be permitted to take time off under this section in respect of duties connected with industrial action.
- (4) An employer who permits an employee to take time off under this section for any purpose shall, subject to the following provisions of this section, pay him for the time taken off for that purpose in accordance with the permission—
  - (a) 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, as if he had worked at that work for the whole of that time;
  - (b) where the employee's remuneration for that work varies with the amount of work done, an amount calculated by reference to the average hourly earnings for that work.
- (5) The average hourly earnings referred to in subsection (4)(b) above shall be the average hourly earnings 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.
- (6) Subject to subsection (7) below, a right to be paid any amount under subsection (4) above shall not affect any right of an employee in relation to remuneration under his contract of employment (hereafter in this section referred to as "contractual remuneration").
- (7) Any contractual remuneration paid to an employee in respect of a period of time off to which subsection (1) above applies shall go towards discharging any liability of the employer under subsection (4) above in respect of that period, and conversely any payment of any amount under subsection (4) above in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.
- (8) An employee who is an official of an independent trade union recognised by his employer 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 or to pay him the whole or part of any amount so required to be paid.

## **58 Time off for trade union activities**

- (1) An employer shall permit an employee of his who is a member of an appropriate trade union to take time off, subject to and in accordance with subsection (3) below, during the employee's working hours for the purpose of taking part in any trade union activity to which this section applies.
- (2) In this section "appropriate trade union", in relation to an employee of any description, means an independent trade union which is recognised by his employer in respect of that description of employee, and the trade union activities to which this section applies are—
  - (a) any activities of an appropriate trade union of which the employee is a member ; and

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- (b) any activities, whether or not falling within paragraph (a) above, in relation to which the employee is acting as a representative of such a union, excluding activities which themselves consist of industrial action whether or not in contemplation or furtherance of a trade dispute.
- (3) 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 to any relevant provisions of a Code of Practice issued by the Service under section 6 above.
- (4) In the Code of Practice referred to in section 6(2)(b)(ii) above the Service shall in particular provide practical guidance on the following matters, that is to say, the question whether, and the circumstances in which a trade union member is to be permitted to take time off under this section for trade union activities connected with industrial action.
- (5) An employee who is a member of an independent trade union recognised by his employer 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.

## **59 Time off for public duties**

- (1) An employer shall permit an employee of his who is—
- (a) a justice of the peace ;
  - (b) a member of a local authority;
  - (c) a member of any statutory tribunal;
  - (d) a member of, in England and Wales, a Regional Health Authority or Area Health Authority or, in Scotland, a Health Board;
  - (e) a member of, in England and Wales, the managing or governing body of an educational establishment maintained by a local education authority, or, in Scotland, a school or college council or the governing body of a central institution or a college of education; or
  - (f) a member of, in England and Wales, a water authority or, in Scotland, river purification board,
- to take time off, subject to and in accordance with subsection (4) below, during the employee's working hours for the purposes of performing any of the duties of his office or, as the case may be, his duties as such a member.
- (2) In subsection (1) above—
- (a) " local authority " in relation to England and Wales includes the Common Council of the City of London but otherwise has the same meaning as in the Local Government Act 1972, and in relation to Scotland has the same meaning as in the Local Government (Scotland) Act 1973 ;
  - (b) "Regional Health Authority" and "Area Health Authority" have the same meaning as in the National Health Service Reorganisation Act 1973, and " Health Board" has the same meaning as in the National Health Service (Scotland) Act 1972 ;
  - (c) " local education authority " means the authority designated by section 192(1) of the Local Government Act 1972, " school or college council" means a body appointed under section 125(1) of the Local Government (Scotland) Act 1973, and "central institution" and " college of education " have the meanings

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- assigned to them by section 145(10) and (14) respectively of the Education (Scotland) Act 1962 ; and
- (d) " river purification board " means a board established under section 135 of the Local Government (Scotland) Act 1973.
- (3) For the purposes of subsection (1) above the duties of a member of a body referred to in paragraphs (b) to (f) of that subsection are:—
- (a) attendance at a meeting of the body or any of its committees or sub-committees;
- (b) the doing of any other thing approved by the body, or anything of a class so approved, for the purpose of the discharge of the functions of the body or of any of its committees or sub-committees.
- (4) The amount of time off which an employee is to be permitted to take under this section and 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 the following:—
- (a) how much time off is required for the performance of the duties of the office or as a member of the body in question, and how much time off is required for the performance of the particular duty ;
- (b) how much time off the employee has already been permitted under this section or sections 57 and 58 above;
- (c) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.
- (5) The Secretary of State may by order—
- (a) modify the provisions of subsection (1) above by adding any office or body to, or removing any office or body from, that subsection or by altering the description of any office or body in that subsection; and
- (b) modify the provisions of subsection (3) above.
- (6) 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.

## **60 Provisions as to industrial tribunals**

- (1) An industrial tribunal shall not consider—
- (a) a complaint under section 57, 58 or 59 above that an employer has failed to permit an employee to take time off; or
- (b) a complaint under section 57 above that an employer has failed to pay an employee the whole or part of any amount required to be paid under that section;
- unless it is presented within three months of the date when the failure occurred or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (2) Where an industrial tribunal finds any complaint mentioned in subsection (1)(a) above well-founded the tribunal shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee which shall be of such amount 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 57 above an industrial tribunal finds that the employer has failed to pay the employee the whole or part of the amount required to be paid under that section, the tribunal shall order the employer to pay the employee the amount which it finds due to him.

## **61 Time off to look for work or make arrangements for training**

- (1) An employee who is given notice of dismissal by reason of redundancy shall, subject to the following provisions of this section, be entitled before the expiration of his notice to be allowed by his employer reasonable time off during the employee's working hours in order to look for new employment or make arrangements for training for future employment.
- (2) An employee shall not be entitled to time off under this section unless, on whichever is the later of the following dates, that is to say—
  - (a) the date on which the notice is due to expire ; or
  - (b) the date on which it would expire were it the notice required to be given by section 1(1) of the Contracts of Employment Act 1972 (minimum period of notice),he will have been or, as the case may be, would have been continuously employed for a period of two years or more.
- (3) An employee who is allowed time off during his working hours under subsection (1) above shall, subject to the following provisions of this section, be entitled to be paid remuneration by his employer for the period of absence at the appropriate hourly rate.
- (4) The appropriate hourly rate in relation to an employee shall be the amount of one week's pay divided by—
  - (a) the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when notice was given; or
  - (b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such hours calculated by dividing by 12 the total number of the employee's normal working hours during the period of 12 weeks ending with the last complete week before the day on which notice was given.
- (5) For the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purposes of this section, the calculation date is the day on which the employer's notice was given.
- (6) In this section, " week " in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, means a week ending with that other day, and in relation to any other employee means a week ending with Saturday.
- (7) If an employer unreasonably refuses to allow an employee time off from work under this section, the employee shall, subject to subsection (11) below, be entitled to be paid an amount equal to the remuneration to which he would have been entitled under subsection (3) above if he had been allowed the time off.



- (8) An employee may present a complaint to an industrial tribunal on the ground that his employer has unreasonably refused to allow him time off under this section or has failed to pay the whole or any part of any amount to which the employee is entitled under subsection (3) or (7) above.
- (9) An industrial tribunal shall not entertain a complaint under subsection (8) above unless it is presented to the tribunal within the period of three months beginning with the day on which it is alleged that the time off should have been allowed, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.
- (10) If on a complaint under subsection (8) above the tribunal finds the grounds of the complaint well-founded it shall make a declaration to that effect and shall order the employer to pay to the employee the amount which it finds due to him.
- (11) The amount—
- (a) of an employer's liability to pay remuneration under subsection (3) above; or
  - (b) which may be ordered by a tribunal to be paid by an employer under subsection (7) above,
- or, where both paragraphs (a) and (b) are applicable, the aggregate amount of the liabilities referred to in those paragraphs, shall not exceed, in respect of the notice period of any employee, two-fifths of a week's pay of that employee.
- (12) Subject to subsection (13) below, a right to any amount under subsection (3) or (7) above shall not affect any right of an employee in relation to remuneration under the contract of employment (hereafter in this section referred to as "contractual remuneration").
- (13) Any contractual remuneration paid to an employee in respect of a period when he takes time off for the purposes referred to in subsection (1) above shall go towards discharging any liability of the employer to pay remuneration under subsection (3) above in respect of that period, and conversely any payment of remuneration under subsection (3) above in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

## **62 Provisions supplementary to ss. 57 to 61**

For the purposes of sections 57 to 61 above—

- (a) a trade union shall be treated as recognised not only if it is recognised for the purposes of collective bargaining, but also if the Service has made a recommendation for recognition which is operative within the meaning of section 15 above;
- (b) the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, he is required to be at work; and
- (c) "normal working hours" shall be construed in accordance with Part I of Schedule 4 to this Act.

### *Insolvency*

#### **63 Priority of certain debts on insolvency**

- (1) An amount to which this section applies shall be treated for the purposes of—
- (a) section 33 of the Bankruptcy Act 1914 ;
  - (b) section 118 of the Bankruptcy (Scotland) Act 1913 ; and
  - (c) section 319 of the Companies Act 1948 ;
- as if it were wages payable by the employer to the employee in respect of the period for which it is payable.
- (2) This section applies to any amount owed by an employer to an employee in respect of—
- (a) a guarantee payment;
  - (b) remuneration on suspension on medical grounds under section 29 above;
  - (c) any payment for time off under section 57(4) or 61(3) above;
  - (d) remuneration under a protective award made under section 101 below.

#### **64 Employee's rights on insolvency of employer**

- (1) If on an application made to him in writing by an employee the Secretary of State is satisfied—
- (a) that the employer of that employee has become insolvent ; and
  - (b) that on the relevant date the employee was entitled to be paid the whole or part of any debt to which this section applies,
- the Secretary of State shall, subject to the provisions of this section, pay the employee out of the Redundancy Fund the amount to which in the opinion of the Secretary of State the employee is entitled in respect of that debt.
- (2) In this section the " relevant date " in relation to a debt means the date on which the employer became insolvent or the date of the termination of the employee's employment, whichever is the later.
- (3) This section applies to the following debts:—
- (a) any arrears of pay in respect of a period or periods not exceeding in the aggregate eight weeks ;
  - (b) any amount which the employer is liable to pay the employee for the period of notice required by section 1(1) or (2) of the Contracts of Employment Act 1972 (minimum period of notice) or for any failure of the employer to give the period of notice required by section 1(1) of that Act;
  - (c) any holiday pay in respect of a period or periods of holiday, not exceeding six weeks in all, to which the employee became entitled during the 12 months immediately preceding the relevant date ;
  - (d) any basic award of compensation for unfair dismissal;
  - (e) any reasonable sum by way of reimbursement of the whole or part of any fee or premium paid by an apprentice or artied clerk.
- (4) For the purposes of subsection (3) (a) above any such amount as is referred to in section 63(2) above shall be treated as if it were arrears of pay.

- (5) The total amount payable to an employee in respect of any debt mentioned in subsection (3) above, where the amount of that debt is referable to a period of time, shall not exceed £80 in respect of any one week or, in respect of a shorter period, an amount bearing the same proportion to £80 as that shorter period bears to a week.
- (6) The Secretary of State may vary the limit referred to in subsection (5) above after a review under section 86 below, by order made in accordance with that section.
- (7) A sum shall be taken to be reasonable for the purposes of subsection (3)(e) above in a case where a trustee in bankruptcy or liquidator has been or is required to be appointed if it is admitted to be reasonable by the trustee in bankruptcy or liquidator under section 34 of the Bankruptcy Act 1914 (preferential claims of apprentices and articed clerks), whether as originally enacted or as applied to the winding up of a company by section 317 of the Companies Act 1948.
- (8) Subsection (7) above shall not apply to Scotland, but in Scotland a sum shall be taken to be reasonable for the purposes of subsection (3)(e) above in a case where a trustee in bankruptcy or liquidator has been or is required to be appointed if it is admitted by the trustee in bankruptcy or the liquidator for the purposes of the bankruptcy or winding up.
- (9) The provisions of subsections (10) and (11) below shall apply in a case where one of the following officers (hereafter in this section referred to as the "relevant officer") has been or is required to be appointed in connection with the employer's insolvency, that is to say, a trustee in bankruptcy, a liquidator, a receiver or manager, or a trustee under a composition or arrangement between the employer and his creditors or under a trust deed for his creditors executed by the employer; and in this subsection "liquidator" and "receiver" include the Official Receiver in his capacity as a provisional liquidator or interim receiver.
- (10) Subject to subsection (11) below, the Secretary of State shall not in such a case make any payment under this section in respect of any debt until he has received a statement from the relevant officer of the amount of that debt which appears to have been owed to the employee on the relevant date and to remain unpaid; and the relevant officer shall, on request by the Secretary of State, provide him, as soon as reasonably practicable, with such a statement.
- (11) Where—
  - (a) a period of six months has elapsed since the application for a payment under this section was received by the Secretary of State, but no such payment has been made;
  - (b) the Secretary of State is satisfied that a payment under this section should be made; and
  - (c) it appears to the Secretary of State that there is likely to be further delay before he receives a statement about the debt in question,then, the Secretary of State may, if the applicant so requests or, if the Secretary of State thinks fit, without such a request, make a payment under this section, notwithstanding that no such statement has been received.

## **65 Payment of unpaid contributions to occupational pension scheme**

- (1) If, on an application made to him in writing by the persons competent to act in respect of an occupational pension scheme, the Secretary of State is satisfied that an employer

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has become insolvent and that at the time that he did so there remained unpaid relevant contributions falling to be paid by him to the scheme, the Secretary of State shall, subject to the provisions of this section, pay into the resources of the scheme out of the Redundancy Fund the sum which in his opinion is payable in respect of the unpaid relevant contributions.

- (2) In this section " relevant contributions " means contributions falling to be paid by an employer in accordance with an occupational pension scheme, either on his own account or on behalf of an employee; and for the purposes of this section a contribution of any amount shall not be treated as falling to be paid on behalf of an employee unless a sum equal to that amount has been deducted from the pay of the employee by way of a contribution from him.
- (3) The sum payable under this section in respect of unpaid contributions of an employer on his own account to an occupational pension scheme shall be the least of the following amounts—
  - (a) the balance of relevant contributions remaining unpaid on the date when he became insolvent and payable by the employer on his own account to the scheme in respect of the 12 months immediately preceding that date;
  - (b) the amount certified by an actuary to be necessary for the purpose of meeting the liability of the scheme on dissolution to pay the benefits provided by the scheme to or in respect of the employees of the employer;
  - (c) an amount equal to 10 per cent, of the total amount of remuneration paid or payable to those employees in respect of the 12 months immediately preceding the date on which the employer became insolvent.
- (4) For the purposes of subsection (3)(c) above, "remuneration " includes holiday pay, maternity pay and any such payment as is referred to in section 63(2) above.
- (5) Any sum payable under this section in respect of unpaid contributions on behalf of an employee shall not exceed the amount deducted from the pay of the employee in respect of the employee's contributions to the occupational pension scheme during the 12 months immediately preceding the date on which the employer became insolvent.
- (6) The provisions of subsections (7) to (9) below shall apply in a case where one of the following officers (hereafter in this section referred to as the " relevant officer") has been or is required to be appointed in connection with the employers' insolvency, that is to say, a trustee in bankruptcy, a liquidator, a receiver or manager, or a trustee under a composition or arrangement between the employer and his creditors or under a trust deed for his creditors executed by the employer; and in this subsection " liquidator " and " receiver " include the Official Receiver in his capacity as a provisional liquidator or interim receiver.
- (7) Subject to subsection (9) below, the Secretary of State shall not in such a case make any payment under this section in respect of unpaid relevant contributions until he has received a statement from the relevant officer of the amount of relevant contributions which appear to have been unpaid on the date on which the employer became insolvent and to remain unpaid; and the relevant officer shall, on request by the Secretary of State provide him, as soon as reasonably practicable, with such a statement.
- (8) Subject to subsection (9) below, an amount shall be taken to be payable, paid or deducted as mentioned in subsection (3)(a) or (c) or subsection (5) above, only if it is so certified by the relevant officer.
- (9) Where—

- (a) a period of six months has elapsed since the application for a payment under this section was received by the Secretary of State, but no such payment has been made;
  - (b) the Secretary of State is satisfied that a payment under this section should be made; and
  - (c) it appears to the Secretary of State that there is likely to be further delay before he receives a statement or certificate about the contributions in question,
- then, the Secretary of State may, if the applicants so request or, if the Secretary of State thinks fit, without such a request, make a payment under this section, notwithstanding that no such statement or certificate has been received.

## **66 Complaint to industrial tribunal**

- (1) A person who has applied for a payment under section 64 above may, within the period of three months beginning with the date on which the decision of the Secretary of State on that application was communicated to him or, if that is not reasonably practicable, within such further period as is reasonable, present a complaint to an industrial tribunal that—
  - (a) the Secretary of State has failed to make any such payment; or
  - (b) any such payment made by the Secretary of State is less than the amount which should have been paid.
- (2) Any persons who are competent to act in respect of an occupational pension scheme and who have applied for a payment to be made under section 65 above into the resources of the scheme may, within the period of three months beginning with the date on which the decision of the Secretary of State on that application was communicated to them, or, if that is not reasonably practicable, within such further period as is reasonable, present a complaint to an industrial tribunal that—
  - (a) the Secretary of State has failed to make any such payment; or
  - (b) any such payment made by him is less than the amount which should have been paid.
- (3) Where an industrial tribunal finds that the Secretary of State ought to make a payment under section 64 or 65 above, it shall make a declaration to that effect and shall also declare the amount of any such payment which it finds the Secretary of State ought to make.

## **67 Transfer to the Secretary of State of rights and remedies**

- (1) Where in pursuance of section 64 above the Secretary of State makes any payment to an employee in respect of any debt to which that section applies—
  - (a) any rights and remedies of the employee in respect of that debt (or, if the Secretary of State has paid only part of it, in respect of that part) shall, on the making of the payment, become rights and remedies of the Secretary of State; and
  - (b) any decision of an industrial tribunal requiring an employer to pay that debt to the employee shall have the effect that the debt or, as the case may be, that part of it which the Secretary of State has paid, is to be paid to the Secretary of State.

- (2) There shall be included among the rights and remedies which become rights and remedies of the Secretary of State in accordance with subsection (1)(a) above any right to be paid in priority to other creditors of the employer in accordance with—
- (a) section 33 of the Bankruptcy Act 1914 ;
  - (b) section 118 of the Bankruptcy (Scotland) Act 1913; and
  - (c) section 319 of the Companies Act 1948,
- and the Secretary of State shall be entitled to be so paid in priority to any other unsatisfied claim of the employee; and in computing for the purposes of any of those provisions any limit on the amount of sums to be so paid any sums paid to the Secretary of State shall be treated as if they had been paid to the employee.
- (3) Where in pursuance of section 65 above the Secretary of State makes any payment into the resources of an occupational pension scheme in respect of any contributions to the scheme, any rights and remedies in respect of those contributions belonging to the persons competent to act in respect of the scheme shall, on the making of the payment, become rights and remedies of the Secretary of State.
- (4) Any sum recovered by the Secretary of State in exercising any right or pursuing any remedy which is his by virtue of this section shall be paid into the Redundancy Fund.

#### **68 Power of Secretary of State to obtain information in connection with applications**

- (1) Where an application is made to the Secretary of State under section 64 or 65 above in respect of a debt owed, or contributions to an occupational pension scheme falling to be made, by an employer, the Secretary of State may require—
- (a) the employer to provide him with such information as the Secretary of State may reasonably require for the purpose of determining whether the application is well-founded ; and
  - (b) any person having the custody or control of any relevant records or other documents to produce for examination on behalf of the Secretary of State any such document in that person's custody or under his control which is of such a description as the Secretary of State may require.
- (2) Any such requirement shall be made by notice in writing given to the person on whom the requirement is imposed and may be varied or revoked by a subsequent notice so given.
- (3) If a person refuses or wilfully neglects to furnish any information or produce any document which he has been required to furnish or produce by a notice under this section he shall be liable on summary conviction to a fine not exceeding £100.
- (4) If a person, in purporting to comply with a requirement of a notice under this section, knowingly or recklessly makes any false statement he shall be liable on summary conviction to a fine not exceeding £400.

#### **69 Interpretation of ss. 64 to 68**

- (1) For the purposes of sections 64 to 68 above an employer shall be taken to be insolvent if, but only if, in England and Wales.—
- (a) he becomes bankrupt or makes a composition or arrangement with his creditors or a receiving order is made against him;

- (b) he has died and an order is made under section 130 of the Bankruptcy Act 1914 for the administration of his estate according to the law of bankruptcy, or by virtue of an order of the court his estate is being administered in accordance with rules set out in Part I of Schedule 1 to the Administration of Estates Act 1925; or
  - (c) where the employer is a company, a winding up order is made or a resolution for voluntary winding up is passed with respect to it, or a receiver or manager of its undertaking is duly appointed, or possession is 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.
- (2) For the purposes of sections 64 to 68 above an employer shall be taken to be insolvent if, but only if, in Scotland.—
- (a) an award of sequestration is made on his estate or he executes a trust deed for his creditors or enters into a composition contract;
  - (b) he has died and a judicial factor appointed under section 163 of the Bankruptcy (Scotland) Act 1913 is required by that section to divide his insolvent estate among his creditors ; or
  - (c) where the employer is a company, a winding up order is made or a resolution for voluntary winding up is passed with respect to it or a receiver of its undertaking is duly appointed.
- (3) In sections 64 to 68 above—
- " holiday pay " means—
- (a) pay in respect of a holiday actually taken; or
  - (b) any accrued holiday pay which under the employee's contract of employment would in the ordinary course have become payable to him in respect of the period of a holiday if his employment with the employer had continued until he became entitled to a holiday ;
- " occupational pension scheme " means any scheme or arrangement which provides or is capable of providing, in relation to employees in any description of employment, benefits (in the form of pensions or otherwise) payable to or in respect of any such employees on the termination of their employment or on their death or retirement;

and any reference in those sections to the resources of such a scheme is a reference to the funds out of which the benefits provided by the scheme are from time to time payable.

#### *Written statement of reasons for dismissal*

### **70 Written statement of reasons for dismissal**

- (1) An employee shall be entitled—
- (a) if he is given by his employer notice of termination of his contract of employment;
  - (b) if his contract of employment is terminated by his employer without notice ; or
  - (c) if, where he is employed under a contract for a fixed term, that term expires without being renewed under the same contract,
- to be provided by his employer, on request, within 14 days of that request, with a written statement giving particulars of the reasons for his dismissal.

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- (2) An employee shall not be entitled to a written statement under subsection (1) above unless on the effective date of termination he has been, or will have been, continuously employed for a period of 26 weeks ending with the last complete week before that date.
- (3) A written statement provided under this section shall be admissible in evidence in any proceedings.
- (4) A complaint may be presented to an industrial tribunal by an employee against his employer on the ground that the employer unreasonably refused to provide a written statement under subsection (1) above or that the particulars of reasons given in purported compliance with that subsection are inadequate or untrue, and if the tribunal finds the complaint well-founded—
  - (a) it may make a declaration as to what it finds the employer's reasons were for dismissing the employee; and
  - (b) it shall make an award that the employer pay to the employee a sum equal to the amount of two weeks' pay.
- (5) An industrial tribunal shall not entertain a complaint under this section relating to the reasons for a dismissal unless it is presented to the tribunal at such a time that the tribunal would, in accordance with paragraph 21(4) or (4A) of Schedule 1 to the 1974 Act, entertain a complaint of unfair dismissal in respect of that dismissal presented at the same time.
- (6) For the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purposes of this section, the calculation date where the dismissal was with notice is the date on which the employer's notice was given and in any other case is the effective date of termination.

#### *Remedies for unfair dismissal*

### **71 Order for reinstatement or re-engagement**

- (1) Where on a complaint under paragraph 17 of Schedule 1 to the 1974 Act (unfair dismissal) an industrial tribunal finds that the grounds of the complaint are well-founded, it shall explain to the complainant what orders for reinstatement or re-engagement may be made under this section and in what circumstances they may be made, and shall ask him whether he wishes the tribunal to make such an order, and if he does express such a wish the tribunal may make an order under this section.
- (2) An order under this section may be an order for reinstatement (in accordance with subsections (3) and (4) below) or an order for re-engagement (in accordance with subsection (5) below), as the tribunal may decide, and in the latter case may be on such terms as the tribunal may decide.
- (3) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed, and on making such an order the tribunal shall specify—
  - (a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal, including arrears of pay, for the period between the date of termination of employment and the date of reinstatement;
  - (b) any rights and privileges, including seniority and pension rights, which must be restored to the employee; and



- (c) the date by which the order must be complied with.
- (4) Without prejudice to the generality of subsection (3) above, if the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.
- (5) An order for re-engagement is an order that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment, and on making such an order the tribunal shall specify the terms on which re-engagement is to take place including—
- (a) the identity of the employer;
  - (b) the nature of the employment;
  - (c) the remuneration for the employment;
  - (d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal, including arrears of pay, for the period between the date of termination of employment and the date of re-engagement;
  - (e) any rights and privileges, including seniority and pension rights, which must be restored to the employee ; and
  - (f) the date by which the order must be complied with.
- (6) In exercising its discretion under this section the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account the following considerations, that is to say—
- (a) whether the complainant wishes to be reinstated;
  - (b) whether it is practicable for the employer to comply with an order for reinstatement;
  - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.
- (7) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and if so on what terms; and in so doing the tribunal shall take into account the following considerations, that is to say—
- (a) any wish expressed by the complainant as to the nature of the order to be made;
  - (b) whether it is practicable for the employer or, as the case may be, a successor or associated employer to comply with an order for re-engagement;
  - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and if so on what terms;
- and except in a case where the tribunal takes into account contributory fault under paragraph (c) above it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.
- (8) Where in any case an employer has engaged a permanent replacement for a dismissed employee the tribunal shall not take that fact into account in determining, for the purposes of subsection (6)(b) or (7)(b) above whether it is practicable to comply with an order for reinstatement or re-engagement unless the employer shows—
- (a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement; or

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- (b) that he engaged the replacement after the lapse of a reasonable period, without having heard from "the dismissed employee that he wished to be reinstated or re-engaged, and that when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.
- (9) In calculating for the purpose of subsection (3)(a) or (5)(d) above any amount payable by the employer the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement or re-engagement by way of—
- (a) wages in lieu of notice or ex gratia payments paid by the employer;
  - (b) remuneration paid in respect of employment with another employer;
- and such other benefits as the tribunal thinks appropriate in the circumstances.

## 72 Enforcement of s. 71 order and compensation

- (1) If an order under section 71 above is made and the complainant is reinstated or, as the case may be, re-engaged but the terms of the order are not fully complied with, then, subject to paragraph 20 of Schedule 1 to the 1974 Act (limit on compensation), an industrial tribunal shall make an award of compensation, to be paid by the employer to the employee, of such amount as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.
- (2) Subject to subsection (1) above, if an order under section 71 above is made but the complainant is not reinstated or, as the case may be, re-engaged in accordance with the order—
- (a) the tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with sections 73 to 76 below, to be paid by the employer to the employee; and
  - (b) unless the employer satisfies the tribunal that it was not practicable to comply with the order, the tribunal shall make an additional award of compensation to be paid by the employer to the employee of an amount—
    - (i) where the dismissal is of a description referred to in subsection (3) below, not less than 26 or more than 52 weeks' pay, or
    - (ii) in any other case, not less than 13 or more than 26 weeks' pay.
- (3) The descriptions of dismissal in respect of which an employer may incur a higher additional award in accordance with subsection (2)(6)(i) above are the following, that is to say.—
- (a) a dismissal which is unfair by virtue of paragraph 6(4) or (5) of Schedule 1 to the 1974 Act (dismissal for membership or non-membership of a trade union, or for taking part in the activities of an independent trade union);
  - (b) a dismissal which is an unlawful act of discrimination by virtue of section 3(1) of the Race Relations Act 1968 ;
  - (c) a dismissal which is an act of discrimination (within the meaning of the Sex Discrimination Act 1975) which is unlawful by virtue of that Act.
- (4) Where in any case an employer has engaged a permanent replacement for a dismissed employee the tribunal shall not take that fact into account in determining, for the purposes of subsection (2)(b) above whether it was practicable to comply with the

order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement.

- (5) If on a complaint under paragraph 17 of Schedule 1 to the 1974 Act the tribunal finds that the grounds of the complaint are well-founded, and no order is made under section 71 above the tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with sections 73 to 76 below, to be paid by the employer to the employee.
- (6) Where in any case the tribunal makes an award of compensation for unfair dismissal, calculated in accordance with sections 73 to 76 below, and the tribunal finds that the complainant has unreasonably prevented an order under section 71 above from being complied with, it shall, without prejudice to the generality of section 76(4) below, take that conduct into account as a failure on the part of the complainant to mitigate his loss.
- (7) For the purposes of Part II of Schedule 4 as it applies for the calculation of a week's pay for the purpose of subsection (2) (b) above, the calculation date where the dismissal was with notice is the date on which the notice was given and in any other case the effective date of termination.
- (8) Notwithstanding anything in the said Part II, the amount of a week's pay for the purpose of calculating an additional award under subsection (2) (b) above shall not exceed £80,

### **73 Compensation for unfair dismissal**

Where a tribunal makes an award of compensation for unfair dismissal under section 72(2)(a) or (5) above, the award shall consist of a basic award (calculated in accordance with sections 74 and 75 below) and a compensatory award (calculated in accordance with section 76 below).

### **74 Calculation of basic award**

- (1) The amount of the basic award shall be the amount calculated in accordance with subsections (3) to (7) and sections 75(1) to (6) below, subject to the following provisions of this Act, namely—
  - (a) subsection (2) below (which provides for an award of two weeks' pay in certain cases);
  - (b) section 75(7) below (which provides for the amount of the award to be reduced where the employee contributed to the dismissal);
  - (c) section 75(8) below (which provides for the amount of the award to be reduced where the employee received a payment in respect of redundancy); and
  - (d) section 77 below (which prohibits double compensation where compensation in respect of the same matter is also awarded under the Sex Discrimination Act 1975).
- (2) In the following cases the amount of the basic award shall be two weeks' pay:—
  - (a) where the tribunal finds that the reason or principal reason for the dismissal of the employee was that he was redundant and the employee—
    - (i) by virtue of section 2(5) or (6) of the Redundancy Payments Act 1965 (unreasonable refusal or relinquishment of suitable alternative

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- employment) is not, or if he were otherwise entitled would not be, entitled to a redundancy payment; or
- (ii) by virtue of the operation of section 3(3) of that Act (renewal of employment or re-engagement) is not treated as dismissed for the purposes of Part I of that Act;
- (b) where the amount calculated in accordance with subsections (3) to (7) and section 75(1) to (7) below is less than the amount of two weeks' pay.
- (3) The amount of the basic award shall be calculated by reference to the period, ending with the effective date of termination, during which the employee has been continuously employed, by starting at the end of that period and reckoning backwards the numbers of years of employment falling within that period, and allowing—
- (a) one and a half weeks' pay for each such year of employment which consists wholly of weeks in which the employee was not below the age of 41 ;
- (b) one week's pay for each such year of employment which consists wholly of weeks in which the employee was below the age of 41 and was not below the age of 22 ; and
- (c) half a week's pay for each such year of employment which consists wholly of weeks in which the employee was below the age of 22 and was not below the age of 18.
- (4) In ascertaining for the purpose of subsection (3) above the period for which an employee has been continuously employed, where the effective date of termination falls to be determined in accordance with paragraph 5(6) of Schedule 1 to the 1974 Act, a period falling within such an interval as is referred to in paragraph 30(1 A) of that Schedule (period of continuous employment) shall count as a period of employment notwithstanding that it does not count under Schedule 1 to the Contracts of Employment Act 1972 (computation of period of employment).
- (5) Where in reckoning the number of years of employment in accordance with subsection (3) above 20 years of employment have been reckoned no account shall be taken of any year of employment earlier than those 20 years.
- (6) Where in the case of an employee the effective date of termination is after the specified anniversary the amount of the basic award calculated in accordance with subsections (3) to (5) above shall be reduced by the appropriate fraction.
- (7) In subsection (6) above " the specified anniversary " in relation to a man means the 64th anniversary of the day of his birth, and in relation to a woman means the 59th anniversary of the day of her birth, and " the appropriate fraction " means the fraction of which—
- (a) the numerator is the number of whole months reckoned from the specified anniversary in the period beginning with that anniversary and ending with the effective date of termination; and
- (b) the denominator is 12.

## **75 Provisions supplementary to s. 74**

- (1) For the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purposes of section 74 above, the calculation date is, subject to subsection (3) below, the date on which notice would have been given by the employer had the conditions referred to in subsection (2) below been fulfilled (whether those conditions were in fact fulfilled or not).

- (2) Those conditions are that the contract was terminable by notice and was terminated by the employer giving such notice as is required to terminate that contract by section 1(1) of the Contracts of Employment Act 1972 (minimum period of notice), and that the notice expired on the effective date of termination.
- (3) Where by virtue of paragraph 5(6) of Schedule 1 to the 1974 Act a date is to be treated as the effective date of termination for the purposes of section 74(3) above which is later than the effective date of termination as defined by paragraph 5(5) of that Schedule, then, for the purposes of Part II of Schedule 4 to this Act as it applies for the calculation of a week's pay for the purpose of section 74 above, the calculation date is the effective date of termination as defined by the said paragraph 5(5).
- (4) Notwithstanding anything in the said Part II, the amount of a week's pay for the purpose of calculating a basic award shall not exceed £80.
- (5) The Secretary of State may, after a review under section 86 below, vary the limit referred to in subsection (4) above by order made in accordance with that section.
- (6) Without prejudice to the generality of the power to make transitional provision in an order under subsection (5) above, such an order may provide that it shall apply in the case of a dismissal in relation to which the effective date of termination for the purposes of this subsection (as defined by paragraph 5(6) of Schedule 1 to the 1974 Act) falls after the order comes into operation, notwithstanding that the effective date of termination for the purposes of other provisions of this Act or the 1974 Act (as defined by paragraph 5(5) of Schedule 1 to the 1974 Act) falls before the order comes into operation.
- (7) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall, except in a case where the dismissal was by reason of redundancy, reduce the amount of the basic award by such proportion as it considers just and equitable having regard to that finding.
- (8) The amount of the basic award shall be reduced or, as the case may be, be further reduced, by the amount of any redundancy payment awarded by the tribunal under the Redundancy Payments Act 1965 in respect of the same dismissal or of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy, whether in pursuance of the said Act of 1965 or otherwise.

## **76 Calculation of compensatory award**

- (1) Subject to paragraph 20 of Schedule 1 to the 1974 Act (limit on compensation) and to section 77 below, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.
- (2) The said loss shall be taken to include—
  - (a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and
  - (b) subject to subsection (3) below, loss of any benefit which he might reasonably be expected to have had but for the dismissal.
- (3) The said loss, in respect of any loss of any entitlement or potential entitlement to, or expectation of, a payment on account of dismissal by reason of redundancy, whether in

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pursuance of the Redundancy Payments Act 1965 or otherwise, shall include only the loss referable to the amount, if any, by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 75(7) or (8) above) in respect of the same dismissal.

- (4) In ascertaining the said loss the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or of Scotland, as the case may be.
- (5) In determining for the purposes of subsection (1) above how far any loss sustained by the complainant was attributable to action taken by the employer no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee, and that question shall be determined as if no such pressure had been exercised.
- (6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.
- (7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy, whether in pursuance of the Redundancy Payments Act 1965 or otherwise, exceeds the amount of the basic award which would be payable but for section 75(8) above that excess shall go to reduce the amount of the compensatory award.

#### **77 Compensation for act which is both sex discrimination and unfair dismissal**

- (1) Where compensation falls to be awarded in respect of any act both under the Sex Discrimination Act 1975 and under the provisions of this Act relating to unfair dismissal, an industrial tribunal shall not award compensation under that Act or this Act in respect of any loss or other matter which is or has been taken into account under the other Act by the tribunal or another industrial tribunal in awarding compensation on the same or another complaint in respect of that act.
- (2) Without prejudice to paragraph 20 of Schedule 1 to the 1974 Act (limit on compensation), whether as set out in Part III of Schedule 16 to this Act or as applied by section 65 of the Sex Discrimination Act 1975, in a case to which subsection (1) above applies the aggregate of the following amounts of compensation awarded by an industrial tribunal, that is to say—
  - (a) any compensation awarded under the said Act of 1975 ; and
  - (b) any compensation awarded under section 72(1) above or, as the case may be, which is calculated in accordance with section 76 above,
 shall not exceed the limit for the time being imposed by the said paragraph 20.

#### **78 Interim relief pending determination of complaint of unfair dismissal**

- (1) An employee who presents a complaint to an industrial tribunal that he has been unfairly dismissed by his employer and that the reason for the dismissal (or, if more than one, the principal reason) was that the employee—
  - (a) was, or proposed to become, a member of a particular independent trade union,
  - or

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- (b) had taken, or proposed to take, part at any appropriate time in the activities of a particular independent trade union of which he was or proposed to become a member;

may, subject to the following provisions of this section, apply to the tribunal for an order under the following provisions of this section.

- (2) An industrial tribunal shall not entertain an application under this section unless—
  - (a) it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date); and
  - (b) before the end of that period there is also so presented a certificate in writing signed by an authorised official of the independent trade union of which the employee was or had proposed to become a member stating that on the date of the dismissal the employee was or had proposed to become a member of the union and that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.
- (3) An industrial tribunal shall determine an application under this section as soon as practicable after receiving the application and the relevant certificate, but shall, at least seven days before the date of the hearing, give the employer a copy of the application and certificate, together with notice of the date, time and place of the hearing.
- (4) An industrial tribunal shall not exercise any power it has of postponing the hearing in the case of an application under this section except where the tribunal is satisfied that special circumstances exist which justify it in doing so.
- (5) If on hearing an application under this section it appears to an industrial tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find that the complainant was unfairly dismissed and that the reason for the dismissal or (if more than one, the principal reason) was a reason mentioned in subsection (1) above, the tribunal shall announce its findings and explain to both parties (if present) what powers the tribunal may exercise on an application under this section and in what circumstances it may exercise them, and shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—
  - (a) to reinstate the employee, that is to say, to treat the employee in all respects as if he had not been dismissed ; or
  - (b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.
- (6) In subsection (5) above "terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed " means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal shall be regarded as continuous with his employment following the dismissal.
- (7) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.
- (8) If the employer states that he is willing to re-engage the employee in another job and specifies the terms and conditions on which he is willing to do so, the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions, and—

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- (a) if the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect; and
  - (b) if the employee is unwilling to accept the job on those terms and conditions, then, if the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, but otherwise the tribunal shall make no order under this section.
- (9) If on the hearing of an application under this section the employer fails to attend before the tribunal or he states that he is unwilling either to reinstate the employee or re-engage him as mentioned in subsection (5) above, the tribunal shall make an order for the continuation of the employee's contract of employment.
- (10) In this section—
- " appropriate time " has the same meaning as in section 53 above;
  - " authorised official ", in relation to a trade union, means an official of the union authorised by the union to act for the purposes of this section ;
- and any reference to the date of dismissal is a reference—
- (a) where the employee's contract of employment was terminated by notice (whether given by his employer or by him), to the date on which the employer's notice was given; and
  - (b) in any other case, to the effective date of termination.
- (11) A document purporting to be an authorisation of an official by a trade union to act for the purposes of this section and to be signed on behalf of the union shall be taken to be such an authorisation unless the contrary is proved, and a document purporting to be a certificate signed by such an official shall be taken to be signed by him unless the contrary is proved.

## **79 Orders for continuation of contract of employment**

- (1) An order for the continuation of a contract of employment under section 78 above shall be an order that the contract of employment, if it has been terminated, shall continue in force as if it had not been terminated and if not shall on its termination continue in force, in either case until the determination or settlement of the complaint and only for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters and for the purpose of determining for any purpose the period for which the employee has been continuously employed.
- (2) Where the tribunal makes any such order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period or part of any such period falling between the date of the dismissal and the determination or settlement of the complaint and, subject to subsection (5) below, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period or part, and shall be paid, in the case of a payment for any such period falling wholly or partly after the order, on the normal pay day for that period and, in the case of a payment for any past period, within a time so specified.
- (3) If an amount is payable by way of pay in pursuance of any such order in respect only of part of a normal pay period the amount shall be calculated by reference to the whole period and be reduced proportionately.
- (4) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of any normal pay period



or part of any such period shall go towards discharging the employer's liability in respect of that period under subsection (2) above, and conversely any payment under subsection (2) above in respect of any period shall go towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.

- (5) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.
- (6) For the purposes of this section the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

## **80 Supplementary provisions as to interim relief**

- (1) At any time between the making of an order by an industrial tribunal under section 78 above and the determination or settlement of the complaint to which it relates, the employer or the employee may apply to the tribunal for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order, and that section shall apply to the application as it applies to an application for an order under that section except that—
  - (a) no certificate need be presented to the tribunal under subsection (2) (b), and no copy of the certificate need be given to the employer under subsection (3), of that section; and
  - (b) in the case of an application by an employer, for the reference in the said subsection (3) to the employer there shall be substituted a reference to the employee.
- (2) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under section 78(7) or (8) above.—
  - (a) the tribunal shall make an order for the continuation of the employee's contract of employment and section 79 above shall apply to an order under this subsection as it applies to an order for the continuation of a contract of employment under section 78 above; and
  - (b) the tribunal shall also order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order under section 78(7) or (8) above and to any loss suffered by the employee in consequence of the non-compliance.
- (3) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment, then—
  - (a) if the non-compliance consists of a failure to pay an amount by way of pay specified in the order, the tribunal shall determine the amount of pay owed by the employer to the employee on the date of the determination, and, if on that date the tribunal also determines the employee's complaint that he has been unfairly dismissed by his employer, the tribunal shall specify that amount separately from any other sum awarded to the employee ; and

- (b) in any other case, the tribunal shall order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.
- (4) An industrial tribunal hearing an application under section 78 above or this section may consist of a President of Industrial Tribunals, the chairman of the tribunal or a member of a panel of chairmen of such tribunals for the time being nominated by a President to hear such applications.

### *Itemised pay statement*

## **81 Right to itemised pay statement**

Every employee shall have the right to be given by his employer at or before the time at which any payment of wages or salary is made to him an itemised pay statement, in writing, containing the following particulars, that is to say.—

- (a) the gross amount of the wages or salary;
- (b) the amounts of any variable and, subject to section 82 below, any fixed deductions from that gross amount and the purposes for which they are made;
- (c) the net amount of wages or salary payable; and
- (d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

## **82 Standing statement of fixed deductions**

- (1) A pay statement given in accordance with section 81 above need not contain separate particulars of a fixed deduction if it contains instead an aggregate amount of fixed deductions, including that deduction, and the employer has given to the employee, at or before the time at which that pay statement is given, a standing statement of fixed deductions, in writing, which contains the following particulars of each deduction comprised in that aggregate amount, that is to say.—
- (a) the amount of the deduction ;
  - (b) the intervals at which the deduction is to be made ; and
  - (c) the purpose for which it is made,
- and which, in accordance with subsection (4) below, is effective at the date on which the pay statement is given.
- (2) A standing statement of fixed deductions may be amended, whether by addition of a new deduction or by a change in the particulars or cancellation of an existing deduction, by notice in writing, containing particulars of the amendment, given by the employer to the employee.
- (3) An employer who has given to an employee a standing statement of fixed deductions shall, within the period of 12 months beginning with the date on which the first standing statement was given and at intervals of not more than 12 months thereafter, re-issue it in a consolidated form incorporating any amendments notified in accordance with subsection (2) above.
- (4) A standing statement of fixed deductions shall become effective, for the purposes of subsection (1) above, on the date on which it is given to the employee and shall cease to have effect on the expiration of the period of 12 months beginning with that date,

or, where it is re-issued in accordance with subsection (3) above, the expiration of the period of 12 months beginning with the date on which it was last re-issued.

### **83 Supplementary**

The Secretary of State may by order—

- (a) vary the provisions of sections 81 and 82 above as to the particulars which must be included in a pay statement or a standing statement of fixed deductions by adding items to or removing items from the particulars listed in those sections or by amending any such particulars; and
- (b) vary the provisions of section 82(3) and (4) above so as to shorten or extend the periods of 12 months referred to in those subsections, or those periods as varied from time to time under this section.

### **84 Reference to industrial tribunal**

- (1) Where an employer is required by section 81 above to give any employee a pay statement and he does not do so, the employee may require a reference to be made to an industrial tribunal to determine what particulars ought to have been included in a statement so as to comply with the requirements of that section.
- (2) Where a pay statement, or a standing statement of fixed deductions, purporting to comply with section 81 or 82(1) above, has been given to an employee and a question arises as to the particulars which ought to have been included in that statement so as to comply with the requirements of section 81, or, as the case may be, section 82(1), either the employer or the employee may require that question to be referred to and determined by an industrial tribunal.
- (3) In this section a question as to the particulars which ought to have been included in a statement does not include a question solely as to the accuracy of an amount stated in any such particulars.
- (4) An industrial tribunal shall not entertain a reference under this section in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made is made before the end of the period of three months beginning with the date on which the employment ceased.
- (5) Where on a reference under this section an industrial tribunal finds that an employer has failed to give an employee any pay statement in accordance with section 81 above or that a pay statement or standing statement of fixed deductions does not, in relation to a deduction, contain the particulars required to be included in that statement by that section or section 82(1) above—
  - (a) the tribunal shall make a declaration to that effect; and
  - (b) where the tribunal further finds that any unnotified deductions have been made from the pay of the employee during the period of 13 weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay the employee a sum not exceeding the aggregate of the unnotified deductions so made.

In this subsection " unnotified deduction " means a deduction made without the employer giving the employee, in any pay statement or standing statement of fixed deductions, the particulars of that deduction required by section 81 or 82(1) above.

*Normal working hours and a week's pay*

**85 Calculation of normal working hours and a week's pay**

- (1) Schedule 4 to this Act shall have effect for calculating for the purposes of this Act, the Redundancy Payments Act 1965, the Contracts of Employment Act 1972, and the 1974 Act the normal working hours and the amount of a week's pay of any employee and, in the case of the said Acts of 1965 and 1972, shall have effect instead of the relevant provisions of paragraph 5 of Schedule 1 and of Schedule 2 to the said Act of 1965 and of Schedule 2 to the said Act of 1972.
- (2) In consequence of subsection (1) above, Schedule 2 to the said Act of 1972 shall have effect (as respects the liability of an employer to an employee for the period of notice required by section 1(1) or (2) of that Act), as set out in Schedule 5 to this Act.

**86 Review of limits**

- (1) The Secretary of State shall in each calendar year, beginning with the first year after that in which this section first comes into force, review—
  - (a) the limits referred to in section 25 above;
  - (b) the limit referred to in section 64(5) above ; and
  - (c) the limits imposed by paragraph 5(4) of Schedule 1 to the Redundancy Payments Act 1965 and by section 72(8) or 75(4) above on the amount of a week's pay for the purposes of those provisions ;and shall determine whether any of those limits should be varied.
- (2) In making a review under this section the Secretary of State shall consider—
  - (a) the general level of earnings obtaining in Great Britain at the time of the review ;
  - (b) the national economic situation as a whole; and
  - (c) such other matters as he thinks relevant.
- (3) If on a review under this section the Secretary of State determines that, having regard to the considerations mentioned in subsection (2) above, any of those limits should be varied, he shall prepare and lay before each House of Parliament the draft of an order giving effect to his decision.
- (4) Where a draft of an order under this section is approved by resolution of each House of Parliament the Secretary of State shall make an order in the form of the draft.
- (5) If, following the completion of an annual review under this section, the Secretary of State determines that any of the limits referred to in subsection (1) above should not be varied, he shall lay before each House of Parliament a report containing a statement of his reasons for that determination.
- (6) The Secretary of State may at any time, in addition to the annual review provided for in subsection (1) above, conduct a further review of the limits mentioned in subsection (1) above, so as to determine whether any of those limits should be varied, and subsections (2) to (4) above shall apply to such a review as if it were a review under subsection (1) above.

### *Employment Appeal Tribunal*

#### **87 Establishment and membership of Employment Appeal Tribunal**

- (1) For the purpose of hearing appeals under section 88 below there shall be a tribunal to be known as the Employment Appeal Tribunal (hereafter in this Act referred to as "the Appeal Tribunal").
- (2) The Appeal Tribunal shall consist of—
  - (a) such number of judges as may be nominated from time to time by the Lord Chancellor from among the judges (other than the Lord Chancellor) of the High Court and the Court of Appeal;
  - (b) at least one judge of the Court of Session nominated from time to time by the Lord President of that Court; and
  - (c) such number of other members as may be appointed from time to time by Her Majesty on the joint recommendation of the Lord Chancellor and the Secretary of State.
- (3) The members of the Appeal Tribunal appointed under subsection (2)(c) above shall be persons who appear to the Lord Chancellor and the Secretary of State to have special knowledge or experience of industrial relations, either as representatives of employers or as representatives of workers.
- (4) The Lord Chancellor shall, after consultation with the Lord President of the Court of Session, appoint one of the judges nominated under subsection (2) above to be President of the Appeal Tribunal.
- (5) No judge shall be nominated a member of the Appeal Tribunal except with his consent.
- (6) The provisions of Schedule 6 to this Act shall have effect with respect to the Appeal Tribunal and proceedings before the Tribunal.

#### **88 Appeals from industrial tribunals and Certification Officer**

- (1) An appeal shall lie to the Appeal Tribunal on a question of law arising from any decision of, or arising in any proceedings before, an industrial tribunal under, or by virtue of, the following Acts—
  - (a) the Redundancy Payments Act 1965;
  - (b) the Equal Pay Act 1970;
  - (c) the Contracts of Employment Act 1972 ;
  - (d) the 1974 Act;
  - (e) the Sex Discrimination Act 1975 ;
  - (f) this Act.
- (2) The Appeal Tribunal shall hear appeals on questions of law arising in any proceedings before, or arising from any decision of, the Certification Officer under the following enactments —
  - (a) sections 3, 4 and 5 of the Trade Union Act 1913 ;
  - (b) section 4 of the Trade Union (Amalgamations, etc.) Act 1964.
- (3) The Appeal Tribunal shall hear appeals on questions of fact or law arising in any proceedings before, or arising from any decision of, the Certification Officer under the following enactments—

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- (a) section 8 of the 1974 Act;
  - (b) section 8 above.
- (4) Without prejudice to section 13 of the Administration of Justice Act 1960 (appeal in case of contempt of court), an appeal shall lie on any question of law from any decision or order of the Appeal Tribunal with the leave of the Tribunal or of the Court of Appeal, or as the case may be, the Court of Session.—
- (a) in the case of proceedings in England and Wales, to the Court of Appeal;
  - (b) in the case of proceedings in Scotland, to the Court of Session.
- (5) No appeal shall lie except to the Appeal Tribunal from any decision of an industrial tribunal under the Acts listed in subsection (1) above or from any decision of the Certification Officer under the enactments listed in subsections (2) and (3) above.