



**Isle of Man**

*Ellan Vannin*

**AT 18 of 1990**

**REDUNDANCY PAYMENTS ACT 1990**





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## REDUNDANCY PAYMENTS ACT 1990

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## REDUNDANCY PAYMENTS ACT 1990

<i>Received Royal Assent:</i>	<i>10 July 1990</i>
<i>Passed:</i>	<i>10 July 1990</i>
<i>Commenced:</i>	<i>10 July 1990<sup>1</sup></i>

**AN ACT** to provide for the making by employers of payments to employees in respect of redundancy; and for connected purposes.

**GENERAL NOTE:** The maximum fines in this Act are as increased by the *Fines Act 1986* and by the *Criminal Justice (Penalties, Etc.) Act 1993 s 1*.

### *Right to redundancy payment*

#### **1 General provisions as to right to redundancy payment**

[P1978/44/81; P1982/46/3(2)]

- (1) Where an employee who has been continuously employed for the period of 2 years ending with the relevant date —
- is dismissed by his employer by reason of redundancy, or
  - is laid off or kept on short-time to the extent specified in section 10(1) and complies with the requirements of that section,
- then, subject to the following provisions of this Act, the employer shall be liable to pay to him a sum (in this Act referred to as a “**redundancy payment**”) calculated in accordance with Schedule 1 and with Schedules 5 and 6 to the *Employment Act 2006* (in this Act referred to as “**the 2006 Act**”).<sup>2</sup>
- (2) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to —
- the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed, or
  - the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out

work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or diminish.

- (3) For the purposes of subsection (2), the business of the employer together with the business or businesses of his associated employers shall be treated as one unless either of the conditions specified in subsection (2) would be satisfied without so treating those businesses.
- (4) For the purposes of subsection (2) the activities carried on by the Department of Education, Sport and Culture with respect to the schools maintained by it and the activities carried on by the governors or managers of those schools shall be treated as one business, unless either of the conditions specified in subsection (2) would be satisfied without so treating them.<sup>3</sup>
- (5) In subsection (2), “cease” means cease either permanently or temporarily and from whatsoever cause, and “diminish” has a corresponding meaning.

## 2 General exclusions from right to redundancy payment

[P1978/44/82]

- (1) [Repealed]<sup>4</sup>
- (2) Except as provided by section 31, an employee shall not be entitled to a redundancy payment by reason of dismissal where his employer, being entitled to terminate his contract of employment without notice by reason of the employee’s conduct terminates it either —
  - (a) without notice, or
  - (b) by giving shorter notice than that which, in the absence of such conduct, the employer would be required to give to terminate the contract, or
  - (c) by giving notice (not being such shorter notice as is mentioned in paragraph (b)) which includes, or is accompanied by, a statement in writing that the employer would, by reason of the employee’s conduct, be entitled to terminate the contract without notice.
- (3) If an employer makes an employee an offer (whether in writing or not) before the ending of his employment under the previous contract to renew his contract of employment, or to re-engage him under a new contract of employment, so that the renewal or re-engagement would take effect either immediately on the ending of his employment under the previous contract or after an interval of not more than 4 weeks thereafter, the provisions of subsections (5) and (6) shall have effect.
- (4) For the purposes of the application of subsection (3) to a contract under which the employment ends on a Friday, Saturday or Sunday —
  - (a) the renewal or re-engagement shall be treated as taking effect immediately on the ending of the employment under the previous

contract if it takes effect on or before the Monday after that Friday, Saturday or Sunday; and

- (b) the interval of 4 weeks shall be calculated as if the employment had ended on that Monday.
- (5) If an employer makes an employee such an offer as referred to in subsection (3) and either —
- (a) the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would not differ from the corresponding provisions of the previous contract; or
  - (b) the first-mentioned provisions would differ (wholly or in part) from those corresponding provisions, but the offer constitutes an offer of suitable employment in relation to the employee;

and (in either case) the employee unreasonably refuses that offer, he shall not be entitled to a redundancy payment by reason of his dismissal.

- (6) If —
- (a) an employee's contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of such an offer as is referred to in subsection (3), and
  - (b) the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which he is employed, and as to the other terms and conditions of his employment, differ (wholly or in part) from the corresponding provisions of the previous contract but the employment is suitable in relation to the employee, and
  - (c) during the trial period referred to in section 4 the employee unreasonably terminates the contract, or unreasonably gives notice to terminate it and the contract is thereafter in consequence terminated,

he shall not be entitled to a redundancy payment by reason of his dismissal from employment under the previous contract.

- (7) Any reference in this section to re-engagement by the employer shall be construed as including a reference to re-engagement by the employer or by any associated employer, and any reference in this section to an offer made by the employer shall be construed as including a reference to an offer made by an associated employer.

*Termination of employment***3 Dismissal by employer**

[P1978/44/83]

- (1) In this Act, except as respects a case to which Schedule 4 applies, “**dismiss**” and “**dismissal**” shall, subject to sections 4, 5 and 6, be construed in accordance with subsection (2).
- (2) An employee shall be treated as dismissed by his employer if, but only if —
  - (a) the contract under which he is employed by the employer is terminated by the employer whether it is so terminated by notice or without notice, or
  - (b) where he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or<sup>5</sup>
  - (c) the employee terminates that contract with or without notice, in circumstances (not falling within section 31 (4)) such that he is entitled to terminate it without notice by reason of the employer’s conduct.

**4 Renewal of contract or re-engagement**

[P1978/4/84]

- (1) If an employee’s contract of employment is renewed, or he is re-engaged under a new contract of employment in pursuance of an offer (whether in writing or not) made by his employer before the ending of his employment under the previous contract, and the renewal or re-engagement takes effect either immediately on the ending of that employment or after an interval of not more than 4 weeks thereafter, then, subject to subsections (3) to (6), the employee shall not be regarded as having been dismissed by his employer by reason of the ending of his employment under the previous contract.
- (2) For the purposes of the application of subsection (1) to a contract under which the employment ends on a Friday, Saturday or Sunday —
  - (a) the renewal or re-engagement shall be treated as taking effect immediately on the ending of the employment if it takes effect on or before the Monday after that Friday, Saturday or Sunday, and
  - (b) the interval of 4 weeks referred to in that subsection shall be calculated as if the employment had ended on that Monday.
- (3) If, in a case to which subsection (1) applies, the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which the employee is employed, and as to the other terms and conditions of his employment, differ (wholly or in part) from the corresponding provisions

of the previous contract, there shall be a trial period in relation to the contract as renewed, or the new contract (whether or not there has been a previous trial period under this section).

- (4) The trial period shall begin with the ending of the employee's employment under the previous contract and end with the expiration of the period of 4 weeks beginning with the date on which the employee starts work under the contract as renewed, or the new contract, or such longer period as may be agreed in accordance with subsection (5) for the purpose of retraining the employee for employment under that contract.
- (5) Any such agreement shall —
  - (a) be made between the employer and the employee or his representative before the employee starts work under the contract as renewed or, as the case may be, the new contract;
  - (b) be in writing;
  - (c) specify the date of the end of the trial period; and
  - (d) specify the terms and conditions of employment which will apply in the employee's case after the end of that period.
- (6) If during the trial period —
  - (a) the employee, for whatever reason, terminates the contract, or gives notice to terminate it and the contract is thereafter in consequence terminated; or
  - (b) the employer, for a reason connected with or arising out of the change to the renewed or new employment, terminates the contract, or gives notice to terminate it and the contract is thereafter in consequence terminated,

then, unless the employee's contract of employment is again renewed, or he is again re-engaged under a new contract of employment, in circumstances such that subsection (1) again applies, he shall be treated as having been dismissed on the date on which his employment under the previous contract or, if there has been more than one trial period, the original contract ended for the reason for which he was then dismissed or would have been dismissed had the offer (or original offer) of renewed or new employment not been made, or, as the case may be, for the reason which resulted in that offer being made.

- (7) Any reference in this section to re-engagement by the employer shall be construed as including a reference to re-engagement by the employer or by any associated employer, and any reference in this section to an offer made by the employer shall be construed as including a reference to an offer made by an associated employer.

## 5 Employee anticipating expiry of employer's notice

[P1978/44/85]

- (1) Subject to the following provisions of this section, where —
- (a) an employer gives notice to an employee to terminate his contract of employment, and
  - (b) at a time within the obligatory period of that notice, the employee gives notice in writing to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire,

the employee shall, for the purposes of this Act, be taken to be dismissed by his employer.

- (2) If, before the employee's notice is due to expire, the employer gives him notice in writing —
- (a) requiring him to withdraw his notice terminating the contract of employment as mentioned in subsection (1)(b) and to continue in the employment until the date on which the employer's notice expires, and
  - (b) stating that, unless he does so, the employer will contest any liability to pay to him a redundancy payment in respect of the termination of his contract of employment,

but the employee does not comply with the requirements of that notice, the employee shall not be entitled to a redundancy payment by virtue of subsection (1) except as provided by subsection (3).

- (3) Where, in the circumstances specified in subsection (1), the employer has given notice to the employee under subsection (2), and on a reference to the Employment Tribunal (in this Act referred to as "**the Tribunal**") it appears to the Tribunal, having regard both to the reasons for which the employee seeks to leave the employment and those for which the employer requires him to continue in it, to be just and equitable that the employee should receive the whole or part of any redundancy payment to which he would have been entitled apart from subsection (2), the Tribunal may determine that the employer shall be liable to pay to the employee —
- (a) the whole of the redundancy payment to which the employee would have been so entitled, or
  - (b) such part of that redundancy payment as the Tribunal thinks fit.
- (4) In this section "the obligatory period", in relation to an employer's notice, means —
- (a) the actual period of the employer's notice (that is to say, the period beginning at the time when the notice is given and ending at the time when it expires), if that period is equal to the minimum period which (whether by virtue of any enactment or otherwise) is

required to be given by the employer to terminate the contract of employment;

- (b) in any other case, that period which, being equal to the minimum period referred to in paragraph (a), expires at the time when the employer's notice expires.

## 6 Implied or constructive termination of contract

[P1978/44/93]

- (1) Where in accordance with any enactment or rule of law —
  - (a) any act on the part of an employer, or
  - (b) any event affecting an employer (including, in the case of an individual, his death),

operates so as to terminate a contract under which an employee is employed by him, that act or event shall for the purposes of this Act be treated as a termination of the contract by the employer, if apart from this subsection it would not constitute a termination of the contract by him; and, in particular, the provisions of sections 3, 4 and 7 shall apply accordingly.

- (2) Where subsection (1) applies, and the employee's contract of employment is not renewed, and he is not re-engaged under a new contract of employment, so as to be treated by virtue of section 4(1) as not having been dismissed, he shall, without prejudice to section 4(6), be taken for the purposes of this Act to be dismissed by reason of redundancy, if the circumstances in which his contract is not so renewed and he is not so re-engaged are wholly or mainly attributable to one or other of the facts specified in section 1(2)(a) and (b).
- (3) For the purposes of subsection (2), section 1(2)(a), in so far as it relates to the employer ceasing or intending to cease to carry on the business, shall be construed as if the reference to the employer included a reference to any person to whom, in consequence of the act or event in question, power to dispose of the business has passed.
- (4) In this section, any reference to section 4(1) includes a reference to that subsection as applied by section 11(2).

## 7 The relevant date

[P1978/44/90]

- (1) Subject to the following provisions of this section, for the purposes of this Act "**the relevant date**", in relation to the dismissal of an employee —
  - (a) where his contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which that notice expires;

- (b) where his contract of employment is terminated without notice, means the date on which the termination takes effect;
  - (c) where he is employed under a limited-term contract which terminates by virtue of the limiting event without being renewed under the same contract, means the date on which the termination takes effect;<sup>6</sup>
  - (d) where he is treated, by virtue of section 4(6), as having been dismissed on the termination of his employment under a previous contract, means —
    - (i) for the purposes of section 20, the date which is the relevant date as defined by paragraph (a), (b) or (c) in relation to the renewed or new contract or, where there has been more than one trial period under section 4, the last such contract; and
    - (ii) for the purposes of any other provision, the date which is the relevant date as defined by paragraph (a), (b) or (c) in relation to the previous contract, or, where there has been more than one trial period under section 4, the original contract; and
  - (e) where he is taken to be dismissed by virtue of section 5(1), means the date on which the employee's notice to terminate his contract of employment expires.
- (2) "The relevant date", in relation to a notice of intention to claim or a right to a redundancy payment in pursuance of such a notice —
- (a) in a case falling within section 9(1)(a), means the date on which the last of the 4 or more consecutive weeks before the service of the notice came to an end, and
  - (b) in a case falling within section 9(1)(b), means the date on which the last of the series of 6 or more weeks before the service of the notice came to an end.
- (3) Where the notice required to be given by an employer to terminate a contract of employment by section 106 of the 2006 Act would, if duly given when notice of termination was given by the employer, or (where no notice was given) when the contract of employment was terminated by the employer, expire on a date later than the relevant date as defined by subsection (1), then for the purposes of section 1(1) and paragraph 1 of Schedule 1 that later date shall be treated as the relevant date in relation to the dismissal.<sup>7</sup>

*Lay-off and short time***8 Lay-off and short time**

[P1978/44/87]

- (1) Where an employee is employed under a contract on such terms and conditions that his remuneration thereunder depends on his being provided by the employer with work of the kind which he is employed to do, he shall, for the purposes of this Act, be taken to be laid off for any week in respect of which, by reason that the employer does not provide such work for him, he is not entitled to any remuneration under the contract.
- (2) Where by reason of diminution in the work provided for an employee by his employer (being work of a kind which under his contract the employee is employed to do) the employee's remuneration for any week is less than half a week's pay, he shall for the purposes of this Act be taken to be kept on short time for that week.

**9 Right to redundancy payment by reason of lay-off or short time**

[P1978/44/88]

- (1) An employee shall not be entitled to a redundancy payment by reason of being laid off or kept on short time unless he gives notice in writing to his employer indicating (in whatsoever terms) his intention to claim a redundancy payment in respect of lay-off or short time (in this Act referred to as a "**notice of intention to claim**") and, before the service of that notice, either —
  - (a) he has been laid off or kept on short time for 4 or more consecutive weeks of which the last before the service of the notice ended on the date of service thereof or ended not more than 4 weeks before that date, or
  - (b) he has been laid off or kept on short time for a series of 6 or more weeks (of which not more than 3 weeks were consecutive) within a period of 13 weeks, where the last week of the series before the service of the notice either ended on the date of service or ended not more than 4 weeks before that date.
- (2) Where an employee has given notice of intention to claim —
  - (a) he shall not be entitled to a redundancy payment in pursuance of that notice unless he terminates his contract of employment by the appropriate notice which (whether given before or after or at the same time as the notice of intention to claim) is given before the end of the period allowed for the purposes of this paragraph (as specified in section 10(5)), and
  - (b) he shall not be entitled to a redundancy payment in pursuance of the notice of intention to claim if he is dismissed by his employer

(but without prejudice to any right to a redundancy payment by reason of the dismissal).

- (3) In subsection (2) “the appropriate notice” means the minimum notice which the employee is required to give by section 106(2) of the 2006 Act or, if he is required by his contract of employment to give more than that notice, the minimum notice which he is so required to give.<sup>8</sup>
- (4) Subject to subsection (5), an employee shall not be entitled to a redundancy payment in pursuance of a notice of intention to claim if, on the date of service of that notice, it was reasonably to be expected that the employee (if he continued to be employed by the same employer) would, not later than 4 weeks after that date, enter upon a period of employment of not less than 13 weeks during which he would not be laid off or kept on short time for any week.
- (5) Subsection (4) shall not apply unless, within 7 days after the service of the notice of intention to claim, the employer gives to the employee notice in writing that he will contest any liability to pay to him a redundancy payment in pursuance of the notice of intention to claim.

## 10 Supplementary provisions in respect of lay-off or short time

[P1978/44/89]

- (1) If, in a case where an employee gives notice of intention to claim and the employer gives notice under section 9(5) (a “counter-notice”), the employee continues or has continued, during the next 4 weeks after the date of service of the notice of intention to claim, to be employed by the same employer, and he is or has been laid off or kept on short time for each of those weeks, it shall be conclusively presumed that the condition specified in section 9(4) was not fulfilled.
- (2) For the purposes of both section 9(1) and subsection (1), it is immaterial whether a series of weeks (whether it is 4 weeks, or 4 or more weeks, or 6 or more weeks) consists wholly of weeks for which the employee is laid off, or wholly of weeks for which he is kept on short time, or partly of the one and partly of the other.
- (3) For the purposes mentioned in subsection (2), no account shall be taken of any week for which an employee is laid off or kept on short time where the lay-off or short time is wholly or mainly attributable to a strike or a lock-out, whether the strike or lock-out is in the trade or industry in which the employee is employed or not, and whether it is in the Island or elsewhere.
- (4) Where the employer gives a counter-notice within 7 days after the service of a notice of intention to claim, and does not withdraw the counter-notice by a subsequent notice in writing, the employee shall not be entitled to a redundancy payment in pursuance of the notice of intention to claim except in accordance with a decision of the Tribunal.

- (5) The period allowed for the purposes of section 9(2)(a) is as follows —
- (a) if the employer does not give a counter-notice within 7 days after the service of the notice of intention to claim, that period is 3 weeks after the end of those 7 days;
  - (b) if the employer gives a counter-notice within those 7 days, but withdraws it by a subsequent notice in writing, that period is 3 weeks after the service of the notice of withdrawal;
  - (c) if the employer gives a counter-notice within those 7 days and does not so withdraw it, and a question as to the right of the employee to a redundancy payment in pursuance of the notice of intention to claim is referred to the Tribunal, that period is 3 weeks after the Tribunal has notified to the employee its decision on that reference.
- (6) For the purposes of subsection (5)(c) no account shall be taken of —
- (a) any appeal against or proceedings arising from the decision of the Tribunal, or
  - (b) any proceedings in consequence of such proceedings or appeal.

*Change of employer*<sup>9</sup>

**11 Transfer of trade, business or undertaking or part of trade, business or undertaking**<sup>10</sup>

- (1) The provisions of this section shall have effect where —
- (a) a business for the purposes of which a person is employed is transferred from one person to another, and<sup>11</sup>
  - (b) in connection with that transfer the person by whom the employee is employed immediately before the transfer (“the previous employer”) terminates the employee’s contract of employment, whether by notice or without notice.

For the sake of clarity, paragraph (a) applies regardless of whether the business has been carried on by the person’s employer.<sup>12</sup>

- (2) If, by agreement with the employee, the person who, immediately after the transfer of the business in question, carries it on (“the new employer”) renews the employee’s contract of employment (with the substitution of the new employer for the previous employer) or re-engages him under a new contract of employment, sections 4 and 7 shall have effect as if the renewal or re-engagement had been a renewal or re-engagement by the previous employer (without any substitution of a new employer for the previous employer).<sup>13</sup>
- (3) If the new employer offers to renew the employee’s contract of employment (with the substitution of the new employer for the previous employer) or to re-engage him under a new contract of employment,

section 2(3) to (6) shall have effect, subject to subsection (4), in relation to that offer as they would have had effect in relation to a like offer made by the previous employer.

- (4) For the purposes of the operation, in accordance with subsection (3), of section 2(3) to (6) in relation to an offer made by the new employer —
- (a) the offer shall not be treated as one whereby the new provisions of the contract as renewed, or of the new contract, as the case may be, would differ from the corresponding provisions of the contract as in force immediately before the dismissal by reason only that the new employer would be substituted for the previous employer, and
  - (b) no account shall be taken of that substitution in determining whether the refusal of the offer was reasonable or, as the case may be, whether the employee acted reasonably in terminating the renewed, or new, employment, during the trial period referred to in section 4.
- (5) Subsections (1) to (4) shall have effect (subject to the necessary modifications) in relation to a case where —
- (a) the employer by whom an employee is employed in connection with a business immediately before a change is one of the persons by whom (whether as partners, trustees or otherwise) the employee is employed in connection with a business immediately after the change, or<sup>14</sup>
  - (b) the employer by whom an employee is employed in connection with a business immediately before a change (whether as partners, trustees or otherwise) include the person by whom, or include one or more of the persons by whom, the employee is employed in connection with a business immediately after the change,<sup>15</sup>

as those provisions have effect where the previous employer and the new employer are wholly different persons.

- (6) Sections 2(7) and 4(7) shall not apply in any case to which this section applies.
- (7) Nothing in this section requires any variation of a contract of employment by agreement between the parties to be treated as constituting a termination of the contract.
- (8) In this section “business” includes—
- (a) a trade or undertaking; and
  - (b) part of a business, trade or undertaking.<sup>16 17</sup>

## 11A Service provision change

- (1) This section applies if there is a service provision change.

- (2) There is a service provision change if —
- (a) activities cease to be carried out by a person (a “client”) on his or her own behalf and are carried out instead by another person (a “contractor”) on the client’s behalf;
  - (b) activities cease to be carried out by a contractor on a client’s behalf (whether or not those activities had previously been carried out by the client on his or her own behalf) and are carried out instead by another person (a “subsequent contractor”) on the client’s behalf; or
  - (c) activities cease to be carried out by a contractor or a subsequent contractor on a client’s behalf (whether or not those activities had previously been carried out by the client on his or her own behalf) and are carried out instead by the client on his or her own behalf, and the conditions in subsection (3) are fulfilled.
- (3) The conditions referred to in subsection (2) are that—
- (a) the client intends that the activities concerned will, following the service provision change, be carried out by the contractor, subsequent contractor or client, as the case may be, otherwise than in connection with a single specific event or task of short-term duration; and
  - (b) the activities concerned do not consist wholly or mainly of the supply of goods for the client’s use.
- (4) If this section applies, for the purpose of section 11—
- (a) the activities concerned are to be treated as a business;
  - (b) the service provision change is to be treated as a transfer of that business; and
  - (c) a person who immediately before the service provision change is employed wholly or mainly in carrying out the activities concerned is to be treated as employed for the purposes of that business.<sup>18</sup>

### *Exemptions and exclusions*

## **12 Exemption orders**

[P1978/44/96]

- (1) If at any time —
- (a) there is in force an agreement between one or more employers or organisations of employers and one or more trade unions representing employees, whereby employees to whom the agreement applies have a right in certain circumstances to payments on the termination of their contracts of employment, and

(b) on the application of all the parties to the agreement, the Department for Enterprise (in this Act referred to as “**the Department**”), having regard to the provisions of the agreement, is satisfied that section 1 should not apply to those employees,<sup>19</sup>

it may make an order under this section in respect of that agreement.

- (2) The Department shall not make an order under this section in respect of an agreement unless the agreement indicates (in whatsoever terms) the willingness of the parties to it to submit to the Tribunal such questions as are mentioned in subsection (3)(b).
- (3) Where an order under this section is in force in respect of an agreement —
- (a) section 1 shall not have effect in relation to any employee who immediately before the relevant date is an employee to whom the agreement applies, but
- (b) section 21 shall have effect in relation to any question arising under the agreement as to the right of an employee to a payment on the termination of his employment, or as to the amount of such a payment, as if the payment were a redundancy payment and the question arose under this Act.
- (4) Any order under this section may be revoked by a subsequent order thereunder whether or not made in pursuance of an application made by all or any of the parties to the agreement in question.

### 13 [Repealed]<sup>20</sup>

### 14 Public offices etc

[P1978/44/99]

- (1) Section 1 does not apply to any person in respect of any employment which is employment in an office specified in section 3(1)(a) or (b) of the *Public Sector Pensions Act 2011*.<sup>21</sup>
- (2) The Department may by order provide that section 1 shall not apply to any person in respect of any employment of a description specified in the order —
- (a) with respect to which provision may be made by a scheme under section 6(1)(c) of the *Public Sector Pensions Act 2011*; or<sup>22</sup>
- (b) and (c) [Repealed]<sup>23</sup>
- (d) which is remunerated out of the General Lighthouse Fund.
- (3) Section 1 shall not apply to any person in respect of his employment in any capacity under the government of an overseas territory.
- (4) This section is without prejudice to any exemption or immunity of the Crown.

**15 Domestic servants**

[P1978/44/100]

- (1) For the purposes of the application of this Act to an employee who is employed as a domestic servant in a private household, this Act (except sections 11 and 11A) shall apply as if the household were a business and the maintenance of the household were the carrying on of that business by the employer.<sup>24</sup>
- (2) Section 1 shall not apply to any person in respect of employment as a domestic servant in a private household, where the employer is the father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, or half-sister of the employee.

**16 Employment outside the Island**

- (1) An employee shall not be entitled to a redundancy payment unless —
  - (a) under his contract of employment he ordinarily works in the Island, or
  - (b) on the relevant date he is ordinarily resident in the Island and, on that date or within the period of 12 months ending on that date, his employer is resident in the Island or has a place of business in the Island.
- (2) The Department may by regulations make provision for excluding the right to a redundancy payment, or reducing the amount of any redundancy payment, in any case where an employee who under his contract of employment ordinarily works outside the Island is entitled to a payment in the nature of a redundancy payment under the law of any part of the United Kingdom.

**17 [Repealed]<sup>25</sup>****18 Share fisherman**

[P1978/44/144(1); SI78/1281]

Section 1 does not apply to employment as master or as a member of the crew of a fishing vessel where the employee is remunerated only by a share in the profits or gross earnings of the vessel.

**19 [Repealed]<sup>26</sup>**

Claims and payments

## 20 Claims for redundancy payments

[P1978/44/101]

- (1) Notwithstanding anything in the preceding provisions of this Act, an employee shall not be entitled to a redundancy payment unless, before the end of the period of 12 months beginning with the relevant date —
  - (a) the payment has been agreed and paid, or
  - (b) the employee has made a claim for the payment by notice in writing given to the employer, or
  - (c) a question as to the right of the employee to the payment, or as to the amount of the payment, has been referred to the Tribunal, or
  - (d) a complaint relating to his dismissal has been presented by the employee under section 133 of the *Employment Act 2006*.<sup>27</sup>
- (2) An employee shall not by virtue of subsection (1) lose his right to a redundancy payment if, during the period of 12 months immediately following the period mentioned in that subsection, the employee —
  - (a) makes such a claim as is referred to in subsection (1)(b), or
  - (b) refers to the Tribunal such a question as is referred to in subsection (1)(c), or
  - (c) makes such an application as is referred to in subsection (1)(d),and it appears to the Tribunal to be just and equitable that the employee should receive a redundancy payment having regard to the reason shown by the employee for his failure to take any such step as is referred to in paragraph (a), (b) or (c) within the period mentioned in subsection (1), and to all the other relevant circumstances.

## 21 Reference of questions to Tribunal

[P1978/44/91 and 9/5]

- (1) Any question arising under this Act as to the right of an employee to a redundancy payment, or as to the amount of a redundancy payment, shall be referred to and determined by the Tribunal.
- (2) For the purposes of any such reference, 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.
- (3) Where in accordance with rules under Part II of Schedule 3 to the 2006 Act the Tribunal determines in the same proceedings —
  - (a) a question referred to it under this section, and
  - (b) an application under section 133 of that Act,<sup>28</sup>subsection (2) shall not have effect for the purposes of the proceedings in so far as they relate to the application under the said section 133.<sup>29</sup>

- (4) In relation to lay-off or short time, the questions which may be referred to and determined by the Tribunal as mentioned in subsection (1) include any question whether an employee will become entitled to a redundancy payment if he is not dismissed by his employer and he terminates his contract of employment as mentioned in section 9(2)(a); and any such question shall for the purposes of this Act be taken to be a question as to the right of the employee to a redundancy payment.

## 22 Written particulars of redundancy payment

[P1984/44/102]

- (1) On making any redundancy payment, otherwise than in pursuance of a decision of the Tribunal which specifies the amount of the payment to be made, the employer shall give to the employee a written statement indicating how the amount of the payment has been calculated.
- (2) Any employer who without reasonable excuse fails to comply with subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding £200.
- (3) If an employer fails to comply with the requirements of subsection (1), then (without prejudice to any proceedings for an offence under subsection (2)) the employee may by notice in writing to the employer require him to give to the employee a written statement complying with those requirements within such period (not being less than one week beginning with the day on which the notice is given) as may be specified in the notice; and if the employer without reasonable excuse fails to comply with the notice he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

### *Redundancy rebates*

## 23 Redundancy rebates

[P1978/44/104]

- (1) Subject to the provisions of this section, the Treasury shall make a payment (in this Act referred to as a “**redundancy rebate**”) out of the Manx National Insurance Fund (in this Act referred to as “**the Fund**”) to any small employer who —
- (a) is liable under the foregoing provisions of this Act to pay, and has paid, a redundancy payment to an employee, or
- (b) under an agreement in respect of which an order is in force under section 12, is liable to make, and has made, a payment to an employee on the termination of his contract of employment.<sup>30</sup>
- (2) No redundancy rebate shall be payable by virtue of this section in a case falling within subsection (1)(b) if the employee’s right to the payment there referred to arises by virtue of a period of continuous employment

(computed in accordance with the provisions of the agreement in question) which is less than 2 years.

- (2A) The Treasury shall not make a payment under this section in respect of an employee whose employer is a company and who, at any time during the 12 months ending with the relevant date, was —
- (a) a director of the company, or
  - (b) the beneficial owner of one-half or more of the issued share capital of the company,
- or of any other company which at that time had control (directly or indirectly) of that company.<sup>31</sup>
- (3) The Treasury may if it thinks fit pay a redundancy rebate to a small employer who has paid an employee a redundancy payment in circumstances in which, owing to section 20, the employee had no right to, and the employer had no liability for, the payment, if the Treasury is satisfied that it would be just and equitable to do so having regard to all the relevant circumstances.<sup>32</sup>
- (4) The amount of any redundancy rebate shall (subject to subsection (7)) be calculated in accordance with Schedule 2.
- (5) The Treasury shall make provision by regulations as to the making of claims for redundancy rebates; and any such regulations may in particular —
- (a) require any claim for a redundancy rebate to be made at or before a time prescribed by the regulations;
  - (b) in such cases as may be so prescribed, require prior notice that such a claim may arise to be given at or before a time so prescribed, so however that, where the claim would relate to an employer's payment in respect of dismissal, the regulations shall not require the notice to be given more than 4 weeks before the date on which the termination of the contract of employment takes effect; and
  - (c) for the purpose of determining the right of any person to, and the amount of, any redundancy rebate, require a person at any time when he makes a claim or gives prior notice as mentioned in paragraph (a) or (b) to provide such evidence and such other information, and to produce for examination on behalf of the Treasury documents in his custody or under his control of such descriptions, as may be determined in accordance with the regulations.<sup>33</sup>
- (6) In relation to any case where, under section 5, 31 or 32, the Tribunal determines that an employer is liable to pay part (but not the whole) of a redundancy payment, the reference in subsection (1)(a) to a redundancy payment shall be construed as a reference to that part of the redundancy payment.

- (7) If any employer who, in accordance with subsection (1), would be entitled to a redundancy rebate fails to give prior notice as required by any such regulations in accordance with subsection (5)(b) and it appears to the Treasury that he has so failed without reasonable excuse, the Treasury may, subject to section 26, reduce the amount of the rebate by such proportion (not exceeding one-tenth) as appears to the Treasury to be appropriate in the circumstances.<sup>34</sup>
- (8) Any person who —
- (a) in providing any information required by regulations under this section, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, or
  - (b) produces for examination in accordance with any such regulations a document which to his knowledge has been intentionally falsified,
- shall be guilty of an offence and liable —
- (i) on summary conviction to a fine not exceeding £5,000 or to imprisonment for a term not exceeding 6 months, or both, or
  - (ii) on conviction on information to a fine or to imprisonment for a term not exceeding 2 years, or both.
- (9) In this section “small employer” means a person who does not employ more than 40 persons.

## **24 Number of persons employed**

- (1) The number of persons employed by any person (“the employer”) for the purpose of section 23 or Schedule 2 shall be calculated in accordance with the following provisions of this section.
- (2) The number of persons so employed shall be calculated as at the following date —
- (a) in the case of a payment falling within paragraph (a) of section 23(1), the date which is the relevant date in relation to that payment by virtue of section 7(1) or (2);
  - (b) in the case of a payment falling within paragraph (b) of section 23(1), the date on which the termination of the employee’s contract of employment is treated as having taken effect for the purposes of the agreement referred to in that paragraph.
- (3) There shall be included in the number of persons so employed any persons employed by any associated employer.

- (4) For the purposes of subsection (2) an employee who is employed by an individual for the purposes of that individual's own household is disregarded if —
- (a) [Repealed]<sup>35</sup>
  - (b) not more than one other employee is so employed for the purposes of that household (whatever the number of hours of employment which any such employee's contract of employment normally involves in a week).
- (5) A person shall be treated as employed for the purposes of this section whether or not under the contract of employment he ordinarily works in the Island.
- (6) For the purposes of this section and Schedule 2 a person shall not be counted within the number of persons employed if he is a person who would fall to be excluded from payment under and by virtue of, section 23(2A).<sup>36</sup>

## 25 Payments out of Fund to employees

[P1978/44/106]

- (1) Where an employee claims that his employer is liable to pay to him an employer's payment, and either —
- (a) that the employee has taken all reasonable steps (other than legal proceedings) to recover the payment from the employer and that the employer has refused or failed to pay it, or has paid part of it and has refused or failed to pay the balance, or
  - (b) that the employer is insolvent and that the whole or part of the payment remains unpaid,
- the employee may apply to the Treasury for a payment under this section.<sup>37</sup>
- (1A) For the purposes of subsection (1)(a) "reasonable steps" includes the making of a formal demand in writing by the employee on the employer in respect of the payment.<sup>38</sup>
- (2) Subject to subsection (2A), if on an application under this section the Treasury is satisfied —
- (a) that the employee is entitled to the employer's payment;
  - (b) that either of the conditions specified in subsection (1) is fulfilled; and<sup>39</sup>
  - (c) that, in a case where the employer's payment is such a payment as is mentioned in section 23(1)(b), the employee's right to the payment arises by virtue of a period of continuous employment (computed in accordance with the provisions of the agreement in question) which is not less than 2 years,<sup>40</sup>

(d) [Repealed]<sup>41</sup>

the Treasury shall pay to the employee out of the Fund a sum calculated in accordance with Schedule 3, reduced by so much (if any) of the employer's payment as has been paid.<sup>42</sup>

(2A) The Treasury shall not make a payment under this section to an employee whose employer is a company and who, at any time during the 12 months ending with the relevant date, was —

- (a) a director of the company, or
- (b) the beneficial owner of one-half or more of the issued share capital of the company, or of any other company which at that time had control (directly or indirectly) of that company.<sup>43</sup>

(3) Where the Treasury pays a sum to an employee in respect of an employer's payment —

- (a) all rights and remedies of the employee with respect to the employer's payment, or (if the Treasury has paid only part of it) all his rights and remedies with respect to that part of the employer's payment shall be transferred to and vest in the Treasury; and<sup>44</sup>
- (b) any decision of the Tribunal requiring the employer's payment to be paid to the employee shall have effect as if it required that payment, or, as the case may be, that part of it which the Treasury has paid, to be paid to the Treasury;<sup>45</sup>
- (ba) the employee shall execute any document (including any declaration of trust), do any act or provide any assistance to the Treasury to enable it to exercise those rights;<sup>46</sup>
- (bb) the employee shall pay to the Treasury any amount which he receives in respect of those rights and until such time any such amount shall be held by him on trust for the Treasury;<sup>47</sup>

and any money recovered by the Treasury by virtue of this subsection shall be paid into the Fund.<sup>48</sup>

(4) Where the Treasury pays a sum under this section in respect of an employer's payment, then (subject to the following provisions of this subsection) section 23 shall apply as if that sum had been paid by the employer to the employee on account of that payment; but if, in a case falling within subsection (1)(a), it appears to the Treasury that the refusal or failure of the employer to pay the employer's payment, or part of it, as the case may be, was without reasonable excuse, the Treasury may, subject to section 27, withhold any redundancy rebate to which the employer would otherwise be entitled in respect of the employer's payment, or may reduce the amount of any such rebate to such extent as the Treasury considers appropriate.<sup>49</sup>

- (5) For the purposes of this section an employer shall be taken to be insolvent if —
- (a) he has become bankrupt or has made a composition or arrangement with his creditors or a receiving order is made against him; or
  - (b) he has died and by virtue of an order of the court his estate is being administered in accordance with the rules set out in section 39 of the *Administration of Estates Act 1990*; or<sup>50</sup>
  - (c) where the employer is a company, a winding-up order has been made with respect to it or a resolution for voluntary winding-up has been passed with respect to it, or a receiver or manager of its undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge; or
  - (ca) such other insolvency procedure analogous to the procedures specified in paragraphs (a), (b) or (c) of this subsection has been undertaken in any jurisdiction outside the Island.<sup>51</sup>
- (6) In this section “legal proceedings” does not include any proceedings before the Tribunal, but includes any proceedings to enforce a decision or award of the Tribunal.

## 26 Supplementary provisions relating to applications under s 25

[P1978/44/107]

- (1) Where an employee makes an application to the Treasury under section 25, the Treasury may, by notice in writing given to the employer, require the employer to provide the Treasury with such information, and to produce for examination on behalf of the Treasury documents in his custody or under his control of such descriptions, as the Treasury may reasonably require for the purpose of determining whether the application is well-founded.<sup>52</sup>
- (2) If any person on whom a notice is served under this section fails without reasonable excuse to comply with a requirement imposed by the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.
- (3) Any person who —
- (a) in providing any information required by a notice under this section, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, or
  - (b) produces for examination in accordance with any such notice a document which to his knowledge has been intentionally falsified,

shall be guilty of an offence and liable —

- (i) on summary conviction to a fine not exceeding £5,000 or to imprisonment for a term not exceeding 6 months, or both, or
- (ii) on conviction on information to a fine or to imprisonment for a term not exceeding 2 years, or both.

## **27 References and appeals to Tribunal relating to payments out of Fund**

[P1978/44/108]

- (1) Subsections (2) and (3) shall have effect where —
  - (a) a claim is made for a redundancy rebate on the grounds that an employer is liable to pay, and has paid, an employer's payment, or prior notice that such a claim may arise is given in accordance with regulations made under section 23(5)(b), or
  - (b) an application is made to the Treasury for a payment under section 25, where it is claimed that an employer is liable to pay an employer's payment.<sup>53</sup>
- (2) Where any such claim or application is made or such prior notice is given, there shall be referred to the Tribunal —
  - (a) any question as to the liability of the employer to pay the employer's payment;
  - (b) in a case falling within subsection (1)(a), any question as to the amount of the rebate payable in accordance with Schedule 2;
  - (c) in a case falling within subsection (1)(b), any question as to the amount of the sum payable in accordance with Schedule 3.
- (3) For the purposes of any reference under subsection (2), 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.
- (4) Where, in any case to which section 23(3) applies, the Treasury refuses to pay a redundancy rebate, the employer may appeal to the Tribunal; 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 redundancy rebate should be paid, the Tribunal shall determine accordingly, and the Treasury shall comply with any such determination of the Tribunal.<sup>54</sup>
- (5) In any case where the Treasury withholds, or reduces the amount of, a redundancy rebate in pursuance of section 25(4), the employer may appeal to the Tribunal; and if on any such appeal the Tribunal is satisfied —
  - (a) in a case where the rebate was withheld, that it should be paid in full, or should be reduced instead of being withheld, or

- (b) in a case where the rebate was reduced, that it should not be reduced, or should be reduced by a smaller or larger proportion than that which the Treasury has applied,<sup>55</sup>

the Tribunal shall determine accordingly, and the Treasury shall comply with any such determination.<sup>56</sup>

## 28 Financial provisions relating to the Fund

- (1) The Treasury may, in accordance with a resolution of Tynwald, apply sums provided by Tynwald for the purposes of this Act; and any such sums shall be paid into the Fund.
- (2) The aggregate amount outstanding by way of principal in respect of sums applied in accordance with subsection (1) must not exceed such amount as Tynwald may by resolution determine.
- (3) Sums paid into the Fund under this section must be repaid from the Fund into the General Revenue of the Island in such manner, at such time and with interest at such rate as the Treasury determines.<sup>57</sup>

### *Equivalent payments*

## 29 Payments equivalent to redundancy rebates in respects of public sector employees<sup>58</sup>

[P1978/44/111]

- (1) The provisions of this section shall have effect with respect to any employment specified in section 14(1) or an order under section 14(2).
- (2) Where the Treasury is satisfied that a payment has been, or will be, made in respect of the termination of any person's employment so specified, and that the payment has been or will be so made to or in respect of him —
  - (a) in accordance with any provision of a scheme made under section 6(1)(c) of the *Public Sector Pensions Act 2011*, or<sup>59</sup>
  - (b) in accordance with any such arrangements as are mentioned in subsection (3),

the Treasury shall pay the appropriate sum out of the Fund to the appropriate fund.<sup>60</sup>

- (3) The arrangements referred to in subsection (2)(b) are any arrangements made with the approval of the Public Services Commission for securing that payments by way of compensation for loss of any such employment as is mentioned in subsection (1) will be made —
  - (a) in circumstances which in the opinion of the Public Services Commission correspond (subject to the appropriate modifications) to those in which a right to a redundancy payment would have accrued if section 1 had applied, and<sup>61</sup>

- (b) on a scale which in the opinion of the Public Services Commission, taking into account any sums which are payable as mentioned in subsection (2)(a) to or in respect of the person losing the employment in question, corresponds (subject to the appropriate modifications) to that on which a redundancy payment would have been payable if section 1 had applied.<sup>62 63</sup>
- (4) For the purposes of subsection (2) the appropriate sum is the sum appearing to the Treasury to be equal to the amount of the redundancy rebate which would have been payable under section 23 if such a right as is mentioned in subsection (3)(a) had accrued, and such a redundancy payment as is mentioned, in subsection (3)(b) had been payable and had been paid.<sup>64</sup>
- (5) In this section “the appropriate fund” —
  - (a) in relation to employment of any description falling within section 14(2)(d), means the General Lighthouse Fund; and
  - (b) in any other case, means the general revenue of the Island.

### **30 References to Tribunal relating to equivalent payments**

[P1978/44/112]

- (1) This section applies to any such payment, which is payable in accordance with any such arrangements, as are mentioned in section 29(3).
- (2) Where the terms and conditions (whether constituting a contract of employment or not) on which any person is employed in any such employment as is mentioned in section 29(1) include provision —
  - (a) for the making of any payment to which this section applies, and
  - (b) for referring to a tribunal any such question as is mentioned in the following provisions of this subsection,

any question as to the right of any person to such a payment in respect of that employment, or as to the amount of such a payment shall be referred to and determined by the Tribunal.

#### *Industrial disputes*

### **31 Termination of contract in case of industrial dispute**

[P1978/44/92]

- (1) Where at any such time as is mentioned in subsection (2) an employee who —
  - (a) has been given notice by his employer to terminate his contract of employment, or
  - (b) has given notice to his employer under section 9(1),

takes part in a strike, in such circumstances that the employer is entitled, by reason of his taking part in the strike, to treat the contract of employment as terminable without notice, and the employer terminates the contract as mentioned in section 2(2) for that reason, section 2(2) shall not apply to that termination of the contract.

- (2) The times referred to in subsection (1) are —
  - (a) in a case falling within paragraph (a), any time within the obligatory period of the employer's notice (as defined by section 5(4)), and
  - (b) in a case falling within paragraph (b), any time after the service of the notice mentioned in that paragraph.
- (3) Where at any such time as is mentioned in subsection (2) an employee's contract of employment, otherwise than by reason of his taking part in a strike, is terminated by his employer in the circumstances specified in section 2(2), and is so terminated as mentioned therein, and on a reference to the Tribunal it appears to the Tribunal, in the circumstances of the case, to be just and equitable that the employee should receive the whole or part of any redundancy payment to which he would have been entitled apart from section 2(2), the Tribunal may determine that the employer shall be liable to pay to the employee —
  - (a) the whole of the redundancy payment to which the employee would have been so entitled, or
  - (b) such part of that redundancy payment as the Tribunal thinks fit.
- (4) Where an employee terminates his contract of employment without notice, being entitled to do so by reason of a lock-out by his employer, section 3(2)(c) shall not apply to that termination of the contract.

### **32 Strike during currency of employer's notice to terminate contract**

[P1978/44/110]

- (1) This section has effect where, after an employer has given notice to an employee to terminate his contract of employment (a "notice of termination") —
  - (a) the employee begins to take part in a strike of employees of the employer, and
  - (b) the employer serves on him a notice in writing (a "notice of extension") requesting him to agree to extend the contract of employment beyond the time of expiry by an additional period comprising as many available days as the number of working days lost by striking ("the proposed period of extension").
- (2) A notice of extension shall indicate the reasons for which the employer makes the request contained in the notice, and shall state that unless either —

- (a) the employee complies with the request, or
- (b) the employer is satisfied that, in consequence of sickness, injury or otherwise, he is unable to comply with it, or that (notwithstanding that he is able to comply with it) in the circumstances it is reasonable for him not to do so,

the employer will contest any liability to pay him a redundancy payment in respect of the dismissal effected by the notice of termination.

- (3) For the purposes of this section an employee shall be taken to comply with the request contained in a notice of extension if, but only if, on each available day within the proposed period of extension, he attends at his proper or usual place of work and is ready and willing to work, whether he has signified his agreement to the request in any other way or not.
- (4) Where an employee on whom a notice of extension has been served —
  - (a) complies with the request contained in the notice, or
  - (b) does not comply with it, but attends at his proper or usual place of work and is ready and willing to work on one or more (but not all) of the available days within the proposed period of extension,

the notice of termination shall have effect, and shall be deemed at all material times to have had effect, as if the period specified in it had been extended beyond the time of expiry —

- (i) where paragraph (a) applies, by an additional period equal to the proposed period of extension, or
- (ii) where paragraph (b) applies, up to the end of the day (or, if more than one, the last of the days) on which he so attends and is ready and willing to work;

and section 107 of and Schedule 5 to the 2006 Act shall apply according as if the period of notice required by section 106 of that Act were extended to a corresponding extent.<sup>65</sup>

- (5) Subject to subsection (6), if an employee on whom a notice of extension is served in pursuance of subsection (1) does not comply with the request contained in the notice, he shall not be entitled to a redundancy payment by reason of the dismissal effected by the notice of termination, unless the employer agrees to pay such a payment to him notwithstanding that the request has not been complied with.
- (6) Where a notice of extension has been served, and on a reference to the Tribunal it appears to the Tribunal that the employee has not complied with the request contained in the notice and the employer has not agreed to pay a redundancy payment in respect of the dismissal in question, but that the employee was unable to comply with the request, or it was reasonable for him not to comply with it as mentioned in subsection (2)(b), the Tribunal may determine that the employer shall be liable to pay to the employee —

- (a) the whole of any redundancy payment to which the employee would have been entitled apart from subsection (5), or
  - (b) such part of any such redundancy payment as the Tribunal thinks fit.
- (7) The service of a notice of extension, and any extension by virtue of subsection (4) of the period specified in a notice of termination —
- (a) shall not affect any right either of the employer or of the employee to terminate the contract of employment (whether before, at or after the time of expiry) by a further notice or without notice, and
  - (b) shall not affect the operation of sections 1 to 22 in relation to any such termination of the contract of employment.
- (8) In this section any reference to the number of working days lost by striking is a reference to the number of working days in the period beginning with the date of service of the notice of termination and ending with the time of expiry which are days on which the employee in question takes part in a strike of employees of the employer.
- (9) In this section —
- “time of expiry”, in relation to a notice of termination, means the time at which the notice would expire apart from this section,
- “working day”, in relation to an employee, means a day on which, in accordance with his contract of employment, he is normally required to work,
- “available day”, in relation to an employee, means a working day beginning at or after the time of expiry which is a day on which he is not taking part in a strike of employees of the employer, and
- “available day within the proposed period of extension” means an available day which begins before the end of that period.

*Special cases*

### **33 Application to employment not under contract of employment**

[P1978/44/115]

- (1) This section applies to employment of any description which —
- (a) is not employment under a contract of service or of apprenticeship, and
  - (b) is not employment of any description falling within section 29(1),
- but is employment the earnings from which are subject to secondary Class 1 contributions under the Social Security Contributions and Benefits Act 1992 (of Parliament) as that Act has effect in the Island.<sup>66</sup>
- (2) The Department may by regulations provide that, subject to such exceptions and modifications as may be prescribed by the regulations, this

Act shall have effect in relation to any such employment of a description to which this section applies as may be so prescribed as if —

- (a) it were employment under a contract of employment, and
- (b) any person engaged in employment of that description were an employee, and
- (c) such person as may be determined by or under the regulations were his employer.

### **34 Employees paid by person other than employer**

[P1978/44/117]

- (1) This section applies to any employee whose remuneration is, by virtue of any statutory provision, payable to him by a person other than his employer.
- (2) The Department may make provision by regulations for modifying any provision of this Act, and of Schedule 5 to the 2006 Act so far as it applies for the purposes of this Act, so that any reference therein to the employer of any employee to which this section applies shall be construed as a reference to the person responsible for paying the remuneration.<sup>67</sup>

### **35 Statutory compensation schemes**

[P1978/44/118]

- (1) This section applies to any statutory provision which was in force immediately before the commencement of this Act, whereby the holders of such situations, places or employment as are specified in that provision are, or may become, entitled to compensation for loss of employment, or for loss or diminution of emoluments or of pension rights, in consequence of the operation of any other statutory provision referred to therein.
- (2) The Department may make provision by regulations for securing that where apart from this section a person is entitled to compensation under a statutory provision to which this section applies, and the circumstances are such that he is also entitled to a redundancy payment, the amount of the redundancy payment shall be set off against the compensation to which he would be entitled apart from this section; and any statutory provision to which any such regulations apply shall have effect subject to the regulations.

**36 [Repealed]<sup>68</sup>***Miscellaneous and supplemental***37 Offences by bodies corporate**

[P1978/44/120]

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of that body corporate.

**38 Restriction on contracting out**

[P1978/44/140]

- (1) Except as provided by subsection (2), any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports —
  - (a) to exclude or limit the operation of any provision of this Act; or
  - (b) to preclude any person from bringing any proceedings under this Act before the Tribunal.<sup>69</sup>
- (2) Subsection (1) does not apply to an agreement —
  - (a) concluded with the assistance of an industrial relations officer; or
  - (b) in respect of which an order under section 12 is in force.<sup>70</sup>

**39 Territorial waters**

[P1978/44/137]

- (1) The Council of Ministers may by order provide that the provisions of this Act shall, to such extent and for such purposes as may be specified in the order, apply (with or without modification) to or in relation to any person in employment for the purposes of any activities in the territorial waters of the Island.<sup>71</sup>
- (2) An order under subsection (1) —
  - (a) may provide that all or any of the provisions of this Act as applied by such an order, shall apply to individuals whether or not they are British citizens, and to bodies corporate whether or not they are

- incorporated under the law of the Island (notwithstanding that the application may affect their activities outside the Island);
- (b) may make provision for conferring jurisdiction on any court specified in the order, or on the Tribunal, in respect of offences, causes of action or other matters arising in connection with employment to which this section applies;
  - (c) may provide that such proceedings shall not be brought without such consent as may be required by the order;
  - (d) may, without prejudice to the generality of the power under subsection (1) to modify the provisions of this Act in their application for the purposes of this section, modify or exclude the operation of section 16.
- (3) Any jurisdiction conferred on any court or tribunal under this section shall be without prejudice to jurisdiction exercisable apart from this section by that or any other court or tribunal.

#### **40 General power to amend Act**

[P1978/44/149]

- (1) The Department may by order —
  - (a) provide that any provision of this Act specified in the order shall not apply to persons or employments of such classes as may be so specified;
  - (b) provide that any such provision shall apply to persons or employments of such classes as may be specified in the order subject to such exceptions and modifications as may be prescribed.<sup>72</sup>
- (2) The Treasury may by order abolish or modify —
  - (a) the scheme of redundancy rebates provided for by sections 23 to 28; or
  - (b) arrangements under which payments equivalent to redundancy rebates are made under section 29 or 30.<sup>73</sup>
- (3) An order under subsection (2) may make such amendments to, and repeals of, provisions of this Act as appear to the Treasury to be necessary or expedient in consequence of the abolition or modification of the scheme of redundancy rebates or the arrangements mentioned in subsection (2)(b).<sup>74</sup>

#### **41 Death of employee or employer**

[P1978/44/150]

Schedule 5 shall have effect for the purpose of supplementing and modifying the provisions of this Act as respects the death of an employee or employer.

**42 [Repealed]**<sup>75</sup>**43 Application to this Act of 2006 Act Schedules 5 and 6**

- (1) An employee's period of employment for the purposes of this Act is to be computed in accordance with Schedule 5 to the *Employment Act 2006*.
- (2) Schedule 6 to that Act shall have effect for the purposes of this Act for calculating normal working hours and the amount of a week's pay of an employee.<sup>76</sup>

**44 [Repealed]**<sup>77</sup>**45 Orders and regulations**

- (1) Subordinate legislation under this Act shall not have effect unless it is approved by Tynwald.
- (2) Subordinate legislation under this Act may provide, for the purpose of applying the same in the case of an employee who is dismissed, laid off or kept on short time before the commencement of this Act, that the legislation shall have effect from a date earlier than the date on which it comes into operation, but not earlier than the date specified in section 47(2).
- (3) In this section "subordinate legislation" means an order or regulations.

**46 Interpretation**

- (1) In this Act —

"the 1981 Act" [Repealed]<sup>78</sup>

"the 2006 Act" means the *Employment Act 2006*;<sup>79</sup>

"associated employer" shall be construed in accordance with subsection (3);

"business" includes a trade or profession and any activity carried on by a body of persons, whether corporate or unincorporate;

"the Department" means the Department for Enterprise;<sup>80</sup>

"dismiss" and "dismissal" shall be construed in accordance with section 3;

"the DSC" [Repealed]<sup>81</sup>

"employee" and "employer" have the same meaning as in section 173 (general interpretation) of the 2006 Act;<sup>82</sup>

"employer's payment" means a payment falling within section 23(1) (a) or (b);

"the Fund" means the Manx National Insurance Fund;

“**limited-term**” has the same meaning as in section 173 (general interpretation) of the 2006 Act;<sup>83</sup>

“**lock-out**” means —

- (a) the closing of a place of employment,
- (b) the suspension of work, or
- (c) the refusal of an employer to continue to employ any number of persons employed by him or her in consequence of a dispute,

done with a view to compelling persons employed by the employer, or to aid another employer in compelling persons employed by him or her, to accept terms or conditions of or affecting employment;<sup>84</sup>

“**notice of intention to claim**” has the meaning given by section 9(1);

“**overseas territory**” means any territory or country outside the Island;

“**redundancy payment**” has the meaning given by section 1(1);

“**redundancy rebate**” has the meaning given by section 23;

“**relevant date**” has the meaning given by section 7;

“**renewal**” includes extension, and any reference to renewing a contract for a limited term shall be construed accordingly;<sup>85</sup>

“**strike**” means —

- (a) the cessation of work by a body of employed persons acting in combination, or
- (b) a concerted refusal, or a refusal under a common understanding, of any number of employed persons to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any employed person or body of employed persons, or to aid other employees in compelling their employer or any employed person or body of employed persons, to accept or not to accept terms or conditions of or affecting employment;<sup>86</sup>

“**the Tribunal**” means the Employment and Equality Tribunal constituted in accordance with section 103 of the *Equality Act 2017*;<sup>87</sup>

“**week**” means —

- (i) in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than a Saturday, a week ending with that other day;
  - (ii) in relation to any other employee, a week ending with Saturday.
- (2) References in this Act to dismissal by reason of redundancy, and to cognate expressions, shall be construed in accordance with section 1.

- (3) For the purposes of this Act a person is an associated employer in relation to the employer if –
  - (a) one of them is a company of which the other (directly or indirectly) has control; or
  - (b) both are companies of which a third person (directly or indirectly) has control.
- (4) Any reference to the government of an overseas territory includes a reference to a government constituted for 2 or more overseas territories and to any authority established for the purpose of providing or administering services which are common to, or relate to matters of common interest to, 2 or more such territories.
- (5) For the purposes of this Act it is immaterial whether the law which (apart from this Act) governs any person's employment is the law of the Island or not.

#### **47 Short title etc**

- (1) This Act may be cited as the Redundancy Payments Act 1990.
- (2) This Act applies in the case of an employee who is dismissed, laid off or kept on short time (as the case may be) before as well as after the commencement of this Act, but does not apply in a case where the relevant date was before the 6th February 1990.

**SCHEDULE 1****CALCULATION OF REDUNDANCY PAYMENTS**

## Section 1

1. The amount of a redundancy payment to which an employee is entitled is found by the formula, —

$P \times Y$ .

Here, —

$P$  is the lesser of, —

- (a) the amount of a week's pay for the employee; and
- (b) the maximum amount of a week's pay;

those amounts being computed or determined in accordance with Schedule 6 to the Employment Act 2006; and

$Y$  is the lesser of, —

- (a) the number of completed years for which the employee has been in the employment; and
- (b) 26.<sup>88</sup>

2. [Repealed]<sup>89</sup>

3. For the purposes of any provision of this Act whereby the Tribunal may determine that an employer shall be liable to pay to an employee either —

- (a) the whole of the redundancy payment to which the employee would have been entitled apart from another provision therein mentioned, or
- (b) such part of that redundancy payment as the Tribunal thinks fit,

this Schedule shall apply as if any reference to the amount of a redundancy payment were a reference to the amount of the redundancy payment to which the employee would have been so entitled.

4. [Repealed]<sup>90</sup>

## SCHEDULE 2

### CALCULATION OF REDUNDANCY REBATES

#### Section 23

#### PART I – REBATES IN RESPECT OF REDUNDANCY PAYMENTS

1. Subject to sections 23(7) and 27 and to the following provisions of this Part, the amount of any redundancy rebate payable in respect of a redundancy payment shall be an amount equal to that proportion of the payment specified in the following table corresponding to the number of persons employed by the employer –

TABLE

<i>Number of employees</i>	<i>Proportion of redundancy payment</i>
Not more than 5	60%
More than 5 but not more than 10	50%
More than 10 but not more than 20	40%
More than 20 but not more than 30	35%
More than 30 but not more than 40	30%

2. [Repealed]<sup>91</sup>

3. Where under section 5(3), 31(3) or 32(6) the Tribunal determines that an employer shall be liable to pay to an employee part only of the redundancy payment to which the employee would have been entitled apart from section 5(1), 31(3) or 32(6), as the case may be –

- (a) the proportion by which the redundancy payment is reduced shall be ascertained, and
- (b) the amount of any redundancy rebate calculated by reference to that payment shall be reduced by that proportion.

4. Where the amount of a redundancy payment or part of a redundancy payment is reduced in accordance with regulations under section 13 or 16(2) –

- (a) the proportion by which it is so reduced shall be ascertained, and
- (b) the amount of any redundancy rebate calculated by reference to that payment shall be reduced by that proportion.

## PART II – REBATES IN RESPECT OF OTHER PAYMENTS

### *Introductory*

5. This Part shall have effect for the purpose of calculating the amount of any redundancy rebate payable in respect of an employer's payment which is not a redundancy payment or part of a redundancy payment ("the agreed payment").

6. In this Part –

**"the agreement"**, in relation to the agreed payment, means the agreement referred to in section 23(1)(b) by reference to which that payment is payable; and

**"the assumed conditions"** are the following –

- (a) that the order referred to in section 23(1)(b) had not been made;
- (b) that the circumstances in which the agreed payment is payable had been such that the employer was liable to pay a redundancy payment to the employee in the circumstances;
- (c) that, in relation to that redundancy payment, the relevant date 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;
- (d) in so far as the relevant provisions of the agreement are inconsistent with the provisions of Schedule 5 to the 2006 Act (as modified by Part I of Schedule 6), that those provisions of the agreement were substituted for those provisions of that Schedule;<sup>92</sup>

**"the relevant provisions of the agreement"** means those provisions of the agreement which relate to either –

- (a) the circumstances in which the continuity of an employee's period of employment is to be treated as broken, or
- (b) the weeks which are to count in computing a period of employment;

**"the relevant redundancy payment"** means the amount of the redundancy payment which the employer would have been liable to pay to the employee if the assumed conditions were fulfilled.

### *Method of calculation*

7. Subject to sections 23(7) and 27 and to the following provisions of this Part, the amount of any redundancy rebate payable in respect of the agreed payment shall be an amount equal to that portion of the payment specified in the table in paragraph 1 corresponding to the number of persons employed (whether in the Island or elsewhere) by the employer and any associated employers.

8. Where the amount of the agreed payment is less than the amount of the relevant redundancy payment —

- (a) the proportion which it bears to the amount of the relevant redundancy payment shall be ascertained, and
- (b) the amount of the rebate shall (except as provided by paragraph 9) be that proportion of the amount calculated in accordance with the preceding provisions of this Part.

9. [Repealed]<sup>93</sup>

### PART III – SUPPLEMENTARY

#### *Power to modify paragraph 1*

10. The Treasury may by order modify this Schedule by substituting for the numbers of employees and the proportions for the time being specified in the table in paragraph 1 such other numbers or proportions as may be specified in the order.<sup>94</sup>

## SCHEDULE 3

### CALCULATION OF PAYMENTS TO EMPLOYEES OUT OF FUND

#### Section 25

1. (1) Where the employer's payment is a redundancy payment, the sum referred to in section 25(2) is a sum equal to the amount of that payment.

(2) Where, in a case falling within section 23(6), the employer's payment is part of a redundancy payment, the sum referred to in section 25(2) is a sum equal to the amount of that part of the payment.

2. (1) This paragraph shall have effect for the purpose of determining the sum referred to in section 25(2) in relation to an employer's payment which is not a redundancy payment or part of a redundancy payment.

(2) Paragraph 6 of Schedule 2 has effect for the purposes of this paragraph as it has effect for the purposes of Part II of that Schedule; and in the application of that paragraph in accordance with this sub-paragraph the employer's payment in relation to which the sum referred to in section 25(2) falls to be determined shall be taken to be the agreed payment.

(3) In relation to any such employer's payment, the sum in question shall be a sum equal to —

- (a) the amount of the employer's payment, or
- (b) the amount of the relevant redundancy payment,

whichever is the less.

## SCHEDULE 4<sup>95</sup>

## SCHEDULE 5

### DEATH OF EMPLOYEE OR EMPLOYER

#### Section 41

#### PART I – GENERAL

##### *Institution or continuance of tribunal proceedings*

1. Where an employee or employer has died, proceedings before the Tribunal arising under this Act may be instituted or continued by a personal representative of the deceased employee or, as the case may be, defended by a personal representative of the deceased employer.

2. (1) If there is no personal representative of a deceased employee, proceedings before the Tribunal arising under this Act (or proceedings to enforce an award made in any such proceedings) may be instituted or continued on behalf of the estate of the deceased employee by such other person as the Tribunal may appoint being either —

- (a) a person authorised by the employee to act in connection with the proceedings before the employee's death; or
- (b) the surviving spouse, surviving civil partner, child, father, mother, brother or sister of the deceased employee,<sup>96</sup>

and references in this Schedule to a personal representative shall be construed as including such a person.

(2) In such a case any award made by the Tribunal shall be in such terms and shall be enforceable in such manner as may be provided by regulations made by the Department.

3. (1) Subject to any specific provision of this Schedule to the contrary, in relation to an employee or employer who has died —

- (a) any reference in this Act to the doing of anything by or in relation to an employee or employer shall be construed as including a reference to the doing of that thing by or in relation to any personal representative of the deceased employee or employer; and
- (b) any reference in this Act to a thing required or authorised to be done by or in relation to an employee or employer shall be construed as including a reference to any thing which, in accordance with this Act as modified by this Schedule (including

sub-paragraph (a)), is required or authorised to be done by or in relation to any personal representative of the deceased employee or employer.

(2) Nothing in this paragraph prevents references in this Act to a successor of an employer from including a personal representative of a deceased employer.

#### *Rights and liabilities accruing after death*

4. (1) Any right arising under this Act as modified by this Schedule shall, if it had not accrued before the death of the employee in question, nevertheless devolve as if it had so accrued.

(2) In relation to any case where, under any provision contained in this Act as modified by this Schedule, the Tribunal has power to determine that an employer shall be liable to pay a personal representative of a deceased employee either —

- (a) the whole of a redundancy payment to which he would have been entitled apart from another provision therein mentioned, or
- (b) such part of such a redundancy payment as the Tribunal thinks fit,

any reference in this paragraph to a right shall be construed as including a reference to any right to receive the whole or part of a redundancy payment if the Tribunal determines that the employer shall be liable to pay it.

5. Where by virtue of this Act as modified by this Schedule a personal representative of a deceased employer is liable to pay any amount and that liability had not accrued before the death of the employer, it shall be treated for all purposes as if it were a liability of the deceased employer which had accrued immediately before the death.

## **PART II – DEATH OF EMPLOYER**

### *Introductory*

6. The provisions of this Part shall have effect in relation to an employee where his employer (“the deceased employer”) dies.

7. Neither section 11 nor section 11A applies to any change whereby the ownership of the business, for the purposes of which the employee was employed by the deceased employer, passes to a personal representative of the deceased employer.<sup>97</sup>

### *Dismissal*

8. Where by virtue of section 6(1) the death of the deceased employer is to be treated for the purposes of this Act as a termination by him of the contract of employment, section 4 shall have effect subject to the following modifications —

- (a) for subsection (1) there shall be substituted the following subsection —

“(1) If an employee’s contract of employment is renewed, or he is re-engaged under a new contract of employment, by a personal representative of the deceased employer and the renewal or re-engagement takes effect no later than 8 weeks after the death of the deceased employer, then, subject to subsections (3) and (6), the employee shall not be regarded as having been dismissed by reason of the ending of his employment under the previous contract.”;

- (b) in subsection (2), paragraph (a) shall be omitted and in paragraph (b) for the words “4 weeks” there shall be substituted the words “8 weeks”;
- (c) in subsections (5) and (6), references to the employer shall be construed as references to the personal representative of the deceased employer.

9. Where by reason of the death of the deceased employer the employee is treated for the purposes of this Act as having been dismissed by him, section 2 shall have effect subject to the following modifications —

- (a) for subsection (3) there shall be substituted the following subsection —

“(3) If a personal representative of the deceased employer makes an employee an offer (whether in writing or not) to renew his contract of employment, or to re-engage him under a new contract of employment, so that the renewal or re-engagement would take effect not later than 8 weeks after the death of the deceased employer, the provisions of subsections (5) and (6) shall have effect.”;

- (b) in subsection (4), paragraph (a) shall be omitted and in paragraph (b) for the words “4 weeks” there shall be substituted the words “8 weeks”;
- (c) in subsection (5), the reference to the employer shall be construed as a reference to the personal representative of the deceased employer.

10. For the purposes of section 2 as modified by paragraph 9 —

- (a) an offer shall not be treated as one whereby the provisions of the contract as renewed, or of the new contract, as the case may be, would differ from the corresponding provisions of the contract as in force immediately before the death of the deceased employer by reason only that the personal representative would be substituted as the employer for the deceased employer, and
- (b) no account shall be taken of that substitution in determining whether the refusal of the offer was unreasonable, or, as the case may be, whether the employee acted reasonably in terminating the

renewed, or new, employment during the trial period referred to in section 4.

*Lay-off and short-time*

11. Where the employee has before the death of the deceased employer been laid off or kept on short-time for one or more weeks, but has not given to the deceased employer notice of intention to claim, then if after the death of the deceased employer —

- (a) his contract of employment is renewed, or he is re-engaged under a new contract by a personal representative of the deceased employer, and
- (b) after the renewal or re-engagement, he is laid off or kept on short-time for one or more weeks by the personal representative of the deceased employer,

sections 9 and 10 shall apply as if the week in which the deceased employer died and the first week of the employee's employment by the personal representative were consecutive weeks, and any reference in those sections to 4 weeks or 13 weeks shall be construed accordingly.

12. Paragraph 13 or 14 (as the case may be) shall have effect where the employee has given to the deceased employer notice of intention to claim, and —

- (a) the deceased employer has died before the end of the next 4 weeks after the service of that notice, and
- (b) the employee has not terminated the contract of employment by notice expiring before the death of the deceased employer.

13. If in the circumstances specified in paragraph 12 the employee's contract of employment is not renewed by a personal representative of the deceased employer before the end of the next 4 weeks after the service of the notice of intention to claim, and he is not re-engaged under a new contract by such a personal representative before the end of those 4 weeks, section 9(1) and (2) and (in relation to section 9(1)) section 10(2) and (3) shall apply as if —

- (a) the deceased employer had not died, and
- (b) the employee had terminated the contract of employment by the appropriate notice (within the meaning of section 9 (3)) expiring at the end of those 4 weeks,

but sections 9(4) and (5) and 10(1) and (4) shall not apply.

14. (1) The provisions of this paragraph shall have effect where, in the circumstances specified in paragraph 12, the employee's contract of employment is renewed by a personal representative of the deceased employer before the end of the next 4 weeks after the service of the notice of intention to claim, or he is re-engaged under a new contract by such a personal representative before the end of those 4 weeks, and —

- (a) he was laid off or kept on short-time by the deceased employer for one or more of those weeks, and
  - (b) he is laid off or kept on short-time by the personal representative for the week, or for the next 2 or more weeks, following the renewal or re-engagement.
- (2) Where the conditions specified in sub-paragraph (1) are fulfilled, sections 9 and 10 shall apply as if –
- (a) all the weeks for which the employee was laid off or kept on short-time as mentioned in sub-paragraph (1) were consecutive weeks during which he was employed (but laid off or kept on short-time) by the same employer, and
  - (b) each of the periods specified in section 10(5)(a) and (b) were extended by any week or weeks any part of which was after the death of the deceased employer and before the date on which the renewal or re-engagement took effect.

*Continuity of period of employment*

15. For the purposes of the application, in accordance with section 15(1), of any provisions of this Act in relation to an employee who was employed as a domestic servant in a private household, any reference to a personal representative

- (a) in this Part, or
- (b) in paragraph 8 of Schedule 5 to the 2006 Act,<sup>98</sup>

shall be construed as including a reference to any person to whom, otherwise than in pursuance of a sale or other disposition for valuable consideration, the management of the household has passed in consequence of the death of the deceased employer.

*Protection of personal representatives*

16. (1) The personal representative of a deceased employer shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of 12 months referred to in section 20(1) on the ground that he ought to have taken into account the possibility that the Tribunal might under section 20(2) permit a claim for a redundancy payment, a reference to the Tribunal or an application under section 20(1)(d) to be made after that period.

(2) Sub-paragraph (1) does not prejudice any power to recover any part of the estate so distributed arising by virtue of a claim, reference or application so made.

### PART III – DEATH OF EMPLOYEE

#### *Death after notice of termination*

17. (1) Where an employer has given notice to an employee to terminate his contract of employment, and before that notice expires the employee dies, the provisions of this Act shall apply as if the contract had been duly terminated by the employer by notice expiring on the date of the employee's death.

(2) Where the employee's contract of employment has been terminated by the employer and by virtue of section 7(3) a date later than the relevant date (as defined by section 7(1)) is to be treated as the relevant date for the purposes of certain provisions of this Act, and before that later date the employee dies, section 7(3) shall have effect as if the notice referred to in that subsection as required to be given by an employer would have expired on the employee's death.

#### *Death after offer of renewal etc*

18. (1) Where an employer has given notice to an employee to terminate his contract of employment, and has offered to renew his contract of employment, or to re-engage him under a new contract, then if –

- (a) the employee dies without having either accepted or refused the offer, and
- (b) the offer has not been withdrawn before his death,

section 2 shall apply as if for the words “the employee unreasonably refuses” there were substituted the words “it would have been unreasonable on the part of the employee to refuse”.

(2) Where an employee's contract of employment has been renewed, or he has been re-engaged under a new contract of employment, and during the trial period the employee dies without having terminated or having given notice to terminate the contract, section 2(6) shall apply as if for the words from “and during the trial period” to “terminated” there were substituted the words “and it would have been unreasonable for the employee, during the trial period referred to in section 4, to terminate or give notice to terminate the contract”.

#### *Death after notice during trial period*

19. Where an employee's contract of employment has been renewed, or he has been re-engaged under a new contract of employment, and during the trial period he gives notice to terminate the contract but dies before the expiry of that notice, sections 2(6) and 4(6)(a) shall have effect as if the notice had expired and the contract had thereby been terminated on the date of the employee's death.

*Death after employee's notice during employer's notice*

20. (1) Where, in the circumstances specified in section 5(1)(a) and (b), the employee dies before the notice given by him under section 5(1)(b) is due to expire and before the employer has given him notice under section 5(2), section 5(3) shall apply as if the employer had given him such notice and he had not complied with it.

(2) Where, in the said circumstances, the employee dies before his notice given under section 5(1)(b) is due to expire but after the employer has given him notice under section 5(2), section 5(2) and (3) shall apply as if the circumstances were that the employee had not died, but did not comply with the last-mentioned notice.

*Death after notice of intention to claim*

21. (1) Where an employee has given notice of intention to claim and dies before he has given notice to terminate his contract of employment and before the period allowed for the purposes of section 9(2)(a) has expired, section 9(2)(a) shall not apply.

(2) Where an employee, who has given notice of intention to claim, dies within 7 days after the service of that notice, and before the employer has given a counter-notice, the provisions of sections 9 and 10 shall apply as if the employer had given a counter-notice within those 7 days.

(3) In this paragraph "counter-notice" has the same meaning as in section 10(1).

**SCHEDULE 6<sup>99</sup>**

**SCHEDULE 7<sup>100</sup>**



## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

- 
- <sup>1</sup> See section 47 for the application of the Act.
- <sup>2</sup> Subs (1) amended by Employment Act 2006 Sch 8.
- <sup>3</sup> Subs (4) amended by Employment Act 2006 Sch 8, by Education (Miscellaneous Provisions) Act 2009 Sch 1, by SD155/10 Sch 10 and by SD2017/0325.
- <sup>4</sup> Subs (1) repealed by Equality Act 2017 Sch 24.
- <sup>5</sup> Para (b) substituted by Employment Act 2006 Sch 8.
- <sup>6</sup> Para (c) substituted by Employment Act 2006 Sch 8.
- <sup>7</sup> Subs (3) amended by Employment Act 2006 Sch 8.
- <sup>8</sup> Subs (3) amended by Employment Act 2006 Sch 8.
- <sup>9</sup> Cross heading substituted by Employment Act 2006 Sch 8.
- <sup>10</sup> S 11 heading amended by Equality Act 2017 Sch 22.
- <sup>11</sup> Para (a) amended by Equality Act 2017 Sch 22.
- <sup>12</sup> Subs (1) amended by Equality Act 2017 Sch 22.
- <sup>13</sup> Subs (2) amended by Equality Act 2017 Sch 22.
- <sup>14</sup> Para (a) amended by Equality Act 2017 Sch 22.
- <sup>15</sup> Para (b) amended by Equality Act 2017 Sch 22.
- <sup>16</sup> Subs (8) inserted by Equality Act 2017 Sch 22.
- <sup>17</sup> S 11 substituted by Employment Act 2006 Sch 8.
- <sup>18</sup> S 11A inserted by Equality Act 2017 Sch 22.
- <sup>19</sup> Para (b) amended by SD155/10 Sch 2 and by SD2017/0325.
- <sup>20</sup> S 13 repealed by Equality Act 2017 Sch 24.
- <sup>21</sup> Subs (1) amended by Public Services Commission Act 2015 Sch.

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- <sup>22</sup> Para (a) substituted by Employment (Amendment) Act 1996 s 9 and amended by Public Services Commission Act 2015 Sch.
- <sup>23</sup> Paras (b) and (c) repealed by Employment (Amendment) Act 1996 s 9.
- <sup>24</sup> Subs (1) amended by Equality Act 2017 Sch 22.
- <sup>25</sup> S 17 repealed by Employment Act 2006 Sch 9.
- <sup>26</sup> S 19 repealed by Employment Act 2006 Sch 9.
- <sup>27</sup> Para (d) substituted by Employment Act 1991 Sch 10 and amended by Employment Act 2006 Sch 8.
- <sup>28</sup> Para (b) amended by Employment Act 2006 Sch 8.
- <sup>29</sup> Subs (3) amended by Employment Act 2006 Sch 8.
- <sup>30</sup> Subs (1) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>31</sup> Subs (2A) inserted by Employment Act 2006 Sch 8 and amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>32</sup> Subs (3) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>33</sup> Subs (5) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>34</sup> Subs (7) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>35</sup> Para (a) repealed by Employment Act 2006 Sch 9.
- <sup>36</sup> Subs (6) added by Employment Act 2006 Sch 8.
- <sup>37</sup> Subs (1) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>38</sup> Subs (1A) inserted by Employment Act 2006 Sch 8.
- <sup>39</sup> Para (b) amended by Employment Act 2006 Sch 9.
- <sup>40</sup> Para (c) amended by Employment Act 2006 Sch 8.
- <sup>41</sup> Para (d) inserted by Employment Act 2006 Sch 8 and repealed by Equality Act 2017 Sch 22.
- <sup>42</sup> Subs (2) amended by Employment (Amendment) Act 1996 s 8, by SD155/10 Sch 6 and by SD2014/08.
- <sup>43</sup> Subs (2A) inserted by Employment (Amendment) Act 1996 s 8 and amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>44</sup> Para (a) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>45</sup> Para (b) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>46</sup> Para (ba) inserted by Employment Act 2006 Sch 8 and amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>47</sup> Para (bb) inserted by Employment Act 2006 Sch 8 and amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>48</sup> Subs (3) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>49</sup> Subs (4) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>50</sup> Para (b) amended by Administration of Estates Act 1990 Sch 4.
- <sup>51</sup> Para (ca) added by Employment Act 2006 Sch 8.
- <sup>52</sup> Subs (1) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>53</sup> Para (b) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>54</sup> Subs (4) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>55</sup> Para (b) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>56</sup> Subs (5) amended by SD155/10 Sch 6 and by SD2014/08.

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- <sup>57</sup> S 28 substituted by SD2014/08.
- <sup>58</sup> S 29 heading amended by Public Services Commission Act 2015 Sch.
- <sup>59</sup> Para (a) amended by Public Services Commission Act 2015 Sch.
- <sup>60</sup> Subs (2) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>61</sup> Para (a) amended by Public Services Commission Act 2015 Sch.
- <sup>62</sup> Para (b) amended by Public Services Commission Act 2015 Sch.
- <sup>63</sup> Subs (3) amended by Public Services Commission Act 2015 Sch.
- <sup>64</sup> Subs (4) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>65</sup> Subs (4) amended by Employment Act 2006 Sch 8.
- <sup>66</sup> Subs (1) amended by Equality Act 2017 Sch 22.
- <sup>67</sup> Subs (2) amended by Employment Act 2006 Sch 8.
- <sup>68</sup> S 36 repealed by Employment Act 2006 Sch 9.
- <sup>69</sup> Subs (1) amended by Equality Act 2017 Sch 22.
- <sup>70</sup> Subs (2) substituted by Equality Act 2017 Sch 22.
- <sup>71</sup> Subs (1) amended by GC155/91.
- <sup>72</sup> Subs (1) renumbered by Equality Act 2017 Sch 22.
- <sup>73</sup> Subs (2) inserted by Equality Act 2017 Sch 22.
- <sup>74</sup> Subs (3) inserted by Equality Act 2017 Sch 22.
- <sup>75</sup> S 42 repealed by Employment Act 1991 Sch 11.
- <sup>76</sup> S 43 substituted by Employment Act 2006 Sch 8.
- <sup>77</sup> S 44 repealed by Employment Act 1991 Sch 11.
- <sup>78</sup> Definition of “the 1981 Act” repealed by Employment Act 1991 Sch 11.
- <sup>79</sup> Definition of “the 2006 Act” inserted by Employment Act 2006 Sch 8.
- <sup>80</sup> Definition of “the Department” amended by SD155/10 Sch 2 and by SD2017/0325.
- <sup>81</sup> Definition of “the DSC” inserted by SD155/10 Sch 6 and repealed by SD2014/08.
- <sup>82</sup> Definition of “employee” and “employer” substituted by Employment Act 2006 Sch 8.
- <sup>83</sup> Definition of “limited-term” inserted by Employment Act 2006 Sch 8.
- <sup>84</sup> Definition of “lock-out” substituted by Employment Act 2006 Sch 8.
- <sup>85</sup> Definition of “renewal” amended by Employment Act 2006 Sch 8.
- <sup>86</sup> Definition of “strike” substituted by Employment Act 2006 Sch 8.
- <sup>87</sup> Definition of “the Tribunal” substituted by Equality Act 2017 Sch 22.
- <sup>88</sup> Para 1 substituted by Equality Act 2017 Sch 22.
- <sup>89</sup> Para 2 repealed by Equality Act 2017 Sch 24.
- <sup>90</sup> Para 4 repealed by Equality Act 2017 Sch 24.
- <sup>91</sup> Para 2 repealed by Equality Act 2017 Sch 24.
- <sup>92</sup> Para (d) amended by Employment Act 2006 Sch 8.
- <sup>93</sup> Para 9 repealed by Equality Act 2017 Sch 24.
- <sup>94</sup> Para 10 amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>95</sup> Sch 4 repealed by Employment Act 2006 Sch 9.
- <sup>96</sup> Item (b) amended by Civil Partnership Act 2011 Sch 14.
- <sup>97</sup> Para 7 amended by Equality Act 2017 Sch 22.

<sup>98</sup> Para (b) substituted by Employment Act 2006 Sch 8.

<sup>99</sup> Sch 6 repealed by Employment Act 1991 Sch 11.

<sup>100</sup> Sch 7 repealed by Employment Act 2006 Sch 9.

