



## FALKLAND ISLANDS

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### Employment Protection Ordinance 1989

(ORDINANCE No. 8 OF 1989)

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## FALKLAND ISLANDS

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### Employment Protection Ordinance 1989

AN ORDINANCE To confer statutory rights on employees arising out of their employment and for purposes connected therewith.

*[DATE OF COMMENCEMENT: 29TH SEPTEMBER 1989]  
(Unless otherwise indicated)*

### PART I PRELIMINARY

#### *Introductory*

#### **1 Short title**

This Ordinance may be cited as the Employment Protection Ordinance 1989.

*[Revision w.e.f. 31/07/2017]*

#### **2 Interpretation**

(1) In this Ordinance, unless the context otherwise requires-

**"act"** and **"action"** each includes omission and references to doing an act or taking action shall be construed accordingly;

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

**"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 following matters-

- (a) terms and conditions of employment, or the physical conditions in which 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 as between workers or groups of workers;
- (d) matters of discipline;
- (e) facilities for trade union officials;
- (f) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures;

**"confinement"** means the birth of a living child or the birth of a child whether living or dead after twenty-eight weeks of pregnancy;

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

**"effective date of termination"** has the meaning given by section 53(4)-(6);

**"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, means the person by whom the employee is (or, in a case where the employment has ceased, was) employed;

**"employers' association"** includes a combination of employers and employers' associations;

**"expected week of confinement"** means the week, beginning with midnight between Saturday and Sunday, in which it is expected that confinement will take place;

**"Governor"** includes any other officer for the time being responsible under the Constitution for the administration of the government of the Falkland Islands, and except where otherwise permitted by the Constitution means the Governor acting in accordance with the advice of the Executive Council;

**"guarantee payment"** has the meaning given by section 15(1);

**"independent trade union"** means a trade union which-

- (a) is not under the domination or control of an employer or a group of employers or of one or more employer's association; and
- (b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control,

and, in relation to a trade union, "**independent**" and "**independence**" shall be construed accordingly;

"**job**", in relation to an employee, means the nature of the work which he is employed to do in accordance with his contract and the capacity and place in which he is so employed;

"**maternity pay**" has the meaning given by section 40(1);

"**notice of intention to claim**" has the meaning given by section 86(1);

"**notified day of return**" has the meaning given by section 45(1) and (8);

"**official**", in relation to a trade union, means any person who is an officer of the union or a branch or section of the union or 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, whom he is to represent;

"**original contract of employment**", in relation to an employee who is absent from work wholly or partly because of pregnancy or confinement, means the contract under which she worked immediately before the beginning of her absence or, if she entered into that contract during her pregnancy by virtue of section 59(2) or otherwise by reason of her pregnancy, the contract under which she was employed immediately before she entered into the later contract or, if there was more than one later contract, the first of the later contracts;

"**position**", in relation to an employee, means the following matters taken as a whole, the nature of his work and his terms and conditions of employment;

"**redundancy payment**" has the meaning given by section 79(1);

"**relevant date**" for the purposes of the provisions of this Ordinance which relate to redundancy payments, has the meaning given by section 88;

"**renewal**" includes extension, and any reference to renewing a contract or a fixed term shall be construed accordingly;

"**statutory provision**" means a provision, whether of a general or a special nature, contained in, or in any document made or issued under, any statute, whether of a general or a special nature;

"**successor**" has the meaning given by subsections (2) and (3) of this section;

"**trade dispute**" means a dispute between workers and their employer which relates wholly or mainly to one or more of the things set out or described in subparagraphs (a) to (f) inclusive of the definition of "collective agreement" in this subsection;

"**trade union**" means an organization (whether permanent or temporary) which consists mainly of workers of one or more descriptions and is an organization whose principal purposes include the regulation of relations between workers of that description or those descriptions and employers or an employers' association;

"week" means, in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day, and in relation to any other employee, a week ending with Saturday.

(2) Subject to subsection (3) in this Ordinance "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 undertaking or of part of the undertaking for the purposes of which the employee was employed, has become the owner of that undertaking or of part of the undertaking for the purposes of which the employee was employed, has become the owner of that undertaking or of that part of it, as the case may be.

(3) Subsection (2) shall have effect (subject to the necessary modifications) in relation to a case where-

- (a) the person by whom an undertaking or part of an undertaking 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 an undertaking or part of an undertaking is owned immediately before a change (whether as partners, trustees or otherwise) include the persons 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 Ordinance to a successor of an employer shall be construed accordingly.

(4) References in this Ordinance to dismissal by reason of redundancy and to cognate expressions, shall be construed in accordance with section 79.

(5) In sections 39, 45, 54, 60 and Schedule 1, except where the context otherwise requires, "to return to work" means to return to work in accordance with section 43(1), and cognate expressions shall be construed accordingly.

(6) For the purposes of this Ordinance, any two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control; and the expression "associated employer" shall be construed accordingly.

(7) For the purposes of this Ordinance it is immaterial whether the law which (apart from this Ordinance) governs any person's employment is the law of the Falkland Islands or not.

(8) In this Ordinance, except where otherwise indicated-

- (a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Ordinance so numbered; and
- (b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered; and
- (c) a reference in a section, subsection or Schedule to a numbered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered.

## *Excluded service*

### **3 Excluded service**

(1) . . .

*[S. 2(a)/Ord. 6/2005/w.e.f. 10/6/2005.]*

(2) Nothing in any subsequent provision of this Ordinance shall apply to-

(a) . . .

*[S. 2(b)(ii)/Ord. 6/2005/w.e.f. 10/6/2005.]*

(b) . . .

*[S. 2(b)(ii)/Ord. 6/2005/w.e.f. 10/6/2005.]*

(c) any employment or engagement in the Falkland Islands Defence Force;

(d) service or employment as a member of Her Majesty's regular armed forces or in the Royal Fleet Auxiliary; or to

(e) service or employment under Her Majesty's Government in the United Kingdom or under the government of any other country (including service or employment under the government of any overseas territory of the United Kingdom and service under the Governments of Northern Ireland, the Isle of Man, Guernsey or Jersey).

*[S. 2(b)(i)/Ord. 6/05/w.e.f. 10/6/05.]*

(3) For the purposes of this Ordinance a person occupying a salaried public office shall be deemed to be employed in that office, and the Crown shall be deemed to be his employer.

*[S. 2(c)/Ord. 6/05/w.e.f. 10/6/05.]*

## **PART II PARTICULAR TERMS OF EMPLOYMENT**

### *Written particulars of terms of employment*

#### **4 Written particulars of terms of employment**

(1) Not later than thirteen 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;

- (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, that is to say-

- (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;
- (e) the length of notice which the employee is obliged to give and entitled to receive to determine his contract of employment; and
- (f) the title of the job which the employee is employed to do:

Provided that paragraph (d)(iii) shall not apply to the employees of any body or authority if the employees' pension rights depend on the terms of a pension scheme established under any provision contained in or having effect under any Ordinance and the body or 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.

(4) Subject to subsection (5), every statement given to an employee under this section shall include a note-

- (a) specifying any disciplinary rules applicable to the employee, or referring to a document which is reasonably accessible to the employee and which specifies such rules;
- (b) specifying, by description or otherwise-
  - (i) a person to whom the employee can apply if he is dissatisfied with any disciplinary decision relating to him; and
  - (ii) a person to whom the employee can apply for the purpose of seeking redress of any grievance relating to his employment,and 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.

(5) The provisions of paragraphs (a) to (c) of subsection (4) shall not apply to rules, disciplinary decisions, grievances or procedures relating to health or safety at work.

(6) The definition of week given by section 2(1) does not apply for the purposes of this section.

## **5 Supplementary provisions relating to statements under section 4**

(1) If there are no particulars to be entered under any of the heads of section 4(3)(d), or under any of the other provisions of section 4(2) and (3), that fact shall be stated.

(2) If the contract is for a fixed term, the statement given under section 4 shall state the date when the contract expires.

(3) A statement given under section 4 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 employment or which is made reasonably accessible to him in some other way.

(4) No statement need be given under section 4 where-

- (a) the employee's terms of employment are the same as those of earlier employment with the same employer in respect of which a statement under that section and any information subsequently required under section 6 was duly given, and
- (b) that earlier employment ended not more than six months before the beginning of the employment in question;

but without prejudice to the operation of subsection (1) of section 6 if there is subsequently a change in the terms of employment.

## **6 Changes in terms of employment**

(1) If after the date to which a statement given under section 4 relates there is a change in the terms of employment to be included, or referred to, in that statement the employer shall, not more than one month after the change, inform the employee of the nature of the change by a written statement and, if he 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 employment, or that it is made reasonably accessible to him 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 employment, or which is made reasonably accessible to him in some other way.

(3) If, in referring in the statement given under section 4 or under subsection (1) of this section 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 one month after the change is made.

(4) Where, after an employer has given to an employee a written statement in accordance with section 4-

- (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 4, but, subject to subsection (5), the change shall be treated as a change falling within subsection (1) of this section.

(5) A written statement under this section which informs an employee of such a change in his 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.

## **7 Exclusion of certain contracts in writing**

Sections 4 and 6 shall not apply to an employee if and so long as the following conditions are fulfilled in relation to him, that is to say-

- (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 subsection (3) of section 4, and under each head of paragraph (d) of that subsection;
- (b) there has been given to the employee a copy of the contract (with any variations made from time to time), or he has reasonable opportunities of reading such a copy in the course of his employment, or such a copy is made reasonably accessible to him in some other way; and
- (c) such a note as is mentioned in section 4(4) has been given to the employee or he has reasonable opportunities of reading such a note in the course of his employment or such a note is made reasonably accessible to him in some other way.

## **8 Employees becoming or ceasing to be excluded from sections 4 to 6**

(1) Sections 4 to 6 shall apply to an employee who at any time comes or ceases to come within the exceptions from those sections provided for by sections 7, 105, 107 or 108, or under section 109, as if his employment with his employer terminated or began at that time.

(2) Section 4(1) shall apply to an employee who ceases to come within the exception provided by section 7 with the substitution for the words "thirteen weeks" of the words "one month".

(3) The fact that section 4 is directed to apply to an employee as if his employment began on his ceasing to come within one of the exceptions referred to in subsection (1) shall not affect the obligation under subsection (2)(b) of that section to specify the date on which his employment actually began.

## **9 Power of Governor to require further particulars**

The Governor may by order provide that section 4 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 section 4(1), (2) and (3) as appear to the Governor to be expedient.

### *Itemized pay statements*

## **10 Rights to itemized pay statements**

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

- (a) the gross amount of the wages or salary;
- (b) the amounts of any variable and, subject to section 11, 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.

## **11 Standing statement of fixed deductions**

(1) A pay statement given in accordance with section 10 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 deduction, in writing, which contains the following particulars of each deduction comprised in that aggregate amount, that is to say-

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

and which, in accordance with subsection (4), 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 twelve months beginning with the date on which the first standing statement was given and at intervals of not more than twelve months thereafter, re-issue 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 twelve months beginning with that date, or where it is re-issued in accordance with subsection (3), the expiration of the period of twelve months beginning with the date on which it was last re-issued.

## **12 Powers to amend sections 10 and 11**

The Governor may by order-

- (a) vary the provisions of sections 10 and 11 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 11(3) and (4) so as to shorten or extend the periods of twelve months referred to in those subsections, or those periods as varied from time to time under this section.

### *Enforcement of rights under Part II*

## **13 References to Summary Court**

(1) Where an employer does not give an employee a statement as required by section 4 or 6(1) or 10, the employee may require a reference to be made to the Summary Court 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 4 or 6(1); or
- (b) a pay statement or a standing statement of fixed deductions, purporting to comply with section 10 or 11(1),

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 require that question to be referred to and determined by the Summary Court.

(3) Where a statement under section 4 or 6(1) given by an employer to an employee contains such an indication as is mentioned in section 6(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 require that question to be referred to and determined by the Summary Court.

(4) In this section, a question as to the particulars which ought to have been included 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.

(5) Where, on a reference under subsection (1), the Summary Court determines particulars as being those which ought to have been included or referred to in a statement given under section 4 or 6(1) 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 Summary Court.

(6) On determining a reference under subsection (2)(a) the Summary Court may either confirm the particulars as included or referred to in the statement given by the employer, or may amend those particulars, or may substitute other particulars for them, as the court 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 court.

(7) On determining a reference under subsection (3), the Summary Court may either confirm the particulars to which the reference relates, or may amend those particulars or may substitute other particulars for them, as the court may determine to be appropriate; and particulars of the change to which the reference relates shall be deemed to have been entered up or recorded in accordance with the decision of the court.

(8) Where on a reference under this section the Summary Court finds that an employer has failed to give an employee any pay statement in accordance with section 10 or that a pay statement or standing statement of fixed deductions does not, in relation to a deduction, contain the particulars required to be included in that statement by that section or section 11(1)-

- (a) the court shall make a declaration to that effect; and
- (b) where the court further finds that any unnotified deductions have been made from the pay of the employee during the period of thirteen 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 court 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 10 or 11(1).

(9) The Summary Court shall not entertain a reference under this section in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made was made before the end of the period of three months beginning with the date on which the employment ceased.

### *Transitional*

#### **14 Transitional provisions in relation to Part II**

Where an employee's employment began before the commencement of section 4(1), that provision shall apply with the substitution of the words "the commencement of this section" for the words "the beginning of an employee's employment" appearing therein.

## **PART III RIGHTS ARISING IN COURSE OF EMPLOYMENT**

### *Guarantee payments*

#### **15 Right to guarantee payments**

(1) Where an employee throughout a day during any part of which he would normally be required to work in accordance with his contract of employment is not provided with work by his employer by reason of-

- (a) a diminution in the requirement of the employer's business for work of the kind which the employee is employed to do; or
- (b) any other occurrence affecting the normal working of the employer's business in relation to work of the kind which the employee is employed to do,

he shall, subject to the following provisions of this Ordinance be entitled to be paid by his employer a payment, referred to in this Ordinance as a guarantee payment, in respect of that day, and in this section and sections 16 and 19-

- (i) such a day is referred to as a "workless day"; and
- (ii) "workless period" has a corresponding meaning.

(2) In this section and sections 16 to 20, "day" means the period of twenty-four hours from midnight to midnight, and where a period of employment begun on any day extends over midnight in to the following day, or would normally so extend, then-

- (a) if the employment before midnight is, or would normally be, of longer duration than that after midnight, that period of employment shall be treated as falling wholly on the first day; and

- (b) in any other case, that period of employment shall be treated as falling wholly on the second day.

## **16 General exclusion from right under section 15**

(1) An employee shall not be entitled to a guarantee payment unless he has been continuously employed for a period of not less than one month ending with the day before that in respect of which the guarantee payment is claimed.

(2) An employee who is employed-

- (a) under a contract for a fixed term of three months or less; or
- (b) under a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months,

shall not be entitled to a guarantee payment unless he has been continuously employed for a period of more than three months ending with the day before that in respect of which the guarantee payment is claimed.

(3) An employee shall not be entitled to a guarantee payment in respect of a workless day if the failure to provide him with work occurs in consequence of a strike, lockout or other industrial action involving any employee of his employer or of an associated employer.

(4) An employee shall not be entitled to a guarantee payment in respect of a workless day if-

- (a) his employer has offered to provide alternative work for that day which is suitable in all the circumstances whether or not work which the employee is under his contract employed to perform, and the employee has unreasonably refused that offer; or
- (b) he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

## **17 Calculation of guarantee payment**

(1) Subject to the limits set by section 18, the amount of a guarantee payment payable to an employee in respect of any day shall be the sum produced by multiplying the number of normal working hours on that day by the guaranteed hourly rate, and accordingly, no guarantee payment shall be payable to an employee in whose case there are no normal working hours on the day in question.

(2) Subject to subsection (3), the guaranteed hourly rate in relation to an employee shall be the amount of one week's pay divided by-

- (a) the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day in respect of which the guarantee payment is payable; or
- (b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks

ending with the last complete week before the day in respect of which the guarantee payment is payable; or

- (c) in a case falling within paragraph (b) but where the employee has not been employed for a sufficient period to enable the calculation to be made under that paragraph, a number which fairly represents the number of normal working hours in a week having regard to such of the following considerations as are appropriate in the circumstances, that is to say-
  - (i) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract;
  - (ii) the average number of such hours of other employees engaged in relevant comparable employment with the same employer.

(3) If in any case an employee's contract has been varied, or a new contract has been entered into, in connection with a period of short-time working, subsection (2) shall have effect as if for the reference to the day in respect of which the guarantee payment is payable there was substituted a reference to the last day on which the original contract was in force.

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

(1) The amount of a guarantee payment payable to an employee in respect of any day shall not exceed £23.10.

*[S.R. & O. 12/02/w.e.f. 27/6/02.]*

(2) An employee shall not be entitled to guarantee payments in respect of more than the specified number of days in any period of three months.

(3) The specified number of days for the purposes of subsection (2) shall be, subject to subsection (4)-

- (a) the number of days, not exceeding five, on which the employee normally works in a week under the contract of employment in force on the day in respect of which the guarantee payment is claimed; or
- (b) where that number of days varies from week to week or over a longer period, the average number of such days, not exceeding five, calculated by dividing by twelve the total number of such days during the period of twelve weeks ending with the last complete week before the day in respect of which the guarantee payment is claimed, and rounding up the resulting figure to the next whole number; or
- (c) in a case falling within paragraph (b) but where the employee has not been employed for a sufficient period to enable the calculation to be made under that paragraph, a number which fairly represents the number of the employee's normal working days in a week, not exceeding five, having regard to such of the following considerations as are appropriate in the circumstances, that is to say-
  - (i) the average number of normal working days in a week which the employee could expect in accordance with the terms of his contract;

- (ii) the average number of such days of other employees engaged in relevant comparable employment with the same employer.

(4) If in any case an employee's contract has been varied, or a new contract has been entered into, in connection with a period of short-time working, subsection (3) shall have effect as if for the references to the day in respect of which the guarantee payment is claimed there were substituted references to the last day on which the original contract was in force.

(5) The Governor may by order vary any of the limits referred to in this section, and may in particular vary the length of the period referred to in subsection (2).

## **19 Supplementary provisions relating to guarantee payments**

(1) Subject to subsection (2), a right to a guarantee payment shall not affect any right to an employee in relation to remuneration under his contract of employment (in this section referred to as "contractual remuneration").

(2) Any contractual remuneration paid to an employee in respect of a workless day shall go towards discharging any liability of the employer to pay a guarantee payment in respect of that day, and conversely any guarantee payment paid in respect of a day shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that day.

(3) For the purposes of subsection (2), contractual remuneration shall be treated as paid in respect of a workless day-

- (a) where it is expressed to be calculated or payable by reference to that day or any part of that day, to the extent that it is so expressed; and
- (b) in any other case, to the extent that it represents guaranteed remuneration, rather than remuneration for work actually done, and is referable to that day when apportioned rateably between that day and any other workless period falling within the period in respect of which the remuneration is paid.

(4) The Governor may by order provide that in relation to any description of employees the provisions of sections 15(2), 17 and 18(3) (as originally enacted or as varied under section 18(5)) and of subsections (1) to (3) of this section, and, so far as they apply for the purposes of those provisions, the provisions of Schedule 6 shall have effect subject to such notifications and adaptations as may be described by the order.

## **20 Complaint to Summary Court**

(1) An employee may present a complaint to the Summary Court that his employer has failed to pay the whole or any part of a guarantee payment to which the employee is entitled.

(2) The Summary Court shall not entertain a complaint relating to a guarantee payment in respect of any day unless the complaint is presented to the court before the end of the period of three months beginning with that day or within such further period as the court considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.

(3) Where the Summary Court finds a complaint under subsection (1) well founded, the court shall order the employer to pay the complainant the amount of guarantee payment which it finds is due to him.

## **21 Exemption orders**

(1) If at any time there is in force a collective agreement whereby employees to whom the agreement relates have a right to guaranteed remuneration and on application of all parties to the agreement who, in the circumstances of the case are relevant parties, the Governor, having regard to the provisions of the agreement is satisfied that section 15 should not apply to those employees he may make an order under this section excluding those employees from the operation of that section.

(2) The Governor shall not make an order under this section in respect of an agreement unless-

- (a) the agreement provides for procedures to be followed (whether by arbitration or otherwise) in cases where an employee claims that his employer has failed to pay the whole or any part of any guaranteed remuneration to which the employee is entitled under the agreement, and that those procedures include a right to arbitration or adjudication by an independent referee or body in cases where (by reason of an equality of votes or otherwise) a decision cannot otherwise be reached; or
- (b) the agreement indicates that an employee to whom the agreement relates may present a complaint to the Summary Court that his employer has failed to pay the whole or any part of any guaranteed remuneration to which the employee is entitled under the agreement;

and where an order under this section is in force in respect of such an agreement as is described in paragraph (b) the Summary Court shall have jurisdiction over such a complaint as if it were a complaint falling within section 20.

(3) An order under this section may be varied or revoked by a subsequent order thereunder, whether in pursuance of an application made by all or any of the relevant parties to the agreement in question, or without any such application.

### *Suspension from work on medical grounds*

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

(1) An employee who is suspended from work by his employer on medical grounds in consequence of-

- (a) any requirement imposed by or under any provision of any enactment or of any instrument made under any enactment; or
- (b) any recommendation of a Government Medical Officer or made pursuant to any code of practice issued or approved under any provision of any legislation dealing with health and safety at work,

shall subject to the following provisions of this Ordinance, be entitled to be paid by his employer remuneration while he is so suspended for a period not exceeding twenty-six weeks.

(2) For the purposes of this section and sections 23 to 25 and 60, an employee shall be regarded as suspended from work only if, and so long as, he continues to be employed by his employer, but is not provided with work or does not perform the work he normally performed before the suspension.

### **23 General exclusion from rights under section 22**

(1) An employee shall not be entitled to remuneration under section 22 unless he has been continuously employed for a period of not less than one month ending with the day before that on which the suspension begins.

(2) An employee who is employed-

- (a) under a contract for a fixed term of three months or less; or
- (b) under a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months,

shall not be entitled to remuneration under section 22 unless he has been continuously employed for a period of more than three months ending with the day before that on which the suspension begins.

(3) An employee shall not be entitled to remuneration under section 22 in respect of any period during which he is incapable of work by reason of disease or bodily or mental disablement.

(4) An employee shall not be entitled to remuneration under section 22 in respect of any period during which-

- (a) his employer has offered to provide him with suitable alternative work, whether or not work which the employee is under his contract, or was under the contract in force before the suspension, employed to perform, and the employee has unreasonably refused to perform that work; or
- (b) he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

### **24 Calculation of remuneration**

(1) The amount of remuneration payable by an employer to an employee under section 22 shall be a week's pay in respect of each week of the period of suspension referred to in subsection (1) of that section, and if in any week remuneration is payable in respect only of part of that week the amount of a week's pay shall be reduced proportionately.

(2) Subject to subsection (3), a right to remuneration under section 22 shall not affect any right of an employee in relation to remuneration under his contract of employment (in this section referred to as "contractual remuneration").

(3) Any contractual remuneration paid by an employer to an employee in respect of any period shall go towards discharging the employer's liability under section 22 in respect of that period, and

conversely any payment of remuneration in discharge of an employer's liability under section 22 in respect of any period shall go towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.

## **25 Complaint to Summary Court**

(1) An employee may present a complaint to the Summary Court that his employer has failed to pay the whole or any part of remuneration to which the employee is entitled under section 22.

(2) The Summary Court shall not entertain a complaint relating to remuneration under section 22 in respect of any day unless the complaint is presented to the court before the end of the period of three months beginning with that day, or within such further period as the court considers reasonable in a case where it considers it was not reasonably practicable for the complaint to be presented within the period of three months.

(3) Where the Summary Court finds a complaint under subsection (1) well founded the Summary Court shall order the employer to pay the complainant the amount of remuneration which it finds is due to him.

### *Trade union membership and activities*

## **26 Trade union activities**

(1) Subject to the following provisions of this section, every employee shall have the right not to have action (short of dismissal) taken against him as an individual by his employer for the purpose of-

- (a) preventing or deterring him from being or seeking to become a member of an independent trade union, or penalizing him for doing so; or
- (b) preventing or deterring him from taking part in the activities of an independent trade union at any appropriate time, or penalizing him for doing so; or
- (c) compelling him 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) Every employee shall also have the right not to have action (short of dismissal) taken against him for the purpose of enforcing a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his failure to become or his 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 must make one or more payments.

(3) For the purposes of this section, any deduction made by an employer from the remuneration payable to an employee of his in respect of that employee's employment shall, if the deduction is attributable to the employee's failure to become or his ceasing to remain a member of any trade union or of a particular trade union or of one or a number of particular trade unions, be treated as if it were action (short of dismissal) taken against the employee for the purpose of enforcing a requirement of a kind mentioned in subsection (2).

(4) In this section "appropriate time", in relation to an employee taking part in any activities of a trade union, means time which either-

- (a) is outside his working hours, or
- (b) is a time within his working hours at which, in accordance with arrangements agreed with, or consent given by his employer, it is permissible for him to take part in those activities,

and in this subsection "working hours", in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

(5) In this section, unless the context otherwise requires, references to a trade union include references to a branch or section of a trade union.

## **27 Complaint to Summary Court**

(1) An employee may present a complaint to the Summary Court on the ground that action has been taken against him by his employer in contravention of section 26.

(2) The Summary Court shall not entertain a complaint under subsection (1) unless it is presented to the court before the end of the period of three months beginning with the date on which there occurred the action complained of, or where that action is part of a series of similar actions, the last of those actions, or within such further period as the court considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.

(3) Where the court finds the complaint well-founded it shall make a declaration to that effect and may make an award of compensation, calculated in accordance with section 29 to be paid by the employer in respect of the action complained of.

## **28 Supplementary provisions relating to complaints under section 27**

(1) On a complaint under section 27 it shall be for the employer to show the purpose for which action was taken against the complainant.

(2) In determining a complaint under section 27, any question as to whether action was taken by the complainant's employer or the purpose for which it was taken, no account shall be taken of any pressure which, by calling, organizing, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to take the action complained of, and that question shall be determined as if no such pressure had been exercised.

## **29 Assessment of compensation on a complaint under section 27**

(1) The amount of the compensation awarded by the Summary Court on a complaint under section 27 shall be such amount as the Court considers just and equitable in all the circumstances having regard to the infringement of the complainant's right under section 26 by the employer's action complained of and to any loss sustained by the complainant which is attributable to that action.

(2) The said loss shall be taken to include-

- (a) any expenses reasonably incurred by the complainant in consequence of the action complained of; and
- (b) loss of any benefit which he might reasonably be expected to have had but for that action.

(3) In ascertaining the said loss the Summary Court shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales.

(4) In determining the amount of compensation to be awarded under subsection (1), no account shall be taken of any pressure as is referred to in section 28(2), and that question shall be determined as if no such pressure had been exercised.

(5) Where the court finds that the action complained of was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

### **30 Awards against third parties**

(1) Where-

- (a) a complaint is presented to the Summary Court under section 27 on the ground that action has been taken against the complainant by his employer for the purpose of compelling him 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 employer or the complainant claims in proceedings before the court that the employer was induced to take the action by pressure which a trade union or other person exercised on the employer by calling, organizing, procuring or financing a strike or other industrial action, or by threatening to do so,

the employer or the complainant may request the court to direct that the person whom he claims 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 Summary Court has made a declaration under section 27(3).

(3) Where a person has been joined as a party to proceedings before the Summary Court by virtue of subsection (1), and the court-

- (a) makes an award of compensation; 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 court may consider just and equitable in the circumstances.

## *Time off work*

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

(1) An employer shall permit an employee of his who is an official of an independent trade union recognized by him to take time off, subject to and in accordance with subsection (2), during the employee's working hours for the purpose of enabling him to carry out those duties of his as such an official which are concerned with industrial relations between his employer and any associated employer, and their employees.

(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.

(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 for the time taken off for that purpose in accordance with the permission-

- (a) where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, as if he had worked at that work for the whole of that time;
- (b) where the employee's remuneration for that work varies with the amount of work done, an amount calculated by reference to the average hourly earnings for that work.

(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 contract of employment (in this section referred to as "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.

(7) An employee who is an official of an independent trade union recognized by his employer may present a complaint to the Summary Court that his employer has failed to permit him to take time off as required by this section or to pay him the whole or part of any amount so required to be paid.

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

(1) An employer shall permit an employee of his who is a member of an appropriate trade union to take time off, subject to and in accordance with subsection (3), during the employee's working hours for the purpose of taking part in any trade union activity to which this section applies.

(2) In this section "appropriate trade union", in relation to an employee of any description, means an independent trade union which is recognized by his employer in respect of that description of employee, and the trade union activities to which this section applies are-

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

(4) An employee who is a member of an independent trade union recognized by his employer may present a complaint to the Summary Court that his employer has failed to permit him to take time off as required by this section.

### **33 Time off for public duties**

(1) An employer shall permit an employee of his who is-

- (a) a member of the Legislative Assembly;

*[Revision w.e.f. 31/07/2017]*

- (b) a member of the Falkland Islands Development Corporation;
- (c) a justice of the peace or a magistrate,

to take time off, subject to and in accordance with subsection (3), during the employee's working hours for the purposes of performing any of the duties of his office or, as the case maybe, his duties as such member.

(2) For the purposes of subsection (1) the duties of a member of a body therein referred to are-

- (a) attendance at a meeting of the body or of any of its committees or sub-committees or subsidiaries; and
- (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 but, in the case of a member of the Legislative Assembly, this shall not include anything done in connection with any election of any person to be a member of that Assembly or any meetings or discussions with constituents whom the member represents.

*[Revision w.e.f. 31/07/2017]*

(3) The amount of time off which an employee is to be permitted to take under this section and the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard, in particular, to the following:

- (a) how much time off is required for the performance of the duties of the office or as a member of the body in question, and how much time off is required for the performance of the particular duty;
- (b) how much time off the employee has already been permitted under this section or sections 31 and 32;
- (c) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.

(4) The Governor may by order-

- (a) modify the provisions of subsection (1) 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 (2).

(5) An employee may present a complaint to the Summary Court that his employer has failed to permit him to take time off as required by this section.

### **34 Time off for attendance at a court**

(1) An employer shall permit an employee of his who is-

- (a) summoned to appear before any court to give evidence or to produce any document or other thing;
- (b) summoned to attend at any court for the purpose of serving as a juror in any proceedings pending before that court,

to take time off during the employee's working hours for that purpose.

(2) An employer shall permit an employee of his who is summoned or otherwise required to attend before any court as a defendant to any criminal proceedings to take time off during the employee's working hours for that purpose.

(3) An employer who contravenes subsection (1) or subsection (2), in addition to any other liability at law he may have, and whether under this Ordinance or otherwise, commits an offence and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 7 on the standard scale or to both such imprisonment and fine.

*[Revision w.e.f. 31/07/2017]*

(4) Where an employee who is a parent or guardian has the custody of another person under the age of eighteen years, who has been summoned or otherwise required to attend before a court as a defendant to any criminal proceedings, subsections (2) and (3) shall apply as if the employee himself were that defendant.

(5) Where an employee is a party to civil proceedings in any court subsection (1)(b) and subsection (2) shall apply as if he had been summoned for the purpose of serving as a juror in those proceedings during such time as he is absent from work for the purpose of attending court.

(6) An employee may present a complaint to the Summary Court that his employer has failed to permit him to take time off as required by this section.

### **35 Time off for the purpose of seeking medical or dental attention**

(1) An employer shall permit an employee who wishes to absent himself from work for the purpose of seeking medical or dental attention to take time off, subject to subsection (3), during the employee's working hours for that purpose.

(2) Subsection (1) also applies in respect of an employee who wishes to take time off for the purpose of accompanying another person under the age of sixteen years of whom he is a parent or guardian or of whom he has custody, while that person seeks medical or dental attention.

(3) An employer does not contravene subsection (1) or (2), if, having regard to the exigencies of his business he requires the employee to postpone his absence to a later time during the same day and such postponement is reasonable having regard to-

- (a) the said exigencies;
- (b) the urgency of the medical or dental attention; and
- (c) the availability of the medical or dental attention sought at the time to which the employer wishes to postpone the employee's absence.

(4) An employer who contravenes subsection (1) or subsection (2), commits an offence and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 7 on the standard scale or to both such imprisonment and fine.

*[Revision w.e.f. 31/07/2017]*

### **36 Provision as to Summary Court**

(1) The Summary Court shall not consider-

- (a) a complaint under section 31, 32, 33 or 34 that an employer has failed to permit an employee to take time off; or
- (b) a complaint under section 31 that an employer has failed to pay an employee the whole or any part of any amount required to be paid under section 31;

unless it is presented within three months of the date when the failure occurred or within such further period as the court considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.

(2) Where the Summary Court finds any complaint mentioned in subsection (1)(a) well founded, the court shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee which shall be of such amount as the court considers just and equitable in all the circumstances having regard to the employer's default in failing to permit time off to be taken by the employee and to any loss sustained by the employee which is attributable to the matters complained of.

(3) Where on a complaint under section 31 the Summary Court finds that the employer has failed to pay the employee the whole or part of the amount required to be paid under that section, the court shall order the employer to pay the employee the amount which it finds due to him.

### **37 Time off for ante-natal care**

(1) An employee who is pregnant and who has, on the advice of a Government medical officer, Government midwife or Government health visitor, made an appointment to attend at any place for the purpose of receiving ante-natal care shall, subject to the following provisions of this section, have 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 shall not be required by virtue of this section to permit an employee to take time off to keep an appointment unless, if he requests her to do so, she produces for his inspection-

- (a) a certificate from a Governmental medical officer, Government midwife or Government health visitor 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) shall 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) shall be 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 shall be the amount of one week's pay divided by-

- (a) the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the 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 twelve the total number of the employee's normal working hours during the period of twelve 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, that is to say-
  - (i) the average number of normal working hours in a week which the employee could expect in accordance with the terms of her contract;
  - (ii) the average number of such hours of other employees engaged in relevant comparable employment with the same employer.

(6) An employee may present a complaint to the Summary Court that her employer has unreasonably refused her time off as required by this section or that he has failed to pay her the whole or part of any amount to which she is entitled under subsection (4).

(7) The Summary Court shall not entertain a complaint under subsection (6) unless it is presented within the period of three months beginning with the day of the appointment concerned, or within such further period as the court considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.

(8) Where on a complaint under subsection (6) the Summary Court 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 court shall order the employer to pay to the employee an amount equal to the remuneration to which she would have been entitled under subsection (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 subsection (4), the court shall order the employer to pay to the employee the amount which it finds due to her.

(9) Subject to subsection (10), a right to any amount under subsection (4) shall not affect any right of an employee in relation to remuneration under her contract of employment (in this section referred to as "contractual remuneration").

(10) 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 subsection (4) in respect of that period, and conversely any payment of remuneration under subsection (4) in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

### **38 Provisions supplementary to sections 31 to 37**

(1) For the purposes of sections 31 to 37-

- (a) a trade union shall be treated as recognized if it is recognized for the purposes of collective bargaining; and
- (b) the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, he is required to be at work.

(2) In subsection (1)-

**"collective bargaining"** means negotiations related to or connected with one or more of the following matters-

- (a) terms or 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 as between workers or groups of workers;
- (d) matters of discipline;
- (e) the membership or non-membership of a trade union on the part of a worker;
- (f) facilities for officials of trade unions;
- (g) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or in the carrying out of such procedures.

"**recognized**" means recognized by an employer or two or more associated employers, to any extent for the purpose of collective bargaining.

## **PART IV MATERNITY**

### *General provisions*

#### **39 Right of employee in respect of pregnancy and confinement**

(1) An employee who is absent from work wholly or partly because of pregnancy or confinement shall, subject to the following provisions of this Ordinance-

- (a) be entitled to be paid by her employer a sum to be known as maternity pay; and
- (b) be entitled to return to work.

(2) Schedule 1 shall have effect for the purpose of supplementing the following provisions of this Ordinance in relation to an employee's right to return to work.

(3) An employee shall be entitled to the rights referred to in subsection (1) whether or not a contract of employment subsists during the period of her absence but, subject to subsection (6), she shall not be so entitled unless-

- (a) she continues to be employed by her employer (whether or not she is at work) until immediately before the beginning of the eleventh week before the expected week of confinement;
- (b) she has at the beginning of that eleventh week been continuously employed for a period of not less than two years;
- (c) in the case of the right to maternity pay, she informs her employer, in writing if he so requests, at least twenty-one days before her absence begins or, if that is not reasonably practicable, as soon as reasonably practicable, that she will be (or is) absent from work wholly or partly because of pregnancy or confinement; and

- (d) in the case of the right to return, she informs her employer in writing at least twenty-one days before her absence begins, or if that is not reasonably practicable, as soon as reasonably practicable-
  - (i) that she will be (or is) absent from work wholly or partly because of pregnancy or confinement;
  - (ii) that she intends to return to work with her employer; and
  - (iii) of the expected week of confinement or, if the confinement has occurred, the date of confinement.

(4) Where not earlier than forty-nine days after the beginning of the expected week of confinement (or the date of confinement) notified under subsection (3)(d) an employee is requested in accordance with subsection (5) by her employer or a successor of his to give him written confirmation that she intends to return to work, she shall not be entitled to the right to return unless she gives that confirmation within fourteen days of receiving the request or, if that is not reasonably practicable, as soon as reasonably practicable.

(5) A request under subsection (4) shall be made in writing and shall be accompanied by a written statement of the effect of that subsection.

(6) An employee who has been dismissed by her employer for a reason falling within section 59(1)(a) or (b) and has not been re-engaged in accordance with that section, shall be entitled to the rights referred to in subsection (1) of this section notwithstanding that she has thereby ceased to be employed before the beginning of the eleventh week before the expected week of confinement if, but for that dismissal, she would at the beginning of that eleventh week have been continuously employed for a period of not less than two years, but she shall not be entitled to the right to return unless she informs her employer (in writing if he so requests), before or as soon as reasonably practicable after the dismissal takes effect, that she intends to return to work with him.

In this subsection "**dismiss**" and "**dismissal**" have the same meaning as they have for the purposes of Part VI.

(7) An employee shall not be entitled to either of the rights referred to in subsection (1) unless, if requested to do so by her employer, she produces for his inspection a certificate from a Government medical officer or a Government midwife stating the expected week of confinement.

(8) The Governor may by order vary the periods of two years referred to in subsections (3) and (6), or those periods as varied from time to time under this subsection, but no such order shall be made unless a draft of the order has been laid before the Legislative Assembly and approved by resolution of the Legislative Assembly.

*[Revision w.e.f. 31/07/2017]*

### ***Maternity pay***

#### **40 Maternity pay**

(1) Maternity pay shall be paid in respect of a period not exceeding, or periods not exceeding in the aggregate, six weeks during which the employee is absent from work wholly or partly because of pregnancy or confinement (in this section and sections 41 and 42 referred to as the payment period or payment periods).

(2) An employee shall not be entitled to maternity pay for any absence before the beginning of the eleventh week before the expected week of confinement, and her payment period or payment periods shall be the first six weeks of absence starting on or falling after the beginning of that eleventh week.

(3) The Governor may by order vary the periods of six weeks referred to in subsections (1) and (2), or those periods as varied from time to time under this subsection, but no such order shall be made unless a draft of the order has been laid before the Legislative Assembly and approved by resolution of the Legislative Assembly.

*[Revision w.e.f. 31/07/2017]*

(4) Where an employee gives her employer the information required by section 39(3)(c) or produces any certificate requested under section 39(7) after the beginning of the payment period or the first of the payment periods, she shall not be entitled to maternity pay for any part of that period until she gives him that information or certificate, but on giving him the information or, as the case may be, producing the certificate, she shall be entitled to be paid in respect of that part of the period or periods which fell before the giving of the information or the production of the certificate.

#### **41 Calculation of maternity pay**

(1) The amount of maternity pay to which an employee is entitled as respects any week shall be nine-tenths of a week's pay.

(2) Maternity pay shall accrue due to an employee from day to day and in calculating the amount of maternity pay payable for any day-

- (a) there shall be disregarded Sunday; and
- (b) the amount payable for any other day shall be taken as one-sixth of the amount of the maternity pay for the week in which the day falls.

(3) Subject to subsection (4), a right to maternity pay shall not affect any right of an employee in relation to remuneration under any contract of employment (in this section referred to as "contractual remuneration").

(4) Any contractual remuneration paid to an employee in respect of a day within a payment period shall go towards discharging any liability of the employer to pay maternity pay in respect of that day, and conversely any maternity pay paid in respect of a day shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that day.

(5) The Governor may by order amend subsection (1)-

- (a) by substituting for the fraction of nine-tenths referred to there, or the fraction as substituted from time to time under this subsection, such greater fraction as he considers appropriate; or
- (b) by deleting the reference to a fraction.

(6) No order shall be made under subsection (5) unless a draft of the order has been laid before the Legislative Assembly and approved by a resolution of the Legislative Assembly.

*[Revision w.e.f. 31/07/2017]*

## **42 Complaint to Summary Court**

(1) A complaint may be presented to the Summary Court by an employee against her employer that he has failed to pay her the whole or any part of the maternity pay to which she is entitled.

(2) The Summary Court shall not entertain a complaint under subsection (1) unless it is presented to the court before the end of the period of three months beginning with the last day of the payment period or, as the case may be, the last of the payment periods, or within such further period as the court considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.

(3) Where the Summary Court finds a complaint under subsection (1) well founded, the court shall order the employer to pay the complainant the amount of maternity pay which it finds is due to her.

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

## **43 Right to return to work**

(1) The right to return to work of an employee who has been absent from work wholly or partly because of pregnancy or confinement is, subject to the following provisions of this Ordinance, a right to return to work with her original employer, or, where appropriate, his successor, at any time before the end of the period of twenty-nine weeks beginning with the week in which the date of confinement falls, in the job in which she was employed under the original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her if she had not been so absent.

(2) In subsection (1) "terms and conditions not less favourable than those which would have been applicable to her if she had not been so absent" means, as regards seniority, pension rights and other similar rights, that the period or periods of employment prior to the employee's absence shall be regarded as continuous with her employment following that absence.

(3) If an employee is entitled to return to work in accordance with subsection (1), but it is not practicable by reason of redundancy for the employer to permit her so to return to work she shall be entitled, where there is a suitable available vacancy, to be offered alternative employment with her employer (or his successor), or an associated employer, under a new contract of employment complying with subsection (4).

(4) The new contract of employment must be such that-

- (a) the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
- (b) the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work in accordance with subsection (1).

#### **44 Enforcement of rights under section 43**

The remedies of an employee for infringement of either of the rights mentioned in section 43 are those conferred by or by virtue of the provisions of sections 45, 54 and 84 and Schedule 1.

#### **45 Exercise of right to return to work**

(1) An employee shall exercise her right to return to work by giving written notice to the employer (who may be her original employer or a successor of that employer) at least twenty-one days before the day on which she proposes to return of her proposal to return on that day (in this section referred to as the "notified day of return").

(2) An employer may postpone an employee's return to work until a date not more than four weeks after the notified day of return if he notifies her before that day that for specified reasons he is postponing her return until that date, and accordingly she will be entitled to return to work with him on that date.

(3) Subject to subsection (4), an employee may-

- (a) postpone her return to work until a date not exceeding four weeks from the notified day of return, notwithstanding that that date falls after the end of the period of twenty-nine weeks mentioned in section 43(1); and
- (b) where no day of return has been notified to the employer, extend the time during which she may exercise her right to return in accordance with subsection (1), so that she returns to work not later than four weeks from the expiration of the said period of twenty-nine weeks,

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

(4) Where an employee has once exercised a right of postponement or extension under subsection (3)(a) or (b), she shall not again be entitled to exercise a right of postponement or extension under that subsection in connection with the same return to work.

(5) If an employee has notified a day of return but there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work on the notified day of return, she may instead return to work when work resumes after the interruption or as soon as reasonably practicable thereafter.

(6) If no day of return has been notified and there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work before the expiration of the period of twenty-nine weeks referred to in section 43(1), or which appears likely to have that effect, and in consequence the employee does not notify a day of return, the employee may exercise her right to return in accordance with subsection (1) so that she returns to work at any time before the end of the period of twenty-eight days from the end of the interruption notwithstanding that she returns to work outside the said period of twenty-nine weeks.

(7) Where the employee has either-

- (a) exercised the right under subsection (3)(b) to extend the period during which she may exercise her right to return; or
- (b) refrained from notifying the day of return in the circumstances described in subsection (6),

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

(8) Where-

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

then, subject to subsection (4), references in those subsections and in sections 54 and 84 and Schedule 1 to the notified day of return shall be construed as references to the day to which the return is postponed or, as the case may be, that later day.

#### **46 Contractual right to return to work**

(1) An employee who has a right both under this Ordinance and under a contract of employment, or otherwise, to return to work, may not exercise the two rights separately but may in returning to work take advantage of whichever right is, in any particular respect, the more favourable.

(2) The provisions of sections 43, 44, 45, 54 and 84 and paragraphs 1 to 4 and 6 of Schedule 1 shall apply, subject to any notifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in subsection (1) as they apply to the exercise of the right to return conferred solely by this Part.

## **PART V TERMINATION OF EMPLOYMENT**

#### **47 Rights of employer and employee to minimum period of notice**

(1) 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-

- (a) shall be not less than one week's notice if his period of continuous employment is less than two years;
- (b) shall be not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years; and
- (c) shall be not less than twelve week's notice if his period of continuous employment is twelve 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 contract of employment shall be not less than one week.

(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 the foregoing subsections, but this section shall not be taken to prevent either party from waiving his 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 three 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) Subsections (1) and (2) do not apply to a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months unless the employee has been continuously employed for a period of more than three months.

(6) It is hereby declared that 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 so to treat it before the passing of this Ordinance.

(7) The definition of week given by section 2(1) does not apply for the purposes of this section.

#### **48 Rights of employee in period of notice**

(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, the provisions of Schedule 2 shall have effect as respects the liability of the employer for the period of notice required by section 47(1).

(2) If an employee who has been continuously employed for one month or more gives notice to terminate his contract of employment, the provisions of Schedule 2 shall have effect as respects the liability of the employer for the period of notice required by section 47(2).

(3) This section shall 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 one week more than the notice required by section 47(1).

## **49 Measure of damages in proceedings against employers**

If an employer fails to give the notice required by section 47, the rights conferred by section 48 (with Schedule 2) shall be taken into account in assessing his liability for breach of the contract.

### **49A Section 47 to 49 not to apply to public officers**

Nothing in section 47 to 49 applies to or in respect of persons serving as a public officers (including police officers) or to any employment or engagement as a public officer.

*[S. 3/Ord. 6/05/w.e.f. 10/6/05.]*

## **50 Statutory contracts**

Sections 47 and 48 shall 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 any statute as they apply in relation to any other contract; and the reference in this section to a statute includes, subject to any express provision to the contrary, a statute made or passed after this Ordinance.

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

(1) An employee shall be entitled-

- (a) if he is given by his employer notice of termination of his contract of employment;
- (b) if his contract of employment is terminated by his employer without notice; or
- (c) if, where he is employed under a contract for a fixed term, that term expires without being renewed under the same contract,

to be provided by his employer, on request, within fourteen days of that request, with a written statement giving particulars of the reasons for his dismissal.

(2) An employee shall not be entitled to a written statement under subsection (1) unless on the effective date of termination he has been, or will have been, continuously employed for a period of six months ending with that date.

(3) A written statement provided under this section shall be admissible in evidence in any proceedings.

(4) A complaint may be presented to the Summary Court by an employee against his employer on the ground that the employer unreasonably refused to provide a written statement under subsection (1) or that the particulars of reasons given in purported compliance with that subsection are inadequate or untrue, and if the court finds the complaint well founded-

- (a) it may make a declaration as to what it finds the employer's reasons were for dismissing the employee; and
- (b) it shall make an award that the employer pay to the employee a sum equal to the amount of two weeks' pay.

(5) The Summary Court shall not entertain a complaint under this section relating to the reasons for a dismissal unless it is presented to the court at such a time that the court would, in accordance

with sections 65(2) or (4), entertain a complaint of unfair dismissal in respect of that dismissal presented at the same time.

## **PART VI UNFAIR DISMISSAL**

### *Right not to be unfairly dismissed*

#### **52 The right [not to be unfairly dismissed]**

(1) Every employee shall have the right not to be unfairly dismissed by his employer

(2) Subject to the subsequent provisions of this Ordinance this section applies to every employment except insofar as its application is excluded by or under any provision of this Ordinance.

*[S. 4/Ord. 6/05/w.e.f. 10/6/05.]*

### *Meaning of unfair dismissal*

#### **53 Meaning of "dismissal"**

(1) In this Part, except as respects a case to which section 54 applies, "dismissal" and "dismiss" shall be construed in accordance with the following provisions of this section.

(2) Subject to subsections (3) and (3A), an employee shall be treated as dismissed by his employer if, but only if-

- (a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice; or
- (b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract; or
- (c) the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct.

*[S. 5(a)/Ord. 6/05/w.e.f. 10/6/05.]*

(3) Where an employer gives notice to an employee to terminate his 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 this employer, and the reasons for the dismissal shall be taken to be the reasons for which the employer's notice is given.

(3A) Paragraph (b) of subsection (2) does not apply and Part VII of this Ordinance does not apply-

- (a) where the employee was residing outside the Falkland Islands at the time he was recruited; or
- (b) wherever he was residing at that time the employee did not have Falkland Islands status or have a permanent residence permit at the time he was recruited.

*[S. 5(b)/Ord. 6/05/w.e.f. 10/6/05 and S.R. & O. 13/05/w.e.f. 10/6/05.]*

(3B) For the purposes of subsection (3A)-

- (a) a person is recruited at the time at which he is notified of the decision by the employer to offer him employment if that is different from the time at which he entered into the relevant contract of employment; and
- (b) "Falkland Islands status" has the same meaning as it has under section 17(5) of the Constitution and "permanent residence permit" has the same meaning it has under the Immigration Ordinance 1999.

*[S. 5(b)/Ord. 6/05/w.e.f. 10/6/05.]*

(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 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 contract for a fixed term, where that term expires without being renewed under the same contract, means the date on which that term expires.

(5) Where the contract of employment is terminated by the employer and the notice required by section 47 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 51(2), 63(1)(a), 64 and 71(3) and paragraph 8(3) of Schedule 6, 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 47 to expire on a date later than the effective date of termination (as defined by subsection (4)),

then, for the purposes of sections 63(1)(a), 64 and 71(3) and paragraph 8(3) of Schedule 6, 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.

#### **54 Failure to permit woman to return to work after confinement treated as dismissal**

Where an employee is entitled to return to work and has exercised her right to return in accordance with section 45 but is not permitted to return to work, then subject to section 55 she shall be treated for the purposes of this Part as if she had been employed until the notified day of return, and, if she would not otherwise be so treated, as having been continuously employed until that day, and as if she had been dismissed with effect from that day for the reason for which she was not permitted to return.

#### **55 Exclusion of section 54 in certain cases**

(1) Section 54 shall not apply in relation to an employee if-

- (a) immediately before her absence began, the number of employees employed by her employer, added to the number employed by any associated employer of his, did not exceed five, and
- (b) it is not reasonably practicable for the employer (who may be the same employer or a successor of his) to permit her to return to work in accordance with section 43(1), or for him or an associated employer to offer her employment under a contract of employment satisfying the conditions specified in subsection (3).

(2) Section 54 shall not apply in relation to an employee if-

- (a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit her to return to work in accordance with section 43(1), and
- (b) he or an associated employer offers her employment under a contract of employment satisfying the conditions specified in subsection (3), and
- (c) she accepts or unreasonably refuses that offer.

(3) The conditions referred to in subsections (1) and (2) are-

- (a) that the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
- (b) that the provisions of the contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work in accordance with section 43(1).

(4) Where on a complaint of unfair dismissal any question arises as to whether the operation of section 54 is excluded by subsection (1) or (2), it shall be for the employer to show that the provisions of that subsection were satisfied in relation to the complainant.

## **56 General provisions relating to fairness of dismissal**

(1) In determining for the purposes of this Part whether the dismissal of an employee was fair or unfair, it shall be for the employer to show-

- (a) what was 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) In subsection (1)(b) the reference to a reason falling within this subsection is a reference to a reason which-

- (a) related to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do; or
- (b) related to the conduct of the employee; or
- (c) was that the employee was redundant; or
- (d) was that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) Where the employer has fulfilled the requirements of subsection (1), then, subject to sections 57 to 61, the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend 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 any other academic, technical or professional qualification relevant to the position which the employee held.

## **57 Dismissal relating to trade union membership**

(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 for it (or, if more than one, the principal reason) was that the employee-

- (a) was, or proposed to become, a member of an independent trade union; or

- (b) had taken part, or proposed to take part, in activities of an independent trade union at an appropriate time; or
- (c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused or proposed to refuse to become or remain a member.

(2) In subsection (1) "an appropriate time", in relation to an employee taking part in the activities of a trade union, means a time which either-

- (a) is outside his working hours; or
- (b) is a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in those activities;

and in this subsection "working hours", in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

### **57A Dismissal relating to minimum wage**

(1) An employee who is dismissed is to 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-

- (a) the employee is entitled to (or will or might become entitled to)-
  - (i) the minimum wage;
  - (ii) a particular rate of minimum wage; or
- (b) 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) one or more of the employee's rights under the Minimum Wage Ordinance (No. 10 of 2013).

(2) For the purposes of subsection (1)(b)-

- (a) "**action**" includes (but is not limited to)-
  - (i) bringing proceedings before the Summary Court under section 20 of the Minimum Wage Ordinance;
  - (ii) making a complaint to the Summary Court under section 21 or 23 of that Ordinance; or
  - (iii) continuing proceedings or a complaint once made or brought.
- (b) it is immaterial-
  - (i) whether or not the employee has (or had) the right; or
  - (ii) whether or not that right is being, has been or was infringed; but
- (c) the claim to the right (and, if applicable, the claim that it has been infringed) must be (or must have been) made in good faith

## **58 Dismissal on ground of redundancy**

Where the reason or principal reason for the dismissal of an employee was that he was redundant, but 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 him and who have not been dismissed by the employer, and either-

- (a) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was one of those specified in section 57(1) or section 57A(1); or

*[S. 30(3)/Ord. 10/13/w.e.f. 1/12/13.]*

- (b) that he was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in his case,

then, for the purposes of this Part, the dismissal shall be regarded as unfair.

## **59 Dismissal on ground of pregnancy**

(1) An employee shall be treated for the purposes of this Part as unfairly dismissed if the reason or principal reason for her dismissal is that she is pregnant or is any other reason connected with her pregnancy, except one of the following reasons-

- (a) that at the effective date of termination she is or will have become, because of her pregnancy, incapable of adequately doing the work which she is employed to do;
- (b) that, because of her pregnancy, she cannot or will not be able to continue after that date to do that work without contravention (either by her or her employer) of a duty or restriction imposed by or under any enactment.

(2) An employee shall be treated for the purposes of this Part as unfairly dismissed if her employer dismisses her for a reason mentioned in subsection (1)(a) or (b), but neither he nor any successor of his, where there is a suitable available vacancy, makes her an offer before or on the effective date of termination to engage her under a new contract of employment complying with subsection (3).

(3) The new contract of employment must-

- (a) take effect immediately on the ending of employment under the previous contract, or, where that employment ends on a Friday, Saturday or Sunday, on or before the next Monday after that Friday, Saturday or Sunday;
- (b) be such that the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
- (c) be such that the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than the corresponding provisions of the previous contract.

(4) On a complaint of unfair dismissal on the ground of failure to offer to engage an employee as mentioned in subsection (2), it shall be for the employer to show that he or a successor made an

offer to engage her in compliance with subsections (2) and (3) or, as the case may be, that there was no suitable available vacancy for her.

(5) Section 53(3) shall not apply in a case where an employer gives notice to an employee to terminate her contract of employment for a reason mentioned in subsection (1)(a) or (b).

## **60 Dismissal of replacement**

(1) Where an employer-

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

then, for the purposes of section 56(1)(b), but without prejudice to the application of section 56(3), the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(2) Where an employer-

- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the end of a suspension such as referred to in section 22 of another employee; and
- (b) dismisses the first-mentioned employee in order to make it possible to resume his original work;

then, for the purposes of section 56(1)(b), but without prejudice to the application of section 56(3), the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

## **61 Dismissal in connection with lock-out, strike or other industrial action**

(1) The provisions of this section shall have effect in relation to an employee (the "complainant") who claims that he has been unfairly dismissed by his employer where at the date of 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 Summary Court 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 any such employee has, before the expiry of the period of three months beginning with that employee's date of dismissal, been offered re-engagement and that the complainant has not been offered re-engagement.

(3) Where it is shown that the condition referred to in paragraph (b) of subsection (2) is fulfilled, the provisions of sections 56 to 59 shall have effect as if in those sections for any reference to the reason or principal reason for which the complainant was dismissed there were substituted a reference to the reason or principal reason of which he has not been offered re-engagement.

(4) 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 or furtherance of which the lock-out occurred; and
- (ii) in relation to a strike or other industrial action, those employees at the establishment who were taking part in the action at the complainant's date of dismissal,

**"establishment"**, in subparagraph (ii), meaning that establishment of the employer at or from which the complainant works; and

(c) any reference to an offer of re-engagement is a reference to 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 held immediately before the date of dismissal or in a different job which would be reasonably suitable in his case.

## **62 Pressure on employer to dismiss unfairly**

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 56(1)(b) or whether the employer acted reasonably in treating it as a sufficient reason for dismissing him-

- (a) no account shall be taken of any pressure which, by calling, organizing, 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 52*

## **63 Qualifying period and upper age limit**

(1) Subject to subsection (3), section 52 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 two years ending with the effective date of termination; or
- (b) on or before the effective date of termination attained the age which, in the undertaking in which he was employed, was the normal retiring age for an employee holding the position which he held, or, if a man, attained the age of sixty-five, or if a woman, attained the age of sixty.

(2) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in section 22(1), subsection (1)(a) shall have effect in relation to that dismissal as if for the words "two years" there were substituted the words "one month".

(3) Subsection (1) shall 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 section 57(1) or section 57A(1).

[S. 30(4)/Ord. 10/13/w.e.f. 1/12/13.]

#### **64 Extended qualifying period where no more than twenty employees**

(1) Subject to subsection (2), section 52 does not apply for the dismissal of an employee from any employment if-

- (a) the period (ending with the effective date of termination) during which the employee was continuously employed did not exceed two years; and
- (b) at no time during that period did the number of employees employed by the employer for the time being of the dismissed employee, added to the number employed by any associated employer, exceed twenty.

(2) Subsection (1) shall not apply to the dismissal of an employee by reason of any such requirement or recommendation as is referred to in section 22(1), or if it is shown that the reason (or, if more than one, the principal reason) for the dismissal was one of those specified in section 57(1).

### *Remedies for unfair dismissal*

#### **65 Complaint to Summary Court**

(1) A complaint may be presented to the Summary Court against an employer by any person (in this Part referred to as the complainant) that he was unfairly dismissed by the employer.

(2) Subject to subsection (4) the Summary Court shall not consider a complaint under this section unless it is presented to the court before the end of the period of three months beginning with the effective date of termination or within such further period as the court 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 of three months.

(3) Subsection (2) shall apply in relation to a complaint to which section 61(3) applies as if-

- (a) for the references to three months there were substituted, in each case, a reference to six months; and
- (b) as if for the reference to the effective date of termination there were substituted a reference to the complainant's date of dismissal (within the meaning of section 61(4)).

(4) The Summary Court shall consider a complaint under this section if, where the dismissal is with notice, the complaint is presented after the notice is given notwithstanding that it is presented before the effective date of termination and in relation to such a complaint the provisions of this Ordinance, so far as they relate to unfair dismissal, shall have effect-

- (a) as if references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such circumstances that he will be unfairly dismissed when the notice expires;
- (b) as if references to reinstatement included references to the withdrawal of the notice by the employer;
- (c) as if 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) as if references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

## **66 Remedies for unfair dismissal**

(1) Where on a complaint under section 65 the Summary Court finds that the grounds of the complaint are well founded, it shall explain to the complainant what orders for reinstatement or re-engagement may be made under section 67 and in what circumstances they may be made, and shall ask him whether he wishes the court to make such an order, and if he does express such a wish the court may make an order under section 67.

(2) If on a complaint under section 65 the court finds that the grounds of the complaint are well founded and no order is made under section 67, the Summary Court shall make an award of compensation for unfair dismissal, calculated in accordance with sections 70 to 75, to be paid by the employer to the employee.

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

(1) An order under this section may be an order for reinstatement (in accordance with subsections (2) and (3) or an order for re-engagement in accordance with subsection (4)), as the Summary Court may decide, and in the latter case may be on such terms as the court may decide.

(2) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed, and on making such an order the court 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) Without prejudice to the generality of subsection (2), if the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.

(4) An order for re-engagement is an order that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment, and on making such an order the court 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.

(5) In exercising its discretion under this section the court shall first consider whether to make an order for reinstatement and in so doing shall take into account the following considerations, that is to say-

- (a) whether the complainant wishes to be reinstated;
- (b) whether it is practicable for the employer to comply with an order for reinstatement;
- (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.

(6) If the court decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and if so on what terms; and in so doing the court shall take into account the following considerations, that is to say-

- (a) any wish expressed by the complainant as to the nature of the order to be made;
- (b) whether it is practicable for the employer or, as the case may be, a successor or associated employer to comply with an order for re-engagement;
- (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and if so on what terms;

and except in a case where the court takes into account contributory fault under paragraph (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.

## **68 Supplementary provisions relating to section 67**

(1) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the court shall not take that fact into account in determining, for the purposes of section 67(5)(b) or (6)(b), whether it is practicable to comply with an order for reinstatement or re-engagement unless the employer shows-

- (a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement; or
- (b) that he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he wished to be reinstated or re-engaged, and that when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

(2) In calculating for the purpose of section 67(2)(a) or (4)(d) any amount payable by the employer, the court shall take into account, so as to reduce the employers's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement or engagement by way of-

- (a) wages in lieu of notice or ex gratia payments paid by the employer;
- (b) remuneration paid in respect of employment with another employer;

and such other benefits as the court thinks appropriate in the circumstances.

## **69 Enforcement of section 67 order and compensation**

(1) If an order under section 67 is made and the complainant is reinstated or, as the case may be, re-engaged but the terms of the order are not fully complied with, then, subject to section 73, the Summary Court shall make an award of compensation, to be paid by the employer to the employee, of such amount as the court thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.

(2) Subject to subsection (1), if an order under section 67 is made but the complainant is not reinstated or, as the case may be, re-engaged in accordance with the order-

- (a) the court shall make an award of compensation for unfair dismissal, calculated in accordance with sections 70 to 75, to be paid by the employer to the employee; and
- (b) except in a case in which the dismissal is to be regarded as unfair by virtue of section 57 or 58(a) or in which the employer satisfies the court that it was not practicable to comply with the order, the court shall make an additional award of compensation to be paid by the employer to the employee of an amount not less than thirteen nor more than twenty-six weeks' pay.

(3) Where in any case an employer has engaged a permanent replacement for a dismissed employee the court shall not take that fact into account in determining, for the purposes of subsection (2)(b) whether it was practicable to comply with the order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement.

(4) Where in any case the Summary Court makes an award of compensation for unfair dismissal, calculated in accordance with sections 70 to 75, and the tribunal finds that the complainant has unreasonably prevented an order under section 67 from being complied with, it shall, without prejudice to the generality of section 72(4), take that conduct into account as a failure on the part of the complainant to mitigate his loss.

### *Amount of compensation*

#### **70 Compensation for unfair dismissal**

(1) Where the Summary Court makes an award of compensation for unfair dismissal under section 66(2) or 69(2)(a) the award shall consist of-

- (a) a basic award (calculated in accordance with section 71); and
- (b) a compensatory award (calculated in accordance with section 72), and
- (c) where the dismissal is to be regarded as unfair by virtue of section 57 or 58(a), a special award (calculated in accordance with section 75);

but paragraph (c) shall not apply unless the complainant requested the court to make an order under section 67, and shall not in any event apply in a case within section 73(2).

(2) Where the Summary Court makes an award of compensation for unfair dismissal under section 66(2) or 69(2)(a) and the dismissal is to be regarded as unfair by virtue of section 57 or 58(a), the court, 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 breach, or proposed breach of any requirement falling within subsection (3).

(3) A requirement falls within this subsection if it is imposed on the complainant in question by or under any arrangement and requires him-

- (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 trade union or of a particular trade union or of one of a number of particular trade unions; or
- (c) not to take part in the activities of any trade union or of a particular trade union or of one of a number of particular trade unions.

## **71 Calculation of basic award**

(1) The amount of the basic award shall be the amount calculated in accordance with subsections (3) to (6) of this section, subject to-

- (a) subsection (2) (which provides for an award of two weeks' pay in certain redundancy cases);
- (b) subsection (9) (which provides for the amount of the award to be reduced where the employee has unreasonably refused an offer of reinstatement);
- (c) subsection (10) (which provides for the amount of the award to be reduced because of the employee's misconduct); and
- (d) subsection (12) (which provides for the amount of the award to be reduced where the employee received a payment in respect of redundancy).

(2) The amount of the basic award shall be two weeks' pay where the court finds that the reason or principal reason for the dismissal of the employee was that he was redundant and the employee-

- (a) by virtue of section 80(5) or (6) is not, or if he were otherwise entitled would not be, entitled to a redundancy payment; or
- (b) by virtue of the operation of section 82(1) is not treated as dismissed for the purposes of Part VII.

(3) The amount of the basic award shall be calculated by reference to the period, ending with the effective date of termination, during which the employee has been continuously employed, by starting at the end of that period and reckoning backwards the numbers of years of employment falling within that period, and allowing-

- (a) one and a half week's pay for each such year of employment in which the employee was not below the age of forty-one;
- (b) one week's pay for each year of employment not falling within paragraph (a) in which the employee was not below the age of twenty-two; and
- (c) half a week's pay for each such year of employment not falling within either of paragraphs (a) and (b).

(4) Where, in reckoning the number of years of employment in accordance with subsection (3), twenty years of employment have been reckoned no account shall be taken of any year of employment earlier than those twenty years.

(5) Where the dismissal is to be regarded as unfair by virtue of section 57 or 58(a), the amount of the basic award (before any reduction under the following provisions of this section) shall not be less than £2,100.

(6) The Governor may by order increase or further increase the minimum award provided for by subsection (5), but no order shall be made under this subsection unless a draft of the order has been laid before the Legislative Assembly and approved by a resolution of the Legislative Assembly.

*[Revision w.e.f. 31/07/2017]*

(7) Where in the case of an employee the effective date of termination is after the specified anniversary the amount of the basic award calculated in accordance with subsections (3) and (4) shall be reduced by the appropriate fraction.

(8) In subsection (7) "**the specified anniversary**" in relation to a man means the sixty-fourth anniversary of the day of his birth, and in relation to a woman means the fifty-ninth anniversary of the day of her birth, and "**the appropriate fraction**" means the fraction of which-

- (a) the numerator is the number of whole months reckoned from the specified anniversary in the period beginning with that anniversary and ending with the effective date of termination; and
- (b) the denominator is twelve.

(9) Where the court 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 employment in all respects as if he had not been dismissed, the court shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that finding.

(10) Where the court 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 the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

(11) Subsection 10 shall not apply where the reason or principal reason for the dismissal was that the employee was redundant unless the dismissal is to be regarded as unfair by virtue of section 58(a), and in that event shall apply only to so much of the basic award as is payable because of subsection (5).

(12) The amount of the basic award shall be reduced or, as the case may be, be further reduced, by the amount of any redundancy payment awarded by the court under Part VII 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 Part VIII or otherwise.

## **72 Calculation of compensatory award**

(1) Subject to sections 73 and 74, the amount of the compensatory award shall be such amount as the court 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 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 or, a payment on account of dismissal by reason of redundancy, whether in pursuance of Part VII 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 71(9) to (12)) in respect of the same dismissal.

(4) In ascertaining the said loss the court shall apply the same rule concerning the duty of a person to mitigate his 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, organizing, 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 court 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 Part VII or otherwise, exceeds the amount of the basic award which would be payable but for section 71(12) that excess shall go to reduce the amount of the compensatory award.

### **73 Limit on compensation**

(1) The amount of compensation awarded to a person under section 69(1) or of a compensatory award to a person calculated in accordance with section 72 shall not exceed £10,000.

(2) The Governor may by order increase the said limit of £10,000 or that limit as from time to time increased under this subsection, but no such order shall be made unless a draft of the order has been laid before the Legislative Assembly and approved by a resolution of the Legislative Assembly.

*[Revision w.e.f. 31/07/2017]*

(3) It is hereby declared for the avoidance of doubt that the limit imposed by this section applies to the amount which the Summary Court would, apart from this section, otherwise award in respect of the subject matter of the complaint after taking into account any payment made by the respondent to the complainant in respect of that matter and any reduction in the amount of the award required by any enactment or rule of law.

### **74 Calculation of special award**

(1) Subject to the following provisions of this section, the amount of the special award shall be-

- (a) one week's pay multiplied by 104; or
- (b) £12,500,

whichever is the greater, but shall not exceed £25,000.

(2) If the award of compensation is made under section 69(2)(a) then, unless the employer satisfies the court that it was not practicable to comply with the preceding order under section 67, the amount of the special award shall be increased to-

- (a) one week's pay multiplied by 156; or
- (b) £18,750,

whichever is the greater, but subject to the following provisions of this section.

(3) In a case where the amount of the basic award is reduced under section 71(7), the amount of the special award shall be reduced by the same fraction.

(4) Where the court 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 the amount of the special award to any extent, the court shall reduce or further reduce that amount accordingly.

(5) Where the court finds that the complainant has unreasonably-

- (a) prevented an order under section 67 from being complied with; or
- (b) refused an offer by the employer (made otherwise than in compliance with such an order) which if accepted would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed,

the court shall reduce or further reduce the amount of the special award to such extent as it considers just and equitable having regard to that finding.

(6) Where the employer has engaged a permanent replacement for the complainant, the court shall not take that fact into account in determining, for the purposes of subsection (2), whether it was practicable to comply with an order under section 67 unless the employer shows that it was not practicable for him to arrange for the complainant's work to be done without engaging a permanent replacement.

(7) The Governor may by order increase any of the sums of £12,500, £25,000 and £18,750 specified in subsections (1) and (2), or any of those sums as from time to time increased under this subsection, but no such order shall be made unless a draft of the order has been laid before the Legislative Assembly and approved by a resolution of the Legislative Assembly.

*[Revision w.e.f. 31/07/2017]*

## **75 Awards against third parties**

(1) If in proceedings before the Summary Court on a complaint against an employer under section 65 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, organizing, 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 court to direct that the person who he claims 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 court has made an award under section 66(2) or an order under section 67.

(3) Where a person has been joined as a party to proceedings before a court by virtue of subsection (1) and the court-

- (a) makes an award of compensation under section 66(2) or 69(2)(a) or (b); 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 court may consider just and equitable in the circumstances.

### **75A Internal appeal procedure**

(1) Where in a case which an award of compensation for unfair dismissal falls to be made under section 66(2) or 69(2) the court finds that-

- (a) the employer provided a procedure for appealing against dismissal.
- (b) the complainant was, at the time of the dismissal or within a reasonable period afterwards, given written notice stating that the employer provided the procedure and including details of it; but
- (c) the complainant did not appeal against the dismissal under the procedure (otherwise than because the employer prevented him from doing so),

the court shall reduce the compensatory award included in the award for unfair dismissal by such amount (if any) as it considers just and equitable.

(2) Where in a case in which an award of compensation for unfair dismissal falls to be made under section 66(2) or 69(2)(a) the court finds that-

- (a) the employer provided a procedure for appealing against dismissal, but
- (b) the employer prevented the complainant from appealing against dismissal under the procedure,

the award of compensation for unfair dismissal shall include a supplementary award of such amount (if any) as the court considers just and equitable.

(3) In determining the amount of a reduction under section (1) or a supplementary award under subsection (2) the court shall have regard to all the circumstances of the case, including in particular the chances that an appeal under the procedure provided by the employer would have been successful.

(4) The amount of such a reduction or supplementary award shall not exceed the amount of two week's pay.

(5) In relation to persons serving as public officers the previous provisions of this section shall be construed as if the meaning of words "appeal against" included apply for a review of a the meaning of "appealing" included applying for a review of.

[S. 6/Ord. 6/05/w.e.f. 10/6/05.]

### *Interim relief*

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

(1) An employee who presents a complaint to the Summary Court under section 65 alleging that the dismissal is to be regarded as unfair by virtue of section 57 may apply to the court for an order under the following provisions of this section.

(2) The Summary Court shall not entertain an application under this section unless-

- (a) it is presented to the court before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date); and
- (b) in a case in which the employee relies on section 57(1)(a) or (b) before the end of that period there is also so presented a certificate in writing signed by an authorized official of the independent trade union of which the employee was or had proposed to become a member stating that on the date of the dismissal the employee was or had proposed to become a member of the union and that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.

(3) The Summary Court shall determine an application under this section as soon as practicable after receiving the application and where appropriate the relevant certificate, but shall give at the appropriate time-

- (a) to the employer; and
- (b) in the case of a section 75 request made at least three days before the date of the hearing, to the person to whom the request relates,

a copy of the application and certificate (if any) together with notice of the date, time and place of the hearing.

(4) In subsection (3)-

**"appropriate time"** means-

- (a) in relation to paragraph (a), not later than seven days before the date of the hearing;
- (b) in relation to paragraph (b), as soon as reasonably practicable; and

**"section 75 request"** means a request made under section 75(1) for the court to direct a person to be joined as a party to the proceedings.

(5) The Summary Court shall not exercise any power it has of postponing the hearing in the case of an application under this section except where the court is satisfied that special circumstances exist which justify it in doing so.

(6) If on hearing an application under this section it appears to the Summary Court that it is likely that on determining the complaint to which the application relates the court will find that the complainant is by virtue of section 57 to be regarded as having been unfairly dismissed, the court shall announce its findings and explain to both parties (if present) what powers the court may exercise on an application under this section and in what circumstances it may exercise them, and shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint-

- (a) to reinstate the employee, that is to say, to treat the employee in all respects as if he had not been dismissed; or
- (b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.

(7) In subsection (6) "terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed" means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal shall be regarded as continuous with his employment following the dismissal.

(8) If the employer states that he is willing to reinstate the employee, the court shall make an order to that effect.

(9) If the employer states that he is willing to re-engage the employee in another job and specifies the terms and conditions on which he is willing to do so, the court shall ask the employee whether he is willing to accept the job on those terms and conditions and-

- (a) if the employee is willing to accept the job on those terms and conditions, the court shall make an order to that effect; and
- (b) if the employee is unwilling to accept the job on those terms and conditions then, if the court is of the opinion that the refusal is reasonable, the court shall make an order for the continuation of his contract of employment, but otherwise the court shall make no order under this section.

(10) If, on the hearing of an application under this section, the employer fails to attend before the court or he states that he is unwilling either to reinstate the employee or re-engage him as mentioned in subsection (6), the court shall make an order for the continuation of the employee's contract of employment.

(11) In this section-

**"authorized official"**, in relation to a trade union, means an official of the union authorized by the union to act for the purposes of this section; and any reference to the date of dismissal is a reference-

- (a) where the employee's contract of employment was terminated by notice (whether given by his employer or by him), to the date on which the employer's notice was given; and

(b) in any other case, to the effective date of termination.

(12) A document purporting to be an authorization of an official by a trade union to act for the purposes of this section and to be signed on behalf of the union shall be taken to be such an authorization unless the contrary is proved, and a document purporting to be a certificate signed by such an official shall be taken to be signed by him less the contrary is proved.

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

(1) An order for the continuation of a contract of employment under section 76 shall be an order that the contract of employment, if it has been terminated, shall continue in force as if it had not been terminated and if not, shall on its termination, continue in force, in either case until the determination or settlement of the complaint and only for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters and for the purpose of determining for any purpose the period for which the employee has been continuously employed.

(2) Where the court makes any such order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period or part of any such period falling between the date of the dismissal and the determination or settlement of the complaint and, subject to subsection (5), the amount so specified shall be that which the employee could reasonably have been expected to earn during that period or part, and shall be paid, in the case of a payment for any such period falling wholly or partly after the order, on the normal pay day for that period and, in the case of a payment for any past period, within a time so specified.

(3) If an amount is payable by way of pay in pursuance of any such order in respect only of part of a normal pay period the amount shall be calculated by reference to the whole period and be reduced proportionately.

(4) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of any normal pay period or part of any such period shall go towards discharging the employer's liability in respect of that period under subsection (2), and conversely any payment under subsection (2) in respect of any period shall go towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.

(5) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the court shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.

(6) For the purposes of this section the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

## **78 Supplementary provisions relating to interim relief**

(1) At any time between the making of an order by the Summary Court under section 76 and the determination or settlement of the complaint to which it relates, the employer or the employee may

apply to the court for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order, and that section shall apply to the application as it applies to an application for an order under that section except that-

- (a) no certificate need be presented to the court under subsection (2)(b), and no copy of the certificate need be given to the employer under subsection (3), of that section; and
- (b) in the case of an application by an employer, for the reference in the said subsection (3) to the employer there shall be substituted a reference to the employee.

(2) If on the application of an employee the court is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under section 76(8) or (9)-

- (a) the court shall make an order for the continuation of the employee's contract of employment and section 77 shall apply to an order under this subsection as it applies to an order for the continuation of a contract of employment under section 76; and
- (b) the court shall also order the employer to pay the employee such compensation as the court considers just and equitable in all the circumstances having regard to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order under section 76(8) or (9) and to any loss suffered by the employee in consequence of the non-compliance.

(3) If on the application of an employee the Summary Court is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment, then-

- (a) if the non-compliance consists of a failure to pay an amount by way of pay specified in the order, the court shall determine the amount of pay owed by the employer to the employee on the date of the determination, and, if on that date the court also determines the employee's complaint that he has been unfairly dismissed by his employer, the court shall specify that amount separately from any other sum awarded to the employee; and
- (b) in any other case, the court shall order the employer to pay the employee such compensation as the court considers just and equitable in all circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.

## **PART VII REDUNDANCY PAYMENTS**

### *Right to redundancy payment*

#### **78A This part not to apply to public officers**

This part does not apply to public officers (including police officers).

[S. 7/Ord. 6/05/w.e.f. 10/6/05.]

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

- (1) Where an employee who has been continuously employed for the requisite period-
- (a) is dismissed by his employer by reason of redundancy; or
  - (b) is laid off or kept on short-time to the extent specified in section 86(1) and complies with the requirements of that section,

then, subject to the following provisions of this Ordinance, the employer shall be liable to pay to him a sum (in this Ordinance referred to as a "redundancy payment") calculated in accordance with Schedule 3.

- (2) For the purposes of this Ordinance an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to-
- (a) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed; or
  - (b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or diminish.

For the purposes of this subsection, the business of the employer together with the business or businesses of his associated employers shall be treated as one unless either of the conditions specified in this subsection would be satisfied without so treating those businesses.

- (3) In subsection (2), "cease" means cease either permanently or temporarily and from whatsoever cause, and "diminish" has a corresponding meaning.
- (4) For the purposes of subsection (1), the requisite period is the period of two years ending with the relevant date.

## **80 General exclusions from right to redundancy payment**

- (1) An employee shall not be entitled to a redundancy payment if immediately before the relevant date the employee-
- (a) if a man, has attained the age of sixty-five; or
  - (b) if a woman, has attained the age of sixty.
- (2) Except as provided by section 90, an employee shall not be entitled to a redundancy payment by reason of dismissal where his employer, being entitled to terminate his contract of employment without notice by reason of the employee's conduct, terminates it either-
- (a) without notice; or
  - (b) by giving shorter notice than that which, in the absence of such conduct, the employer would be required to give to terminate the contract; or

- (c) by giving notice (not being such shorter notice as is mentioned in paragraph (b)) which includes, or is accompanied by, a statement in writing that the employer would, by reason of the employee's conduct, be entitled to terminate the contract without notice.

(3) If an employer makes an employee an offer (whether in writing or not) before the ending of his employment under the previous contract to renew his contract of employment, or to re-engage him under a new contract of employment, so that the renewal or re-engagement would take effect either immediately on the ending of his employment under the previous contract or after an interval of not more than four weeks thereafter, the provisions of subsections (5) and (6) shall have effect.

(4) For the purposes of the application of subsection (3) to a contract under which the employment ends on a Friday, Saturday or Sunday-

- (a) the renewal or re-engagement shall be treated as taking effect immediately on the ending of the employment under the previous contract if it takes effect on or before the next Monday after that Friday, Saturday or Sunday; and
- (b) the interval of four weeks shall be calculated as if the employment had ended on that Monday.

(5) If an employer makes an employee such an offer as is referred to in subsection (3) and either-

- (a) the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would not differ from the corresponding provisions of the previous contract; or
- (b) the first-mentioned provisions would differ (wholly or in part) from those corresponding provisions, but the offer constitutes an offer of suitable employment in relation to the employee,

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

(6) If an employee's contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of such an offer as is referred to in subsection (3), and the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which he is employed, and as to the other terms and conditions of his employment, differ (wholly or in part) from the corresponding provisions of the previous contract but the employment is suitable in relation to the employee, and during the trial period referred to in section 82 the employee unreasonably terminates the contract, or unreasonably gives notice to terminate it and the contract is thereafter, in consequence, terminated, he shall not be entitled to a redundancy payment by reason of his dismissal from employment under the previous contract.

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

## **81 Dismissal by employer**

(1) In this Part, except as respects a case to which section 84 applies, "dismiss" and "dismissal" shall, subject to sections 82, 83 and 91, be construed in accordance with subsection (2).

(2) An employee shall be treated as dismissed by his employer if, but only if-

- (a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice; or
- (b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract; or
- (c) the employee terminates that contract with or without notice, in circumstances (not falling within section 90(4)) such that he is entitled to terminate it without notice by reason of the employer's conduct.

## **82 Renewal of contract or re-engagement**

(1) If an employee's contract of employment is renewed, or he is re-engaged under a new contract of employment in pursuance of an offer (whether in writing or not) made by his employer before the ending of his employment under the previous contract, and the renewal or re-engagement takes effect either immediately on the ending of that employment or after an interval of not more than four weeks thereafter, then, subject to subsections (3) to (6), the employee shall not be regarded as having been dismissed by his employer by reason of the ending of his employment under the previous contract.

(2) For the purposes of the application of subsection (1) to a contract under which the employment ends on a Friday, Saturday or Sunday-

- (a) the renewal or re-engagement shall be treated as taking effect immediately on the ending of the employment if it takes effect on or before the Monday after that Friday, Saturday or Sunday, and
- (b) the interval of four weeks referred to in that subsection shall be calculated as if the employment had ended on that Monday.

(3) If, in a case to which subsection (1) applies, the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which the employee is employed, and as to the other terms and conditions of his employment, differ (wholly or in part) from the corresponding provisions of the previous contract, there shall be a trial period in relation to the contract as renewed, or the new contract (whether or not there has been a previous trial period under this section).

(4) The trial period shall begin with the ending of the employee's employment under the previous contract and end with the expiration of the period of four weeks beginning with the date on which the employee starts work under the contract as renewed, or the new contract, or such longer period as may be agreed in accordance with the next following subsection for the purpose of retraining the employee for employment under that contract.

(5) Any such agreement shall-

- (a) be made between the employer and the employee or his representative before the employee starts work under the contract as renewed or, as the case may be, the new contract;
- (b) be in writing;
- (c) specify the date of the end of the trial period; and
- (d) specify the terms and conditions of employment which will apply in the employee's case after the end of that period.

(6) If during the trial period-

- (a) the employee, for whatever reason, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated; or
- (b) the employer, for a reason connected with or arising out of the change to the renewed, or new, employment, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated,

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

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

### **83 Employee anticipating expiry of employer's notice**

(1) The provisions of this section shall have effect where-

- (a) an employer gives notice to an employee to terminate the contract of employment; and
- (b) at a time within the obligatory period of that notice, the employee gives notice in writing to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire.

(2) Subject to the following provisions of this section, in the circumstances specified in subsection (1) the employee shall, for the purposes of this Part, be taken to be dismissed by his employer.

(3) If, before the employee's notice is due to expire, the employer gives him notice in writing-

- (a) requiring him to withdraw his notice terminating the contract of employment as mentioned in subsection (1)(b) and to continue in the employment until the date on which the employer's notice expires, and

- (b) stating that, unless he does so, the employer will contest any liability to pay to him a redundancy payment in respect of the termination of his contract of employment,

but the employee does not comply with the requirements of that notice, the employee shall not be entitled to a redundancy payment by virtue of subsection (2) except as provided by subsection (4).

(4) Where, in the circumstances specified in subsection (1), the employer has given notice to the employee under subsection (3), and on a reference to the Summary Court it appears to the court, having regard both to the reasons for which the employee seeks to leave the employment and those for which the employer requires him to continue in it, to be just and equitable that the employee should receive the whole or part of any redundancy payment to which he would have been entitled apart from subsection (3), the court may determine that the employer shall be liable to pay to the employee-

- (a) the whole of the redundancy payment to which the employee would have been so entitled; or
- (b) such part of that redundancy payment as the court thinks fit.

(5) In this section-

- (a) if the actual period of the employer's notice (that is to say, the period beginning at the time when the notice is given and ending at the time when it expires) is equal to the minimum period which (whether by virtue of any enactment or otherwise) is required to be given by the employer to terminate the contract of employment, "the obligatory period", in relation to that notice, means the actual period of the notice;
- (b) in any other case, "**the obligatory period**", in relation to an employer's notice, means that period which, being equal to the minimum period referred to in paragraph (a), expires at the time when the employer's notice expires.

#### **84 Failure to permit woman to return to work after confinement treated as dismissal**

Where an employee is entitled to return to work and has exercised her right to return in accordance with section 45 but is not permitted to return to work, then she shall be treated for the purposes of the provisions of this Part as if she had been employed until the notified day of return, and, if she would not otherwise be so treated, as having been continuously employed until that day, and as if she had been dismissed with effect from that day for the reason for which she was not permitted to return.

#### **85 Lay-off and short-time**

(1) Where an employee is employed under a contract on such terms and conditions that his remuneration thereunder depends on his being provided by the employer with work of the kind which he is employed to do, he shall, for the purposes of this Part, be taken to be laid off for any week in respect of which, by reason that the employer does not provide such work for him, he is not entitled to any remuneration under the contract.

(2) Where by reason of a diminution in the work provided for an employee by his employer (being work of a kind which under his contract the employee is employed to do) the employee's

remuneration for any week is less than half a week's pay, he shall for the purposes of this Part be taken to be kept on short-time for that week.

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

(1) An employee shall not be entitled to a redundancy payment by reason of being laid off or kept on short-time unless he gives notice in writing to his employer indicating (in whatsoever terms) his intention to claim a redundancy payment in respect of lay-off or short-time (in this Ordinance referred to as a "**notice of intention to claim**") and, before the service of that notice, either-

- (a) he has been laid off or kept on short-time for four or more consecutive weeks of which the last before the service of the notice ended on the date of service thereof or ended not more than four weeks before that date; or
- (b) he has been laid off or kept on short-time for a series of six or more weeks (of which not more than three were consecutive) within a period of thirteen weeks, where the last week of the series before the service of the notice ended on the date of service thereof or ended not more than four weeks before that date.

(2) Where an employee has given notice of intention to claim-

- (a) he shall not be entitled to a redundancy payment in pursuance of that notice unless he terminates his contract of employment by a week's notice which (whether given before or after or at the same time as the notice of intention to claim) is given before the end of the period allowed for the purposes of this paragraph (as specified in section 87(5)), and
- (b) he shall not be entitled to a redundancy payment in pursuance of the notice of intention to claim if he is dismissed by his employer (but without prejudice to any right to a redundancy payment by reason of the dismissal):

Provided that, if the employee is required by his contract of employment to give more than one week's notice to terminate the contract, the reference in paragraph (a) to a week's notice shall be construed as a reference to the minimum notice which he is so required to give.

(3) Subject to subsection (4), an employee shall not be entitled to a redundancy payment in pursuance of a notice of intention to claim if, on the date of service of that notice, it was reasonably to be expected that the employee (if he continued to be employed by the same employer) would, not later than four weeks after that date, enter upon a period of employment of not less than thirteen weeks during which he would not be laid off or kept on short-time for any week.

(4) Subsection (3) shall not apply unless, within seven days after the service of the notice of intention to claim, the employer gives to the employee notice in writing that he will contest any liability to pay him a redundancy payment in pursuance of the notice of intention to claim.

## **87 Supplementary provisions in relation to lay-off or short-time**

(1) If, in a case where an employee gives notice of intention to claim and the employer gives a notice under section 86(4) (in this section referred to as a "counter-notice"), the employee continues or has continued, during the next four weeks after the date of service of the notice of intention to claim, to be employed by the same employer, and he is or has been laid off or kept on

short-time for each of those weeks, it shall be conclusively presumed that the condition specified in section 86(3) was not fulfilled.

(2) For the purposes of both section 86(1) and subsection (1) of this section, it is immaterial whether a series of weeks (whether it is four weeks, or four or more weeks, or six or more weeks) consists wholly of weeks for which the employee is laid off or wholly of weeks for which he is kept on short-time or partly of the one and partly of the other.

(3) For the purpose mentioned in subsection (2), no account shall be taken of any week for which an employee is laid off or kept on short-time where the lay-off or short-time is wholly or mainly attributable to a strike or a lock-out (within the meaning of paragraph 17 of Schedule 5) whether the strike or lock-out is in the trade or industry in which the employee is employed or not and whether it is in the Falkland Islands or elsewhere.

(4) Where the employer gives a counter-notice within seven days after the service of a notice of intention to claim, and does not withdraw the counter-notice by a subsequent notice in writing, the employee shall not be entitled to a redundancy payment in pursuance of the notice of intention to claim except in accordance with a decision of the Summary Court.

(5) The period allowed for the purposes of section 86(2)(a) is as follows, that is to say-

- (a) if the employer does not give a counter-notice within seven days after the service of the notice of intention to claim, that period is three weeks after the end of those seven days;
- (b) if the employer gives a counter-notice within those seven days, but withdraws it by a subsequent notice in writing, that period is three weeks after the service of the notice of withdrawal;
- (c) if the employer gives a counter-notice within those seven days and does not so withdraw it, and a question as to the right of the employee to a redundancy payment in pursuance of the notice of intention to claim is referred to the court, that period is three weeks after the court has notified to the employee its decision on that reference.

(6) For the purposes of subsection (5)(c), no account shall be taken of any appeal against the decision of the Summary Court, or of any requirement to the Summary Court to state a case for the opinion of the Supreme Court, or of any proceedings or decision in consequence of such an appeal or requirement.

## **88 The relevant date**

(1) Subject to the following provisions of this section, for the purposes of the provisions of this Ordinance so far as they relate to redundancy payments, "the relevant date", in relation to the dismissal of an employee-

- (a) where his contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which that notice expires;
- (b) where his contract of employment is terminated without notice, means the date on which the termination takes effect;
- (c) where he is employed under a contract for a fixed term and that term expires as mentioned in section 81(2)(b), means the date on which that term expires;

- (d) where he is treated, by virtue of section 82(6), as having been dismissed on the termination of his employment under a previous contract, means-
  - (i) for the purposes of section 96, the date which is the relevant date as defined by paragraph (a), (b) or (c) of this subsection in relation to the renewed, or new, contract, or, where there has been more than one trial period under section 82, the last such contract; and
  - (ii) for the purposes of any other provisions, the date which is the relevant date as defined by paragraph (a), (b) or (c) of this subsection in relation to the previous contract, or, where there has been more than one trial period under section 84, the original contract; and
- (e) where he is taken to be dismissed by virtue of section 83(2), means the date on which the employee's notice to terminate his contract of employment expires.

(2) "**The relevant date**", in relation to a notice of intention to claim or a right to a redundancy payment in pursuance or such a notice-

- (a) in a case falling within section 86(1)(a), means the date on which the last of the four or more consecutive weeks before the service of the notice came to an end; and
- (b) in a case falling within section 86(1)(b), means the date on which the last of the series of six or more weeks before the service of the notice came to an end.

(3) Where the notice required to be given by an employer to terminate a contract of employment by section 47(1) would, if duly given when notice of termination was given by the employer, or (where no notice was given) when the contract of employment was terminated by the employer, expire on a date later than the relevant date as defined by subsection (1), then for the purposes of section 79(4) and paragraph 1 of Schedule 3 and paragraph 8(4) of Schedule 6, that later date shall be treated as the relevant date in relation to the dismissal.

## **89 Reference of questions to Summary Court**

(1) Any question arising under this Part as to the right of an employee to a redundancy payment, or as to the amount of a redundancy payment, shall be referred to and determined by the Summary Court.

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

(3) In relation to lay-off or short-time, the questions which may be referred to and determined by a court, as mentioned in subsection (1), shall include any question whether an employee will become entitled to a redundancy payment if he is not dismissed by his employer and he terminates his contract of employment as mentioned in section 86(2)(a) and any such question shall for the purposes of this Part be taken to be a question as to the right of the employee to a redundancy payment.

## **90 Special provisions as to termination of contract in cases of misconduct or industrial dispute**

(1) Where at any such time as is mentioned in subsection (2), an employee who-

- (a) has been given notice by his employer to terminate his contract of employment; or
- (b) has given notice to his employer under section 86(1),

takes part in a strike, in such circumstances that the employer is entitled, by reason of his taking part in the strike, to treat the contract of employment as terminable without notice, and the employer for that reason terminates the contract as mentioned in section 80(2), that subsection shall not apply to that termination of the contract.

(2) The times referred to in subsection (1) are-

- (a) in a case falling within paragraph (a) of that subsection any time within the obligatory period of the employer's notice (as defined by section 83(5)); and
- (b) in a case falling within paragraph (b) of that subsection, any time after the service of the notice mentioned in that paragraph.

(3) Where at any such time as is mentioned in subsection (2) an employee's contract of employment, otherwise than by reason of his taking part in a strike, is terminated by his employer in the circumstances specified in section 80(2), and is so terminated as mentioned therein, and on a reference to the Summary Court it appears to the court, in the circumstances of the case, to be just and equitable that the employee should receive the whole or part of any redundancy payment to which he would have been entitled apart from section 80(2), the court may determine that the employer shall be liable to pay the employee-

- (a) the whole of the redundancy payment to which the employee would have been so entitled; or
- (b) such part of that redundancy payment as the court thinks fit.

(4) Where an employee terminates his contract of employment without notice, being entitled to do so by reason of a lock-out by his employer, section 81(2)(c) shall not apply to that termination of the contract.

(5) In this section "strike" and "lock-out" each has the meaning given by paragraph 17 of Schedule 5.

## **91 Implied or constructive termination of contract**

(1) Where in accordance with any enactment or rule of law-

- (a) any act on the part of an employer; or
- (b) any event affecting an employer (including, in the case of an individual, his death),

operates so as to terminate a contract under which an employee is employed by him, that act or event shall for the purposes of this Part be treated as a termination of the contract by the employer,

if apart from this subsection it would not constitute a termination of the contract by him and, in particular, the provisions of sections 81, 82 and 88 shall apply accordingly.

(2) Where subsection (1) applies, and the employee's contract of employment is not renewed, and he is not re-engaged under a new contract of employment, so as to be treated, by virtue of section 82(1), as not having been dismissed, he shall, without prejudice to section 82(6), be taken for the purposes of this Part to be dismissed by reason of redundancy if the circumstances in which his contract is not so renewed and he is not so re-engaged are wholly or mainly attributable to one or other of the facts specified in section 79(2)(a) and (b).

(3) For the purposes of subsection (2), section 79(2)(a), in so far as it relates to the employer ceasing or intending to cease to carry on the business, shall be construed as if the reference to the employer included a reference to any person to whom, in consequence of the act or event in question, power to dispose of the business has passed.

(4) In this section, any reference to section 82(1) includes a reference to that subsection as applied by section 92(2).

## **92 Change of ownership of business**

(1) The provisions of this section shall have effect, subject to section 93, where-

- (a) a change occurs (whether by virtue of a sale or other disposition or by operation of law) in the ownership of a business for the purposes of which a person is employed, or of a part of such a business; and
- (b) in connection with that change the person by whom the employee is employed immediately before the change occurs (in this section referred to as "the previous owner") terminates the employee's contract of employment, whether by notice or without notice.

(2) If, by agreement with the employee, the person who immediately after the change occurs is the owner of the business, or of the part of the business in question, as the case may be (in this section referred to as "the new owner"), renews the employee's contract of employment (with the substitution of the new owner for the previous owner) or re-engages him under a new contract of employment, sections 82 and 88 shall have effect as if the renewal or re-engagement had been a renewal or re-engagement by the previous owner (without any substitution of the new owner for the previous owner).

(3) If the new owner offers to renew the employee's contract of employment (with the substitution of the new owner for the previous owner) or to re-engage him under a new contract of employment, subsections (3) to (6) of section 80 shall have effect, subject to subsection (4), in relation to that offer as they would have had effect in relation to the like offer made by the previous owner.

(4) For the purposes of the operation, in accordance with subsection (3), of section 80(3) to (6) in relation to an offer made by the new owner-

- (a) the offer shall not be treated as one whereby the provisions of the contract as renewed, or of the new contract, as the case may be, would differ from the corresponding provisions of the contract as in force immediately before the dismissal by reason only that the new owner would be substituted for the previous owner as the employer; and

- (b) no account shall be taken of that substitution in determining whether the refusal of the offer was unreasonable or, as the case may be, whether the employee acted reasonably in terminating the renewed, or new, employment during the trial period referred to in section 82.

(5) The preceding provisions of this section shall have 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 person 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 those provisions have effect where the previous owner and the new owner are wholly different persons.

(6) Sections 80(7) and 82(7) shall not apply in any case to which this section applies.

(7) Nothing in this section shall be construed as requiring any variation of a contract of employment by agreement between the parties to be treated as constituting a termination of the contract.

### **93 Section 92 not to apply in certain circumstances**

(1) Where a business is-

- (a) a business the whole or a substantial part of which consists of the rearing of sheep or cattle;
- (b) there is used for the purposes of that business land exceeding one thousand acres in area; and
- (c) the Crown or the Falkland Islands Development Corporation acquires that business,

section 92 shall not apply, and for all the purposes of this Part, the previous owner of the business shall, be deemed to have dismissed immediately prior to the transfer every employee whom he has not earlier dismissed.

(2) An employee who, by subsection (1) of this section is deemed to have been dismissed, shall be entitled to a redundancy payment from his previous employer, if in the application of sections 79 to 91 (inclusive) he would be so entitled if he had actually been dismissed and the only reason for his dismissal was his redundancy.

(3) Where the owner of a business disposes of the whole or part of a business to a person who, immediately before such disposal was an employee of the owner of that business, that person shall not be entitled to any payment under any provision of this Part if-

- (a) the whole or the relevant part of the business was transferred to him with his agreement;
- or

- (b) the whole or the relevant part of the business is given to him by will or other testamentary disposition and he does not prior to the same being vested in him disclaim or refuse the gift,

and section 92 shall not apply in relation to the employee who thus acquires the whole or part of the business but applies in relation to every other employee.

#### **94 Exclusion or reduction of redundancy payments on account of pension rights**

(1) The Governor shall by regulations make provision for excluding the right to a redundancy payment, or reducing the amount of any redundancy payment, in such cases as may be prescribed by the regulations, being cases in which an employee has (whether by virtue of any statutory provision or otherwise) a right or claim (whether legally enforceable or not) to a periodical payment or lump sum by way of pension, gratuity or superannuation allowance which is to be paid by reference to his employment by a particular employer and is to be paid, or to begin to be paid, at the time when he leaves that employment or within such period thereafter as may be prescribed by the regulations.

(2) Provision shall be made by any such regulations for securing that the right to a redundancy payment shall not be excluded, and that the amount of a redundancy payment shall not be reduced, by reason of any right or claim to a periodical payment or lump sum, in so far as that payment or lump sum represents such compensation as is payable under a statutory provision, whether made or passed before, on, or after the passing of this Ordinance.

(3) In relation to any case where, under section 83 or 90 the Summary Court determines that an employer is liable to pay part (but not the whole) of a redundancy payment, any reference in this section to a redundancy payment, or to the amount of a redundancy payment, shall be construed as a reference to that part of the redundancy payment, or to the amount of that part, as the case may be.

#### **95 Domestic servants**

(1) For the purposes of the application of the provisions of this Part to an employee who is employed as a domestic servant in a private household, those provisions (except section 92) shall apply as if the household were a business and the maintenance of the household were the carrying on of that business by the employer.

(2) Section 79 shall not apply to any person in respect of employment as a domestic servant in a private household, where the employer is the father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, or half-sister of the employee.

#### **96 Claims for redundancy payments**

(1) Notwithstanding anything in the preceding provisions of this Part, an employee shall not be entitled to a redundancy payment unless, before the end of the period of six months beginning with the relevant date-

- (a) the payment has been agreed and paid; or

- (b) the employee has made a claim for the payment by notice in writing given to the employer; or
- (c) a question as to the right of the employee to the payment, or as to the amount of the payment, has been referred to the Summary Court; or
- (d) a complaint relating to his dismissal has been presented by the employee under section 65.

(2) An employee shall not by virtue of subsection (1) lose his right to a redundancy payment if, during the period of six months immediately following the period mentioned in that subsection, the employee-

- (a) makes such a claim as is referred to in paragraph (b) of that subsection;
- (b) refers to the Summary Court such a question as is referred to in paragraph (c) of that subsection; or
- (c) makes such a complaint as is referred to in paragraph (d) of that subsection,

and it appears to the court to be just and equitable that the employee should receive a redundancy payment having regard to the reason shown by the employee for his failure to take any such step as is referred to in paragraph (a), (b) or (c) of this subsection within the period mentioned in subsection (1), and to all the other relevant circumstances.

## **97 Written particulars of redundancy payments**

(1) On making any redundancy payment, otherwise than in pursuance of a decision of the court which specifies the amount of the payment to be made, the employer shall give to the employee a written statement indicating how the amount of the payment has been calculated.

(2) Any employer who without reasonable excuse fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

*[Revision w.e.f. 31/07/2017]*

(3) If an employer fails to comply with the requirements of subsection (1), then (without prejudice to any proceedings for an offence under subsection (2)) the employee may by notice in writing to the employer require him to give to the employee a written statement complying with those requirements within such period (not being less than one week beginning with the day on which the notice is given) as may be specified in the notice; and if the employer without reasonable excuse fails to comply with the notice he commits an offence under this subsection and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

*[Revision w.e.f. 31/07/2017]*

## **98 Provision as to notices**

(1) Any notice which under this Part is required or authorized to be given by an employer to an employee may be given by being delivered to the employee, or left for him at his usual or last-known place of residence, or sent by post addressed to him at that place.

(2) Any notice which under this Part is required or authorized to be given by an employee to an employer may be given either by the employee himself or by a person authorized by him to act on his behalf, and, whether given by or on behalf of the employee-

- (a) may be given by being delivered to the employer, or sent by post addressed to him at the place where the employee is or was employed by him; or
- (b) if arrangements in that behalf have been made by the employer, may be given by being delivered to a person designated by the employer in pursuance of the arrangements, or left for such a person at a place so designated, or sent by post to such a person at an address so designated.

(3) In the preceding provisions of this section, any reference to the delivery of a notice shall, in relation to a notice which is not required by this Part to be in writing, be construed as including a reference to the oral communication of the notice.

(4) Any notice which, in accordance with any provision of this section, is left for a person at a place referred to in that provision shall, unless the contrary is proved, be presumed to have been received by him on the day on which it was left there.

(5) Nothing in subsection (1) or subsection (2) shall be construed as affecting the capacity of an employer to act by a servant or agent for the purposes of any provision of this Part, including either of those subsections.

## **PART VIII INSOLVENCY OF EMPLOYER**

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

(1) An amount to which this section applies shall be treated for the purposes of-

- (a) section 33 of the Bankruptcy Act 1914; and
- (b) section 319 of the Companies Act 1948;

as if it were wages payable by the employer to the employee in respect of the period for which it is payable.

(2) This section applies to any amount owed by an employer to an employee in respect of-

- (a) a guarantee payment;
- (b) remuneration on medical grounds under section 22;
- (c) any payment for time off under section 31(3) or 37(4); and
- (d) any payment under Part VII.

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

(1) If on an application made in writing to him by an employee the Governor is satisfied-

- (a) that the employer of that employee has become insolvent; and
- (b) that on the relevant date the employee was entitled to be paid the whole or any part of any debt to which this section applies,

the Governor may, subject to the provisions of this section, authorize the Financial Secretary to pay to the employee out of the Consolidated Fund the amount to which, in the opinion of the Financial Secretary, the employee is entitled in respect of that debt.

(2) In this section "the relevant date", in relation to a debt, means whichever is the latest of-

- (a) the date on which the employer became insolvent;
- (b) the date of the termination of the employee's employment; or
- (c) where the debt falls within subsection (3)(d), the date on which the award was made.

(3) This section applies to the following debts:

- (a) any arrears of pay in respect of one or more (but not more than eight) weeks;
- (b) any amount which the employer is liable to pay the employee for the period of notice required by section 47(1) or (2);
- (c) any holiday pay-
  - (i) in respect of a period or periods of holiday not exceeding six weeks in all; and
  - (ii) to which the employee became entitled during the twenty-four months ending with the relevant date; and
- (d) any basic award of compensation for unfair dismissal (within the meaning of section 70).

(4) For the purposes of subsection 3(a), any such amount as is referred to in section 99(2) shall be treated as if it were arrears of pay.

(5) The total amount payable to an employee in respect of any debt mentioned in subsection (3), where that debt is referable to a period of time, shall not exceed £234.08 in respect of any one week or, in respect of a shorter period, an amount bearing the same proportion to £152 as that shorter period bears to a week.

*[S.R. & O. 12/02/w.e.f. 27/6/02.]*

(6) The provisions of subsections (7) and (8) shall apply in a case where one of the following officers (hereafter in this section referred to as the "relevant officer") has been or is required to be appointed in connection with the employer's insolvency, that is to say, a trustee in bankruptcy, a liquidator, a receiver or manager, or a trustee under a composition or arrangement between the employer and his creditors or under a trust deed for his creditors executed by the employer; and in this subsection "liquidator" or "receiver" include the Official Receiver in his capacity as a provisional liquidator or interim receiver.

(7) Subject to subsection (8), the Governor shall not in such a case authorize any payment under this section in respect of any debt until he has received a statement from the relevant officer of the

amount of that debt which appears to have been owed to the employee on the relevant date and to remain unpaid; and the relevant officer shall, on request by the Governor, provide him, as soon as reasonably practicable, with such a statement.

(8) Where-

- (a) the application for a payment under this section has been received by the Governor, but no such payment has been made;
- (b) the Governor is satisfied that a payment under this section should be made; and
- (c) it appears to the Governor that there is likely to be unreasonable delay before he receives a statement about the debt in question,

then, the Governor may, if the applicant so requests or, if the Governor thinks fit, without such a request, make a payment under this section, notwithstanding that no such statement has been received.

### **101 Transfer of rights and remedies to the Crown**

(1) Where, in pursuance of section 100, the Financial Secretary makes any payment to an employee in respect of any debt to which that section applies-

- (a) any rights and remedies of the employee in respect of that debt (or, if the Financial Secretary has paid only part of it, in respect of that part) shall, on the making of the payment, become rights and remedies of the Crown; and
- (b) any decision of the Summary Court 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 Financial Secretary has paid, is to be paid to the Financial Secretary.

(2) There shall be included among the rights and remedies which become rights and remedies of the Crown in accordance with subsection (1)(a) any right to be paid in priority to other creditors of the employer in accordance with-

- (a) section 33 of the Bankruptcy Act 1914; and
- (b) section 319 of the Companies Act 1948,

and the Crown shall be entitled to be so paid in priority to any other unsatisfied claim of the employee; and in computing for the purposes of any of those provisions any limit on the amount of sums to be so paid any sums paid to the Crown shall be treated as if they had been paid to the employee.

(3) Any sum recovered by the Crown in exercising any right or pursuing any remedy which is his by virtue of this section shall be paid into the Consolidated Fund.

### **102 Power of Crown to obtain information in connection with applications**

(1) Where an application is made to the Governor under section 100 in respect of a debt owed by an employer, the Financial Secretary may require-

- (a) the employer to provide him with such information as the Governor may reasonably require for the purpose of determining whether the application is well founded;
- (b) any person having the custody or control of any relevant records or documents to produce for examination on behalf of the Governor any such document in that person's custody or control which is of such a description as the Financial Secretary may require.

(2) Any such requirement shall be made by notice in writing given to the person on whom the requirement is imposed and may be varied or revoked by a subsequent notice so given.

(3) If a person refuses or wilfully neglects to furnish any information or produce any document which he has been required to furnish or produce by a notice under this section he commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

*[Revision w.e.f. 31/07/2017]*

(4) If a person, in purporting to comply with a requirement of a notice under this section, knowingly or recklessly makes any false statement he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

*[Revision w.e.f. 31/07/2017]*

### **103 Interpretation of sections 99 to 102**

(1) For the purposes of sections 100 to 102, an employer shall be taken to be insolvent if, but only if, in the Falkland Islands-

- (a) he becomes bankrupt or makes a composition or arrangement with his creditors or a receiving order is made against him;
- (b) he has died and an order is made under section 130 of the Bankruptcy Act 1914 for the administration of his estate according to the law of bankruptcy, or by virtue of an order of the court his estate is being administered in accordance with rules set out in Part I of Schedule 1 to the Administration of Estates Act 1925; or
- (c) where the employer is a company, a winding-up order is made or a resolution for voluntary winding-up is passed with respect to it, or a receiver or manager of its undertaking is duly appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge.

(2) In sections 100 to 102-

**"holiday pay"** means-

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

**PART IX  
GENERAL**

*Contracting out of provisions of Ordinance*

**104 Restrictions on contracting out**

Except as provided by the following provisions of this section, any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports-

- (a) to exclude or limit the operation of any provision of this Ordinance; or
- (b) to preclude any person from presenting a complaint to, or bringing any proceedings under this Ordinance before, the Summary Court.

(2) Subsection (1) shall not apply-

- (a) to any provision in a collective agreement excluding rights under section 15 if an order under section 21 is for the time being in force in respect of it;
- (b) to any provision of an agreement relating to dismissal from employment such as is mentioned in section 106(1) or (2).

*Excluded classes of employment*

**105 Employment outside the Falkland Islands**

(1) Sections 4 to 6 and 47 to 49 do not apply in relation to employment during any period when the employee is engaged in work wholly or mainly outside the Falkland Islands unless the employee ordinarily works in the Falkland Islands and the work outside the Falkland Islands is for the same employer.

(2) Sections 10 and 51 and Parts III, IV, VI and VIII do not apply to employment where under his contract of employment the employee ordinarily works outside the Falkland Islands.

(3) An employee shall not be entitled to a redundancy payment if on the relevant date he is outside the Falkland Islands, unless under his contract of employment he ordinarily worked in the Falkland Islands.

(4) An employee who under his contract of employment ordinarily works outside the Falkland Islands shall not be entitled to a redundancy payment unless on the relevant date he is in the Falkland Islands in accordance with instructions given to him by his employer.

(5) For the purpose of subsection (2) a person employed to work on board a ship registered at a port in the Falkland Islands shall, unless-

- (a) the employment is wholly outside the Falkland Islands; or
- (b) he is not ordinarily resident in the Falkland Islands,

be regarded as a person who ordinarily works in the Falkland Islands.

### **106 Contracts for a fixed term**

(1) Section 52 does not apply to dismissal from employment under a contract for a fixed term of one year or more, where the dismissal consists only of the expiry of that term without its being renewed, if before the term so expires the employee has agreed in writing to exclude any claim in respect of rights under that section in relation to that contract.

(2) An employee employed under a contract of employment for a fixed term of two years or more entered into after the passing of this Ordinance shall not be entitled to a redundancy payment in respect of the expiry of that term without its being renewed (whether by the employer or by an associated employer of his), if before the term so expires he has agreed in writing to exclude any right to a redundancy payment in that event.

(3) Such an agreement as is mentioned in subsection (1) or (2) may be contained either in the contract itself or in a separate agreement.

(4) Where an agreement under subsection (2) is made during the currency of a fixed term, and that term is renewed, the agreement under that subsection shall not be construed as applying to the term as renewed, but without prejudice to the making of a further agreement under that subsection in relation to the term so renewed.

### **107 Mariners**

(1) Sections 4 to 9 and 47 to 49 do not apply to a person employed as a master of or a seaman on a sea-going British ship having a gross registered tonnage of 80 tons or more, including a person ordinarily employed as a seaman who is employed in or about such a ship in port by the owner or charterer of the ship to do work of a kind ordinarily done by a seaman on such a ship while it is in port or registered under section 373 of the Merchant Shipping Act 1894.

(2) Sections 10 and 51 and Parts III, IV and VI to VIII do not apply to employment as master or as a member of the crew of a fishing vessel where the employee is remunerated only by a share in the profits or gross earnings of the vessel.

(3) Section 105(3) and (4) do not apply to an employee, and section 106(2) does not apply to a contract of employment, if the employee is employed as a master or seaman in a British ship and is ordinarily resident in the Falkland Islands.

(4) Sections 10, 33 and 100 do not apply to employment as a merchant seaman.

(5) Employment as a merchant seaman does not include employment in the fishing industry or employment on board a ship otherwise than by the owner, manager or charterer of that ship except employment as a radio officer, but, save as aforesaid, it includes employment as master or a member of the crew of any ship and as a trainee undergoing training for the sea service, and employment in or about a ship in port by the owner, manager or charterer of the ship to do work of the kind ordinarily done by a merchant seaman on a ship while it is in port.

## **107A Exclusion of provisions in relation to police officers**

Section 15 to 21, 31 to 51, Part IV and Part VI do not apply to police officers.

[S. 8/Ord. 6/05/w.e.f. 10/6/05.]

## **108 Miscellaneous classes of employment**

(1) Subject to subsections (2), (3) and (4) of this section, sections 4, 6, 10, 31, 32 and 33 (which do not depend upon an employee having a qualifying period of continuous employment) do not apply to employment under a contract which normally involves employment for less than sixteen hours weekly.

(2) If the employee's relations with his employer cease to be governed by a contract which normally involves work for sixteen hours or more weekly and become governed by a contract which normally involves employment for eight hours or more, but less than sixteen hours, weekly, the employee shall nevertheless for a period of twenty-six weeks, computed in accordance with subsection (3), be treated for the purposes of subsection (1) as if his contract normally involved employment for sixteen hours or more weekly.

(3) In computing the said period of twenty-six weeks no account shall be taken of any week-

- (a) during which the employee is in fact employed for sixteen hours or more;
- (b) during which the employee takes part in a strike (as defined by paragraph 18 of Schedule 5), or is absent from work because of a lock-out (as so defined) by his employer; or
- (c) during which there is no contract of employment but which, by virtue of paragraph 8(1) of Schedule 5, counts in computing a period of continuous employment.

(4) An employee whose relations with his employer are governed by a contract of employment which normally involves employment for eight hours or more, but less than sixteen hours, weekly shall nevertheless, if he has been continuously employed for a period of five years or more be treated for the purposes of subsection (2) as if his contract normally involved employment for sixteen hours or more weekly.

(5) References in this section to weeks are to weeks within the meaning of Schedule 5.

### *Reviews of limits*

## **109 Review of limits**

(1) The Governor shall from time to time review-

- (a) the limits referred to in section 18;
- (b) the limit referred to in section 100(5); and
- (c) the limits imposed by paragraph 8(1) of Schedule 6 on the amount of a week's pay for the purpose of any of the provisions of this Ordinance,

and shall determine whether any of those limits shall be varied.

(2) In making a review under this section the Governor shall consider-

- (a) the general level of earnings obtaining in the Falkland Islands at the time of the review;
- (b) the economic situation of the Falkland Islands as a whole; and
- (c) such other matters as he thinks relevant.

(3) If on a review under this section the Governor determines that, having regard to the considerations mentioned in subsection (2), any of those limits should be varied, he may prepare and lay before the Legislative Assembly the draft of an order giving effect to his decision.

*[Revision w.e.f. 31/07/2017]*

(4) If the draft of an order under this section is approved by a resolution of the Legislative Assembly the Governor may make an order in the form of the draft.

*[Revision w.e.f. 31/07/2017]*

### *Supplemental provisions*

#### **110 Death of employee or employer**

Schedule 4 shall have effect for the purpose of supplementing and modifying the provisions of Part II (so far as it relates to itemised pay statements), section 51 and Parts III, IV and VI to VIII as respects the death of an employee or an employer.

#### **111 Computation of period of continuous employment**

(1) References in any provision of this Ordinance to a period of continuous employment are, except where provision is expressly made to the contrary, to a period computed in accordance with the provisions of this section and Schedule 5; 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 twelve 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 consecutive employment,

shall be determined in accordance with Schedule 5 (that is to say, week by week), but the length of an employee's period of employment shall be computed in months and years of twelve months in accordance with the following rules.

(3) Subject to the following provisions of this section, an employee's period of continuous employment for the purposes of any provision of this Ordinance begins with the day on which he

starts work and ends with the day by reference to which the length of his period of continuous employment falls to be ascertained for the purposes of the provision in question.

(4) For the purposes of section 79 and Schedule 3 an employee's period of continuous employment shall be treated as beginning on his eighteenth birthday if that date is later than the starting date referred to in subsection (3).

(5) If an employee's period of continuous employment contains one or more periods which, by virtue of any provision of Schedule 5, do not count in computing the length of the period but do not break continuity, the beginning of the period shall be treated as postponed by the number of days falling within that intervening period or, as the case may be, by the aggregate number of days falling within that intervening period, or as the case may be, by the aggregate number of days falling within those periods.

(6) The number of days falling within such an intervening period is-

- (a) in the case of a period to which paragraph 12(2) of Schedule 5 applies, seven days for each week within that subparagraph; and
- (b) in the case of a period to which paragraph 13(2) or 13(4) of that Schedule applies, the number of days between the last working day before the strike or lock-out and the day on which work was resumed.

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

Schedule 6 shall have effect for the purposes of this Ordinance for calculating the normal working hours and the amount of a week's pay of any employee.

## **113 Offences by bodies corporate**

(1) Where an offence under section 102 committed by a body corporate is proved to have been committed with the consent or connivance of or be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member as if he were a director of the body corporate.

### *Appeals to Supreme Court*

## **114 Appeals to the Supreme Court**

(1) Any person who is aggrieved by a decision or determination of the Summary Court under any provision of this Ordinance may, subject to subsection (2), by notice in writing delivered to the Registrar of the Supreme Court, within twenty-one days thereof or such longer time as the Supreme Court may allow, appeal to the Supreme Court against that decision or determination.

(2) An appeal under subsection (1) must be grounded upon one or more points of law or points of mixed fact and law and no appeal shall lie to the Supreme Court on a matter of fact only.

(3) The Chief Justice or any other judge of the Supreme Court acting with his authority on receiving a copy of any notice of appeal under this section, together with the record of the proceedings before the Summary Court, may-

- (a) if he considers that the notice of appeal discloses no arguable basis of appeal, and without hearing the appellant or any other person thereon, summarily dismiss the appeal and confirm the decision of the Summary Court; or
- (b) order that the appeal be set down for hearing before him or any other judge of the Supreme Court,

and may do so outside as well as within the Falkland Islands.

(4) On the determination or other disposal of an appeal heard before him pursuant to an order under subsection (3)(b), the Chief Justice or any other judge of the Supreme Court determining the same pursuant to an order of the Chief Justice pursuant to that provision may make any order or finding that the Summary Court could have made under any provision of this Ordinance and may quash, vary or supplement any order or finding of the Supreme Court in the matter.

(5) No further appeal shall lie from a decision or determination of the Supreme Court under this section.

(6) The Chief Justice may make such rules or give such practice directions as he considers necessary for the purposes of this section.

### *Miscellaneous*

#### **115 Supplemental provisions as to proceedings before the Summary Court or Supreme Court**

(1) Where a complaint has been made to the Summary Court under any provision of this Ordinance, that court may make any order as to the attendance of witnesses or the production or discovery of documents as the Senior Magistrate might make in any civil proceedings before the Magistrate's Court and, in the event of non-compliance with any such order may make any order the Magistrate's Court might make on non-compliance with any such order in civil proceedings before it.

(2) A party in any proceedings under this Ordinance before the Summary Court or on an appeal under section 114 to the Supreme Court may appear for himself or be represented by any other person instructed to appear for him in those proceedings, whether or not that other person is a legal practitioner.

(3) No order or award as to the costs of representation by a legal practitioner or other person may be made either by the Summary Court or by the Supreme Court in any proceedings under this Ordinance.

## **116 Regulations**

In addition to any other powers he has under any other provision of this Ordinance, the Governor may make any regulation for the purpose of prescribing any matter or thing necessary or convenient to be prescribed for the purposes of this Ordinance.

**SCHEDULE 1  
SUPPLEMENTARY PROVISIONS RELATING TO MATERNITY**

**PART I  
UNFAIR DISMISSAL**

*Introductory*

1. References in this Part to provisions of this Ordinance relating to unfair dismissal are references to those provisions as they apply by virtue of section 54.

*Adaptation of unfair dismissal provisions*

2. (1) Section 56 shall have effect as if for subsection (3) there were substituted the following subsection:

"(3) Where the employer has fulfilled the requirements of subsection (1), then, subject to sections 57(1), 58, 59 and 61, the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer would have been acting reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee if she had not been absent from work; and that question shall be determined in accordance with equity and the substantial merits of the case."

(2) If in the circumstances described in section 43(3) no offer is made of such alternative employment as is referred to in that subsection, then the dismissal which by virtue of section 56 is treated as taking place shall, notwithstanding anything in section 56 or 57, be treated as an unfair dismissal for the purposes of Part VI of this Ordinance.

(3) The following references shall be construed as references to the notified day of return, that is to say-

- (a) references in Part VI of this Ordinance to the effective date of termination;
- (b) references in sections 67 and 68 to the date of termination of employment.

(4) The following provisions of this Ordinance shall not apply, that is to say, sections 53, 63(1), 71(7), and (8), 105(2), 106(1), 107(2) and 10(1) of Schedule 5, paragraphs 7(1)(f) to (i) and (2) and 8(3) of Schedule 6.

(5) For the purposes of Part II of Schedule 6 as it applies for the calculation of a week's pay for the purposes of section 69 or 71, the calculation date is the last day on which the employee worked under the original contract of employment.

## **PART II REDUNDANCY PAYMENTS**

### *Introductory*

3. References in this Part to provisions of this Ordinance relating to redundancy are references to those provisions as they apply by virtue of section 84.

### *Adaptation of redundancy payment provisions*

4. (1) References in Part VII of this Ordinance shall be adapted as follows, that is to say-

- (a) references to the relevant date, wherever they occur, shall be construed, except where the context otherwise requires, as references to the notified day of return;
- (b) references in sections 80(4) and 82(1) to a renewal or re-engagement taking effect immediately on the ending of employment under the previous contract or after an interval of not more than four weeks thereafter, shall be construed as references to a renewal or re-engagement taking effect on the notified day of return or not more than four weeks after that day; and
- (c) references in section 82(3) to the provisions of the previous contract shall be construed as references to the provisions of the original contract of employment.

(2) Nothing in section 84 shall prevent an employee from being treated, by reason of the operation of section 82(1), as not having been dismissed for the purposes of Part VII of this Ordinance.

(3) The following provisions of this Ordinance shall not apply, that is to say, sections 79(1)(b), 80(1) and (2), 81(1) and (2), 83, 85 to 87, 88(3), 90, 91, 107(2) and 110, paragraph 4 of Schedule 3, Schedule 4 and paragraphs 7(1)(j) and (k) and 8(4) of Schedule 6.

(4) For the purposes of Part II of Schedule 6 as it applies for the calculation of a week's pay for the purposes of Schedule 3, the calculation date is the last day on which the employee worked under the original contract of employment.

### *Prior redundancy*

5. If, in proceedings arising out of a failure to permit an employee to return to work, the employer shows-

- (a) that the reason for the failure is that the employee is redundant; and
- (b) that the employee was dismissed or, had she continued to be employed by him, would have been dismissed, by reason of redundancy during her absence on a day earlier than the notified day of return and falling after the beginning of the eleventh week before the expected week of confinement,

then, for the purposes of Part VII of this Ordinance the employee-

- (i) shall not be treated as having been dismissed with effect from the notified day of return; but
- (ii) shall, if she would not otherwise be so treated, be treated as having been continuously employed until that earlier day and as having been dismissed by reason of redundancy with effect from that day.

### **PART III GENERAL**

#### *Dismissal during period of absence*

6. (1) This paragraph applies to the dismissal of an employee who is under this Ordinance entitled to return to work and whose contract of employment continues to subsist during the period of her absence but who is dismissed by her employer during that period after the beginning of the eleventh week before the expected week of confinement.

(2) For the purposes of subparagraph (1), an employee shall not be taken to be dismissed during the period of her absence if the dismissal occurs in the course of the employee's attempting to return to work in accordance with her contract in circumstances in which section 46 applies.

(3) In the application of Part VI of this Ordinance to a dismissal to which this paragraph applies, the following provisions shall not apply, that is to say, sections 63, 105(2) and 107(2).

(4) Any such dismissal shall not affect the employee's right to return to work, but-

- (a) compensation in any unfair dismissal proceedings arising out of that dismissal shall be assessed without regard to the employee's right to return; and
- (b) that right shall be exercisable only on her repaying any redundancy payment or compensation for unfair dismissal paid in respect of that dismissal, if the employer requests such repayment.

#### *Power to amend or modify*

7. (1) The Governor may by order amend the provisions of this Schedule and section 46 or modify the application of those provisions to any description of case.

(2) No order under this paragraph shall be made unless a draft of the order has been laid before the Legislative Assembly and approved by a resolution of the Legislative Assembly.

*[Revision w.e.f. 31/07/2017]*

**SCHEDULE 2**  
**RIGHTS OF EMPLOYEE IN PERIOD OF NOTICE**

*Preliminary*

1. In this Schedule the "period of notice" means the period of notice required by section 47(1) or, as the case may be, section 47(2).

*Employments for which there are normal working hours*

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 by his employer; or
- (b) the employee is incapable of work because of sickness or injury; or
- (c) the employee is absent from work in accordance with the terms of his employment relating to holidays,

then the employer shall be liable to pay the employee for the part of normal working hours covered by paragraphs (a), (b) and (c) 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 employer in respect of the relevant part of the period of notice whether by way of sick 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 shall 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*

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 shall be 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 subparagraph (3), the employer's obligation under this paragraph shall be conditional on the employee being ready and willing to do work of a reasonable nature and amount to earn a week's pay.

(3) Subparagraph (2) shall not apply-

- (a) in respect of any period during which the employee is incapable of work because of sickness or injury; or
- (b) in respect of any period during which the employee is absent from work in accordance with the terms of his employment relating to holidays,

and any payment made to an employee by his employer in respect of such a period, whether by way of sick 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.

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

#### *Absence on leave granted at request of employee*

4. The employer shall not be 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 section 31, 32, 33, 34, 35 or 37).

#### *Notice given before a strike*

5. 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.

In this paragraph "**strike**" has the meaning given by paragraph 18 of Schedule 5.

#### *Termination of employment during period of notice*

6. (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 the 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 shall be 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**  
**CALCULATION OF REDUNDANCY PAYMENTS**

1. The amount of redundancy payment to which an employee is entitled in any case shall, subject to the following provisions of this Schedule, be calculated by reference to the period, ending with the relevant date, during which he has been continuously employed.

2. Subject to paragraphs 3 and 4, the amount of the redundancy payment shall be calculated by reference to the period specified in paragraph 1 by starting at the end of that period and reckoning backwards the number of years of employment falling within that period and allowing-

- (a) one and a half week's pay for each such year of employment in which the employee was not below the age of forty-one;
- (b) one week's pay for each such year of employment (not falling within the preceding subparagraph) in which the employee was not below the age of twenty-two; and
- (c) half a week's pay for each such year of employment not falling within either of the preceding subparagraphs.

3. Where, in reckoning the number of years of employment in accordance with paragraph 2, twenty years of employment have been reckoned, no account shall be taken of any year of employment earlier than those twenty years.

4. (1) Where in the case of an employee the relevant date is after the specified anniversary, the amount of the redundancy payment, calculated in accordance with the preceding provisions of this Schedule, shall be reduced by the appropriate fraction.

(2) In this paragraph "**the specified anniversary**", in relation to a man, means the sixty-fourth anniversary of the day of his birth, and, in relation to a woman, means the fifty-ninth anniversary of the day of her birth, and "the appropriate fraction" means the fraction of which-

- (a) the numerator is the number of whole months, reckoned from the specified anniversary, in the period beginning with that anniversary and ending with the relevant date, and
- (b) the denominator is twelve.

5. For the purposes of any provision contained in Part VII whereby the Summary Court may determine that an employer shall be liable to pay to an employee either-

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

the preceding provisions of this Schedule shall apply as if in those provisions any reference to the amount of a redundancy payment here a reference to the amount of the redundancy payments to which the employee would have been so entitled.

6. The preceding provisions of this Schedule shall have effect without prejudice to the operation of any regulations made under section 94 whereby the amount of a redundancy payment, or part of a redundancy payment, may be reduced.

**SCHEDULE 4  
DEATH OF EMPLOYEE OR EMPLOYER**

**PART I  
GENERAL**

*Introductory*

1. In this Schedule "**the relevant provisions**" means Part II (so far as it relates to itemized pay statements), section 51 and Parts III, IV, VI, VII and VIII of this Ordinance and this Schedule.

*Institution or continuance of court proceedings*

2. Where an employee or employer has died, court proceedings arising under any of the relevant provisions may be instituted or continued by a personal representative of the deceased employee or, as the case may be, defended by a personal representative of the deceased employer.

3. (1) If there is no personal representative of a deceased employee, court proceedings arising under any of the relevant provisions (or proceedings to enforce an award of the court any such proceedings) may be instituted or continued on behalf of the estate of the deceased employee by such other person as the court may appoint being either-

- (a) a person authorized by the employee to act in connection with the proceedings before the employee's death; or
- (b) the widower, widow, child, father, mother, brother or sister of the deceased employee,

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

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

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

- (a) any reference in the relevant provisions to the doing of anything by or in relation to an employee or employer shall be construed as including a reference to the doing of that thing by or in relation to any personal representative of the deceased employee or employer; and
- (b) any reference in the said provisions to a thing required or authorized to be done by or in relation to an employee or employer shall be construed as including a reference to any thing which in accordance with any such provision as modified by this Schedule (including subparagraph (a)), is required or authorized to be done by or in relation to any personal representative of the deceased employee or employer.

(2) Nothing in this paragraph shall prevent references in the relevant provisions to a successor of an employer from including a personal representative of a deceased employer.

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

5. Any right arising under any of the relevant provisions as modified by this Schedule shall, if it had not accrued before the death of the employee in question, nevertheless devolve as if it had so accrued.

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

## **PART II UNFAIR DISMISSAL**

### ***Introductory***

7. In this Part of this Schedule "the unfair dismissal provisions" means Part VI of this Ordinance and this Schedule.

### ***Death during notice period***

8. Where an employer has given notice to an employee to terminate his contract of employment and before that termination the employee or the employer dies, the unfair dismissal provisions shall apply as if the contract had been duly terminated by the employer by notice expiring on the date of the death.

9. Where-

- (a) the employee's contract of employment has been terminated; and
- (b) by virtue of section 53(5) or (6) a date later than the effective date of termination as defined in section 53(4) is to be treated as the effective date of termination for the purposes of certain of the unfair dismissal provisions; and
- (c) before that later date the employer or the employee dies;

subsection (5) or, as the case may be, (6) shall have effect as if the notice referred to in that section as required by section 47 would have expired on the date of the death.

### *Remedies for unfair dismissal*

10. Where an employee has died, then, unless an order for reinstatement or re-engagement has already been made, section 67 shall not apply; and accordingly if the Summary Court finds that the grounds of the complaint are well founded the case shall be treated as falling within section 66(2) as a case in which no order is made under section 67.

11. If an order for reinstatement or re-engagement has been made and the employee dies before the order is complied with-

- (a) if the employer has before the death refused to reinstate or re-engage the employee in accordance with the order, section 69(2) and (3) shall apply and an award shall be made under section 69(2)(b) unless the employer satisfies the court that it was not practicable at the time of the refusal to comply with the order;
- (b) if there has been no such refusal, section 69(1) shall apply if the employer fails to comply with any ancillary terms of the order which remain capable of fulfilment after the employee's death as it would apply to such a failure to comply fully with the terms of an order where the employee had been reinstated or re-engaged.

### **PART III REDUNDANCY PAYMENTS, DEATH OF EMPLOYER**

#### *Introductory*

12. The provisions of this Part shall have effect in relation to an employee where this employer (in this Part referred to as "the deceased employer" dies.

13. Section 92 shall not apply to any change whereby the ownership of the business, for the purposes of which the employee was employed by the deceased employer, passes to a personal representative of the deceased employer.

#### *Dismissal*

14. Where by virtue of section 91(1), the death of the deceased employer is to be treated for the purposes of Part VII of this Ordinance as a termination by him of the contract of employment, section 82 shall have effect subject to the following modifications:

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

"(1) If an employee's contract of employment is renewed, or he is re-engaged under a new contract of employment, by a personal representative of the deceased employer and the renewal or re-engagement takes effect not later than eight weeks after the death of the deceased employer, then, subject to subsections (3) and (6), the employee shall not be regarded as having been dismissed by reason of the ending of his employment under the previous contract";

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

15. Where by reason of the death of the deceased employer the employee is treated for the purposes of Part VII of this Ordinance as having been dismissed by him, section 80 shall have effect subject to the following modifications:

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

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

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

16. For the purposes of section 80 as modified by paragraph 15-

- (a) an offer shall not be treated as one whereby the provisions of the contract as renewed, or of the new contract, as the case may be, would differ from the corresponding provisions of the contract as in force immediately before the death of the deceased employer by reason only that the personal representative would be substituted as the employer for the deceased employer; and
- (b) no account shall be taken of that substitution in determining whether the refusal of the offer was unreasonable, or, as the case may be, whether the employee acted reasonably in terminating the renewed, or new, employment during the trial period referred to in section 82.

### *Lay-off and short-time*

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

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

the provisions of sections 86 and 87 shall apply as if the week in which the deceased employer died and the first week of the employee's employment by the personal representative were

consecutive weeks, and any reference in those sections to four weeks or thirteen weeks shall be construed accordingly.

18. The provisions of paragraph 19 or (as the case may be) paragraph 20 shall have effect where the employee has given to the deceased employer notice of intention to claim, and-

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

19. If in the circumstances specified in paragraph 18 the employee's contract of employment is not renewed by a personal representative of the deceased employer before the end of the next four weeks after the service of the notice of intention to claim, and he is not re-engaged under a new contract by such a personal representative before the end of those four weeks, section 86(1) and (2) and (in relation to subsection (1) of that section) section 87(2) and (3) shall apply as if-

- (a) the deceased employer had not died; and
- (b) the employee had terminated the contract of employment by a week's notice (or, if under the contract he is required to give more than a week's notice to terminate the contract, he had terminated it by the minimum notice which he is so required to give) expiring at the end of those four weeks,

but sections 86(3) and (4) and 87(1) and (4) shall not apply.

20. (1) The provisions of this paragraph shall have effect where, in the circumstances specified in paragraph 18, the employee's contract of employment is renewed by a personal representative of the deceased employer before the end of the next four weeks after the service of the notice of intention to claim, or he is re-engaged under a new contract by such a personal representative before the end of those four weeks, and-

- (a) he was laid off or kept on short-time by the deceased employer for one or more of those weeks; and
- (b) he is laid off or kept on short-time by the personal representative for the week, or for the next two or more weeks, following the renewal or re-engagement.

(2) Where the conditions specified in subparagraph (1) are fulfilled, sections 86 and 87 shall apply as if-

- (a) all the weeks for which the employee was laid off or kept on short-time as mentioned in subparagraph (1) were consecutive weeks during which he was employed (but laid off or kept on short-time) by the same employer; and
- (b) each of the periods specified in paragraphs 87(5)(a) and (b) were extended by any week or weeks any part of which was after the death of the deceased employer and before the date on which the renewal or re-engagement took effect.

### *Continuity of period of employment*

21. For the purposes of the application, in accordance with section 95(1), of any provisions of Part VII of this Ordinance in relation to an employee who was employed as a domestic servant in a private household, any reference to a personal representative in-

- (a) this Part of this Schedule; or
- (b) paragraph 14 of Schedule 5,

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

### **PART IV REDUNDANCY PAYMENTS: DEATH OF EMPLOYER**

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

(2) Where the employee's contract of employment has been terminated by the employer and by virtue of section 88(3) a date later than the relevant date as defined by subsection (1) of that section is to be treated as the relevant date for the purposes of certain provisions of Part VII of this Ordinance and before that later date the employee dies, section 88(3) shall have effect as if the notice referred to in that subsection as required to be given by an employer would have expired on the employee's death.

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

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

section 80 shall apply as if for the words "the employee unreasonably refuses" there were substituted the words "it would have been unreasonable on the part of the employee to refuse".

(2) Where an employee's contract of employment has been renewed, or he has been re-engaged under a new contract of employment, and during the trial period the employee dies without having terminated or having given notice to terminate the contract, subsection (6) of that section shall apply as if for the words from "and during the trial period" to "terminated" there were substituted the words "and it would have been unreasonable for the employee, during the trial period referred to in section 84, to terminate or give notice to terminate the contract".

24. Where an employee's contract of employment has been renewed, or he has been re-engaged under a new contract of employment, and during the trial period he gives notice to terminate the contract but dies before the expiry of that notice, sections 80(6) and 82(6)(a) shall have effect as

if the notice had expired and the contract had thereby been terminated on the date of the employee's death.

25. (1) Where, in the circumstances specified in section 83(1)(a) and (b), the employee dies before the notice given by him under paragraph (b) is due to expire, and before the employer has given him notice under subsection (3) of that section, subsection (4) of that section shall apply as if the employer had given him such notice and he had not complied with it.

(2) Where, in the said circumstances, the employee dies before his notice given under section 83(1)(b) is due to expire but after the employer has given him notice under section 83(3), subsections (3) and (4) of that section shall apply as if the circumstances were that the employee had not died, but did not comply with the last-mentioned notice.

26. (1) Where an employee has given notice of intention to claim and dies before he has given notice to terminate his contract of employment and before the period allowed for the purposes of section 86(2)(a) has expired, the said subsection (2)(a) shall not apply.

(2) Where an employee, who has given notice of intention to claim, dies within seven days after the service of that notice, and before the employer has given a counter-notice, the provisions of section 86 and 87 shall apply as if the employer had given a counter-notice within those seven days.

(3) In this paragraph "counter-notice" has the same meaning as in section 87(1).

27. (1) In relation to the making of a claim by a personal representative of a deceased employee who dies before the end of the period of six months beginning with the relevant date, section 101(1) shall apply with the substitution for the words "six months", of the words "one year".

(2) In relation to the making of a claim by a personal representative of a deceased employee who dies after the end of the period of six months beginning with the relevant date and before the end of the following period of six months, section 96(2) shall apply with the substitution for the words "six months", of the words "one year".

28. In relation to any case where, under any provision contained in Part VII of this Ordinance modified by this Schedule, the Summary Court has power to determine that an employer shall be liable to pay to a personal representative of a deceased employee either-

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

any reference in paragraph 5 to a right shall be construed as including a reference to any right to receive the whole or part of a redundancy payment if the court determines that the employer shall be liable to pay it.

**SCHEDULE 5**  
**COMPUTATION OF PERIOD OF EMPLOYMENT**

*Preliminary*

1. (1) Except so far as otherwise provided by the following provisions of this Schedule, a week which does not count under paragraphs 2 to 11 breaks the continuity of the period of employment.
- (2) The provisions of this Schedule apply, subject to paragraph 12, to a period of employment notwithstanding that during that period the employee was engaged in work wholly or mainly outside the Falkland Islands, or was excluded by or under this Ordinance from any right conferred by this Ordinance.
- (3) A person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.

*Normal working weeks*

2. Any week in which the employee is employed for sixteen hours or more shall count in computing a period of employment.

*Employment governed by contract*

3. Any week during the whole or part of which the employee's relations with the employer are governed by a contract of employment which normally involves employment for sixteen hours or more weekly shall count in computing a period of employment.
4. (1) If the employee's relations with his employer cease to be governed by a contract which normally involves work for sixteen hours or more weekly and become governed by a contract which normally involves employment for eight hours or more, but less than sixteen hours, weekly and, but for that change, the later weeks would count in computing a period of employment, or would not break the continuity of a period of employment, then those later weeks shall count in computing a period of employment or, as the case may be, shall not break the continuity of a period of employment, notwithstanding that change.
- (2) Not more than twenty-six weeks shall count under this paragraph between any two periods falling under paragraph 3, and in computing the said figure of twenty-six weeks no account shall be taken of any week which counts in computing a period of employment, or does not break the continuity of a period of employment, otherwise than by virtue of this paragraph.
5. (1) An employee whose relations with his employer are governed, or have been from time to time governed, by a contract of employment which normally involves employment for eight hours or more, but less than sixteen hours, weekly shall nevertheless, if he satisfies the condition referred to in subparagraph (2), be treated for the purposes of this Schedule (apart from this paragraph) as if his contract normally involved employment for sixteen hours or more weekly, and had at all

times at which there was a contract during the period of employment of five years or more referred to in subparagraph (2) normally involved employment for sixteen hours or more weekly.

(2) Subparagraph (1) shall apply if the employee, on the date by reference to which the length of any period of employment falls to be ascertained in accordance with the provisions of this Schedule, has been continuously employed within the meaning of subparagraph (3) for a period of five years or more.

(3) In computing for the purposes of subparagraph (2) an employee's period of employment, the provisions of this Schedule (apart from this paragraph) shall apply but as if, in paragraphs 2 and 3, for the words "sixteen hours" wherever they occur, there were substituted the words "eight hours".

6. (1) If an employee has, at any time during the relevant period of employment, been continuously employed for a period which qualifies him for any right which requires a qualifying period of continuous employment computed in accordance with this Schedule, then he shall be regarded for the purposes of qualifying for that right as continuing to satisfy that requirement until the condition referred to in subparagraph (3) occurs.

(2) In this paragraph the relevant period of employment means the period of employment ending on the date by reference to which the length of any period of employment falls to be ascertained which would be continuous (in accordance with the provisions of this Schedule) if at all relevant times the employee's relations with the employer had been governed by a contract of employment which normally involved employment for sixteen hours or more weekly.

(3) The condition which defeats the operation of subparagraph (1) is that in a week subsequent to the time at which the employee qualified as referred to in that subparagraph-

- (a) his relations with his employer are governed by a contract of employment which normally involves employment for less than eight hours weekly; and
- (b) he is employed in that week for less than sixteen hours.

(4) If, in a case in which an employee is entitled to any right by virtue of subparagraph (1), it is necessary for the purpose of ascertaining the amount of his entitlement to determine for what period he has been continuously employed, he shall be regarded for that purpose as having been continuously employed throughout the relevant period.

#### ***Power to amend paragraphs 2 to 6 by order***

7. (1) The Governor may by order-

- (a) amend paragraphs 2 to 6 so as to substitute for each of the references to sixteen hours a reference to such other number of hours less than sixteen as may be specified in the order; and
- (b) amend paragraphs 5 and 6 so as to substitute for each of the references to eight hours a reference to such other number of hours less than eight as may be specified in the order.

(2) No order under this paragraph shall be made unless a draft of the order has been laid before the Legislative Assembly and approved by a resolution of the Legislative Assembly.

*[Revision w.e.f. 31/07/2017]*

(3) The provisions of any order under this paragraph shall apply to periods before the order takes effect as they apply to later periods.

***Periods in which there is no contract of employment***

8. (1) If in any week 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 is regarded as continuing in the employment of his employer for all or any purposes; or
- (d) absent from work wholly or partly because of pregnancy or confinement,

that week shall, notwithstanding that it does not fall under paragraph 2, 3 or 4, count as a period of employment.

(2) Not more than twenty-six weeks shall count under paragraph (a) or, subject to paragraph 9, under paragraph (d) of subparagraph (1) between any periods falling under paragraph 2, 3 or 4.

***Maternity***

9. If an employee returns to work in accordance with section 43(1) or in pursuance of an offer made in the circumstances described in section 55(2) after a period of absence from work wholly or partly occasioned by pregnancy or a confinement, every week during that period shall count in computing a period of employment, notwithstanding that it does not fall under paragraph 2, 3 or 4.

***Intervals in employment where sections 53(5), 55(6) or 82(1) or 88(3) apply***

10. (1) In ascertaining, for the purposes of sections 63(1)(a), 64(1) and section 71(3), the period for which an employee has been continuously employed, where by virtue of section 53(5) or, as the case may be, section 53(6) a date is treated as the effective date of termination which is later than the effective date of termination as defined by section 53(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) Where by virtue of section 82(1) an employee is treated as not having been dismissed by reason of a renewal or re-engagement taking effect after an interval, then, in determining for the purposes of section 79(1) or Schedule 3 whether he has been continuously employed for the requisite period,

the period of that interval shall count as a period of employment except in so far as it is to be disregarded under paragraphs 11 and 12 (notwithstanding that it does not otherwise count under this Schedule).

(3) Where by virtue of section 88(3) a date is to be treated as the relevant date for the purposes of section 79(4) which is later than the relevant date as defined by section 88(1), then in determining for the purposes of section 79(1) or Schedule 3 whether the employee has been continuously employed for the requisite period, the period of the interval between those two dates shall count as a period of employment except in so far as it is to be disregarded under paragraphs 11 to 13 (notwithstanding that it does not otherwise count under this Schedule).

### *Payment of previous redundancy payment or equivalent payment*

11. (1) Where the conditions mentioned in subparagraph (2)(a) or (2)(b) are fulfilled in relation to a person, then in determining, for the purposes of section 79(1) or Schedule 3, whether at any subsequent time he has been continuously employed for the requisite period, or for what period he has been continuously employed, the continuity of the period of employment shall be treated as having been broken-

- (a) in so far as the employment was under a contract of employment, at the date which was the relevant date in relation to the payment mentioned in subparagraph (2)(a) or as the case may be, subparagraph (2)(b); or
- (b) in so far as the employment was otherwise than under a contract of employment, at the date which would have been the relevant date in relation to that payment had the employment been under a contract of employment,

and accordingly no account shall be taken of any time before that date.

(2) Subparagraph (1) has effect where-

- (a) a redundancy payment is paid to an employee, whether in respect of dismissal or in respect of lay-off or short-time; and
- (b) the contract of employment under which he was employed (in this section referred to as "the previous contract") is renewed, whether by the same or another employer, or he is re-engaged under a new contract of employment whether by the same or another employer; and
- (c) the circumstances of the renewal or re-engagement are such that, in determining for the purposes of section 79(1) or Schedule 3 whether at any subsequent time he has been continuously employed for the requisite period, or for what period he has been continuously employed, the continuity of his period of employment would, apart from this paragraph, be treated as not having been broken by the termination of the previous contract and the renewal or re-engagement.

(3) 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, or, in a case where the Summary Court has determined that the employer is liable to pay part (but not the whole) of the redundancy payment, that part of the redundancy payment has been paid in full to the employee by the employer; or
- (b) the Financial Secretary has paid a sum to the employee in respect of the redundancy payment under section 100.

***Redundancy payments: employment wholly or partly abroad***

12. (1) In computing in relation to an employee the period specified in section 79(4) or the period specified in paragraph 1 of Schedule 3, a week of employment shall not count if-

- (a) the employee was employed outside the Falkland Islands during the whole or part of that week;
- (b) he was not during that week, or during the corresponding contribution week a person in respect of whom a sum was payable in respect of Medical Services Levy, and whether or not such sum was in fact paid.

(2) Where by virtue of subparagraph (1) a week of employment does not count in computing such a period as is mentioned in that subparagraph, the continuity of that period shall not be broken by reason only that that week of employment does not count in computing that period.

(3) Any question arising under this paragraph whether a sum was or would have been payable in respect of Medical Services Levy shall be determined by the Financial Secretary subject to, a right of appeal to the Supreme Court by any person aggrieved by such determination.

(4) The provisions of this paragraph shall not apply in relation to a person who is employed as a master or seaman in a British ship and is ordinarily resident in the Falkland Islands.

***Industrial disputes***

13. (1) A week shall not count under paragraph 2, 3, 4, 8 or 9 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 if in that week, or any part of that week, the employee takes part in a strike.

(3) Subparagraph (2) applies whether or not the week would, apart from subparagraph (1), have counted under this Schedule.

(4) The continuity of the period of employment is not broken by a week 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.

### *Change of employer*

14. (1) Subject to this paragraph 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 an Ordinance) 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 shall count as a period of employment with the transferee, and the transfer shall not break the continuity of the period of employment.

(3) If by or under an Ordinance, and whether passed before this Ordinance, 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 shall count 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 shall count 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 persons, the employee's period of employment at the time of the change shall count as a period of employment with the partners, personal representatives or trustees after the change, and the change shall not break the continuity of the period of employment.

15. If an employee is taken into the employment of another employer who, at the time when the employee enters his employment is an associated employer of the first-mentioned employer, the employee's period of employment at that time shall count 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.

### *Reinstatement or re-engagement of dismissed employee*

16. (1) Regulations made by the Governor may make provision-

- (a) for preserving the continuity of a person's period of employment for the purposes of this Schedule or for the purposes of this Schedule as applied by or under any other enactment specified in the regulations; or
- (b) for modifying or excluding the operation of paragraph 11 subject to the recovery of any such payment as is mentioned in subparagraph (2) of that paragraph,

in cases where, in consequence of action to which subparagraph (2) applies, a dismissed employee is reinstated or re-engaged by his employer or by a successor or associated employer of that employer.

(2) This subparagraph applies to any action taken in relation to the dismissal of an employee which consists of the presentation by him of a complaint under section 65.

*Employment before the commencement of this Ordinance*

17. Save as otherwise expressly provided, the provisions of this Schedule apply to periods before it comes into force as they apply to later periods.

*Interpretation*

18. (1) In this Schedule, unless the context otherwise requires-

**"lock-out"** means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment;

**"strike"** means the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other employees in compelling their employer or any person or body of persons employed, to accept or not to accept terms or conditions of or affecting employment;

**"week"** means a week ending with Saturday.

(2) For the purposes of this Schedule the hours of employment of an employee who is required by the terms of his employment to live on the premises where he works shall be the hours during which he is on duty or during which his services may be required.

**SCHEDULE 6**  
**CALCULATION OF NORMAL WORKING HOURS AND A WEEK'S PAY**

**PART I**  
**NORMAL WORKING HOURS**

1. 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 2, in those cases that fixed number of hours shall be the normal working hours.

2. 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.

**PART II**  
**A WEEK'S PAY**

*Employments for which there are normal working hours*

3. (1) This paragraph and paragraph 4 shall apply if there are normal working hours for an employee when employed under the contract of employment in force on the calculation date.

(2) Subject to paragraph 4, if an 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 shall be 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 normal working hours in a week.

(3) Subject to paragraph 4, if subparagraph (2) does not apply, the amount of a week's pay shall be 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 twelve weeks-

- (a) where the calculation date is the last day of a week ending with that week;
- (b) in any other case, ending with the last complete week before the calculation date.

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

4. (1) This paragraph shall apply if there are normal working hours for an employee when employed under the contract of employment in force on the calculation date, and he is required under that contract to work during those 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 the said days or time.

(2) The amount of a week's pay shall be the amount of remuneration for the average weekly number of normal working hours (calculated in accordance with subparagraph (3)) at the average hourly rate of remuneration (calculated in accordance with subparagraph (4)).

(3) The average number of weekly hours shall be calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks-

- (a) where the calculation date is the last day of a week, ending with that week;
- (b) in any other case, ending with the last complete week before the calculation date.

(4) The average hourly rate of remuneration shall be the average hourly rate of remuneration payable by the employer to the employee in respect of the period of twelve weeks-

- (a) where the calculation date is the last day of a week, ending with that week;
- (b) in any other case, ending with the last complete week before the calculation date.

5. (1) For the purpose of paragraphs 3 and 4, in arriving at the average hourly rate of remuneration only the hours when the employee was working, and only the remuneration payable for, or apportionable to, those hours of work, shall be brought in; and if for any of the twelve weeks mentioned in either of those paragraphs no such remuneration was payable by the employer to the employee, account shall be taken of remuneration in earlier weeks so as to bring the number of weeks of which account is taken up to twelve.

(2) Where, in arriving at the said 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 the amount of that remuneration was greater than it would have been if the work had been done in normal working hours, account shall be taken of that remuneration as if-

- (a) where the calculation date is the last day of a week, ending with that week;
- (b) in any other case, ending with the last complete week before the calculation date.

(3) For the purpose of the application of subparagraph (2) to a case falling within paragraph 2, subparagraph (2) shall be construed as if for the words "had been done in normal working hours", in each place where those words occur, there were substituted the words "had been done in normal working hours falling within the number of hours without overtime".

### *Employments for which there are no normal working hours*

6. (1) This paragraph shall apply if there are no normal working hours for an employee when employed under the contract of employment in force on the calculation date.

(2) The amount of a week's pay shall be the amount of the employee's average weekly remuneration in the period of twelve weeks-

- (a) where the calculation date is the last day of a week, ending with that week;
- (b) in any other case, ending with the last complete week before the calculation date.

(3) In arriving at the said average weekly rate of 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 the number of weeks of which account is taken up to twelve.

### *The calculation date*

7. (1) For the purposes of this Part, the calculation date is-

- (a) where the calculation is for the purposes of section 17, the day in respect of which the guarantee payment is payable, or, where an employee's contract has been varied, or a new contract entered into, in connection with a period of short-time working, the last day on which the original contract was in force;
- (b) where the calculation is for the purposes of section 24, the day before that on which the suspension referred to in section 22(1) begins;
- (c) where the calculation is for the purposes of section 37, the day of the appointment concerned;
- (d) where the calculation is for the purposes of section 41, the last day on which the employee worked under the contract of employment in force immediately before the beginning of her absence;
- (e) where the calculation is for the purposes of Schedule 2, the day immediately preceding the first day of the period of notice required by section 47(1) or, as the case may be, section 47(2);
- (f) where the calculation is for the purposes of section 51 or 69(2)(b) and the dismissal was with notice, the date on which the employer's notice was given;
- (g) where the calculation is for the purposes of section 51 or 69(2)(b) but subparagraph (f) does not apply, the effective date of termination;
- (h) where the calculation is for the purposes of section 71 and by virtue of section 53(5) or, as the case may be, section 53(6) a date is to be treated as the effective date of termination for the purposes of section 71(3) which is later than the effective date of termination as defined by section 53(4), the effective date of termination as defined by section 53(4);

- (i) where the calculation is for the purposes of section 71 but neither subsection (5) nor subsection (6) of section 53 applies in relation to the date of termination, the date on which notice would have been given had the conditions referred to in subparagraph (2) been fulfilled (whether those conditions were in fact fulfilled or not);
- (j) where the calculation is for the purposes of section 85(2), the day immediately preceding the first of the four- or, as the case may be, the six-week referred to in section 86(1);
- (k) where the calculation is for the purposes of Schedule 3 and by virtue of section 88(3) a date is to be treated as the relevant date for the purposes of certain provisions of this Act which is later than the relevant date as defined by section 88(1), the relevant date as defined by section 88(1);
- (l) where the calculation is for the purposes of Schedule 3 but subparagraph (k) does not apply, the date on which notice would have been given had the conditions referred to in subparagraph (2) been fulfilled (whether those conditions were in fact fulfilled or not).

(2) The conditions referred to in subparagraph (1)(i) and (ii) are that the contract was terminable by notice and was terminated by the employer giving such notice as is required to terminate that contract by section 47 and that the notice expired on the effective date of termination or on the relevant date, as the case may be.

#### *Maximum amount of week's pay for certain purposes*

8. (1) Notwithstanding the preceding provisions of this Schedule, the amount of a week's pay for the purpose of calculating-

- (a) an additional award of compensation (within the meaning of section 69(2)(b)) shall not exceed £277.20;

*[S.R. & O. 12/02/w.e.f. 27/6/02.]*

- (b) a basic award of compensation (within the meaning of section 70) shall not exceed £277.20;

*[S.R. & O. 12/02/w.e.f. 27/6/02.]*

- (c) a redundancy payment shall not exceed £277.20,

*[S.R. & O. 12/02/w.e.f. 27/6/02.]*

(2) The Governor may after a review under section 109 vary the limit referred to in subparagraph (1)(a) or (b) or (c) by an order made in accordance with that section.

(3) Without prejudice to the generality of the power to make transitional provision in an order under section 109, such an order may provide that it shall apply in the case of a dismissal in relation to which the effective date of termination for the purposes of this subparagraph, as defined by section 53(5) or, as the case may be, section 53(6), falls after the order comes into operation, notwithstanding that the effective date of termination, as defined by section 53(4), for the purposes of other provisions of this Ordinance falls before the order comes into operation.

(4) Without prejudice to the generality of the power to make transitional provision in an order under section 109, such an order may provide that it shall apply in the case of a dismissal in relation to which the relevant date for the purposes of this subparagraph falls after the order comes into operation, notwithstanding that the relevant date for the purposes of other provisions of this Ordinance falls before the order comes into operation.

### *Supplemental*

9. In any case in which an employee has not been employed for a sufficient period to enable a calculation to be made under any of the foregoing provisions of this Part, the amount of a week's pay shall be an amount which fairly represents a week's pay; and in determining that amount the Summary Court shall apply as nearly as may be such of the foregoing provisions of this Part as it considers appropriate, and may have regard to such of the following considerations as it thinks fit, that is to say-

- (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;
- (d) the remuneration received by other persons engaged in relevant comparable employment with other employers.

10. In arriving at an average hourly rate or average weekly rate of remuneration under this Part 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, a period of employment with the former employer counts as part of the employee's continuous period of employment with the later employer.

11. Where under this Part 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, then the remuneration or other payments shall be apportioned in such manner as may be just.

12. The Governor may by regulations provide that in prescribed cases the amount of a week's pay shall be calculated in such manner as the regulations may prescribe.

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<sup>i</sup> S.R. & O. No. 20 of 1989; L.N. No. 1 of 1989