



Isle of Man

Ellan Vannin

AT 21 of 2006

EMPLOYMENT ACT 2006



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**Isle of Man***Ellan Vannin*

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AN ACT to consolidate enactments relating to employment rights; to confer new rights on employees and workers; and for connected purposes.

PART I – DISCRIMINATION AT RECRUITMENT ON TRADE UNION GROUNDS

1 Refusal of employment on grounds related to union membership or activities

[P1992/52/137; 1996/18/1]

- (1) It is unlawful to refuse a person employment —
 - (a) because he or she is, or is not, or has been, or has not been a member of a trade union, or
 - (b) because he or she is or has been involved (whether or not as a member) in trade union activities, or
 - (c) because he or she is unwilling to accept a requirement —
 - (i) to take steps to become or cease to be, or to remain or not to become, a member of a trade union, or
 - (ii) to cease to be involved (whether or not as a member) in trade union activities, or
 - (iii) to make payments or suffer deductions in the event of he or she not being a member of a trade union.
- (2) A person who is thus unlawfully refused employment has a right of complaint to the Employment Tribunal (in this Act referred to as “the Tribunal”).
- (3) Where an advertisement is published which indicates, or might reasonably be understood as indicating —

- (a) that employment to which the advertisement relates is open only to a person who is, or is not, or has been, or has not been a member of a trade union, or
- (b) that any such requirement as is mentioned in subsection (1)(c) will be imposed in relation to employment to which the advertisement relates,

a person who does not satisfy that condition or, as the case may be, is unwilling to accept that requirement, and who seeks and is refused employment to which the advertisement relates, shall be conclusively presumed to have been refused employment for that reason.

- (4) Where there is an arrangement or practice under which employment is offered only to persons put forward or approved by a trade union, and the trade union puts forward or approves only persons who are members of the union, a person who is not a member of the union and who is refused employment in pursuance of the arrangement or practice shall be taken to have been refused employment because he or she is not a member of the trade union.
- (5) A person shall be taken to be refused employment if he or she seeks employment of any description with a person and that person —
 - (a) refuses or deliberately omits to entertain and process his or her application or enquiry, or
 - (b) causes him or her to withdraw or cease to pursue his or her application or enquiry, or
 - (c) refuses or deliberately omits to offer him or her employment of that description, or
 - (d) makes him or her an offer of such employment the terms of which are such as no reasonable employer who wished to fill the post would offer and which is not accepted, or
 - (e) makes him or her an offer of such employment but withdraws it or causes him or her not to accept it.
- (6) Where a person is offered employment on terms which include a requirement that he or she is, or is not, or has been, or has not been a member of a trade union, or any such requirement as is mentioned in subsection (1)(c), and he or she does not accept the offer because he or she does not satisfy or, as the case may be, is unwilling to accept that requirement, he or she shall be treated as having been refused employment for that reason.
- (7) Where a person may not be considered for appointment or election to an office in a trade union unless he or she is a member of the union, or of a particular branch or section of the union or of one of a number of particular branches or sections of the union, nothing in this section applies to anything done for the purpose of securing compliance with

that condition although as holder of the office he or she would be employed by the union.

For this purpose an “office” means any position by virtue of which the holder is an official of the union.

- (8) The provisions of this section apply in relation to an employment agency acting, or purporting to act, on behalf of an employer as in relation to an employer.

2 Refusal of service of employment agency on grounds related to union membership or activities

[P1992/52/138; 1996/18/2]

- (1) It is unlawful for an employment agency to refuse a person any of its services —
- (a) because he or she is, or is not, or has been, or has not been a member of a trade union, or
 - (b) because he or she is or has been involved (whether or not as a member) in trade union activities, or
 - (c) because he or she is unwilling to accept a requirement —
 - (i) to take steps to become or cease to be, or to remain or not to become, a member of a trade union, or
 - (ii) to cease to be involved (whether or not as a member) in trade union activities.
- (2) A person who is thus unlawfully refused any service of an employment agency has a right of complaint to the Tribunal.
- (3) Where an advertisement is published which indicates, or might reasonably be understood as indicating —
- (a) that any service of an employment agency is available only to a person who is, or is not, or has been, or has not been a member of a trade union, or
 - (b) that any such requirement as is mentioned in subsection (1)(c) will be imposed in relation to a service to which the advertisement relates,
- a person who does not satisfy that condition or, as the case may be, is unwilling to accept that requirement, and who seeks to avail himself or herself of and is refused that service, shall be conclusively presumed to have been refused it for that reason.
- (4) A person shall be taken to be refused a service if he or she seeks to avail himself or herself of it and the agency —
- (a) refuses or deliberately omits to make the service available to him or her, or

- (b) causes him or her not to avail himself or herself of the service or to cease to avail himself or herself of it, or
 - (c) does not provide the same service, on the same terms, as is provided to others.
- (5) Where a person is offered a service on terms which include a requirement that he or she is, or is not, or has been, or has not been a member of a trade union, or any such requirement as is mentioned in subsection (1)(c), and he or she does not accept the offer because he or she does not satisfy or, as the case may be, is unwilling to accept that requirement, he or she shall be treated as having been refused the service for that reason.

3 Time limit for proceedings

[P1992/52/139; 1996/18/3]

- (1) The Tribunal shall not consider a complaint under section 1 or 2 unless it is presented to the Tribunal —
- (a) before the end of the period of 3 months beginning with the date of the conduct to which the complaint relates, or
 - (b) where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as the Tribunal considers reasonable.
- (2) The date of the conduct to which a complaint under section 1 relates shall be taken to be —
- (a) in the case of an actual refusal, the date of the refusal;
 - (b) in the case of a deliberate omission —
 - (i) to entertain and process the complainant's application or enquiry, or
 - (ii) to offer employment,the end of the period within which it was reasonable to expect the employer to act;
 - (c) in the case of conduct causing the complainant to withdraw or cease to pursue his or her application or enquiry, the date of that conduct;
 - (d) in a case where an offer was made but withdrawn, the date when it was withdrawn;
 - (e) in any other case where an offer was made but not accepted, the date on which it was made.
- (3) The date of the conduct to which a complaint under section 2 relates shall be taken to be —
- (a) in the case of an actual refusal, the date of the refusal;

- (b) in the case of a deliberate omission to make a service available, the end of the period within which it was reasonable to expect the employment agency to act;
- (c) in the case of conduct causing the complainant not to avail himself or herself of a service or to cease to avail himself or herself of it, the date of that conduct;
- (d) in the case of failure to provide the same service, on the same terms, as is provided to others, the date or last date on which the service in fact provided was provided.

4 Remedies

[P1992/52/140; 1996/18/4]

- (1) Where the Tribunal finds that a complaint under section 1 (refusal of employment: union membership or activities) or 2 (refusal of employment by agency: union membership or activities) is well-founded, it shall make a declaration to that effect and may make such of the following as it considers just and equitable —
 - (a) an order requiring the respondent to pay compensation to the complainant of such amount as the Tribunal may determine;
 - (b) a recommendation that the respondent take within a specified period action appearing to the Tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any conduct to which the complaint relates.
- (2) Compensation shall be assessed on the same basis as damages for breach of statutory duty and may include compensation for injury to feelings.
- (3) If the respondent fails without reasonable justification to comply with a recommendation to take action, the Tribunal may increase its award of compensation or, if it has not made such an award, make one.
- (4) The total amount of compensation shall not exceed the limit for the time being imposed by section 144(1) (limit of compensatory award).

5 Complaint against employer and employment agency

[P1992/52/141; 1996/18/5]

- (1) Where a person has a right of complaint under this Part against a prospective employer and against an employment agency arising out of the same facts, he or she may present a complaint against either of them or against them jointly.
- (2) If a complaint is brought against one only, he or she or the complainant may request the Tribunal to join the other as a party to the proceedings. The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no

such request may be made after the Tribunal has made its decision as to whether the complaint is well-founded.

- (3) Where a complaint is brought against an employer and an employment agency jointly, or where it is brought against one and the other is joined as a party to the proceedings, and the Tribunal —
 - (a) finds that the complaint is well-founded as against the employer and the agency; and
 - (b) makes an award of compensation,

it may order that the compensation shall be paid by the one or the other, or partly by one and partly by the other, as the Tribunal may consider just and equitable in the circumstances.

6 Awards against third parties

[P1992/52/142; 1996/18/6]

- (1) If in proceedings on a complaint under section 1 (refusal of employment: union membership or activities) or 2 (refusal of employment by agency: union membership or activities) either the complainant or the respondent claims that the respondent was induced to act in the manner complained of by pressure which a trade union or other person exercised on him or her by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, the complainant or the respondent may request the Tribunal to direct that the person who he or she claims exercised the pressure be joined as a party to the proceedings.
- (2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the Tribunal has made its decision as to whether the complaint is well-founded.
- (3) Where a person has been so joined as a party to the proceedings and the Tribunal —
 - (a) finds that the complaint is well-founded,
 - (b) makes an award of compensation, and
 - (c) also finds that the claim in subsection (1) is well-founded,

it may order that the compensation shall be paid by the person joined instead of by the respondent, or partly by that person and partly by the respondent, as the Tribunal may consider just and equitable in the circumstances.

- (4) Where by virtue of section 5 (complaint against employer and employment agency) there is more than one respondent, this section applies to either or both of them.

7 Interpretation etc.

[P1992/52/143; 1996/18/7]

(1) In this Part —

“**advertisement**” includes every form of advertisement or notice, whether to the public or not, and references to publishing an advertisement shall be construed accordingly;

“**employment agency**” means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers, but subject to subsection (2).

(2) For the purposes of this Part as it applies to employment agencies —

(a) services other than those mentioned in the definition of “employment agency” in subsection (1) shall be disregarded, and

(b) a trade union shall not be regarded as an employment agency by reason of services provided by it only for, or in relation to, its members.

(3) References in this Part to being or not being or having been, or not having been a member of a trade union —

(a) are to being or not being or having been, or not having been a member of any trade union, of a particular trade union or of one of a number of particular trade unions; and

(b) include references to being or not being or having been, or not having been a member of a particular branch or section of a trade union or of one of a number of particular branches or sections of a trade union.

(4) The remedy of a person for conduct which is unlawful by virtue of section 1 (refusal of employment: union membership or activities) or 2 (refusal of employment by agency: union membership or activities) is by way of a complaint to the Tribunal in accordance with this Act, and not otherwise.

No other legal liability arises by reason that conduct is unlawful by virtue of either of those sections.

PART II – RIGHTS DURING EMPLOYMENT

Written particulars of terms of employment

8 Written particulars of terms of employment

[P1996/18/1 and 3(1) and (2); 1991/19/1]

(1) Not later than 4 weeks after the beginning of an employee’s employment with an employer, the employer shall give to the employee a written statement in accordance with the following provisions of this section.

- (2) An employer shall in a statement under this section —
- (a) identify the parties;
 - (b) specify the date when the employment began; and
 - (c) specify the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).
- (3) A statement under this section shall contain the following particulars of the terms of employment as at a specified date not more than one week before the statement is given or, where the employment terminated before the statement is given, one week before such termination —
- (a) the scale or rate of remuneration, or the method of calculating remuneration,
 - (b) the intervals at which remuneration is paid (that is, whether weekly or monthly or by some other period),
 - (c) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),
 - (d) any terms and conditions relating to —
 - (i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),
 - (ii) incapacity for work due to sickness or injury, including any provision for sick pay,
 - (iii) pensions and pension schemes, including the normal retiring age in the employment,
 - (e) the length of notice which the employee is obliged to give and entitled to receive to terminate his or her contract of employment,
 - (f) the title of the job which the employee is employed to do,
 - (g) where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a limited term, the date or circumstances when it is to end,
 - (h) either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer,
 - (i) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made, and
 - (j) where the employee is required to work outside the Island for a period of more than one month —

- (i) the period for which he or she is to work outside the Island,
 - (ii) the currency in which remuneration is to be paid while he or she is working outside the Island,
 - (iii) any additional remuneration payable to him or her, and any benefits to be provided to or in respect of him or her, by reason of being required to work outside the Island, and
 - (iv) any terms and conditions relating to his or her return to the Island.
- (4) Subsection (3)(d)(iii) does not apply to the employees of any public authority if the employees' pension rights depend on the terms of a pension scheme established under any provision contained in or having effect under an Act of Tynwald and the authority are required by any such provision to give to new employees information concerning their pension rights, or concerning the determination of questions affecting their pension rights.
- (5) Subject to subsection (6), every statement given to an employee under this section shall include a note —
- (a) specifying any disciplinary rules and procedures applicable to the employee, or referring to a document which is reasonably accessible to the employee and which specifies any such rules and procedures;
 - (b) specifying, by description or otherwise —
 - (i) a person to whom the employee can apply if he or she is dissatisfied with any disciplinary decision relating to him or her; and
 - (ii) a person to whom the employee can apply for the purpose of seeking redress of any grievance relating to his or her employment; and
 - (iii) the manner in which any such application should be made;
 - (c) where there are further steps consequent upon any such application, explaining those steps or referring to a document which is reasonably accessible to the employee and which explains them; and
 - (d) stating whether a contracting-out certificate is in force for the employment in respect of which the statement is given.
- (6) Subsection (5)(a) to (c) does not apply to rules, disciplinary decisions, grievances or procedures relating to health or safety at work.
- (7) The definition of week given by section 173(1) (general interpretation) does not apply for the purposes of this section.

9 Supplementary provisions as to statements under section 8

[P1996/18/2; 1991/19/2]

- (1) If there are no particulars to be entered under any of the heads of section 8(3)(d), or under any of the other provisions of sections 8(2), (3) and (5)(b)(i), that fact shall be stated.
- (2) A statement given under section 8 may, for all or any of the particulars to be given by the statement, refer the employee to some document which the employee has reasonable opportunities of reading in the course of his or her employment or which is made reasonably accessible to him or her in some other way.
- (3) No statement need be given under section 8 where —
 - (a) the employee's employment began not more than 6 months after the end of earlier employment with the same employer,
 - (b) a statement under that section, and any information subsequently required under section 10 (changes in terms of employment), were duly given to the employee in respect of his or her earlier employment, and
 - (c) the terms of his or her present employment are the same as those of his or her earlier employment and any other matters falling within section 8(5) of which particulars were to be given by that statement are also unchanged,

but without prejudice to the operation of section 10 if there is subsequently a change in his or her terms of employment or in any of those matters.

- (4) The employer shall preserve a copy of every statement given under section 8 until the expiration of 6 months following the termination of the employment in question.
- (5) Where before the end of the period of 4 weeks after the beginning of an employee's employment the employee is to begin to work outside the Island for a period of more than one month, the statement under section 8 shall be given to him or her not later than the time when he or she leaves the Island in order to begin so to work.

10 Changes in terms of employment

[P1991/19/3]

- (1) If after the date to which a statement given under section 8 (written particulars of terms of employment) relates there is a change in the terms of employment to be included, or referred to, in that statement the employer shall —
 - (a) not more than 4 weeks after the change, or
 - (b) where that change results from the employee being required to work outside the Island for a period of more than one month, the

time when he or she leaves the Island to begin so to work, if that is earlier,

inform the employee of the nature of the change by a written statement and, if he or she does not leave a copy of the statement with the employee, shall preserve the statement and ensure that the employee has reasonable opportunities of reading it in the course of his or her employment, or that it is made reasonably accessible to him or her in some other way.

- (2) A statement given under subsection (1) may, for all or any of the particulars to be given by the statement, refer the employee to some document which the employee has reasonable opportunities of reading in the course of his or her employment, or which is made reasonably accessible to him or her in some other way.
- (3) If, in referring in the statement given under section 8 or under subsection (1) to any such document, the employer indicates to the employee that future changes in the terms of which the particulars are given in the document will be entered up in the document (or recorded by some other means for the information of persons referring to the document), the employer need not under subsection (1) inform the employee of any such change if it is duly entered up or recorded not later than 4 weeks after the change is made.
- (4) Where, after an employer has given to an employee a written statement in accordance with section 8 —
 - (a) the name of the employer (whether an individual or a body corporate or partnership) is changed, without any change in the identity of the employer, or
 - (b) the identity of the employer is changed, in such circumstances that[,] the continuity of the employee's period of employment is not broken,

and (in either case) the change does not involve any change in the terms (other than the names of the parties) included or referred to in the statement, then, the person who, immediately after the change, is the employer shall not be required to give to the employee a statement in accordance with section 8, but, subject to subsection (5), the change shall be treated as a change falling within subsection (1).

- (5) A written statement under this section which informs an employee of such a change in his or her terms of employment as is referred to in subsection (4)(b) shall specify the date on which the employee's period of continuous employment began.
- (6) Any reference in subsection (1), (3) or (4) to the terms of employment which were to be, or were, included or referred to in a statement given under section 8 shall be construed as including a reference to any other

matters falling within section 8(2)(c) and (5) of which particulars were to be given by that statement.

11 Exclusion of certain contracts in writing

[P1991/19/4]

Sections 8 (written particulars of terms of employment) and 10 (changes in terms of employment) do not apply to an employee if and so long as the following conditions are fulfilled in relation to him or her —

- (a) the employee's contract of employment is a contract which has been reduced to writing in one or more documents and which contains express terms affording the particulars to be given under each of the paragraphs in section 8(3) and under each head of section 8(3)(d);
- (b) there has been given to the employee a copy of the contract (with any variations made from time to time), or he or she has reasonable opportunities of reading such a copy in the course of his or her employment, or such a copy is made reasonably accessible to him or her in some other way; and
- (c) such a note as is mentioned in section 8(5) has been given to the employee or he or she has reasonable opportunities of reading such a note in the course of his or her employment or such a note is made reasonably accessible to him or her in some other way.

12 Employees becoming or ceasing to be excluded from sections 8 to 10

[P1991/19/5]

- (1) Sections 8 to 10 apply to an employee who at any time comes or ceases to come within the exceptions from those sections provided for by section 11 (exclusion of certain contracts in writing) or Schedule 4 (treatment of special categories of worker) as if his or her employment with his or her employer terminated or began at that time.
- (2) The fact that section 8 is directed to apply to an employee as if his or her employment began on their ceasing to come within one of the exceptions referred to in subsection (1) does not affect the obligation under section 8(2)(b) to specify the date on which his or her employment actually began.

13 Power of Department to require further particulars

[P1991/19/6]

The Department may by order provide that section 8 shall have effect as if such further particulars as may be specified in the order were included in the particulars to be included in a statement under that section, and, for that purpose, the order may include such provisions amending sections 8(1), (2) and (3) as appear to the Department to be expedient.

*Itemised pay statements***14 Right to itemised pay statement**

[P1996/18/8; 1991/19/7]

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

- (a) the gross amount of the wages or salary;
- (b) the amounts of any variable and, subject to section 15 (standing statement of fixed deductions), any fixed deductions from that gross amount and the purposes for which they are made;
- (c) the net amount of wages or salary payable; and
- (d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

15 Standing statement of fixed deductions

[P1991/19/8]

- (1) A pay statement given in accordance with section 14 need not contain separate particulars of a fixed deduction if it contains instead an aggregate amount of fixed deductions, including that deduction, and the employer has given to the employee, at or before the time at which that pay statement is given, a standing statement of fixed deductions, in writing, which contains the following particulars of each deduction comprised in that aggregate amount, —

- (a) the amount of the deduction;
- (b) the intervals at which the deduction is to be made; and
- (c) the purpose for which it is made,

and which, in accordance with subsection (4), is effective at the date on which the pay statement is given.

- (2) A standing statement of fixed deductions may be amended, whether by addition of a new deduction or by a change in the particulars or cancellation of an existing deduction, by notice in writing, containing particulars of the amendment, given by the employer to the employee.
- (3) An employer who has given to an employee a standing statement of fixed deductions shall, within the period of 12 months beginning with the date on which the first standing statement was given and at intervals of not more than 12 months thereafter, reissue it in a consolidated form incorporating any amendments notified in accordance with subsection (2).
- (4) A standing statement of fixed deductions shall become effective, for the purposes of subsection (1), on the date on which it is given to the employee and shall cease to have effect on the expiration of the period of

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

16 Power to amend sections 14 and 15

[P1996/18/10; 1991/19/9]

The Department may by order —

- (a) vary the provisions of sections 14 and 15 as to the particulars which must be included in a pay statement or a standing statement of fixed deductions by adding items to or removing items from the particulars listed in those sections or by amending any such particulars; and
- (b) vary the provisions of section 15(3) and (4) so as to shorten or extend the periods of 12 months referred to in those subsections, or those periods as varied from time to time under this section.

Enforcement of rights under Part II

17 References to and determination by Tribunal

[P1996/18/11 and 12; 1991/19/10]

- (1) Where an employer does not give an employee a statement as required by section 8 or 10 (written particulars and changes in terms of employment) or 14 (right to itemised pay statement), either because he or she gives him or her no statement or because the statement given does not comply with what is required, the employee may apply to the Tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the relevant section.
- (2) Where —
 - (a) a statement purporting to be a statement under section 8 or 10, or
 - (b) a pay statement, or a standing statement of fixed deductions, purporting to comply with section 14 or 15,has been given to an employee, and a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of this Part, either the employer or the employee may apply to have the question determined by the Tribunal.
- (3) Where a statement under section 8 or 10 given by an employer to an employee contains such an indication as is mentioned in section 10(3), and —
 - (a) any particulars purporting to be particulars of a change to which that indication relates are entered up or recorded in accordance with that indication, and

- (b) a question arises as to the particulars which ought to have been so entered up or recorded,
- either the employer or the employee may apply to have the question determined by the Tribunal.
- (4) In this section, a question as to the particulars which ought to have been included –
- (a) in a pay statement, or in a standing statement of fixed deductions, does not include a question solely as to the accuracy of an amount stated in any such particulars;
- (b) in a note under section 8(5), does not include any question whether the employment is, has been or will be contracted-out employment for the purposes of Part III of the Pension Schemes Act 1993 (as that Act of Parliament has effect in the Island).
- (5) Where, on an application under subsection (1), the Tribunal determines particulars as being those which ought to have been included or referred to in a statement given under section 8 or 10, the employer shall be deemed to have given to the employee a statement in which those particulars were included, or referred to, as specified in the decision of the Tribunal.
- (6) On determining an application under subsection (2)(a), the Tribunal may either –
- (a) confirm the particulars as included or referred to in the statement given by the employer, or
- (b) amend those particulars, or
- (c) substitute other particulars for them,
- as the Tribunal may determine to be appropriate; and the statement shall be deemed to have been given by the employer to the employee in accordance with the decision of the Tribunal.
- (7) On determining an application under subsection (3), the Tribunal may either confirm the particulars to which the application relates, or may amend those particulars or may substitute other particulars for them, as the Tribunal may determine to be appropriate; and the statement shall be deemed to have been given by the employer to the employee in accordance with the decision of the Tribunal.
- (8) Where on an application under this section the Tribunal finds –
- (a) that an employer has failed to give an employee a statement in accordance with section 8 or 10 within 14 days of having received a written request from the employee to do so or has failed to give an employee a statement in accordance with section 14, or
- (b) that a pay statement or standing statement of fixed deductions does not, in relation to a deduction, contain the particulars

required to be included in that statement by section 14 or section 15 –

- (i) the Tribunal shall make a declaration to that effect; and
- (ii) in the case of failure to give an employee a statement in accordance with section 8 or 10 the Tribunal shall order the employer to pay the employee a sum equivalent to 2 weeks' pay and may, if it considers it just and equitable in all the circumstances, make an award of up to 4 weeks' pay calculated in accordance with Schedule 6 (a week's pay); and
- (iii) in the case of failure to give an employee a statement in accordance with section 14 or section 15, if the Tribunal further finds that any unnotified deductions have been made from the pay of the employee during the period of 13 weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the Tribunal may order the employer to pay the employee a sum not exceeding the aggregate of the unnotified deductions so made.

In this subsection “unnotified deduction” means a deduction made without the employer giving the employee, in any pay statement or standing statement of fixed deductions, the particulars of that deduction required by section 14 or 15.

- (9) The Tribunal shall not entertain an application under this section in a case where the employment to which the application relates has ceased unless the application was made –
 - (a) before the end of the period of 3 months beginning with the date on which the employment ceased, or
 - (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of 3 months.

18 Tribunal's duties in cases other than section 17

- (1) This section applies to proceedings before the Tribunal relating to a claim by an employee or a worker (as the case may be) under any of the jurisdictions listed in Schedule 1.
- (2) If, in the case of proceedings to which this section applies –
 - (a) the employer was in breach of his or her duty to the employee under section 8 (written statement of initial employment particulars) or 10 (changes in terms of employment) when the proceedings were begun, and

- (b) the Tribunal finds in favour of the employee, whether or not the Tribunal makes an award to him or her in respect of the claim to which the proceedings relate, the Tribunal shall order the employer to pay the employee a sum equivalent to 2 weeks' pay and may, if it considers it just and equitable in all the circumstances, make an award of up to 4 weeks' pay calculated in accordance with Schedule 6 (a week's pay).
- (3) The Department may by order —
- (a) amend Schedule 1 for the purpose of —
 - (i) adding a jurisdiction to the list in that Schedule, or
 - (ii) removing a jurisdiction from that list;
 - (b) make provision, in relation to a jurisdiction listed in Schedule 1, for this section not to apply to proceedings relating to claims of a description specified in the order;
 - (c) make provision for this section to apply, with or without modifications, as if —
 - (i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this section were an employee for those purposes, and
 - (ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.

19 Offences

[P1991/19/11]

- (1) If a person without reasonable excuse fails to comply with the requirements of section 8 (written particulars of terms of employment), 10 (changes in terms of employment) or 14 (right to itemised pay statement), he or she shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.
- (2) If, in a statement under section 8, 10, 14 or 15 (standing statement of fixed deductions) or in any document prepared for the purposes of section 8(5) or 9(2) (supplementary provisions: section 8), a person includes anything which to his or her knowledge is false in a material particular, or recklessly includes anything which is false in a material particular, he or she shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.
- (3) If an employer has failed to give a statement required by section 8(1) or section 10(1) within the time limited by the relevant section then, without prejudice to the bringing of proceedings under subsection (1), the Department may by notice in writing to the employer require him or her, within a period specified in the notice (not being less than one week from

receipt of the notice), to make good his or her default, and if the default continues after the expiration of that period, the employer shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,500 and to a further fine of £50 for every day on which the default continues after conviction.

- (4) Where an offence under this section is committed by a body corporate and 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, he or she, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.
- (5) Where the affairs of a body corporate are managed by its members, subsection (4) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

20 Powers of entry etc.

[P1991/19/12]

- (1) A person authorised in writing by the Department may enter at all reasonable hours any premises where he or she has reasonable ground for supposing that any persons are employed, and make such examination and inquiry as may be necessary for ascertaining whether the provisions of this Part are being or have been complied with in respect of any employee.
- (2) The following persons —
 - (a) the occupier of any premises liable to inspection under subsection (1);
 - (b) any person who is or has been employing another;
 - (c) the servants and agents of any such person as is referred to in paragraph (a) or (b);

shall furnish to a person so authorised all such information, and produce for his or her inspection all such documents, as he or she may reasonably require for the purpose of ascertaining whether the provisions of this Part have been complied with.

- (3) For the purposes of this section the following provisions of the Social Security Administration Act 1992 (as that Act of Parliament has effect in the Island), apply as they apply for the purposes of section 121A(1) of that Act (relevant social security legislation) —
 - (a) section 109C(5) (inspector to produce certificate of his appointment if required to do so on applying for admission to any premises), and

- (b) section 111 (delay, obstruction etc. of inspector),
with the substitution for references to an inspector of references to a person so authorised.
- (4) In this section “premises” does not include a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business.

PART III – RIGHTS ARISING IN COURSE OF EMPLOYMENT

Deductions from wages etc

21 Restrictions on deductions etc.

[P1996/18/13/14/15(3); 1991/19/13]

- (1) Subject to such exceptions as may be prescribed by the Department, an employer shall not make any deduction from any wages of any worker employed by him or her or receive any payment from him or her directly or indirectly in respect of any employment agency fee which the employer is obliged to pay in respect of the employment of that worker and any provision in any agreement to deduct such fee shall be void.
- (2) An employer shall not make any other deduction from any wages of any worker employed by him or her unless –
- (a) the deduction is required or authorised to be made by virtue of any statutory provision or any relevant provision of the worker’s contract; or
- (b) the worker has previously signified in writing his or her agreement or consent to the making of it.
- (3) An employer shall not receive any payment directly or indirectly from any worker employed by him or her unless the payment satisfies one of the conditions set out in subsection (2)(a) and (b).
- (4) In this section “relevant provision”, in relation to a worker’s contract, means any provision of the contract comprised –
- (a) in one or more written terms of the contract of which the employer has given the worker a copy on any occasion before the employer makes the deduction in question, or (where subsection (2)(a) applies for the purposes of subsection (3)) before he or she receives the payment in question, or
- (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) whose existence and effect, or (as the case may be) combined effect, in relation to the worker the employer has notified to the worker in writing on any such occasion.

- (5) For the purposes of this section —
- (a) any relevant provision of a worker's contract having effect by virtue of any variation of the contract, or
 - (b) any agreement or consent signified by a worker as mentioned in subsection (2)(b),

does not operate to authorise the making of any deduction, or the receipt of any payment, on account of any conduct of the worker, or any other event occurring, before the variation took effect or (as the case may be) the agreement or consent was signified.

- (6) Nothing in this section applies —
- (a) to any deduction from a worker's wages made by his or her employer, or any payment received from a worker by his or her employer, where the purpose of the deduction or payment is the reimbursement of the employer in respect of —
 - (i) any overpayment of wages, or
 - (ii) any overpayment in respect of expenses incurred by the worker in carrying out his or her employment,made (for any reason) by the employer to the worker;
 - (b) to any deduction from a worker's wages made by his or her employer, or any payment received from a worker by his or her employer, in consequence of any disciplinary proceedings if those proceedings were held by virtue of any statutory provision;
 - (c) to any deduction from a worker's wages made by his or her employer in pursuance of any requirement imposed on the employer by any statutory provision to deduct and pay over to a public authority amounts determined by that authority as being due to it from the worker, if the deduction is made in accordance with the relevant determination of that authority;
 - (d) to any deduction from a worker's wages made by his or her employer in pursuance of any arrangements which have been established —
 - (i) in accordance with any relevant provision of his or her contract to whose inclusion in the contract the worker has signified his or her agreement or consent in writing, or
 - (ii) otherwise with the prior agreement or consent of the worker signified in writing,and under which the employer is to deduct and pay over to a third person amounts notified to the employer by that person as being due to him or her from the worker, if the deduction is made in accordance with the relevant notification by that person;
 - (e) to any deduction from a worker's wages made by his or her employer, or any payment received from a worker by his or her

employer, where the worker has taken part in a strike or other industrial action and the deduction is made, or the payment has been required, by the employer on account of the worker's having taken part in that strike or other action; or

- (f) to any deduction from a worker's wages made by his or her employer with his or her prior agreement or consent signified in writing, or any payment received from a worker by his or her employer, where the purpose of the deduction or payment is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of any amount by the worker to the employer.
- (7) This section is without prejudice to any other statutory provision by virtue of which any sum payable to a worker by his or her employer but not falling within the definition of "wages" in section 27 is not to be subject to any deduction at the instance of the employer.

22 Deductions on account of cash shortages etc.

[P1996/18/17/18/19; 1991/19/14 and 20]

- (1) Where (in accordance with section 21(2)) the employer of a worker in retail employment makes, on account of one or more cash shortages or stock deficiencies, any deduction or deductions from any wages payable to the worker on a pay day, the amount or aggregate amount of the deduction or deductions shall not exceed one-tenth of the gross amount of the wages payable to the worker on that day.
- (2) In this section and sections 23 to 28 —
- "cash shortage"** means a deficit arising in relation to amounts received in connection with retail transactions;
- "gross amount"**, in relation to any wages payable to the worker, means the total amount of those wages before deductions of whatever nature;
- "pay day"**, in relation to a worker, means a day on which wages are payable to the worker;
- "retail employment"**, in relation to a worker, means employment involving (whether on a regular basis or not) —
- (a) the carrying out by the worker of retail transactions directly with members of the public or with fellow workers or other individuals in their personal capacities, or
- (b) the collection by the worker of amounts payable in connection with retail transactions carried out by other persons directly with members of the public or with fellow workers or other individuals in their personal capacities;
- "retail transaction"** means the sale or supply of goods, or the supply of services (including financial services); and

“**stock deficiency**” means a stock deficiency arising in the course of retail transactions.

(3) Where the employer of a worker in retail employment makes a deduction from the worker’s wages on account of a cash shortage or stock deficiency, the employer shall not be treated as making the deduction in accordance with section 21(2) unless (in addition to the requirements of that provision being satisfied with respect to the deduction) —

- (a) the deduction is made, or
- (b) in the case of a deduction which is one of a series of deductions relating to the shortage or deficiency, the first deduction in the series was made,

not later than the end of the period of 12 months beginning with the date when the employer established the existence of the shortage or deficiency or (if earlier) the date when he or she ought reasonably to have done so.

(4) This subsection applies where —

- (a) by virtue of any agreement between a worker in retail employment and his or her employer, the amount of the worker’s wages or any part of them is or may be determined by reference to the incidence of cash shortages or stock deficiencies, and
- (b) the gross amount of the wages payable to the worker on any pay day is, on account of any such shortages or deficiencies, less than the gross amount of the wages that would have been payable to him or her on that day if there had been no such shortages or deficiencies.

(5) In a case where subsection (4) applies —

- (a) the amount representing the difference between the 2 amounts referred to in subsection (4)(b) (“the relevant amount”) shall be treated for the purposes of sections 21 to 28 as a deduction from the wages payable to the worker on that day made by the employer on account of the cash shortages or stock deficiencies in question; and
- (b) the second of the amounts so referred to in subsection (4)(b) shall be treated for the purposes of sections 21 to 28 (except subsection (4) of this section) as the gross amount of the wages payable to him or her on that day;

and section 21(2) (restrictions on deductions etc.) and (if the requirements of subsections (1) and (3) are satisfied subsection (1) have effect in relation to the relevant amount accordingly.

23 Payments on account of cash shortages etc.

[P1996/18/20 and 21; 1991/19/17]

- (1) Where the employer of a worker in retail employment receives from the worker any payment on account of a cash shortage or stock deficiency the employer shall not be treated as receiving the payment in accordance with section 21(3), unless (in addition to the requirements of those provisions being satisfied with respect to the payment) he or she has previously —
 - (a) notified the worker in writing of the worker's total liability to him or her in respect of that shortage or deficiency; and
 - (b) required the worker to make the payment by means of a demand for payment made in accordance with this section.
- (2) Any demand for payment made by the employer of a worker in retail employment in respect of a cash shortage or stock deficiency —
 - (a) shall be made in writing, and
 - (b) shall be made on one of the worker's pay days.
- (3) A demand for payment in respect of a particular cash shortage or stock deficiency, or (in the case of a series of such demands) the first such demand, shall not be made —
 - (a) earlier than the first pay day of the worker following the date when he or she is notified of his or her total liability in respect of the shortage or deficiency in pursuance of subsection (1)(a) or, where he or she is so notified on a pay day, earlier than that day, or
 - (b) later than the end of the period of 12 months beginning with the date when the employer established the existence of the shortage or deficiency or (if earlier) the date when he or she ought reasonably to have done so.
- (4) Where the employer of a worker in retail employment makes on any pay day one or more demands for payment in accordance with this section, the amount or aggregate amount required to be paid by the worker in pursuance of the demand or demands shall not exceed —
 - (a) one-tenth of the gross amount of the wages payable to the worker on that day, or
 - (b) where one or more deductions falling within section 22(1) (deductions on account of cash shortages etc.) are made by the employer from those wages, such amount as represents the balance of that one-tenth after subtracting the amount or aggregate amount of the deduction or deductions.
- (5) Once any amount has been required to be paid by means of a demand for payment made in accordance with this section on any pay day, that amount shall not be taken into account under subsection (4) as it applies

to any subsequent pay day, notwithstanding that the employer is obliged to make further requests for it to be paid.

- (6) For the purposes of sections 21 to 28 a demand for payment shall be treated as made by the employer on one of the worker's pay days if it is given to the worker, or posted to, or left at, his or her last known address —
 - (a) on that pay day, or
 - (b) in the case of a pay day which is not a working day of the employer's business, on the first such working day following that pay day.

24 Provisions supplementary to sections 22 and 23

[P1996/18/20(5)/21(3)/22; 1991/19/16]

- (1) In this section "final instalment of wages", in relation to a worker, means —
 - (a) the amount of wages payable to the worker which consists of or includes an amount payable by way of contractual remuneration in respect of the last of the periods for which he or she is employed under his or her contract prior to its termination for any reason (but excluding any wages referable to any earlier such period), or
 - (b) where an amount in lieu of notice is paid to the worker later than the amount referred to in paragraph (a), the amount so paid,in each case whether the amount in question is paid before or after the termination of the worker's contract.
- (2) Section 22(1) (deductions on account of cash shortages etc.) does not operate to restrict the amount of any deductions that may (in accordance with section 21(2)) be made by the employer of a worker in retail employment from the worker's final instalment of wages.
- (3) Nothing in section 23 (payments on account of cash shortages etc.) applies to any payment falling within section 23(1) that is made on or after the day on which any such worker's final instalment of wages is paid, but (notwithstanding that the requirements of section 21(3) (general restrictions on deductions: employer receiving payment) would otherwise be satisfied with respect to it) his or her employer shall not be treated as receiving any such payment in accordance with section 21(3) if the payment was first required to be made after the end of the period referred to in section 23(3)(b).
- (4) Legal proceedings by the employer of a worker in retail employment for the recovery from the worker of any amount in respect of a cash shortage or stock deficiency shall not be instituted by the employer after the end of the period referred to in section 23(3)(b) unless the employer has

within that period made a demand for payment in respect of that amount in accordance with section 23.

- (5) Where in any legal proceedings the court finds that the employer of a worker in retail employment is (in accordance with section 21(3), as it applies apart from section 23(1)) entitled to recover an amount from the worker in respect of a cash shortage or stock deficiency, the court shall, in ordering the payment by the worker to the employer of that amount, make such provision as appears to the court to be necessary to ensure that it is paid by the worker at a rate not exceeding that at which it could be recovered from him or her by the employer in accordance with section 23.

This subsection does not apply to any amount which is to be paid by a worker on or after the day on which his or her final instalment of wages is paid.

- (6) References in sections 21 to 28 to a deduction made from any wages of a worker in retail employment, or to a payment received from such a worker by his or her employer, on account of a cash shortage or stock deficiency include references to a deduction or payment so made or received on account of —
- (a) any dishonesty or other conduct on the part of the worker which resulted in any such shortage or deficiency, or
 - (b) any other event in respect of which he or she (whether together with any other workers or not) has any contractual liability and which so resulted,

in each case whether the amount of the deduction or payment is designed to reflect the exact amount of the shortage or deficiency or not; and references in sections 21 to 28 to the recovery from the worker of an amount in respect of a cash shortage or stock deficiency accordingly include references to the recovery from him or her of an amount in respect of any such conduct or event as is mentioned in paragraph (a) or (b).

25 Complaints to Tribunal

[P1996/18/23/24/25; 1991/19/17]

- (1) A worker may complain to the Tribunal —
- (a) that his or her employer has made a deduction from his or her wages in contravention of section 21(1) or (2) (including a deduction made in contravention of section 21(2) as it applies by virtue of section 22(3) (deductions on account of cash shortages)), or
 - (b) that his or her employer has received from him or her a payment in contravention of section 21(3) (including a payment received in

contravention of those provisions as they apply by virtue of section 23(1) (payments on account of cash shortages)), or

- (c) that his or her employer has recovered from his or her wages by means of one or more deductions falling within section 22(1) an amount or aggregate amount exceeding the limit applying to the deduction or deductions under that provision, or
 - (d) that his or her employer has received from him or her in pursuance of one or more demands for payment made (in accordance with section 23) on a particular pay day, a payment or payments of an amount or aggregate amount exceeding the limit applying to the demand or demands under section 23(4).
- (2) The Tribunal shall not entertain a complaint under this section unless it is presented within the period of 3 months beginning with —
- (a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or
 - (b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received,

or within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the relevant period of 3 months.

- (3) Where a complaint is brought in respect of —
- (a) a series of deductions or payments, or
 - (b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 23(4) (payments on account of cash shortages) but received by the employer on different dates,

subsection (2) shall be read as referring to the last deduction or payment in the series or to the last of the payments so received (as the case may require).

- (4) Where the Tribunal finds that a complaint under this section is well-founded, it shall make a declaration to that effect; and (subject to subsections (5) and (6)) —
- (a) in the case of a complaint under subsection (1)(a) or (b), the Tribunal shall order the employer to pay to the worker the amount of any deduction, or to repay to him or her the amount of any payment, made or received in contravention of section 21 (general restrictions on deductions etc.);
 - (b) in the case of a complaint under subsection (1)(c) or (d), the Tribunal shall order the employer to pay or (as the case may be) repay to the worker any amount recovered or received from him

- or her in excess of any such limit as is mentioned in that provision; and
- (c) in the case of a complaint under subsection (1), the Tribunal may, if it considers it just and equitable in all the circumstances order the employer to pay to the worker a sum up to the equivalent of 4 weeks' pay calculated in accordance with the provisions of Schedule 6 (a week's pay).
- (5) Where, in the case of any complaint under subsection (1)(a) or (b) in respect of a contravention of section 21(2) (authorised deductions), the Tribunal finds that, although neither of the conditions set out in section 21(2)(a) and (b) was satisfied with respect to the whole amount of a deduction or payment, one of those conditions was satisfied with respect to any lesser amount, the amount of the deduction or payment shall for the purposes of subsection (4)(a) be treated as reduced by the amount with respect to which that condition was satisfied.
- (6) An employer shall not under subsection (4)(a) or (b) be ordered by the Tribunal to pay or repay to a worker any amount in respect of a deduction or payment, or (as the case may be) in respect of any combination of deductions or payments, in so far as it appears to the Tribunal that he or she has already paid or repaid any such amount to the worker.
- (7) Where the Tribunal has under subsection (4)(a) or (b) ordered an employer to pay or repay to a worker any amount in respect of a particular deduction or payment falling within subsection (1)(a) to (d) ("the relevant amount") the amount which the employer shall be entitled to recover (by whatever means) in respect of the matter in respect of which the deduction or payment was originally made or received shall be treated as reduced by the relevant amount.
- (8) Where the Tribunal has under subsection (4)(b) ordered an employer to pay or repay to a worker any amount in respect of any combination of deductions or payments falling within subsection (1)(c) or (d) ("the relevant amount") the aggregate amount which the employer shall be entitled to recover (by whatever means) in respect of the cash shortages or stock deficiencies in respect of which the deductions or payments were originally made or required to be made shall be treated as reduced by the relevant amount.

26 Supplementary provisions as to complaints

[P1996/18/26; 1991/19/18]

- (1) Section 25 does not affect the jurisdiction of the Tribunal to entertain a reference under section 17 in relation to any deduction from the wages of a worker, but the aggregate of any amounts ordered by the Tribunal to be paid under section 17(8)(b)(iii) and under section 25(4)(a) or (b) (whether on the same or different occasions) in respect of a particular

deduction shall not, without prejudice to section 25(4)(c), exceed the amount of the deduction.

- (2) The jurisdiction of the Tribunal under section 25 includes power to determine the total amount of the wages that were properly payable to the worker including any amount owed in lieu of notice under section 27(1)(c), on the occasion in question.
- (3) Any provision in an agreement shall be void in so far as it purports to exclude or limit the operation of any provision of sections 21 to 28, or to preclude any person from presenting a complaint under section 25.

27 Meaning of “wages”

[P1996/18/27; 1991/19/19]

- (1) In sections 21 to 28 “wages”, in relation to a worker, means any sums payable to the worker by his or her employer in connection with his or her employment, including —
 - (a) any fee, bonus, commission, holiday pay or other emolument referable to his or her employment, whether payable under his or her contract or otherwise;
 - (b) any amount owed in respect of a payment for time off under sections 35(3) (time off: trade union duties), 41(3) (time off: to look for work), 43(4) (time off: ante-natal care) and 46 (time off: pension scheme trustees); and
 - (c) whether computed in accordance with section 106 (rights of employer and employee to a minimum period of notice) or by contract, whichever is the greater, any amount owed in lieu of notice including pension contributions and other benefits ordinarily paid by the employer, or in respect of a payment due under Schedule 2 (rights of employee in period of notice);

but excluding any payments falling within subsection (2).

- (2) Those payments are —
 - (i) any payment by way of an advance under an agreement for a loan or by way of an advance of wages (but without prejudice to the application of section 21(2) (general restrictions on deductions etc.) to any deduction made from the worker’s wages in respect of any such advance);
 - (ii) any payment in respect of expenses incurred by the worker in carrying out his or her employment;
 - (iii) any payment by way of a pension, allowance or gratuity in connection with the worker’s retirement or as compensation for loss of office;
 - (iv) any payment referable to the worker’s redundancy; and

- (v) any payment to the worker otherwise than in his or her capacity as a worker.
- (3) Where any payment in the nature of a non-contractual bonus is (for any reason) made to a worker by his or her employer, then, for the purposes of sections 21 to 28, the amount of the payment shall be treated –
 - (a) as wages of the worker, and
 - (b) as payable to him or her as such on the day on which the payment is made.
- (4) For the purposes of sections 21 to 28 “gross amount” in relation to any wages payable to a worker, means the total amount of those wages before deductions of whatever nature.
- (5) For the purposes of sections 21 to 28 any monetary value attaching to any payment or benefit in kind furnished to a worker by his or her employer shall not be treated as wages of the worker except in the case of any voucher, stamp or similar document which is –
 - (a) of a fixed value expressed in monetary terms, and
 - (b) capable of being exchanged (whether on its own or together with other vouchers, stamps or documents, and whether immediately or only after a time) for money, goods or services (or for any combination of 2 or more of those things).

28 Supplemental interpretation of sections 21 to 27

[P1991/19/20; 1996/18/13 and 17]

- (1) Where the total amount of any wages that are paid on any occasion by an employer to any worker employed by him or her is less than the total amount of the wages that are properly payable by him or her to the worker on that occasion (after deductions) then, except in so far as the deficiency is attributable to an error of computation, the amount of the deficiency shall be treated for the purposes of sections 21 to 27 and this section as a deduction made by the employer from the worker’s wages on that occasion.
- (2) In subsection (1) the reference to an error of computation is a reference to an error of any description on the part of the employer affecting the computation by him or her of the gross amount of the wages that are properly payable by him or her to the worker on that occasion.
- (3) Any reference in sections 21 to 27 to an employer receiving a payment from a worker employed by him or her is a reference to the receipt of such a payment in his or her capacity as the worker’s employer.

*Inducements***29 Inducements relating to union membership or activities**

[P1992/52/145A]

- (1) A worker has the right not to have an offer made to him or her by his or her employer for the sole or main purpose of inducing the worker —
 - (a) not to be or seek to become a member of a registered trade union,
 - (b) not to take part, at an appropriate time, in the activities of a registered trade union,
 - (c) not to make use, at an appropriate time, of trade union services, or
 - (d) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions.
- (2) In subsection (1) “an appropriate time” means —
 - (a) a time outside the worker’s working hours, or
 - (b) a time within his or her working hours at which, in accordance with arrangements agreed with or consent given by his or her employer, it is permissible to take part in the activities of a trade union or (as the case may be) make use of trade union services.
- (3) In subsection (2) “working hours”, in relation to a worker, means any time when, in accordance with his or her contract of employment (or other contract personally to do work or perform services), he or she is required to be at work.
- (4) In subsections (1) and (2) —
 - (a) “trade union services” means services made available to the worker by a registered trade union by virtue of his or her membership of the union, and
 - (b) references to a worker’s “making use” of trade union services include his or her consenting to the raising of a matter on his or her behalf by a registered trade union of which he or she is a member.
- (5) A worker may present a complaint to the Tribunal on the ground that his or her employer has made him or her an offer in contravention of this section.

30 Inducements relating to collective bargaining

[P1992/52/145B]

- (1) A worker who is a member of a registered trade union which is recognised by his or her employer has the right not to have an offer made to him or her by his or her employer if —

- (a) acceptance of the offer, together with other workers' acceptance of offers which the employer also makes to them, would have the prohibited result, and
 - (b) the employer's sole or main purpose in making the offers is to achieve that result.
- (2) The prohibited result is that the workers' terms of employment, or any of those terms, will no longer be determined by collective agreement negotiated by or on behalf of the union.
- (3) It is immaterial for the purposes of subsection (1) whether the offers are made to the workers simultaneously.
- (4) Having terms of employment determined by collective agreement shall not be regarded for the purposes of section 29 (inducements: union membership or activities), 67 (detriment: trade union membership or activities) or 120 (dismissal: trade union membership or activities) as making use of a trade union service.
- (5) A worker may present a complaint to the Tribunal on the ground that his or her employer has made him or her an offer in contravention of this section.

31 Time limit for proceedings

[P1992/52/145C]

The Tribunal shall not consider a complaint under section 29 or 30 unless it is presented —

- (a) before the end of the period of 3 months beginning with the date when the offer was made or, where the offer is part of a series of similar offers to the worker, the date when the last of them was made, or
- (b) where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.

32 Consideration of complaint

[P1992/52/145D]

- (1) On a complaint under section 29 (inducements: union membership or activities) it shall be for the employer to show what was the sole or main purpose in making the offer.
- (2) On a complaint under section 30 (inducements: collective bargaining) it shall be for the employer to show what was the sole or main purpose in making the offers.
- (3) On a complaint under section 29 or 30, in determining any question whether the employer made the offer (or offers) or the purpose for which he or she did so, no account shall be taken of any pressure which was

exercised on him or her by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.

- (4) In determining whether an employer's sole or main purpose in making offers was the purpose mentioned in section 30(1), the matters taken into account must include any evidence –
- (a) that when the offers were made the employer had recently changed or sought to change, or did not wish to use, arrangements agreed with the union for collective bargaining,
 - (b) that when the offers were made the employer did not wish to enter into arrangements proposed by the union for collective bargaining, or
 - (c) that the offers were made only to particular workers, and were made with the sole or main purpose of rewarding those particular workers for their high level of performance or of retaining them because of their special value to the employer.

33 Remedies

[P1992/52/145E]

- (1) Subsections (2) and (3) apply where the Tribunal finds that a complaint under section 29 (inducements: union membership or activities) or 30 (inducements: collective bargaining) is well-founded.
- (2) The Tribunal –
- (a) shall make a declaration to that effect, and
 - (b) shall make an award to be paid by the employer to the complainant in respect of the offer complained of.
- (3) The amount of the award shall be £2,500 or such other amount as may be prescribed by the Department.
- (4) Where an offer made in contravention of section 29 or 30 is accepted –
- (a) if the acceptance results in the worker's agreeing to vary his or her terms of employment, the employer cannot enforce the agreement to vary, or recover any sum paid or other asset transferred by him or her under the agreement to vary;
 - (b) if as a result of the acceptance the worker's terms of employment are varied, nothing in section 29 or 30 makes the variation unenforceable by either party.
- (5) Nothing in this section or sections 29 and 30 prejudices any right conferred by section 67 (detriment on grounds related to trade union membership or activities) or 72 (remedies).
- (6) In ascertaining any amount of compensation under section 72, no reduction shall be made on the ground –

- (a) that the complainant caused or contributed to his or her loss, or to the act or failure complained of, by accepting or not accepting an offer made in contravention of section 29 or 30, or
- (b) that the complainant has received or is entitled to an award under this section.

34 Interpretation and other supplementary provisions

[P1992/52/145F]

- (1) References in sections 29 (inducements: union membership or activities) and 30 (inducements: collective bargaining) to being or becoming a member of a trade union include references —
 - (a) to being or becoming a member of a particular branch or section of that union, and
 - (b) to being or becoming a member of one of a number of particular branches or sections of that union.
- (2) References in those sections —
 - (a) to taking part in the activities of a trade union, and
 - (b) to services made available by a trade union by virtue of membership of the union,shall be construed in accordance with subsection (1).
- (3) The remedy of a worker for infringement of the right conferred on him or her by section 29 or 30 is by way of a complaint to the Tribunal in accordance with this Part, and not otherwise.

Time off work

35 Time off for carrying out trade union duties

[P1991/19/26]

- (1) An employer shall permit an employee of his or hers who is an official of a registered trade union recognised by the employer to take time off, subject to and in accordance with subsection (2), during the employee's working hours for the purpose of enabling that person —
 - (a) to carry out —
 - (i) any duties as such an official, which are concerned with negotiations with the employer that are related to or connected with any matters which fall within the definition of "trade dispute" in section 173(1) (general interpretation) and in relation to which the trade union is recognised by the employer; or
 - (ii) any other duties as such an official, which are concerned with the performance, on behalf of employees of the

- employer, of any functions that are related to or connected with any of those matters and that the employer has agreed may be so performed by the trade union; or
- (b) to undergo training in aspects of industrial relations which is —
 - (i) relevant to the carrying out of those duties; and
 - (ii) approved by the registered trade union of which that person is an official.
- (2) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances (having regard to any relevant code of practice issued or approved by the Department under section 171 (codes of practice)).
- (3) An employer who permits an employee to take time off under this section for any purpose shall, subject to the following provisions of this section, pay him or her for the time taken off for that purpose in accordance with the permission —
- (a) where the employee's remuneration for the work he or she would ordinarily have been doing during that time does not vary with the amount of work done, as if he or she had worked at that work for the whole of that time;
 - (b) where the employee's remuneration for that work varies with the amount of work done, an amount calculated by reference to the average hourly earnings for that work.
- (4) The average hourly earnings referred to in subsection (3)(b) shall be the average hourly earnings of the employee concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.
- (5) Subject to subsection (6), a right to be paid any amount under subsection (3) shall not affect any right of an employee in relation to remuneration under his or her contract of employment (the "contractual remuneration").
- (6) Any contractual remuneration paid to an employee in respect of a period of time off to which subsection (1) applies shall go towards discharging any liability of the employer under subsection (3) in respect of that period, and conversely any payment of any amount under subsection (3) in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

36 Complaints to Tribunal

[P1996/18/26]

- (1) An employee who is an official of a registered trade union recognised by his or her employer may present a complaint to the Tribunal that his or her employer has failed to permit him or her to take time off as required by section 35 or to pay him or her the whole or part of any amount required to be paid under that section.
- (2) The Tribunal shall not consider a complaint under this section that an employer has failed to permit an employee to take time off unless it is presented –
 - (a) before the end of the period of 3 months beginning with the date on which the failure occurred, or
 - (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.
- (3) Where the Tribunal finds a complaint under this section well-founded, the Tribunal –
 - (a) shall make a declaration to that effect, and
 - (b) shall order the employer to pay to the employee the amount which it finds due.
- (4) The amount which may be ordered by the Tribunal to be paid by an employer shall be such as the Tribunal considers just and equitable in all the circumstances having regard to –
 - (a) the employer's default in failing to permit time off to be taken by the employee, and
 - (b) any loss sustained by the employee which is attributable to the matters to which the complaint relates.

37 Time off for trade union activities

[P1991/19/27]

- (1) An employer shall permit an employee of his or hers who is a member of an appropriate trade union to take time off, subject to and in accordance with subsection (3), during the employee's working hours for the purpose of taking part in any trade union activity to which this section applies.
- (2) In this section and in section 38, "appropriate trade union" in relation to an employee of any description, means a registered trade union which is recognised by the employee's employer in respect of that description of employee, and the trade union activities to which this section applies are –

- (a) any activities of an appropriate trade union of which the employee is a member; and
- (b) any activities, whether or not falling within paragraph (a), in relation to which the employee is acting as a representative of such a union,

excluding activities which themselves consist of industrial action whether or not in contemplation or furtherance of a trade dispute.

- (3) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances (having regard to any relevant code of practice issued or approved by the Department under section 171).

38 Complaints to Tribunal

[P1996/18/27]

- (1) An employee who is a member of an appropriate trade union may complain to the Tribunal that the employer has failed to permit him or her to take time off as required by section 37.
- (2) The Tribunal shall not consider a complaint under this section that an employer has failed to permit an employee to take time off unless it is presented —
 - (a) before the end of the period of 3 months beginning with the date on which the failure occurred, or
 - (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.
- (3) Where the Tribunal finds a complaint under this section well-founded, the Tribunal —
 - (a) shall make a declaration to that effect, and
 - (b) may make an award of compensation to be paid by the employer to the employee.
- (4) The amount of the compensation shall be such as the Tribunal considers just and equitable in all the circumstances having regard to —
 - (a) the employer's default in failing to permit time off to be taken by the employee, and
 - (b) any loss sustained by the employee which is attributable to the matters to which the complaint relates.

39 Time off for public duties

[P1996/18/50; 1991/19/28]

- (1) An employer shall permit an employee who is summoned to serve as a member of a jury in pursuance of any provision of the *Jury Act 1980* or section 8 of the *Coroners of Inquests Act 1987* to take time off during the employee's working hours for the purpose of obeying the summons.
- (2) Subject to and in accordance with subsection (4) an employer shall permit an employee who is —
 - (a) a justice of the peace;
 - (b) a member of a local authority;
 - (c) a member of any statutory tribunal; or
 - (d) a member of the governing body of a school maintained by the Department of Education and Children,¹to take time off during the employee's working hours for the purposes of performing any of the duties of his or her office or, as the case may be, his or her duties as such a member.
- (3) For the purposes of subsection (2) the duties of a member of a body referred to in subsection (2)(b), (c) or (d) are —
 - (a) attendance at a meeting of the body or any of its committees or sub-committees;
 - (b) the doing of any other thing approved by the body, or anything of a class so approved, for the purpose of the discharge of the functions of the body or of any of its committees or sub-committees.
- (4) The amount of time off which an employee is to be permitted to take under subsection (2) and the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all circumstances having regard, in particular, to the following —
 - (a) how much time off is required for the performance of the duties of the office or as a member of the body in question and how much time off is required for the performance of the particular duty;
 - (b) how much time off the employee has already been permitted under this section or section 35 (time off for carrying out trade union duties) or 37 (time off for trade union activities);
 - (c) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.
- (5) The Department may by order —
 - (a) modify the provisions of subsection (2) by adding any office or body to, or removing any office or body from, that subsection or by altering the description of any office or body in that subsection; and

- (b) modify the provisions of subsection (3).

40 Complaints to Tribunal

[P1996/18/51]

- (1) An employee may complain to the Tribunal that his or her employer has failed to permit him or her to take time off as required by section 39.
- (2) The Tribunal shall not consider a complaint under this section that an employer has failed to permit an employee to take time off unless it is presented —
 - (a) before the end of the period of 3 months beginning with the date on which the failure occurred, or
 - (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.
- (3) Where the Tribunal finds a complaint under this section well-founded, the Tribunal —
 - (a) shall make a declaration to that effect, and
 - (b) may make an award of compensation to be paid by the employer to the employee.
- (4) The amount of the compensation shall be such as the Tribunal considers just and equitable in all the circumstances having regard to —
 - (a) the employer's default in failing to permit time off to be taken by the employee, and
 - (b) any loss sustained by the employee which is attributable to the matters to which the complaint relates.

41 Time off to look for work etc.

[P1996/18/52 and 53; 1991/19/30]

- (1) An employee who is given notice of dismissal by reason of redundancy is, subject to the following provisions of this section, entitled before the expiration of his or her notice to be allowed by the employer reasonable time off during the employee's working hours in order to look for new employment or make arrangements for training for future employment.
- (2) An employee is not entitled to time off under this section unless, on the later of the following dates —
 - (a) the date on which the notice is due to expire; or
 - (b) the date on which it would expire, if it were the notice required to be given by section 106(1) (rights of employer and employee to minimum period of notice);

the employee will have been or, as the case may be, would have been continuously employed for a period of 2 years or more.

- (3) An employee who is allowed time off during his or her working hours under subsection (1) is, subject to the following provisions of this section, entitled to be paid remuneration by his or her employer for the period of absence at the appropriate hourly rate.
- (4) The appropriate hourly rate in relation to an employee is the amount of one week's pay divided by —
 - (a) the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when notice was given; or
 - (b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such hours calculated by dividing by 12 the total number of the employee's normal working hours during the period of 12 weeks ending with the last complete week before the day on which notice was given.
- (5) If an employer unreasonably refuses to allow an employee time off from work under this section, the employee is, subject to section 42(4), entitled to be paid an amount equal to the remuneration to which he or she would have been entitled under subsection (3) if the employee had been allowed the time off.

42 Complaints to Tribunal

[P1996/18/54]

- (1) An employee may complain to the Tribunal on the ground that his or her employer has unreasonably refused to allow him or her time off under section 41 or has failed to pay the whole or any part of any amount to which the employee is entitled under section 41(3) or 41(5).
- (2) The Tribunal shall not entertain a complaint under subsection (1) unless it is presented to the Tribunal within the period of 3 months beginning with the day on which it is alleged that the time off should have been allowed or the failure occurred, or within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of 3 months.
- (3) If on a complaint under subsection (1) the Tribunal finds the grounds of the complaint well-founded it shall make a declaration to that effect and shall order the employer to pay to the employee the amount which it finds due.
- (4) The amount —

- (a) of an employer's liability to pay remuneration under section 41(3);
or
- (b) which may be ordered by the Tribunal to be paid by an employer under subsection (3),

or, where both paragraphs (a) and (b) are applicable, the aggregate amount of the liabilities referred to in those paragraphs, shall not exceed, in respect of the notice period of any employee, two-fifths of a week's pay of that employee calculated in accordance with the provisions of Schedule 6 (a week's pay).

- (5) Subject to subsection (6), a right to any amount under section 41(3) or 41(5) shall not affect any right of an employee in relation to remuneration under the contract of employment (the "contractual remuneration").
- (6) Any contractual remuneration paid to an employee in respect of a period when he or she takes time off for the purposes referred to in section 41(1) shall go towards discharging any liability of the employer to pay remuneration under section 41(3) in respect of that period, and conversely any payment of remuneration under section 41(3) in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

43 Time off for ante-natal care

[P1996/18/55 and 56; 1991/19/31]

- (1) An employee who is pregnant and who has, on the advice of a registered medical practitioner or registered midwife, made an appointment to attend at any place for the purpose of receiving ante-natal care has, subject to the following provisions of this section, the right not to be unreasonably refused time off during her working hours to enable her to keep the appointment.
- (2) Subject to subsection (3), an employer is not required by virtue of this section to permit an employee to take time off to keep an appointment unless, if she requests him or her to do so, she produces for his or her inspection —
 - (a) a certificate from a registered medical practitioner or registered midwife stating that the employee is pregnant, and
 - (b) an appointment card or some other document showing that the appointment has been made.
- (3) Subsection (2) does not apply where the employee's appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with subsection (1).
- (4) An employee who is permitted to take time off during her working hours in accordance with subsection (1) is entitled to be paid remuneration by her employer for the period of absence at the appropriate hourly rate.

- (5) The appropriate hourly rate in relation to an employee is the amount of one week's pay divided by —
- (a) the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when time off is taken; or
 - (b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such hours (calculated by dividing by 12 the total number of the employee's normal working hours during the period of 12 weeks ending with the last complete week before the day on which the time off is taken); or
 - (c) in a case falling within paragraph (b) but where the employee has not been employed for a sufficient period to enable the calculation to be made under that paragraph, a number which fairly represents the number of normal working hours in a week having regard to such of the following considerations as are appropriate in the circumstances —
 - (i) the average number of normal working hours in a week which the employee could expect in accordance with the terms of her contract;
 - (ii) the average number of such hours of other employees engaged in relevant comparable employment with the same employer.

44 Complaints to Tribunal

[P1996/18/57]

- (1) An employee may complain to the Tribunal that her employer —
- (a) has unreasonably refused her time off as required by section 43, or
 - (b) has failed to pay her the whole or part of any amount to which she is entitled under section 43(4).
- (2) The Tribunal shall not entertain a complaint under subsection (1) unless it is presented within the period of 3 months beginning with the day of the appointment concerned, or within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of 3 months.
- (3) Where on a complaint under subsection (1) the Tribunal finds the complaint well-founded it shall make a declaration to that effect; and —
- (a) if the complaint is that the employer has unreasonably refused the employee time off, the Tribunal shall order the employer to pay to the employee an amount equal to the remuneration to which she would have been entitled under section 43(4) if the time off had not been refused; and

- (b) if the complaint is that the employer has failed to pay the employee the whole or part of any amount to which she is entitled under section 43(4), the Tribunal shall order the employer to pay to the employee the amount which it finds due to her.
- (4) Subject to subsection (5), a right to any amount under section 43(4) does not affect any right of an employee in relation to remuneration under her contract of employment (the “contractual remuneration”).
- (5) Any contractual remuneration paid to an employee in respect of a period of time off under this section shall go towards discharging any liability of the employer to pay remuneration under section 43(4) in respect of that period, and conversely any payment of remuneration under section 43(4) in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

45 Right to time off for pension scheme trustees

[P1996/18/58]

- (1) The employer in relation to a relevant occupational pension scheme shall permit an employee who is a trustee of the scheme to time off during the employee’s working hours for the purpose of —
 - (a) performing any of his or her duties as such a trustee, or
 - (b) undergoing training relevant to the performance of those duties.
- (2) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard, in particular, to —
 - (a) how much time off is required for the performance of the duties of a trustee of the scheme and the undergoing of relevant training, and how much time off is required for performing the particular duty or for undergoing the particular training, and
 - (b) the circumstances of the employer’s business and the effect of the employee’s absence on the running of that business.
- (3) In this section —
 - (a) “an employee who is a trustee of the scheme” includes a director of a company which is a trustee of a relevant occupational pension scheme and references to such a trustee shall be read for this purpose as references to such a director, and
 - (b) “relevant occupational pension scheme” means an occupational pension scheme (as defined in section 1 of the Pension Schemes Act 1993 (as that Act of Parliament has effect in the Island) established under a trust for employees of the employer, and

- (c) references to the employer, in relation to such a scheme, are to an employer of persons in the description or category of employment to which the scheme relates, and
- (d) references to training are to training on the employer's premises or elsewhere.

46 Right to payment for time off under section 45

[P1996/18/59]

- (1) An employer who permits an employee to take time off under section 45 shall pay him or her for the time taken off pursuant to the permission.
- (2) Where the employee's remuneration for the work he or she would ordinarily have been doing during that time does not vary with the amount of work done, he or she must be paid as if he or she had worked at that work for the whole of that time.
- (3) Where the employee's remuneration for the work he or she would ordinarily have been doing during that time varies with the amount of work done, he or she must be paid an amount calculated by reference to the average hourly earnings for that work.
- (4) The average hourly earnings mentioned in subsection (3) are —
 - (a) those of the employee concerned, or
 - (b) if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.
- (5) A right to be paid an amount under subsection (1) does not affect any right of an employee in relation to remuneration under his or her contract of employment (the "contractual remuneration").
- (6) Any contractual remuneration paid to an employee in respect of a period of time off under section 45 goes towards discharging any liability of the employer under subsection (1) in respect of that period; and, conversely, any payment under subsection (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

47 Complaints to Tribunal

[P1996/18/60]

- (1) An employee may present a complaint to the Tribunal that his or her employer —
 - (a) has failed to permit the employee to take time off as required by section 45, or
 - (b) has failed to pay the employee in accordance with section 46.

- (2) The Tribunal shall not consider a complaint under this section unless it is presented —
 - (a) before the end of the period of 3 months beginning with the date when the failure occurred, or
 - (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.
- (3) Where the Tribunal finds a complaint under subsection (1)(a) well-founded, the Tribunal —
 - (a) shall make a declaration to that effect, and
 - (b) may make an award of compensation to be paid by the employer to the employee.
- (4) The amount of the compensation shall be such as the Tribunal considers just and equitable in all the circumstances having regard to —
 - (a) the employer's default in failing to permit time off to be taken by the employee, and
 - (b) any loss sustained by the employee which is attributable to the matters complained of.
- (5) Where on a complaint under subsection (1)(b) the Tribunal finds that an employer has failed to pay an employee in accordance with section 46, it shall order the employer to pay the amount which it finds to be due.

48 Provisions supplementary to sections 35 to 47

[P1996/18/61; 1991/19/32]

- (1) For the purposes of sections 35 to 47 the working hours of an employee shall be taken to be any time when, in accordance with his or her contract of employment, the employee is required to be at work.
- (2) For the purposes of sections 35 (time off for carrying out trade union duties) and 37 (time off for trade union activities) a registered trade union shall be taken to be recognised by an employer if it is recognised by him or her, to any extent, for the purpose of collective bargaining, that is, negotiations related to or connected with one or more of the matters specified in the definition of "trade dispute" in section 173(1).

PART IV – PROTECTED DISCLOSURES

49 Meaning of “protected disclosure”

[P1996/18/43A]

In this Act a “**protected disclosure**” means a qualifying disclosure (as defined by section 50) which is made by a worker in accordance with any of sections 51 to 56, or in accordance with section 5(1) or 5(2) of the *Corruption Act 2008*.²

50 Disclosure qualifying for protection

[P1996/18/43B]

- (1) In this Part a “**qualifying disclosure**” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following –
 - (a) that a criminal offence has been committed, is being committed or is likely to be committed,
 - (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject,
 - (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
 - (d) that the health or safety of any individual has been, is being or is likely to be endangered,
 - (e) that the environment has been, is being or is likely to be damaged, or
 - (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.
- (2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the Island or elsewhere, and whether the law applying to it is that of the Isle of Man or of any other country or territory.
- (3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence in the Island by making it.
- (4) A disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.
- (5) In this Part “**the relevant failure**”, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

51 Disclosure to employer or other responsible person

[P1996/18/43C]

- (1) A qualifying disclosure is made in accordance with this section if the worker makes it in good faith —
- (a) to his or her employer, or
 - (b) if the worker reasonably believes that the relevant failure relates to the act or failure to act of a person other than his or her employer, to the party exercising responsibility for and having legal control over the conduct of that person.
- (2) A worker who, in accordance with a procedure whose use by him or her is authorised by his or her employer, makes a qualifying disclosure to a person other than his or her employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his or her employer.

52 Disclosure to legal adviser

[P1996/18/43D]

A qualifying disclosure is made in accordance with this section if it is made in the course of obtaining legal advice.

53 Disclosure to Civil Service Commission

[P1996/18/43E]

A qualifying disclosure is made in accordance with this section if —

- (a) the worker's employer is —
 - (i) an individual appointed under any enactment by the Civil Service Commission or the Council of Ministers, or
 - (ii) a body any of whose members are so appointed, and
- (b) the disclosure is made in good faith to the Civil Service Commission.

54 Disclosure to prescribed person

[P1996/18/43F]

- (1) A qualifying disclosure is made in accordance with this section if the worker —
- (a) makes the disclosure in good faith to a person prescribed by an order made by the Department for the purposes of this section, and
 - (b) reasonably believes —
 - (i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and

- (ii) that the information disclosed, and any allegation contained in it, are substantially true.
- (2) An order prescribing persons for the purposes of this section may specify persons or descriptions of persons, and shall specify the descriptions of matters in respect of which each person, or persons of each description, is or are prescribed.

55 Disclosure in other cases

[P1996/18/43G]

- (1) A qualifying disclosure is made in accordance with this section if —
 - (a) the worker makes the disclosure in good faith,
 - (b) he or she reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,
 - (c) he or she does not make the disclosure for purposes of personal gain,
 - (d) any of the conditions in subsection (2) is met, and
 - (e) in all the circumstances of the case, it is reasonable for him or her to make the disclosure.
- (2) The conditions referred to in subsection (1)(d) are —
 - (a) that, at the time he or she makes the disclosure, the worker reasonably believes that he or she will be subjected to a detriment by his or her employer if he or she makes a disclosure to his or her employer or in accordance with section 54,
 - (b) that, in a case where no person is prescribed for the purposes of section 54 in relation to the relevant failure, the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed or destroyed if he or she makes a disclosure to his or her employer, or
 - (c) that the worker has previously made a disclosure of substantially the same information —
 - (i) to his or her employer, or
 - (ii) in accordance with section 54.
- (3) In determining for the purposes of subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to —
 - (a) the identity of the person to whom the disclosure is made,
 - (b) the seriousness of the relevant failure,
 - (c) whether the relevant failure is continuing or is likely to occur in the future,
 - (d) whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person,

- (e) in a case falling within subsection (2)(c)(i) or (ii), any action which the employer or the person to whom the previous disclosure in accordance with section 54 was made has taken or might reasonably be expected to have taken as a result of the previous disclosure, and
 - (f) in a case falling within subsection (2)(c)(i), whether in making the disclosure to the employer the worker complied with any procedure whose use by him or her was authorised by the employer.
- (4) For the purposes of this section a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure as mentioned in subsection (2)(c) even though the subsequent disclosure extends to information about action taken or not taken by any person as a result of the previous disclosure.

56 Disclosure of exceptionally serious failure

[P1996/18/43H]

- (1) A qualifying disclosure is made in accordance with this section if —
- (a) the worker makes the disclosure in good faith,
 - (b) he or she reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,
 - (c) he or she does not make the disclosure for purposes of personal gain,
 - (d) the relevant failure is of an exceptionally serious nature, and
 - (e) in all the circumstances of the case, it is reasonable for him or her to make the disclosure.
- (2) In determining for the purposes of subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to the identity of the person to whom the disclosure is made.

57 Contractual duties of confidentiality

[P1996/18/43J]

- (1) Any provision in an agreement to which this section applies is void in so far as it purports to preclude the worker from making a protected disclosure.
- (2) This section applies to any agreement between a worker and his or her employer (whether a worker's contract or not), including an agreement to refrain from instituting or continuing any proceedings under any of the Employment Acts or this Act or any proceedings for breach of contract.

58 Extension of meaning of “worker” etc for Part IV

[P1996/18/43K]

- (1) For the purposes of this Part “worker” includes an individual who is a worker as defined by section 173(1) (general interpretation) or who —
- (a) works or worked for a person in circumstances in which —
 - (i) he is or was introduced or supplied to do that work by a third person, and
 - (ii) the terms on which he or she is or was engaged to do the work are or were in practice substantially determined not by him or her but by the person for whom he or she works or worked, by the third person or by both of them,
 - (b) contracts or contracted with a person, for the purposes of that person’s business, for the execution of work to be done in a place not under the control or management of that person and would fall within paragraph (b) of the definition of “worker” in section 173(1) if for “personally” in that provision there were substituted “(whether personally or otherwise)”,
 - (c) works or worked as a person providing general medical services, general dental services, general ophthalmic services or pharmaceutical services in accordance with arrangements made by the Department of Health under section 3, 6, 8 or 10 of the *National Health Service Act 2001*,³
 - (d) is or was provided with work experience provided pursuant to a training course or programme or with training for employment (or with both) otherwise than —
 - (i) under a contract of employment, or
 - (ii) by an educational establishment on a course run by that establishment,

and any reference to a worker’s contract, to employment or to a worker being “employed” shall be construed accordingly.

- (2) For the purposes of this Part “employer” includes —
- (a) in relation to a worker falling within subsection (1)(a), the person who substantially determines or determined the terms on which he or she is or was engaged,
 - (b) in relation to a worker falling within subsection (1)(c), the Department of Health, and⁴
 - (c) in relation to a worker falling within subsection (1)(d), the person providing the work experience or training.
- (3) In this section “educational establishment” includes any university, college, school or other educational establishment.

59 Application of this Part and related provisions to police

[P1996/18/43KA]

- (1) For the purposes of —
 - (a) this Part,
 - (b) section 64 (detriment: protected disclosures) and sections 71 (complaints to tribunal) and 72 (remedies) so far as relating to that section, and
 - (c) section 118 (unfair dismissal: protected disclosures) and the other provisions of Part X so far as relating to the right not to be unfairly dismissed in a case where the dismissal is unfair by virtue of section 118,

a person who holds, otherwise than under a contract of employment, the office of constable or an appointment as a police cadet shall be treated as an employee employed by the Chief Constable under a contract of employment; and any reference to a worker being “employed” and to his or her “employer” shall be construed accordingly.

60 Other interpretative provisions

[P1996/18/43L]

- (1) In this Part —

“**qualifying disclosure**” has the meaning given by section 50;

“**the relevant failure**”, in relation to a qualifying disclosure, has the meaning given by section 50(5).
- (2) In determining for the purposes of this Part whether a person makes a disclosure for purposes of personal gain, there shall be disregarded any reward payable by or under any enactment.
- (3) Any reference in this Part to the disclosure of information shall have effect, in relation to any case where the person receiving the information is already aware of it, as a reference to bringing the information to his or her attention.

PART V – DETRIMENT

61 Health and safety cases

[P1996/18/44]

- (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that —
 - (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety

- at work, the worker carried out (or proposed to carry out) any such activities,
- (b) being a representative of workers on matters of health and safety at work or member of a safety committee —
- (i) in accordance with arrangements established under or by virtue of any enactment, or
- (ii) by reason of being acknowledged as such by the employer, the worker performed (or proposed to perform) any functions as such a representative or a member of such a committee,
- (c) being a worker at a place where —
- (i) there was no such representative or safety committee, or
- (ii) there was such a representative or safety committee but it was not reasonably practicable for the worker to raise the matter by those means,
- he brought to his or her employer's attention, by reasonable means, circumstances connected with his or her work which he or she reasonably believed were harmful or potentially harmful to health or safety,
- (d) in circumstances of danger which the worker reasonably believed to be serious and imminent and which he or she could not reasonably have been expected to avert, he or she left (or proposed to leave) or (while the danger persisted) refused to return to his or her place of work or any dangerous part of his or her place of work, or
- (e) in circumstances of danger which the worker reasonably believed to be serious and imminent, he or she took (or proposed to take) appropriate steps to protect himself or herself or other persons from the danger.
- (2) For the purposes of subsection (1)(e) whether steps which a worker took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his or her knowledge and the facilities and advice available to him or her at the time.
- (3) A worker is not to be regarded as having been subjected to any detriment on the ground specified in subsection (1)(e) if the employer shows that it was (or would have been) so negligent for the worker to take the steps which he or she took (or proposed to take) that a reasonable employer might have treated him or her as the employer did.
- (4) This section does not apply where the worker is an employee and the detriment in question amounts to dismissal within the meaning of Part X (unfair dismissal).
- (5) For the purposes of this section and sections 64 (detriment: protected disclosures), 71 (complaints) and 72 (remedies), "worker", "worker's

contract”, “employment” and “employer” have the same extended meaning given by section 58.

62 Annual leave and other working time cases

[P1996/18/45A]

- (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the worker —
 - (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of any regulations made under section 167 (annual leave and other working time cases),
 - (b) refused (or proposed to refuse) to forgo a right conferred on him or her by those regulations,
 - (c) failed to enter into, or agree to vary or extend, any agreement with his or her employer which may be provided for in those regulations,
 - (d) brought proceedings against the employer to enforce a right conferred on him or her by those regulations, or
 - (e) alleged that the employer had infringed such a right.
- (2) It is immaterial for the purposes of subsection (1)(d) or (e) —
 - (a) whether or not the worker has the right, or
 - (b) whether or not the right has been infringed,but, for those provisions to apply, the claim to the right and that it has been infringed must be made in good faith.
- (3) It is sufficient for subsection (1)(e) to apply that the worker, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.
- (4) This section does not apply where the worker is an employee and the detriment in question amounts to dismissal within the meaning of Part X (unfair dismissal).

63 Trustees of occupational pension schemes

[P1996/18/46]

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that, being a trustee of a relevant occupational pension scheme which relates to his or her employment, the employee performed (or proposed to perform) any functions as such a trustee.
- (2) This section does not apply where the detriment in question amounts to dismissal within the meaning of Part X (unfair dismissal).

- (3) This section applies to an employee who is a director of a company which is a trustee of a relevant occupational pension scheme as it applies to an employee who is a trustee of such a scheme (references to such a trustee being read for this purpose as references to such a director).
- (4) In this section “relevant occupational pension scheme” means an occupational pension scheme as defined in section 1 of the Pension Schemes Act 1993 (as that Act of Parliament has effect in the Island) established under a trust.

64 Protected disclosures

[P1996/18/47B]

- (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the worker has made a protected disclosure.
- (2) This section does not apply where —
 - (a) the worker is an employee, and
 - (b) the detriment in question amounts to dismissal within the meaning of Part X (unfair dismissal).
- (3) For the purposes of this section, “worker”, “worker’s contract”, “employment” and “employer” have the extended meaning given by section 58.

65 Leave for family and domestic reasons

[P1996/18/47C]

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done for a prescribed reason.
- (2) A prescribed reason is one which is prescribed by regulations made by the Department and which relates to —
 - (a) pregnancy, childbirth or maternity,
 - (b) ordinary, compulsory or additional maternity leave,
 - (c) ordinary or additional adoption leave,
 - (d) parental leave, or
 - (e) paternity leave.

66 Flexible working

[P1996/18/47E]

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the employee —

- (a) made (or proposed to make) an application under section 99 (statutory right to request flexible working),
 - (b) exercised (or proposed to exercise) a right conferred on him or her under section 100 (employer's duties in relation to section 99),
 - (c) brought proceedings against the employer under section 101 (complaints to tribunal), or
 - (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.
- (2) This section does not apply where the detriment in question amounts to dismissal within the meaning of Part X (unfair dismissal).

67 Detriment on grounds related to trade union membership or activities

[P1992/52/146; 1991/19/21]

- (1) A worker has the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his or her employer if the act or failure takes place for the sole or main purpose of –
- (a) preventing or deterring him or her from being or seeking to become a member of a registered trade union, or penalising him or her for doing so,
 - (b) preventing or deterring him or her from taking part in the activities of a registered trade union at an appropriate time, or penalising him or her for doing so,
 - (c) preventing or deterring him or her from making use of trade union services at an appropriate time, or penalising him or her for doing so, or
 - (d) compelling him or her to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions.
- (2) In subsection (1) “an appropriate time” means –
- (a) a time outside the worker's working hours, or
 - (b) a time within his or her working hours at which, in accordance with arrangements agreed with or consent given by his or her employer, it is permissible for him or her to take part in the activities of a trade union or (as the case may be) make use of trade union services;

and for this purpose “working hours”, in relation to a worker, means any time when, in accordance with his or her contract of employment (or other contract personally to do work or perform services), he or she is required to be at work.

- (3) In this section –

- (a) “trade union services” means services made available to the worker by a registered trade union by virtue of his or her membership of the union, and
 - (b) references to a worker’s “making use” of trade union services include his or her consenting to the raising of a matter on his or her behalf by a registered trade union of which he or she is a member.
- (4) If a registered trade union of which a worker is a member raises a matter on his or her behalf (with or without his or her consent), penalising the worker for that is to be treated as penalising him or her as mentioned in subsection (1)(c).
- (5) A worker also has the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his or her employer if the act or failure takes place because of the worker’s failure to accept an offer made in contravention of section 29 or 30 (inducements).
- (6) For the purposes of subsection (5), not conferring a benefit that, if the offer had been accepted by the worker, would have been conferred on him or her under the resulting agreement shall be taken to be subjecting the worker to a detriment as an individual (and to be a deliberate failure to act).
- (7) A worker also has the right not to be subjected to a detriment as an individual by any act, or any deliberate failure to act, by his or her employer if the act or failure takes place for the sole or main purpose of enforcing a requirement (whether or not imposed by a contract of employment or in writing) that, in the event of his or her not being a member of any trade union or of a particular trade union or of one of a number of particular trade unions, he or she must make one or more payments.
- (8) For the purposes of subsection (7) any deduction made by an employer from the remuneration payable to a worker in respect of his or her employment shall, if it is attributable to his or her not being a member of any trade union or of a particular trade union or of one of a number of particular trade unions, be treated as a detriment to which he or she has been subjected as an individual by any act of his or her employer taking place for the sole or main purpose of enforcing a requirement of a kind mentioned in that subsection.
- (9) This section does not apply where —
 - (a) the worker is an employee; and
 - (b) the detriment in question amounts to dismissal within the meaning of Part X (unfair dismissal).
- (10) In this section references to being, becoming or ceasing to remain a member of a trade union include references to being, becoming or

ceasing to remain a member of a particular branch or section of that union and to being, becoming or ceasing to remain a member of one of a number of particular branches or sections of that union.

68 Right to accompany or be accompanied

[P1999/26/12]

- (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the worker –
 - (a) exercised or sought to exercise the right under section 103(2), (3), or (6) (right to be accompanied), or
 - (b) accompanied or sought to accompany another worker (whether of the same employer or not) pursuant to a request under that section.
- (2) References in this section to a worker having accompanied or sought to accompany another worker include references to that person having exercised or sought to exercise any of the powers conferred by section 103(2) or (3) (right to be accompanied).
- (3) This section does not apply where –
 - (a) the worker is an employee; and
 - (b) the detriment in question amounts to dismissal within the meaning of Part X (unfair dismissal).
- (4) For the purpose of this section “worker” has the extended meaning given in section 58(1).

69 Protected industrial action

- (1) An employee has the right not to be subjected in the protected period to any detriment as an individual by any act, or any deliberate failure to act, by his or her employer done on the ground that the employee is or was involved in protected industrial action within the meaning of section 124 (unfair dismissal: protected industrial action).
- (2) This section does not apply where the detriment in question amounts to dismissal within the meaning of Part X (unfair dismissal).

70 Assertion of statutory right

- (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer on the ground that he or she exercised or sought to exercise a relevant statutory right or that he or she alleged that the employer had infringed a right of the worker which is a relevant statutory right.
- (2) It is immaterial for the purposes of subsection (1) –

- (a) whether or not the worker has the right, or
 - (b) whether or not the right has been infringed,
- but for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.
- (3) It is sufficient for subsection (1) to apply that the worker, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.
 - (4) The following are relevant statutory rights for the purposes of this section and section 119 (unfair dismissal: assertion of statutory right) –
 - (a) any right conferred by this Act for which the remedy for its infringement is by way of a complaint or reference to the Tribunal,
 - (b) the right conferred by section 106 (minimum period of notice),
 - (c) the rights conferred by any regulations made under section 167 (annual leave and other working time cases), and
 - (d) such other rights as may by order be prescribed by the Department.
 - (5) This section does not apply where the detriment in question amounts to dismissal within the meaning of Part X (unfair dismissal).

Enforcement

71 Complaints to Tribunal

[P1996/18/48]

- (1) An employee may present a complaint to the Tribunal that he or she has been subjected to a detriment in contravention of sections 63 (detriment: trustees of occupational pension schemes), 65 (detriment: leave for family and domestic reasons), 66 (detriment: flexible working) or 69 (detriment: protected industrial action).
- (2) In the case of a worker, a worker may present a complaint to the Tribunal that he or she has been subjected to a detriment in contravention of section 61 (detriment: health and safety), 62 (detriment: annual leave, etc.), 64 (detriment: protected disclosure), 67 (detriment: trade union membership or activities), 68 (detriment: right to be accompanied) or 70 (detriment: assertion of statutory right).
- (3) On such a complaint it is for the employer to show what was the sole or main purpose for which he or she acted or failed to act.
- (4) The Tribunal shall not consider a complaint under this section unless it is presented –
 - (a) in respect of all complaints other than complaints under section 69 (detriment: protected industrial action) before the end of the

- period of 3 months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, and
- (b) in the case of complaints under section 69 before the end of the period of 6 months beginning with the date of the act or failure to act to which the complaint relates, or where that act or failure is part of a series of similar acts or failures, the last of them, or
- (c) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.
- (5) For the purposes of subsection (4) —
- (a) where an act extends over a period, the “date of the act” means the last day of that period, and
- (b) a deliberate failure to act shall be treated as done when it was decided on;
- and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he or she does an act inconsistent with doing the failed act or, if he or she has done no such inconsistent act, when the period expires within which he or she might reasonably have been expected to do the failed act if it was to be done.
- (6) For the purposes of section 67 (detriment: trade union membership or activities), in determining whether the employer acted or failed to act, or the purpose for which he or she did so, no account shall be taken of any pressure which was exercised on him or her by calling, or organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.

72 Remedies

[P1992/52/149(5); P1996/18/49]

- (1) Where the Tribunal finds a complaint under section 71 well-founded, it —
- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.
- (2) The amount of the compensation awarded shall be such as the Tribunal considers just and equitable in all the circumstances having regard to —
- (a) the infringement to which the complaint relates, and
- (b) any loss which is attributable to the act, or failure to act, which infringed the complainant’s right.

- (3) The loss shall be taken to include —
 - (a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates; and
 - (b) loss of any benefit which the complainant might reasonably be expected to have had but for that act or failure to act.
- (4) In ascertaining the loss the Tribunal shall apply the same rule concerning the duty of a person to mitigate loss as applies to damages recoverable under the common law.
- (5) Where the Tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.
- (6) In the case of a complaint under section 67 (detriment: trade union membership or activities), in determining the amount of compensation to be awarded no account shall be taken of any pressure which was exercised on the employer by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.
- (7) If in proceedings on a complaint under section 67 —
 - (a) the complaint is made on the ground that the complainant has been subjected to detriment by an act or failure by the employer taking place for the sole or main purpose of compelling the complainant to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions, and
 - (b) either the complainant or the employer claims in proceedings before the Tribunal that the employer was induced to act or fail to act in the way complained of by pressure which a trade union or other person exercised on him or her by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so,

the complainant or the employer may request the Tribunal to direct that the person who he or she claims exercised the pressure be joined as a party to the proceedings.
- (8) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the Tribunal has made a declaration that the complaint is well-founded.
- (9) Where a person has been so joined as a party to proceedings and the Tribunal —

- (a) makes an award of compensation, and
- (b) finds that the claim mentioned in subsection (7)(b) is well-founded,

it may order that the compensation shall be paid by the person joined instead of by the employer, or partly by that person and partly by the employer, as the Tribunal may consider just and equitable in the circumstances.

Application to police of rights relating to health and safety

73 Application to police of section 61 and related provisions

[P1996/18/49A]

For the purposes of section 61 (detriment: health and safety), and of sections 71 (complaints to tribunal) and 72 (remedies) so far as relating to that section, the holding, otherwise than under a contract of employment, of the office of constable or an appointment as police cadet shall be treated as employment by the Chief Constable under a contract of employment.

PART VI – SUSPENSION FROM WORK ON MATERNITY GROUNDS

74 Meaning of suspension on maternity grounds

[P1996/18/66]

- (1) For the purposes of this Part an employee is suspended from work on maternity grounds if, in consequence of any relevant requirement or relevant recommendation, she is suspended from work by her employer on the ground that she is pregnant, has recently given birth or is breastfeeding a child.

- (2) In subsection (1) —

“relevant requirement” means a requirement imposed by or under a specified statutory provision, and

“relevant recommendation” means a recommendation in a specified provision of a code of practice issued or approved under section 16 of the Health and Safety at Work etc. Act 1974 (as that Act of Parliament has effect in the Island);

and in this subsection “specified statutory provision” means a statutory provision for the time being specified in an order made by the Department under this subsection.

- (3) For the purposes of this Part an employee shall be regarded as suspended from work on maternity grounds only if and for so long as she —

- (a) continues to be employed by her employer, but
- (b) is not provided with work or (disregarding alternative work for the purposes of section 75) does not perform the work she normally performed before the suspension.

75 Right to offer of alternative work

[P1996/18/67]

- (1) Where an employer has available suitable alternative work for an employee, the employee has a right to be offered to be provided with the alternative work before being suspended from work on maternity grounds.
- (2) For alternative work to be suitable for an employee for the purposes of this section –
 - (a) the work must be of a kind which is both suitable in relation to her and appropriate for her to do in the circumstances, and
 - (b) the terms and conditions applicable to her for performing the work, if they differ from the corresponding terms and conditions applicable to her for performing the work she normally performs under her contract of employment, must not be substantially less favourable to her than those corresponding terms and conditions.

76 Right to remuneration

[P1996/18/68]

- (1) An employee who is suspended from work on maternity grounds is entitled to be paid remuneration by her employer while she is suspended.
- (2) An employee is not entitled to remuneration under this section in respect of any period if –
 - (a) her employer has offered to provide her during the period with work which is suitable alternative work for her for the purposes of section 75, and
 - (b) the employee has unreasonably refused to perform that work.

77 Calculation of remuneration

[P1996/18/69]

- (1) The amount of remuneration payable by an employer to an employee under section 76 is a week's pay in respect of each week of the period of suspension; and if in any week remuneration is payable in respect of only part of that week the amount of a week's pay shall be reduced proportionately.

- (2) A right to remuneration under section 76 does not affect any right of an employee in relation to remuneration under the employee's contract of employment (the "contractual remuneration").
- (3) Any contractual remuneration paid by an employer to an employee in respect of any period goes towards discharging the employer's liability under section 76 in respect of that period; and, conversely, any payment of remuneration in discharge of an employer's liability under section 76 in respect of any period goes towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.

78 Complaints to Tribunal under sections 75 and 76

[P1996/18/70]

- (1) An employee may present a complaint to the Tribunal that her employer has failed to pay the whole or any part of remuneration to which she is entitled under section 76.
- (2) The Tribunal shall not consider a complaint under subsection (1) relating to remuneration in respect of any day unless it is presented —
 - (a) before the end of the period of 3 months beginning with that day, or
 - (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within that period of 3 months.
- (3) Where the Tribunal finds a complaint under subsection (1) well-founded, the Tribunal shall order the employer to pay the employee the amount of remuneration which it finds is due to her.
- (4) An employee may present a complaint to the Tribunal that in contravention of section 75 (right to offer of alternative work) her employer has failed to offer to provide her with work.
- (5) The Tribunal shall not consider a complaint under subsection (4) unless it is presented —
 - (a) before the end of the period of 3 months beginning with the first day of the suspension, or
 - (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within that period of 3 months.
- (6) Where the Tribunal finds a complaint under subsection (4) well-founded, the Tribunal may make an award of compensation to be paid by the employer to the employee.
- (7) The amount of the compensation shall be such as the Tribunal considers just and equitable in all the circumstances having regard to —

- (a) the infringement of the employee's right under section 75 by the failure on the part of the employer to which the complaint relates, and
- (b) any loss sustained by the employee which is attributable to that failure.

PART VII – LEAVE FOR FAMILY AND DOMESTIC REASONS

79 Ordinary maternity leave

[P1996/18/71]

- (1) An employee may, provided that she satisfies any conditions which may be prescribed, be absent from work at any time during an ordinary maternity leave period.
- (2) An ordinary maternity leave period is a period calculated in accordance with regulations made by the Department.
- (3) Regulations under subsection (2) –
 - (a) shall secure that no ordinary maternity leave period is less than 26 weeks;
 - (b) may allow an employee to choose, subject to any prescribed restrictions, the date on which an ordinary maternity leave period starts.
- (4) Subject to section 82 (redundancy and dismissal), an employee who exercises her right under subsection (1) –
 - (a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if she had not been absent,
 - (b) is bound, for such purposes and to such extent as may be prescribed, by any obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1)), and
 - (c) is entitled to return from leave to a job of a prescribed kind.
- (5) In subsection (4)(a) “terms and conditions of employment” –
 - (a) includes matters connected with an employee's employment whether or not they arise under her contract of employment, but
 - (b) does not include terms and conditions about remuneration.
- (6) The Department may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (7) The Department may make regulations making provision, in relation to the right to return under subsection 4(c), about –

- (a) seniority, pension rights and similar rights; and
- (b) terms and conditions of employment on return.

80 Compulsory maternity leave

[P1996/18/72]

- (1) An employer shall not permit an employee who satisfies prescribed conditions to work during a compulsory maternity leave period.
- (2) A compulsory maternity leave period is a period calculated in accordance with regulations made by the Department.
- (3) Regulations under subsection (2) shall secure —
 - (a) that no compulsory leave period is less than 2 weeks, and
 - (b) that every compulsory maternity leave period falls within an ordinary maternity leave period.
- (4) Subject to subsection (5), any provision of or made under the Health and Safety at Work etc. Act 1974 (as that Act of Parliament has effect in the Island), shall apply in relation to the prohibition under subsection (1) as if it were imposed by regulations under section 15 of that Act.
- (5) Section 33(1)(c) of the 1974 Act shall not apply in relation to the prohibition under subsection (1); and an employer who contravenes that subsection shall be —
 - (a) guilty of an offence, and
 - (b) liable on summary conviction to a fine not exceeding £5,000.

81 Additional maternity leave

[P1996/18/73]

- (1) An employee who satisfies prescribed conditions may be absent from work at any time during an additional maternity leave period.
- (2) An additional maternity leave period is a period calculated in accordance with regulations made by the Department.
- (3) Regulations under subsection (2) may allow an employee to choose, subject to prescribed restrictions, the date on which an additional maternity leave period ends.
- (4) Subject to section 82 (redundancy and dismissal), an employee who exercises her right under subsection (1) —
 - (a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if she had not been absent,
 - (b) is bound, for such purposes and to such extent as may be prescribed, by obligations arising under those terms and

- conditions (except in so far as they are inconsistent with subsection (1)), and
- (c) is entitled to return from leave to a job of a prescribed kind.
- (5) In subsection (4)(a) “terms and conditions of employment” —
- (a) includes matters connected with an employee’s employment whether or not they arise under her contract of employment, but
 - (b) does not include terms and conditions about remuneration.
- (6) In subsection (4)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to additional maternity leave and partly to ordinary maternity leave.
- (7) The Department may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (8) The Department may make regulations making provision, in relation to the right to return under subsection (4)(c), about —
- (a) seniority, pension rights and similar rights;
 - (b) terms and conditions of employment on return.

82 Redundancy and dismissal

[P1996/18/74]

- (1) Regulations under section 79 or 81 may make provision about redundancy during an ordinary or additional maternity leave period.
- (2) Regulations under section 79 or 81 may make provision about dismissal (other than by reason of redundancy) during an ordinary or additional maternity leave period.
- (3) Regulations made by virtue of subsection (1) or (2) may include —
 - (a) provision requiring an employer to offer alternative employment;
 - (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part X (unfair dismissal)).
- (4) Regulations under section 79 or 81 may make provision —
 - (a) for section 79(4)(c) or 81(4)(c) not to apply in specified cases, and
 - (b) about dismissal at the conclusion of an ordinary or additional maternity leave period.

83 Sections 79 to 81: supplemental

[P1996/18/75]

Regulations under section 79, 80 or 81 may —

- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;
- (b) make provision for the consequences of failure to give notices, to produce evidence or to comply with other procedural requirements;
- (c) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
- (d) make special provision for cases where an employee has a right which corresponds to a right under sections 79 to 82 and which arises under her contract of employment or otherwise;
- (e) make provision modifying the effect of Schedule 6 (a week's pay) in relation to an employee who is or has been absent from work on ordinary or additional maternity leave;
- (f) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to ordinary, compulsory or additional maternity leave;
- (g) make different provision for different cases or circumstances.

84 Parental leave: children with a disability

- (1) The Department shall make regulations entitling an employee who satisfies specified conditions —
 - (a) as to duration of employment, and
 - (b) as to having, or expecting to have, responsibility for a child with a disability,to be absent from work on parental leave for the purpose of caring for that child.
- (2) The regulations shall include provision for determining —
 - (a) the extent of an employee's entitlement to parental leave in respect of that child;
 - (b) when parental leave may be taken.
- (3) Provision under subsection (2)(a) shall secure that where an employee is entitled to parental leave in respect of a child with a disability he or she is entitled to a period or total period of leave of at least 3 months; but this subsection is without prejudice to any provision which may be made by the regulations for cases in which —
 - (a) a person ceases to satisfy conditions under subsection (1);
 - (b) an entitlement to parental leave is transferred.
- (4) Provision under subsection (2)(b) may, in particular, refer to —

- (a) the age of a child with a disability, or
 - (b) a specified period of time starting from a specified event.
- (5) Regulations under subsection (1) may —
- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child with a disability;
 - (b) require parental leave to be taken as a single period of absence in all cases or in specified cases;
 - (c) require parental leave to be taken as a series of periods of absence in all cases or in specified cases;
 - (d) require all or specified parts of a period of parental leave to be taken at or by specified times;
 - (e) make provision about the postponement by an employer of a period of parental leave which an employee wishes to take;
 - (f) specify a minimum or maximum period of absence which may be taken as part of a period of parental leave;
 - (g) specify a maximum aggregate of periods of parental leave which may be taken during a specified period of time.
- (6) In this section, the reference to a child with a disability is to a child who is entitled to a disability living allowance within the meaning of section 71 of the Social Security Contributions and Benefits Act 1992 (as that Act of Parliament has effect in the Island).

85 Parental leave

[P1996/18/76]

- (1) The Department may make regulations entitling an employee who satisfies specified conditions —
- (a) as to duration of employment, and
 - (b) as to having, or expecting to have, responsibility for a child who is not a disabled child within the meaning of section 84(6),
- to be absent from work on parental leave for the purpose of caring for that child.
- (2) The regulations shall include provision for determining —
- (a) the extent of an employee's entitlement to parental leave in respect of that child;
 - (b) when parental leave may be taken.
- (3) Provision under subsection (2)(a) shall secure that where an employee is entitled to parental leave in respect of such a child he or she is entitled to a period or total period of leave of at least 3 months; but this subsection is without prejudice to any provision which may be made by the regulations for cases in which —

- (a) a person ceases to satisfy conditions under subsection (1);
 - (b) an entitlement to parental leave is transferred.
- (4) Provision under subsection (2)(b) may, in particular, refer to —
- (a) a child's age, or
 - (b) a specified period of time starting from a specified event.
- (5) Regulations under subsection (1) may —
- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child;
 - (b) require parental leave to be taken as a single period of absence in all cases or in specified cases;
 - (c) require parental leave to be taken as a series of periods of absence in all cases or in specified cases;
 - (d) require all or specified parts of a period of parental leave to be taken at or by specified times;
 - (e) make provision about the postponement by an employer of a period of parental leave which an employee wishes to take;
 - (f) specify a minimum or maximum period of absence which may be taken as part of a period of parental leave;
 - (g) specify a maximum aggregate of periods of parental leave which may be taken during a specified period of time.

86 Rights during and after parental leave

[P1996/18/77]

- (1) Regulations under section 84 (parental leave: children with a disability) and 85 (parental leave) shall provide —
- (a) that an employee who is absent on parental leave is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he or she had not been absent;
 - (b) that an employee who is absent on parental leave is bound, for such purposes and to such extent as may be prescribed, by any obligations arising under those terms and conditions (except in so far as they are inconsistent with section 84(1) and 85(1)); and
 - (c) that an employee who is absent on parental leave is entitled, subject to section 84(1) and 85(1), to return from leave to a job of such kind as the regulations may specify.
- (2) In subsection (1)(a) “terms and conditions of employment” —
- (a) includes matters connected with an employee's employment whether or not they arise under a contract of employment, but
 - (b) does not include terms and conditions about remuneration.

- (3) Regulations under section 84 and 85 may specify matters which are, or are not, to be treated as remuneration for the purposes of subsection (2)(b).
- (4) The regulations may make provision, in relation to the right to return mentioned in subsection (1)(c), about —
 - (a) seniority, pension rights and similar rights;
 - (b) terms and conditions of employment on return.

87 Special cases

[P1996/18/78]

- (1) Regulations under section 84 and 85 may make provision —
 - (a) about redundancy during a period of parental leave;
 - (b) about dismissal (other than by reason of redundancy) during a period of parental leave.
- (2) Provision by virtue of subsection (1) may include —
 - (a) provision requiring an employer to offer alternative employment;
 - (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part X).
- (3) Regulations under section 84 and 85 may provide for an employee to be entitled to choose to exercise all or part of his or her entitlement to parental leave —
 - (a) by varying the terms of his or her contract of employment as to hours of work, or
 - (b) by varying his or her normal working practice as to hours of work,

in a way specified in or permitted by the regulations for a period specified in the regulations.
- (4) Provision by virtue of subsection (3) —
 - (a) may restrict an entitlement to specified circumstances;
 - (b) may make an entitlement subject to specified conditions (which may include conditions relating to obtaining the employer's consent);
 - (c) may include consequential and incidental provision.
- (5) Regulations under section 84 and 85 may make provision permitting all or part of an employee's entitlement to parental leave in respect of a child to be transferred to another employee in specified circumstances.
- (6) The reference in section 86(1)(c) (rights during and after parental leave) to absence on parental leave includes, where appropriate, a reference to a

continuous period of absence attributable partly to parental leave and partly to —

- (a) maternity leave, or
- (b) adoption leave,

or to both.

- (7) Regulations under section 84 and 85 may provide for specified provisions of the regulations not to apply in relation to an employee if any provision of his or her contract of employment confers an entitlement to absence from work for the purpose of caring for a child.

88 Supplemental

[P1996/18/79]

- (1) Regulations under section 84 (parental leave: children with a disability) and 85 (parental leave) may, in particular —
 - (a) make provision about notices to be given and evidence to be produced by employees to employers, by employers to employees, and by employers to other employers;
 - (b) make provision requiring employers or employees to keep records;
 - (c) make provision about other procedures to be followed by employers and employees;
 - (d) make provision (including provision creating criminal offences) specifying the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
 - (e) make provision specifying the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
 - (f) make special provision for cases where an employee has a right which corresponds to a right conferred by the regulations and which arises under his or her contract of employment or otherwise;
 - (g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to parental leave;
 - (h) make different provision for different cases or circumstances.
- (2) The regulations may make provision modifying the effect of Schedule 6 (a week's pay) in relation to an employee who is or has been absent from work on parental leave.

89 Complaints to Tribunal

[P1996/18/80]

- (1) An employee may present a complaint to the Tribunal that his or her employer —
 - (a) has unreasonably postponed a period of parental leave requested by the employee under section 84 (parental leave: children with a disability) or 85 (parental leave), or
 - (b) has prevented or attempted to prevent the employee from taking parental leave.
- (2) The Tribunal shall not consider a complaint under this section unless it is presented —
 - (a) before the end of the period of 3 months beginning with the date (or last date) of the matters complained of, or
 - (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.
- (3) Where the Tribunal finds a complaint under this section well-founded it —
 - (a) shall make a declaration to that effect, and
 - (b) may make an award of compensation to be paid by the employer to the employee.
- (4) The amount of compensation shall be such as the Tribunal considers just and equitable in all the circumstances having regard to —
 - (a) the employer's behaviour, and
 - (b) any loss sustained by the employee which is attributable to the matters complained of.

90 Paternity leave: birth

[P1996/18/80A]

- (1) The Department shall make regulations entitling an employee who satisfies specified conditions —
 - (a) as to duration of employment,
 - (b) as to relationship with a newborn, or expected, child, and
 - (c) as to relationship with the child's mother,to be absent from work on leave under this section for the purpose of caring for the child or supporting the mother.
- (2) The regulations shall include provision for determining —
 - (a) the extent of an employee's entitlement to leave under this section in respect of a child;

- (b) when leave under this section may be taken.
- (3) Provision under subsection (2)(a) shall secure that where an employee is entitled to leave under this section in respect of a child he or she is entitled to at least 2 weeks' leave.
- (4) Provision under subsection (2)(b) shall secure that leave under this section must be taken before the end of a period of at least 56 days beginning with the date of the child's birth.
- (5) Regulations under subsection (1) may —
- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child or supporting the child's mother;
 - (b) make provision excluding the right to be absent on leave under this section in respect of a child where more than one child is born as a result of the same pregnancy;
 - (c) make provision about how leave under this section may be taken.
- (6) Where more than one child is born as a result of the same pregnancy, the reference in subsection (4) to the date of the child's birth shall be read as a reference to the date of birth of the first child born as a result of the pregnancy.
- (7) In this section —
- “newborn child” includes a child stillborn after 24 weeks of pregnancy;
- “week” means any period of 7 days.

91 Paternity leave: adoption

[P1996/18/80B]

- (1) The Department shall make regulations entitling an employee who satisfies specified conditions —
- (a) as to duration of employment,
 - (b) as to relationship with a child placed, or expected to be placed, for adoption under the law of the Island, and
 - (c) as to relationship with a person with whom the child is, or is expected to be, so placed for adoption,
- to be absent from work on leave under this section for the purpose of caring for the child or supporting the person by reference to whom he or she satisfies the condition under paragraph (c).
- (2) The regulations shall include provision for determining —
- (a) the extent of an employee's entitlement to leave under this section in respect of a child;
 - (b) when leave under this section may be taken.

- (3) Provision under subsection (2)(a) shall secure that where an employee is entitled to leave under this section in respect of a child he or she is entitled to at least 2 weeks' leave.
- (4) Provision under subsection (2)(b) shall secure that leave under this section must be taken before the end of a period of at least 56 days beginning with the date of the child's placement for adoption.
- (5) Regulations under subsection (1) may —
 - (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child or supporting a person with whom a child is placed for adoption;
 - (b) make provision excluding the right to be absent on leave under this section in the case of an employee who exercises a right to be absent from work on adoption leave;
 - (c) make provision excluding the right to be absent on leave under this section in respect of a child where more than one child is placed for adoption as part of the same arrangement;
 - (d) make provision about how leave under this section may be taken.
- (6) Where more than one child is placed for adoption as part of the same arrangement, the reference in subsection (4) to the date of the child's placement shall be read as a reference to the date of placement of the first child to be placed as part of the arrangement.
- (7) In this section, "week" means any period of 7 days.
- (8) The Department may by regulations provide for this section to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of the Island, with such modifications as the regulations may prescribe.

92 Rights during and after paternity leave

[P1996/18/80C]

- (1) Regulations under section 90 (paternity leave: birth) shall provide —
 - (a) that an employee who is absent on leave under that section is entitled, for such purposes and to such extent as the regulations may prescribe, to the benefit of the terms and conditions of employment which would have applied if he or she had not been absent;
 - (b) that an employee who is absent on leave under that section is bound, for such purposes and to such extent as the regulations may prescribe, by obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1) of that section), and

- (c) that an employee who is absent on leave under that section is entitled to return from leave to a job of a kind prescribed by regulations, subject to section 93(1) (special cases).
- (2) The reference in subsection (1)(c) to absence on leave under section 90 includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that section and partly to any one or more of the following —
 - (a) maternity leave,
 - (b) adoption leave, and
 - (c) parental leave.
 - (3) Subsection (1) shall apply to regulations under section 91 (paternity leave: adoption) as it applies to regulations under section 90.
 - (4) In the application of subsection (1)(c) to regulations under section 91, the reference to absence on leave under that section includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that section and partly to any one or more of the following —
 - (a) maternity leave,
 - (b) adoption leave,
 - (c) parental leave, and
 - (d) leave under section 90.
 - (5) In subsection (1)(a), “terms and conditions of employment” —
 - (a) includes matters connected with an employee’s employment whether or not they arise under his or her contract of employment, but
 - (b) does not include terms and conditions about remuneration.
 - (6) Regulations under section 90 or 91 may specify matters which are, or are not, to be treated as remuneration for the purposes of this section.
 - (7) Regulations under section 90 or 91 may make provision, in relation to the right to return mentioned in subsection (1)(c), about —
 - (a) seniority, pension rights and similar rights;
 - (b) terms and conditions of employment on return.

93 Special cases

[P1996/18/80D]

- (1) Regulations under section 90 (paternity leave: birth) or 91 (paternity leave: adoption) may make provision about —
 - (a) redundancy, or
 - (b) dismissal (other than by reason of redundancy),

during a period of leave under that section.

- (2) Provision by virtue of subsection (1) may include —
- (a) provision requiring an employer to offer alternative employment;
 - (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part X).

94 Supplemental

[P1996/18/80E]

Regulations under section 90 (paternity leave: birth) or 91 (paternity leave: adoption) may —

- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employers and employees;
- (b) make provision requiring employers or employees to keep records;
- (c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
- (d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
- (e) make special provision for cases where an employee has a right which corresponds to a right under section 90 or 91 and which arises under his or her contract of employment or otherwise;
- (f) make provision modifying the effect of Schedule 6 (a week's pay) in relation to an employee who is or has been absent from work on leave under section 90 or 91;
- (g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions which may be specified, in relation to a person entitled to take leave under section 90 or 91;
- (h) make different provision for different cases or circumstances.

95 Ordinary adoption leave

[P1996/18/75A]

- (1) An employee who satisfies prescribed conditions may be absent from work at any time during an ordinary adoption leave period.
- (2) An ordinary adoption leave period is a period calculated in accordance with regulations made by the Department.
- (3) Subject to section 97 (redundancy and dismissal), an employee who exercises his or her right under subsection (1) —

- (a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he or she had not been absent,
 - (b) is bound, for such purposes and to such extent as may be prescribed, by any obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1)), and
 - (c) is entitled to return from leave to a job of a prescribed kind.
- (4) In subsection (3)(a) “terms and conditions of employment” —
- (a) includes matters connected with an employee’s employment whether or not they arise under his or her contract of employment, but
 - (b) does not include terms and conditions about remuneration.
- (5) In subsection (3)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to ordinary adoption leave and partly to maternity leave.
- (6) The Department may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (7) The Department may make regulations making provision, in relation to the right to return under subsection (3)(c), about —
- (a) seniority, pension rights and similar rights;
 - (b) terms and conditions of employment on return.

96 Additional adoption leave

[P1996/18/75B]

- (1) An employee who satisfies prescribed conditions may be absent from work at any time during an additional adoption leave period.
- (2) An additional adoption leave period is a period calculated in accordance with regulations made by the Department.
- (3) Regulations under subsection (2) may allow an employee to choose, subject to prescribed restrictions, the date on which an additional adoption leave period ends.
- (4) Subject to section 97 (redundancy and dismissal), an employee who exercises his or her right under subsection (1) —
 - (a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he or she had not been absent,
 - (b) is bound, for such purposes and to such extent as may be prescribed, by obligations arising under those terms and

- conditions (except in so far as they are inconsistent with subsection (1)), and
- (c) is entitled to return from leave to a job of a prescribed kind.
- (5) In subsection (4)(a) “terms and conditions of employment” —
- (a) includes matters connected with an employee’s employment whether or not they arise under his or her contract of employment, but
 - (b) does not include terms and conditions about remuneration.
- (6) In subsection (4)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to additional adoption leave and partly to —
- (a) maternity leave, or
 - (b) ordinary adoption leave,
- or to both.
- (7) The Department may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (8) The Department may make regulations making provision, in relation to the right to return under subsection (4)(c), about —
- (a) seniority, pension rights and similar rights;
 - (b) terms and conditions of employment on return.

97 Redundancy and dismissal

[P1996/18/75C]

- (1) Regulations under section 95 or 96 may make provision about —
- (a) redundancy, or
 - (b) dismissal (other than by reason of redundancy),
- during an ordinary or additional adoption leave period.
- (2) Regulations made by virtue of subsection (1) may include —
- (a) provision requiring an employer to offer alternative employment;
 - (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part X).
- (3) Regulations under section 95 or 96 may make provision —
- (a) for section 95(3)(c) or 96(4)(c) not to apply in specified cases, and
 - (b) about dismissal at the conclusion of an ordinary or additional adoption leave period.

98 Supplemental

[P1996/18/80F]

Regulations under section 95 (ordinary adoption leave) or 96 (additional adoption leave) may —

- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employers and employees;
- (b) make provision requiring employers or employees to keep records;
- (c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
- (d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
- (e) make special provision for cases where an employee has a right which corresponds to a right under this Part and which arises under his or her contract of employment or otherwise;
- (f) make provision modifying the effect of Schedule 6 (a week's pay) in relation to an employee who is or has been absent from work on ordinary or additional adoption leave;
- (g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to ordinary or additional adoption leave;
- (h) make different provision for different cases or circumstances.

99 Statutory right to request flexible working

[P1996/18/57A(3) and 80F]

- (1) A qualifying employee may apply to his or her employer for a change in his or her terms and conditions of employment if —
 - (a) the change relates to —
 - (i) the hours he or she is required to work,
 - (ii) the times when he or she is required to work,
 - (iii) where, as between his or her home and a place of business of his or her employer, he or she is required to work, or
 - (iv) such other aspect of his or her terms and conditions of employment as the Department may specify by regulations, and
 - (b) his or her purpose in applying for the change is to enable him or her to care for someone who, at the time of application, is a dependant in respect of whom the conditions as to relationship specified in subsection (6) are satisfied.



- (2) An application under this section must —
- (a) state that it is such an application,
 - (b) specify the change applied for and the date on which it is proposed the change should become effective,
 - (c) explain what effect, if any, the employee thinks making the change applied for would have on his or her employer and how, in the employee's opinion, any such effect might be dealt with, and
 - (d) explain how the employee meets, in respect of the dependant concerned, the conditions as to relationship mentioned in subsection (1)(b).
- (3) If an employee has made an application under this section, he or she may not make a further application under this section to the same employer before the end of the period of twelve months beginning with the date on which the previous application was made.
- (4) The Department may by regulations make provision about —
- (a) the form of applications under this section, and
 - (b) when such an application is to be taken as made.
- (5) For the purposes of this section, an employee is —
- (a) a qualifying employee if he or she —
 - (i) satisfies such conditions as to duration of employment as the Department may specify by regulations, and
 - (ii) is not an agency worker;
 - (b) an agency worker if he or she is supplied by a person ("the agent") to do work for another ("the principal") under a contract or other arrangement made between the agent and the principal.
- (6) For the purposes of this section "dependant" means, in relation to an employee —
- (a) a spouse or civil partner,⁵
 - (b) a child who has not attained the age of 6 years or such other age as may be prescribed by order by the Department,
 - (c) a child with a disability within the meaning of section 84(6),
 - (d) a parent,
 - (e) a person who lives in the same household as the employee, otherwise than by reason of being —
 - (i) his or her employee, tenant, lodger or boarder, or
 - (ii) a child who is excluded by age from eligibility under paragraph (b), and
 - (f) such other categories of persons as the Department may by regulations from time to time prescribe.

100 Employer's duties in relation to application under section 99

[P1996/18/80G]

- (1) An employer to whom an application under section 99 is made —
 - (a) shall deal with the application in accordance with regulations made by the Department, and
 - (b) shall only refuse the application because he or she considers that one or more of the following grounds applies —
 - (i) the burden of additional costs,
 - (ii) detrimental effect on ability to meet customer demand,
 - (iii) inability to re-organise work among existing staff,
 - (iv) inability to recruit additional staff,
 - (v) detrimental impact on quality,
 - (vi) detrimental impact on performance,
 - (vii) insufficiency of work during the periods the employee proposes to work,
 - (viii) planned structural changes, and
 - (ix) such other grounds as the Department may specify by regulations.
- (2) Regulations under subsection (1)(a) may include —
 - (a) provision for the holding of a meeting between the employer and the employee to discuss an application under section 99 within 28 days after the date the application is made;
 - (b) provision for the giving by the employer to the employee of notice of his or her decision on the application within 14 days after the date of the meeting under paragraph (a);
 - (c) provision for notice under paragraph (b) of a decision to refuse the application to state the grounds for the decision;
 - (d) provision for the employee to have a right, if he or she is dissatisfied with the employer's decision, to appeal against it within 14 days after the date on which notice under paragraph (b) is given;
 - (e) provision about the procedure for exercising the right of appeal under paragraph (d), including provision requiring the employee to set out the grounds of appeal;
 - (f) provision for notice under paragraph (b) to include such information as the regulations may specify relating to the right of appeal under paragraph (d);
 - (g) provision for the holding, within 14 days after the date on which notice of appeal is given by the employee, of a meeting between the employer and the employee to discuss the appeal;

- (h) provision for the employer to give the employee notice of his or her decision on any appeal within 14 days after the date of the meeting under paragraph (g);
 - (i) provision for notice under paragraph (h) of a decision to dismiss an appeal to state the grounds for the decision;
 - (j) provision for a statement under paragraph (c) or (i) to contain a sufficient explanation of the grounds for the decision;
 - (k) provision for the employee to have a right to be accompanied at meetings under paragraph (a) or (g) by a person of such description as the regulations may specify and for that person to be granted time off and to be paid by the employer under section 35(3), (4), (5) and (6) (time off for trade union activities) as if he or she were an official of a registered trade union;
 - (l) provision for postponement in relation to any meeting under paragraph (a) or (g) which a companion under paragraph (k) is not available to attend;
 - (m) provision in relation to companions under paragraph (k) corresponding to section 103(8) and (10) (right to paid time off to act as companion, etc.);
 - (n) provision, in relation to the rights under paragraphs (k) and (l), for the application (with or without modification of sections 68, 104 and 105 (provisions ancillary to right to be accompanied under section 103).
- (3) Regulations under subsection (1)(a) may include —
- (a) provision for any requirement of the regulations not to apply where an application is disposed of by agreement or withdrawn;
 - (b) provision for extension of a time limit where the employer and employee agree, or in such other circumstances as the regulations may specify;
 - (c) provision for applications to be treated as withdrawn in specified circumstances;
- and may make different provision for different cases.
- (4) The Department may by order amend subsection (2).

101 Complaints to Tribunal

[P2002/22/80H]

- (1) An employee who makes an application under section 99 (statutory right to request flexible working) may present a complaint to the Tribunal —
 - (a) that his or her employer has failed in relation to the application to comply with section 100(1) (employer's duties, etc.), or

- (b) that a decision by his or her employer to reject the application was based on incorrect facts.
- (2) No complaint under this section may be made in respect of an application which has been disposed of by agreement or withdrawn.
- (3) In the case of an application which has not been disposed of by agreement or withdrawn, no complaint under this section may be made until the employer —
 - (a) notifies the employee of a decision to reject the application on appeal, or
 - (b) commits a breach of regulations under section 100(1)(a) of such description as the Department may specify by regulations.
- (4) No complaint under this section may be made in respect of failure to comply with provision included in regulations under section 100(1)(a) because of subsection (2)(k), (1) or (m) of that section.
- (5) The Tribunal shall not consider a complaint under this section unless it is presented —
 - (a) before the end of the period of 3 months beginning with the relevant date, or
 - (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.
- (6) In subsection (5)(a), the reference to the relevant date is —
 - (a) in the case of a complaint permitted by subsection (3)(a), the date on which the employee is notified of the decision on the appeal, and
 - (b) in the case of a complaint permitted by subsection (3)(b), the date on which the breach concerned was committed.

102 Remedies

[P1996/18/80I]

- (1) Where the Tribunal finds a complaint under section 101 well-founded it shall make a declaration to that effect and may —
 - (a) make an order for reconsideration of the application, and
 - (b) make an award of compensation to be paid by the employer to the employee.
- (2) The amount of compensation shall be such amount, not exceeding the permitted maximum, as the Tribunal considers just and equitable in all the circumstances.
- (3) For the purposes of subsection (2), the permitted maximum is such number of weeks' pay as the Department may specify by regulations.

- (4) Where the Tribunal makes an order under subsection (1)(a), section 100 (employer's duties, etc.), and the regulations under that section, shall apply as if the application had been made on the date of the order.

PART VIII - DISCIPLINARY AND GRIEVANCE HEARINGS

103 Right to be accompanied

[P1999/26/10]

- (1) This section applies where a worker —
- (a) is required or invited by his or her employer to attend a disciplinary or grievance hearing, and
 - (b) reasonably requests to be accompanied at the hearing.
- (2) Where this section applies, the employer must permit the worker to be accompanied at the hearing by one companion who —
- (a) is chosen by the worker; and
 - (b) is within subsection (5).
- (3) The employer must permit the worker's companion to —
- (a) address the hearing in order to do any or all of the following —
 - (i) put the worker's case;
 - (ii) sum up that case;
 - (iii) respond on the worker's behalf to any view expressed at the hearing;
 - (b) confer with the worker during the hearing.
- (4) Subsection (3) does not require the employer to permit the worker's companion to —
- (a) answer questions on behalf of the worker;
 - (b) address the hearing if the worker indicates at it that he or she does not wish his or her companion to do so; or
 - (c) use the powers conferred by that subsection in a way that prevents the employer from explaining his or her case or prevents any other person at the hearing from making a contribution to it.
- (5) A person is within this subsection if he or she is —
- (a) employed by a trade union of which he or she is an official within the meaning of section 25 of the *Trade Unions Act 1991* (interpretation: general),
 - (b) an official of a trade union (within that meaning) whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings, or

- (c) another of the employer's workers.
- (6) If —
- (a) a worker has a right under this section to be accompanied at a hearing,
 - (b) his chosen companion will not be available at the time proposed for the hearing by the employer, and
 - (c) the worker proposes an alternative time which satisfies subsection (7),
- the employer must postpone the hearing to the time proposed by the worker.
- (7) An alternative time must —
- (a) be reasonable, and
 - (b) fall before the end of the period of 5 working days beginning with the first working day after the day proposed by the employer.
- (8) An employer shall permit a worker to take time off during working hours for the purpose of accompanying another of the employer's workers in accordance with a request under subsection (1)(b).
- (9) Section 35(2) to (6) (time off for carrying out trade union duties), 36 and 48(1) (complaints to tribunal; supplementary provisions) shall apply in relation to subsection (8) as they apply in relation to section 35(1).
- (10) Section 35(3) to 35(6) (payment for time off for carrying out trade union duties) shall apply in relation to subsection (8) in respect of a person who falls within subsection (5)(c) as if he or she were an official of a registered trade union.

104 Complaints to Tribunal

[P1999/26/1]

- (1) A worker may present a complaint to the Tribunal that his or her employer has failed, or threatened to fail, to comply with section 103(2), (3) or (6).
- (2) The Tribunal shall not consider a complaint under this section in relation to a failure or threat unless the complaint is presented —
 - (a) before the end of the period of 3 months beginning with the date of the failure or threat, or
 - (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.
- (3) Where the Tribunal finds that a complaint under this section is well-founded it shall order the employer to pay compensation to the worker of an amount not exceeding 2 weeks' pay.

- (4) Schedule 6 (a week's pay) shall apply for the purposes of subsection (3); and in applying that Schedule the calculation date shall be taken to be —
- (a) in the case of a claim which is made in the course of a claim for unfair dismissal, the date on which the employer's notice of dismissal was given or, if there was no notice, the effective date of termination, and
 - (b) in any other case, the date on which the relevant hearing took place (or was to have taken place).

105 Interpretation of Part VIII

[P1999/26/13]

- (1) In this Part "worker" has the meaning given to it by section 58(1) and any reference to a worker's contract, to employment or to a worker being "employed" shall be construed accordingly.
- (2) For the purposes of section 103 (right to be accompanied) a disciplinary hearing is a hearing which could result in —
 - (a) the administration of a formal warning to a worker by his or her employer,
 - (b) the taking of some other action in respect of a worker by his or her employer, or
 - (c) the confirmation of a warning issued or some other action taken.
- (3) For the purposes of section 103 a grievance hearing is a hearing which concerns the performance of a duty by an employer in relation to a worker.
- (4) For the purposes of section 103(7)(b) a working day is a day other than —
 - (a) a Saturday or a Sunday,
 - (b) Christmas Day or Good Friday, or
 - (c) a day which is a bank holiday under the *Bank Holidays Act 1989*.

PART IX – TERMINATION OF EMPLOYMENT

106 Rights of employer and employee to a minimum period of notice

[P1996/18/86; 1991/19/36]

- (1) Subject to subsection (7), the notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more is —
 - (a) not less than one week's notice if his or her period of continuous employment is less than 2 years;

- (b) not less than one week's notice for each year of continuous employment if his or her period of continuous employment is 2 years or more but less than 12 years; and
 - (c) not less than 12 weeks' notice if his or her period of continuous employment is 12 years or more.
- (2) The notice required to be given by an employee who has been continuously employed for one month or more to terminate his or her contract of employment is —
 - (a) not less than one week's notice if his or her period of continuous employment is less than 2 years;
 - (b) not less than one week's notice for each year of continuous employment if his or her period of continuous employment is 2 years or more but less than 4 years;
 - (c) not less than 4 weeks' notice if his or her period of continuous employment is 4 years or more.
- (3) Any provision for shorter notice in any contract of employment with a person who has been continuously employed for one month or more shall have effect subject to subsections (1) and (2), but this section shall not be taken to prevent either party from waiving his or her right to notice on any occasion, or from accepting a payment in lieu of notice.
- (4) Any contract of employment of a person who has been continuously employed for 3 months or more which is a contract for a term certain of one month or less shall have effect as if it were for an indefinite period and, accordingly, subsections (1) and (2) shall apply to the contract.
- (5) This section does not affect any right of either party to treat the contract as terminable without notice by reason of such conduct by the other party as would have enabled him or her so to treat it before the passing of this Act.
- (6) The definition of "week" given by section 173(1) (general interpretation) does not apply for the purposes of this section.
- (7) The Department may by order vary any minimum period of notice required by this section after consulting with such persons as it considers appropriate.

107 Rights of employee in period of notice

[P1996/18/87; 1991/19/37]

- (1) If an employer gives notice to terminate the contract of employment of a person who has been continuously employed for one month or more, Schedule 2 has effect as respects the liability of the employer for the period of notice required by section 106(1) (minimum notice by employer).

- (2) If an employee who has been continuously employed for one month or more gives notice to terminate his or her contract of employment, Schedule 2 has effect as respects the liability of the employer for the period of notice required by section 106(2) (minimum notice by employee).
- (3) This section does not apply in relation to a notice given by the employer or the employee if the notice to be given by the employer to terminate the contract must be at least 2 weeks more than the notice required by section 106(1).

108 Measure of damages in proceedings against employers

[P1991/19/38]

If an employer fails to give the notice required by section 106, the rights conferred by section 107 (with Schedule 2) shall be taken into account in assessing his or her liability for breach of the contract.

109 Statutory contracts

[P1991/19/39]

Sections 106 and 107 apply in relation to a contract all or any of the terms of which are terms which take effect by virtue of any provision contained in or having effect under a statutory provision, as they apply in relation to any other contract; and the reference in this section to a statutory provision includes, subject to any express provision to the contrary, such a provision made after the passing of this Act.

110 Right to written statement of reasons for dismissal

[P1996/18/92 and 93; 1991/19/40]

- (1) Subject to subsections (2) and (3), an employee is entitled —
 - (a) if he or she is given by his or her employer notice of termination of his or her contract of employment;
 - (b) if his or her contract of employment is terminated by his or her employer without notice; or
 - (c) if the employee is employed under a limited-term contract and the contract terminates by virtue of the limiting event without being renewed under the same contract,

to be provided by his or her employer, on request, within 14 days of that request, with a written statement giving particulars of the reasons for dismissal, irrespective of whether he or she has been continuously employed for any period.

- (2) An employee is entitled to a written statement under this section without having to request it and irrespective of whether she has been continuously employed for any period if she is dismissed —

- (a) at any time while she is pregnant, or
 - (b) after childbirth in circumstances in which her ordinary or additional maternity leave period ends by reason of the dismissal.
- (3) An employee who is dismissed while absent from work during an ordinary or additional adoption leave period is entitled to a written statement under this section without having to request it and irrespective of whether he or she has been continuously employed for any period if he or she is dismissed in circumstances in which that period ends by reason of the dismissal.
- (4) A written statement under this section is admissible in evidence in any proceedings.
- (5) An employee may complain to the Tribunal that his or her employer unreasonably failed to provide a written statement under this section or that the particulars of reasons given in purported compliance with this section are inadequate or untrue, and if the Tribunal finds the complaint well-founded –
- (a) it may make a declaration as to what it finds the employer's reasons were for dismissing the employee; and
 - (b) it shall make an award that the employer pay to the employee a sum equal to the amount of 2 weeks' pay.
- (6) The Tribunal shall not entertain a complaint under this section relating to the reasons for a dismissal unless it is presented to the Tribunal at such a time that the Tribunal would, in accordance with section 133 (complaints to tribunal), entertain a complaint of unfair dismissal in respect of that dismissal presented at the same time.

PART X – UNFAIR DISMISSAL

Right not to be unfairly dismissed

111 Right of employee not to be unfairly dismissed

[P1996/18/94; 1991/19/41]

- (1) Subject to subsection (2), an employee has the right not to be unfairly dismissed by his or her employer.
- (2) This section applies to every employment except in so far as its application is excluded by or under any provision of this Part or by Schedule 4 (treatment of special categories of worker).

*Meaning of unfair dismissal***112 Meaning of “dismissal”**

[P1996/18/95 and 97; 1991/19/42]

- (1) In this Part, subject to subsection (3), “**dismissal**” and “**dismiss**” shall be construed in accordance with the following provisions of this section.
- (2) Subject to subsection (3), an employee shall be treated as dismissed by his or her employer if, but only if, —
 - (a) the contract under which he or she is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice, or
 - (b) he or she 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
 - (c) the employee terminates that contract, with or without notice, in circumstances such that he or she is entitled to terminate it without notice by reason of the employer’s conduct.
- (3) Where an employer gives notice to an employee to terminate his or her contract of employment and, at a time within the period of that notice, the employee gives notice 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 Part be taken to be dismissed by his or her employer, and the reasons for this dismissal shall be taken to be the reasons for which the employer’s notice is given.
- (4) In this Part “**the effective date of termination**” —
 - (a) in relation to an employee whose contract of employment is terminated by notice, whether given by his or her employer or by the employee, means the date on which that notice expires;
 - (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect; and
 - (c) in relation to an employee who 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.
- (5) Where the contract of employment is terminated by the employer and the notice required by section 106 (minimum notice) to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by subsection (4)) then, for the purposes of sections 132(1)(a) (qualifying period, etc.) and 142(2)

(calculation of basic award: continuous employment), the later date shall be treated as the effective date of termination in relation to the dismissal.

- (6) Where the contract of employment is terminated by the employee and —
- (a) the material date does not fall during a period of notice given by the employer to terminate that contract; and
 - (b) had the contract been terminated not by the employee but by notice given on the material date by the employer, that notice would have been required by section 106 to expire on a date later than the effective date of termination (as defined by subsection (4)),

then, for the purposes of sections 132(1)(a) and 142(2), the later date shall be treated as the effective date of termination in relation to the dismissal.

- (7) “Material date” means —
- (a) in subsection (5), the date when notice of termination was given by the employer or (where no notice was given) the date when the contract of employment was terminated by the employer; and
 - (b) in subsection (6), the date when notice of termination was given by the employee or (where no notice was given) the date when the contract of employment was terminated by the employee.

113 General provisions relating to fairness of dismissal

[P1996/18/98; 1991/19/44]

- (1) In determining for the purposes of this Part whether the dismissal of an employee was fair or unfair, it is for the employer to show —
- (a) the reason (or, if there was more than one, the principal reason) for the dismissal, and
 - (b) that it was a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.
- (2) A reason falls within this subsection if —
- (a) it related to the capability or qualifications of the employee for performing work of the kind which he or she was employed by the employer to do, or
 - (b) it related to the conduct of the employee, or
 - (c) it was that the employee was redundant, or
 - (d) it was that the employee could not continue to work in the position which he or she held without contravention (either on his or her part or on that of his or her employer) of a duty or restriction imposed by or under a statutory provision.
- (3) Where the employer has fulfilled the requirements of subsection (1), then, subject to sections 114 to 131 of this Act and section 9 of the *Shops*

Act 2000 (reasons for and circumstances of dismissal), the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and that question shall be determined in accordance with equity and the substantial merits of the case.

- (4) In this section, in relation to an employee, —
- (a) “capability” means capability assessed by reference to skill, aptitude, health or any other physical or mental quality;
 - (b) “qualifications” means any degree, diploma or other academic, technical or professional qualification relevant to the position which the employee held.

114 Leave for family reasons

[P1996/18/99]

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if —
- (a) the reason or principal reason for the dismissal is of a prescribed kind, or
 - (b) the dismissal takes place in prescribed circumstances.
- (2) In this section “prescribed” means prescribed by regulations made by the Department.
- (3) A reason or set of circumstances prescribed under this section must relate to —
- (a) pregnancy, childbirth or maternity,
 - (b) ordinary, compulsory or additional maternity leave,
 - (c) ordinary or additional adoption leave,
 - (d) parental leave, or
 - (e) paternity leave,
- and it may also relate to redundancy or other factors.
- (4) Regulations under this section may —
- (a) make different provision for different cases or circumstances,
 - (b) apply any enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to persons regarded as unfairly dismissed by reason of this section.

115 Health and safety cases

[P1996/18/100]

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is any one or more of the grounds described in section 61(1) and (2) (health and safety cases).
- (2) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee is that specified in section 61(1)(e) (health and safety cases: circumstances of danger), he or she shall not be regarded as unfairly dismissed if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he or she took (or proposed to take) that a reasonable employer might have dismissed him or her for taking (or proposing to take) them.
- (3) For the purposes of this section, and of the other provisions of this Part so far as relating to the right not to be unfairly dismissed in a case where the dismissal is unfair by virtue of this section, the holding, otherwise than under a contract of employment, of the office of constable or an appointment as police cadet shall be treated as employment by the Chief Constable under a contract of employment.

116 Annual leave and other working time cases

[P1996/18/101A]

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee –

- (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of any regulations made under section 167 (annual leave and other working time cases),
- (b) refused (or proposed to refuse) to forgo a right conferred on him or her by those regulations, or
- (c) failed to enter into, or agree to vary or extend, any agreement with his or her employer which may be provided for in those regulations.

117 Trustees of occupational pension schemes

[P1996/18/102]

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that, being a trustee of a relevant occupational pension scheme which relates to his or her employment, the employee performed (or proposed to perform) any functions as such a trustee.

- (2) This section applies to an employee who is a director of a company which is a trustee of a relevant occupational pension scheme as it applies to an employee who is a trustee of such a scheme (references to such a trustee being read for this purpose as references to such a director).
- (3) In this section “relevant occupational pension scheme” means an occupational pension scheme (as defined in section 1 of the Pension Schemes Act 1993 (as that Act of Parliament has effect in the Island)) established under a trust.

118 Protected disclosures

[P1996/18/103A]

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure within the meaning of section 49 (meaning of “protected disclosure”).

119 Assertion of statutory right

[P1996/18/104]

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee –
 - (a) brought proceedings against the employer to enforce a right which is a relevant statutory right within the meaning of section 70(4), or
 - (b) alleged that the employer had infringed a right which is such a relevant statutory right.
- (2) It is immaterial for the purposes of subsection (1) –
 - (a) whether or not the employee has the right, or
 - (b) whether or not the right has been infringed,but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.
- (3) It is sufficient for subsection (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

120 Dismissal of employee relating to trade union membership or activities

[P1992/26/152; 1991/19/45]

- (1) The dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been unfair if the reason (or, if more than one, the principal reason) for it was that the employee –
 - (a) was, or proposed to become, a member of a registered trade union, or

- (b) had taken part, or proposed to take part, in the activities of a registered trade union at an appropriate time, or
 - (c) had made use, or proposed to make use, of trade union services at an appropriate time, or
 - (d) had failed to accept an offer made in contravention of section 29 or 30 (inducements: trade union membership etc.), or
 - (e) had refused, or proposed to refuse, to become or remain a member of a trade union.
- (2) In subsection (1) “an appropriate time”, in relation to an employee taking part in the activities of a trade union or (as the case may be) making use of trade union services, means a time which either —
- (a) is outside his or her working hours, or
 - (b) is a time within his or her working hours at which, in accordance with arrangements agreed with or consent given by his or her employer, it is permissible for him or her to take part in those activities or make use of those services;
- and in this subsection “working hours”, in relation to an employee, means any time when, in accordance with his or her contract of employment, he or she is required to be at work.
- (3) In this section —
- (a) “trade union services” means services made available to the employee by a registered trade union by virtue of his or her membership of the union, and
 - (b) references to an employee’s “making use” of trade union services include his or her consenting to the raising of a matter on his or her behalf by a registered trade union of which he or she is a member.
- (4) Where the reason, or one of the reasons, for the dismissal was that a registered trade union (with or without the employee’s consent) raised a matter on behalf of the employee as one of its members, the reason shall be treated as falling within subsection (1)(c).
- (5) Where the reason, or one of the reasons, for the dismissal of an employee was —
- (a) his or her refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his or her contract of employment or in writing) that, in the event of his or her failure to become or ceasing to remain a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, he or she must make one or more payments; or
 - (b) his or her objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his or her contract of employment or in writing) under which, in the

event mentioned in paragraph (a), his or her employer is entitled to deduct one or more sums from the remuneration payable to him or her in respect of his or her employment;

that reason shall be treated as falling within subsection (1)(e).

- (6) In this section references to being, becoming or ceasing to remain a member of a trade union include references to being, becoming or ceasing to remain a member of a particular branch or section of that union and to being, becoming or ceasing to remain a member of one of a number of particular branches or sections of that union.
- (7) References in this section —
- (a) to taking part in the activities of a trade union, and
 - (b) to services made available by a trade union by virtue of membership of the union,
- shall be construed in accordance with subsection (6).

121 The minimum wage

[P1996/18/104A; 1991/19/45A]

- (1) An employee who is dismissed shall be treated for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that —
- (a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right of the employee's to which this section applies; or
 - (b) the employer was prosecuted for an offence under section 26 of the *Minimum Wage Act 2001* as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, a right of the employee's to which this section applies; or
 - (c) the employee qualifies, or will or might qualify, for the minimum wage or for a particular rate of minimum wage.
- (2) It is immaterial for the purposes of subsection (1)(a) or (b) —
- (a) whether or not the employee has the right, or
 - (b) whether or not the right has been infringed,
- but, for that subsection to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.
- (3) The following are the rights to which this section applies —
- (a) any right conferred by, or by virtue of, any provision of the *Minimum Wage Act 2001* for which the remedy for its infringement is by way of a complaint to the Tribunal; and

- (b) any right conferred by section 13 of that Act (entitlement to additional remuneration).

122 Flexible working

[P1996/18/104C]

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee –

- (a) made (or proposed to make) an application under section 99 (statutory right to request flexible working), or
- (b) exercised (or proposed to exercise) a right conferred on him or her under section 100 (employer's duties, etc.), or
- (c) brought proceedings against the employer under section 101 (complaints to tribunal), or
- (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.

123 Dismissal for exercise of right to be accompanied

[P1999/26/12; 2004/24/37]

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that he or she –
 - (a) exercised or sought to exercise the right under section 103(2), (3) or (6), or
 - (b) accompanied or sought to accompany another worker (whether of the same employer or not) pursuant to a request under that section.
- (2) References in this section to an employee having accompanied or sought to accompany another worker include references to the employee having exercised or sought to exercise any of the powers conferred by section 103(2), (3) or (6).

124 Dismissal in connection with protected industrial action

[P1992/52/238A; P1996/18/105; P2004/24/26, 27 and 28]

- (1) For the purposes of this section an employee takes protected industrial action if he or she commits an act which, or a series of acts each of which, he or she is induced to commit by an act which by virtue of section 11 of the *Trade Unions Act 1991* (acts in contemplation, etc. of trade disputes) is not actionable in tort.
- (2) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if –

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee took protected industrial action, and
 - (b) subsection (3) or (4) applies to the dismissal.
- (3) This subsection applies to a dismissal if the date of dismissal is within the protected period.
- (4) This subsection applies to a dismissal if —
 - (a) the date of dismissal is after the end of that period, and
 - (b) the employee had stopped taking protected industrial action before the end of that period.
- (5) For the purposes of this section “the protected period”, in relation to the dismissal of an employee, is the sum of the basic period and any extension period in relation to that employee.
- (6) Unless and until otherwise prescribed by the Department, the basic period is 4 weeks beginning with the first day of protected industrial action.
- (7) An extension period in relation to an employee is a period equal to the number of days falling on or after the first day of protected industrial action (but not before the protected period ends) during the whole or any part of which the employee is locked out by his or her employer.
- (8) In subsections (6) and (7), “the first day of protected industrial action” means the day on which the employee starts to take protected industrial action (even if on that day he or she is locked out by his or her employer).
- (9) For the purposes of this section no account shall be taken of the repudiation of any act by a trade union as mentioned in section 20 of the *Trade Unions Act 1991* (liability of trade union for industrial action) in relation to anything which occurs before the end of the next working day after the day on which the repudiation takes place.
- (10) In this section —
 - (a) “date of dismissal” has the meaning given by section 130(6)(a) selective dismissal or re-engagement arising out of industrial action);
 - (b) “working day” means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under the *Bank Holidays Act 1989*.

125 Racial discrimination and dismissal

[1991/19/52]

- (1) Where an employer dismisses an employee —

- (a) in circumstances in which the employee is treated less favourably than he or she would have been treated if he or she had been of another racial group; or
 - (b) because the employee does not meet or has not attained a standard which applies equally to employees who are not of the employee's racial group, but —
 - (i) which is such that the proportion of persons of the employee's racial group who can meet or attain it is considerably smaller than the proportion of persons not of that group who can do so, and
 - (ii) which the employer cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied, and
 - (iii) which is to the employee's detriment because he or she cannot meet or attain it;the dismissal shall be regarded as unfair for the purposes of this Part.
- (2) In this section "racial group" means a group of persons defined by reference to colour, race, nationality or ethnic or national origins, and references to a person's racial group are to any racial group into which he or she falls.

126 Religious discrimination and dismissal

[P2001/33/7; 1991/19/53]

- (1) Where an employer dismisses an employee because he or she —
- (a) professes or does not profess a particular religious belief,
 - (b) is or is not a member of a particular religious denomination, or
 - (c) attends or does not attend religious worship of a particular kind,
- the dismissal shall be regarded as unfair for the purposes of this Part.
- (2) This section does not apply —
- (a) in the case of employment as a minister of religion, or as a lay worker of any religious denomination;
 - (b) in the case of employment as a reserved teacher in a maintained school; or
 - (c) in any other case in which the employer can show that a reason for dismissal falling within subsection (1)(a), (b) or (c) was justifiable.
- (3) Expressions in subsection (2)(b) have the same meanings as in the *Education Act 2001*.

127 Dismissal on ground of sexual orientation

- (1) Where an employer dismisses an employee on the ground of his or her sexual orientation, the dismissal shall be regarded as unfair for the purposes of this Part.
- (2) For the purposes of this section “sexual orientation” means a sexual orientation towards —
 - (a) persons of the same sex;
 - (b) persons of the opposite sex; or
 - (c) persons of the same sex and of the opposite sex.

128 Dismissal on ground of redundancy

[P1996/18/105; 1991/19/46]

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if —
 - (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant, and
 - (b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and any of subsections (2) to (15) applies.⁶
- (2) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 115(1) (read with subsections (2) and (3) of that section) (health and safety).
- (3) This subsection applies if the reason (or if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 116 (annual leave and other working time cases) read with any regulations made under that section.
- (4) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 117(1) (trustees of occupational pension schemes).
- (5) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 118 (protected disclosures).
- (6) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 119(1) (assertion of statutory right).
- (7) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of

- those specified in section 120(1) (dismissal: trade union membership or activities).
- (8) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 121(1) (read with subsection (2) of that section) (minimum wage).
 - (9) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 122 (dismissal: flexible working).
 - (10) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 123 (dismissal for exercise of right to be accompanied).
 - (11) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 124 (dismissal: protected industrial action).
 - (12) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 125 (racial discrimination).
 - (13) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 126 (religious discrimination).
 - (14) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 127 (sexual orientation and dismissal).
 - (15) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 9 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007 (unless the case is one to which paragraph (4) of that regulation applies).⁷

129 Replacements

[P1996/18/106; 1991/19/48]

- (1) Where this section applies to an employee he or she shall be regarded for the purposes of section 113(1)(b) (general provisions: fairness of dismissal) as having been dismissed for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) This section applies to an employee where —
 - (a) on engaging him or her the employer informs him or her in writing that his or her employment will be terminated on the resumption of work by another employee who is, or will be,

- absent wholly or partly because of pregnancy or childbirth, or on adoption leave, and
- (b) the employer dismisses him or her in order to make it possible to give work to the other employee.
- (3) This section also applies to an employee where —
- (a) on engaging him or her the employer informs him or her in writing that his or her employment will be terminated at the end of a suspension of another employee from work on maternity grounds (within the meaning of Part VI), and
 - (b) the employer dismisses him or her in order to make it possible to allow the resumption of work by the other employee.
- (4) Subsection (1) does not affect the operation of section 113(3) in a case to which this section applies.

130 Selective dismissal or re-engagement arising out of industrial action: jurisdiction of Tribunal

[P1992/52/238; 1991/19/49]

- (1) This section applies in relation to an employee who has a right to complain of unfair dismissal (“the complainant”) and who claims to have been unfairly dismissed, where at the date of the dismissal —
- (a) the employer was conducting or instituting a lock-out, or
 - (b) the complainant was taking part in a strike or other industrial action.
- (2) In such a case the Tribunal shall not determine whether the dismissal was fair or unfair unless it is shown —
- (a) that one or more relevant employees of the same employer have not been dismissed, or
 - (b) that a relevant employee has, before the expiry of the period of 3 months beginning with the date of dismissal, been offered re-engagement and that the complainant has not been offered re-engagement.
- (3) Subsection (2) does not apply to the dismissal of the employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal was one of those specified in or under section 114, 115, 118 or 122 (dismissal in family, health and safety, protected disclosure cases and flexible working).

In this subsection “redundancy case” means a case falling within section 128(1) (dismissal: redundancy) and a reference to a specified reason for dismissal includes a reference to specified circumstances of dismissal.

- (4) Subsection (2) does not apply in relation to an employee who is regarded as unfairly dismissed by virtue of section 124 (dismissal: protected industrial action).
- (5) Where it is shown that the condition in subsection (2)(b) (discriminatory re-engagement) is fulfilled, references in sections 113 to 123 and 125 to 129 (dismissal: reasons) of this Act and section 9 of the *Shops Act 2000* (dismissal: reasons) to the reason or principal reason for which the complainant was dismissed shall be read as references to the reason or principal reason for which he or she has not been offered re-engagement.
- (6) In this section —
- (a) “date of dismissal” means —
- (i) where the employee’s contract of employment was terminated by notice, the date on which the employer’s notice was given, and
- (ii) in any other case, the effective date of termination;
- (b) “relevant employees” means —
- (i) in relation to a lock-out, employees who were directly interested in the dispute in contemplation of furtherance of which the lock-out occurred, and
- (ii) in relation to a strike or other industrial action, those employees at the establishment of the employer at or from which the complainant works who at the date of his or her dismissal were taking part in the action;
- (c) “an offer of re-engagement” means an offer (made either by the original employer or by a successor of that employer or an associated employer) to re-engage an employee, either in the job which he or she held immediately before the date of dismissal or in a different job which would be reasonably suitable in his or her case.

131 Pressure on employer to dismiss unfairly

[P1996/18/107; 1991/19/50]

In determining, for the purposes of this Part any question as to the reason, or principal reason, for which an employee was dismissed or any question whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirements of section 113(1)(b) or whether the employer acted reasonably in treating it as a sufficient reason for dismissing him or her, —

- (a) no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee, and

- (b) any such question shall be determined as if no such pressure had been exercised.

Exclusion of section 111

132 Qualifying period and upper age limit

[P1996/18/108 and 109; 1991/19/54]

- (1) Subject to subsection (2), section 111 (right of employee not to be unfairly dismissed) does not apply to the dismissal of an employee from any employment if the employee –
 - (a) was not continuously employed for a period of not less than one year ending with the effective date of termination, or
 - (b) on or before the effective date of termination –
 - (i) had attained the age which, in the undertaking in which he or she was employed, was the normal retiring age for an employee holding the position which he or she held, and
 - (ii) that age was the same whether the employee holding that position was a man or a woman, or
 - (c) in a case other than one falling within paragraph (b), the employee had attained the age of 65 or such other age, not being less than 65, as may be prescribed.
- (2) Subsection (1) does not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal was one of those specified in –
 - (a) section 114 (leave for family reasons) (read with any regulations made under that section),
 - (b) section 115 (health and safety cases),
 - (c) section 116 (annual leave and other working time cases) (read with any regulations made under that section),
 - (d) section 117 (trustees of occupational pension schemes),
 - (e) section 118 (protected disclosures),
 - (f) section 119 (assertion of statutory right),
 - (g) section 120 (dismissal: trade union membership or activities),
 - (h) section 121 (minimum wage),
 - (i) section 122 (flexible working),
 - (j) section 123 (dismissal: right to be accompanied),
 - (k) section 124 (dismissal: protected industrial action),
 - (l) section 125 (racial discrimination),
 - (m) section 126 (religious discrimination),
 - (n) section 127 (dismissal on ground of sexual orientation),

- (o) section 128 (dismissal on ground of redundancy), and
 - (p) regulation 9(1) of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007.⁸
- (3) Subsection (1) does not apply to the dismissal of an employee if it is shown that the circumstances of the dismissal were either of those specified in section 130(2)(a) or (b) as they apply to section 130(1) (selective dismissal or re-engagement arising out of industrial action).

Remedies for unfair dismissal

133 Complaints to Tribunal

[P1996/18/111; 1991/19/57]

- (1) A complaint may be presented to the Tribunal against an employer by any person that he or she was unfairly dismissed by the employer.
- (2) Subject to subsection (3), the Tribunal shall not consider a complaint under this section unless it is presented to the Tribunal –
 - (a) in respect of all claims other than claims under section 124 (dismissal: protected industrial action) and 130 (selective dismissal or re-engagement arising out of industrial action), before the end of the period of 3 months beginning with the effective date of termination, and
 - (b) in the case of claims under section 124 and 130 before the end of the period of 6 months beginning with the effective date of dismissal, or
 - (c) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period stated in paragraph (a) or (b).
- (3) Where a dismissal is with notice, the Tribunal shall consider a complaint under this section if it is presented after the notice is given but before the effective date of termination.
- (4) In relation to a complaint which is presented as mentioned in subsection (3), the provisions of this Act, so far as they relate to unfair dismissal, have effect as if –
 - (a) references to a complaint by a person that he or she was unfairly dismissed by his or her employer included references to a complaint by a person that the employer has given him or her notice in such circumstances that he or she will be unfairly dismissed when the notice expires,
 - (b) references to reinstatement included references to the withdrawal of the notice by the employer,

- (c) references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice, and
- (d) references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

134 Remedies for unfair dismissal: orders and compensation

[P1996/18/112; 1991/19/58]

- (1) This section applies where, on a complaint under section 133 the Tribunal finds that the grounds of the complaint are well-founded.
- (2) The Tribunal shall —
 - (a) explain to the complainant what orders may be made under section 135 and in what circumstances they may be made, and
 - (b) ask the complainant whether he or she wishes the Tribunal to make such an order.
- (3) If the complainant expresses such a wish, the Tribunal may make an order under section 135.
- (4) If no order is made under section 135 the Tribunal shall make an award of compensation for unfair dismissal (calculated in accordance with sections 140 to 146 to be paid by the employer to the employee).

135 The orders

[P1996/18/113; P1992/52/239(4)]

- (1) Subject to subsection (2) an order under this section may be —
 - (a) an order for reinstatement in accordance with section 136, or
 - (b) an order for re-engagement in accordance with section 137,as the Tribunal may decide.
- (2) In relation to a complaint under section 133 (complaints to tribunal) that a dismissal was unfair by virtue of section 124 (dismissal: protected industrial action), or where the circumstances of the dismissal were either of those specified in section 130(2)(a) or (b) (selective dismissal or re-engagement arising out of industrial action), no order shall be made under subsection (1) until after —
 - (a) in relation to a complaint under section 133, the conclusion of protected industrial action by any employee in relation to the relevant dispute; or
 - (b) where the circumstances of the dismissal were either of those specified in section 130(2)(a) or (b), the conclusion of industrial action by any employee in relation to the relevant dispute.

136 Order for reinstatement

[P1996/18/114]

- (1) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he or she had not been dismissed.
- (2) On making an order for reinstatement the Tribunal shall specify —
 - (a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,
 - (b) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and
 - (c) the date by which the order must be complied with.
- (3) If the complainant would have benefited from an improvement in terms and conditions of employment had he or she not been dismissed, an order for reinstatement shall require the complainant to be treated as if he or she had benefited from that improvement from the date on which he or she would have done so but for being dismissed.
- (4) In calculating for the purposes of subsection (2)(a) any amount payable by the employer, the Tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement by way of —
 - (a) wages in lieu of notice or ex gratia payments paid by the employer, or
 - (b) remuneration paid in respect of employment with another employer,and such other benefits as the Tribunal thinks appropriate in the circumstances.

137 Order for re-engagement

[P1996/18/115]

- (1) An order for re-engagement is an order, on such terms as the Tribunal may decide, that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he or she was dismissed or other suitable employment.
- (2) On making an order for re-engagement the Tribunal shall specify the terms on which re-engagement is to take place, including —
 - (a) the identity of the employer,
 - (b) the nature of the employment,

- (c) the remuneration for the employment,
 - (d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of re-engagement,
 - (e) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and
 - (f) the date by which the order must be complied with.
- (3) In calculating for the purposes of subsection (2)(d) any amount payable by the employer, the Tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of re-engagement by way of —
- (a) wages in lieu of notice or ex gratia payments paid by the employer, or
 - (b) remuneration paid in respect of employment with another employer,
- and such other benefits as the Tribunal thinks appropriate in the circumstances.

138 Choice of order and its terms

[P1996/18/116]

- (1) In exercising its discretion under section 135 the Tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account —
- (a) whether the complainant wishes to be reinstated,
 - (b) whether it is practicable for the employer to comply with an order for reinstatement, and
 - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his or her reinstatement.
- (2) If the Tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.
- (3) In so doing the Tribunal shall take into account —
- (a) any wish expressed by the complainant as to the nature of the order to be made,
 - (b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and

- (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his or her re-engagement and (if so) on what terms.
- (4) Except in a case where the Tribunal takes into account contributory fault under subsection (3)(c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.
- (5) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the Tribunal shall not take that fact into account in determining, for the purposes of subsection (1)(b) or (3)(b), whether it is practicable to comply with an order for reinstatement or re-engagement.
- (6) Subsection (5) does not apply where the employer shows —
 - (a) that it was not practicable for him or her to arrange for the dismissed employee's work to be done without engaging a permanent replacement, or
 - (b) that —
 - (i) he or she engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he or she wished to be reinstated or re-engaged, and
 - (ii) when the employer engaged the replacement it was no longer reasonable for him or her to arrange for the dismissed employee's work to be done except by a permanent replacement.

139 Enforcement of order and compensation

[P1996/18/117]

- (1) The Tribunal shall make an award of compensation, to be paid by the employer to the employee, if —
 - (a) an order under section 135 is made and the complainant is reinstated or re-engaged, but
 - (b) the terms of the order are not fully complied with.
- (2) Subject to section 144 (limit of compensatory award, etc.), the amount of the compensation shall be such as the Tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.
- (3) Subject to subsections (1) and (2), if an order under section 135 is made but the complainant is not reinstated or re-engaged in accordance with the order, the Tribunal shall make —
 - (a) an award of compensation for unfair dismissal (calculated in accordance with sections 140 to 146), and

- (b) except where this paragraph does not apply, an additional award of compensation of an amount not less than 26 nor more than 52 weeks' pay,
- to be paid by the employer to the employee.
- (4) Subsection (3)(b) does not apply where the employer satisfies the Tribunal that it was not practicable to comply with the order.
- (5) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the Tribunal shall not take that fact into account in determining for the purposes of subsection (4) whether it was practicable to comply with the order for reinstatement or re-engagement unless the employer shows that it was not practicable for him or her to arrange for the dismissed employee's work to be done without engaging a permanent replacement.
- (6) Where in any case the Tribunal finds that the complainant has unreasonably prevented an order under section 135 from being complied with, in making an award of compensation for unfair dismissal it shall take that conduct into account as a failure on the part of the complainant to mitigate his or her loss.

Amount of compensation

140 Compensation for unfair dismissal

[P1996/18/118; 1991/19/59]

- (1) Where the Tribunal makes an award of compensation for unfair dismissal under section 134 or section 139(3)(a) the award shall consist of —
- (a) a basic award calculated in accordance with section 141; and
- (b) a compensatory award calculated in accordance with sections 143 to 145.
- (2) In addition to an award under subsection (1) the Tribunal may make an award for compensation for injury to feelings if it considers it just and equitable in all the circumstances to do so.

141 Reduction of compensation: matters to be disregarded

[P1992/52/155; 1991/19/60]

- (1) This section applies in any case where the Tribunal makes an award of compensation for unfair dismissal under section 140 and the dismissal is to be regarded as unfair by virtue of section 120 (dismissal: trade union membership or activities) or 128(7) (redundancy: dismissal for trade union membership or activities).
- (2) In such a case the Tribunal, in considering whether it would be just and equitable to reduce, or further reduce, the amount of any part of the

award, shall disregard any conduct or action of the complainant in so far as it constitutes —

- (a) a breach, or proposed breach, of any requirement falling within subsection (3);
 - (b) a refusal, or proposed refusal, to comply with a requirement of a kind mentioned in section 120(5)(a) (payments in lieu of membership); or
 - (c) an objection, or proposed objection, (however expressed) to the operation of a provision of a kind mentioned in section 120(5)(b) (deductions in lieu of membership).
- (3) A requirement falls within this subsection if it is imposed on the complainant in question by or under any arrangement or contract of employment or other agreement and requires him or her —
- (a) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions;
 - (b) to cease to be, or refrain from becoming, a member of any registered trade union or of a particular registered trade union or of one of a number of particular registered trade unions;
 - (c) not to take part in the activities of any registered trade union or of a particular registered trade union or of one of a number of particular registered trade unions; or
 - (d) not to make use of services made available by any trade union or by a particular trade union or by one of a number of particular trade unions.

For the purposes of this subsection a requirement means a requirement imposed on the complainant by or under an arrangement or contract of employment or other agreement.

- (4) Conduct or action of the complainant shall be disregarded in so far as it constitutes acceptance of or failure to accept an offer made in contravention of section 29 or 30 (inducements).

142 Calculation of basic award

[P1996/18/122; 1991/19/61]

- (1) The amount of the basic award shall be the amount calculated in accordance with subsections (2) to (4), subject to subsections (5) to (7).
- (2) The amount of the basic award shall be calculated by reference to the period, ending with the effective date of termination, during which the employee has been continuously employed, by reckoning the numbers of years of employment falling within that period, and allowing one week's pay for each such year of employment calculated in accordance with Schedule 6.

- (3) Where in the case of an employee the effective date of termination is after the 64th anniversary of the day of the employee's birth, or such later anniversary as may be prescribed, the amount of the basic award calculated in accordance with subsection (2) shall be reduced by the appropriate fraction.
- (4) In subsection (3) "the appropriate fraction" means the number of whole months reckoned from the said anniversary in the period beginning with that anniversary and ending with the effective date of termination, divided by 12.
- (5) Where the Tribunal finds that the complainant has unreasonably refused an offer by the employer which if accepted would have the effect of reinstating the complainant in his or her employment in all respects as if the complainant had not been dismissed, the Tribunal shall reduce or further reduce the amount of the basic award to such an extent as it considers just and equitable having regard to that finding.
- (6) Where the Tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce that amount of the basic award to any extent, the Tribunal shall reduce or further reduce the amount accordingly.
- (7) The amount of the basic award shall be reduced or, as the case may be[,] further reduced, by the amount of any redundancy payment awarded by the Tribunal under the *Redundancy Payments Act 1990* in respect of the same dismissal or of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy, whether in pursuance of that Act or otherwise.

143 Calculation of compensatory award

[P1996/18/123; 1991/19/62]

- (1) Subject to the provisions of this section and section 144 (limit of compensatory award), the amount of the compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.
- (2) The said loss shall be taken to include —
 - (a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and
 - (b) subject to subsection (3), loss of any benefit which he or she might reasonably be expected to have had but for the dismissal.
- (3) The said loss, in respect of any loss of any entitlement or potential entitlement to, or expectation of, a payment on account of dismissal by reason of redundancy, whether in pursuance of the *Redundancy Payments*

Act 1990 or otherwise, shall include only the loss referable to the amount, if any, by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 142(5) to (7) calculation of basic award)[)] in respect of the same dismissal.

- (4) In ascertaining the said loss the Tribunal shall apply the same rule concerning the duty of a person to mitigate his or her loss as applies to damages recoverable under the common law.
- (5) In determining, for the purposes of subsection (1), how far any loss sustained by the complainant was attributable to action taken by the employer no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee, and that question shall be determined as if no such pressure had been exercised.
- (6) Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.
- (7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy, whether in pursuance of the said Act of 1990 or otherwise, exceeds the amount of the basic award which would be payable but for section 142(7) (calculation of basic award) that excess shall go to reduce the amount of the compensatory award.

144 Limit of compensatory award etc.

[P1996/18/124; 1991/19/63]

- (1) The amount of —
 - (a) any compensation awarded to a person under section 139(1) and (2) (enforcement of order and compensation), or
 - (b) a compensatory award to a person calculated in accordance with section 143 (calculation of compensatory award),

shall not exceed £30,000 or such other amount as may be prescribed by order of the Department.⁹

- (2) The amount of any compensation for injury to feelings awarded to any person under section 140(2) (compensation for unfair dismissal) shall not exceed £5,000 or such other amount as may be prescribed by order of the Department.
- (3) Subsection (1) shall not apply to compensation awarded, or a compensatory award made, to a person in a case where he or she is regarded as unfairly dismissed by virtue of section 115 (health and

safety), 118 (protected disclosures), 128(2) (redundancy: health and safety related reasons) or 128(5) (redundancy: protected disclosure).

- (4) In the case of compensation awarded to a person under section 139(1) and (2), the limit imposed by this section may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under section 136(2)(a) (amounts payable on reinstatement) or section 137(2)(d) (amounts payable on re-engagement).
- (5) Where —
- (a) a compensatory award is an award under paragraph (a) of subsection (3) of section 139, and
 - (b) an additional award falls to be made under paragraph (b) of that subsection,
- the limit imposed by this section on the compensatory award may be exceeded to the extent necessary to enable the aggregate of the compensatory and additional awards fully to reflect the amount specified as payable under section 136(2)(a) (amounts payable on reinstatement) or section 137(2)(d) (amounts payable on re-engagement).
- (6) The limit imposed by this section applies to the amount which the Tribunal would, apart from this section, award in respect of the subject matter of the complaint after taking into account —
- (a) any payment made by the respondent to the complainant in respect of that matter; and
 - (b) any reduction in the amount of the award required by any enactment or rule of law.

145 Acts which are both unfair dismissal and discrimination

[P1996/18/126]

- (1) This section applies where compensation falls to be awarded in respect of any act under —
- (a) the provisions of this Act relating to unfair dismissal,
 - (b) the provisions of the *Employment (Sex Discrimination) Act 2000*, or
 - (c) the provisions of such other Acts of Tynwald as the Department may by order designate.
- (2) The Tribunal shall not award compensation under any one or more of those Acts in respect of any loss or other matter which is or has been taken into account under any other of them by the Tribunal in awarding compensation on the same or another complaint in respect of that act.

146 Awards against third parties

[1991/19/64]

- (1) If in proceedings before the Tribunal on a complaint against an employer under section 133 (complaints to tribunal: unfair dismissal) either the employer or the complainant claims —
- (a) that the employer was induced to dismiss the complainant by pressure which a trade union or other person exercised on the employer by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, and
 - (b) that the pressure was exercised because the complainant was not a member of any trade union or of a particular trade union or of one of a number of particular trade unions,

the employer or the complainant may request the Tribunal to direct that the person who is claimed to have exercised the pressure be joined as a party to the proceedings.

- (2) A request under subsection (1) shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the Tribunal has made an award under section 134 (remedies for unfair dismissal).
- (3) Where a person has been joined as a party to proceedings before the Tribunal by virtue of subsection (1) and the Tribunal —
- (a) makes an award of compensation under section 134, but
 - (b) finds that the claim mentioned in subsection (1) is well-founded,
- the award may be made against that person instead of against the employer, or partly against that person and partly against the employer as the Tribunal may consider just and equitable in the circumstances.

PART XI – INSOLVENCY AND CESSATION OF BUSINESS OF EMPLOYER

147 Insolvency of employer

[1991/19/67]

- (1) If on an application made to it in writing by an employee the Department of Social Care (“the DSC”) is satisfied —
- (a) that the employer of that employee has become insolvent;
 - (b) that the employment of the employee has terminated;
 - (c) that the Manx National Insurance Fund has received (or had been entitled to receive) payment of Class 1 national insurance contribution liabilities from the employer in relation to that employment; and

- (d) that on the relevant date the employee was entitled to be paid the whole or part of any debt to which this section applies,
- the DSC shall, subject to the provisions of this section, section 150 (restriction on payment in certain cases) and section 153 (subrogation), pay to the employee out of the Manx National Insurance Fund the amount to which in the DSC's opinion the employee is entitled in respect of that debt.¹⁰
- (2) In this section "the relevant date" –
- (a) in relation to arrears of pay and to holiday pay, means the date on which the employer became insolvent;
- (b) in relation to a basic award of compensation for unfair dismissal, means whichever is the latest of –
- (i) the date on which the employer became insolvent;
- (ii) the date of the termination of the employee's employment; and
- (iii) the date on which the award was made;
- (c) in relation to any other debt to which this section applies, means whichever is the later of the dates, mentioned in paragraph (b)(i) and (ii).
- (3) This section applies to the following debts –
- (a) any arrears of pay in respect of one or more (but not more than 8 weeks[]);
- (b) any amount which the employer is liable to pay the employee for the period of notice required by section 106(1) or (2) (minimum notice: employer and employee) or for any failure of the employer to give the period of notice required by section 106(1);
- (c) any holiday pay –
- (i) in respect of a period or periods of holiday not exceeding 6 weeks in all; and
- (ii) to which the employee became entitled during the 12 months ending with the relevant date;
- (d) any basic award of compensation for unfair dismissal (within the meaning of section 140).
- (4) For the purposes of subsection (3)(a), any amount owed by an employer to an employee in respect of a payment for time off under section 35(3) (time off for trade union duties), 41(3) (time off to look for work), 43 (time off for ante-natal care) or 46 (payment for time off for pension scheme trustees) shall be treated as if it were arrears of pay.
- (5) The DSC shall not make any payment under this section unless an application under subsection (1) is made before the end of the period of 12 months beginning with –

- (a) the date on which the employer became insolvent, or
 - (b) the date of the termination of the employee's employment,
- whichever is the later.¹¹

148 Cessation of business of employer

[1991/19/67A]

- (1) If on an application made to it in writing by an employee the DSC is satisfied –
- (a) that the employment of the employee has terminated;
 - (b) that the employer has ceased to carry on business in the Island;
 - (c) that the Manx National Insurance Fund has received (or had been entitled to receive) payment of Class 1 national insurance contribution liabilities from the employer in relation to that employment;
 - (d) that at the date of the application the employee was entitled to be paid the whole or part of any debt to which section 147 (insolvency of employer) applies; and
 - (e) that the employee has taken all reasonable steps (other than legal proceedings) to recover the debt from the employer, and the employer has refused or failed to pay it, or has paid part of it and has refused or failed to pay the balance,

the DSC may pay to the employee out of the Manx National Insurance Fund the amount to which in the DSC's opinion the employee is entitled in respect of that debt.¹²

- (2) For the purposes of subsection (1)(e) "reasonable steps" includes the making of a formal demand in writing by the employee on the employer in respect of the debt.
- (3) The DSC shall not make any payment under this section unless an application under subsection (1) is made before the end of the period of 12 months beginning with the date of the termination of the employee's employment.¹³

149 Payment of unpaid contributions to occupational pension scheme etc.

[1991/19/68]

- (1) If, on application made to it in writing by the persons competent to act in respect of an occupational pension scheme or a personal pension scheme, the DSC is satisfied that an employer has become insolvent and that at that time there remained unpaid relevant contributions falling to be paid by the employer to the scheme, the DSC shall, subject to the provisions of this section and section 150 (restriction on payment in certain cases), pay into the resources of the scheme out of the Manx National Insurance

Fund the sum which is in its opinion payable in respect of the unpaid relevant contributions.¹⁴

- (2) In this section “relevant contributions” means contributions falling to be paid by an employer to an occupational pension scheme or a personal pension scheme, either on the employer’s own account or on behalf of an employee; and for the purposes of this section a contribution of any amount shall not be treated as falling to be paid on behalf of an employee unless a sum equal to that amount has been deducted from the pay of the employee by way of a contribution from him or her.
- (3) Subject to subsection (6), the sum payable under this section in respect of unpaid contributions of an employer on his or her own account to an occupational pension scheme or a personal pension scheme shall be the least of the following amounts —
 - (a) the balance of relevant contributions remaining unpaid on the date when the employer became insolvent and payable by the employer on his or her own account to the scheme in respect of the 12 months immediately preceding that date;
 - (b) the amount certified by an actuary to be necessary for the purpose of meeting the liability of the scheme on dissolution to pay the benefits provided by the scheme to or in respect of the employees of the employer; and
 - (c) an amount equal to 10 per cent. of the total amount of remuneration paid or payable to those employees in respect of the 12 months immediately preceding the date on which the employer became insolvent.
- (4) For the purposes of subsection (3)(c), “remuneration” includes holiday pay, and any such payment as is referred to in section 147(4) (payment for time off).
- (5) Any sum payable under this section in respect of unpaid contributions on behalf of an employee shall not exceed the amount deducted from the pay of the employee in respect of the employee’s contributions to the scheme during the 12 months immediately preceding the date on which the employer became insolvent.
- (6) Where the scheme in question is a money purchase scheme, the sum payable under this section by virtue of subsection (3) shall be the lesser of the amounts mentioned in paragraphs (a) and (c) of that subsection.
- (7) The DSC shall not make any payment under this section unless an application under subsection (1) is made before the end of the period of 12 months beginning with the date on which the employer became insolvent.¹⁵
- (8) In this section —

“on his or her own account”, in relation to an employer, means on his or her own account but to fund benefits for, or in respect of, one or more employees; and

“money purchase scheme” means a pension scheme under which –

- (a) all the benefits that may be provided are money purchase benefits;
- (b) all the benefits are made in relation to a member of a personal or occupational pension scheme or, in respect of such a member, his or her widow, widower or surviving civil partner;¹⁶
- (c) the rate or amount of those benefits is calculated by reference to a payment or payments made by the member or by any other person in respect of the member; and
- (d) the rate or amount of those benefits is not calculated by reference to the average salary of a member over the period of service on which the benefit is based.

150 Restriction on payment in certain cases

[1991/19/69]

- (1) This section applies where any of the following (a “relevant officer”) –
 - (a) a trustee in bankruptcy,
 - (b) a liquidator,
 - (c) a receiver or manager,
 - (d) a trustee under a deed of arrangement (within the meaning of the Bankruptcy Code 1892), or
 - (e) such other person who is authorised to exercise rights analogous to those of a relevant officer described in (a), (b), (c) or (d), whether appointed by instrument governed by foreign law or by a competent court outside the Island,

has been or is required to be appointed in connection with the employer’s insolvency.
- (2) Subject to subsection (5), the DSC shall not make any payment under section 147 (employee’s rights on insolvency of employer) in respect of any debt until it has received a statement from the relevant officer of the amount of that debt owed to the employee on the relevant date and to remain unpaid.¹⁷
- (3) Subject to subsection (5), the DSC shall not make any payment under section 149 (payment of unpaid contributions to occupational pension scheme) in respect of unpaid relevant contributions until it has received a statement from the relevant officer of the amount of relevant contributions which appear to have been unpaid on the date when the employer became insolvent and to remain unpaid.¹⁸

- (4) Subject to subsection (5), an amount shall be taken to be payable, paid or deducted as mentioned in section 149(3)(a) or (c) or (5) only if it is so certified by the relevant officer.
- (5) If the DSC is satisfied —
 - (a) that it does not require a statement under subsection (2) or (3) in order to determine the amount of the debt that was owed to the employee on the relevant date and remains unpaid, or the amount of relevant contributions that was unpaid on the date on which the employer became insolvent and remains unpaid, as the case may be, or
 - (b) that it does not require a certificate under subsection (4) in order to determine the amounts payable, paid or deducted as mentioned in section 149(3)(a) or (c) or (5),

it may make a payment in respect of the debt or contributions in question, under section 147 (employee's rights on insolvency of employer) or 149 (payment of unpaid contributions to occupational pension scheme, etc.), as the case may be, without having received such a statement or certificate.¹⁹

151 Exception for directors etc.

[1991/19/70]

The DSC shall not make any payment under section 147 (insolvency of employer), 148 (cessation of business of employer), or 149 (payment of unpaid contributions to occupational pension scheme, etc.) to or in respect of an employee whose employer is a company and who, at any time during the 12 months ending with the date on which the employer became insolvent, 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.²⁰

152 Complaints to Tribunal

[1991/19/71]

- (1) An employee who has applied for a payment under section 147 (insolvency of employer) or 148 (cessation of business of employer) may, within the period of 3 months beginning with the date on which the DSC's decision on that application was communicated to him or her or, if that is not reasonably practicable, within such further period as is reasonable, complain to the Tribunal that —
 - (a) the DSC has failed to make any such payment; or²¹
 - (b) any such payment made by the DSC is less than the amount which should have been paid.²²

- (2) Any persons who are competent to act in respect of an occupational pension scheme or a personal pension scheme and who have applied for a payment to be made under section 149 (payment of unpaid contributions to occupational pension scheme, etc.) into the resources of the scheme may, within the period of 3 months beginning with the date on which the DSC's decision on that application was communicated to them, or, if that is not reasonably practicable, within such further period as is reasonable, present a complaint to the Tribunal that —
- (a) the DSC has failed to make any such payment; or²³
 - (b) any such payment made by it is less than the amount which should have been paid.²⁴
- (3) Where the Tribunal finds that the DSC ought to make a payment under section 147, 148 or 149, it shall make a declaration to that effect and shall also declare the amount of any such payment which it finds the DSC ought to make.²⁵

153 Subrogation of DSC

[1991/19/72]

- (1) Where, in pursuance of section 147 (insolvency of employer) or 148 (cessation of business of employer), the DSC makes any payment to an employee in respect of any debt to which section 147 applies —
- (a) any rights of the employee in respect of that debt (or, if the DSC has paid only part of it, in respect of that part) shall, on the making of the payment, become the rights of the DSC;²⁶
 - (b) the employee shall execute such documents (including any declaration of trust), do any act or provide such assistance to the DSC as it may require to enable it to exercise those rights;²⁷
 - (c) the employee shall pay to the DSC any amount which he or she receives in respect of those rights and until such time any such amount shall be held by the employee on trust for the DSC; and²⁸
 - (d) any decision of the Tribunal requiring an employer to pay that debt to the employee shall have the effect that the debt or, as the case may be, that part of it which the DSC has paid, is to be paid to the DSC.²⁹
- (2) Where a debt or any part of a debt in respect of which the DSC has made a payment in pursuance of section 147 (insolvency of employer) or 148 (cessation of business of employer) constitutes a preferential debt, then, without prejudice to the generality of subsection (1), there is included among the rights which become rights of the DSC in accordance with subsection (1) any right under the *Preferential Payments Act 1908* (in this Act referred to as “**the 1908 Act**”) by reason of the status of the debt (or that part of it) as a preferential debt.³⁰

- (3) In computing for the purposes of the 1908 Act the aggregate amount payable in priority to other creditors of the employer in respect of —
- (a) any claim of the DSC to be so paid by virtue of subsection (2), and³¹
 - (b) any claim by the employee to be so paid in his or her own right, any claim falling within paragraph (a) shall be treated as if it were a claim of the employee; but the DSC is entitled, as against the employee, to be so paid in respect of any claim of the DSC's (up to the full amount of the claim) before any payment falling within paragraph (b).³²
- (4) Where in pursuance of section 149 (payment of unpaid contributions to occupational pension schemes, etc.) the DSC makes any payment into the resources of an occupational pension scheme or a personal pension scheme in respect of any contributions to the scheme, any rights and remedies in respect of those contributions belonging to the persons competent to act in respect of the scheme shall, on the making of the payment, become the rights and remedies of the DSC.³³
- (5) Where the DSC makes any such payment as is mentioned in subsection (4) and the sum (or any part of the sum) falling to be paid by the employer on account of the contributions in respect of which the payment is made constitutes a preferential debt, then, without prejudice to the generality of subsection (4), there is included among the rights and remedies which become the rights and remedies of the DSC in accordance with subsection (4) any right under the 1908 Act by reason of the status of that sum (or that part of it) as a preferential debt.³⁴
- (6) In computing for the purposes of the 1908 Act the aggregate amount payable in priority to other creditors of the employer in respect of —
- (a) any claim of the DSC to be so paid by virtue of subsection (5), and³⁵
 - (b) any claim by the persons competent to act in respect of the scheme, any claim falling within paragraph (a) shall be treated as if it were a claim of those persons, to be so paid in respect of any claim of the DSC's (up to the full amount of the claim) before any payment is made to them in respect of any claim falling within paragraph (b).³⁶
- (7) Any sum recovered by the DSC in exercising any rights under this section shall be paid into the Manx National Insurance Fund.³⁷

154 Power of DSC to obtain information in connection with applications

[1991/19/73]

- (1) Where an application is made to the DSC under section 147 (insolvency of employer), 148 (cessation of business of employer) or 149 (payment of unpaid contributions to occupational pension scheme, etc.) in respect of a

debt owed, or contributions to an occupational pension scheme or a personal pension scheme falling to be made, by an employer, the DSC may require —

- (a) the employer to provide it with such information as the DSC may reasonably require for the purpose of determining whether the application is well-founded; and³⁸
 - (b) any person having the custody or control of any relevant records or other documents to produce for examination on behalf of the DSC any such document in that person's custody or under his or her control which is of such a description as the DSC may require.³⁹
- (2) Any such requirement shall be made by notice in writing given to the person on whom the requirement is imposed and may be varied or revoked by a subsequent notice so given.
 - (3) If a person refuses or wilfully neglects to furnish any information or produce any document which he or she has been required to furnish or produce by a notice under this section that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.
 - (4) If a person, in purporting to comply with a requirement of a notice under this section, knowingly or recklessly makes any false statement that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.
 - (5) Where an offence under this section is committed by a body corporate and 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, he or she, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.
 - (6) Where the affairs of a body corporate are managed by its members, subsection (5) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

155 Interpretation of Part XI

[1991/19/74]

- (1) For the purposes of this Part, an employer shall be taken to be insolvent if, but only if, —
 - (a) the employer becomes bankrupt or makes a deed of arrangement (within the meaning of the Bankruptcy Code 1892);
 - (b) the employer has died and by virtue of an order of the court his or her estate is being administered in accordance with the rules set

out in section 39 of the *Administration of Estates Act 1990* (insolvent estates);

- (c) where the employer is a company, a winding up order is made or a creditors' resolution for voluntary winding up is passed with respect to it, or a receiver or manager of its undertaking is duly appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge; or
- (d) an event analogous to any of those specified in paragraphs (a) to (c) has occurred in respect of the employer in any jurisdiction outside the Island.

(2) In this Part —

“the Department” [Repealed]⁴⁰

“holiday pay” means —

- (a) pay in respect of a holiday actually taken; or
- (b) any accrued holiday pay which under the employee's contract of employment would in the ordinary course have become payable to the employee in respect of the period of a holiday if his or her employment with the employer had continued until the employee became entitled to a holiday;

“occupational pension scheme” means any scheme or arrangement which provides or is capable of providing, in relation to employees in any description of employment, benefits (in the form of pensions or otherwise) payable to or in respect of any such employees on the termination of their employment or on their death or retirement;

“personal pension scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect so as to provide benefits (in the form of pensions or otherwise) payable on death or retirement to or in respect of employees who have made arrangements with the trustees or managers of the scheme for them to become members of the scheme and any reference in this Part to the resources of such a scheme is a reference to the funds out of which the benefits provided by the scheme are from time to time payable;

“preferential debt” means a debt falling within section 3(1) of the 1908 Act;

“rights” includes remedies;

“the 1908 Act” means the *Preferential Payments Act 1908*.

PART XII – RESOLUTION OF DISPUTES RELATING TO EMPLOYMENT

156 The Employment Tribunal

[1991/19/75]

- (1) There shall continue to be an Employment Tribunal, which shall be constituted in accordance with Part I of Schedule 3.
- (2) Part II of Schedule 3, which makes provision, among other things, with respect to proceedings before the Tribunal, shall have effect.
- (3) The remedy of an employee for infringement of any of the rights conferred on him or her or for contravention of any obligation imposed by —
 - (i) Part II rights during employment);
 - (ii) sections, 35 to 48 (time off work provisions) of Part III rights arising in course of employment);
 - (iii) sections 61 (detriment: health and safety), 62 (detriment: annual leave and other working time cases), 64 (detriment: protected disclosures), 67 (detriment on grounds related to trade union membership or activities), 68 (detriment: right to accompany, etc.) and 70 (detriment: assertion of statutory right) of Part V (detriment);
 - (iv) Part VI (suspension from work on maternity grounds);
 - (v) Part VII (leave for family and domestic reasons);
 - (vi) section 110 (right to written statement of reasons for dismissal) of Part IX (termination of employment);
 - (vii) Part X (unfair dismissal);
 - (viii) Part XI (insolvency and cessation of business); and
 - (ix) sections 165 (part-time work: discrimination, 166 (limited-term employment) and 167 (annual leave and other working time cases),

is by way of complaint or reference to the Tribunal and not otherwise.
- (4) The remedy of a worker in respect of any contravention of —
 - (i) section 21 restrictions or deductions),
 - (ii) section 22(1) (deductions on account of cash shortages),
 - (iii) section 23 (payments on account of cash shortages), and
 - (iv) section 26(1) (supplementary provisions as to complaints),

is by way of complaint under section 25 and not otherwise.
- (5) In relation to the rights conferred by —
 - (i) section 61 (detriment: health and safety),

- (ii) section 62 (detriment: annual leave and other working time cases),
 - (iii) section 64 (detriment: protected disclosures),
 - (iv) section 67 (detriment: trade union membership or activities),
 - (v) section 68 (detriment: right to accompany, etc.), and
 - (vi) section 70 (detriment: assertion of statutory right),
- the reference in subsection (3) to an employee has effect as a reference to a worker.
- (6) The Department may by order extend the provisions of subsections (3) and (5) to include other provisions of this Act.
 - (7) Complaints to the Tribunal shall be commenced in accordance with rules under paragraph 1 of Part II of Schedule 3.
 - (8) In this Part (and Schedule 3) “**complaint**” includes a claim, reference, application or appeal to the Tribunal.

157 Conciliation

[1991/19/76]

- (1) This section applies to a complaint to the Tribunal —
 - (a) arising out of a contravention or alleged contravention of any provisions of this Act or any regulations made under it where the Tribunal has jurisdiction to hear a complaint;
 - (b) arising out of a contravention of or alleged contravention of section 1 of the *Redundancy Payments Act 1990* (general provisions as to right to redundancy payments);
 - (c) arising out of a contravention, or alleged contravention of sections 9 and 12 of the *Shops Act 2000* (dismissal; detriment); or
 - (d) arising out of a contravention or alleged contravention of sections 8, 14, 16(1)(a) or 20 of the *Minimum Wage Act 2001* (enforcement rights).
- (2) Where at any time —
 - (a) a person claims that action has been taken in respect of which proceedings could be brought by that person before the Tribunal, but
 - (b) before any application relating to that action has been presented by him or her a request is made to an industrial relations officer (whether by that person or by the person against whom the proceedings could be instituted to make his or her services available to them,

the industrial relations officer shall endeavour to promote a settlement of the question without recourse to the Tribunal.

- (3) Where a person (“the claimant”) has made a complaint to which this section applies and a copy of it has been sent to an industrial relations officer, the industrial relations officer shall —
- (a) if requested to do so by the claimant and the other party to the proceedings, or
 - (b) without such a request, if the industrial relations officer considers that he or she could act under this subsection with a reasonable prospect of success,
- endeavour to promote a settlement of the question without its being determined by the Tribunal.
- (4) For the purpose of promoting a settlement in a case falling within subsection (1)(a) where the claimant has ceased to be employed by the other party to the dispute or proceedings —
- (a) the industrial relations officer shall in particular seek to promote the reinstatement or re-engagement of the claimant by that other party, or by a successor of his or hers or by an associated employer, on terms appearing to the industrial relations officer to be equitable;
 - (b) where the claimant does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, and the parties desire the industrial relations officer to act under this section, the industrial relations officer shall seek to promote agreement between them as to a sum by way of compensation to be paid by that other party to the claimant.
- (5) In acting under this section the industrial relations officer shall, where appropriate, have regard to the desirability of encouraging the use of procedures, other than proceedings before the Tribunal, available for the settlement of grievances.
- (6) Anything communicated to an industrial relations officer in connection with the performance of his or her functions under this section shall not be admissible in evidence in proceedings before the Tribunal, except with the consent of the person who communicated it to him or her.

158 Recoupment of benefit

[1991/19/77]

- (1) This section applies to payments which are the subject of proceedings before the Tribunal and are —
- (a) payments of wages or compensation for loss of wages; or
 - (b) payments by employers to employees, under Part III, Part V, section 110 (right to written statement of reasons for dismissal) or Part X, or

- (c) payments by employers to employees, of a nature similar to, or for a purpose corresponding to the purpose of, such payments as are mentioned in paragraph (b).
- (2) The DSC may by regulations make provision with respect to payments to which this section applies for all or any of the following purposes –
- (a) enabling that Department to recover from an employer, by way of total or partial recoupment of jobseeker's allowance or income support, a sum not exceeding the amount of the prescribed element of the monetary award;
 - (b) requiring or authorising the Tribunal to order the payment of such a sum, by way of total or partial recoupment of either benefit, to that Department instead of to the employee;
 - (c) requiring the Tribunal to order the payment to the employee of only the excess of the prescribed element of the monetary award over the amount of any jobseeker's allowance or income support shown to the Tribunal to have been paid to the employee, and enabling that Department to recover from the employer, by way of total or partial recoupment of the benefit, a sum not exceeding that amount.⁴¹
- (3) Without prejudice to subsection (2), regulations under that subsection may –
- (a) be so framed as to apply to all payments to which this section applies or one or more classes of those payments, and so as to apply both to jobseeker's allowance and income support or only to one of those benefits;
 - (b) confer powers and impose duties on the High Court, the Tribunal, adjudication officers and other persons;
 - (c) impose, on an employer to whom a monetary award relates, a duty to furnish particulars connected with the award and to suspend payments in pursuance of the award during any period prescribed by the regulations;
 - (d) provide for an employer who pays a sum to the DSC in pursuance of this section to be relieved from any liability to pay the sum to another person;⁴²
 - (e) provide for the determination by an adjudication officer of any issue arising as to the total or partial recoupment in pursuance of the regulations, of a jobseeker's allowance or income support;
 - (f) confer on an employee a right of appeal to an appeal tribunal constituted under chapter 1 of Part 1 of the Social Security Act 1998 (as that Act of Parliament has effect in the Island) against any decision of an adjudication officer on any such issue;
 - (g) provide for the proof in proceedings before the High Court or the Tribunal (whether by certificate or in any other manner) of any

amount of jobseeker's allowance or income support paid to an employee.

(4) Where in pursuance of any regulations under subsection (2) a sum has been recovered by or paid to the DSC by way of total or partial recoupment of jobseeker's allowance or income support, no sum shall be recoverable under Part III or V of the Social Security Administration Act 1992 (as that Act of Parliament has effect in the Island) and no abatement, payment or reduction shall be made by reference to the jobseeker's allowance or the income support recouped.⁴³

(5) Any amount found to have been duly recovered by or paid to the DSC in pursuance of regulations under subsection (2) by way of total or partial recoupment of jobseeker's allowance or income support shall be paid into the Manx National Insurance Fund or the general revenue of the Island respectively.⁴⁴

(6) In this section —

“adjudication officer” means an adjudication officer appointed under chapter 1 of Part 1 of the Social Security Act 1998 (as that Act of Parliament has effect in the Island);

“income support” means income support payable under section 124 of the Social Security Contributions and Benefits Act 1992 (as that Act of Parliament has effect in the Island);

“jobseeker's allowance” means —

- (i) a jobseeker's allowance under the Jobseekers Act 1995 (as that Act of Parliament has effect in the Island); and
- (ii) any benefit payable by virtue of a resolution of Tynwald which is designated by regulations under subsection (2) for the purpose of this definition;

“monetary award” means the amount which is awarded, or ordered or adjudged to be paid, to the employee by the High Court or the Tribunal or would be so awarded or ordered apart from any provision of regulations under this section;

“the prescribed element”, in relation to any monetary award, means so much of that award as is attributable to such matters as may be prescribed by regulations under subsection (2).

159 Enforcement of awards etc. of Tribunal

[1991/19/78]

Where on any appeal, reference or complaint, or in any other proceedings, under the *Redundancy Payments Act 1990*, the *Employment (Sex Discrimination) Act 2000*, the *Shops Act 2000*, the *Minimum Wage Act 2001* or this Act, the Tribunal —

- (a) determines that any party to the proceedings is entitled to be paid any sum by another such party; or
- (b) orders any such party to pay or repay any sum to another such party, or
- (c) makes an award of compensation,

the Tribunal may grant execution for the sum or the amount of the award, as the case may be.

160 Appeals

[1991/19/79]

- (1) Any person who is aggrieved by any decision, determination, order or award of the Tribunal under the *Redundancy Payments Act 1990*, the *Employment (Sex Discrimination) Act 2000*, the *Shops Act 2000*, the *Minimum Wage Act 2001* or this Act may, within such time as may be prescribed by rules of court, appeal on a question of law to the High Court.
- (2) On an appeal under this section the High Court may exercise any power of the Tribunal or may remit the case to the Tribunal.
- (3) Any decision, determination, order or award of the High Court on such an appeal shall have the same effect and may be enforced in the same manner as a decision or award of the Tribunal.
- (4) Any sum payable in pursuance of a determination, order or award of the High Court on an appeal under this section shall be treated as if it were a sum payable in pursuance of a determination, order or award of the Tribunal for the purposes of paragraph 11 of Part II of Schedule 3 (interest on sums awarded).

PART XIII - MISCELLANEOUS AND SUPPLEMENTAL

161 Application to territorial waters

[1991/19/80]

- (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.
- (2) An order under subsection (1) 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; but any such jurisdiction

shall be without prejudice to the jurisdiction exercisable apart from this section by that or any other court or tribunal.

162 Power to confer rights on individuals

[P1999/18/23; 1991/19/81]

- (1) This section applies to any right conferred on an individual against an employer (however defined) under or by virtue of this Act.
- (2) The Department may by order make provision which has the effect of conferring any such right on individuals who are of a specified description.
- (3) The reference in subsection (2) to individuals includes a reference to individuals expressly excluded from exercising the right.
- (4) An order under this section may —
 - (a) provide that individuals are to be treated as parties to workers' contracts or contracts of employment;
 - (b) make provision as to who are to be regarded as the employers of individuals;
 - (c) make provision which has the effect of modifying the operation of any right as conferred on individuals by the order;
 - (d) include such consequential, incidental or supplementary provisions as the Department thinks fit.
- (5) An order under this section may make provision in such way as the Department thinks fit.
- (6) The ways in which an order under this section may make provision include, in particular —
 - (a) amending any statutory provision, and
 - (b) excluding or applying (whether with or without amendment) any statutory provision.

163 Illegality and treatment of special categories of worker

[1991/19/82]

- (1) A worker is excluded from benefiting from any of the provisions of this Act and the Employment Acts where the worker's contract is tainted by illegality unless the Tribunal considers it is just and equitable to rule otherwise.
- (2) Schedule 4 has effect for the purpose of excluding certain categories of employment from some or all of the provisions of this Act or for the purpose of modifying their application to such categories of employment.

164 Restrictions on contracting out

[P1996/18/203; 1991/19/83]

- (1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports —
 - (a) to exclude or limit the operation of any provision of this Act, or
 - (b) to preclude a person from bringing any proceedings under this Act before the Tribunal.
- (2) Subsection (1) does not apply to any agreement to refrain from instituting or continuing proceedings where an industrial relations officer has taken action under —
 - (i) section 157 (conciliation); or
 - (ii) such other enactments as may by order be prescribed by the Department.

165 Part-time work: discrimination

[P1999/26/19]

- (1) The Department shall make regulations for the purpose of securing that persons in part-time employment are treated, for such purposes and to such extent as the regulations may specify, no less favourably than persons in full-time employment.
- (2) The regulations may —
 - (a) specify classes of person who are to be taken to be, or not to be, in part-time employment;
 - (b) specify classes of person who are to be taken to be, or not to be, in full-time employment;
 - (c) specify circumstances in which persons in part-time employment are to be taken to be, or not to be, treated less favourably than persons in full-time employment;
 - (d) make provision which has effect in relation to persons in part-time employment generally or provision which has effect only in relation to specified classes of persons in part-time employment.
- (3) The regulations may —
 - (a) confer jurisdiction (including exclusive jurisdiction) on the Tribunal and on the High Court;
 - (b) create criminal offences in relation to specified acts or omissions by an employer, by an organisation of employers, by an organisation of workers or by an organisation existing for the purposes of a profession or trade carried on by the organisation's members;
 - (c) in specified cases or circumstances, extend liability for a criminal offence created under paragraph (b) to a person who aids the

- commission of the offence or to a person who is an agent, principal, employee, employer or officer of a person who commits the offence;
- (d) provide for specified obligations or offences not to apply in specified circumstances;
 - (e) make provision about notices or information to be given, evidence to be produced and other procedures to be followed;
 - (f) amend, apply with or without modifications, or make provision similar to any provision of this Act (including, in particular, Parts V, X and XIII) and the *Redundancy Payments Act 1990*;
 - (g) provide for the provisions of specified agreements to have effect in place of provisions of the regulations to such extent and in such circumstances as may be specified;
 - (h) include supplemental, incidental, consequential and transitional provision, including provision amending an enactment;
 - (i) make different provision for different cases or circumstances.
- (4) Regulations under this section which create an offence —
- (a) shall provide for it to be triable summarily only, and
 - (b) may not provide for it to be punishable by custody or by a fine in excess of £5,000.

166 Limited-term employment

[2002/22/45]

- (1) The Department may make regulations —
- (a) for the purpose of securing that employees in limited-term employment are treated, for such purposes and to such extent as the regulations may specify, no less favourably than employees in permanent employment, and
 - (b) for the purpose of preventing abuse arising from the use of successive periods of limited-term employment.
- (2) The regulations may —
- (a) specify classes of employee who are to be taken to be, or not to be, in limited-term employment;
 - (b) specify classes of employee who are to be taken to be, or not to be, in permanent employment;
 - (c) specify circumstances in which employees in limited-term employment are to be taken to be, or not to be, treated less favourably than employees in permanent employment;
 - (d) specify circumstances in which periods of limited-term employment are to be taken to be, or not to be, successive;

- (e) specify circumstances in which limited-term employment is to have effect as permanent employment;
 - (f) make provision which has effect in relation to employees in limited-term employment generally or provision which has effect only in relation to specified classes of employee in limited-term employment.
- (3) The regulations may –
- (a) confer jurisdiction (including exclusive jurisdiction) on the Tribunal and on the High Court;
 - (b) provide for specified obligations not to apply in specified circumstances;
 - (c) make provision about notices or information to be given, evidence to be produced and other procedures to be followed;
 - (d) amend, apply with or without modifications, or make provision similar to any provision of –
 - (i) this Act, including in particular, Parts V, X and XIII; or
 - (ii) the Social Security Contributions and Benefits Act 1992 (as that Act of Parliament has effect in the Island);
 - (e) provide for the provisions of specified agreements to have effect in place of provisions of the regulations to such extent and in such circumstances as may be specified.
- (4) The power of the Department to make regulations under this section includes power –
- (a) to make different provision for different cases or circumstances;
 - (b) to make such incidental, supplementary consequential or transitional provisions as the Department thinks fit.

167 Annual leave and other working time cases

[SI 1998/1833]

- (1) The Department shall make regulations conferring upon workers rights which concern directly or indirectly entitlement to annual leave, compensation related to the taking of annual leave, payment in respect of periods of leave and the manner in which such compensation or payment may be made.
- (2) Without prejudice to the generality of subsection (1), the Department may make regulations under that subsection which determine –
 - (a) a worker's right to a period of annual leave, subject to qualifying conditions, limitations and permitted exceptions;
 - (b) the minimum period of annual leave to which a worker shall be entitled and the mode of its computation;

- (c) the manner and the conditions subject to which annual leave may be taken or postponed;
 - (d) the treatment of bank holidays under the *Bank Holidays Act 1989* for the purposes of regulations made under this subsection;
 - (e) a worker's entitlement to payment for annual leave and for the continuation of a worker's terms and conditions of employment during annual leave; and
 - (f) the computation of compensation in lieu of annual leave where a worker's employment is terminated; and
 - (g) conditions subject to which a worker may enter into a written agreement to vary or disapply the provisions of regulations made under subsection (1) and this subsection.
- (3) The Department may make regulations in relation to measures which concern directly or indirectly the organisation of working time.
- (4) Without prejudice to the generality of subsection (3), the Department may make regulations under that subsection prescribing —
- (a) a worker's maximum average weekly working time including overtime, by reference to a specified number of weeks;
 - (b) a worker's maximum working time during a period of 24 hours beginning at midnight;
 - (c) a worker's maximum working hours between midnight and 5am;
 - (d) a worker's entitlement during the period in which he or she works for the employer to rest breaks in each 24 hour period and weekly rest breaks in each 7 day period; and
 - (e) conditions subject to which a worker and an employer may enter into a written agreement to vary or disapply the provisions of regulations made under subsection (3) and this subsection.
- (5) Regulations under subsection (1) to (4) may exclude from their application prescribed activities and circumstances in which a worker is employed.
- (6) Regulations under this section may provide for the keeping of worker records by the employer in such form and containing such particulars as may be prescribed.
- (7) Regulations under this section may amend, modify or repeal any statutory provision (whenever made) relating to annual leave, holiday pay or working time.
- (8) Regulations under this section may provide that contravention of, or failure to comply with, the regulations shall be an offence punishable on summary conviction by a fine not exceeding such amount (which shall not be greater than £5,000) as may be specified in the regulations.

- (9) A complaint may be presented to the Tribunal by a worker that the employer has failed to permit the exercise of any right (including any right to compensation or payment) under regulations made under this section and the Department may by regulation prescribe —
- (i) time limits for the making of complaints to the Tribunal under this subsection;
 - (ii) the nature of the order which may be made where a complaint is well-founded; and
 - (iii) the amount of compensation and the basis upon which it shall be computed.

168 Death of employer or employee

[P1996/18/206 and 207; 1991/19/84]

- (1) Where an employer has died, any proceedings of the Tribunal arising under any of the provisions of this Act to which this section applies may be defended by a personal representative of the deceased employer.
- (2) This section applies to —
 - (a) Part II (rights during employment), so far as it relates to itemised pay statements,
 - (b) the time off provisions of Part III (rights arising in course of employment), apart from sections 45 to 47 (pension scheme trustees' rights) and section 48, so far as it relates to those sections,
 - (c) Part V (detriment),
 - (d) Parts VI (suspension from work on maternity grounds) and VII (leave for family and domestic reasons),
 - (e) section 110 of Part IX (written statement of reasons for dismissal), and
 - (f) Parts X (unfair dismissal) and XI (insolvency and cessation of business).
- (3) Where an employee has died, any Tribunal proceedings arising under any of the provisions of this Act to which this section applies may be instituted or continued by a personal representative of the deceased employee.
- (4) If there is no personal representative of a deceased employee, any proceedings of the Tribunal arising under any of the provisions of this Act to which this section applies may be instituted or continued on behalf of the estate of the deceased employee by any appropriate person appointed by the Tribunal.
- (5) In subsection (4) “appropriate person” means a person who is —
 - (a) authorised by the employee before his death to act in connection with the proceedings, or

- (b) the surviving spouse or surviving civil partner, child, parent or brother or sister of the deceased employee;⁴⁵

and in the following provisions of this section references to a personal representative include a person appointed under subsection (4).

- (6) In a case where proceedings are instituted or continued by virtue of subsection (4), any award made by the Tribunal shall be —
- (a) made in such terms, and
- (b) enforceable in such manner,
- as the Department may by regulations prescribe.
- (7) Any reference in the provisions of this Act to which this section applies to the doing of anything by or in relation to an employer or employee includes a reference to the doing of the thing by or in relation to a personal representative of the deceased employer or employee.
- (8) Any reference in the provisions of this Act to which this section applies to a thing required or authorised to be done by or in relation to an employer or employee includes a reference to a thing required or authorised to be done by or in relation to a personal representative of the deceased employer or employee.
- (9) Subsections (7) and (8) do not prevent a reference to a successor of an employer including a personal representative of a deceased employer.
- (10) Any right arising under any of the provisions of this Act to which this section applies which accrues after the death of an employee devolves as if it had accrued before his death.
- (11) Where —
- (a) by virtue of any of the provisions to which this section applies a personal representative is liable to pay any amount, and
- (b) the liability has not accrued before the death of the employer,
- it shall be treated as a liability of the deceased employer which had accrued immediately before his death.

169 Computation of period of employment

[P1996/18/210; 1991/19/85]

Schedule 5 has effect for the purposes of this Act for computing an employee's period of continuous employment.

170 Calculation of normal working hours and a week's pay

[1991/19/86]

Schedule 6 has effect for the purpose of this Act for calculating the normal working hours and the amount of a week's pay of any employee.

171 Codes of practice

[1991/19/87]

- (1) The Department may issue codes of practice, or approve codes of practice issued by any other person (including a code of practice issued by a person outside the Island), containing such practical guidance as it thinks fit for all or any of the following purposes —
- (a) promoting the improvement of industrial relations;
 - (b) eliminating discrimination in the field of employment;
 - (c) promoting equality of opportunity between men and women in that field.

In this subsection “discrimination” has the meaning given by section 7 of the *Employment (Sex Discrimination) Act 2000* (interpretation of Part 2 of that Act).

- (2) The Department shall not issue or approve a code of practice under this section unless it has first —
- (a) consulted the industrial relations officer or officers and such organisations appearing to the Department to be representative of employers and employees as the Department thinks appropriate;
 - (b) published its proposals in the form either of a draft code or of a copy of the code proposed to be approved, as the case may be; and
 - (c) considered any representations made to the Department about the draft or proposed code;

and the draft or proposed code has been approved by Tynwald.

- (3) A code of practice issued under this section, and the instrument approving a code under this section, shall state the date on which the code comes into operation.
- (4) Without prejudice to any other provision of this Act, a failure on the part of any person to observe any provision of a code of practice issued or approved under this section shall not of itself render him or her liable to any proceedings, but in any proceedings before a court or tribunal —
- (a) any such code shall be admissible in evidence, and
 - (b) any provision of the code which appears to the court or tribunal to be relevant to the question arising in the proceedings shall be taken into account in determining that question.

172 Publication of employees’ rights

[1991/19/87A]

- (1) The Department shall from time to time, and in any event not less than once in each year, cause to be published in 2 newspapers published and circulating in the Island notices —

- (a) summarising —
 - (i) the rights of employees and workers under this Act;
 - (ii) the rights of employees under the *Redundancy Payments Act 1990*; and
 - (iii) the rights of women and men under the *Employment (Sex Discrimination) Act 2000*;
 - (iv) the rights of shop-workers under the *Shops Act 2000*; and
 - (v) the rights of workers under the *Minimum Wage Act 2001*;
- (b) advising of the availability of public information leaflets in relation to those rights,

for the purpose of promoting public awareness of those rights.

- (2) A notice shall be treated as complying with subsection (1) if it is in such form and contains such information as is prescribed in regulations made by the Department.

173 General interpretation

[1991/19/88]

- (1) In this Act, except in so far as the context otherwise requires —
 - “**act**” and “**action**” each includes omission, and references to doing an act or taking action shall be construed accordingly;
 - “**associated employer**” shall be construed in accordance with subsection (7);
 - “**basic award of compensation for unfair dismissal**” shall be construed in accordance with section 140;
 - “**business**” includes a trade or profession, and any activity carried on by a body of persons, whether corporate or unincorporate;
 - “**childbirth**” means the birth of a living child, or the birth of a child, whether living or dead, after 24 weeks of pregnancy;
 - “**collective agreement**” means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers’ associations and relating to one or more of the matters specified below; and
 - “**collective bargaining**” means negotiations relating to or connected with one or more of those matters;

The matters referred to above are —

- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
- (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;

- (c) allocation of work or the duties of employment between workers or groups of workers;
- (d) matters of discipline;
- (e) a worker's membership or non-membership of a registered trade union;
- (f) facilities for officials of registered trade unions; and
- (g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a registered trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures;

“contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

“Crown employment” means service —

- (a) in an office specified in Part I of Schedule 1 to the *Superannuation Act 1984*;
- (b) as a member of the Isle of Man Civil Service; or
- (c) as a member of the Isle of Man Constabulary;

but does not include service as a member of the naval, military or air forces of the Crown;

“the Department” means the Department of Economic Development;⁴⁶

“the DSC” means the Department of Social Care;⁴⁷

“effective date of termination” has the meaning given by section 112(4) to (7);

“employee” means an individual who has entered into or works under (or where the employment has ceased, worked under) a contract of employment;

“employer”, in relation to an employee or a worker, means the person by whom the employee or worker is (or where the employment has ceased, was) employed;

“employers association” has the meaning given by section 23(3) of the *Trade Unions Act 1991*;

“employment” means —

- (a) employment under a contract of employment, and
- (b) in relation to a worker, means employment under his or her contract;

“the Employment Acts” means the *Redundancy Payments Act 1990*, the *Shops Act 2000*, the *Employment (Sex Discrimination) Act 2000*, and the *Minimum Wage Act 2001*;

“employment agency fee” means any charge however described which is imposed by a business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) providing services (whether by provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them;

“expected week of childbirth” means the week, beginning with midnight between Saturday and Sunday, in which it is expected that childbirth will take place;

“job”, in relation to an employee, means the nature of the work which he or she is employed to do in accordance with his or her contract and the capacity and place in which he or she is so employed;

“limited-term employment” means a contract of employment under which —

- (a) the employment under the contract is not intended to be permanent, and
- (b) provision is accordingly made in the contract for it to terminate by virtue of a limiting event;

“limiting event”, in relation to a contract of employment means —

- (a) in the case of a contract for a fixed-term, the expiry of the term,
- (b) in the case of a contract made in contemplation of the performance of a specific task, the performance of the task, and
- (c) in the case of a contract which provides for its termination on the occurrence of an event (or the failure of an event to occur), the occurrence of the event (or the failure of that event to occur);

“official”, in relation to a trade union, means any person —

- (a) who is an officer of the union or of a branch or section of the union, or
- (b) who (not being such an officer) is a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them, including any person so elected or appointed who is an employee of the same employer as the members, or one or more of the members whom he or she is to represent;

“paternity leave” means the rights to leave conferred by sections 90 and 91;

“position” in relation to an employee, means the following matters taken as a whole —

- (a) his or her status as an employee,
- (b) the nature of his or her work, and
- (c) his or her terms and conditions of employment;

“**prescribed**” means prescribed by order or regulations made by the Department;

“**protected disclosure**” has the meaning given to it by section 49;

“**public authority**” means any person certain of whose functions are functions of a public nature;

“**redundancy**” has the same meaning as in the *Redundancy Payments Act 1990*;

“**registered**”, in relation to a trade union or employers’ association, means registered under the *Trade Unions Act 1991*;

“**renewal**” includes extension, and any reference to renewing a contract or a limited term shall be construed accordingly;

“**strike**” means any concerted stoppage of work except in the case of Schedule 2 paragraph 6 and Schedule 5 where the expression 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;

“**successor**” shall be construed in accordance with subsections (5) and (6);

“**trade dispute**” means —

- (a) a dispute between workers and their employer which relates wholly or mainly to one or more of the following matters —
 - (i) terms and conditions of employment, or the physical conditions in which any workers are required to work;
 - (ii) re-engagement of, or failure or refusal to re-engage, or termination or suspension of employment or the duties of employment of, one or more workers;
 - (iii) allocation of work or the duties of employment as between workers or groups of workers;
 - (iv) matters of discipline;
 - (v) the membership or non-membership of a registered trade union on the part of a worker;
 - (vi) facilities for officials of registered trade unions; and
 - (vii) machinery for negotiations or consultation, and other procedures, relating to any of the foregoing, including the recognition by employers or employers’ associations of the right of a registered trade union to represent workers in

any such negotiation or consultation or in the carrying out of such procedures;

- (b) a dispute is a trade dispute for the purposes of this Act even though it relates to matters occurring outside the Island, so long as the person or persons whose actions in the Island are said to be in furtherance of the dispute, are likely to be affected in respect of one or more of the matters specified in this definition by the outcome of the dispute;
- (c) a dispute between any Department or Statutory Board or any other officer or body performing functions on behalf of the Crown and any workers shall, notwithstanding that it is not the employer of those workers, be treated as a dispute between an employer and those workers; and
- (d) a dispute to which a registered trade union or employer's association is a party shall be treated as a dispute to which workers, or as the case may be, employers are parties;

“**trade union**” has the same meaning as in the *Trade Unions Act 1991*;

“**the Tribunal**” means the Employment Tribunal constituted in accordance with Part 1 of Schedule 3;

“**week**” means —

- (a) in Schedule 5, a week ending with a Saturday, and
- (b) otherwise, except in sections 90, 91 and 106, in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day and, in relation to any other employee, a week ending with a Saturday;

“**worker**” (except in the phrase “**shop worker**”) means an individual who has entered into or works under (or, where the employment has ceased, worked under) —

- (a) a contract of employment, or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual,

and any reference to a worker's contract shall be construed accordingly.

- (2) References in this Act to dismissal by reason of redundancy shall be construed in accordance with section 1 of the *Redundancy Payments Act 1990*.

- (3) 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.
- (4) For the purposes of the application of this Act in relation to Crown employment –
- (a) a reference to an employee shall be read as a reference to a person in Crown employment;
 - (b) a reference to a contract of employment shall be read as a reference to the conditions of service of such a person;
 - (c) a reference to dismissal shall be read as a reference to the termination of Crown employment.
- (5) Subject to subsection (6), in this Act “successor”, in relation to the employer of an employee, means a person who, in consequence of a change occurring (whether by virtue of a sale or other disposition or by operation of law) in the ownership of the business or of part of the business for the purposes of which the employee was employed, has become the owner of that business or of that part of it.
- (6) Subsection (5) has effect (subject to the necessary modifications) in relation to a case where –
- (a) the person by whom a business or part of a business is owned immediately before a change is one of the persons by whom (whether as partners, trustees or otherwise) it is owned immediately after the change; or
 - (b) the persons by whom a business or part of a business is owned 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, it is owned immediately after the change,
- as that subsection has effect where the previous owner and the new owner are wholly different persons; and any reference in this Act to a successor of the employer shall be construed accordingly.
- (7) For the purposes of this Act a person is an associated employer in relation to an employer if –
- (a) one of them is a company of which the other (directly or indirectly) has control;
 - (b) both are companies of which a third person (directly or indirectly) has control.

174 Subordinate legislation: general provisions

- (1) Any power conferred by this Act to make subordinate legislation –

- (a) if it is expressed to be exercisable for alternative purposes, may be exercised in relation to the same case for any or all of those purposes, and
 - (b) if it is conferred for the purposes of any one provision of this Act, is without prejudice to any power to make subordinate legislation for the purposes of any other provision.
- (2) A power conferred by this Act to make subordinate legislation includes power to provide for a person to exercise a discretion in dealing with any matter.
- (3) Any power conferred by this Act to make subordinate legislation also includes power to make such incidental, supplementary, consequential or transitional provision as appears to the Department to be expedient.
- (4) Regulations may, for the purposes of or in connection with the coming into force of any provisions of this Act, make any such provision as could be made by virtue of section 177(3) by an order bringing those provisions into force.
- (5) For the purposes of this section “subordinate legislation” means any order, rule, regulation, notice or other instrument having legislative effect which is made under this Act.

175 Tynwald control over orders etc.

[1991/19/89]

- (1) Orders and regulations made by any Department under this Act, except an order mentioned in subsection (3), shall not have effect unless they are approved by Tynwald.
- (2) An order under paragraph 10 of Schedule 6 (a week’s pay) shall not be made without the concurrence of the DSC.⁴⁸
- (3) An order under section 177(2) (appointed day orders) shall be laid before Tynwald as soon as may be after it is made.

176 Transitional provisions, savings, amendments and repeals

- (1) The transitional provisions and savings in Schedule 7 shall have effect.
- (2) The enactments specified in Schedule 8 are amended in accordance with that Schedule.
- (3) The enactments specified in Schedule 9 are repealed to the extent specified in column 3 of that Schedule.

177 Short title and commencement

- (1) This Act may be cited as the Employment Act 2006.

- (2) This Act shall come into operation on such day or days as the Department may by order appoint and different days may be so appointed for different provisions and different purposes.⁴⁹
- (3) Without prejudice to section 174(3), the power to make an order under subsection (2) includes power to make transitional adaptations or modifications of the provisions brought into force by the order, as it appears to the Department expedient, including different adaptations or modifications for different periods.

SCHEDULE 1

TRIBUNAL'S DUTIES IN CASES OTHER THAN SECTION 17

Section 18

Tribunal jurisdictions to which section 18 applies

Section 21 of the *Redundancy Payments Act 1990* (redundancy payments)

Section 35 of the *Employment (Sex Discrimination) Act 2000* (equality clauses)

Section 36 of the *Employment (Sex Discrimination) Act 2000* (sex discrimination in employment)

Section 20 of the *Minimum Wage Act 2001* (detriment in relation to minimum wage)

Section 25 of this Act (unauthorised deductions)

Section 29 of this Act (inducements relating to union membership or activities)

Section 30 of this Act (inducements relating to collective bargaining)

Section 71 of this Act (detriment in employment)

Section 133 of this Act (unfair dismissal)

SCHEDULE 2

RIGHTS OF EMPLOYEE IN PERIOD OF NOTICE

Section 107

Preliminary

P1996/18/87; 1991/19/37

1. In this Schedule the "period of notice" means the period of notice required by section 106 (1) or (2) (minimum period of notice), as the case may be.

Employments for which there are normal working hours

P1996/18/88

2. (1) If an employee has normal working hours under the contract of employment in force during the period of notice, and if during any part of those normal working hours —
 - (a) the employee is ready and willing to work but no work is provided for him or her by his or her employer; or
 - (b) the employee is incapable of work because of sickness or injury; or
 - (c) the employee is absent from work wholly or partly because of pregnancy or childbirth or on adoption leave, parental leave or paternity leave, or

- (d) the employee is absent from work in accordance with the terms of his or her employment relating to holidays,

then the employer is liable to pay the employee for the part of normal working hours covered by paragraphs (a) to (d) a sum not less than the amount of remuneration for that part of normal working hours calculated at the average hourly rate of remuneration produced by dividing a week's pay by the number of normal working hours.

(2) Any payments made to the employee by his or her employer in respect of the relevant part of the period of notice whether by way of sick pay, maternity pay, paternity pay, adoption pay, parental leave pay, holiday pay or otherwise, shall go towards meeting the employer's liability under this paragraph.

(3) Where notice was given by the employee, the employer's liability under this paragraph does not arise unless and until the employee leaves the service of the employer in pursuance of the notice.

Employments for which there are no normal working hours
P1996/18/89

3. (1) If an employee does not have normal working hours under the contract of employment in force in the period of notice the employer is liable to pay the employee for each week of the period of notice a sum not less than a week's pay.

(2) Subject to sub-paragraph (3), the employer's obligation under this paragraph is conditional on the employee being ready and willing to do work of a reasonable nature and amount to earn a week's pay.

(3) Sub-paragraph (2) does not apply –

- (a) in respect of any period during which the employee is incapable of work because of sickness or injury,
- (b) in respect of any period during which the employee is absent from work wholly or partly because of pregnancy or childbirth, or on adoption leave, parental leave or paternity leave, or
- (c) in respect of any period during which the employee is absent from work in accordance with the terms of his or her employment relating to holidays.

(4) Any payment made to an employee by his or her employer in respect of a period within sub-paragraph (3), whether by way of sick pay, maternity pay, paternity pay, adoption pay, parental leave pay, holiday pay or otherwise, shall be taken into account for the purposes of this paragraph as if it were remuneration paid by the employer in respect of that period.

(5) Where the notice was given by the employee, the employer's liability under this paragraph does not arise unless and until the employee leaves the service of the employer in pursuance of the notice.

Sickness or industrial injury benefit

P1996/18/90

4. (1) This paragraph has effect where the arrangements in force relating to the employment are such that —

- (a) payments by way of sick pay are made by the employer to employees to whom the arrangements apply, in cases where any such employees are incapable of work because of sickness or injury, and
- (b) in calculating any payment so made to any such employee an amount representing, or treated as representing, short-term incapacity benefit or industrial injury benefit is taken into account, whether by way of deduction or by way of calculating the payment as a supplement to that amount.

(2) If during any part of the period of notice the employee is incapable of work because of sickness or injury, and —

- (a) one or more payments, by way of sick pay are made to him or her by the employer in respect of that part of the period of notice, and
- (b) in calculating any such payment such an amount as is referred to in sub-paragraph (1)(b) is taken into account as therein mentioned,

then for the purposes of this Schedule the amount so taken into account shall be treated as having been paid by the employer to the employee by way of sick pay in respect of that part of that period, and shall go towards meeting the liability of the employer under paragraph 2 or paragraph 3 accordingly.

Absence on leave granted at request of employee

P1996/18/91

5. The employer is not liable under the foregoing provisions of this Schedule to make any payment in respect of a period during which the employee is absent from work with the leave of the employer granted at the request of the employee (including any period of time off taken in accordance with sections 35, 37, 39, 41, 43 and 45.

Notice given before a strike

P1996/18/91

6. No payment shall be due under this Schedule in consequence of a notice to terminate a contract given by an employee if, after the notice is given and on or before the termination of the contract, the employee takes part in a strike of employees of the employer.

Termination of employment during period of notice

7. (1) If, during the period of notice, the employer breaks the contract of employment, payments received under this Schedule in respect of the part of the

period after the breach shall go towards mitigating the damages recoverable by the employee for loss of earnings in that part of the period of notice.

(2) If, during the period of notice, the employee breaks the contract and the employer rightfully treats the breach as terminating the contract, no payment is due to the employee under this Schedule in respect of the part of the period of notice falling after the termination of the contract.

SCHEDULE 3

THE EMPLOYMENT TRIBUNAL

Section 156

PART I - CONSTITUTION OF TRIBUNAL

1. (1) There shall be appointed in accordance with the *Tribunals Act 2006* —
 - (a) a person to act as chairperson of the Tribunal;
 - (b) a panel of persons to act as deputy chairpersons of the Tribunal;
 - (c) 2 panels of persons to act as members of the Tribunal, one panel consisting of persons appointed after consultation with such organisation or organisations as appear to the Appointments Commission to be representative of employers, and the other panel consisting of persons appointed after consultation with such organisation or organisations as appear to the Appointments Commission to be representative of employees.
2. (1) Subject to sub-paragraphs (2) and (3), the Tribunal shall consist of the chairperson of the Tribunal, and 2 other members, one from each of the panels referred to in paragraph 1(1)(c) chosen by the chairperson.
 - (2) If the chairperson of the Tribunal is absent or unable to act, his or her place shall be taken, and any of his or her functions may be exercised, by a deputy chairperson, chosen by the chairperson.
 - (3) If one of the other members of the Tribunal is absent or unable to act, his or her place shall be taken by another member, chosen by the chairperson of the Tribunal, of the panel from which that member was drawn.
 - (4) Except where the rules otherwise provide, where the Tribunal has begun to hear any complaint or other matter, it may not, without the consent of the parties, continue to do so unless it comprises at least 2 of the members who began to hear the matter.

PART II – PROCEEDINGS OF TRIBUNAL

Rules as to Tribunal procedure

1. (1) The Department may by rules (in this Schedule referred to as “the rules”) make such provision as appears to it to be necessary or expedient with respect to proceedings before the Tribunal.

(2) Without prejudice to the generality of sub-paragraph (1), the rules may in particular include provision –

- (a) for treating the Department or the DSC (either generally or in such circumstances as may be prescribed by the rules) as a party to any proceedings before the Tribunal, where it would not otherwise be a party to them, and entitling it to appear and to be heard accordingly;⁵⁰
- (b) for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses;
- (c) for enabling the Tribunal, on the application of any party to proceedings before it or of its own motion, to order such discovery or inspection of documents, or the furnishing of such further particulars, as might be ordered by the High Court on an application by a party to proceedings before it;
- (d) for the determination of any matter before the Tribunal by a hearing on a preliminary point;
- (e) for prescribing the procedure to be followed on any complaint before the Tribunal, including provisions as to the persons entitled to appear and to be heard on behalf of parties to such proceedings, and provisions for enabling the Tribunal to review its decisions, and revoke or vary its orders and awards, in such circumstances as may be determined in accordance with the rules;
- (f) for the award of costs;
- (g) for taxing or otherwise settling any such costs (and in particular for enabling such costs to be taxed in the High Court);
- (h) for the registration of applications to the Tribunal and the registration and proof of decisions, orders and awards made by it; and
- (i) for the terms of an award made in a case mentioned in section 168(1) (death of employee or employer), and for the enforcement of such an award.

(3) In relation to proceedings under section 133 (complaints to tribunal: unfair dismissal), where the proceedings arise out of the employer’s failure to permit the employee to return to work after an absence due to pregnancy or childbirth, the rules shall include provision for requiring the employer to pay the costs or expenses of

any postponement or adjournment of the hearing caused by his or her failure, without a special reason, to adduce reasonable evidence as to the availability of the job which the employee held before her absence, or of suitable employment.

(4) The rules may include provision authorising the Tribunal to restrict the registration and reporting of applications, proceedings, decisions, orders or awards in appropriate cases.

(5) The rules may include provision authorising or requiring the Tribunal, in circumstances specified in the rules, to send notice or a copy of any document so specified relating to any proceedings before the Tribunal, or of any decision, order or award of the Tribunal, to any Department or other person or body so specified.

(6) The rules may include provision enabling the chairperson of the Tribunal sitting alone to hear and determine

- (a) any complaint under section 25 (complaints to tribunal: deductions from wages) or 152 (complaints to tribunal: insolvency, etc.), or
- (b) any other complaint —
 - (i) with the consent of the parties, or
 - (ii) if it appears to the chairperson that the complainant does not intend to pursue the complaint, or that the respondent does not intend to contest the complaint, or (where there are 2 or more respondents) that none of them intends to contest the complaint.

(7) Any person who without reasonable excuse fails to comply with any requirement imposed by the rules by virtue of sub-paragraph (2)(b), (2)(c) or restriction imposed by sub-paragraph (4) shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

(8) Where an offence under sub-paragraph (7) is committed by a body corporate and 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, he or she, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(9) Where the affairs of a body corporate are managed by its members, sub-paragraph (8) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

Pre-hearing reviews

2. (1) The rules may include provision —
- (a) for authorising a preliminary consideration of proceedings, before the Tribunal (a “pre-hearing review”) to be carried out by such person as may be determined by or in accordance with the rules,

or (if so determined in accordance with the rules) by the Tribunal itself, and

- (b) for enabling such powers to be exercised in connection with a pre-hearing review as may be prescribed by the rules.
- (2) The rules may in particular include provision —
- (a) for authorising any person or the Tribunal carrying out a pre-hearing review under the rules to make, in circumstances specified in the rules, an order requiring a party to the proceedings, if he or she wishes to continue to participate in the proceedings, to pay a deposit of an amount not exceeding such sum as may be prescribed by the rules;
 - (b) for prescribing —
 - (i) the manner in which the amount of any such deposit is to be determined in any particular case;
 - (ii) the consequences of non-payment of any such deposit; and
 - (iii) the circumstances in which any such deposit, or any part of it, may be refunded to the party who paid it, or be paid over to another party to the proceedings.

(3) In relation to a complaint under section 69 (detriment: protected industrial action) or section 133 (unfair dismissal: complaints to tribunal) that a dismissal was unfair by virtue of section 124 (dismissal: protected industrial action) or section 130 (dismissal: selective dismissal or re-engagement) —

- (a) the rules may make provision about the withdrawal and adjournment of applications (including provision for the extension of time within which to make a fresh application, an application having once been withdrawn in specified circumstances), and
- (b) the rules may make provision requiring a pre-hearing review to be carried out in specified circumstances.

National security

3. (1) If on a complaint made under section 29 (inducements: trade union membership, etc.), 30 (inducements: collective bargaining), 67 (detriment: trade union membership or activities) or 115 (unfair dismissal: health and safety) of this Act or under section 28 of the *Employment (Sex Discrimination) Act 2000* (acts safeguarding national security), it is shown that the action complained of was taken for the purpose of safeguarding national security the Tribunal shall dismiss the complaint.

(2) The rules may make provision about the composition of the Tribunal (including provision disapplying or modifying Part I paragraph 1 of this Schedule) for the purposes of proceedings in relation to which a direction is given under subparagraph (3).

(3) A direction may be given under this sub-paragraph by the Chief Minister if —

- (a) it relates to particular Crown employment proceedings, and
- (b) the Chief Minister considers it expedient in the interests of national security.

(4) The rules may make provision enabling the Chief Minister, if he or she considers it expedient in the interests of national security —

- (a) to direct the Tribunal to sit in private for all or part of particular Crown employment proceedings;
- (b) to direct the Tribunal to exclude the applicant from all or part of particular Crown employment proceedings;
- (c) to direct the Tribunal to exclude the applicant's representatives from all or part of particular Crown employment proceedings;
- (d) to direct the Tribunal to take steps to conceal the identity of a particular witness in particular Crown employment proceedings;
- (e) to direct the Tribunal to take steps to keep secret all or part of the reasons for its decision in particular Crown employment proceedings.

(5) The rules may enable the Tribunal, if it considers it expedient in the interests of national security, to do in relation to particular proceedings before it anything of a kind which the Tribunal can be required to do by direction under subparagraphs (4)(a) to (e) in relation to particular Crown employment proceedings.

(6) In relation to cases where a person has been excluded by virtue of subparagraphs (4)(b) or (c) or (5), the rules may make provision —

- (a) for the appointment by the Attorney General of a person to represent the interests of the applicant;
- (b) about the publication and registration of reasons for the Tribunal's decision;
- (c) permitting an excluded person to make a statement to the Tribunal before the commencement of the proceedings, or the part of the proceedings, from which he or she is excluded.

(7) Proceedings are Crown employment proceedings for the purposes of this paragraph if the employment to which the complaint relates —

- (a) is Crown employment, or
- (b) is connected with the performance of functions on behalf of the Crown.

Confidential information

4. (1) The rules may enable the Tribunal to sit in private for the purpose of hearing evidence from any person which in the opinion of the Tribunal is likely to consist of —

- (a) information which he or she could not disclose without contravening a prohibition imposed by or by virtue of any enactment,
- (b) information which has been communicated to him or her in confidence or which he or she has otherwise obtained in consequence of the confidence reposed in him or her by another person, or
- (c) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in the definition of “trade dispute” in section 173 (general interpretation (matters to which trade disputes relate) cause substantial injury to any undertaking of that person or in which that person works.

Restriction of publicity in cases involving national security

5. (1) This paragraph applies where the Tribunal has been directed under paragraph 3(4) or has determined under paragraph 3(5) —

- (a) to take steps to conceal the identity of a particular witness, or
- (b) to take steps to keep secret all or part of the reasons for its decision.

(2) It is an offence to publish —

- (a) anything likely to lead to the identification of the witness, or
- (b) the reasons for the Tribunal’s decision or the part of its reasons which it has been directed or has itself determined to keep secret.

(3) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding £5,000.

(4) Where a person is charged with an offence under this paragraph it is a defence to prove that at the time of the alleged offence he or she was not aware, and neither suspected nor had reason to suspect, that the publication in question was of, or included, the matter in question.

(5) Where an offence under this paragraph 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 —

- (a) a director, manager, secretary or other similar officer of the body corporate, or
- (b) a person purporting to act in any such capacity,

that person as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) Where the affairs of a body corporate are managed by its members, subparagraph (5)(a) shall apply in relation to the acts and defaults of a member in

connection with his or her functions of management as if he or she were a director of the body corporate.

(7) A reference in this paragraph to publication includes a reference to inclusion in a programme which is included in a programme service, within the meaning of the *Broadcasting Act 1993*.

Restrictions on disclosure of information

P1996/18/202

6. (1) Where in the opinion of the Chief Minister the disclosure of any information would be contrary to the interests of national security —

- (a) nothing in any of the provisions to which this paragraph applies requires any person to disclose the information, and
- (b) no person shall disclose the information in any court or tribunal relating to any of those provisions.

(2) This paragraph applies to —

- (a) Part II (rights during employment), so far as it relates to employment particulars,
- (b) in Part III (rights arising in course of employment), sections 43 (time off for ante-natal care) and 44 (complaints to tribunal),
- (c) in Part V (detriment), sections 61 (health and safety), 62 (annual leave and other working time cases), 65 (leave for family and domestic reasons), and sections 71 (complaints to tribunal) and 72 (remedies) so far as relating to those sections,
- (d) in Part VI (suspension from work on maternity grounds), sections 74 to 76, (rights in respect of suspension from work on maternity grounds) and sections 77 and 78 so far as relating to those sections,
- (e) Part VII (leave for family and domestic reasons),
- (f) in Part IX (termination of employment), section 110 (right to written statement of reasons for dismissal),
- (g) Part X (unfair dismissal) so far as relating to a dismissal which is treated as unfair —
 - (i) by section 114 (leave for family reasons) or 115 (health and safety);
 - (ii) by section 128(1) (dismissal on ground of redundancy) by reason of the application of subsection (2) (health and safety);
- (h) Part XIII (miscellaneous and supplemental) and Schedule 5 (continuous employment) (so far as relating to any of the provisions in paragraphs (a) to (g)).

Exclusion of Arbitration Act 1976

7. The *Arbitration Act 1976* does not apply to any proceedings before the Tribunal.

Conciliation

8. (1) This paragraph applies to any proceedings before the Tribunal on a complaint to which section 157(conciliation) applies.

(2) Where an industrial relations officer, in accordance with the rules, certifies to the Tribunal that he or she has (whether before or after the commencement of the proceedings) brought about a settlement of the question to which the proceedings relate, the proceedings shall be stayed, and may not continue without the leave of the Tribunal.

- (3) The rules shall include provision —
- (a) for requiring a copy of any such complaint, and a copy of any other document relating thereto which is prescribed by the rules, to be sent to an industrial relations officer;
 - (b) for securing that the parties to the proceedings are notified that the services of an industrial relations officer are available to them; and
 - (c) for postponing the hearing and any pre-hearing review for such time as may be determined in accordance with the rules for the purpose of giving an opportunity for the complaint to be settled by way of conciliation and withdrawn.

Right of appearance

9. Any person may appear before the Tribunal in person or be represented by an advocate or by a representative of a trade union or an employers' association or by any other person whom he or she desires to represent him or her.

Expenses

10. (1) The Department may, with the approval of the Treasury, make arrangements for the payment of sums in respect of loss of earnings and travelling expenses to persons who are parties to or witnesses in proceedings before the Tribunal.

(2) Arrangements under sub-paragraph (1) may be limited to such class or description of proceedings, and to persons falling within that sub-paragraph who satisfy such conditions, as appear to the Department to be appropriate.

Interest on sums awarded

11. (1) The Department may by order provide that sums payable in pursuance of decisions of the Tribunal shall carry interest at such rate and between such times as may be prescribed by the order.

(2) Any interest due by virtue of such an order shall be recoverable as a sum payable in pursuance of the decision.

- (3) The power conferred by sub-paragraph (1) includes power —
- (a) to specify cases or circumstances in which interest shall not be payable;
 - (b) to provide that interest shall be payable only on sums exceeding a specified amount or falling between specified amounts;
 - (c) to make provision for the manner in which and the periods by reference to which interest is to be calculated and paid;
 - (d) to provide that any enactment shall or shall not apply in relation to interest payable by virtue of an order under sub-paragraph (1) or shall apply to it with such modifications as may be specified in the order;
 - (e) to make provision for cases where sums are payable in pursuance of decisions or awards made on appeal from the Tribunal;
 - (f) to make such incidental or supplemental provision as the Department considers necessary.

(4) Without prejudice to the generality of sub-paragraph (3), an order under sub-paragraph (1) may provide that the rate of interest shall be the rate from time to time specified or prescribed under section 9 of the *Administration of Justice Act 1981* as that enactment has effect from time to time.

SCHEDULE 4

TREATMENT OF SPECIAL CATEGORIES OF WORKER

Section 163(2)

Work outside the Island

1. Except for the provisions of Part XI (insolvency and cessation of business of employer), the provisions of this Act do not apply where the worker is engaged in work wholly or mainly outside the Island unless the worker is a person to whom paragraph 2 applies.

Seafarers

2. (1) This paragraph applies to —
- (a) a person employed as a seafarer on a Manx ship (including a person ordinarily employed as a seafarer who is employed in or about such a vessel in port by the owner or charterer of the ship to do work of a kind ordinarily done by a seafarer on such a ship while it is in port);

- (b) a person employed as a skipper of or a seafarer on a Manx fishing vessel.
- (2) Except as provided by sub-paragraphs (3) to (7), Parts I to XI do not apply to a person described in sub-paragraph (1)(a) or (b).
- (3) The provisions mentioned in sub-paragraph (4) apply to a person described in sub-paragraph (1)(a) if and only if –
- (a) the vessel is a Manx ship whose entry in the register specifies a port in the Isle of Man as the port to which the Manx ship is to be treated as belonging; and
 - (b) under his or her contract of employment the person employed does not work wholly outside the Island; and
 - (c) the person employed is ordinarily resident in the Island.
- (4) The provisions are –
- Part I (discrimination at recruitment on trade union grounds);
 - Part II (rights during employment) in so far as it applies to itemised pay statements;
 - Part III (rights arising in course of employment) except sections 39 to 42;
 - Part IV (protected disclosures);
 - Part V (detriment) except section 68;
 - Part VI (suspension from work on maternity grounds);
 - Part VII (leave for family and domestic reasons);
 - Part IX section 110 (right to written statement of reasons for dismissal);
 - Part X (unfair dismissal) except sections 123 and 128(10); and
 - Part XI (insolvency and cessation of business of employer).
- (5) In addition to those rights set out in sub-paragraph (4), Part II (rights during employment) in so far as it applies to written particulars of terms of employment and sections 106 to 107 (rights of employer and employee to a minimum period of notice etc) apply to a person described in sub-paragraph (1)(a), meeting the conditions in sub-paragraph (3) who is a master of a Manx ship.
- (6) The provisions set out in sub-paragraphs (4) and (5) apply to a person described in sub-paragraph (1)(b) who is ordinarily resident in the Island, unless he or she is remunerated only by a share in the profits or gross earnings of the vessel.
- (7) Sections 61 (detriment: health and safety) and 64 (detriment: protected disclosures) apply to a person described in sub-paragraph (1)(b) who is ordinarily resident in the Island, and who is remunerated only by a share in the profits or gross earnings of the vessel.
- (8) In this paragraph –

“Manx fishing vessel” means a fishing vessel registered in the Island under Part III of the *Merchant Shipping Registration Act 1991*;

“Manx ship” means a ship registered in the Island under Part I of the *Merchant Shipping Registration Act 1991*; and

“seafarer” means any person, including the master, who is employed or engaged in any capacity on board a ship, on the business of the ship, but does not include persons who are training in a sail training vessel or persons who are not engaged in the navigation of, or have no emergency safety responsibilities on such a vessel.

Crown employment

3. The following provisions —

Section 106 (minimum period of notice);

Section 107 (rights of employee in period of notice); and

Part XI (insolvency and cessation of business of employer);

do not apply to a person in Crown employment, other than a person in police service (within the meaning of paragraph 4).

Police service

4. (1) The following provisions —

Part I (discrimination at recruitment on trade union grounds);

Part II sections 14 to 16 (right to itemised pay statement) and 17 to 19 (references to tribunal, etc. as they apply to that right);

Part III sections 29 to 34 (inducements), 35 to 48 (time off work);

Part V (detriment) sections 62 (annual leave and other working time cases), 63 (trustees of occupational pension schemes) and 65 to 70 (detriment: other grounds);

Part VI (suspension from work on maternity grounds);

Part VII (leave for family and domestic reasons);

Part VIII (disciplinary and grievance hearings);

Part IX section 110 (written statement of reasons for dismissal);

Part X (unfair dismissal) (except such of those provisions which relate to the right not to be unfairly dismissed in a case where dismissal is unfair by virtue of section 115 (health and safety cases), 118 (protected disclosures) or 121 (the minimum wage));

do not apply in relation to employment under a contract of employment in police service or to persons engaged in such employment.

(2) In this paragraph “police service” means service —

- (a) as a member of the Isle of Man Constabulary; or
- (b) in any other capacity by virtue of which a person has the powers or privileges of a constable.

Short term employment

5. Sections 8 to 13 do not apply to an employee if his or her employment continues for less than 4 weeks.

SCHEDULE 5

COMPUTATION OF PERIOD OF EMPLOYMENT

Section 169

General rules

P1996/18/210

1. (1) References in any provision of this Act to a period of continuous employment are, (except where provision is expressly made to the contrary) to a period computed in accordance with this Schedule and in any such provision which refers to a period of continuous employment expressed in months or years, a month means a calendar month and a year means a year of 12 calendar months.

(2) In computing an employee's period of continuous employment any question arising as to —

- (a) whether the employee's employment is of a kind counting towards a period of continuous employment, or
- (b) whether periods consecutive or otherwise) are to be treated as forming a single period of continuous employment,

shall be determined week by week but where it is necessary to compute the length of an employee's period of employment it shall be computed in months and years of 12 months in accordance with the following rules.

(3) Subject to the following provisions of this Schedule, an employee's period of continuous employment for the purposes of any provision of the *Redundancy Payments Act 1990* and this Act begins with the day on which he or she starts work and ends with the day by reference to which the length of the employee's period of continuous employment falls to be ascertained for the purposes of the provision in question.¹

(4) If any employee's period of continuous employment includes one or more periods which, by virtue of any provision of this Schedule, do not count in computing the length of the period but do not break continuity (in this Schedule referred to as an "intervening period"), in each of paragraphs 6, 7 and 13 the beginning of that period shall be treated as postponed by the number of days falling within that

¹ P1996/18/211

intervening period or, as the case may be, by the aggregate number of days falling within those intervening periods.

2. (1) Except so far as otherwise provided by the following provisions of this Schedule, a week which does not count under paragraphs 3 to 5 breaks the continuity of the period of employment.²

(2) A person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.

Employment governed by contract

P1996/18/212(1)

3. Any week during the whole or part of which the employee's relations with the employer are governed by a contract of employment counts in computing a period of employment.

Periods in which there is no contract of employment

P1996/18/212(3)

4. (1) Subject to sub-paragraph (2), any week (not falling within paragraph 3) during which the employee is, for the whole or part of the week —

- (a) incapable of work in consequence of sickness or injury, or
- (b) absent from work on account of a temporary cessation of work, or
- (c) absent from work in circumstances such that, by arrangement or custom, he or she is regarded as continuing in the employment of his or her employer for all or any purposes,

counts in computing the employee's period of employment.

(2) Not more than 26 weeks count under sub-paragraph (1)(a) between any periods falling under paragraph 3.³

Termination of contract on inadequate notice, etc.

5. In ascertaining, for the purposes of section 132(1)(a) (qualifying period and upper age limit) and section 142(2) (calculation of basic award), the period for which an employee has been continuously employed, where by virtue of section 112(5) or (6) (dismissal on inadequate notice, etc.), as the case may be, a date is treated as the effective date of termination which is later than the effective date of termination as defined by section 112(4), the period of the interval between those two dates shall count as a period of employment notwithstanding that it does not otherwise count under this Schedule.

² P1996/18/210(5)

³ P1996/18/212(4)

Industrial disputes

P1996/18/216

6. (1) A week does not count under paragraph 3 or 4 if in that week, or any part of that week, the employee takes part in a strike.

(2) The continuity of an employee's period of employment is not broken by a week which does not count under this Schedule, and which begins after 30 September 1982 if in that week, or any part of that week, the employee takes part in a strike.

(3) Sub-paragraph (2) applies whether or not the week would, apart from sub-paragraph (1), have counted under this Schedule.

(4) The continuity of the period of employment is not broken by a week which begins after 30 September 1982 and which does not count under this Schedule, if in that week, or any part of that week, the employee is absent from work because of a lock-out by the employer.

(5) For the purposes of paragraph 1(4) (treatment of intervening period), the number of days between the last working day before the strike or lock-out and the day on which work was resumed do not count in computing the employee's period of employment but do not break continuity and that period shall be treated as postponed by the number of days falling within the intervening period or, as the case may be, by the aggregate number of days falling within those intervening periods.

(6) For the purposes of sub-paragraph (5) "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.

Reinstatement after service with the armed forces, etc.

7. (1) If a person who is entitled to apply to his or her former employer under the Reserve Forces (Safeguard of Employment) Act 1985 (as that Act of Parliament has effect in the Island), enters the employment of that employer not later than the end of the 6 month period mentioned in section 1(4)(b) of that Act, his or her period of service in the armed forces of the Crown in the circumstances specified in section 1(1) of that Act does not breach his or her continuity of employment.

(2) For the purposes of paragraph 1(4) (treatment of intervening period), the number of days between the employee's last day of the previous period of employment with the employer (or, if there was more than one such period, the last of them) and the first day of the period of employment beginning in the 6 month period do not count in computing the employee's period of employment but do not break continuity

and that period shall be treated as postponed by the number of days falling within the intervening period or, as the case may be, by the aggregate of the number of days falling within those intervening periods shall constitute the intervening period.

Change of employer

8. (1) Subject to this paragraph and paragraphs 9 and 10, the foregoing provisions of this Schedule relate only to employment by the one employer.

(2) If a trade or business or an undertaking (whether or not it be an undertaking established by or under any enactment) is transferred from one person to another, the period of employment of an employee in the trade or business or undertaking at the time of the transfer counts as a period of employment with the transferee, and the transfer does not break the continuity of the period of employment.

(3) If by or under any enactment, whether passed before or after this Act, a contract of employment between any body corporate and an employee is modified and some other body corporate is substituted as the employer, the employee's period of employment at the time when the modification takes effect counts as a period of employment with the second-mentioned body corporate, and the change of employer shall not break the continuity of the period of employment.

(4) If on the death of an employer the employee is taken into the employment of the personal representatives or trustees of the deceased, the employee's period of employment at the time of the death counts as a period of employment with the employer's personal representatives or trustees, and the death shall not break the continuity of the period of employment.

(5) If there is a change in the partners, personal representatives or trustees who employ any person, the employee's period of employment at the time of the change counts as a period of employment with the partners, personal representatives or trustees after the change, and the change does not break the continuity of the period of employment.

9. If an employee of an employer is taken into the employment of another employer who, at the time when the employee enters his or her employment is an associated employer of the first-mentioned employer, the employee's period of employment at that time counts as a period of employment with the second-mentioned employer and the change of employer shall not break the continuity of the period of employment.

10. (1) If an employee of one of the employers described in sub-paragraph (2) is taken into the employment of another of those employers, his or her period of employment at the time of the change of employer counts as a period of employment with the second employer and the change shall not break the continuity of the period of employment.

(2) The employers referred to in sub-paragraph (1) are —

(a) the Department of Education and Children;⁵¹

- (b) any body in whom functions under the *Education Act 2001* are vested by an order under paragraph 2 of Schedule 7 to that Act; and
- (c) the managers and governors of the schools maintained by that Department, or any such body.

Crown employment

11. (1) Subject to the following, the provisions of this Schedule shall have effect (for the purpose of computing an employee's period of employment, but not for any other purpose) in relation to Crown employment and to persons in Crown employment as they have effect in relation to other employment and to other employees, and accordingly, except where the context otherwise requires, references to an employer shall be construed as including a reference to the Crown.

(2) The reference in paragraph 8(2) to an undertaking includes a reference to any function of a Department, or Statutory Board or any other officer or body performing functions on behalf of the Crown.

Special provision for redundancy payments

P1996/18/214

12. (1) This paragraph applies where a period of continuous employment has to be determined in relation to an employee for the purposes of the application of section 1 of the *Redundancy Payments Act 1990* (general provisions as to rights to redundancy payments) or Schedule 1 of that Act (calculation of redundancy payments).

- (2) The continuity of a period of employment is broken where —
 - (a) a redundancy payment has previously been paid to the employee (whether in respect of dismissal or in respect of lay-off or short-time, and
 - (b) the contract of employment under which the employee was employed was renewed (whether by the same or another employer) or the employee was re-engaged under a new contract of employment (whether by the same or another employer).
- (3) The continuity of a period of employment is also broken where —
 - (a) a payment has been made to the employee (whether in respect of the termination of his or her employment or lay-off or short-time) in accordance with a scheme under section 1 of the *Superannuation Act 1984* or arrangements falling within section 29(3) of the *Redundancy Payments Act 1990* (payments equivalent to redundancy rebates in respect of civil servants, etc.), and
 - (b) the employee commenced new, or renewed, employment.

(4) The date on which the person's continuity of employment is broken by virtue of this paragraph —

- (a) if the employment was under a contract of employment, is the date which was the relevant date in relation to the payment mentioned in sub-paragraph (2)(a) or (3)(a), and
- (b) if the employment was otherwise than under a contract of employment, is the date which would have been the relevant date in relation to the payment mentioned in sub-paragraph (2)(a) or (3)(a) had the employment been under a contract of employment.

(5) For the purposes of this paragraph a redundancy payment shall be treated as having been paid if –

- (a) the whole of the payment has been paid to the employee by the employer,
- (b) the Tribunal has determined liability and found that the employer must pay part (but not all) of the redundancy payment and the employer has paid that part, or
- (c) the DSC has paid a sum to the employee in respect of the redundancy payment under section 25 of the *Redundancy Payments Act 1990* (payments out of fund to employees).⁵²

(6) In this paragraph “relevant date” has the meaning given to it in section 7(1) of the *Redundancy Payments Act 1990*.

Employment abroad etc

P1996/18/215; 1991/19/Sch 7 para 1(2)

13. (1) This Schedule applies to a period of employment –
- (a) (subject to the following provisions of this paragraph) even where during the period the employee was engaged in work wholly or mainly outside the Island, and
 - (b) even where the employee was excluded by or under this Act from any right conferred by this Act.

(2) For the purposes of section 1(1) of the *Redundancy Payments Act 1990* (general provisions as to rights to redundancy payments) and Schedule 1 of that Act (calculation of redundancy payments), a week of employment does not count in computing a period of employment if the employee –

- (a) was employed outside the Island during the whole or part of the week, and
- (b) was not during that week an employed earner for the purposes of the Social Security Contributions and Benefits Act 1992 (as that Act of Parliament has effect in the Island), in respect of whom a secondary Class 1 contribution was payable under that Act (whether or not the contribution was in fact paid).

(3) Where by virtue of sub-paragraph (2) a week of employment does not count in computing a period of employment, the continuity of the period is not broken by reason only that the week does not count in computing the period; and the number

of days which, for the purposes of paragraph 1(4) (period of continuous employment), fall within the intervening period is 7 for each week within this sub-paragraph.

- (4) Any question arising under sub-paragraph (2) whether —
- (a) a person was an employed earner for the purposes of the Social Security Contributions and Benefits Act 1992, or
 - (b) if so, whether a secondary Class 1 contribution was payable in respect of him or her under that Act,

shall be determined by a contributions decision-maker.

(5) Chapter II of Part 1 of the Social Security Act 1998 (decisions and appeals) (as that Act of Parliament has effect in the Island) shall apply in relation to the determination of any issue by a contributions decision-maker under subparagraph (4) as if it were a decision falling within section 7A(1) of that Act (as it has effect in the Island).

- (6) Sub-paragraph (2) does not apply in relation to a person who is —
- (a) employed as a seafarer in a Manx ship (as such terms are defined in paragraph 2(8) of Schedule 4), and
 - (b) is ordinarily resident in the Island.

(7) For the purposes of sub-paragraphs (4) and (5), a “contributions decision-maker” means a contributions decision-maker appointed by the DSC under section 1A of the Social Security Act 1998 (as that Act of Parliament has effect in the Island).⁵³

Continuity of employment where employee re-employed

14. (1) This paragraph applies to any action taken in relation to the dismissal of an employee which consists of —

- (a) the presentation by the employee of a relevant complaint of dismissal, or
- (b) any action taken by an industrial relations officer under section 157 conciliation.

(2) In sub-paragraph (1) “relevant complaint of dismissal” means —

- (a) a complaint under section 133 of this Act,
- (b) a complaint under section 36 of the *Employment (Sex Discrimination) Act 2000*, or
- (c) a complaint under section 9 of the *Shops Act 2000* (as it applies Part X of this Act).

(3) If in consequence of any action to which this paragraph applies a dismissed employee is reinstated or re-engaged by his or her employer or by a successor or associated employer of the employer —

- (a) the continuity of that employee's period of employment shall be preserved, and
- (b) the period beginning with the date on which the dismissal takes effect and ending with the date of reinstatement or re-engagement shall count in the computation of the employee's period of continuous employment.

Exclusion of operation of paragraph 12 where redundancy or equivalent payment repaid

15. Paragraph 12 (continuity broken where employee re-employed after the making of a redundancy payment or equivalent payment) shall not apply where —

- (i) in consequence of any action to which paragraph 14 applies a dismissed employee is reinstated or re-engaged by his or her employer or by a successor or associated employer of the employer,
- (ii) the terms upon which he or she is so reinstated or re-engaged include provision for him or her to repay the amount of a redundancy payment or an equivalent payment paid in respect of the relevant dismissal, and
- (iii) that provision is complied with.

For the purposes of this paragraph the cases in which a redundancy payment shall be treated as having been paid are the cases mentioned in paragraph 12(5).

SCHEDULE 6

CALCULATION OF NORMAL WORKING HOURS AND A WEEK'S PAY

Section 170

Introductory

P1996/18/220

1. The amount of a week's pay of an employee shall be calculated for the purposes of this Act in accordance with this Schedule.

Normal working hours where there is entitlement to overtime

2. For the purposes of this Schedule the cases where there are normal working hours include cases where the employee is entitled to overtime pay when employed for more than a fixed number of hours in a week or other period, and, subject to paragraph 3, in those cases that fixed number of hours shall be the normal working hours.

3. If in such a case —

- (a) the contract of employment fixes the number, or the minimum number, of hours of employment in the said week or other period (whether or not it also provides for the reduction of that number or minimum in certain circumstances), and
- (b) that number or minimum number of hours exceeds the number of hours without overtime,

that number or minimum number of hours (and not the number of hours without overtime) shall be the normal working hours.

Employments with normal working hours

P1996/18/221

4. (1) This paragraph and paragraphs 5 and 6 apply where there are normal working hours for the employee when employed under the contract of employment in force on the calculation date.

(2) Subject to paragraph 5, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does not vary with the amount of work done in the period, the amount of a week's pay is the amount which is payable by the employer under the contract of employment in force on the calculation date if the employee works throughout his or her normal working hours in a week.

(3) Subject to paragraph 5, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does vary with the amount of work done in the period, the amount of a week's pay is the amount of remuneration for the number of normal working hours in a week calculated at the average hourly rate of remuneration payable by the employer to the employee in respect of the period of 12 weeks ending —

- (a) where the calculation date is the last day of a week, with that week, and
- (b) otherwise, with the last complete week before the calculation date.

(4) In this paragraph references to remuneration varying with the amount of work done includes remuneration which may include any commission or similar payment which varies in amount.

(5) This paragraph is subject to paragraphs 10 and 11.

Remuneration varying according to time of work

P1996/18/222

5. (1) This paragraph applies if the employee is required under the contract of employment in force on the calculation date to work during normal working hours on days of the week, or at times of the day, which differ from week to week or over a longer period so that the remuneration payable for, or apportionable to, any week varies according to the incidence of those days or times.

(2) The amount of a week's pay is the amount of remuneration for the average number of weekly normal working hours at the average hourly rate of remuneration.

(3) For the purposes of sub-paragraph (2) —

- (a) the average number of weekly hours is calculated by dividing by 12 the total number of the employee's normal working hours during the relevant period of 12 weeks, and
- (b) the average hourly rate of remuneration is the average hourly rate of remuneration payable by the employer to the employee in respect of the relevant period of 12 weeks.

(4) In sub-paragraph (3) "the relevant period of 12 weeks" means the period of 12 weeks ending —

- (a) where the calculation date is the last day of a week, with that week, and
- (b) otherwise, with the last complete week before the calculation date.

(5) This paragraph is subject to paragraphs 10 and 11.

Supplementary

P1996/18/223

6. (1) For the purposes of paragraphs 4 and 5, in arriving at the average hourly rate of remuneration, only —

- (a) the hours when the employee was working, and
- (b) the remuneration payable for, or apportionable to, those hours,

shall be brought in.

(2) If for any of the 12 weeks mentioned in paragraphs 4 and 5 no remuneration within sub-paragraph (1)(b) was payable by the employer to the employee, account shall be taken of remuneration in earlier weeks so as to bring up to 12 the number of weeks of which account is taken.

(3) Where —

- (a) in arriving at the average hourly rate of remuneration, account has to be taken of remuneration payable for, or apportionable to, work done in hours other than normal working hours, and
- (b) the amount of that remuneration was greater than it would have been if the work had been done in normal working hours (or, in a case within paragraph 3, in normal working hours falling within the number of hours without overtime),

account shall be taken of that remuneration as if the work had been done in such hours and the amount of that remuneration had been reduced accordingly.

Employments with no normal working hours

P1996/18/224

7. (1) This paragraph applies where there are no normal working hours for the employee when employed under the contract of employment in force on the calculation date.

(2) The amount of a week's pay is the amount of the employee's average weekly remuneration in the period of 12 weeks ending —

(a) where the calculation date is the last day of a week, with that week, and

(b) otherwise, with the last complete week before the calculation date.

(3) In arriving at the average weekly remuneration no account shall be taken of a week in which no remuneration was payable by the employer to the employee and remuneration in earlier weeks shall be brought in so as to bring up to 12 the number of weeks of which account is taken.

(4) This paragraph is subject to paragraphs 10 and 11.

The calculation date for rights during employment

P1996/18/225

8. (1) Where the calculation is for the purposes of section 41 or 42 (time off to look for work), the calculation date is the day on which the employer's notice was given.

(2) Where the calculation is for the purposes of section 43 (time off for ante-natal care), the calculation date is the day of the appointment.

(3) Where the calculation is for the purposes of section 77 (suspension on maternity grounds) —

(a) in the case of an employee suspended on medical grounds, the calculation date is the day before that on which the suspension begins, and

(b) in the case of an employee suspended on maternity grounds, the calculation date is —

(i) where the day before that on which the suspension begins falls during a period of ordinary or additional maternity leave, the day before the beginning of that period,

(ii) otherwise, the day before that on which the suspension begins.

(4) Where the calculation is for the purposes of section 102 (remedies: flexible working), the calculation date is the day on which the application under section 99 (statutory right to request flexible working) was made.

P1996/18/226 *The calculation date for rights on termination*

9. (1) Where the calculation is for the purposes of paragraphs 2 and 3 of Schedule 2 (employment with and without normal working hours), the calculation date is the day immediately preceding the first day of the period of notice required by section 106(1) or (2) (rights to notice).

(2) Where the calculation is for the purposes of section 110(8) (written statement of reasons for dismissal) or 139 (enforcement of order and compensation: unfair dismissal), the calculation date is —

- (a) if the dismissal was with notice, the date on which the employer's notice was given, and
- (b) otherwise, the effective date of termination.

(3) Where the calculation is for the purposes of section 142 (unfair dismissal: basic award), the calculation date is —

- (a) if by virtue of subsection (5) or (6) of section 112 (dismissal on inadequate notice, etc.) a date later than the effective date of termination as defined in subsection (4) of that section is to be treated for certain purposes as the effective date of termination, the effective date of termination as so defined, and
- (b) otherwise, the date specified in sub-paragraph (6).

(4) Where the calculation is for the purposes of section 8(2) of the *Redundancy Payments Act 1990* (lay off and short time), the calculation date is the day immediately preceding the first of the 4, or 6, weeks referred to in section 9(1) (rights to redundancy payments by reason of lay off or short time) of that Act.

(5) Where the calculation is for the purposes of Schedule 1 of that Act (calculation of redundancy payments), the calculation date is —

- (a) if by virtue of section 7(3) of that Act (the relevant date where inadequate notice) a date is to be treated for certain purposes as the relevant date which is later than the relevant date as defined by the previous provisions of that section, the relevant date as so defined, and
- (b) otherwise, the date specified in sub-paragraph (6).

(6) The date referred to in sub-paragraphs (3)(b) and (5)(b) is the date on which notice would have been given had —

- (a) the contract been terminable by notice and been terminated by the employer giving such notice as is required by section 106 (minimum period of notice) to terminate the contract, and
- (b) the notice expired on the effective date of termination, or the relevant date,

(whether or not those conditions were in fact fulfilled).

P1996/18/227 *Maximum amount of a week's pay*

10. For the purpose of —

- (a) an award under section 17(8)(b)(ii) (failure to issue written particulars),
- (b) an award under section 18(2)(b) (tribunal's duties in cases other than section 17),
- (c) an award under section 25(4)(c) (deductions from wages etc: complaints to tribunal),
- (d) an award under section 42(4) (time off to look for work: complaints),
- (e) an award of compensation under section 102 (flexible working),
- (f) an award of compensation under section 104 (right to be accompanied: complaints to tribunal), or
- (g) an award under section 138(3)(b) (additional award of compensation for unfair dismissal), or
- (h) an award under section 141(2) (basic award of compensation for unfair dismissal),
- (i) a redundancy payment under section 1 of the *Redundancy Payments Act 1990* (general provisions as to right to redundancy payment),

the amount of a week's pay shall not exceed £420.00 or such sum as may be prescribed by order made by the Department.⁵⁴

P1996/18/228 *New employments and other special cases*

11. (1) In any case in which the employee has not been employed for a sufficient period to enable a calculation to be made under the preceding provisions of this Schedule, the amount of a week's pay is the amount which fairly represents a week's pay.

- (2) In determining that amount the Tribunal —
 - (a) shall apply as nearly as may be such of the preceding provisions of this Schedule as it considers appropriate, and
 - (b) may have regard to such of the considerations specified in subparagraph (3) as it thinks fit.
- (3) The considerations referred to in sub-paragraph (2)(b) are —
 - (a) any remuneration received by the employee in respect of the employment in question,
 - (b) the amount offered to the employee as remuneration in respect of the employment in question,

- (c) the remuneration received by other persons engaged in relevant comparable employment with the same employer, and
- (d) the remuneration received by other persons engaged in relevant comparable employment with other employers.

(4) The Department may by regulations provide that in cases prescribed by the regulations the amount of a week's pay shall be calculated in such manner as may be so prescribed.

Supplementary

P1996/18/229

12. (1) In arriving at —
- (a) an average hourly rate of remuneration, or
 - (b) average weekly remuneration,

under this Schedule, account shall be taken of work for a former employer within the period for which the average is to be taken if, by virtue of Schedule 5 computation of period of employment), a period of employment with the former employer counts as part of the employee's continuous period of employment.

(2) Where under this Schedule account is to be taken of remuneration or other payments for a period which does not coincide with the periods for which the remuneration or other payments are calculated, the remuneration or other payments shall be apportioned in such manner as may be just.

SCHEDULE 7

TRANSITIONAL PROVISIONS AND SAVINGS

Section 176(1)

General transitionals and savings

1. The substitution of this Act for the provisions repealed or revoked by this Act does not affect the continuity of the law.

2. (1) Anything done, or having effect as done, (including the making of any orders or regulations) under or for the purposes of any provision repealed or revoked by this Act has effect as if done under or for the purposes of any corresponding provision of this Act.

(2) Sub-paragraph (1) does not apply to the making of any orders or regulations to the extent that they are reproduced in this Act.

3. Any reference (express or implied) in this Act or any other enactment, or in any instrument or document, to a provision of this Act is (so far as the context permits) to be read as (according to the context) being or including in relation to times,

circumstances and purposes before the commencement of this Act a reference to the corresponding provision repealed or revoked by this Act.

4. (1) Any reference (express or implied) in any enactment, or in any instrument or document, to a provision repealed or revoked by this Act is (so far as the context permits) to be read as (according to the context) being or including in relation to times, circumstances and purposes after the commencement of this Act a reference to the corresponding provision of this Act.

(2) In particular, where a power conferred by an Act is expressed to be exercisable in relation to enactments contained in Acts passed before or in the same session as the Act conferring the power, the power is also exercisable in relation to provisions of this Act which reproduce such enactments.

5. Paragraphs 1 to 4 have effect in place of section 16 of the *Interpretation Act 1976* (but are without prejudice to any other provision of that Act).

Preservation of old transitionals and savings

6. (1) The repeal by this Act of an enactment previously repealed subject to savings (whether or not in the repealing enactment) does not affect the continued operation of those savings.

(2) The repeal by this Act of a saving made on the previous repeal of an enactment does not affect the operation of the saving in so far as it remains capable of having effect.

(3) Where the purpose of an enactment repealed by this Act was to secure that the substitution of the provisions of the Act containing that enactment for provisions repealed by that Act did not affect the continuity of the law, the enactment repealed by this Act continues to have effect in so far as it is capable of doing so.

Application to existing contracts⁵⁵

7. Subject to the following provisions of this Schedule, any provision of this Act applies in relation to a contract of employment entered into before as well as after the commencement of that provision.

Rights during employment

8. Section 8(3)(g), (h), (i) and (j) and (5)(a) only apply —

- (a) in relation to a contract of employment entered into after the commencement of those provisions;
- (b) upon any change in the terms of employment notified to the employee under section 10 after the commencement of those provisions; and

- (c) after the commencement of those provisions, upon request in writing made by the employee to the employer to provide the particulars required by those provisions within a reasonable time.

Unfair dismissal

9. Part X does not apply, in relation to the dismissal of an employee, and Part V of the *Employment Act 1991* continues to apply, where the effective date of termination fell before the commencement of Part X.

Insolvency and cessation of business of employer

10. Part XI does not apply and Part VI of the *Employment Act 1991* continues to apply where the employee's employment terminated before the commencement of Part XI.

Periods of employment

11. (1) Subject to sub-paragraph (2), section 169 (computation of period of employment) and Schedule 5 (computation of period of employment), so far as they relate to the computation of the length of a period of continuous employment, apply to periods before the commencement of those provisions as they apply to later periods.

(2) Where the date by reference to which the length of an employee's period of continuous employment falls to be ascertained before such commencement, it shall be ascertained in accordance with the former provisions.

(3) In this paragraph "the former provisions" means section 85 and Schedule 7 to the *Employment Act 1991* (including that Schedule as applied by section 43(1) of the *Redundancy Payments Act 1990*).

Miscellaneous and supplemental

12. In relation to Crown employment sections 8 to 13 (written particulars of employment) shall not apply except —

- (a) in relation to Crown employment entered into after the commencement of those provisions;
- (b) upon any change in the terms of employment notified to the Crown employee under section 10 after the commencement of those provisions; and
- (c) after the commencement of those provisions upon request in writing made by the Crown employee to the employer to provide the particulars required by those provisions within 14 days.

13. In Schedule 8, the amendment to the *Preferential Payments Act 1908* only applies in respect of remuneration payable by a debtor to a person by way of a remuneration where the relevant date (within the meaning of section 3(2) of that Act) occurs after the commencement of that provision.

14. In Schedule 8, item 10 of the amendments to the *Redundancy Payments Act 1990* shall not apply where the relevant date (as defined in section 7(1) of that Act) in relation to the dismissal of an employee, has occurred before the commencement of that provision.

15. In Schedule 9, in the repeals of the *Redundancy Payments Act 1990* —

- (i) item 1 (repeal of section 17) shall not apply to contracts entered into before the commencement of that repeal;
- (ii) item 2 (repeal of section 19) shall not apply to contracts of employment entered into between husband and wife before the commencement of that repeal until such date as may be prescribed;
- (iii) items 5 and 7 (repeal of section 36 and Schedule 4) shall not apply in respect of a right to return to work where the expected week of childbirth preceded the commencement of those provisions.

16. (1) This paragraph applies to the dismissal of an employee employed under a contract for a fixed term of one year or more which consists of the expiry of the term without its being renewed, where the employee has agreed in accordance with paragraph 2 of Schedule 5 of the *Employment Act 1991* to exclude any rights under Part V (unfair dismissal) of that Act in relation to that contract.

(2) In Schedule 9, the repeal of paragraph 2 of Schedule 5 of the *Employment Act 1991* shall have effect in relation to a dismissal to which this paragraph applies where the effective date of termination (within the meaning of section 112 of this Act) falls on or after such date as may be prescribed, unless both the following conditions are satisfied —

- (a) that, where there has been no renewal of the contract, the contract was entered into before the prescribed date or, where there have been one or more renewals, the only or most recent renewal was agreed before that date, and
- (b) that the agreement to exclude any rights under Part V (unfair dismissal) of the *Employment Act 1991* was entered into and took effect before the prescribed date.

17. In Schedule 9, the repeal of paragraph 6 of Schedule 5 of the *Employment Act 1991* shall not apply in respect of contracts of employment entered into under those exclusions before the commencement of that repeal until such date as may be prescribed.

18. In Schedule 8, the amendment of the *Redundancy Payments Act 1990* by item 1 of the amendments to that Act and in Schedule 9, the repeal of Schedule 5 paragraph 8 and Schedule 7 of the *Employment Act 1991*, shall not apply to contracts entered into by employees before the commencement of that amendment and those repeals which

involve employment for a period of less than 16 hours weekly, until such date as may be prescribed.

19. In Schedule 9, item 2(b) of the repeals of the *Employment (Sex Discrimination) Act 2000* (repeal of section 46(4)(b) and (5)) shall not apply to contracts entered into before the commencement of that repeal.

SCHEDULE 8

AMENDMENT OF ENACTMENTS

Section 176(2)

[Sch 8 amended by Education (Miscellaneous Provisions) Act 2009 Sch 1 and amends the following Acts —

Preferential Payments Act 1908 q.v.

Agricultural Wages Act 1952 q.v.

Trade Disputes Act 1985 q.v.

Trade Unions Act 1991 q.v.

Shops Act 2000 q.v.

Employment (Sex Discrimination) Act 2000 q.v.

Minimum Wage Act 2001 q.v.]

SCHEDULE 9

ENACTMENTS REPEALED⁵⁶

Section 176(3)

<i>Short Title</i>	<i>Extent of Repeal</i>
Trade Disputes (Regulation) Act 1936	Section 3
Trade Disputes Act 1985	In section 7, (interpretation) the definition of “employee”
Redundancy Payments Act 1990	Section 17 Section 19 Section 24(4)(a) In section 25(2)(b) omit “and” Section 36 Section 38(2)(b) Schedule 4 Schedule 7

<i>Short Title</i>	<i>Extent of Repeal</i>
Employment Act 1991	The whole Act except for section 66(1) and Part 1 of Schedule 3.
Trade Unions Act 1991	Section 4(1)(b)(iii) In section 19(2) omit “references to the date of dismissal and to an offer of re-engagement shall be construed in accordance with section 49(4) of that Act.”. Schedule 1 paragraphs 2(3), 2(4), 2(6) and 4.
Employment (Amendment) Act 1996	The whole Act
Shops Act 2000	Section 1(3) and (4) Section 4(4)(d) Section 4(5) Section 7(3) Section 14(4) Section 15(4) Section 21 Section 25 Section 26(2)
Employment (Sex Discrimination) Act 2000	Section 34 and the cross heading In section 46 – (a) in subsection (4)(a) omit “of the discrimination officer or” and “, or” at the end of the line; (b) omit subsection (4)(b) and subsection (5) Section 51(4) Section 52
Minimum Wage Act 2001	Section 22 Section 24 Section 25

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References

¹ Para (d) amended by SD155/10 Sch 10.

² S 49 amended by Corruption Act 2008 s 5(4).

³ Para (c) amended by SD155/10 Sch 4.

⁴ Para (b) amended by SD155/10 Sch 4.

⁵ Para (a) amended by Civil Partnership Act 2011 Sch 14.

⁶ Para (b) amended by SD104/07.

⁷ Subs (15) added by SD104/07.

⁸ Para (p) added by SD104/07.

⁹ Increased to £50,000 by SD226/09 effective 20 July 2009 subject to the appropriate date as defined by SD226/09.

¹⁰ Subs (1) amended by SD155/10 Sch 6.

¹¹ Subs (5) amended by SD155/10 Sch 6.

¹² Subs (1) amended by SD155/10 Sch 6.

¹³ Subs (3) amended by SD155/10 Sch 6.

¹⁴ Subs (1) amended by SD155/10 Sch 6.

¹⁵ Subs (7) amended by SD155/10 Sch 6.

¹⁶ Para (a) amended by Civil Partnership Act 2011 Sch 15.

¹⁷ Subs (2) amended by SD155/10 Sch 6.

¹⁸ Subs (3) amended by SD155/10 Sch 6.

¹⁹ Subs (5) amended by SD155/10 Sch 6.

²⁰ S 151 amended by SD155/10 Sch 6.

²¹ Para (a) amended by SD155/10 Sch 6.

²² Subs (1) amended by SD155/10 Sch 6. Para (b) amended by SD155/10 Sch 6.

- ²³ Para (a) amended by SD155/10 Sch 6.
- ²⁴ Subs (2) amended by SD155/10 Sch 6.
- ²⁵ Subs (3) amended by SD155/10 Sch 6.
- ²⁶ Para (a) amended by SD155/10 Sch 6.
- ²⁷ Para (b) amended by SD155/10 Sch 6.
- ²⁸ Para (c) amended by SD155/10 Sch 6.
- ²⁹ Subs (1) amended by SD155/10 Sch 6. Para (d) amended by SD155/10 Sch 6.
- ³⁰ Subs (2) amended by SD155/10 Sch 6.
- ³¹ Para (a) amended by SD155/10 Sch 6.
- ³² Subs (3) amended by SD155/10 Sch 6.
- ³³ Subs (4) amended by SD155/10 Sch 6.
- ³⁴ Subs (5) amended by SD155/10 Sch 6.
- ³⁵ Para (a) amended by SD155/10 Sch 6.
- ³⁶ Subs (6) amended by SD155/10 Sch 6.
- ³⁷ Subs (7) amended by SD155/10 Sch 6.
- ³⁸ Para (a) amended by SD155/10 Sch 6.
- ³⁹ Subs (1) amended by SD155/10 Sch 6. Para (b) amended by SD155/10 Sch 6.
- ⁴⁰ Definition of “the Department” repealed by SD155/10 Sch 6.
- ⁴¹ Subs (2) amended by SD155/10 Sch 6.
- ⁴² Para (d) amended by SD155/10 Sch 6.
- ⁴³ Subs (4) amended by SD155/10 Sch 6.
- ⁴⁴ Subs (5) amended by SD155/10 Sch 6.
- ⁴⁵ Para (b) amended by Civil Partnership Act 2011 Sch 14.
- ⁴⁶ Definition of “the Department” amended by SD155/10 Schs 2 and 6.
- ⁴⁷ Definition of “the DSC” inserted by SD155/10 Sch 6.
- ⁴⁸ Subs (2) amended by SD155/10 Sch 6.
- ⁴⁹ ADO SD72/07 as amended by SD213/07

PROVISIONS COMING INTO OPERATION ON 26 FEBRUARY 2007

Section 156(1) and Part I of Schedule 3 (Employment Tribunal)

Section 173 (interpretation)

Section 174 (subordinate legislation)

Section 175 (Tynwald control over orders etc.)

Section 176(1) and Schedule 7 (transitional provisions)

Section 176(3) and Schedule 9 (repeals), in relation to the *repeal of s 75(1) of, and Part 1 of Schedule 4 to, Employment Act 1991*

Section 177 (short title and commencement)

PROVISIONS COMING INTO OPERATION ON 26 FEBRUARY 2007 FOR CERTAIN PURPOSES

Section 21 (restriction on deductions)

Section 33 (inducements: remedies)

Section 54 (disclosure to prescribed persons)

Section 65 (leave for family and domestic reasons)

Section 70 (assertion of statutory rights)



Sections 79 to 83 (maternity leave)
Sections 84 to 88 (parental leave)
Sections 90 to 94 (paternity leave)
Sections 95 to 98 (adoption leave)
Sections 99 to 102 (flexible working)
Section 114 (leave for family reasons)
Section 144 (limit of award etc.)
Section 156(2) to (8) and Part II of Schedule 3 (Employment Tribunal)
Section 158 (recoupment of benefit)
Section 161 (application to territorial waters)
Section 162 (power to confer rights on individuals)
Section 165 (part-time work)
Section 166 (limited-term employment)
Section 167 (annual leave and working time)
Section 168 (death of employer or employee)
Section 170 (normal working hours and a week's pay), in relation to the provisions of Schedule 6 mentioned below.
Section 171 (codes of practice)
Section 172(2) (publication)
In Schedule 6 (normal working hours and a week's pay), paragraphs 10 and 11
PROVISIONS COMING INTO OPERATION ON 1 APRIL 2007 FOR CERTAIN PURPOSES
Section 65 (detriment - leave for family reasons)
Sections 71 and 72 (detriment - complaints and remedies)
Part X (unfair dismissal), except sections 115 to 128
Section 157 (conciliation) for the purpose of other provisions of the Act brought into operation by this Part and proceedings under those provisions (but subject to paragraph 15 of Schedule 2 to SD72/07 (transitional provisions))
Section 164 (restriction on contracting out), for the purpose of other provisions of the Act brought into operation by this Part and proceedings under those provisions
Section 169 and Schedule 5 (computation of period of employment), for the purpose of other provisions of this Act brought into operation by this Part
Section 170 and Schedule 6 (normal working hours and a week's pay), for the purpose of other provisions of the Act brought into operation by this Part
Section 176(3) and Schedule 9 (repeals), in relation to the *repeal of Part III and ss 43 and 47 of Employment Act 1991*
PROVISIONS COMING INTO OPERATION ON 1 MAY 2007
Part I (discrimination at recruitment on trade union grounds)
Part II (rights during employment), except any provisions specified as coming into operation on 1 December 2007
Sections 21 to 28 (deductions from wages etc.)
Sections 35 to 44 and 48 (time off)
Section 110 (statement of reasons for dismissal)
Part XI (insolvency and cessation of business of employer)

Section 157 (conciliation), for the purpose of other provisions of the Act brought into operation by this Part and proceedings under those provisions (but subject to paragraph 15 of Schedule 2 to SD72/07 (transitional provisions))

Section 164 (restriction on contracting out) for the purpose of other provisions of the Act brought into operation by this Part and proceedings under those provisions

Section 169 and Schedule 5 (computation of period of employment), for the purpose of other provisions of this Act brought into operation by this Part

Section 170 and Schedule 6 (normal working hours and a week's pay), for the purpose of other provisions of the Act brought into operation by this Part

Section 176(2) and Schedule 8 (amendments), so far as they amend section 15 of the *Minimum Wage Act 2001*

Section 176(3) and Schedule 9 (repeals), in relation to the repeal of the following enactments —

- (a) in the *Redundancy Payments Act 1990*, sections 17 and 19;
- (b) in the *Employment Act 1991* —
 - (i) sections 1 to 20;
 - (ii) sections 26 to 32;
 - (iii) Part VI (except s 66(1) and Part I of Schedule 3);
 - (iv) paragraphs 2, 6 and 7 of Sch 5;
 - (v) paragraph 8 of Sch 5 (so far as it relates to ss 1 to 6);
- (c) in the *Employment (Amendment) Act 1996* (ss 1 to 7);
- (d) in the *Employment (Sex Discrimination) Act 2000* s 46 (in part)

PROVISIONS COMING INTO OPERATION ON 1 DECEMBER 2007

In section 17(8)(b) (statements of particulars and pay statements: Tribunal award), subparagraph (ii);

Section 18 and Schedule 1 (statements of particulars and pay statements: award in other proceedings);

Section 176(2) and Schedule 8 (amendments), so far as they amend sections 3, 3A and 4 of the *Trade Disputes Act 1985*.

The rest of the Act is brought into operation on 30 September 2007.

⁵⁰ Para (a) amended by SD155/10 Sch 6.

⁵¹ Para (a) substituted by SD155/10 Sch 10.

⁵² Para (c) amended by SD155/10 Sch 6.

⁵³ Subpara (7) amended by SD155/10 Sch 6.

⁵⁴ Increased to £480 by SD225/09 effective 20 July 2009 subject to the appropriate date as defined by SD225/09.

⁵⁵ P1996/18/Sch.9

⁵⁶ These repeals have been incorporated into the extant Acts.