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CHAPTER 355A
SEVERANCE PAYMENTS

An Act to provide for the making by employers of severance payments to employees who cease to be employed in circumstances amounting to redundancy and for related matters.

1971-24.
1972-27.
1974-2.
1977-22.
1981-18¹.
1984-11.
1985-23.
1986-15.
1991-18.
2006-8.
2007-22.

[1st January, 1973] Commence-
ment

PART I*Preliminary*

1. This Act may be cited as *the Severance Payments Act*. Short title.
2. For the purposes of this Act, Interpretation.
 “appointed day” means 1st January, 1973;
 “business” includes a trade or profession and any activity carried on by a body of persons, whether corporate or unincorporate;
 “cease” means cease either permanently or temporarily, and from whatever cause;
 “diminish” means diminish either permanently or temporarily, and from whatever cause;
 “employee” means an individual who has entered into or works under (or, in the case of a contract which has been terminated, worked under) a contract of service with an employer, whether the

¹Act 1981-18 has not been proclaimed.

contract is for manual labour, clerical work or otherwise, is expressed or implied, oral or in writing; and “employer” and any reference to employment shall be construed accordingly;

“Fund” means the Severance Fund established by section 24;

“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;

2006-8.
First
Schedule.

“pensionable age” means each age corresponding with the period prescribed as set out in Part II of the *First Schedule*;

“relevant date” shall be construed in accordance with subsection (2) of section 5, subsection (2) of section 6 or subsection (4) of section 16, as the case may require;

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

“severance payment” means a sum which an employer is liable to pay to an employee under subsection (1) of section 3;

“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.

PART II

Severance Payments

3. (1) Where on or after the appointed day an employee who has been continuously employed for the requisite period
- (a) is dismissed by his employer because of redundancy; or
- (b) is laid off or kept on short-time to the extent specified in subsection (1) of section 6 and complies with the requirements of that section; or
- (c) is dismissed by his employer because of a natural disaster, his employer is, subject to this Act, liable to pay him a sum calculated in accordance with the Part I of the *First Schedule*.
- (2) Where an employee is employed in work of a seasonal nature, his employer is liable to pay him a severance payment under subsection (1) only if the event in respect of which that payment is claimed occurs during the course of a season.
- (3) For the purposes of this Act, an employee who is dismissed shall be deemed
- (a) to be dismissed because of redundancy if his dismissal is wholly or mainly attributable to
- (i) 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
- (ii) 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;

General provisions as to right to severance payment.

First Schedule. 2006-8.

1972-27.

ss.3A-4

(b) to be dismissed because of a natural disaster if his dismissal is wholly or mainly attributable to the destruction of, or damage caused to, the employer's place of business by fire, flood, hurricane, earthquake or other act of God whether or not similar to any of the foregoing causes.

1972-27. (4) For the purposes of this section, an employee shall not be deemed to be employed in work of a seasonal nature if he is normally employed by the same employer outside the season, whether in the same or a different capacity, so that the total of the periods of his employment with the employer during any year amounts to 35 weeks or more.

Time limit for severance payment. 1984-11. **3A.** (1) A severance payment that is required to be paid by an employer under section 3 shall be paid within 2 months of its becoming due, or within such longer period, not exceeding 4 months, as the Board allows.

(2) Where a severance payment that is required to be paid by an employer under section 3 has not been paid within the period specified in subsection (1), interest calculated on the unpaid severance payment at such rate as the Minister responsible for Finance may fix by order is payable by the employer from the expiration of the period.

General exclusions from the right to severance payment. 2006-8. **4.** (1) An employee who immediately before the relevant date is under the age of 16 years or has attained pensionable age is not entitled to a severance payment.

(2) Except as provided by section 8, an employee is not entitled to a severance payment because of dismissal where his employer, being entitled to terminate his contract of employment without notice because of the employee's conduct, terminates it

(a) without notice;

(b) by giving shorter notice than that which, in the absence of such conduct, the employer would by law 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 because of the employee's conduct be entitled to terminate the contract without notice.

(3) An employee is not entitled to a severance payment because of dismissal if before the relevant date the employer has offered to renew his contract of employment or to re-engage him under a new contract, so that

(a) the provisions of the contract as renewed or of the new contract, as the case may be, 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 contract as in force immediately before his dismissal; and

(b) the renewal or re-engagement would take effect on or before the relevant date,

and the employee has unreasonably refused that offer.

(4) An employee is not entitled to a severance payment ^{1972-27.} because of dismissal if before the relevant date the employer has made him an offer in writing to renew his contract of employment or to re-engage him under a new contract so that in accordance with the particulars specified in the offer the provisions of the contract as renewed or of the new contract, as the case may be, as to the capacity and place in which he would be employed and as to the other terms and conditions of his employment would differ wholly or in part from the corresponding provisions of the contract as in force immediately before his dismissal, but

- (a) the offer constitutes an offer of suitable employment in relation to the employee; and
- (b) the renewal or re-engagement would take effect on or before the relevant date or not more than 4 weeks after that date,

and the employee has unreasonably refused that offer.

(5) Where the relevant date falls on a Friday, Saturday or Sunday

- (a) the reference in paragraph (b) of subsection (3) to the relevant date shall be construed as a reference to the next Monday after that date; and
- (b) the reference in paragraph (b) of subsection (4) to four weeks after the relevant date shall be construed as a reference to the 5th Monday after that date.

5. (1) This section shall have effect where

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

Employee
anticipating
expiry of
employer's
notice.

(2) Subject to subsections (3) and (4), in the circumstances specified in subsection (1) the employee shall for the purposes of this Part be deemed to be dismissed by his employer and "the relevant date" in relation to that dismissal is the date on which the employee's notice expires.

(3) Where, 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 paragraph (b) of subsection (1) 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 him a severance payment in respect of the termination of his contract of employment,

and the employee does not comply with the requirements of that notice, the employee is not entitled to a severance 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 tribunal under section 38 it appears to the tribunal, having regard both to the reasons for which the employee seeks to leave the employment and those for which the employer requires him to continue in it, to be just and equitable that the employee should receive the whole or part of any severance payment to which he would have been entitled apart from subsection (3), the tribunal may determine that the employer shall be liable to pay to the employee

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

(5) For the purposes of 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 the period which, being equal to the minimum period referred to in paragraph (a) expires at the time when the employer’s notice expires.

6. (1) Where an employee has been laid off or kept on short-time for

(a) 13 or more consecutive weeks; or

(b) a series of 16 or more weeks (of which not more than 12 were consecutive) within a period of 26 weeks,

Right to
severance
payment for
lay-off or
short-time.
1972-27.
1985-23.

then, if the employee, within 4 weeks after the relevant date, gives notice in writing to his employer indicating (in whatsoever terms) his intention to claim a severance payment in respect of the lay-off or short-time (in this section and section 7 referred to as “a notice of intention to claim”) the employee is, subject to this section, entitled to a severance payment for being laid off or kept on short-time.

(2) For the purposes of this Part “the relevant date” in relation to a notice of intention to claim or a right to a severance payment pursuant to such notice means the date on which the last of the 13 or more consecutive weeks referred to in paragraph (a) of subsection (1) or the series of 16 or more weeks referred to in paragraph (b) of that subsection, as the case may be, came to an end.

1985-23.

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

(a) he is not entitled to a severance 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 subsection (5) of section 7); and

(b) he is not entitled to a severance 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 severance payment because of the dismissal):

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(3A) If an employee is required by his contract of employment to give more than a week's notice to terminate the contract, the reference in paragraph (a) of subsection (3) to a week's notice shall be construed as a reference to the minimum notice which he is so required to give.

1985-23. (4) Subject to subsection (5), an employee is not entitled to a severance 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 26 weeks during which he would not be laid off or kept on short-time for any week.

(5) Subsection (4) shall not apply unless, within seven days after the service of the notice of intention to claim, the employer gives to the employee notice in writing (in section 7 referred to as a "counter-notice") that he will contest any liability to pay to him a severance payment in pursuance of the notice of intention to claim.

1972-27. (6) For the purposes of this section and section 7, "week", in relation to an employee whose remuneration is calculated weekly by a week ending on a day other than Saturday, means a week ending on that other day, and, in relation to any other employee, means a week ending with Saturday.

Supplementary provisions as to severance payments in respect of lay-off or short-time. 7. (1) Where, in a case where an employee gives notice of intention to claim and the employer gives 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 subsection (4) of section 6 was not fulfilled.

1972-27.
1985-23. (2) For the purposes of section 6 (1) and subsection (1), it is immaterial whether the 13 or more consecutive weeks referred to in paragraph (a) of section 6(1) or the series of 16 or more weeks referred to in paragraph (b) of that section consist 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 one and partly of the other.

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

(4) Where the employer gives a counter-notice within 7 days after the service of a notice of intention to claim and does not withdraw the counter-notice by a subsequent notice in writing, the employee shall not be entitled to a severance payment in pursuance of the notice of intention to claim except in accordance with a decision of a tribunal.

(5) The period allowed for the purposes of paragraph (a) of subsection (3) of section 6 is as follows, that is to say

- (a) if the employer does not give a counter-notice within 7 days after the service of the notice of intention to

claim, that period is 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 severance payment in pursuance of the notice of intention to claim is referred to a tribunal, that period is three weeks after the tribunal has notified to the employee its decision on that reference.

(6) For the purposes of paragraph (c) of subsection (5), no account shall be taken of any appeal against the decision of the tribunal or of any proceedings or decision in consequence of such an appeal.

8. (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 subsection (1) of section 6,

Special provisions respecting termination of contract in cases of misconduct of industrial dispute.

takes part in a strike, in such circumstances that the employer is entitled, because 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 subsection (2) of section 4, 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 subsection (5) of section 5); and
- (b) in a case falling within paragraph (b) of subsection (1), 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 because of his taking part in a strike, is terminated by his employer in

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the circumstances specified in subsection (2) of section 4, and is so terminated as mentioned in the said subsection (2), and on a reference to a tribunal it appears to the tribunal, in the circumstances of the case, to be just and equitable that the employee should receive the whole or part of any severance payment to which he would have been entitled apart from the last-mentioned subsection, the tribunal may determine that the employer shall be liable to pay to the employee—

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

(4) Where an employee terminates his contract of employment without notice, being entitled to do so by reason of a lock-out by his employer, paragraph (c) of subsection (1) of section 16 shall not apply to that termination of the contract.

Change of
ownership.

9. (1) The provisions of this section shall have effect where—

- (a) a change occurs (whether by virtue of a sale or 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

1972-27.

- (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) Where, 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, subsection (2) of section 16 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) Where 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, but the employee refuses the offer, subsection (3), or, as the case may be, subsection (4), of section 4 shall have effect, subject to subsection (4), in relation to that offer and refusal as it would have had effect in relation to the like offer made by the previous owner and a refusal of that offer by the employee.

(4) For the purposes of the operation of this section, in accordance with subsection (3) of this section or subsection (3) or (4) of section 4 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.

(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 persons by whom a business, or part of a business, is owned immediately before a change (whether as partners, trustees or otherwise) include the person by whom, or include one or more of the persons by whom, it is owned immediately after the change,

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

(6) 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.

10. (1) Where at any time there is in force an agreement between one or more employers or organisations of employers and one or more trade unions representing employees, whereby employees to whom the agreement applies have a right in certain circumstances to payments on the termination of their contracts of employment, and, on the application of all the parties to the agreement, the Minister, having regard to the provisions of the agreement, is satisfied that section 3 should not apply to those employees, he may make an order under this section in respect of that agreement.

Exemptions
in case of
private
severance
payments
arrange-
ments.

(2) The Minister shall not make an order under this section in respect of an agreement unless the agreement indicates (in whatsoever terms) the willingness of the parties to it to submit to a tribunal such questions as are mentioned in paragraph (b) of subsection (3).

(3) Where an order under this section is in force in respect of an agreement—

- (a) section 3 shall not have effect in relation to any employee who immediately before the relevant date is an employee to whom the agreement applies; and

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- (b) section 38 shall have effect in relation to any question arising under the agreement as to the right of an employee to a payment on the termination of his employment, or as to the amount of such a payment, as if the payment were a severance payment and the question arose under this Part.

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

Exclusion or reduction of severance payment on account of pension rights.

11. (1) The Minister may by regulations make provision for excluding the right to a severance payment, or reducing the amount of any severance payment, in such cases as may be prescribed by the regulations, being cases in which an employee has (whether by virtue of an enactment 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 severance payment shall not be excluded, and that the amount of a severance payment shall not be reduced, because of any right or claim to a periodical payment or lump sum, in so far as that payment or lump sum represents compensation payable under any enactment (other than this Act) for the time being in force whether made or passed before, on or after the appointed day.

(3) In relation to any case where, under any provision contained in this Part, a tribunal determines that an employer is liable to pay part (but not the whole) of severance payment, any reference in this section to a severance payment, or to the amount of a severance payment shall be construed as a reference to that part of the severance payment, or to the amount of that part, as the case may be.

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

- (a) a severance payment is paid to an employee whether in respect of dismissal or in respect of lay-off or short-time;
- (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 subsection (1) of section 3 or the First Schedule, 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 section, be treated as not having been broken by the termination of the previous contract and the renewal or re-engagement.

Modification of right to severance payment where previous severance payment has been paid.

First Schedule.

(2) Where the conditions mentioned in subsection (1) are fulfilled, then, in determining, for the purposes of subsection (1) of section 4 or the First Schedule, 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 at the date which was the relevant date in relation to the severance payment mentioned in paragraph (a) of subsection (1), and accordingly no account shall be taken of any time before that date.

(3) For the purposes of this section a severance 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
- (b) in a case where a tribunal has determined that the employer is liable to pay part (but not the whole) of the severance payment, that part of the severance payment has been paid in full to the employee by the employer; or
- (c) a payment has been made to the employee under section 31.

1972-27.

Saving of right to severance payment.

13. Except as provided for by regulations made under section 11 or by section 12, the right of an employee to a severance payment under this Act shall not be excluded and the amount of a severance payment due to that employee shall not be reduced because of any right or claim to any other payment due to the employee.

Excluded classes of employees.

14. (1) Section 3 shall not apply

(a) to any person in respect of any employment

(i) which is employment in a public office; or

(ii) which is employment by any Statutory Board set out in the Schedule to the *Statutory Boards Pensions Act*; or

(iii) any other employment which is pensionable under any enactment for the time being in force in Barbados;

(b) to any person in respect of his employment as master or a member of the crew of a fishing vessel, if he is not paid in respect of that employment otherwise than by a share in the profits or gross earnings of the vessel;

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(c) where the employer is the husband or wife of the employee;

(d) to any person in respect of employment as a domestic servant in a private household where the employer is the father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother or half-sister of the employee;

(e) to any person in respect of employment

(i) as a member of a partnership under a partnership agreement, or

(ii) as an independent contractor or agent, or

(iii) under a contract for the performance of services.

(2) For the purposes of this Part, the Minister may by order

(a) provide that any enactment contained in this Part which

is specified in the order shall not apply to persons or to employments of such classes as may be prescribed by the order or shall apply to persons or employments of such classes as may be prescribed by the order subject to such exceptions and modifications as may be so prescribed;

(b) vary or revoke any of the provisions of subsection (1).

(3) An order made under subsection (2) shall be subject to negative resolution. 1972-27.

15. For the purpose 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 9) 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. Application of this Part to domestic servants.

PART III

Explanation of certain expressions

16. (1) For the purposes of this Act, an employee shall, subject to Part II, be deemed to be dismissed by his employer if— Dismissal by employer.

(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 without notice in circumstances (not falling within subsection (4) of section 8) such that he is entitled so to terminate it by reason of the employer's conduct; or

(d) he is not re-employed or re-engaged by the employer within four weeks of the destruction or damage of the employer's place of business by any of the causes mentioned in paragraph (b) of subsection (2) of section 3; or 1972-27.

(e) in the case of an employee employed in work of a seasonal nature, he is not re-employed or re-engaged by the 1972-27.

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employer within eight weeks from the beginning of a season for any cause mentioned in section 3 (2).

(2) An employee shall not be deemed for the purposes of this Act to be dismissed by his employer if his contract of employment is renewed or he is re-engaged by the same employer under a new contract of employment; and

(a) in a case where the provisions of the contract as renewed, or of the new contract, as the case may be, as to the capacity and place in which he is employed, and as to the other terms and conditions of his employment, do not differ from the corresponding provisions of the previous contract, the renewal or re-engagement takes effect immediately on the ending of his employment under the previous contract; or

(b) in any other case, the renewal or re-engagement is in pursuance of an offer in writing made by his employer before the ending of his employment under the previous contract, and takes effect either immediately on the ending of that employment or after an interval of not more than four weeks thereafter.

(3) For the purposes of the application of subsection (2) 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 mentioned in paragraph (b) of that subsection shall be calculated as if the employment had ended on that Monday.

(4) Subject to section 5, for the purposes of Part II, “the relevant date”, in relation to the dismissal of an employee—

(a) where his contract of employment is terminated by notice given by his employer, is the date on which that notice expires;

(b) where his contract of employment is terminated without notice, whether by the employer or by the employee, is the date on which the termination takes effect; and

- (c) where he is employed under a contract for a fixed term and that term expires as mentioned in paragraph (b) of subsection (1), is the date on which that term expires.

17. (1) For the purposes of section 3 (1) the requisite period is the period of one hundred and four weeks ending with the relevant date, excluding any week which began before the employee attained the age of sixteen.

Continuous employment for requisite period.

1972-27.

(2) Subject to subsection (1) and to the following provisions of this section, the Second Schedule shall have effect for the purposes of Part II in determining whether an employee has been continuously employed for the requisite period.

Second Schedule.

(3) Where by virtue of subsection (2) of section 16 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 subsection (1) of section 3 whether he has been continuously employed for the requisite period, the period of that interval shall count as a period of employment, notwithstanding that it does not count under the Second Schedule.

(4) The preceding provisions of this section shall have effect subject to section 12 in cases to which that section applies.

1972-27.

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

Lay-off and short-time.

(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 weeks' pay (calculated in accordance with paragraph 6 of the First Schedule) he shall for the purposes of this Act be deemed to be kept on short-time for that week.

(3) In this section the expression "week", in relation to an employee whose remuneration is calculated weekly by a

1972-27.

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week ending on a day other than Saturday, means a week ending with that other day, and, in relation to any other employee, means a week ending with Saturday.

Implied or constructive termination of contract.

19. (1) Where in accordance with any enactment or rule of law—

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

operates so as to terminate a contract under which an employee is employed by him, that act or event shall for the purposes of this Act be treated as a termination of the contract by the employer, if apart from this subsection it would not constitute a termination of the contract by him.

1972-27.

(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 as mentioned in subsection (2) of section 16, he shall for the purposes of this Act be taken to be dismissed by reason of redundancy if the circumstances in which the contract is not renewed and he is not re-engaged as mentioned in subsection (2) of section 16 are wholly or mainly attributable to one or other of the facts specified in paragraphs (a) and (b) of subsection (2) of section 3.

(3) For the purposes of subsection (2), section 3(3)(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 subsection (2) of section 16 includes a reference to that section as applied by section 9.

PART IV

Provisions relating to notices to terminate contracts of employment

Minimum period of notice required to terminate contract of employment. 1972-27.

20. (1) For the purposes of this Act, 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 hundred and four weeks or more—

- (a) shall be not less than two weeks' notice if his period of continuous employment is two years or more but less than five years; and
- (b) shall be not less than four weeks' notice if his period of continuous employment is five years or more.

(2) For the purposes of this Act, the notice required to be given by an employee who has been continuously employed for one hundred and four weeks or more to terminate his contract of employment shall be not less than one week. 1972-27.

(3) Any contract of employment of a person who has been continuously employed for one hundred and four weeks 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 payment in lieu of notice. 1972-27.

(4) Any contract of employment of a person who has been continuously employed for one hundred and four weeks or more which is a contract for a term certain of four weeks or less shall have effect as if it were for an indefinite period, and, accordingly, subsections (1) and (2) shall apply to the contract. 1972-27.

(5) The Second Schedule shall apply for the purposes of this section for ascertaining the length of an employee's period of employment and whether that period of employment has been continuous. Second Schedule.

(6) It is hereby declared that this section does not affect any right of either party to treat the contract as terminable without notice because of such conduct by the other party as would have enabled him so to treat it before the commencement of this Act.

(7) This section applies in relation to any contract made before the commencement of this Act, and, in relation to a contract all or any of the terms of which take effect by virtue of any provision in or having effect under an Act, this section applies as it applies in relation to any other contract.

21. (1) Where an employer gives notice to an employee to terminate his contract of employment and—

- (a) withdraws the notice before the date on which it is due to expire; and

Effect of withdrawal by employer of notice to terminate employee's contract of employment.

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(b) offers to renew the employee's contract or to re-engage him under a new contract so that—

(i) the provisions of the contract as renewed, or of the new contract, as the case may be, 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 contract as in force immediately before the notice was given by the employer; and

(ii) the renewal or re-engagement would take effect on or before the date on which the notice was due to expire,

then, if the employee has unreasonably refused that offer, he shall not be entitled to a severance payment because of dismissal.

(2) Where in the circumstances specified in subsection (1) an employer has withdrawn a notice previously given to an employee to terminate his contract of employment and any question relating to the employee's refusal of the employer's offer to renew the contract or to re-engage him under a new contract has been referred to a tribunal in accordance with section 38, then, if it appears to the tribunal, having regard to the reasons for which the employee has refused the employer's offer, to be just and equitable that the employee should receive the whole or part of any severance payment to which he would have been entitled apart from subsection (1), the tribunal may determine that the employer shall be liable to pay to the employee—

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

22. (1) The provisions of this section shall have effect where, after an employer has given notice to an employee to terminate his contract of employment (in this section referred to as a "notice of termination")—

Strike during currency of employer's notice to terminate contract.

- (a) the employee begins to take part in a strike of employees of the employer; and
- (b) the employer serves on him a notice in writing (in this section referred to as a "notice of extension") requesting him to agree to extend the contract of employment beyond the time of expiry by an additional period comprising as many available days as the number of working days lost by striking (in this section referred to as "the proposed period of extension").

(2) A notice of extension shall indicate the reasons for which the employer makes the request contained in the notice and shall state that unless either—

- (a) the employee complies with the request; or

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(b) the employer is satisfied that, in consequence of sickness, injury or otherwise, he is unable to comply with it, or that (notwithstanding that he is able to comply with it) in the circumstances it is reasonable for him not to do so, the employer will contest any liability to pay him a severance payment in respect of the dismissal effected by the notice of termination.

(3) For the purposes of this section an employee shall be taken to comply with the request contained in a notice of extension if, but only if, on each available day within the proposed period of extension, he attends at his proper or usual place of work and is ready and willing to work, whether he has signified his agreement to the request in any other way or not.

(4) Where an employee on whom a notice of extension has been served—

- (a) complies with the request contained in the notice; or
- (b) does not comply with it, but attends at his proper or usual place of work and is ready and willing to work on one or more (but not all) of the available days within the proposed period of extension,

the notice of termination shall have effect, and shall be deemed at all material times to have had effect, as if the period specified in it had (in a case falling within paragraph (a) of this subsection) been extended beyond the time of expiry by an additional period equal to the proposed period of extension or (in a case falling within paragraph (b) of this subsection) had been extended beyond the time of expiry up to the end of the day (or, if more than one, the last of the days) on which he so attends and is ready and willing to work.

(5) Subject to subsection (6), if an employee on whom a notice of extension is served under subsection (1) does not comply with the request contained in the notice, he shall not be entitled to a severance payment because of the dismissal effected by the notice of termination, unless the employer agrees to pay such a payment to him notwithstanding that the request has not been complied with.

(6) Where a notice of extension has been served, and on reference to a tribunal it appears to the tribunal that the employee has not complied with the request contained in the

notice and the employer has not agreed to pay a severance payment in respect of the dismissal in question, but that the employee was unable to comply with the request or it was reasonable for him not to comply with it, as mentioned in paragraph (b) of subsection (2), the tribunal may determine that the employer shall be liable to pay to the employee— 1972-27.

- (a) the whole of any severance payment to which the employee would have been entitled apart from subsection (5); or
- (b) such part of any such severance payment as the tribunal thinks fit.

(7) The service of a notice of extension, and any extension, under subsection (4), of the period specified in a notice of termination—

- (a) shall not affect any right either of the employer or of the employee to terminate the contract of employment (whether before, at or after the time of expiry) by a further notice or without notice; and
- (b) shall not affect the operation of Part II in relation to any such termination of the contract of employment.

(8) In this section any reference to the number of working days lost by striking is a reference to the number of working days in the period beginning with the date of service of the notice of termination and ending with the time of expiry which are days on which the employee in question takes part in a strike of employees of the employer.

(9) For the purposes of this section, the expression—

- (a) “available day”, in relation to an employee, means a working day beginning at or after the time of expiry which is a day on which he is not taking part in a strike of employees of the employer;
- (b) “available day within the proposed period of extension” means an available day which begins before the end of that period;
- (c) “time of expiry”, in relation to a notice of termination, means the time at which the notice would expire apart from this section;

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- (d) "working day", in relation to an employee, means a day on which, in accordance with his contract of employment, he is normally required to work.

Lock-out during currency of notice to terminate contract of employment.

23. Where—

- (a) an employer has given notice to an employee to terminate his contract of employment because of redundancy; or
- (b) an employee, either in the circumstances specified in section 5 or otherwise, has given notice in writing to an employer to terminate his contract of employment; and
- (c) before the date of expiry of the notice referred to in paragraph (a) or the notice referred to in paragraph (b), as the case may be, there is a lock-out by the employer of his employees; and
- (d) an employee terminates his contract of employment before the expiry of the notice referred to in paragraph (a) or paragraph (b), as the case may be,

then, notwithstanding section 4 or any other provision to the contrary contained in this Act, the termination by the employee of his contract of employment in the circumstances mentioned in this section shall not affect his entitlement to a severance payment in accordance with Part II.

PART V

Severance Fund

Establishment and management of Fund.

24. (1) For the purposes of this Act there shall be established under the control and management of the Minister a fund to be called the Severance Fund into which there shall be paid all sums received by the Minister under this Part and out of which payments shall be made in accordance with this Act.

(2) The Minister shall keep proper accounts of the Fund and adequate financial and other records in relation thereto and shall, within six months after the end of the financial year to which the accounts relate, submit such accounts to the Auditor-General for audit.

(3) The Auditor-General shall, as soon as may be after the receipt of any accounts submitted to him under subsection (2),

audit them and shall lay copies thereof together with his report thereon before Parliament.

(4) Any moneys forming part of the Fund may be invested by the Minister in such manner and in such securities as the Minister responsible for Finance may direct.

24A. (1) The Minister may by order delegate to the National Insurance Board established by section 3 of the National Insurance and Social Security Act, or to the Director, National Insurance, such of his functions under this Part relating to the control and management of the Fund as he thinks appropriate.

Delegation
of functions
by Minister.

1972-27.
Cap. 47.

(2) Where an order made under subsection (1) is in force—

(a) a reference in this Part or in any regulations made under this Part to the Minister in relation to any function delegated by the order shall be construed as including a reference to the National Insurance Board or the Director, National Insurance, as the case may be;

(b) if the function delegated by the order is the control and management of the Fund, sub-paragraphs (i), (ii) and (iii) shall have effect in substitution for subsections (2) and (3) of section 24—

(i) accounts of the Fund shall be prepared in such form, in such manner and at such times as the Auditor-General directs, and the Auditor-General shall examine and certify every such account,

(ii) The National Insurance Board shall—

(aa) in each year prepare a report on its activities in relation to the Fund in the last preceding year and shall furnish that report to the Minister not later than the 30th June,

(bb) submit to the Minister every account certified by the Auditor-General pursuant to sub-paragraph (i), and

(iii) the Minister shall cause a copy of every report or account submitted to him pursuant to sub-paragraph (ii) to be laid before Parliament.

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Contributions to Fund.
1972-27.

Cap. 47.

25. (1) Subject to subsection (1A), every employer who, in respect of any contribution week beginning on or after the appointed day, is liable to pay an employer's contribution under subsection (1) of section 15 of the National Insurance and Social Security Act in respect of a person over the age of sixteen years and under the age of sixty-five years employed by him is liable also to pay in respect of that person a contribution to be called a "severance fund contribution".

1972-27.

(1A) No severance fund contribution is payable by an employer in respect of a person to whom, by virtue of section 14 (1), section 3 does not apply.

(2) Subject to subsection (3), the amount of the severance fund contribution which is payable by an employer under subsection (1) in respect of any person employed by him and in respect of any contribution week shall be such as may be prescribed by regulations made by the Minister.

(3) Severance fund contributions shall be paid to the National Insurance Board established by section 3 of the National Insurance and Social Security Act, but, subject to this Part, shall be taken to be so paid as contributions to the Fund.

Collection of severance fund contributions.

Cap. 47.

26. (1) Subject to subsections (3) to (5), the National Insurance and Social Security Act shall have effect (for the purposes of that Act as well as for the purposes of this Act) in relation to an employer who is liable to pay a severance fund contribution in respect of a person employed by him for a contribution week as if—

- (a) that contribution and the contribution payable by him for that week in respect of that person under subsection (1) of section 15 of that Act together constituted one combined contribution payable by him under that Act in respect of that person for that week; and
- (b) the whole of the combined contribution in question were payable into the National Insurance Fund established by section 30 of that Act;

and in that Act reference to contribution shall be construed accordingly.

(2) Except in so far as may be otherwise provided by any regulations made under the National Insurance and Social

Security Act, after 1st January, 1973, subsection (1) shall apply in relation to regulations made, whether before or after that date under any provisions of that Act to which that subsection applies as it applies in relation to those provisions. Cap. 47.

(3) There shall be excluded from the provisions of the *National Insurance and Social Security Act* which are to have effect as mentioned in subsection (1) the provisions of subsection (1) of section 30 of that Act relating to the payment of contributions into the National Insurance Fund. Cap. 47.

(4) Nothing in subsection (1) or (2) shall be construed

(a) as affecting the rate of any contributions under subsection (1) of section 15 of the *National Insurance and Social Security Act*; or Cap. 47.

(b) as excepting any employer who pays or is liable to pay employer's contributions under the *National Insurance and Social Security Act*, or as conferring any power to except such employer, from liability to pay severance fund contributions; or Cap. 47.

(c) as conferring any power to modify the rate of severance fund contributions in relation to any class of persons.

(5) Notwithstanding anything in subsections (1) to (4), where a person has paid in error

(a) contributions under the *National Insurance and Social Security Act*; and Cap. 47.

(b) severance fund contributions,

and he or any other person has received any benefit under that Act which, under any provision of that Act or any regulations made thereunder, may be deducted from any payment of the contributions paid in error under that Act, nothing in that Act or those regulations shall be construed as authorising that benefit to be deducted from any repayment of the severance fund contributions paid in error.

Recovery of severance fund contributions and other sums.
Cap. 47.
1984-11.
1986-15.
2006-8.

26A. (1) Sections 43, 43A, 43B, 43C and 43D of the *National Insurance and Social Security Act* shall have effect in respect of the recovery of unpaid severance fund contributions as if those contributions were national insurance contributions.

2006-8.
Cap. 47.

(2) Where in accordance with section 31 the Minister pays an employee out of the Fund a sum in respect of the severance payment due by his employer and the sum has not been recovered under the Act, the sum is recoverable by the National Insurance Board from the employer in the manner specified in sections 43, 43A, 43B, 43C and 43D of the *National Insurance and Social Security Act* as if it were an unpaid national insurance contribution recoverable by the National Insurance Board.

2006-8.
Cap. 47.

(2A) Notwithstanding subsection (2), section 43C of the *National Insurance and Social Security Act* shall apply to sections 3 and 25 of this Act, with such modifications as are necessary.

(3) Where the Minister pays an employee a sum under section 31(2) in respect of an unpaid severance payment on which interest is payable by the employer in accordance with section 3A, that interest is recoverable by the National Insurance Board in accordance with subsection (2) as if it had been paid by the Minister under that subsection and shall be paid over to the employee as soon as possible after it has been recovered.

Defrayment of initial expenditure and meeting of temporary insufficiency in Fund.

27. (1) The initial expenditure incurred in bringing this Act into force shall be defrayed out of such sums as Parliament may provide for the purpose.

(2) Any temporary insufficiency in the assets of the Fund to meet the liabilities of the Fund under this Act shall be met from such sums as Parliament may advance for the purpose.

(3) Any sums advanced by Parliament pursuant to subsection (2) shall be repaid by the Minister out of the Fund into the Consolidated Fund in such manner at such times and with interest thereon at such rate as the Minister responsible for Finance may direct.

28. Notwithstanding section 27, all expenses incurred in the administration of this Act and the regulations shall be paid out of the Fund.

Expenses of administration. 1974-2.

29. (1) Subject to subsections (2) and (6) and section 42(5)(b), the Minister shall make a payment (in this Part referred to as a “rebate”) out of the Fund to any employer who

Rebates to employers in respect of severance payments.

(a) is liable under Part II to pay and has paid a severance payment to an employee; or

(b) under an agreement in respect of which an order is in force under section 10 is liable to make and has made a payment to an employee on the termination of his contract of employment.

(2) No rebate shall be payable by virtue of this section in a case falling within paragraph (b) of subsection (1) if the employee’s right to the payment referred to in that paragraph arises by virtue of a period of employment (computed in accordance with the agreement in question) which is less than 104 weeks.

(3) Subject to subsection (6), the amount of any rebate shall be calculated in accordance with the *Third Schedule*.

Third Schedule.

(4) The Minister shall make regulations providing for the making of claims for rebates, and such regulations may

(a) require any claim for a rebate to be made at or before a prescribed time;

(b) in such cases as may be prescribed, require prior notice that such claim may arise to be given at or before a prescribed time, but where the claim would relate to an employer’s payment in respect of dismissal, the regulations shall not require the notice to be given more than 4 weeks before the date on which the termination of the contract of employment takes effect; and

(c) for the purpose of determining the right of any person to, and the amount of, any rebate, require a person at any time when he makes a claim or gives prior notice as mentioned in

paragraph (a) or (b), to provide such evidence and such other information, and to produce for examination on behalf of the Minister documents in his custody or under his control of such description as may be determined in accordance with the regulations.

(5) In relation to any case where, under any provision contained in Part II, a tribunal determines that an employer is liable to pay part but not the whole of a severance payment, the reference in paragraph (a) of subsection (1) to a severance payment shall be construed as a reference to that part of the severance payment.

(6) Where an employer who, in accordance with subsection (1), would be entitled to a rebate fails to give prior notice as required by any regulations made under paragraph (b) of subsection (4) and it appears to the Minister that he has so failed without reasonable excuse, the Minister, subject to section 33, may reduce the amount of the rebate by such proportion, not exceeding 10 per cent, as appears to the Minister to be appropriate in the circumstances.

1984-11.
Cap. 47.
Cap. 42.

(6A) Where an employer is entitled to a rebate in accordance with section 29, if that employer owes any sum as contributions to the National Insurance Fund, the Consolidated Fund in respect of the Health Service, the Severance Fund or the National Training Fund under the *National Insurance and Social Security Act*, this Act and the *Occupational Training Act* respectively, that sum shall be deducted by the National Insurance Board from the rebate and shall be paid into the appropriate Fund.

(7) Any person who

- (a) in providing any information required by regulations made under this section makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular; or
- (b) produces for examination in accordance with any regulations made under this section a document which to his knowledge has been wilfully falsified,

is guilty of an offence and liable on summary conviction to a fine of \$1 000 or to imprisonment for 6 months or to both such fine and imprisonment.

30. (1) The Minister may make payments out of the Fund to employers who are liable to pay severance fund contributions in respect of employees to whom this section applies.

Payments out of Fund to employers in other cases.

(2) The Minister may determine the classes of employees to whom this section applies in respect of whom payments are to be made by virtue of this section and with the approval of the Minister responsible for Finance may determine the amounts of the payments which may be so made in respect of any class of such employees.

1972-27.

(3) The payments made to an employer by virtue of this section shall not in respect of any period exceed the amount appearing to the Minister to be the aggregate amount paid by that employer in respect of that period by way of severance fund contributions in respect of employees to whom this section applies.

31. (1) Where an employee claims that his employer is liable to pay him an employer's payment and either

Payments out of Fund to employees.

- (a) that he has taken all reasonable steps, other than legal proceedings, to recover the payment from the employer and that the employer has refused or failed to pay it or has paid part of it and has refused or failed to pay the balance; or
- (b) that the employer is insolvent and that the whole or part of the payment remains unpaid,

the employee may apply to the Minister for a payment under this section.

(2) Where on an application made under this section the Minister is satisfied

- (a) that the employee is entitled to the employer's payment;
- (b) that the condition specified in either paragraph (a) or (b) of subsection (1) is fulfilled; and

- (c) that in a case where the employer's payment is such a payment as is mentioned in paragraph (b) of subsection (1) of section 29, the employee's right to the payment arises by virtue of a period of employment (computed in accordance with the agreement in question) which is not less than 104 weeks,

Fourth
Schedule.

the Minister shall pay to the employee out of the Fund a sum calculated in accordance with the *Fourth Schedule* reduced by so much (if any) of the employer's payment as has been paid.

1984-11.

(2A) Where a sum is to be paid by the Minister out of the Fund to an employee in pursuance of subsection (2), that sum is not to include any interest that may be payable by an employer under section 3A in respect of his unpaid severance payment; but is subject to interest calculated at the rate of one per cent per month and is payable by the employer in respect of whom the sum was paid.

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

- (a) all rights and remedies of the employee with respect to the employer's payment or (if the Minister has paid only part of it) all his rights and remedies with respect to that part of the employer's payment, shall be transferred to and vest in the Minister; and
- (b) any decision of a tribunal requiring the employer's payment to be paid to the employee shall have effect as if it required that payment, or, as the case may be, that part of it which the Minister has paid, to be paid to the Minister,

and any money recovered by the Minister by virtue of this subsection shall be paid into the Fund.

(4) Where the Minister pays a sum under this section in respect of an employer's payment, then, subject to subsection (5), section 29 shall apply as if that sum had been paid by the employer to the employee on account of that payment; but if, in a case falling within paragraph (a) of subsection (1), it appears to the Minister that the refusal or failure of the employer to pay the employer's payment or part of it, as the case

may be, was without reasonable excuse, the Minister, subject to section 33, may withhold any rebate to which the employer would otherwise be entitled in respect of the employer's payment, or may reduce the amount of any such rebate to such extent as the Minister considers appropriate.

(5) For the purposes of this section, an employer shall be taken to be insolvent if

- (a) he has become bankrupt or has made a composition or arrangement with his creditors;

- (b) he has died and an order has been made under section 118 of the Bankruptcy Act for the administration of his estate according to the law of bankruptcy; Cap. 303.
- (c) where the employer is a company—
- (i) a winding-up order has been made with respect to it; or
 - (ii) a resolution for voluntary winding-up has been passed with respect to it; or
 - (iii) a receiver or manager of its undertaking has been duly appointed; or
 - (iv) possession has been taken by or on behalf of the holders of any debentures secured by a floating charge of any property of the company comprised in or subject to the charge.

(6) For the purposes of this section “legal proceedings” does not include any proceedings before a tribunal, but includes any proceedings to enforce a decision of a tribunal.

32. (1) Where an employee makes an application to the Minister under section 31, the Minister may by notice in writing given to the employer require the employer—

Supplement-
ary provi-
sions as to
applications
under section
31.

- (a) to provide the Minister with such information; and
- (b) to produce for examination on behalf of the Minister documents in his custody or under his control of such descriptions,

as the Minister may reasonably require for the purpose of determining whether the application is well-founded.

(2) Any person, being a person on whom a notice has been served under subsection (1), who—

- (a) fails without reasonable excuse to comply with a requirement imposed by the notice;
- (b) in providing any information required by the notice—
 - (i) makes a statement which he knows to be false in a material particular; or
 - (ii) recklessly makes a statement which is false in a material particular; or

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- (c) produces for examination in accordance with the notice a document which to his knowledge has been wilfully falsified,

is guilty of an offence and liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months or to both such fine and imprisonment.

References and appeals to tribunal relating to payments out of Fund.

33. (1) Subsections (2) and (3) shall have effect where—

- (a) a claim is made for a rebate on the ground that an employer is liable to pay and has paid an employer's payment or prior notice that such claim may arise is given in accordance with regulations made under paragraph (b) of subsection (4) of section 29; or
- (b) an application is made to the Minister for a payment under section 31 where it is claimed that an employer is liable to pay an employer's payment.

(2) Where any claim or application is made or prior notice is given as mentioned in subsection (1), there shall be referred to a tribunal in accordance with regulations made under Part VI—

- (a) any question as to the liability of the employer to pay the employer's payment;
- (b) in a case falling within paragraph (a) of subsection (1), any question as to the amount of the rebate payable in accordance with the Third Schedule;
- (c) in a case falling within paragraph (b) of subsection (1) any question as to the amount of the sum payable in accordance with the Fourth Schedule,

and any question referred to a tribunal under this subsection shall be determined by the tribunal in accordance with the regulations.

(3) Subsection (2) of section 38 shall apply for the purposes of any reference under subsection (2) as it applies for the purposes of references under subsection (1) of that section.

(4) In any case where the Minister withholds or reduces the amount of a rebate under subsection (6) of section 29 or subsection (4) of section 31, the employer may appeal to a tribunal and where on any such appeal the tribunal is satisfied—

(a) in a case where the rebate was withheld that it should be paid in full or should be reduced instead of being withheld; or

(b) in a case where the rebate was reduced, that it should not be reduced or shall be reduced by a smaller or longer proportion than that which the Minister has applied,

the tribunal shall determine accordingly.

(5) The determination of a tribunal on an appeal under subsection (4) shall be final and the Minister shall comply therewith.

34. (1) For the purposes of this Part, the expression “contribution week” and “employer’s contribution” and (except in sections 29 and 31 to 33) “employer” has the same meaning as in the *National Insurance and Social Security Act*;

Interpretation of this Part.

Cap. 47.

“employer’s payment” means any payment falling within paragraph (a) or (b) of subsection (1) of section 29.

(2) It is hereby declared that section 44 of the *National Insurance and Social Security Act*, and any regulations made under that section shall have effect in accordance with subsections (1) and (2) of section 26.

PART VI

Miscellaneous Provisions

35. Part I of the Fifth Schedule shall have effect in relation to the death of an employer; and Part II of that Schedule shall have effect in relation to the death of an employee.

Death of employer or employee. Fifth Schedule. Written particulars of severance payments.

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

(2) Any employer who without reasonable excuse fails to comply with subsection (1) shall be guilty of an offence and liable on summary conviction to a fine of \$100.

(3) Where 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 1 week beginning with the day on which the notice is given) as may be specified in the notice; and where the employer without reasonable excuse fails to comply with the notice he shall be guilty of an offence under this subsection and liable on summary conviction

- (a) if it is his first conviction of an offence under this section, to a fine of \$100; or
- (b) in any other case, to a fine of \$500.

Claims for severance payments. 1972-27.

37. Notwithstanding anything in Part II, an employee shall not be entitled to a severance payment unless, before the end of the period of 12 months beginning with the relevant date

- (a) the payment has been agreed and paid; or
- (b) the employee has made a claim for the payment by notice in writing given to the employer; or
- (c) a question as to the right of the employee to the payment, or as to the amount of the payment, has been referred to a tribunal in accordance with section 38.

Reference of questions to tribunal.

38. (1) Any question arising under this Act as to the right of an employee to a severance payment, or as to the amount of a severance payment, shall, in accordance with regulations made under this Part, be referred to and determined by a tribunal appointed and constituted in accordance with the Sixth Schedule.

Sixth Schedule.

- (2) For the purposes of any such reference
 - (a) a person's employment during any period shall, unless the contrary is proved, be presumed to have been continuous;
 - (b) an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed because of redundancy or natural disaster.

(3) In relation to lay-off or short-time, the questions which may be referred to and determined by a tribunal, as mentioned in subsection (1), shall include any question whether an em-

employee will become entitled to a severance payment if he is not dismissed by his employer and he terminates his contract of employment as mentioned in paragraph (a) of subsection (3) of section 6, and any such question shall for the purposes of Part II be taken to be a question as to the right of the employee to a severance payment.

(4) On the determination by a tribunal of any question referred to it under this Act, the tribunal shall furnish the employer and employee concerned with its decision together with such a statement of the reasons therefor as will enable the employer or employee to determine whether any question of law has arisen on which he may wish to appeal under section 39.

(5) The provisions contained in the Sixth Schedule shall have effect as to the appointment and constitution of and otherwise in relation to a tribunal referred to in subsection (1). Sixth Schedule.

39. (1) Any person who is dissatisfied on a question of law with a decision of a tribunal under this Act may— Appeal on question of law to High Court from decisions of tribunal.

(a) within thirty days after the date of the decision; or

(b) within twenty-one days after receipt, in accordance with section 38, of a statement of the reasons for the decision,

whichever is the longer period, appeal to the High Court from that decision in accordance with rules of court made for the purposes of this section.

(2) The decision of the High Court in any appeal under this section shall be final.

40. (1) Without prejudice to section 25 of the Interpretation Act, any notice which under this Act is required or authorised 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. Provisions as to notices. Cap. 1.

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

THE LAWS OF BARBADOS

- (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 Act 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 Act, including either of those subsections.

Application of Act to employees dismissed, etc., between 1st September, 1969 and appointed day. 1974-2.

41. (1) This Act (section 20 excepted) shall, subject to subsections (2) to (7) and to such adaptations and modifications as may be necessary, apply to any employee who, before the appointed day, had been continuously employed for the requisite period and who, between the 1st September, 1969 and that day, was dismissed, laid off or kept on short-time, as the case may be, in any of the circumstances mentioned in subsection (1) of section 3.

(2) In the application of this Act to any employee mentioned in subsection (1) the following provisions shall have effect.

(3) Where any provision of this Act requires—

- (a) any notice to be given; or
- (b) any other thing to be done,

within a specified period after a specified event or date or the taking of a specified action, then, if that event or date or the taking of that action precedes the appointed day, the specified period shall be deemed to begin on the appointed day.

(4) Where any provision of this Act requires any payment to be made by an employer to an employee, then, unless any question relating to the payment has been referred to a tribunal under section 38, the payment shall be made by the employer

- (a) in any case where a period for making the payment was specified, within the same period after the appointed day; and
- (b) in any other case not later than 4 weeks after the appointed day.

(5) Where by agreement or under any enactment other than this Act a payment has been made by an employer to an employee as compensation for his being dismissed, laid off or kept on short-time, the amount of severance payment to which the employee would otherwise be entitled shall be abated by the amount of such compensation. ^{1974-2.}

(6) An employer who

- (a) has before the commencement of the Fund paid compensation to an employee for his being dismissed, laid off or kept on short-time; or
- (b) is by virtue of this Act liable to pay a severance payment to an employee in respect of his having been dismissed, laid off or kept on short-time before 1st January, 1973,

is not entitled to be paid a rebate under section 29.

(7) This section does not apply to a displaced sugar factory worker within the meaning of section 2 of the *Sugar Factory Workers Severance Payments Act*.¹ whose date of displacement as defined by that section occurred before 1st January, 1973. ^{1972-27.}

42. (1) Where the employer is a company, any reference in Part II to re-engagement by the employer shall be construed as a reference to re-engagement by that company or by any associated company, and any reference in that Part to an offer made by the employer shall be construed as including a reference to an offer made by an associated company. ^{Associated companies.}

¹Formerly Cap. 358, now repealed.

(2) Subsection (1) shall not affect the operation of section 9 in a case where the previous owner and the new owner (as defined by that section) are associated companies; and where that section applies, subsection (1) shall not apply.

(3) Where an employee is dismissed by his employer, and the employer is a company (in this subsection referred to as "the employing company") which has one or more associated companies, then, if

- (a) neither of the conditions specified in sub-paragraphs (i) and (ii) of paragraph (a) of subsection (3) of section 3 is fulfilled; but
- (b) one or other of those conditions would be fulfilled if the business of the employing company and the business of the associated company (or, if more than one, each of the associated companies) were treated as together constituting one business,

that condition shall for the purposes of Part II be taken to be fulfilled in relation to the dismissal of the employee.

(4) For the purposes of this section, two companies shall be taken to be associated companies if one is a subsidiary of the other, or both are subsidiaries of a third company, and the expression "associated company" shall be construed accordingly.

(5) For the purposes of this section

- (a) the expression "company" includes any body corporate;
- (b) a company shall be treated as a subsidiary of another company if that other company is a member of it and—
 - (i) either controls the composition of its board of directors; or
 - (ii) holds a majority of its shares; or
 - (iii) the first-mentioned company is a subsidiary of any company which is that other company's subsidiary.

Recovery of
severance
payments.
1984-11.

43. (1) A severance payment and any interest due on that payment pursuant to section 3A may be recovered as a debt due to the employee in civil proceedings before a court of competent jurisdiction.

(2) A decision of a tribunal under section 38 pursuant to which any sum is payable may, unless an appeal therefrom is made under section 39, be filed by or on behalf of the employee concerned in the magistrate's court of District "A", and upon being so filed shall

- (a) be registered in that court; and
- (b) notwithstanding that the sum involved exceeds the normal monetary limit on the civil jurisdiction of that court, have the same force and effect as a judgment of that court in favour of the employee against the employer concerned for the sum specified therein, together with the reasonable costs and charges of its registration;

and all proceedings may be taken on a decision so registered and it may be enforced as if it were a judgment of that court.

(3) Any sum payable pursuant to a decision of the High Court on an appeal made under section 39 shall be recoverable by execution issued from that court.

44. The Minister may make regulations for carrying into effect the provisions of this Act. Regulations.

45. (1) Notwithstanding any rule of law to the contrary, where, in an action brought by an employee against an employer for breach of their contract of employment, the employee claims damages for wrongful dismissal, the court shall, if Measure of damages for wrongful dismissal in certain cases.

- (a) it finds that the employee was wrongfully dismissed; and
- (b) it is satisfied that, had the employee been dismissed by reason of redundancy or natural disaster, the employer would be liable to pay him a severance payment,

assess those damages at an amount not less than such severance payment. 1972-27.

(2) Subsection (1) applies to a magistrate's court notwithstanding that the amount of the damages assessed in accordance with that subsection exceeds the normal monetary limit on the civil jurisdiction of that court.

FIRST SCHEDULE

(Section 3)

2006-8.

PART I

*Calculation of Severance Payments*Second
Schedule.

1. (1) The amount of a severance 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, and for the purposes of this *Schedule* that period shall be computed in accordance with the *Second Schedule*, but as if

- (a) any week which began before the employee attained the age of 16 were excluded; and
- (b) the continuity of an employee's period of employment were not broken by a week which does not count under the *Second Schedule*, if the whole or part of that week falls within any such interval as is referred to in subsection (3) of section 17.

(2) Where section 12 applies, sub-paragraph (1) shall have effect subject to that section.

2. Subject to paragraph 3, the amount of the severance 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 complete years of employment falling within that period and allowing, for each complete year of employment,

1991-18.

- (a) 2.5 weeks' basic pay for each such year up to 10 years;
- (b) 3 weeks basic pay for each such year by which the employment exceeds 10 years but does not exceed 20 years; and
- (c) 3.5 weeks' basic pay for each such year by which the employment exceeds 20 years but does not exceed 33 years.

3. Where, in reckoning the number of complete years of employment in accordance with paragraph 2, 33 complete years of employment have been reckoned, account shall not be taken of any year of employment earlier than those 33 years.

4. The preceding provisions of this *Schedule* shall have effect without prejudice to the operation of any regulations made under section 11 whereby the amount of a severance payment, or part of a severance payment, may be reduced.

5. Where the relevant date does not occur at the end of a week, any reference in the preceding provisions of this *Schedule* to the relevant date shall be construed as a reference to the end of the week in which that date falls.

6. (1) For the purposes of this *Schedule*,

1972-27.
1984-11.
1991-18.

(a) "basic pay" means the insurable earnings of an employee as calculated in accordance with regulation 14 of, and the Schedule to, the *National Insurance and Social Security (Collection of Contributions) Regulations, 1967*;

(b) "complete year of employment" means 52 weeks (whether continuous or discontinuous) which in accordance with *the Second Schedule* count in computing a period of employment;

Second
Schedule.

(c) "week" means a week ending on Saturday;

(d) "week's basic pay" means,

(i) in relation to an employee employed in work of a seasonal nature, his average basic pay per week in the 2 full seasons immediately preceding the date on which he ceases to be employed;

(ii) in relation to any other employee, his total basic pay during the 104 weeks immediately preceding the date on which he ceased to be employed divided by 104,

provided that, where in any of those weeks the employee was laid off or kept on short-time, his earnings in respect of such weeks shall be taken to be at the average weekly rate of basic pay during the 4 weeks of normal employment immediately before the commencement of the period of lay-off or short-time;

(e) "year" means any period of 52 weeks.

(2) The Minister may by order provide that, subject to such transitional provisions as may be contained in the order, the amount of a week's basic pay shall not in any case be taken for the purposes of this *Schedule* to exceed such sum as may be specified in the order.

2006-8.

PART II

*(Section 2)**Pensionable Age*

| Period | Age |
|---|-----------|
| From 1st January 2003 to 31st December 2005 (inclusive) | 65 years |
| From 1st January 2006 to 31st December 2009 (inclusive) | 65½ years |
| From 1st January 2010 to 31st December 2013 (inclusive) | 66 years |
| From 1st January 2014 to 31st December 2017 (inclusive) | 66½ years |
| From 1st January 2018 and after | 67 years. |

SECOND SCHEDULE

*(Sections 17, 20(5))**Computation of Period of Employment*

- Preliminary. 1. (1) The employee's period of employment shall be computed in weeks in accordance with this Schedule.
- (2) Except as otherwise expressly provided, this Schedule applies to periods before 1st January, 1973 as it applies to later periods.
- General provisions as to continuity of period of employment. 2. Except so far as otherwise provided by the following provisions of this Schedule, any week which does not count under paragraphs 3 to 6 breaks the continuity of the period of employment.
- Normal working weeks. 3. Any week in which the employee is employed for 21 hours or more shall count in computing a period of employment.
- Employment governed by contract. 4. 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 21 hours or more weekly shall count in computing a period of employment.

5. (1) Where in any week the employee is, for the whole or part of the week, Periods in which there is no contract of employment.
- (a) incapable of work because of sickness or injury; or
 - (b) absent from work because 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,

that week shall, notwithstanding that it does not fall under paragraph 3 or 4, count as a period of employment.

(2) Not more than 26 weeks shall count under sub-paragraph (1)(a) between any 2 periods falling under paragraphs 3 and 4.

(3) Sub-paragraph (1)(b) shall not apply to a temporary cessation of work because of a strike in which the employee takes part.

5A. (1) Subject to this paragraph, a week shall not count under paragraphs 3, 4, or 5, if— Employment wholly or partly abroad.

- (a) the employee was employed outside Barbados during the whole or part of that week; and
- (b) no employer's contribution in respect of him was paid in respect of the corresponding contribution week,

unless an employer's contribution in respect of him was payable (though not in fact paid) in respect of the corresponding contribution week.

(2) For the purposes of the application of sub-paragraph (1) to a week of employment where the corresponding contribution week began before 5th June, 1967, an employer's contribution shall be treated as payable as mentioned in that sub-paragraph if that contribution would have been so payable if the enactments relating to national insurance which were in force on that date had been in force in that contribution week.

(3) Where under sub-paragraph (1) a week of employment does not count as mentioned in that sub-paragraph, the continuity of the period of employment is not broken only because that week does not count.

L.N. 46
of 1967.

(4) Any question arising under this paragraph whether an employer's contribution was paid or was or would have been payable shall be determined in accordance with the *National Insurance and Social Security (Determination of Claims and Questions) Regulations, 1967*.

(5) For the purposes of this paragraph,

"corresponding contribution week" in relation to a week of employment means a contribution week of which so much as falls within the period beginning with midnight between Sunday and Monday and ending with Saturday also falls within that week of employment;

"contribution week" and "employer's contribution" have the meanings respectively assigned to them by section 34 (1) ;

"week of employment" means a week ending with Saturday.

Excluded
classes of
employees.

5B. A week shall not count under paragraph 3, 4 or 5 during which the employee is excluded by or under section 14, but the continuity of the period of employment is not broken only because that week does not count.

Seasonal
employees.

5C. In the case of an employee who is employed in work of a seasonal nature the weeks outside the season during which he is not employed by the same employer do not break the continuity of the period of employment.

Industrial
disputes
before
commence-
ment of Act.

6. Where in any week beginning before 1st January, 1973 the employee was, for the whole or any part of the week, absent from work

(a) because he was taking part in a strike; or

(b) because of a lock-out by the employer,

the week shall count as a period of employment.

Industrial
disputes
after
commence-
ment of
Act.

7. (1) A week shall not count under paragraph 3, 4 or 5 if in that week, or any part of that week, the employee takes part in a strike.

(2) The continuity of an employee's period of employment is not broken by a week which does not count under this Schedule, and which begins after 1st January, 1973, if in that week or any part of that week the employee takes part in a strike.

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

(4) The continuity of the period of employment is not broken by a week which begins after 1st January, 1973, 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.

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

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

(3) Where by virtue of an enactment 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) Where 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) Where there is a change in the partners, personal representatives or trustees who employ any person, the employee's period of employment at the time of the change 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.

THIRD SCHEDULE

s. 29 (3).

Calculation of Rebates

PART I

Rebates in respect of severance payments

1. Subject to this Part and sections 29 (6) and 33, the amount of a rebate payable in respect of a severance payment shall be an amount equivalent to such percentage of the amount of that severance payment as the Minister prescribes. 1977-22.

2. (1) Sub-paragraphs (2) to (4) shall have effect in relation to any case where—

(a) under any provision contained in this Act a tribunal is empowered to determine that an employer is liable to pay to an employee either the whole or part of the severance payment to which the employee would have been entitled apart from any other provision mentioned therein; and

(b) the tribunal determines that the employer is liable to pay part but not the whole of that severance payment.

(2) There shall be ascertained what proportion that part of the severance payment bears to the whole of it (in this paragraph referred to as the “relevant proportion”).

(3) There shall also be ascertained what in accordance with paragraph 1 would have been the amount of the rebate payable in respect of that severance payment if the employer had been liable to pay the whole of it.

(4) Subject to paragraph 3, the amount of the rebate payable shall then be an amount equal to the relevant proportion of the amount referred to in sub-paragraph (3).

3. Where the amount of a severance payment or part of a severance payment is reduced in accordance with regulations made under section 11—

(a) the proportion by which it is so reduced shall be ascertained; and

(b) the amount of any rebate calculated by reference to that payment shall be reduced by that proportion.

4. For the purposes of this Part, the expression—

“complete year of employment” has the meaning assigned to it by paragraph 6 (1) of the First Schedule;

“rebate” has the same meaning as in Part V of this Act; and

“week’s basic pay” has the meaning assigned to it by paragraph 6 (1) of the First Schedule.

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PART II

Rebates in respect of other payments

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

6. For the purposes of this Part, the expression—

"agreement" in relation to the agreed payment, means the agreement referred to in paragraph (b) of subsection (1) of section 29;

"employer's payment" has the same meaning as in Part V of this Act;

"rebate" has the same meaning as in Part V of this Act;

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

(a) the circumstances in which the continuity of an employee's period of employment is to be treated as broken; or

(b) the weeks which are to count in computing a period of employment.

7. In this Part, any reference to the amount of the relevant severance payment, in relation to the agreed payment, shall be construed as a reference to the amount of the severance payment which the employer would have been liable to pay if—

(a) the order referred to in paragraph (b) of section 29 (1) had not been made;

(b) the circumstances in which the agreed payment is payable had been such that the employer was liable to pay a severance payment to the employee in those circumstances;

(c) in relation to that severance payment, the relevant date had been the date on which the termination of the employer's contract of employment is treated for the purposes of the agreement as having taken effect; and

(d) in so far as the relevant provisions of the agreement are inconsistent with the provisions of the Second Schedule as to the matters referred to in paragraph (a) or (b) of the definition of the expression "relevant provision of the agreement" contained in paragraph 6, those provisions of the agreement were substituted for those provisions of the Second Schedule,

and the expression "the assumed conditions" means the conditions specified in sub-paragraphs (a) to (d) of this paragraph.

8. Subject to paragraphs 9 and 10 and sections 29 (6) and 33, the amount of rebate payable in respect of an agreed payment shall be an amount equivalent to such percentage of the amount of that agreed payment as the Minister prescribes.

9. For the purposes of paragraph 8, paragraph 1 of the First Schedule shall be construed as if sub-paragraphs (1) (b) and (2) of that paragraph were omitted.

10. Where the amount of the agreed payment is less than the amount of the relevant severance payment—

- (a) the proportion which it bears to the amount of the relevant severance payment shall be ascertained; and
- (b) the amount of the rebate shall be that proportion of the amount calculated in accordance with paragraph 8.

FOURTH SCHEDULE

s. 31 (2).

Calculation of Payments to Employees out of Severance Fund

1. (1) Where the employer's payment is a severance payment the sum referred to in section 31 (2) is a sum equal to the amount of that payment.

(2) Where, in a case falling within subsection (5) of section 29, the employer's payment is part of a severance payment, the sum referred to in subsection (2) of section 31 is a sum equal to the amount of that part of the payment.

2. (1) This paragraph shall have effect for the purpose of determining the sum referred to in subsection (2) of section 31 in relation to an employer's payment which is not a severance payment or part of a severance payment.

(2) Paragraph 7 of the Third Schedule (except in so far as it defines the expression "rebate") and paragraph 8 of that Schedule shall have effect for the purposes of this paragraph as they have effect for the purposes of Part II of that Schedule; and in the application of those paragraphs in accordance with this sub-paragraph, the employer's payment in relation to which the sum referred to in subsection (2) of section 31 falls to be determined shall be taken to be the agreed payment.

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

- (a) the amount of the employer's payment; or
- (b) the amount of the relevant severance payment, whichever is the less.

3. For the purposes of this Schedule, the expression "employer's payment" has the same meaning as in Part V.

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s. 35.

FIFTH SCHEDULE

Death of Employer or of Employee

PART I

Death of Employer

INTRODUCTORY

1. This Part shall have effect in relation to an employee where his employer (in this Part referred to as "the deceased employer") dies.

2. Section 9 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

3. Where, by virtue of subsection (1) of section 19, the death of the deceased employer is to be treated for the purpose of this Act as a termination by him of the contract of employment, the employee shall nevertheless not be treated for those purposes as having been dismissed by the deceased employer if—

- (a) his contract of employment is renewed by a personal representative of the deceased employer, or he is re-engaged under a new contract of employment by such a personal representative; and
- (b) the renewal or re-engagement takes effect not later than eight weeks after the death of the deceased employer.

4. Where, because of the death of the deceased employer, the employee is treated for the purpose of this Act as having been dismissed by him, he shall not be entitled to a severance payment in respect of that dismissal if a personal representative of the deceased employer has made to him an offer in writing to renew his contract of employment, or to re-engage him under a new contract, so that in accordance with the particulars specified in the offer the renewal or re-engagement would take effect not later than eight weeks after the death of the deceased employer and either—

- (a) the provisions of the contract as renewed, or of the new contract, as the case may be, 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 contract as in force immediately before the death; or
- (b) if, in accordance with the particulars specified in the offer, those provisions would differ (wholly or in part) from the corresponding provisions of the contract as in force immediately before the death, the offer constitutes an offer of suitable employment in relation to the employee,

and (in either case) the employee has unreasonably refused that offer.

5. For the purposes of paragraph 4

- (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 only because 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.

6. Where by virtue of subsection (1) of section 19 the death of the deceased employer is to be treated as a termination by him of the contract of employment, any reference in subsection (2) of that section to subsection (2) of section 16 shall be construed as including a reference to paragraph 3.

LAY-OFF AND SHORT-TIME

7. 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, as mentioned in sub-paragraphs (a) and (b) of paragraph 3; and
- (b) after the renewal or re-engagement, he is laid off or kept on short-time for one or more weeks by the personal representative of the deceased employer,

sections 6 and 7 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, except in subsection (4) of section 6, to 13 weeks or 26 weeks shall be construed accordingly. 1985-23.

8. Paragraph 9 or, as the case may be, 10 shall have effect where the employee has given to the deceased employer notice of intention to claim, and

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

9. Where in the circumstances specified in paragraph 8 the employee's contract of employment is not renewed by a personal representative of the deceased employer before the end of the next 4 weeks after the service of the notice of intention to claim, and he is not re-engaged under a new contract by such a personal representative before the end of those 4 weeks, subsections (1) to (3) of section 6 and (in relation to subsection (1) of that section) subsections (2) and (3) of section 7 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 4 weeks;

but subsections (4) and (5) of section 6 and subsections (1) and (4) of section 7 shall not apply.

10. (1) This paragraph shall have effect where, in the circumstances specified in paragraph 8, the employee's contract of employment is renewed by a personal representative of the deceased employer before the end of the next 4 weeks after the service of the notice of intention to claim, or he is re-engaged under a new contract by such a personal representative before the end of those 4 weeks, and

- (a) he was laid off or kept on short-time by the deceased employer for one or more of those weeks; and
- (b) he is laid off or kept on short-time by the personal representative for the week, or for the next 2 or more weeks, following the renewal or re-engagement.

(2) Where the conditions specified in sub-paragraph (1) are fulfilled, sections 6 and 7 shall apply as if

- (a) all the weeks for which the employee was laid off or kept on short-time as mentioned in sub-paragraph (1) were consecutive weeks during which he was employed (but laid off or kept on short-time) by the same employer; and
- (b) each of the periods specified in paragraphs (a) and (b) of subsection (5) of section 7 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.

11. In paragraphs 7 to 10 the expressions "week" and "notice of intention to claim" have the same meanings as in section 6.

CONTINUITY OF PERIOD OF EMPLOYMENT

12. Where by virtue of paragraph 3 the employee is treated as not having been dismissed by reason of a renewal or re-engagement taking effect after the death of the deceased employer, then

- (a) in determining, for the purposes of subsection (1) of section 3, whether he has been continuously employed for the requisite period, the interval between the death and the date on which the renewal or re-engagement takes effect shall count as a period of employment with the personal representative of the deceased employer, if apart from this paragraph it would not count for that purpose as such a period of employment; and
- (b) in computing the period specified in paragraph 1 of the *First Schedule*, the continuity of the employee's period of employment shall be treated as not being broken by any week which does not count under the *Second Schedule*, if the whole or part of that week falls within that interval.

13. For the purposes of the application, in accordance with section 15, of any provisions of this Act in relation to an employee who was employed as a domestic servant in a private household, any reference to a personal representative in 1972-27.

(a) this Part; or

(b) paragraph 8 of the *Second Schedule*, 1972-27.

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.

SUPPLEMENTARY PROVISIONS

14. Subject to the preceding provisions of this Part, in relation to an employer who has died

- (a) any reference in this Act to the doing of anything by, or in relation to, an 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 employer; and
- (b) any reference in this Act to a thing required or authorised to be done by, or in relation to, an employer shall be construed as including a reference to anything which, in accordance with any provisions of this Act as modified by this Part (including the preceding sub-paragraph), is required or authorised to be done by, or in relation to, any personal representative of his.

15. Where by virtue of any provision of this Act, as modified by this Part, a personal representative of the deceased employer is liable to pay a severance payment, or part of a severance payment, and that liability had not accrued before the death of the deceased employer, it shall be treated for all purposes as if it were a liability of the deceased employer which had accrued immediately before his death.

PART II

Death of Employee

16. 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 II of this Act shall apply as if the contract had been duly terminated by the employer by notice expiring on the date of the employee's death.

17. 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,

subsection (3), or, as the case may be, subsection (4), of section 4 shall apply as if for the words "the employee has unreasonably refused", there were substituted the words "it would have been unreasonable on the part of the employee to refuse".

18. (1) Where, in the circumstances specified in paragraphs (a) and (b) of subsection (1) of section 5, the employee dies before the notice given by him under paragraph (b) of that subsection is due to expire and before the employer has given 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 circumstances specified in paragraphs (a) and (b) of subsection (1) of section 5, the employee dies before his notice given under paragraph (b) of that subsection is due to expire but after the employer has given him notice under subsection (3) of that section, 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.

19. (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 paragraph (a) of subsection (3) of section 6 has expired, the said paragraph (a) shall not apply.

(2) Where an employee, who has given notice of intention to claim, dies within 7 days after the service of that notice, and before the employer has given a counter-notice, sections 6 and 7 shall apply, as if the employer had given a counter-notice within those 7 days.

(3) In this paragraph the expressions "notice of intention to claim" and "counter-notice" have the same meanings as in section 7.

20. 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 6 months beginning with the relevant date, section 37 shall apply with the substitution, for the words "6 months", of the words "one year".

21. Subject to the preceding provisions of this Part, in relation to an employee who has died

- (a) any reference to in this Act to the doing of anything by, or in relation to, an employee 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; and
- (b) any reference in this Act to a thing required or authorised to be done by, or in relation to, an employee shall be construed as including a reference to anything which, in accordance with any provision of this Act as modified by this Part (including the preceding sub-paragraph), is required or authorised to be done by, or in relation to, any personal representative of his.

22. (1) Any right of a personal representative of a deceased employee to a severance payment, where that right had not accrued before the employee's death, shall devolve as if it had accrued before his death.

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

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

any reference in sub-paragraph (1) to a right to a severance payment shall be construed as including a reference to any right to receive the whole or part of a severance payment if the tribunal determines that the employer shall be liable to pay it.

SIXTH SCHEDULE

(Section 38(5))

1. For the purposes of section 38, a tribunal shall consist of a chairman and not less than 2 other members who shall be appointed by the Minister.

2. The Minister shall appoint as chairman of a tribunal a person who has been entitled to practise in Barbados as a barrister or solicitor for not less than 5 years.

3. The other members of a tribunal shall be appointed by the Minister in equal numbers from persons nominated by organisations representing workers and employers in Barbados.

4. Where the chairman or other member of a tribunal dies or resigns from his office or becomes unable to perform the functions thereof, another person qualified to be appointed as chairman or a member of the tribunal shall be appointed by the Minister in his place.

5. The Minister shall assign a public officer to perform the functions of secretary to a tribunal appointed under this Schedule.

6. Where the members of a tribunal are equally divided on any question that arises during the proceedings of the tribunal, the chairman of the tribunal shall have and exercise a casting vote.

7. A tribunal appointed under this Schedule may regulate its own procedure and may make rules for this purpose.

8. (a) The powers, rights and privileges of a tribunal appointed under this Schedule shall be the same as those conferred on a Commission appointed under the *Commission of Enquiry Act*, and that Act shall, *mutatis mutandis*, apply in relation to the proceedings of any such tribunal and to any person summoned to give evidence before the tribunal.

(b) Any power exercisable by the Cabinet under the *Commission of Enquiry Act* shall, in the application of that Act to a tribunal appointed under this Schedule, be exercisable by the Minister.

9. The chairman and other members of a tribunal appointed under this Schedule shall be paid such remuneration as fixed by the Minister.

10. A tribunal appointed under this Schedule shall meet as often as is necessary to enable the tribunal to deal with the matter referred to it under this Act.