

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Employment Act 1989, Cross Heading: Employment Protection (Consolidation) Act 1978 (c. 44). (See end of Document for details)

SCHEDULES

SCHEDULE 6

MINOR AND CONSEQUENTIAL AMENDMENTS

Employment Protection (Consolidation) Act 1978 (c. 44)

18 In section 1(4) (written particulars of terms of employment), after “subsection (5) insert “ and section 2A(1) ”.

19 For section 32 substitute—

“32 Provisions supplementary to ss. 27 to 31A.

(1) For the purposes of sections 27 to 31A 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.

(2) For the purposes of sections 27 and 28 a trade union shall be taken to be recognised by an employer if it is recognised by him, to any extent, for the purpose of collective bargaining, that is to say, negotiations related to or connected with one or more of the matters specified in section 29(1) of the Trade Union and Labour Relations Act 1974.”

20 F1

Textual Amendments

F1 Sch. 6 para. 20 repealed by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(2), [Sch. 3](#)

21 (1) Section 106 (payments out of fund to employees) shall be amended as follows.

(2) After subsection (1) insert—

“(1A) In this Act “employer’s payment, in relation to an employee, means—

- (a) a redundancy payment which his employer is liable to pay to him under the foregoing provisions of this Part, or
- (b) a payment which his employer is, under an agreement in respect of which an order is in force under section 96, liable to make to him on the termination of his contract of employment.

(1B) In relation to a case where, under section 85, 92 or 110, an industrial tribunal determines that an employer is liable to pay only part of a redundancy

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payment, the reference in subsection (1A)(a) above to a redundancy payment shall be construed as a reference to that part of the redundancy payment.”

(3) In subsection (2), for “section 104(1) substitute “ subsection (1A) ”.

(4) Omit subsection (4).

22 For section 108 substitute—

“108 References to tribunal relating to payments under s.106.

(1) Where on an application made to the Secretary of State for a payment under section 106 it is claimed that an employer is liable to pay an employer’s payment, there shall be referred to an industrial tribunal—

- (a) any question as to the liability of the employer to pay the employer’s payment; and
- (b) any question as to the amount of the sum payable in accordance with Schedule 7.

(2) For the purposes of any reference under this section an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy.”

23 In section 127(2)(a) (interpretation of sections 122 to 126), for “an award of sequestration is made on his estate” substitute “ sequestration of his estate is awarded ”.

24 In section 153(1) (interpretation), for the definition of “employer’s payment substitute—

““employer’s payment has the meaning given by section 106(1A) and (1B);”.

25 (1) Schedule 7 (calculation of payments to employees out of Redundancy Fund) shall be amended as follows.

(2) In paragraph 1(2), for “section 104(6) substitute “ section 106(1B) ”.

(3) For paragraph 2 substitute—

“2 (1) Where the employer’s payment is not a redundancy payment or part of a redundancy payment, the sum referred to in section 106(2) is a sum equal to—

- (a) the amount of the employer’s payment, or
 - (b) the amount of the relevant redundancy payment,
- whichever is less.

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- (2) The reference in sub-paragraph (1)(b) to the amount of the relevant redundancy payment is a reference to the amount of the redundancy payment which the employer would have been liable to pay to the employee if—
- (a) the order in force in respect of the agreement as mentioned in section 106(1A)(b) had not been made;
 - (b) the circumstances in which the employer’s payment is payable had been such that the employer was liable to pay a redundancy payment to the employee in those circumstances;
 - (c) the relevant date, in relation to any such redundancy payment, had been the date on which the termination of the employee’s contract of employment is treated for the purposes of the agreement as having taken effect; and
 - (d) in so far as the provisions of the agreement which relate to the following matters, that is to say—
 - (i) the circumstances in which the continuity of an employee’s period of employment is to be treated as broken, and
 - (ii) the weeks which are to count in computing a period of employment,are inconsistent with the provisions of Schedule 13 as to those matters, those provisions of the agreement were substituted for those provisions of that Schedule.
- (3) In sub-paragraph (2) “the agreement means the agreement falling within section 106(1A)(b) by reference to which the employer’s payment is payable.”

26 In paragraph 1(2) of Schedule 9 (regulations as to procedure of industrial tribunals), for paragraph (e) substitute—

- “(e) for enabling an industrial tribunal, on the application of any party to proceedings before it or of its own motion, to order—
- (i) in England and Wales, such discovery or inspection of documents, or the furnishing of such further particulars, as might be ordered by a county court on an application by a party to proceedings before it, or
 - (ii) in Scotland, such recovery or inspection of documents as might be ordered by the sheriff;”.

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