

**SECOND SUPPLEMENT TO THE GIBRALTAR  
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LEGAL NOTICE NO. 14 OF 1996

**EMPLOYMENT AND TRAINING ORDINANCE**

**EMPLOYMENT (MATERNITY AND HEALTH AND SAFETY)  
REGULATIONS 1996**

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LEGAL NOTICE NO.14 OF 1996.

**EMPLOYMENT AND TRAINING ORDINANCE**

**EMPLOYMENT (MATERNITY AND HEALTH AND SAFETY)  
REGULATIONS, 1996**

In exercise of the power conferred on him by section 86 of the Employment Ordinance, and of all other enabling powers and for the purpose of transposing into the national law of Gibraltar Council Directives 89/391/EEC and 92/85/EEC, the Governor has made the following regulations —

**PART I**

**GENERAL**

**Title and commencement.**

1. (1) These regulations may be cited as the Employment (Maternity and Health and Safety) Regulations 1996 and, subject to sub-regulations (2) and (3), shall come into effect on the 1st day of January 1996.

(2) Part II of these regulations shall have effect only in relation to women whose expected week of childbirth begins on or after the 5th day of May 1996.

(3) The amendment to section 62 of the Employment and Training Ordinance made in regulation 23 shall apply to any dismissal where the effective date of termination in relation to that dismissal falls on or after the 1st day of February 1996.

**Interpretation and application.**

2. (1) In these regulations —

“the effective date of termination” has the meaning given to that expression in Part V of the Ordinance;

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

“given birth” means delivered of a living child, or after twenty-four weeks of pregnancy, a still born child;

“registered” in relation to a medical practitioner or midwife means registered in accordance with the Medical and Health Ordinance;

“representative”, for the purposes of Part III, in relation to a worker means any person elected, chosen or designated in accordance with any law or practice to represent employees in matters relating to the safety and health protection of such workers at work.

(2) The provisions of this Part and Parts II and III are binding on the Crown.

**PART II**

**MATERNITY RIGHTS**

**General right to maternity leave.**

3. (1) An employee who is absent from work at any time during her maternity leave period shall, subject to regulation 6 and 7, be entitled to the benefit of the terms and conditions of employment which would have been applicable to her if she had not been absent (and had not been pregnant or given birth to a child).

(2) Except as provided in sub-regulation (3), this regulation does not confer any entitlement to remuneration.

(3) During her maternity leave period an employee shall be entitled to remuneration at the weekly rate of injury benefit (excluding dependants allowance) to which she would have been entitled during that period had she been a beneficiary in relation to such benefit.

(4) In this regulation, “beneficiary”, “dependants allowance” and “injury benefit” have the same respective meanings as in the Social Security (Employment Injuries Insurance) Ordinance.

**Commencement of maternity leave period.**

4. (1) Subject to sub-regulation (2), an employee’s maternity leave period commences with —

- (a) the date which, in accordance with regulation 6, she notifies to her employer as the date on which she intends her period of absence from work in exercise of her right to maternity leave to commence; or
- (b) if earlier, the first day on which she is absent from work wholly or partly because of pregnancy or childbirth after the beginning of the sixth week before the expected week of childbirth.

(2) Where childbirth occurs before the day with which the employee’s maternity leave period would otherwise commence, her maternity leave period shall commence with the day on which childbirth occurs.

**Duration of maternity leave.**

5. (1) Subject to sub-regulations (2), (3) and (4), an employee’s maternity leave period shall continue for the period of fourteen weeks from its commencement or until the birth of the child, if later.

(2) Subject to sub-regulation (3), where any requirement imposed by or under this regulation or any law prohibits her working for any period after the end of the period mentioned in sub-regulation (1) by reason of her having recently given birth, her maternity leave period shall continue until the expiry of that later period.

(3) Where an employee is dismissed —

- (a) after the commencement of her maternity leave period but before the time when (apart from this sub-regulation) that period would end; or
- (b) before the period specified in sub-regulation (4) ends,

the period ends at the time of the dismissal.

(4) An employee shall not work, or be permitted by her employer to work at any time during the period of two weeks commencing immediately after the day on which she has given birth.

(5) Where an employee is pregnant, and has notified her employer in writing of that fact, she shall be entitled to have time off, without loss of pay, in order to attend ante-natal examinations, where such examinations have to take place during working hours.

(6) An employer guilty of an offence consisting of a breach of a prohibition imposed on him by sub-regulation (4) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

**Notice of commencement of leave.**

6. (1) An employee shall not have the right conferred by regulation 3 unless —

- (a) she notifies her employer of the date (within the restriction imposed by sub-regulation (2)) (“the notified leave date”) on which she intends her period of absence from work in exercise of her right to maternity leave to commence —
  - (i) not less than twenty-one days before that date; or
  - (ii) if that is not reasonably practicable, as soon as is reasonably practicable;
- (b) where she is first absent from work wholly or partly because of pregnancy or childbirth before the notified leave date, or before she has notified such a date, and after the beginning of

the sixth week before the expected week of childbirth, she notifies her employer as soon as is reasonably practicable that she is absent for that reason; or

- (c) where childbirth occurs before the notified leave date or before she has notified such a date, she notifies her employer that she has given birth as soon as is reasonably practicable after the birth,

and any notice she is required to give under paragraphs (a) to (c) shall, if her employer so requests, be given in writing.

(2) No date may be notified under sub-regulation (1)(a) which occurs before the beginning of the eleventh week before the expected week of childbirth.

(3) Where, in the case of an employee, either paragraph (b) or (c) of sub-regulation (1) has fallen to be satisfied, and has been so satisfied, nothing in paragraph (a) of that sub-regulation shall impose any requirement on the employee.

**Requirement to inform employer of pregnancy etc..**

7.(1) An employee shall not have the right conferred by regulation 3 unless she informs her employer in writing at least twenty-one days before her maternity leave period commences or, if that is not reasonably practicable, as soon as is reasonably practicable —

- (a) that she is pregnant; and
- (b) of the expected week of childbirth or, if the childbirth has occurred, the date on which it occurred.

(2) An employee shall not have the right conferred by regulation 3 or 5(5) unless, if requested to do so by her employer, she produces for his inspection a certificate from a registered medical practitioner or a registered midwife stating the expected week of childbirth.

**Requirement to inform employer of return during maternity leave period.**

8.(1) An employee who intends to return to work earlier than the end of her maternity leave period shall give to her employer not less than seven days notice of the date on which she intends to return.

(2) If an employee returns to work as mentioned in sub-regulation (1) without notifying her employer of her intention to do so or without giving him the notice required by that sub-regulation her employer shall be entitled to postpone her return to a date such as will secure, subject to sub-regulation (3), that he has seven days notice of her return.

(3) An employer is not entitled under sub-regulation (2) to postpone an employee's return to work to a date after the end of her maternity leave period.

(4) If an employee who has been notified under sub-regulation (2) that she is not to return to work before the date specified by her employer does return to work before that date, the employer shall be under no contractual obligation to pay her remuneration until the date specified by him as the date on which she may return.

**Special provision where redundancy during maternity leave period.**

9. (1) Where during an employee's maternity leave period it is not practicable by reason of redundancy for the employer to continue to employ her under her existing contract of employment, she shall be entitled, where there is a suitable available vacancy, to be offered (before the ending of her employment under that contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with sub-regulation (2) (and takes effect immediately on the ending of her employment under the previous contract).

(2) The new contract of employment must be such that —

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

**Contractual right to maternity leave.**

10. (1) An employee who has the right to maternity leave under regulation 3 and a right to maternity leave under a contract of employment or otherwise may not exercise the two rights separately but may, in taking maternity leave, take advantage of whichever right is, in any particular respect, the more favourable.

(2) The provisions of regulations 4 to 9 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in sub-regulation (1) as they apply to the exercise of the right under regulation 3.

**Right to return to work.**

11. (1) An employee who —

- (a) has the right conferred by regulation 3; and
- (b) has, at the beginning of the eleventh week before the expected week of childbirth, been continuously employed for a period of not less than one year,

shall also have the right to return to work at any time during the period beginning at the end of her maternity leave period and ending twenty-nine weeks after the beginning of the week in which childbirth occurs.

(2) An employee's right to return to work under this regulation is the right to return to work with the person who was her employer before the end of her maternity leave period, or (where appropriate) his successor, in the job in which she was then employed —

- (a) on terms and conditions as to remuneration not less favourable than those which would have been applicable to her had she not been absent from work at any time since the commencement of her maternity leave period;
- (b) with her seniority, pension rights and similar rights as they would have been if the period or periods of her employment prior to the end of her maternity leave period were continuous with her employment following her return to work;

- (c) otherwise on terms and conditions no less favourable than those which would have been applicable to her had she not been absent from work after the end of her maternity leave period.

**Requirement to give notice of return to employer.**

12(1) An employee shall not have the right to return to work under regulation 11 unless she includes with the information required by regulation 7(1) the information that she intends to exercise the right.

(2) Where, not earlier than twenty-one days before the end of her maternity leave period, an employee is requested in accordance with sub-regulation (3) by her employer, or a successor of his, to give him written confirmation that she intends to exercise the right to return to work under regulation 11, the employee shall not be entitled to that right unless she gives the requested confirmation within fourteen days of receiving the request or, if that is not reasonably practicable, as soon as is reasonably practicable.

(3) A request under sub-regulation (2) shall be —

- (a) made in writing; and
- (b) accompanied by a written statement of the effect of that sub-regulation.

**Special provision where redundancies occur before return to work.**

13. (1) Where an employee has the right to return to work under regulation 11, but it is not practicable by reason of redundancy for the employer to permit her to return in accordance with that right, she shall be entitled, where there is a suitable available vacancy, to be offered alternative employment with her employer (or his successor), or an associated employer, under a new contract of employment complying with sub-regulation (2).

(2) The new contract of employment must be such that —

- (a) the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and

- (b) the provisions of the new contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work pursuant to her right to return.

**Exercise of right to return to work.**

14(1) An employee shall exercise the right to return to work under regulation 11 by giving written notice to the employer (who may be her employer before the end of her maternity leave period or a successor of his) at least twenty-one days before the day on which she proposes to return of her proposal to return on that day (the “notified day of return”).

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

(3) Subject to sub-regulation (4), an employee may —

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

if, before the notified day of return (or the end of the period of twenty-nine weeks), she gives the employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she will be incapable of work on the notified day of return (or the end of that period).

(4) Where an employee has once exercised a right of postponement or extension under sub-regulation (3)(a) or (b), she shall not again be entitled to

exercise a right of postponement or extension under that sub-regulation in connection with the same return to work.

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

(6) If —

- (a) no day of return has been notified;
- (b) there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work before the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred, or which appears likely to have that effect; and
- (c) in consequence, the employee does not notify a day of return,

the employee may exercise her right to return in accordance with sub-regulation (1) so that she returns to work at any time before the end of the period of twenty-eight days from the end of the interruption notwithstanding that she returns to work outside the period of twenty-nine weeks.

(7) Where the employee has either —

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

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

**Contractual rights.**

15. An employee who has the right to return to work under regulation 11 and a right to return to work after absence because of pregnancy or childbirth under a contract of employment or otherwise may not exercise the two rights separately but may, in returning to work, take advantage of whichever right is, in any particular respect, the more favourable.

**Suspension from work on maternity grounds.**

16. (1) For the purposes of regulations 17 and 18 an employee is suspended on maternity grounds where, in consequence of any requirement imposed by or under any relevant statutory provision she is suspended from work by her employer on the ground that she is pregnant, has recently given birth or is breastfeeding a child.

(2) For the purposes of this regulation, and regulations 17 and 18, an employee shall be regarded as suspended from work only if, and so long as, she continues to be employed by her employer, but is not provided with work or (disregarding alternative work for the purposes of regulation 17) does not perform the work she normally performed before the suspension.

(3) For the purposes of sub-regulation (1), “relevant statutory provision” has the meaning given to that expression in section 6 of the Factories Ordinance.

**Right to offer of alternative work.**

17 (1) Where an employer has available suitable alternative work for an employee the employee has a right to be offered to be provided with it before being suspended on maternity grounds.

(2) For alternative work to be suitable for an employee for the purposes of this regulation —

- (a) the work must be of a kind which is both suitable in relation to her and appropriate for her to do in the circumstances; and
- (b) the terms and conditions applicable to her for performing the work, if they differ from the corresponding terms and conditions applicable to her for performing the work she normally performs under her contract of employment, must not be substantially less favourable to her than those corresponding terms and conditions.

(3) An employee may present a complaint to the Industrial Tribunal that her employer has failed to offer to provide her with work in contravention of sub-regulation (1).

(4) The Industrial Tribunal shall not entertain a complaint under sub-regulation (3) unless it is presented to the Tribunal before the end of the period of three months beginning with the first day of the suspension, or within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.

(5) Where the Industrial Tribunal finds the complaint well-founded it may make an award of compensation to be paid by the employer to the employee.

(6) The amount of the compensation shall be such as the Industrial Tribunal considers just and equitable in all the circumstances having regard to the infringement of the complainant's right under sub-regulation (1) by the employer's failure complained of and to any loss sustained by the complainant which is attributable to that failure.

**Right to remuneration on suspension.**

18. (1) An employee who is suspended on maternity grounds shall be entitled to be paid remuneration by her employer while she is so suspended.

(2) An employee shall not be entitled to remuneration under this regulation in respect of any period during which her employer has offered to provide her with work which is suitable alternative work for the purposes of regulation 17 and the employee has unreasonably refused to perform that work.

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

(4) Subject to sub-regulation (5), a right to remuneration under this regulation shall not affect any right of an employee in relation to remuneration under her contract of employment (in sub-regulation (5) referred to as "contractual remuneration").

(5) Any contractual remuneration paid by an employer to an employee in respect of any period shall go towards discharging the employer's liability under this regulation in respect of that period and, conversely, any payment of remuneration in discharge of an employer's liability under this regulation in respect of any period shall go towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.

(6) An employee may present a complaint to the Industrial Tribunal that her employer has failed to pay the whole or any part of remuneration to which she is entitled under this regulation.

(7) The Industrial Tribunal shall not entertain a complaint relating to remuneration under this regulation in respect of any day unless the complaint is presented to the Tribunal before the end of the period of three months beginning with that day, or within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.

(8) Where the Industrial Tribunal finds a complaint under sub-regulation (6) well-founded, the Tribunal shall order the employer to pay the complainant the amount of remuneration which it finds is due to her.

### **PART III**

#### **HEALTH AND SAFETY**

##### **Right not to suffer detriment in health and safety cases.**

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

- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, he carried out, or proposed to carry out, any such activities;

(b) being a representative of workers on matters of health and safety at work —

(i) in accordance with arrangements established under or by virtue of any law; or

(ii) by reason of being acknowledged as such by the employer,

he performed, or proposed to perform, any functions as such a representative;

(c) being an employee at a place where —

(i) there was no such representative; or

(ii) there was such a representative but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety;

(d) in circumstances of danger which he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left, or proposed to leave, or (while the danger persisted) refused to return to, his place of work or any dangerous part of his place of work; or

(e) in circumstances of danger which he reasonably believed to be serious and imminent, he took, or proposed to take, appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of sub-regulation (1)(e) whether steps which an employee took, or proposed to take, were appropriate shall be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) An employee shall not be regarded as having been subjected to any detriment on the ground specified in sub-regulation (1)(e) if the employer shows that it was, or would have been, so negligent for the employee to take the steps which he took, or proposed to take, that a reasonable employer might have treated him as the employer did.

(4) This regulation shall not apply where the detriment in question amounts to dismissal.

**Complaint of detriment.**

20. (1) An employee may present a complaint to the Industrial Tribunal on the ground that he has been subjected to a detriment in contravention of regulation 19.

(2) On such a complaint it shall be for the employer to show the ground on which any act, or deliberate failure to act, was done.

(3) The Industrial Tribunal shall not consider a complaint under this regulation unless it is presented —

- (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them; or
- (b) where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.

(4) For the purposes of sub-regulation (3) —

- (a) where an act extends over a period, the “date of the act” means the last day of that period; and
- (b) a deliberate failure to act shall be treated as done when it was decided on,

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the

period expires within which he might reasonably have been expected to do the failed act if it was to be done.

**Compensation in the event of detriment.**

21. (1) Where the Industrial Tribunal finds that a complaint under regulation 20 is well-founded, it shall make a declaration to that effect and may make an award of compensation to be paid to the complainant in respect of the act or failure to act complained of.

(2) The amount of the compensation awarded shall be such as the Tribunal considers just and equitable in all the circumstances having regard to the infringement complained of and to any loss which is attributable to the act or failure which infringed his right.

(3) The loss shall be taken to include —

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

(4) In ascertaining the loss, the Tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law.

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

**PART IV**

**AMENDMENT TO THE EMPLOYMENT AND TRAINING  
ORDINANCE**

**Amendment to section 60.**

22. Section 60 of the Employment and Training Ordinance is amended —

(a) in sub-section (1) by omitting the expression “sub-section (2)” and substituting therefor the expression “sub-sections (2) to (4)”;

(b) by inserting after sub-section (2) the following sub-sections —

“(3) Sub-section (1) shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal, or in a redundancy case, for selecting the employee for dismissal, was one of those specified in section 65A(1)(a) to (e), 65B(1)(a) to (e) or 65C(1).

(4) Sub-section (1) shall not apply to a case falling within section 65A(f).”.

**Amendment to section 62.**

23. Section 62 of the Employment and Training Ordinance is amended in sub-section (1) by omitting paragraph (a) and substituting therefor the following paragraph —

“(a) had made a claim against the employer under section 52A to 52D or under the Employment (Maternity and Health and Safety) Regulations 1995 whether such claim had been referred to the Industrial Tribunal or not;”.

**New sections 65A, 65B and 65C.**

24. The Employment and Training Ordinance is amended by inserting after section 65 the following new sections —

**“Dismissal in maternity cases.**

65A. (1) For the purposes of sections 59 and 70 the dismissal of an employee by an employer shall be regarded as having been unfair if —

(a) the reason (or, if there is more than one, the principal reason) for her dismissal is that she is pregnant or any other reason connected with her pregnancy;

- (b) her maternity leave period is ended by the dismissal and the reason (or, if there is more than one, the principal reason) for her dismissal is that she has given birth to a child or any other reason connected with her having given birth to a child;
- (c) the reason (or, if there is more than one, the principal reason) for her dismissal, where her contract of employment was terminated after the end of her maternity leave period, is that she took, or availed herself of the benefits or, maternity leave;
- (d) the reason (or, if there is more than one, the principal reason) for her dismissal, where —
  - (i) before the end of her maternity leave period, she gave to her employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she would be incapable of work after the end of that period; and
  - (ii) her contract of employment was terminated within the four week period following the end of her maternity leave period in circumstances where she continued to be incapable to work and the certificate relating to her incapacity remained current,is that she has given birth to a child or any other reason connected with her having given birth to a child;
- (e) the reason (or, if there is more than one, the principal reason) for her dismissal is a requirement under any relevant statutory provision (as defined in section 6 of the Factories Ordinance) having the consequence of requiring that the employee be suspended from work;
- (f) her maternity leave period is ended by the dismissal, and the reason (or, if there is more than one, the principal reason) for her dismissal is that she is redundant and regulation 9 of the Employment (Maternity and Health and Safety) Regulations 1995 has not been complied with.

(2) For the purposes of sub-section(1)(c) a woman “takes maternity leave” if she is absent from work during her maternity leave period and a woman “avails herself of the benefits of maternity leave” if, during her maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by regulation 3 of the Employment (Maternity and Health and Safety) Regulations 1996 during that period.

(3) Where an employee is dismissed during the period beginning with the date on which she notifies her employer that she is pregnant until the end of her maternity leave period, her employer shall cite duly substantiated grounds for her dismissal in writing.

(4) In this section, the expression “given birth” means delivered of a living child, or, after twenty-four weeks of pregnancy, a still born child

**Dismissal in health and safety cases.**

65B. (1) The dismissal of an employee by an employer shall be regarded for the purposes of sections 59 and 70 as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee —

- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, carried out, or proposed to carry out, any such activities;
- (b) being a representative of workers on matters of health and safety at work —
  - (i) in accordance with arrangements established under or by virtue of any law; or
  - (ii) by reason of being acknowledged as such by the employer, performed, or proposed to perform, any functions as such a representative;
- (c) being employee at a place where —
  - (i) there was no such representative; or

- (ii) there was such a representative but it was not reasonably practicable for the employee to raise the matter by those means,

brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety;

- (d) in circumstances of danger which he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, left, or proposed to leave, or (while the danger persisted) refused to return to, his place of work or any dangerous part of his place of work; or
- (e) in circumstances of danger which he reasonably believed to be serious and imminent, took, or proposed to take, appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of sub-section (1)(e) whether steps which an employee took, or proposed to take, were appropriate shall be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee was that specified in sub-section (1)(e), the dismissal shall not be regarded as having been unfair if the employer shows that it was, or would have been, so negligent for the employee to take the steps which he took, or proposed to take, that a reasonable employer might have dismissed him for taking, or proposing to take, them.

(4) In this section "representative" in relation to a worker means any person elected, chosen or designated in accordance with any law or practice to represent employees in matters relating to be safety and health protection of such workers at work.

**Dismissal in relevant statutory right cases.**

65C. (1) For the purposes of sections 59 and 70 the dismissal of an employee by an employer shall be regarded as having been unfair if the reason for it (or if more than one, the principal reason) was that the employee —

- (a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right; or
- (b) alleged that the employer had infringed a right of his which is a relevant statutory right.

(2) It is immaterial for the purposes of sub-section (1) whether the employee has the right or not and whether it has been infringed or not, but, for that sub-section to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It shall be sufficient for sub-section (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

(4) For the purposes of this section any right conferred upon an employee by sections 65A and 65B and the Employment (Maternity and Health and Safety) Regulations 1995 is a relevant statutory right.”.

Dated this 25th day of January ,1996.

By Command,  
M. J. ROBINSON,  
Deputy Governor.