



Redundancy Pay

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The right of an employee to receive a one-off payment from their employer on being made redundant is common and well established, appearing in many individual contracts of employment. The *Redundancy Payments Act 1965* introduced a universal minimum provision which in its current form is contained in the *Employment Rights Act 1996*. This entitles employees to a redundancy payment after they have been employed continuously with the same employer for two years. This is calculated with reference to how long the employment has lasted; the relevant age bracket into which the employee falls; and their weekly pay. The legislation places a 'cap' or upper limit on the amount of a week's pay to be used in the calculation. In 1965 this was set at £40 and is currently £350 as of 1 February 2009. This cap has been reviewed annually and if necessary updated. The *Employment Relations Act 1999* introduced a mechanism to link annual updating to the retail prices index.

Trade unions have campaigned for a one-off increase in the cap to address the historic decline in its real value. At the 2004 Labour National Policy Forum in Warwick the Government agreed to this, incorporating a commitment in the 2005 Labour Party manifesto, and accordingly took a power in the *Work and Families Act 2006* to make a one-off increase. This power is being used to provide for an increase from £350 to £380 to take effect in October 2009. The Government has indicated that there will subsequently be no updating exercise in February 2010.

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1 Minimum redundancy pay entitlement

For many employees redundancy pay is set out in their employment contract. However, all employees who qualify are entitled to statutory minimum payments calculated in accordance with Part XI of the *Employment Rights Act 1996* (ERA). Under the Act (and its subsequent amendments), employers must pay redundant employees a minimum redundancy payment made up as follows:

- (i) for each year's service aged 41+.....1.5 weeks' pay
- (ii) for each year's service aged 22 - 40 (inclusive).....1 week's pay
- (iii) for each year's service aged below 22.....0.5 weeks' pay

However, there is a maximum of 20 years' service which counts and a limit on the amount of a week's pay which counts. This is currently set at £350 for redundancies up and including 31 September 2009. Thus the maximum statutory redundancy payment is currently £10,500.¹ Generally, pay is the level of pay the employee was entitled to at the time notice of redundancy was given. The Business Link website has an online tool for calculating the number of weeks' pay due.²

The 2009 Budget includes a one-off increase in the maximum amount of weekly SRP to £380. It was subsequently confirmed that this will take effect from 1 October 2009. In addition, the annual uprating due to take place in February 2010 will be suspended. The final impact assessment estimates average annual costs of £115.6 – 144.9 million.³ This change is subject to an affirmative order being approved by Parliament. The draft [Work and Families \(Increase of Maximum Amount\) Order 2009](#) was considered by the Second Delegated

¹ £350 x 1.5 x 20 = £10,500

² Business Link, [Calculate the statutory redundancy pay due to your employee](#)

³ BERR, [The Work and Families \(Increase of Maximum Amount\) Order 2009, Final Impact Assessment](#), June 2009

Legislation Committee on Tuesday 16 June at 4.30 pm.⁴ The Budget document also states that the Government will consider introducing a minimum level of redundancy pay:

The Government is also considering whether to introduce a new 'floor' which would set a minimum level for statutory redundancy payment rates, and would legislate on this in the next Parliament.⁵

To qualify for any redundancy payment, one must have been continuously employed by the same employer for at least two years.⁶ All employees, regardless of hours worked, qualify for payments after two years.

2 Uprating redundancy pay

2.1 Employment Relations Act 1999

The limit on a week's pay is increased every year in line with inflation, under provisions contained in section 34 of the *Employment Relations Act 1999*. Subsections (2) and (3) read as follows:

(2) If the retail prices index for September of a year is higher or lower than the index for the previous September, the Secretary of State shall as soon as practicable make an order in relation to each sum mentioned in subsection (1)—

- (a) increasing each sum, if the new index is higher, or
- (b) decreasing each sum, if the new index is lower,

by the same percentage as the amount of the increase or decrease of the index.

(3) In making the calculation required by subsection (2) the Secretary of State shall—

- (a) in the case of the sum mentioned in subsection (1)(a), round the result up to the nearest 10 pence,
- (b) in the case of the sums mentioned in subsection (1)(b), (c), [(ea),] (f) and (g), round the result up to the nearest £100, and
- (c) in the case of the sums mentioned in subsection (1)(d) and (e), round the result up to the nearest £10.

Before these provisions came into force, there was no obligation to increase the limit annually, merely an obligation to review it.⁷

2.2 Warwick Agreement

The Labour Party National Policy Forum (NFP) met at Warwick University in July 2004.⁸ The National Policy Forum is the Labour party's year round policy-making body that feeds into the party's annual conference.⁹ A number of "concessions to unions" were reported as having

⁴ [House of Commons Order of Business for Friday 12 June 2009](#)

⁵ HM Treasury, [Budget 2009](#), 22 April 2009, p96

⁶ Until the House of Lords judgment on 3 March 1994 in the case of *Regina v Secretary of State for Employment ex parte Equal Opportunities Commission and Another*, people who worked between 8 and 16 hours a week had to have worked for the same employer for 5 years to qualify, and those who worked less than 8 hours a week never qualified.

⁷ Section 208 of the *Employment Rights Act 1996* required the Secretary of State, in each calendar year, to undertake a review of various limits and to decide whether limits should be varied.

⁸ Labour Party, *Britain is Working*, September 2004

⁹ Unite the Union, [A Guide to Partnership in Power](#), undated

been made at the Warwick meeting in 2004.¹⁰ An increase in redundancy pay was one of these commitments.

The “Warwick Agreement” as it has come to be known has been widely heralded in the press and by the unions themselves as representing significant changes in government policy. An article from the Guardian states that “it made peace between discontented elements in the unions and the government. It thereby averted the threat of mass disaffiliation from the party by the unions and helped to secure union support for Labour in the 2005 election.”¹¹ Party officials are also reported to have been “happy” with the outcome: “no government red lines were crossed and that many of the reforms were already on the way, independent of union pressure.”¹²

There is no official Warwick agreement text as such. The Labour Party and the Unions have each produced documents setting out their view of the agreement. The official policy document from the Labour Party is: *Britain is Working*, September 2004.¹³ The summary of the specific commitments by the Unison is entitled *Full employment and working in modern Britain – TULO Guide to Commitments, National Policy Forum 25 July 2004*.¹⁴

Some unions are concerned that not enough progress has been made by the Labour government to implement the agreement more fully. The union Unite has undergone a review of progress made under the agreement and has developed a “traffic light” system to show:

Green: Pledges implemented or current progress to completion satisfactory to government and the affiliated trade unions.

Yellow: Areas of substantial concern amongst affiliated regarding the implementation or delivery of that pledge.

Red: Those policies and priorities where there is a disagreement between affiliates and the government over interpretation or delivery.

Of the 108 policy and priority pledges agreed at Warwick; 70 (65%) have been classified as “Green”, 25 (23%) “Yellow” and 13 (12%) “Red”.¹⁵

2.3 Work and Families Act 2006

As a result of the Warwick Agreement a power has been provided for under section 14 of the *Work and Families Act 2006* which would allow ministers to make a one-off change to the statutory cap on the level of a week’s pay used for calculating various statutory entitlements such as redundancy pay. This power is being used for an uprating to take effect from October 2009 (see above).

2.4 TUC campaign

The TUC has been calling for an increase the weekly limit on statutory redundancy pay toward restoring the equivalent value of the limit when it was first introduced in 1965:

¹⁰ Guardian.co.uk website, [Q&A: The 'Warwick agreement'](#), 13 September 2005

¹¹ Guardian.co.uk website, [Q&A: The 'Warwick agreement'](#), 13 September 2005

¹² Guardian.co.uk website, [Q&A: The 'Warwick agreement'](#), 13 September 2005

¹³ Labour Party, [Britain is Working](#), September 2004

¹⁴ Unison, [Full employment and working in modern Britain – TULO Guide to Commitments, National Policy Forum 25 July 2004](#)

¹⁵ Unite the Union website, [Warwick Agreement Report to Unite Executive Committee - July 2008](#); Full details about which areas fall into each category is available on the [union website](#)

When redundancy pay was introduced for the first time in 1965 the limit was set at £40, more than twice the average wage (£19.60). If the limit had been uprated in line with prices it would now be a little over £500, and if increased in line with earnings it would now be in excess of £1,000.

TUC General Secretary Brendan Barber said: 'Now is the right time to start to restore the value of redundancy pay. When it was introduced the big majority of the workforce had all their wages counted when working out their redundancy pay, but now more than half the workforce would lose out.

'The Government pledged in its manifesto for the last election to boost redundancy and that pledge should be implemented. A one off rise to £500 and a link to earnings rather than prices in future is the minimum we need to see to start to restore some fairness.'¹⁶

2.5 Statutory Redundancy Pay (Amendment) Bill

This is a Private Members Bill sponsored by Lindsay Hoyle MP who came third in the ballot. It was debated at Second Reading on 13 March 2009. The Bill provides for the annual uprating of statutory redundancy entitlements taking into account average weekly earnings. At present these entitlements are uprated in line with the retail prices index.¹⁷

3 Tax on redundancy pay

There are two types of redundancy pay - statutory and non-statutory. Statutory redundancy pay is the legal minimum which an employer is obliged to pay an employee.¹⁸ This type of payment is distinct from ex-gratia or non-statutory redundancy payments; that is, those which an employer chooses to make, which are not made under a contractual obligation. Statutory redundancy pay is exempt from income tax,¹⁹ whereas ex-gratia payments are not.²⁰ However, individuals are eligible to receive the first £30,000 of their **total** redundancy pay tax-free.²¹ Although statutory redundancy pay is not assessable for income tax purposes, when applying the £30,000 threshold it is included in the calculation of someone's total redundancy pay.²² Ex-gratia payments in excess of the £30,000 limit are treated as taxable income. Only the excess over £30,000 is taxed.

HM Revenue & Customs publish a factsheet setting out the tax rules for redundancy payments, which is available from their site.²³ Detailed guidance on the tax treatment of all types of termination payments and benefits is provided in the department's online *Employment Income Manual*.²⁴

¹⁶ TUC, [Time to restore redundancy pay value](#), 28 February 2008

¹⁷ [Statutory Redundancy Pay \(Amendment\) Bill 2008-09](#); See Library research paper [RP 09/21](#), 11 March 2009

¹⁸ Guidance on the law is given in, Department for Trade and Industry, *Redundancy entitlement: statutory rights: a guide for employees* - URN No: 08/640, 2008. This is available at:

<http://www.berr.gov.uk/whatwedo/employment/employment-legislation/employment-guidance/page15686.html>

¹⁹ Under section 309 of the *Income Tax (Earnings and Pensions) Act (ITEPA) 2003*

²⁰ Under ss 401-416 of *ITEPA 2003*

²¹ Under section 403 of *ITEPA 2003*.

²² It is worth noting that under current rules the maximum amount of statutory redundancy pay someone can receive is far lower than £30,000.

²³ Inland Revenue, [Redundancy factsheet](#), March 2005

²⁴ paragraphs EIM12800-13995. The Manual is available [online](#). The issue is also discussed in, "Terminate, terminate...", *Taxation*, 4 September 2008

The £30,000 was last increased by £5,000 to £35,000 in the 1988 Budget, with effect from 6 April 1988.²⁵ Although there have been calls for this limit to be increased in recent years,²⁶ the Government has not given any indication that it has plans to do so.²⁷

4 Insolvent employers

4.1 Debts owed to employees

Under the *Employment Rights Act 1996* (ERA) the Redundancy Payments Office (RPO) operated by the Insolvency Service must pay certain debts owed by an insolvent employer to his employees.²⁸ The debts covered are:²⁹

1. Arrears of pay up to £350 a week for a maximum of eight weeks. This payment includes: commission, overtime and guarantee payments.
2. Statutory payments for time off work; or suspension on medical or maternity grounds.
3. Any 'protective award' made by an employment tribunal if an employer has failed to inform or consult worker's representative about a collective redundancy.
4. Holiday pay, for unused holidays and for holidays actually taken but not paid, up to a weekly limit of £350 for a maximum of six weeks. Holiday pay may include holiday carried over from the previous year if the contract of employment allows this.
5. A compensatory payment for failure to give proper statutory notice, up to a weekly limit of £350.
6. An unpaid basic award made by an employment tribunal of compensation for unfair dismissal (unfair dismissal awards are usually made up of two components: a basic award calculated according to age, length of service and pay, and a compensatory award determined by the tribunal to take account of the actual loss sustained. These provisions cover only the basic award.)
7. Reasonable reimbursement of apprentices' or articled clerks' fees or premiums. Unlike holiday pay and compensation, the full amounts can be recovered.³⁰
8. Statutory redundancy payments. The amount of a statutory redundancy payment is the employee's weekly pay (up to a limit currently set at £350 a week) multiplied by a number of 'qualifying weeks' depending on how long the employee has been in the job.³¹

²⁵ Inland Revenue press release, *Tax relief for redundancy etc payments*, 15 March 1988. This change was made under section 74 of the *Finance Act 1988*.

²⁶ In May 2002 Helen Jones put down an EDM supporting an increase in the threshold which attracted 54 signatures (EDM 1313 of 2001-02, *Tax threshold for redundancy pay*, 15 May 2002).

²⁷ The issue has come up in a number of PQs; for example, HC Deb 17 July 2003 c 462W; HC Deb 10 March 2004 c 1550W; HC Deb 16 March 2005 c 295W.

²⁸ BERR, [Redundancy Payments Offices](#)

²⁹ Sections 166 and 184 of the *Employment Rights Act 1996*

³⁰ An "articled clerk" was someone in work-based training in a firm of solicitors or accountants. For solicitors these professional arrangements have changed and are now referred to as "training contracts" and such individuals are now called "trainee solicitors". The Act does not define this term.

³¹ BERR, [Redundancy entitlement - statutory rights. A guide for employees](#). URN No: 07/613

4.2 Payments by the state

The scheme for redundancy is covered under section 166 ERA:

Payments by Secretary of State

166 Applications for payments

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

(a) that the employee has taken all reasonable steps, other than legal proceedings, to recover the payment from the employer and 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 the whole or part of the payment remains unpaid,

the employee may apply to the Secretary of State for a payment under this section.

(2) In this Part "employer's payment", in relation to an employee, means—

(a) a redundancy payment which his employer is liable to pay to him under this Part, . . .

[(aa) a payment which his employer is liable to make to him under an agreement to refrain from instituting or continuing proceedings for a contravention or alleged contravention of section 135 which has effect by virtue of section 203(2)(e) or (f), or]

(b) a payment which his employer is, under an agreement in respect of which an order is in force under section 157, liable to make to him on the termination of his contract of employment.

(3) In relation to any case where (in accordance with any provision of this Part) an [employment tribunal] determines that an employer is liable to pay part (but not the whole) of a redundancy payment the reference in subsection (2)(a) to a redundancy payment is to the part of the redundancy payment.

(4) In subsection (1)(a) "legal proceedings"—

(a) does not include any proceedings before an [employment tribunal], but

(b) includes any proceedings to enforce a decision or award of an [employment tribunal].

4.3 Definition of insolvency

The remaining sub-sections cover the definition of insolvency:

(5) An employer is insolvent for the purposes of subsection (1)(b)—

(a) where the employer is an individual, if (but only if) subsection (6) is satisfied, . . .

(b) where the employer is a company, if (but only if) subsection (7) is satisfied[, and

(c) where the employer is a limited liability partnership, if (but only if) subsection (8) is satisfied].

(6) This subsection is satisfied in the case of an employer who is an individual—

(a) in England and Wales if—

(i) he has been adjudged bankrupt or has made a composition or arrangement with his creditors, or

- (ii) he has died and his estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986, and
- (b) in Scotland if—
 - (i) sequestration of his estate has been awarded or he has executed a trust deed for his creditors or has entered into a composition contract, or
 - (ii) he has died and a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889 is required by that section to divide his insolvent estate among his creditors.

(7) This subsection is satisfied in the case of an employer which is a company—

- (a) if a winding up order . . . has been made, or a resolution for voluntary winding up has been passed, with respect to the company, [(aa) if the company is in administration for the purposes of the Insolvency Act 1986,]
- (b) if a receiver or (in England and Wales only) a manager of the company's undertaking has been duly appointed, or (in England and Wales only) possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge, or
- (c) if a voluntary arrangement proposed in the case of the company for the purposes of Part I of the Insolvency Act 1986 has been approved under that Part of that Act.

[(8) This subsection is satisfied in the case of an employer which is a limited liability partnership—

- (a) if a winding-up order, an administration order or a determination for a voluntary winding-up has been made with respect to the limited liability partnership,
- (b) if a receiver or (in England and Wales only) a manager of the undertaking of the limited liability partnership has been duly appointed, or (in England and Wales only) possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the limited liability partnership comprised in or subject to the charge, or
- (c) if a voluntary arrangement proposed in the case of the limited liability partnership for the purpose of Part I of the Insolvency Act 1986 has been approved under that Part of that Act.]

4.4 Claims

Complaints about the Department's failure to make such payments are dealt with by employment tribunals.³² In the case of redundancy payments, (but not arrears of wages etc) the RPO may also assume responsibility where the

employee has taken all reasonable steps (other than legal proceedings) to recover the payment from the employer and ... the employer has refused or failed to pay it.³³

Ex-employees wishing to make a claim under these provisions should apply to their employer's representative (for example, the receiver, liquidator or trustee) for an application form (RP1). The completed form should be sent to the RPO. Form RP1 together with full details of how to apply are also contained in a leaflet, available on the BERR website.³⁴

³² Section 188 of the *Employment Rights Act 1996*

³³ Section 166(1)(a) of the *Employment Rights Act 1996*

³⁴ The Insolvency Service, [Redundancy and Insolvency - A Guide for Insolvency Practitioners to employees' rights on the insolvency of their employer](#), URN 08/550

Employees who have outstanding claims which are not covered by this scheme must submit a claim to the employer's representative who will consider it separately as part of the insolvency proceedings.

5 Age Discrimination

5.1 Employment Equality (Age) Regulations 2006

The *Employment Equality (Age) Regulations 2006 SI No.1031* were made on the 3 April 2006 and came into force on 1 October 2006.³⁵ They arise out of the need to implement the *EC Directive establishing a general framework for equal treatment in employment and occupation (2000/78/EC)* adopted on 27 November 2000. The purpose of this directive, commonly called the "Employment Directive" or "Framework Employment Directive", is to prohibit discrimination in employment on the grounds of religion or belief, disability, age or sexual orientation. Provisions covering religion or belief and sexual orientation came into force in December 2003.³⁶ The provisions on disability were implemented from 1 October 2004.³⁷

5.2 Consultation

The Government, through the DTI, published a consultation document in July 2003: *Equality and Diversity: Age Matters*.³⁸ One of its summarised proposals related to redundancy:

Redundancy: we propose removing some age-related aspects of the statutory redundancy payments scheme. Age will cease to be a factor when calculating the payment due: the calculation will be on the basis of one week's pay per year of service, subject to the current maximum of 20 years, regardless of age; and service below the age of 18, which is currently ignored, will be taken into account.

The upper age limit for entitlement to a statutory redundancy payment will depend on the decision we make about retirement ages.

Entitlement would either:

- a. end at the employer's normal retirement age for the job, which would have to be justified if under the default retirement age, if we decided to have one; or
- b. end at the default age if one was set out in legislation and if the employer had no normal retirement age for the job; or
- c. continue for as long as the person remained in employment – if the employer had no normal retirement age for the job and if we decided not to set out a default age in legislation.

It is important to note that the "retirement age" and the "pension age" are not synonymous. The retirement age is the age at which one can be required to leave work. The pension age is that age at which one can start to draw an unreduced pension. A Ministerial Statement on 14 December 2004 by Patricia Hewitt confirmed the Government's final decision in favour of a national default retirement age of 65 together with a right for employees to request working beyond the set retirement age. The decision to have a national default retirement age will be reviewed after five years. Mandatory retirement will be outlawed below 65 unless the employer can objectively justify their action.³⁹

³⁵ [Employment Equality \(Age\) Regulations 2006](#) SI No.1031 [on 1 April 2008]

³⁶ [The Employment Equality \(Religion or Belief\) Regulations 2003](#) SI No.1660 and the [Employment Equality \(Sexual Orientation\) Regulations 2003](#) SI No.1661

³⁷ By the [Disability Discrimination Act 1995 \(Amendment\) Regulations 2003](#) SI No.1673

³⁸ HM Government, [Equality and Diversity: Age Matters](#), July 2003 DTI

³⁹ HC Deb 14 December 2004 cc127 - 130WS

A consultation on the *draft Employment Equality (Age) Regulations 2006* was published in July 2005: *Equality and Diversity: Coming of Age*.⁴⁰ This confirmed the proposed abolition of the upper and lower age limits on claiming for unfair dismissal and entitlement to minimum redundancy pay.

5.3 Age related aspects

For many employees redundancy pay is set out in their employment contract and is thus not directly affected by the proposed changes. The effect of the above proposals would have been to alter the amount of minimum statutory redundancy money paid to workers laid off. The summary document talks about removing the 'age related aspects of redundancy pay calculations.

The 'age related aspects' work in favour of older workers because the multiplier for those over 40 is 1.5 weeks pay, as opposed to 1 week and 0.5 weeks for the other two younger age groups (see above).

Under the original proposals pay would be calculated across all age groups on a one week per year of service award. Anyone who is made redundant over the age of 40 would lose out while those under 18 would benefit from a rise. Needless to say this involved a reappraisal of the original thinking behind the age criteria. This was set out in the original consultation document. It was thought that the introduction of the age discrimination legislation would compensate for the loss of payment weighting in favour of older workers, which was originally implemented in (at least tacit) recognition of discrimination against older employees. However, government policy on this has changed and the age related aspects will now be retained. Whilst the initial proposal was to abolish the three age related bands in favour of a single multiplier, government has abandoned this approach and will be retaining the present system. A statement on 2 March 2006 explained:

Statutory Redundancy Payments Scheme

The Parliamentary Under-Secretary of State for Trade and Industry (Mr. Gerry Sutcliffe): The Government have been considering what amendments might be needed to the statutory redundancy payments scheme to bring it into line with the EU Employment Directive, which requires Member States to outlaw discrimination on the grounds of age, among other things, in the employment field. The current scheme contains three age bands and directs greatest financial support to older workers and those with long service.

We have been discussing the way forward with key stakeholders over the last few months, including the CBI, EEF and TUC. In the course of those discussions the Government became concerned that a system using a single multiplier might not meet our overall policy aims. We have therefore carefully examined the rationale for the current scheme, and come to the conclusion that this provides the best fit with our aims.

Evidence the Government have gathered demonstrates that younger, prime age and older workers fall into three distinct economic categories, with older workers facing a particularly difficult position in the employment market. Young workers tend not to be out of work for long, and see only a small fall in pay when switching jobs. Older workers are much more likely to become long-term unemployed, and to experience a substantial fall in pay when finding a new job. Prime age workers fall into the middle. We therefore believe that it is sensible for the level of support provided through the scheme to reflect these three categories. A system using a single multiplier would leave a significant group of older workers substantially worse off than at present, and

⁴⁰ HM Government, [Equality and Diversity: Coming of Age](#), July 2005

we believe this would be unacceptable. Even if a substantial amount of money were injected into the scheme so as to leave older workers no worse off, the enhanced benefits to younger workers are not justified by their position in the employment market.

The Directive provides for the possibility of Member States providing for different treatment on the grounds of age, where this difference of treatment is objectively and reasonably justified by a legitimate aim, including employment policy. We have looked at this question very closely and are confident that retaining the age bands is permitted by the Directive.

The Government have however decided to remove the lower and upper age limits in the redundancy scheme (at 18 and 65 respectively) and the taper at the age of 64 because we believe, as employees are living and working longer, these cannot be justified under the Directive. A small group of amendments to the scheme will be set out in the forthcoming age regulations, which will be laid before Parliament shortly.⁴¹

5.4 Historical background

Upper and lower age limits

The effect of the age discrimination regulations has been to abolish the upper and lower age limits that formerly applied. Under these provisions those under 18 or over 65 were not entitled to the minimum statutory redundancy pay. Under section 211(2) ERA service before a person's 18th birthday did not count for statutory redundancy pay calculations. This was in contrast to the calculation of the basic award in unfair dismissal claims, which has not been subject to a lower age limit. Similarly, an employee made redundant after their 65th birthday did not qualify for statutory redundancy pay under section 156 ERA. The DTI guidance at that time on redundancy explained how the entitlement formerly tailed off after the age of 64:

12. If you are aged 64 or over

If you are aged 64 or over, we have to reduce your redundancy payment by one-twelfth for each complete month you worked after your 64th birthday. This means that if you are 65 or over, you are not entitled to a redundancy payment. You may still be entitled to compensation for notice pay, unpaid wages or holiday pay you are owed.⁴²

Legal challenges to the upper age limits

A challenge was launched against the legality of upper age limits in the case of *Harvest Town Circle Ltd v Rutherford*, where a man dismissed at the age of 67 argued that there was no objective justification for the rule prohibiting people over the normal retiring age from claiming unfair dismissal and that it affected more men than women. It was argued that section 109 ERA indirectly discriminates against men and is therefore incompatible with Article 141 of the Treaty of Rome (equal pay for equal work). This argument was supported by the employment tribunal, but appealed to the Employment Appeals Tribunal (EAT). They overturned the decision on the grounds that the Secretary of State should have been consulted.

The case was remitted back to an employment tribunal for rehearing where it was joined with another similar case (*Bentley v Secretary of State for Trade and Industry*). Mr. Bentley's case involved a challenge to the upper age limit for statutory redundancy pay in section 156 ERA on the basis that this has a disparate impact on men and women. The tribunal again found in favour of Mr. Rutherford and also found in favour of Mr. Bentley. In both cases the employers had become insolvent making the Secretary of State liable under the ERA for the amounts claimed. The Secretary of State appealed to the EAT (*The Secretary of State v Rutherford and Bentley* [2002] IRLR 768). The EAT found that the tribunal had used the wrong statistics

⁴¹ HC Deb 2 Mar 2006 cc39-40WS

⁴² The Insolvency Service, [Redundancy and Insolvency: A guide for employees](#), 2005 [on 1 April 2008]

for comparison and that the Secretary of State had made out justifiable reasons for maintaining the law as it stood. The case was appealed to the Court of Appeal who gave judgement on this case on 3 September 2004 dismissing the appeal.⁴³ A further appeal to the House of Lords was also dismissed.⁴⁴

⁴³ [Rutherford & Another v. Secretary of State for Trade and Industry](#) [2004] EWCA Civ 1186; Full text of judgement [on 1 April 2008]

⁴⁴ [Secretary of State for Trade and Industry \(Respondent\) v. Rutherford and another \(FC\) \(Appellants\) and others](#) [2006] UKHL 19, 3 May 2006 [on 1 April 2008]