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Employment Rights Act 1996

1996 CHAPTER 18

PART I

EMPLOYMENT PARTICULARS

Right to statements of employment particulars

1 Statement of initial employment particulars.

(1) Where **[**[F1]a worker**]** begins employment with an employer, the employer shall give to **[**[F2]the worker**]** a written statement of particulars of employment.

[[F3](2) Subject to sections 2(2) to (4)—

(a) the particulars required by subsections (3) and (4) must be included in a single document; and

(b) the statement must be given not later than the beginning of the employment.**]**

(3) The statement shall contain particulars of—

(a) the names of the employer and **[**[F4]worker**]**,

(b) the date when the employment began, and

(c) **[**[F5]in the case of a statement given to an employee,**]** the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).

(4) The statement shall also contain particulars, as at a specified date not more than seven days before the statement **[**[F6](or the instalment of a statement given under section 2(4) containing them)**]** is given, of—

(a) the scale or rate of remuneration or the method of calculating remuneration,

(b) the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals),

[[F7](c) any terms and conditions relating to hours of work including any terms and conditions relating to—

(i) normal working hours,

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(ii) the days of the week the worker is required to work, and

(iii) whether or not such hours or days may be variable, and if they may be how they vary or how that variation is to be determined.**]**

(d) any terms and conditions relating to any of the following—

(i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the **[**F8worker's**]** entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),

(ii) incapacity for work due to sickness or injury, including any provision for sick pay, F9...

[F10(iia) any other paid leave, and**]**

(iii) pensions and pension schemes,

[F11(da) any other benefits provided by the employer that do not fall within another paragraph of this subsection,**]**

(e) the length of notice which the **[**F12worker**]** is obliged to give and entitled to receive to terminate his contract of employment **[**F13or other worker's contract**]**,

(f) the title of the job which the **[**F14worker**]** is employed to do or a brief description of the work for which he is employed,

(g) where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end,

[F15(ga) any probationary period, including any conditions and its duration,**]**

(h) either the place of work or, where the **[**F16worker**]** is required or permitted to work at various places, an indication of that and of the address of the employer,

(j) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made, F17...

(k) where the **[**F18worker**]** is required to work outside the United Kingdom for a period of more than one month—

(i) the period for which he is to work outside the United Kingdom,

(ii) the currency in which remuneration is to be paid while he is working outside the United Kingdom,

(iii) any additional remuneration payable to him, and any benefits to be provided to or in respect of him, by reason of his being required to work outside the United Kingdom, and

(iv) any terms and conditions relating to his return to the United Kingdom.

[F19(l) any training entitlement provided by the employer,

(m) any part of that training entitlement which the employer requires the worker to complete, and

(n) any other training which the employer requires the worker to complete and which the employer will not bear the cost of.**]**

(5) Subsection (4)(d)(iii) does not apply to **[**F20a worker**]** of a body or authority if—

(a) the **[**F21worker's**]** pension rights depend on the terms of a pension scheme established under any provision contained in or having effect under any Act, and

(b) any such provision requires the body or authority to give to a new **[**F22worker**]** information concerning the **[**F23worker's**]** pension rights or the determination of questions affecting those rights.

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[F24(6) In this section "probationary period" means a temporary period specified in the contract of employment or other worker's contract between a worker and an employer that—

(a) commences at the beginning of the employment, and

(b) is intended to enable the employer to assess the worker's suitability for the employment.**]**

Textual Amendments

F1 Words in s. 1(1) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **5(a)(i)** (with reg. 15)

F2 Words in s. 1(1) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **5(a)(ii)** (with reg. 15)

F3 S. 1(2) substituted (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **3(a)** (with reg. 8)

F4 Word in s. 1(3)(a) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **5(b)** (with reg. 15)

F5 Words in s. 1(3)(c) inserted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **5(c)** (with reg. 15)

F6 Words in s. 1(4) substituted (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **3(b)(i)** (with reg. 8)

F7 S. 1(4)(c) substituted (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **3(b)(ii)** (with reg. 8)

F8 Word in s. 1(4)(d)(i) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **5(d)** (with reg. 15)

F9 Word in s. 1(4)(d)(ii) omitted (6.4.2020) by virtue of The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **3(b)(iii)** (with reg. 8)

F10 S. 1(4)(d)(iia) inserted (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **3(b)(iii)** (with reg. 8)

F11 S. 1(4)(da) inserted (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **3(b)(iv)** (with reg. 8)

F12 Word in s. 1(4)(e) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **5(e)** (with reg. 15)

F13 Words in s. 1(4)(e) inserted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **5(f)** (with reg. 15)

F14 Word in s. 1(4)(f) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **5(e)** (with reg. 15)

F15 S. 1(4)(ga) inserted (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **3(b)(v)** (with reg. 8)

F16 Word in s. 1(4)(h) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **5(e)** (with reg. 15)

F17 Word in s. 1(4)(j) omitted (6.4.2020) by virtue of The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **3(b)(vi)** (with reg. 8)

F18 Word in s. 1(4)(k) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **5(e)** (with reg. 15)

F19 S. 1(4)(l)-(n) inserted (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **3(b)(vii)** (with reg. 8)

F20 Words in s. 1(5) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **5(g)** (with reg. 15)

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F21 Word in s. 1(5)(a) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **5(h)** (with reg. 15)

F22 Word in s. 1(5)(b) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **5(i)** (with reg. 15)

F23 Word in s. 1(5)(b) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **5(h)** (with reg. 15)

F24 S. 1(6) inserted (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **3(b)(viii)** (with reg. 8)

2 Statement of initial particulars: supplementary.

(1) If, in the case of a statement under section 1, there are no particulars to be entered under any of the heads of paragraph (d) or (k) of subsection (4) of that section, or under any of the other paragraphs of subsection (3) or (4) of that section, that fact shall be stated.

(2) A statement under section 1 may refer the **[**F25worker**]** for particulars of any of the matters specified in **[**F26subsection (4)(d)(ii) to (iii) and (l)**]** of that section to the provisions of some other document which is reasonably accessible to the **[**F25worker**]**.

(3) A statement under section 1 may refer the **[**F27worker**]** for particulars of either of the matters specified in subsection (4)(e) of that section to the law or to the provisions of any collective agreement directly affecting the terms and conditions of the employment which is reasonably accessible to the **[**F27worker**]**.

[F28(4) A statement, insofar as it relates to the particulars required by section1(4)(d)(iii), (j) and (l) and the note required by section 3—

(a) may be given in instalments; and

(b) must be given not later than two months after the beginning of the employment, even where the employment ends before that date. **]**

(5) Where before the end of the period of two months after the beginning of **[**F29a worker's**]** employment the **[**F30worker**]** is to begin to work outside the United Kingdom for a period of more than one month, **[**F31any instalment of a statement given under subsection (4)**]** shall be given to him not later than the time when he leaves the United Kingdom in order to begin so to work.

F32(6) . . . . . .

Textual Amendments

F25 Word in s. 2(2) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **6(a)** (with reg. 15)

F26 Words in s. 2(2) substituted (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **4(a)** (with reg. 8)

F27 Word in s. 2(3) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **6(a)** (with reg. 15)

F28 S. 2(4) substituted (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **4(b)** (with reg. 8)

F29 Words in s. 2(5) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **6(b)** (with reg. 15)

F30 Word in s. 2(5) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **6(a)** (with reg. 15)

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F31 Words in s. 2(5) substituted (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **4(c)** (with reg. 8)

F32 S. 2(6) omitted (6.4.2020) by virtue of The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **4(d)** (with reg. 8)

3 Note about disciplinary procedures and pensions.

(1) A statement under section 1 shall include a note—

(a) specifying any disciplinary rules applicable to **[**F33the worker**]** or referring **[**F33the worker**]** to the provisions of a document specifying such rules which is reasonably accessible to **[**F33the worker**]**,

[F34(aa) specifying any procedure applicable to the taking of disciplinary decisions relating to **[**F35the worker**]**, or to a decision to dismiss **[**F35the worker**]**, or referring **[**F35the worker**]** to the provisions of a document specifying such a procedure which is reasonably accessible to **[**F35the worker**]**,**]**

(b) specifying (by description or otherwise)—

(i) a person to whom **[**F36the worker**]** can apply if dissatisfied with any disciplinary decision relating to him **[**F37or any decision to dismiss him**]**, and

(ii) a person to whom **[**F38the worker**]** can apply for the purpose of seeking redress of any grievance relating to his employment,

and the manner in which any such application should be made, and

(c) where there are further steps consequent on any such application, explaining those steps or referring to the provisions of a document explaining them which is reasonably accessible to **[**F39the worker**]**.

(2) Subsection (1) does not apply to rules, disciplinary decisions, **[**F40decisions to dismiss**]** grievances or procedures relating to health or safety at work.

F41(3) . . . . . .

F41(4) . . . . . .

F42(5) . . . . . .

Textual Amendments

F33 Words in s. 3(1)(a) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **7** (with reg. 15)

F34 S. 3(1)(aa) inserted (1.10.2004) by Employment Act 2002 (c. 22), **ss. 35(2)**, 55(2); S.I. 2004/1717, **art. 2(2)** (subject to art. 3)

F35 Words in s. 3(1)(aa) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **7** (with reg. 15)

F36 Words in s. 3(1)(b)(i) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **7** (with reg. 15)

F37 Words in s. 3(1)(b)(i) inserted (1.10.2004) by Employment Act 2002 (c. 22), **ss. 35(3)**, 55(2); S.I. 2004/1717, **art. 2(2)** (subject to art. 3)

F38 Words in s. 3(1)(b)(ii) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **7** (with reg. 15)

F39 Words in s. 3(1)(c) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **7** (with reg. 15)

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F40 Words in s. 3(2) inserted (1.10.2004) by Employment Act 2002 (c. 22), **ss. 35(4)**, 55(2); S.I. 2004/1717, **art. 2(2)** (subject to art. 3)

F41 S. 3(3)(4) repealed (1.11.2004) by Employment Act 2002 (c. 22), **ss. 36**, 54, 55(2), **Sch. 8**; S.I. 2004/1717, **art. 2(2)** (subject to art. 3); S.I. 2004/2822, **art. 2(b)**

F42 S. 3(5) omitted (6.4.2016 unless brought into force earlier by an order under s. 56(1) of the amending Act) by virtue of Pensions Act 2014 (c. 19), s. 56(4), **Sch. 13 para. 67**

4 Statement of changes.

(1) If, after the material date, there is a change in any of the matters particulars of which are required by sections 1 to 3 to be included or referred to in a statement under section 1, the employer shall give to **[**F43the worker**]** a written statement containing particulars of the change.

(2) For the purposes of subsection (1)—

(a) in relation to a matter particulars of which are included or referred to in a statement given under section 1 F44... , the material date is the date to which the statement relates,

(b) in relation to a matter particulars of which—

(i) are included or referred to in an instalment of a statement given under **[**F45section 2(4)**]**

F46(ii) . . . . . .

the material date is the date to which the instalment relates, and

(c) in relation to any other matter, the material date is the date by which a statement under section 1 is required to be given.

(3) A statement under subsection (1) shall be given at the earliest opportunity and, in any event, not later than—

(a) one month after the change in question, or

(b) where that change results from **[**F47the worker**]** being required to work outside the United Kingdom for a period of more than one month, the time when he leaves the United Kingdom in order to begin so to work, if that is earlier.

(4) A statement under subsection (1) may refer **[**F48the worker**]** to the provisions of some other document which is reasonably accessible to **[**F48the worker**]** for a change in any of the matters specified in **[**F49sections 1(4)(d)(ii) to (iii)**]** and 3(1)(a) and (c).

(5) A statement under subsection (1) may refer **[**F50the worker**]** for a change in either of the matters specified in section 1(4)(e) to the law or to the provisions of any collective agreement directly affecting the terms and conditions of the employment which is reasonably accessible to **[**F50the worker**]**.

(6) Where, after an employer has given to **[**F51a worker**]** a statement under section 1, either—

(a) the name of the employer (whether an individual or a body corporate or partnership) is changed without any change in the identity of the employer, or

(b) **[**F52in the case of a statement given to an employee,**]** the identity of the employer is changed in circumstances in which the continuity of the employee's period of employment is not broken,

and subsection (7) applies in relation to the change, the person who is the employer immediately after the change is not required to give to **[**F53the worker**]** a statement

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under section 1; but the change shall be treated as a change falling within subsection (1) of this section.

(7) This subsection applies in relation to a change if it does not involve any change in any of the matters (other than the names of the parties) particulars of which are required by sections 1 to 3 to be included or referred to in the statement under section 1.

(8) A statement under subsection (1) which informs an employee of a change such as is referred to in subsection (6)(b) shall specify the date on which the employee's period of continuous employment began.

Textual Amendments

F43 Words in s. 4(1) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **8(a)** (with reg. 15)

F44 Words in s. 4(2)(a) omitted (6.4.2020) by virtue of The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **5(a)** (with reg. 8)

F45 Words in s. 4(2)(b)(i) substituted (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **5(b)** (with reg. 8)

F46 S. 4(2)(b)(ii) omitted (6.4.2020) by virtue of The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **5(c)** (with reg. 8)

F47 Words in s. 4(3)(b) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **8(a)** (with reg. 15)

F48 Words in s. 4(4) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **8(a)** (with reg. 15)

F49 Words in s. 4(4) substituted (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **5(d)** (with reg. 8)

F50 Words in s. 4(5) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **8(a)** (with reg. 15)

F51 Words in s. 4(6) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **8(b)** (with reg. 15)

F52 Words in s. 4(6)(b) inserted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **8(c)** (with reg. 15)

F53 Words in s. 4(6) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **8(a)** (with reg. 15)

5 Exclusion from rights to statements.

(1) Sections 1 to 4 apply to **[**F54a worker**]** who at any time comes or ceases to come within the exceptions from those sections provided by **[**F55section**]** 199, and under section 209, as if his employment with his employer terminated or began at that time.

(2) The fact that section 1 is directed by subsection (1) to apply to **[**F56a worker**]** as if his employment began on his ceasing to come within the exceptions referred to in that subsection does not affect the obligation under section 1(3)(b) to specify the date on which his employment actually began.

Textual Amendments

F54 Words in s. 5(1) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **9** (with reg. 15)

F55 Words in s. 5(1) substituted (25.10.1999) by 1999 c. 26, **s. 32(3)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 7(2))

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F56 Words in s. 5(2) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **9** (with reg. 15)

6 Reasonably accessible document or collective agreement.

In sections 2 to 4 references to a document or collective agreement which is reasonably accessible to **[**F57a worker**]** are references to a document or collective agreement which—

(a) **[**F58the worker**]** has reasonable opportunities of reading in the course of his employment, or

(b) is made reasonably accessible to **[**F59the worker**]** in some other way.

Textual Amendments

F57 Words in s. 6 substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **10(a)** (with reg. 15)

F58 Words in s. 6(a) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **10(b)** (with reg. 15)

F59 Words in s. 6(b) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **10(b)** (with reg. 15)

7 Power to require particulars of further matters.

The Secretary of State may by order provide that section 1 shall have effect as if particulars of such further matters as may be specified in the order were included in the particulars required by that section; and, for that purpose, the order may include such provisions amending that section as appear to the Secretary of State to be expedient.

[F60**7A Use of alternative documents to give particulars**

(1) Subsections (2) and (3) apply where—

(a) an employer gives **[**F61a worker**]** a document in writing in the form of a contract of employment **[**F62or other worker's contract**]** or letter of engagement,

(b) the document contains information which, were the document in the form of a statement under section 1, would meet the employer's obligation under that section in relation to the matters mentioned **[**F63in that section save for the particulars specified in section 2(4) and**]**, and

[F64(c) the document is given not later than the beginning of the employment.**]**

(2) The employer's duty under section 1 in relation to any matter shall be treated as met if the document given to the **[**F65worker**]** contains information which, were the document in the form of a statement under that section, would meet the employer's obligation under that section in relation to that matter.

(3) The employer's duty under section 3 shall be treated as met if the document given to the **[**F66worker**]** contains information which, were the document in the form of a statement under section 1 and the information included in the form of a note, would meet the employer's obligation under section 3.

(4) For the purposes of this section a document to which subsection (1)(a) applies shall be treated, in relation to information in respect of any of the matters mentioned in

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section 1(4), as specifying the date on which the document is given to the **[**F67worker**]** as the date as at which the information applies.

(5) Where subsection (2) applies in relation to any matter, the date on which the document by virtue of which that subsection applies is given to the **[**F68worker**]** shall be the material date in relation to that matter for the purposes of section 4(1).

(6) Where subsection (3) applies, the date on which the document by virtue of which that subsection applies is given to the **[**F69worker**]** shall be the material date for the purposes of section 4(1) in relation to the matters of which particulars are required to be given under section 3.

(7) The reference in section 4(6) to an employer having given a statement under section 1 shall be treated as including his having given a document by virtue of which his duty to give such a statement is treated as met.

Textual Amendments

F60 Ss. 7A, 7B inserted (1.10.2004) by Employment Act 2002 (c. 22), **ss. 37**, 55(2); S.I. 2004/1717, **art. 2(2)** (subject to art. 3)

F61 Words in s. 7A(1)(a) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **11(a)(i)** (with reg. 15)

F62 Words in s. 7A(1)(a) inserted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **11(a)(ii)** (with reg. 15)

F63 Words in s. 7A(1)(b) substituted (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **6(a)** (with reg. 8)

F64 S. 7A(1)(c) substituted (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **6(b)** (with reg. 8)

F65 Word in s. 7A(2) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **11(b)** (with reg. 15)

F66 Word in s. 7A(3) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **11(b)** (with reg. 15)

F67 Word in s. 7A(4) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **11(b)** (with reg. 15)

F68 Word in s. 7A(5) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **11(b)** (with reg. 15)

F69 Word in s. 7A(6) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **11(b)** (with reg. 15)

7B Giving of alternative documents before start of employment

A document in the form of a contract of employment **[**F70or other worker's contract**]** or letter of engagement given by an employer to **[**F71a worker**]** before the beginning of the **[**F72worker's**]** employment with the employer shall, when the employment begins, be treated for the purposes of section 7A as having been given at that time.**]**

Textual Amendments

F60 Ss. 7A, 7B inserted (1.10.2004) by Employment Act 2002 (c. 22), **ss. 37**, 55(2); S.I. 2004/1717, **art. 2(2)** (subject to art. 3)

F70 Words in s. 7B inserted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **12(a)** (with reg. 15)

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F71 Words in s. 7B substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **12(b)** (with reg. 15)

F72 Word in s. 7B substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **12(c)** (with reg. 15)

Right to itemised pay statement

8 Itemised pay statement.

(1) **[**F73A worker**]** has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.

(2) The statement shall contain particulars of—

(a) the gross amount of the wages or salary,

(b) the amounts of any variable, and (subject to section 9) any fixed, deductions from that gross amount and the purposes for which they are made,

(c) the net amount of wages or salary payable, F74...

(d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment; **[**F75and

(e) where the amount of wages or salary varies by reference to time worked, the total number of hours worked in respect of the variable amount of wages or salary either as—

(i) a single aggregate figure, or

(ii) separate figures for different types of work or different rates of pay.**]**

Textual Amendments

F73 Words in s. 8(1) substituted (6.4.2019) by The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) (No. 2) Order 2018 (S.I. 2018/529), arts. 1, **2(2)** (with art. 3)

F74 Word in s. 8(2)(c) omitted (6.4.2019) by virtue of The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018 (S.I. 2018/147), arts. 1, **2(a)** (with art. 3)

F75 S. 8(2)(e) and word inserted (6.4.2019) by The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018 (S.I. 2018/147), arts. 1, **2(b)** (with art. 3)

9 Standing statement of fixed deductions.

(1) A pay statement given in accordance with section 8 need not contain separate particulars of a fixed deduction if—

(a) it contains instead an aggregate amount of fixed deductions, including that deduction, and

(b) the employer has given to **[**F76the worker**]**, at or before the time at which the pay statement is given, a standing statement of fixed deductions which satisfies subsection (2).

(2) A standing statement of fixed deductions satisfies this subsection if—

(a) it is in writing,

(b) it contains, in relation to each deduction comprised in the aggregate amount of deductions, particulars of—

(i) the amount of the deduction,

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(ii) the intervals at which the deduction is to be made, and

(iii) the purpose for which it is made, and

(c) it is (in accordance with subsection (5)) effective at the date on which the pay statement is given.

(3) A standing statement of fixed deductions may be amended, whether by—

(a) addition of a new deduction,

(b) a change in the particulars, or

(c) cancellation of an existing deduction,

by notice in writing, containing particulars of the amendment, given by the employer to **[**F76the worker**]**.

(4) An employer who has given to **[**F77a worker**]** a standing statement of fixed deductions shall—

(a) within the period of twelve months beginning with the date on which the first standing statement was given, and

(b) at intervals of not more than twelve months afterwards,

re-issue it in a consolidated form incorporating any amendments notified in accordance with subsection (3).

(5) For the purposes of subsection (2)(c) a standing statement of fixed deductions—

(a) becomes effective on the date on which it is given to **[**F76the worker**]**, and

(b) ceases to be effective at the end of the period of twelve months beginning with that date or, where it is re-issued in accordance with subsection (4), with the end of the period of twelve months beginning with the date of the last re-issue.

Textual Amendments

F76 Words in s. 9 substituted (6.4.2019) by The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) (No. 2) Order 2018 (S.I. 2018/529), arts. 1, **2(3)(a)** (with art. 3)

F77 Words in s. 9(4) substituted (6.4.2019) by The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) (No. 2) Order 2018 (S.I. 2018/529), arts. 1, **2(3)(b)** (with art. 3)

10 Power to amend provisions about pay and standing statements.

The Secretary of State may by order—

(a) vary the provisions of sections 8 and 9 as to the particulars which must be included in a pay statement or a standing statement of fixed deductions by adding items to, or removing items from, the particulars listed in those sections or by amending any such particulars, and

(b) vary the provisions of subsections (4) and (5) of section 9 so as to shorten or extend the periods of twelve months referred to in those subsections, or those periods as varied from time to time under this section.

Enforcement

11 References to [F78employment tribunals].

[F79(1) Where an employer does not give a worker a statement as required by section 1, 4 or 8 (either because the employer gives the worker no statement or because the statement

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the employer gives does not comply with what is required), the worker may require a reference to be made to an employment tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the section concerned.**]**

(2) Where—

[F80(a) a statement purporting to be a statement under section 1 or 4, or a pay statement or a standing statement of fixed deductions purporting to comply with section 8 or 9, has been given to a worker, and**]**

(b) a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of this Part,

either the employer or **[**F81the worker**]** may require the question to be referred to and determined by an **[**F78employment tribunal**]**.

(3) For the purposes of this section—

F82(a) . . . . . .

(b) a question as to the particulars which ought to have been included in a pay statement or standing statement of fixed deductions does not include a question solely as to the accuracy of an amount stated in any such particulars.

(4) An **[**F78employment tribunal**]** shall not consider a reference under this section in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made was made—

(a) before the end of the period of three months beginning with the date on which the employment ceased, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of three months.

F83(5) . . . . . .

[F84(6) **[**F85Section**]** 207B (extension of time limits to facilitate conciliation before institution of proceedings) also applies for the purposes of subsection (4)(a).**]**

Textual Amendments

F78 Words in s. 11(1)(2)(4) and sidenote to s. 11 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)(b)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F79 S. 11(1) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **13(a)** (with reg. 15)

F80 S. 11(2)(a) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **13(b)** (with reg. 15)

F81 Words in s. 11(2) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **13(c)** (with reg. 15)

F82 S. 11(3)(a) omitted (6.4.2016 unless brought into force earlier by an order under s. 56(1) of the amending Act) by virtue of Pensions Act 2014 (c. 19), s. 56(4), **Sch. 13 para. 68**

F83 S. 11(5) omitted (31.12.2020) by virtue of The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(2)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

F84 S. 11(6) inserted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 2 para. 16**; S.I. 2014/253, art. 3(g)

F85 Word in s. 11(6) substituted (6.4.2014) by The Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2014 (S.I. 2014/431), art. 1, **Sch. para. 3**

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Modifications etc. (not altering text)

C1 S. 11: power to apply conferred (1.4.1999) by 1998 c. 39, **s. 12(4)(a)** (with s. 36); S.I. 1998/2574, art. 2(2), **Sch. 2**

12 Determination of references.

(1) Where, on a reference under section 11(1), an **[**F86employment tribunal**]** determines particulars as being those which ought to have been included or referred to in a statement given under section 1 or 4, the employer shall be deemed to have given to the **[**F87worker**]** a statement in which those particulars were included, or referred to, as specified in the decision of the tribunal.

(2) On determining a reference under section 11(2) relating to a statement purporting to be a statement under section 1 or 4, an **[**F86employment tribunal**]** may—

(a) confirm the particulars as included or referred to in the statement given by the employer,

(b) amend those particulars, or

(c) substitute other particulars for them,

as the tribunal may determine to be appropriate; and the statement shall be deemed to have been given by the employer to the **[**F88worker**]** in accordance with the decision of the tribunal.

(3) Where on a reference under section 11 an **[**F86employment tribunal**]** finds—

(a) that an employer has failed to give **[**F89a worker**]** any pay statement in accordance with section 8, or

(b) that a pay statement or standing statement of fixed deductions does not, in relation to a deduction, contain the particulars required to be included in that statement by that section or section 9,

the tribunal shall make a declaration to that effect.

(4) Where on a reference in the case of which subsection (3) applies the tribunal further finds that any unnotified deductions have been made from the pay of **[**F90the worker**]** during the period of thirteen weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay **[**F90the worker**]** a sum not exceeding the aggregate of the unnotified deductions so made.

(5) For the purposes of subsection (4) a deduction is an unnotified deduction if it is made without the employer giving **[**F91the worker**]**, in any pay statement or standing statement of fixed deductions, the particulars of the deduction required by section 8 or 9.

Textual Amendments

F86 Words in s. 12(1)(2)(3) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)**(with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F87 Word in s. 12(1) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **14** (with reg. 15)

F88 Word in s. 12(2) substituted (6.4.2020) by The Employment Rights (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/731), regs. 1(2), **14** (with reg. 15)

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F89 Words in s. 12(3) substituted (6.4.2019) by The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) (No. 2) Order 2018 (S.I. 2018/529), arts. 1, **2(5)(a)** (with art. 3)

F90 Words in s. 12(4) substituted (6.4.2019) by The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) (No. 2) Order 2018 (S.I. 2018/529), arts. 1, **2(5)(b)** (with art. 3)

F91 Words in s. 12(5) substituted (6.4.2019) by The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) (No. 2) Order 2018 (S.I. 2018/529), arts. 1, **2(5)(b)** (with art. 3)

Modifications etc. (not altering text)

C2 S. 12: power to apply conferred (1.4.1999) by 1998 c. 39, **s. 12(4)(a)**(with s. 36); S.I. 1998/2574, art. 2(2), **Sch. 2**

PART II

PROTECTION OF WAGES

Modifications etc. (not altering text)

C3 Pt. 2 modified (1.4.1999) by 1998 c. 39, **s. 18(1)(a)(2)** (with s. 36); S.I. 1998/2574, art. 2(2), **Sch. 2**

Deductions by employer

13 Right not to suffer unauthorised deductions.

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

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(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

[F92(8) In relation to deductions from amounts of qualifying tips, gratuities and service charges allocated to workers under Part 2B, subsection (1) applies as if—

(a) in paragraph (a), the words "or a relevant provision of the worker's contract" were omitted, and

(b) paragraph (b) were omitted.**]**

Textual Amendments

F92 S. 13(8) inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 11(a)**, 14(2); S.I. 2023/876, reg. 3(c)

14 Excepted deductions.

(1) Section 13 does not apply to a deduction from a worker's wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of—

(a) an overpayment of wages, or

(b) an overpayment in respect of expenses incurred by the worker in carrying out his employment,

made (for any reason) by the employer to the worker.

(2) Section 13 does not apply to a deduction from a worker's wages made by his employer in consequence of any disciplinary proceedings if those proceedings were held by virtue of a statutory provision.

(3) Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of a requirement imposed on the employer by a statutory provision to deduct and pay over to a public authority amounts determined by that authority as being due to it from the worker if the deduction is made in accordance with the relevant determination of that authority.

(4) Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of any arrangements which have been established—

(a) in accordance with a relevant provision of his contract to the inclusion of which in the contract the worker has signified his agreement or consent in writing, or

(b) otherwise with the prior agreement or consent of the worker signified in writing,

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and under which the employer is to deduct and pay over to a third person amounts notified to the employer by that person as being due to him from the worker, if the deduction is made in accordance with the relevant notification by that person.

(5) Section 13 does not apply to a deduction from a worker's wages made by his employer where the worker has taken part in a strike or other industrial action and the deduction is made by the employer on account of the worker's having taken part in that strike or other action.

(6) Section 13 does not apply to a deduction from a worker's wages made by his employer with his prior agreement or consent signified in writing where the purpose of the deduction is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of an amount by the worker to the employer.

Payments to employer

15 Right not to have to make payments to employer.

(1) An employer shall not receive a payment from a worker employed by him unless—

(a) the payment is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the payment.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer receiving the payment in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the receipt of a payment on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(4) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the receipt of a payment on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(5) Any reference in this Part to an employer receiving a payment from a worker employed by him is a reference to his receiving such a payment in his capacity as the worker's employer.

16 Excepted payments.

(1) Section 15 does not apply to a payment received from a worker by his employer where the purpose of the payment is the reimbursement of the employer in respect of—

(a) an overpayment of wages, or

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(b) an overpayment in respect of expenses incurred by the worker in carrying out his employment,

made (for any reason) by the employer to the worker.

(2) Section 15 does not apply to a payment received from a worker by his employer in consequence of any disciplinary proceedings if those proceedings were held by virtue of a statutory provision.

(3) Section 15 does not apply to a payment received from a worker by his employer where the worker has taken part in a strike or other industrial action and the payment has been required by the employer on account of the worker's having taken part in that strike or other action.

(4) Section 15 does not apply to a payment received from a worker by his employer where the purpose of the payment is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of an amount by the worker to the employer.

Cash shortages and stock deficiencies in retail employment

17 Introductory.

(1) In the following provisions of this Part—

"cash shortage" means a deficit arising in relation to amounts received in connection with retail transactions, and

"stock deficiency" means a stock deficiency arising in the course of retail transactions.

(2) In the following provisions of this Part "retail employment", in relation to a worker, means employment involving (whether or not on a regular basis)—

(a) the carrying out by the worker of retail transactions directly with members of the public or with fellow workers or other individuals in their personal capacities, or

(b) the collection by the worker of amounts payable in connection with retail transactions carried out by other persons directly with members of the public or with fellow workers or other individuals in their personal capacities.

(3) References in this section to a "retail transaction" are to the sale or supply of goods or the supply of services (including financial services).

(4) References in the following provisions of this Part to a deduction made from wages of a worker in retail employment, or to a payment received from such a worker by his employer, on account of a cash shortage or stock deficiency include references to a deduction or payment so made or received on account of—

(a) any dishonesty or other conduct on the part of the worker which resulted in any such shortage or deficiency, or

(b) any other event in respect of which he (whether or not together with any other workers) has any contractual liability and which so resulted,

in each case whether or not the amount of the deduction or payment is designed to reflect the exact amount of the shortage or deficiency.

(5) References in the following provisions of this Part to the recovery from a worker of an amount in respect of a cash shortage or stock deficiency accordingly include references

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to the recovery from him of an amount in respect of any such conduct or event as is mentioned in subsection (4)(a) or (b).

(6) In the following provisions of this Part "pay day", in relation to a worker, means a day on which wages are payable to the worker.

18 Limits on amount and time of deductions.

(1) Where (in accordance with section 13) the employer of a worker in retail employment makes, on account of one or more cash shortages or stock deficiencies, a deduction or deductions from wages payable to the worker on a pay day, the amount or aggregate amount of the deduction or deductions shall not exceed one-tenth of the gross amount of the wages payable to the worker on that day.

(2) Where the employer of a worker in retail employment makes a deduction from the worker's wages on account of a cash shortage or stock deficiency, the employer shall not be treated as making the deduction in accordance with section 13 unless (in addition to the requirements of that section being satisfied with respect to the deduction)—

(a) the deduction is made, or

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

not later than the end of the relevant period.

(3) In subsection (2) "the relevant period" means the period of twelve months beginning with the date when the employer established the existence of the shortage or deficiency or (if earlier) the date when he ought reasonably to have done so.

19 Wages determined by reference to shortages etc.

(1) This section applies where—

(a) by virtue of an agreement between a worker in retail employment and his employer, the amount of the worker's wages or any part of them is or may be determined by reference to the incidence of cash shortages or stock deficiencies, and

(b) the gross amount of the wages payable to the worker on any pay day is, on account of any such shortages or deficiencies, less than the gross amount of the wages that would have been payable to him on that day if there had been no such shortages or deficiencies.

(2) The amount representing the difference between the two amounts referred to in subsection (1)(b) shall be treated for the purposes of this Part as a deduction from the wages payable to the worker on that day made by the employer on account of the cash shortages or stock deficiencies in question.

(3) The second of the amounts referred to in subsection (1)(b) shall be treated for the purposes of this Part (except subsection (1)) as the gross amount of the wages payable to him on that day.

(4) Accordingly—

(a) section 13, and

(b) if the requirements of section 13 and subsection (2) of section 18 are satisfied, subsection (1) of section 18,

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have effect in relation to the amount referred to in subsection (2) of this section.

20 Limits on method and timing of payments.

(1) Where the employer of a worker in retail employment receives from the worker a payment on account of a cash shortage or stock deficiency, the employer shall not be treated as receiving the payment in accordance with section 15 unless (in addition to the requirements of that section being satisfied with respect to the payment) he has previously—

(a) notified the worker in writing of the worker's total liability to him in respect of that shortage or deficiency, and

(b) required the worker to make the payment by means of a demand for payment made in accordance with the following provisions of this section.

(2) A demand for payment made by the employer of a worker in retail employment in respect of a cash shortage or stock deficiency—

(a) shall be made in writing, and

(b) shall be made on one of the worker's pay days.

(3) A demand for payment in respect of a particular cash shortage or stock deficiency, or (in the case of a series of such demands) the first such demand, shall not be made—

(a) earlier than the first pay day of the worker following the date when he is notified of his total liability in respect of the shortage or deficiency in pursuance of subsection (1)(a) or, where he is so notified on a pay day, earlier than that day, or

(b) later than the end of the period of twelve months beginning with the date when the employer established the existence of the shortage or deficiency or (if earlier) the date when he ought reasonably to have done so.

(4) For the purposes of this Part a demand for payment shall be treated as made by the employer on one of a worker's pay days if it is given to the worker or posted to, or left at, his last known address—

(a) on that pay day, or

(b) in the case of a pay day which is not a working day of the employer's business, on the first such working day following that pay day.

(5) Legal proceedings by the employer of a worker in retail employment for the recovery from the worker of an amount in respect of a cash shortage or stock deficiency shall not be instituted by the employer after the end of the period referred to in subsection (3)(b) unless the employer has within that period made a demand for payment in respect of that amount in accordance with this section.

21 Limit on amount of payments.

(1) Where the employer of a worker in retail employment makes on any pay day one or more demands for payment in accordance with section 20, the amount or aggregate amount required to be paid by the worker in pursuance of the demand or demands shall not exceed—

(a) one-tenth of the gross amount of the wages payable to the worker on that day, or

(b) where one or more deductions falling within section 18(1) are made by the employer from those wages, such amount as represents the balance of that

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one-tenth after subtracting the amount or aggregate amount of the deduction or deductions.

(2) Once an amount has been required to be paid by means of a demand for payment made in accordance with section 20 on any pay day, that amount shall not be taken into account under subsection (1) as it applies to any subsequent pay day, even though the employer is obliged to make further requests for it to be paid.

(3) Where in any legal proceedings the court finds that the employer of a worker in retail employment is (in accordance with section 15 as it applies apart from section 20(1)) entitled to recover an amount from the worker in respect of a cash shortage or stock deficiency, the court shall, in ordering the payment by the worker to the employer of that amount, make such provision as appears to the court to be necessary to ensure that it is paid by the worker at a rate not exceeding that at which it could be recovered from him by the employer in accordance with this section.

22 Final instalments of wages.

(1) In this section "final instalment of wages", in relation to a worker, means—

(a) the amount of wages payable to the worker which consists of or includes an amount payable by way of contractual remuneration in respect of the last of the periods for which he is employed under his contract prior to its termination for any reason (but excluding any wages referable to any earlier such period), or

(b) where an amount in lieu of notice is paid to the worker later than the amount referred to in paragraph (a), the amount so paid,

in each case whether the amount in question is paid before or after the termination of the worker's contract.

(2) Section 18(1) does not operate to restrict the amount of any deductions which may (in accordance with section 13(1)) be made by the employer of a worker in retail employment from the worker's final instalment of wages.

(3) Nothing in section 20 or 21 applies to a payment falling within section 20(1) which is made on or after the day on which any such worker's final instalment of wages is paid; but (even if the requirements of section 15 would otherwise be satisfied with respect to it) his employer shall not be treated as receiving any such payment in accordance with that section if the payment was first required to be made after the end of the period referred to in section 20(3)(b).

(4) Section 21(3) does not apply to an amount which is to be paid by a worker on or after the day on which his final instalment of wages is paid.

Enforcement

23 Complaints to [F93employment tribunals].

(1) A worker may present a complaint to an **[**F93employment tribunal**]**—

(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),

(b) that his employer has received from him a payment in contravention of section 15 (including a payment received in contravention of that section as it applies by virtue of section 20(1)),

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(c) that his employer has recovered from his wages by means of one or more deductions falling within section 18(1) an amount or aggregate amount exceeding the limit applying to the deduction or deductions under that provision, or

(d) that his employer has received from him in pursuance of one or more demands for payment made (in accordance with section 20) on a particular pay day, a payment or payments of an amount or aggregate amount exceeding the limit applying to the demand or demands under section 21(1).

(2) Subject to subsection (4), an **[**F93employment tribunal**]** shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3) Where a complaint is brought under this section in respect of—

(a) a series of deductions or payments, or

(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

[F94(3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).**]**

(4) Where the **[**F93employment tribunal**]** is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

[F95(4A) An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint.

(4B) Subsection (4A) does not apply so far as a complaint relates to a deduction from wages that are of a kind mentioned in section 27(1)(b) to (j).**]**

[F96(5) No complaint shall be presented under this section in respect of any deduction made in contravention of section 86 of the M1 Trade Union and Labour Relations (Consolidation) Act 1992 (deduction of political fund contribution where certificate of exemption or objection has been given).**]**

Textual Amendments

F93 Words in s. 23(1)(2)(4) and sidenote to s. 23 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)(b)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F94 S. 23(3A) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(3)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

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F95 S. 23(4A)(4B) inserted (8.1.2015) by The Deduction from Wages (Limitation) Regulations 2014 (S.I. 2014/3322), regs. 1(1), **2** (with reg. 4)

F96 S. 23(5) inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 18**; S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3)

Modifications etc. (not altering text)

C4 S. 23(1)(a) extended (1.4.1999) by 1998 c. 39, **s. 20(1)(a)** (with s. 36); S.I. 1998/2574, art. 2(2), **Sch. 2**

Marginal Citations

M1 1992 c. 52.

24 Determination of complaints.

[F97(1)**]** Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer—

(a) in the case of a complaint under section 23(1)(a), to pay to the worker the amount of any deduction made in contravention of section 13,

(b) in the case of a complaint under section 23(1)(b), to repay to the worker the amount of any payment received in contravention of section 15,

(c) in the case of a complaint under section 23(1)(c), to pay to the worker any amount recovered from him in excess of the limit mentioned in that provision, and

(d) in the case of a complaint under section 23(1)(d), to repay to the worker any amount received from him in excess of the limit mentioned in that provision.

[F98(2) Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.**]**

Textual Amendments

F97 S. 24 renumbered (6.4.2009) as s. 24(1) by Employment Act 2008 (c. 24), **ss. 7(1)(a)**, 22(1)(a); S.I. 2008/3232, **art. 2** (with Sch. paras. 1, 5)

F98 S. 24(2) inserted (6.4.2009) by Employment Act 2008 (c. 24), **ss. 7(1)(b)**, 22(1)(a); S.I. 2008/3232, **art. 2** (with Sch. paras. 1, 5)

25 Determinations: supplementary.

(1) Where, in the case of any complaint under section 23(1)(a), a tribunal finds that, although neither of the conditions set out in section 13(1)(a) and (b) was satisfied with respect to the whole amount of the deduction, one of those conditions was satisfied with respect to any lesser amount, the amount of the deduction shall for the purposes of section 24(a) be treated as reduced by the amount with respect to which that condition was satisfied.

(2) Where, in the case of any complaint under section 23(1)(b), a tribunal finds that, although neither of the conditions set out in section 15(1)(a) and (b) was satisfied with respect to the whole amount of the payment, one of those conditions was satisfied with respect to any lesser amount, the amount of the payment shall for the purposes of

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section 24(b) be treated as reduced by the amount with respect to which that condition was satisfied.

(3) An employer shall not under section 24 be ordered by a tribunal to pay or repay to a worker any amount in respect of a deduction or payment, or in respect of any combination of deductions or payments, in so far as it appears to the tribunal that he has already paid or repaid any such amount to the worker.

(4) Where a tribunal has under section 24 ordered an employer to pay or repay to a worker any amount in respect of a particular deduction or payment falling within section 23(1)(a) to (d), the amount which the employer is entitled to recover (by whatever means) in respect of the matter in relation to which the deduction or payment was originally made or received shall be treated as reduced by that amount.

(5) Where a tribunal has under section 24 ordered an employer to pay or repay to a worker any amount in respect of any combination of deductions or payments falling within section 23(1)(c) or (d), the aggregate amount which the employer is entitled to recover (by whatever means) in respect of the cash shortages or stock deficiencies in relation to which the deductions or payments were originally made or required to be made shall be treated as reduced by that amount.

26 Complaints and other remedies.

Section 23 does not affect the jurisdiction of an **[**F99employment tribunal**]** to consider a reference under section 11 in relation to any deduction from the wages of a worker; but the aggregate of any amounts ordered by an **[**F99employment tribunal**]** to be paid under section 12(4) and under section 24 (whether on the same or different occasions) in respect of a particular deduction shall not exceed the amount of the deduction.

Textual Amendments

F99 Words in s. 26 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Supplementary

27 Meaning of "wages" etc.

(1) In this Part "wages", in relation to a worker, means any sums payable to the worker in connection with his employment, including—

(a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise,

(b) statutory sick pay under Part XI of the M2Social Security Contributions and Benefits Act 1992,

(c) statutory maternity pay under Part XII of that Act,

[F100(ca) **[**F101statutory paternity pay**]** under Part 12ZA of that Act,

(cb) statutory adoption pay under Part 12ZB of that Act,**]**

[F102(cc) statutory shared parental pay under Part 12ZC of that Act,**]**

[F103(cd) statutory parental bereavement pay under Part 12ZD of that Act,**]**

[F104(ce) any amount of qualifying tips, gratuities and service charges allocated to the worker under Part 2B of this Act,**]**

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(d) a guarantee payment (under section 28 of this Act),

(e) any payment for time off under Part VI of this Act or section 169 of the [M3]Trade Union and Labour Relations (Consolidation) Act 1992 (payment for time off for carrying out trade union duties etc.),

(f) remuneration on suspension on medical grounds under section 64 of this Act and remuneration on suspension on maternity grounds under section 68 of this Act,

[[F105](fa) remuneration on ending the supply of an agency worker on maternity grounds under section 68C of this Act.**]**

(g) any sum payable in pursuance of an order for reinstatement or re-engagement under section 113 of this Act,

(h) any sum payable in pursuance of an order for the continuation of a contract of employment under section 130 of this Act or section 164 of the Trade Union and Labour Relations (Consolidation) Act 1992, and

(j) remuneration under a protective award under section 189 of that Act,

but excluding any payments within subsection (2).

(2) Those payments are—

(a) any payment by way of an advance under an agreement for a loan or by way of an advance of wages (but without prejudice to the application of section 13 to any deduction made from the worker's wages in respect of any such advance),

(b) any payment in respect of expenses incurred by the worker in carrying out his employment,

(c) any payment by way of a pension, allowance or gratuity in connection with the worker's retirement or as compensation for loss of office,

(d) any payment referable to the worker's redundancy, and

(e) any payment to the worker otherwise than in his capacity as a worker.

(3) Where any payment in the nature of a non-contractual bonus is (for any reason) made to a worker by his employer, the amount of the payment shall for the purposes of this Part—

(a) be treated as wages of the worker, and

(b) be treated as payable to him as such on the day on which the payment is made.

(4) In this Part "gross amount", in relation to any wages payable to a worker, means the total amount of those wages before deductions of whatever nature.

(5) For the purposes of this Part any monetary value attaching to any payment or benefit in kind furnished to a worker by his employer shall not be treated as wages of the worker except in the case of any voucher, stamp or similar document which is—

(a) of a fixed value expressed in monetary terms, and

(b) capable of being exchanged (whether on its own or together with other vouchers, stamps or documents, and whether immediately or only after a time) for money, goods or services (or for any combination of two or more of those things).

Textual Amendments

F100 S. 27(1)(ca)(cb) inserted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 25**; S.I. 2002/2866, **art. 2(2)** Sch. 1 Pt. 2

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F101 Words in s. 27(1)(ca) substituted (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 30(a)**; S.I. 2014/1640, art. 7(m) (with art. 16)
F102 S. 27(1)(cc) inserted (1.12.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 30(b)**; S.I. 2014/1640, art. 5(2)(k)
F103 S. 27(1)(cd) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 21**; S.I. 2020/45, reg. 2
F104 S. 27(1)(ce) inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 11(b)**, 14(2); S.I. 2023/876, reg. 3(c)
F105 S. 27(1)(fa) inserted (1.10.2011) by The Agency Workers Regulations 2010 (S.I. 2010/93), Reg. 25, **Sch. 2 para. 10**

Marginal Citations
M2 1992 c. 4.
M3 1992 c. 52.

[F106PART 2A

ZERO HOURS WORKERS

Textual Amendments
F106 Pt. 2A (ss. 27A, 27B) inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 153(2)**, 164(1) (with s. 153(2)); S.I. 2015/1329, reg. 2(g)

27A Exclusivity terms unenforceable in zero hours contracts

(1) In this section "zero hours contract" means a contract of employment or other worker's contract under which—
(a) the undertaking to do or perform work or services is an undertaking to do so conditionally on the employer making work or services available to the worker, and
(b) there is no certainty that any such work or services will be made available to the worker.

(2) For this purpose, an employer makes work or services available to a worker if the employer requests or requires the worker to do the work or perform the services.

(3) Any provision of a zero hours contract which—
(a) prohibits the worker from doing work or performing services under another contract or under any other arrangement, or
(b) prohibits the worker from doing so without the employer's consent,
is unenforceable against the worker.

(4) Subsection (3) is to be disregarded for the purposes of determining any question whether a contract is a contract of employment or other worker's contract.

27B Power to make further provision in relation to zero hours workers

(1) The Secretary of State may by regulations make provision for the purpose of securing that zero hours workers, or any description of zero hours workers, are not restricted

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by any provision or purported provision of their contracts or arrangements with their employers from doing any work otherwise than under those contracts or arrangements.

(2) In this section, "zero hours workers" means—

(a) employees or other workers who work under zero hours contracts;

(b) individuals who work under non-contractual zero hours arrangements;

(c) individuals who work under worker's contracts of a kind specified by the regulations.

(3) The worker's contracts which may be specified by virtue of subsection (2)(c) are those in relation to which the Secretary of State considers it appropriate for provision made by the regulations to apply, having regard, in particular, to provision made by the worker's contracts as to income, rate of pay or working hours.

(4) In this section "non-contractual zero hours arrangement" means an arrangement other than a worker's contract under which—

(a) an employer and an individual agree terms on which the individual will do any work where the employer makes it available to the individual and the individual agrees to do it, but

(b) the employer is not required to make any work available to the individual, nor the individual required to accept it,

and in this section "employer", in relation to a non-contractual zero hours arrangement, is to be read accordingly.

(5) Provision that may be made by regulations under subsection (1) includes provision for—

(a) modifying—

(i) zero hours contracts;

(ii) non-contractual zero hours arrangements;

(iii) other worker's contracts;

(b) imposing financial penalties on employers;

(c) requiring employers to pay compensation to zero hours workers;

(d) conferring jurisdiction on employment tribunals;

(e) conferring rights on zero hours workers.

(6) Provision that may be made by virtue of subsection (5)(a) may, in particular, include provision for exclusivity terms in prescribed categories of worker's contracts to be unenforceable, in cases in which section 27A does not apply.

For this purpose an exclusivity term is any term by virtue of which a worker is restricted from doing any work otherwise than under the worker's contract.

(7) Regulations under this section may—

(a) make different provision for different purposes;

(b) make provision subject to exceptions.

(8) For the purposes of this section—

(a) "zero hours contract" has the same meaning as in section 27A;

(b) an employer makes work available to an individual if the employer requests or requires the individual to do it;

(c) references to work and doing work include references to services and performing them.

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(9) Nothing in this section is to be taken to affect any worker's contract except so far as any regulations made under this section expressly apply in relation to it.**]**

[F107PART 2B

TIPS, GRATUITIES AND SERVICE CHARGES

Textual Amendments

F107 Part 2B inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 1**, 14(2); S.I. 2023/876, reg. 3(a)

Requirement to deal with tips, gratuities and service charges

27C Qualifying tips, gratuities and service charges

(1) This Part makes provision for—

(a) how employers must deal with qualifying tips, gratuities and service charges, and

(b) the Secretary of State to issue a code of practice to promote fairness and transparency in relation to the distribution of qualifying tips, gratuities and service charges.

(2) In this Part "qualifying tips, gratuities and service charges" means—

(a) employer-received tips, and

(b) worker-received tips which—

(i) are subject to employer control, or

(ii) are connected with any other worker-received tips which are subject to employer control.

(3) An "employer-received tip" is an amount paid by a customer of an employer by way of a tip, gratuity or service charge (however described) which—

(a) is received upon its payment or subsequently by the employer or an associated person, or

(b) is received upon its payment by a person under a payment arrangement made between the employer and that person.

(4) A "worker-received tip" is an amount paid by a customer of an employer by way of a tip, gratuity or service charge (however described) which—

(a) is received upon its payment by a worker of the employer, and

(b) is not subsequently received by the employer or an associated person.

(5) For the purposes of subsection (2)(b)—

(a) a worker-received tip is subject to employer control if the employer or an associated person exercises control or significant influence over the allocation of the tip;

(b) a worker-received tip ("tip A") is connected with another worker-received tip which is subject to employer control ("tip B") if—

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(i) both tips are paid at, or are otherwise attributable to, the same place of business, and

(ii) tip A is paid later in the week, or in the week following the week, in which tip B is paid.

(6) In this section the "amount paid by a customer of an employer by way of a tip, gratuity or service charge" means the actual amount paid by the customer (and accordingly any deductions from the amount paid, whether deducted by the employer or any other person, are to be disregarded when determining the amount paid by the customer).

(7) An amount paid by a customer of an employer is not paid by way of a tip, gratuity or service charge to the extent that the amount represents payment of value added tax.

(8) If an amount is not paid in money, it can be a qualifying tip, gratuity or service charge only if it is paid in the form of a voucher, stamp, token or similar item which is—

(a) of a fixed value expressed in monetary terms, and

(b) capable of being exchanged (whether on its own or together with other vouchers, stamps, tokens or items, and whether immediately or only after a time) for money, goods or services (or for any combination of two or more of those things).

(9) In this section—

"payment arrangement" means an arrangement between an employer and another person under which payments made by customers of the employer are to be received by the other person instead of the employer;

"week" means any period of seven days beginning with a Monday (and ending with a Sunday).**]**

[F108 27D How tips etc must be dealt with

(1) An employer must ensure that the total amount of the qualifying tips, gratuities and service charges paid at, or otherwise attributable to, a place of business of the employer is allocated fairly between workers of the employer at that place of business.

(2) Where a worker is allocated an amount of employer-received tips in accordance with subsection (1), that amount is payable to the worker by the employer.

(3) In determining what would be a fair allocation of qualifying tips, gratuities and service charges under this section or section 27E (non-public places of business), regard must be had to the relevant provisions of any code of practice issued under this Part.

(4) See also sections 27E (non-public places of business) and 27F (independent troncs).

Textual Amendments

F108 Ss. 27D, 27E inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 2**, 14(2); S.I. 2023/876, reg. 3(a)

27E Non-public places of business

(1) This section applies where—

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(a) qualifying tips, gratuities and service charges are paid at, or are otherwise attributable to, a non-public place of business of an employer (the "non-public tips"), and

(b) the employer also has one or more public places of business.

(2) The employer may comply with the requirement in section 27D(1) to ensure that the total amount of the non-public tips is allocated fairly between workers of the employer at the non-public place of business by instead ensuring that the total amount of the non-public tips is allocated fairly between both—

(a) workers of the employer at the non-public place of business, and

(b) workers of the employer at one or more public places of business of the employer.

(3) In this section—

"non-public place of business" means a place of business that is not a public place of business;

"public place of business" means a place of business where interaction between—

(a) customers of the employer, and

(b) workers of the employer,

occurs wholly or mainly face-to-face.**]**

Textual Amendments

F108 Ss. 27D, 27E inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 2**, 14(2); S.I. 2023/876, reg. 3(a)

[F109 27F Independent troncs

(1) In this section "relevant tips" means the qualifying tips, gratuities and service charges that—

(a) are paid at, or are otherwise attributable to, a place of business of an employer, and

(b) are paid during a reference period.

(2) Where—

(a) the employer makes arrangements for the total amount of the relevant tips to be allocated between workers of the employer at the place of business by an independent tronc operator, and

(b) it is fair for the employer to make those arrangements,

the employer is to be treated as having ensured that the total amount of the relevant tips is allocated fairly between workers of the employer at the place of business in accordance with section 27D(1).

(3) Where—

(a) the employer makes arrangements for a part of the total amount of the relevant tips to be allocated between workers of the employer at the place of business by an independent tronc operator, and

(b) it is fair for the employer to make those arrangements,

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the employer is to be treated as having ensured that that part of the total amount of the relevant tips is allocated fairly between workers of the employer at the place of business in accordance with section 27D(1).

(4) In determining whether it would be fair for an employer to make the arrangements mentioned in subsection (2) or (3), regard must be had to the relevant provisions of any code of practice issued under this Part.

(5) Section 27D(2) does not apply to an amount which—

(a) by virtue of subsection (2) or (3), is treated as having been allocated fairly between workers, and

(b) is payable to the worker by the independent tronc operator.

(6) For the purposes of this section "an independent tronc operator" is a person who the employer reasonably considers to be operating, or intending to operate, independently of the employer, arrangements under which—

(a) the total amount of qualifying tips, gratuities and service charges subject to the arrangements is allocated between workers of the employer at the relevant place of business by the person,

(b) such allocated qualifying tips, gratuities and service charges are payable to such workers by the person or by the employer (or partly by the person and partly by the employer),

(c) amounts payable to workers by the person in accordance with paragraph (b) are not subject to unauthorised deductions by the person, and

(d) all payments made to workers in accordance with paragraph (b) are payments to which paragraph 5(1) of Part 10 of Schedule 3 to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (payments disregarded in the calculation of earnings)—

(i) applies by virtue of the payments meeting the condition in paragraph 5(3) of that Part, or

(ii) would apply by virtue of the payments meeting the condition in paragraph 5(3) of that Part if the modifications in subsection (7) were made to paragraph 5 of that Part.

(7) The modifications are—

(a) each reference to a "secondary contributor" is to be read as a reference to an "employer";

(b) each reference to an "earner" is to be read as a reference to a "worker".

(8) The Secretary of State may by regulations—

(a) amend the definition of "independent tronc operator" in this section in consequence of the making of social security contributions regulations, and

(b) consequentially amend any other provision of this Part.

(9) In this section—

"reference period" means a period of at least one day, as determined by the employer from time to time;

"social security contributions regulations" means any regulations making provision related to social security contributions of employers or workers;

"unauthorised deduction" means a deduction that is not required or authorised to be made by virtue of a statutory provision.**]**

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Textual Amendments

F109 S. 27F inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 3**, 14(2); S.I. 2023/876, reg. 3(a)

[F110 27G When tips etc must be dealt with

The employer must—

(a) ensure that a qualifying tip, gratuity or service charge is allocated in accordance with section 27D(1), and

(b) make any payment that the employer is required to make to a worker under section 27D(2) as a result of that allocation,

no later than the end of the month following the month in which the tip, gratuity or service charge was paid by the customer.**]**

Textual Amendments

F110 S. 27G inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 4**, 14(2); S.I. 2023/876, reg. 3(a)

[F111 27H Agency workers

(1) In this Part an "eligible agency worker" is an individual—

(a) who is supplied by a person (the "agent") to do work for another person (the "principal") under a contract or other arrangements made between the agent and the principal, but

(b) who is not, as respects that work, a worker of the principal because of the absence of a worker's contract between the individual and the principal, and

(c) who is not a party to a contract under which the individual undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the individual.

(2) Where an eligible agency worker does work for the principal at a place of business of the principal, this Part applies as if—

(a) the eligible agency worker were a worker of the principal, and

(b) the principal were the employer of the eligible agency worker.

(3) Where an amount is payable to an eligible agency worker under section 27D(2)—

(a) the amount may instead be paid to the agent (within the period specified in section 27G);

(b) the employer must not make any unauthorised deductions from the amount (whether or not the amount is paid to the agent under paragraph (a)).

(4) Where an amount is paid to the agent under subsection (3)—

(a) the amount becomes payable to the eligible agency worker by the agent before the end of the month after the month in which the agent is paid the amount under subsection (3), and

(b) the agent must not make any unauthorised deductions from the amount.

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(5) In this section "unauthorised deduction" means a deduction that is not required or authorised to be made by virtue of a statutory provision.

(6) In this Part a reference to an eligible agency worker includes, where the context requires, a reference to a former eligible agency worker.**]**

Textual Amendments

F111 S. 27H inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 5**, 14(2); S.I. 2023/876, reg. 3(a)

[F112 Information

Textual Amendments

F112 Ss. 27I, 27J and cross-heading inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 6**, 14(2); S.I. 2023/876, reg. 3(a)

27I Written policy

(1) Where qualifying tips, gratuities and service charges are paid at, or are otherwise attributable to, a place of business of an employer on more than an occasional and exceptional basis, the employer must have a written policy on dealing with qualifying tips, gratuities and service charges for the place of business.

(2) A written policy for a place of business must include the following information—

(a) whether the employer requires or encourages customers to pay tips, gratuities and service charges at the place of business;

(b) how the employer ensures that all qualifying tips, gratuities and service charges paid at, or otherwise attributable to, the place of business are dealt with in accordance with this Part, including how the employer allocates qualifying tips, gratuities and service charges between workers at the place of business.

(3) Where an employer is required by this section to have a written policy for a place of business, the employer must make the written policy available to all workers of the employer at the place of business.

(4) Subsection (5) applies in a case where—

(a) an employer is not required by this section to have a written policy for a place of business, but

(b) the employer would be required by this section to have such a written policy if worker-received tips paid at, or otherwise attributable to, the place of business were qualifying tips, gratuities and service charges.

(5) In that case, the employer must make the following information available to all workers of the employer at the place of business—

(a) the fact that the employer is not required by this section to have a written policy for the place of business, and

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(b) the reasons why the employer is not required by this section to have such a written policy.

(6) Where—

(a) an employer makes a written policy available to workers at a place of business under this section, and

(b) the employer subsequently amends that policy,

the employer must make the amended version of the policy available to all workers of the employer at the place of business.

27J Records

(1) Where qualifying tips, gratuities and service charges are paid at, or are otherwise attributable to, a place of business of an employer on more than an occasional and exceptional basis, the employer must—

(a) create a record of how every qualifying tip, gratuity and service charge paid at, or otherwise attributable to, the place of business has been dealt with in accordance with this Part, and

(b) maintain that record for a period of three years beginning with the date on which the qualifying tip, gratuity or service charge was paid.

(2) The record required by subsection (1) must include—

(a) the amount of qualifying tips, gratuities and service charges paid at, or otherwise attributable to, the place of business;

(b) the amount of those qualifying tips, gratuities and service charges—

(i) that the employer allocated to workers of the employer at the place of business;

(ii) that the employer arranged to be allocated to workers of the employer at the place of business by an independent tronc operator in accordance with section 27F.

(3) A worker of an employer may make a written request for the employer to provide the following records for a period specified in the request in relation to a place of business of the employer that the worker worked at—

(a) the amount of qualifying tips, gratuities and service charges paid at, or otherwise attributable to, the place of business;

(b) the amount of those qualifying tips, gratuities and service charges—

(i) that the employer allocated to the worker;

(ii) that the employer arranged to be allocated to workers of the employer at the place of business by an independent tronc operator in accordance with section 27F.

(4) Where—

(a) an employer receives a request from a worker under subsection (3) for records in relation to a place of business of the employer, and

(b) the employer is required by this section to maintain those records,

the employer must, within the response period, provide the worker with the requested records in respect of the period specified in the request or a substantially similar period.

(5) Subsection (6) applies in a case where—

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(a) an employer receives a request from a worker under subsection (3) for records in relation to a place of business of the employer,

(b) the employer is not required by this section to maintain those records, but

(c) the employer would be required by this section to maintain those records if worker-received tips paid at, or otherwise attributable to, the place of business were qualifying tips, gratuities and service charges.

(6) In that case, the employer must, within the response period, notify the worker—

(a) that the employer is not required by this section to maintain the requested records, and

(b) of the reasons why the employer is not required by this section to maintain those records.

(7) A worker may request records under this section in respect of a period only if—

(a) the period is a period of one month or two or more consecutive months,

(b) the period begins no more than three years before the date of the request,

(c) the period ends before the date of the request, and

(d) the worker worked for the employer at any time during each month that forms part of the request.

(8) A worker may not make more than one request for records under this section in any three month period.

(9) Except as provided by subsection (10), a disclosure of information required by subsection (4) does not breach—

(a) any obligation of confidence owed by the person making the disclosure, or

(b) any other restriction on the disclosure of information (however imposed).

(10) Subsection (4) does not require a disclosure of information that would contravene the data protection legislation (but in determining whether a disclosure would do so, the duty imposed by that subsection is to be taken into account).

(11) In this section—

"the data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act);

"date of the request" means the date that the request is received by the employer;

"response period" means the period of four weeks beginning with the date of the request.**]**

[F113 Enforcement

Textual Amendments

F113 Ss. 27K-27M and cross-heading inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 7**, 14(2); S.I. 2023/876, reg. 3(a)

27K Complaints to employment tribunal about tips etc

(1) A worker may present a complaint to an employment tribunal that the worker's employer has failed to comply with—

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(a) section 27D (how tips etc must be dealt with), or

(b) section 27G (when tips etc must be dealt with),

in relation to the worker.

(2) An eligible agency worker may also present a complaint to an employment tribunal that an agent has failed to comply with the requirement to make a payment to the eligible agency worker that the agent was required to make under section 27H(4).

(3) An employment tribunal must not consider a complaint under this section unless it is presented before the end of the period of twelve months beginning with the date of the failure to comply.

(4) But, if the employment tribunal is satisfied that it was not reasonably practicable for a complaint to be presented before the end of the relevant period of twelve months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

(5) If a complaint is presented under this section in respect of a series of failures to comply, the reference in subsection (3) to the date of the failure to comply is to the date of the last failure in the series.

(6) An eligible agency worker may present a complaint under subsection (2) whether or not the eligible agency worker also presents a complaint under subsection (1).

(7) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3).

27L Determination of complaints about tips etc

(1) If an employment tribunal finds a complaint under section 27K well founded—

(a) it must make a declaration to that effect, and

(b) it may—

(i) in the case of a complaint under section 27K(1), make an order requiring the employer to deal with qualifying tips, gratuities and service charges that were paid at, or were otherwise attributable to, a place of business of the employer in accordance with this Part;

(ii) in the case of a complaint under section 27K(2), make an order requiring the agent to make a payment to the eligible agency worker of the amount that the agent was required under section 27H to pay to the eligible agency worker.

(2) An order made under subsection (1)(b)(i) may in particular—

(a) require the employer to revise an allocation made by the employer under section 27D;

(b) make a recommendation to the employer regarding that allocation;

(c) require the employer to make a payment to one or more workers of the employer in accordance with this Part (including a worker who is not the complainant).

(3) A recommendation made under subsection (2)(b) is not binding on an employer, but is to be admissible in evidence in proceedings before an employment tribunal; and any provision of the recommendation which appears to the tribunal to be relevant to any question arising in the proceedings is to be taken into account in determining that question.

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(4) An order made under subsection (1)(b)(i) following a complaint presented by a worker does not prevent a different worker from presenting a complaint under this Part in relation to the same employer or the same qualifying tips, gratuities and service charges.

27M Compensation: dealing with tips etc

(1) If an employment tribunal makes a declaration under section 27L(1)(a), it may order the employer or agent (as the case may be) to pay to the complainant such amount, not exceeding £5,000, as the tribunal considers appropriate in all the circumstances to compensate the complainant for any financial loss sustained by the complainant which is attributable to the matter complained of.

(2) The tribunal may make an order under this section whether or not an order under section 27L(1)(b) has been made.**]**

[F114 27N Complaints to employment tribunal about information

(1) A worker may present a complaint to an employment tribunal that the worker's employer has failed to comply with a requirement in section 27I (written policy) or 27J (records).

(2) An employment tribunal must not consider a complaint under this section unless it is presented before the end of the period of three months beginning with the date of the failure to comply.

(3) But, if the employment tribunal is satisfied that it was not reasonably practicable for a complaint to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

(4) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).

Textual Amendments

F114 Ss. 27N, 27O inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 8**, 14(2); S.I. 2023/876, reg. 3(a)

27O Determination of complaints about information

(1) If an employment tribunal finds a complaint under section 27N well founded—

(a) it must make a declaration to that effect, and

(b) it may make an order requiring the employer to comply with the requirement in accordance with section 27I or 27J.

(2) If an employment tribunal makes a declaration under subsection (1)(a), it may order the employer to pay to the worker such amount, not exceeding £5,000, as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by the worker which is attributable to the matter complained of.

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(3) The tribunal may make an order under subsection (2) whether or not an order referred to in subsection (1)(b) has been made.**]**

Textual Amendments

F114 Ss. 27N, 27O inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 8**, 14(2); S.I. 2023/876, reg. 3(a)

[F115Code of practice about tips etc

Textual Amendments

F115 Ss. 27P-27T and cross-heading inserted (31.7.2023) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 9**, 14(2); S.I. 2023/876, reg. 3(b)

27P Issue of code of practice

(1) The Secretary of State may issue a code of practice under section 27Q for the purpose of promoting fairness and transparency in the distribution of qualifying tips, gratuities and service charges.

(2) The Secretary of State may from time to time revise the whole or any part of a code of practice and issue that revised code of practice under section 27Q.

27Q Procedure for issue of code of practice

(1) If the Secretary of State proposes to issue a code of practice under this section the Secretary of State must—

(a) consult ACAS;

(b) publish a draft of the code of practice;

(c) consider any representations made about the draft code of practice and modify the draft code of practice accordingly.

(2) If the Secretary of State decides to proceed with the draft code of practice, the Secretary of State must—

(a) lay it before both Houses of Parliament, and

(b) if it is approved by resolution of each House, issue the code of practice in the form of the draft.

(3) A code of practice issued under this section comes into effect on such day as the Secretary of State may by regulations appoint.

27R Consequential revision of code of practice

(1) A code of practice issued under section 27Q may be revised by the Secretary of State in accordance with this section for the purpose of bringing it into conformity with subsequent statutory provisions by the making of consequential amendments and the omission of obsolete passages.

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(2) In this section "subsequent statutory provisions" means provisions made by or under an Act of Parliament and coming into force after the code of practice was issued.

(3) If the Secretary of State proposes to revise a code of practice under this section, the Secretary of State must lay a draft of the revised code of practice before each House of Parliament.

(4) If within the period of 40 days beginning with the day on which the draft is laid before Parliament, or, if copies are laid before the two Houses on different days, with the later of the two days, either House so resolves, no further proceedings are to be taken thereon, but without prejudice to the laying before Parliament of a new draft.

(5) In reckoning the period of 40 days no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(6) If no such resolution is passed, the Secretary of State must issue the code of practice in the form of the draft and it comes into effect on such day as the Secretary of State may by regulations appoint.

27S Revocation of code of practice

A code of practice issued under this Part may be revoked by the Secretary of State by regulations.

27T Failure to comply with code of practice

(1) In proceedings before an employment tribunal, a code of practice issued under this Part is to be admissible in evidence, and any provision of the code of practice which appears to the tribunal to be relevant to any question arising in the proceedings is to be taken into account in determining that question.

(2) A failure on the part of an employer to observe any provision of a code of practice issued under this Part does not of itself render the employer liable to any proceedings.**]**

[F116 General

Textual Amendments

F116 Ss. 27U-27Y and cross-heading inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 10**, 14(2); S.I. 2023/876, reg. 3(c)

27U No restitution claims by employer

(1) This section applies where—

(a) a worker is allocated an amount of qualifying tips, gratuities and service charges in accordance with section 27D(1) (the "original allocation"),

(b) the employment tribunal makes an order under section 27L(1)(b)(i) that has the effect of requiring the employer to revise that allocation,

(c) the employer subsequently revises the amount of qualifying tips, gratuities and service charges allocated to the worker (the "revised allocation"), and

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(d) the amount of the revised allocation is less than the amount of the original allocation.

(2) The difference between the amount of the revised allocation and the amount of the original allocation is not payable by the worker to the employer (and accordingly the employer may not bring proceedings in a court or tribunal to recover from the worker or an agent (as the case may be) the difference between such amounts based wholly or partly on the employment tribunal order).

(3) For the meaning of "agent", see section 27H.

27V Relationship with contractual rights

(1) An entitlement of a worker to be allocated qualifying tips, gratuities and service charges under this Part does not affect any contractual right of the worker to receive an amount representing qualifying tips, gratuities and service charges under a contract of employment ("contractual tips").

(2) But—

(a) any contractual tips paid to a worker by an employer of that worker in respect of any period are to go towards discharging any liability of that employer to allocate qualifying tips, gratuities and service charges to that worker in respect of that period under this Part, and

(b) any qualifying tips, gratuities and service charges allocated by an employer to a worker under this Part in respect of any period are to go towards discharging any liability of that employer to pay contractual tips to that worker in respect of that period.

27W Restrictions on contracting out of this Part

(1) A prohibited reimbursement provision in an agreement between an employer and a worker (whether in a contract of employment or not) is void.

(2) A provision in an agreement is a "reimbursement provision" if it purports—

(a) to require the worker to make a payment to the employer, or

(b) to reduce any part of the wages payable to the worker by the employer.

(3) A reimbursement provision is "prohibited" if there is a relationship between—

(a) the payment or reduction, or the amount of the payment or reduction, under the reimbursement provision, and

(b) either—

(i) the worker being allocated qualifying tips, gratuities and service charges, or

(ii) the worker receiving worker-received tips that are not qualifying tips, gratuities and service charges.

(4) The circumstances in which there is a relationship of the kind mentioned in subsection (3) include circumstances where—

(a) the possibility of the worker being allocated qualifying tips, gratuities and service charges,

(b) the amount of qualifying tips, gratuities and service charges to be allocated to the worker,

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(c) the possibility of the worker receiving worker-received tips that are not qualifying tips, gratuities and service charges, or

(d) the amount of worker-received tips that are not qualifying tips, gratuities and service charges to be received by the worker,

is wholly or partly dependent on the reimbursement provision having been agreed.

(5) This section is without prejudice to section 203 (restrictions on contracting out).

27X Interpretation

(1) In this Part—

"customer", in relation to an employer, includes any person who is provided with services by the employer;

"place of business", in relation to an employer, includes any location where the activities of the employer's business are carried out (whether on a permanent or temporary basis).

(2) Where a qualifying tip, gratuity or service charge is—

(a) attributable to a place of business, but

(b) paid at a different place of business,

this Part applies to the qualifying tip, gratuity or service charge only in relation to the place of business to which it is attributable.

(3) Where an employer-received tip or a worker-received tip is neither paid at, nor otherwise attributable to, a place of business of the employer, this Part applies as if—

(a) the tip were attributable to a place of business of the employer, and

(b) all workers of the employer were at that place of business (whether or not those workers were also at any other place of business of the employer).

(4) Where subsection (3) applies in relation to two or more employer-received tips or worker-received tips, all such tips are attributable (in accordance with that subsection) to the same place of business of the employer.

(5) For the purposes of this Part an employer and a person are to be treated as associated if—

(a) one is a company of which the other (directly or indirectly) has control, or

(b) both are companies of which a third person (directly or indirectly) has control,

and "associated person" is to be construed accordingly.

27Y Application

This Part applies in respect of tips, gratuities and service charges paid by customers on or after the date on which section 27D comes into force.**]**

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PART III

GUARANTEE PAYMENTS

28 Right to guarantee payment.

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

(a) a diminution in the requirements of the employer's business for work of the kind which the employee is employed to do, or

(b) any other occurrence affecting the normal working of the employer's business in relation to work of the kind which the employee is employed to do,

the employee is entitled to be paid by his employer an amount in respect of that day.

(2) In this Act a payment to which an employee is entitled under subsection (1) is referred to as a guarantee payment.

(3) In this Part—

(a) a day falling within subsection (1) is referred to as a "workless day", and

(b) "workless period" has a corresponding meaning.

(4) In this Part "day" means the period of twenty-four hours from midnight to midnight.

(5) Where a period of employment begun on any day extends, or would normally extend, over midnight into the following day—

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

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

29 Exclusions from right to guarantee payment.

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

(2) [F117] . . . . . .

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

(4) An employee is not entitled to a guarantee payment in respect of a workless day if—

(a) his employer has offered to provide alternative work for that day which is suitable in all the circumstances (whether or not it is work which the employee is under his contract employed to perform), and

(b) the employee has unreasonably refused that offer.

(5) An employee is not entitled to a guarantee payment if he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

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Textual Amendments

F117 S. 29(2) omitted (1.10.2002) by virtue of The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(2)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

30 Calculation of guarantee payment.

(1) Subject to section 31, the amount of a guarantee payment payable to an employee in respect of any day is the sum produced by multiplying the number of normal working hours on the day by the guaranteed hourly rate; and, accordingly, no guarantee payment is payable to an employee in whose case there are no normal working hours on the day in question.

(2) The guaranteed hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day in respect of which the guarantee payment is payable.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—

(a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day in respect of which the guarantee payment is payable, or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in subsection (4) as are appropriate in the circumstances.

(4) The considerations referred to in subsection (3)(b) are—

(a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract, and

(b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

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

31 Limits on amount of and entitlement to guarantee payment.

(1) The amount of a guarantee payment payable to an employee in respect of any day shall not exceed **[**[F118]£38**]**.

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

(3) The specified number of days for the purposes of subsection (2) is the number of days, not exceeding five, on which the employee normally works in a week under the

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contract of employment in force on the day in respect of which the guarantee payment is claimed.

(4) But where that number of days varies from week to week or over a longer period, the specified number of days is instead—

(a) the average number of such days, not exceeding five, calculated by dividing by twelve the total number of such days during the period of twelve weeks ending with the last complete week before the day in respect of which the guarantee payment is claimed, and rounding up the resulting figure to the next whole number, or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under paragraph (a), a number which fairly represents the number of the employee's normal working days in a week, not exceeding five, having regard to such of the considerations specified in subsection (5) as are appropriate in the circumstances.

(5) The considerations referred to in subsection (4)(b) are—

(a) the average number of normal working days in a week which the employee could expect in accordance with the terms of his contract, and

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

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

[F119(7) The Secretary of State may by order vary—

(a) the length of the period specified in subsection (2);

(b) a limit specified in subsection (3) or (4).**]**

Textual Amendments

F118 Sum in s. 31(1) substituted (6.4.2024) by The Employment Rights (Increase of Limits) Order 2024 (S.I. 2024/213), art. 1(2), **Sch.** (with art. 4)

F119 S. 31(7) substituted (25.10.1999) by 1999 c. 26, **s. 35**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I**

Modifications etc. (not altering text)

C5 S. 31(1): power to amend conferred (17.12.1999) by 1999 c. 26, **s. 34(1)(a)**; S.I. 1999/3374, **art. 2(a)** (with art. 3)

32 Contractual remuneration.

(1) A right to a guarantee payment does not affect any right of an employee in relation to remuneration under his contract of employment ("contractual remuneration").

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

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

(a) where it is expressed to be calculated or payable by reference to that day or any part of that day, to the extent that it is so expressed, and

(b) in any other case, to the extent that it represents guaranteed remuneration, rather than remuneration for work actually done, and is referable to that day when apportioned rateably between that day and any other workless period falling within the period in respect of which the remuneration is paid.

33 Power to modify provisions about guarantee payments.

The Secretary of State may by order provide that in relation to any description of employees the provisions of—

(a) sections 28(4) and (5), 30, 31(3) to (5) (as originally enacted or as varied under section 31(7)) and 32, and

(b) so far as they apply for the purposes of those provisions, Chapter II of Part XIV and section 234,

shall have effect subject to such modifications and adaptations as may be prescribed by the order.

34 Complaints to [F120employment tribunals].

(1) An employee may present a complaint to an **[**F120employment tribunal**]** that his employer has failed to pay the whole or any part of a guarantee payment to which the employee is entitled.

(2) An **[**F120employment tribunal**]** shall not consider a complaint relating to a guarantee payment in respect of any day unless the complaint is presented to the tribunal—

(a) before the end of the period of three months beginning with that day, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[F121(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).**]**

(3) Where an **[**F120employment tribunal**]** finds a complaint under this section well-founded, the tribunal shall order the employer to pay to the employee the amount of guarantee payment which it finds is due to him.

Textual Amendments

F120 Words in s. 34(1)(2)(3) and sidenote to s. 34 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)(b)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F121 S. 34(2A) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(4)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

35 Exemption orders.

(1) Where—

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(a) at any time there is in force a collective agreement, or an agricultural wages order, under which employees to whom the agreement or order relates have a right to guaranteed remuneration, and

(b) on the application of all the parties to the agreement, or of the Board making the order, the appropriate Minister (having regard to the provisions of the agreement or order) is satisfied that section 28 should not apply to those employees,

he may make an order under this section excluding those employees from the operation of that section.

(2) In subsection (1) "agricultural wages order" means an order made under—

F122(a) . . . . . .

(b) section 3 of the M4Agricultural Wages (Scotland) Act 1949.

(3) In subsection (1) "the appropriate Minister" means—

(a) in relation to a collective agreement or to an order such as is referred to in subsection (2)(b), the Secretary of State, F123...

F123(b) . . . . . .

(4) The Secretary of State shall not make an order under this section in respect of an agreement unless—

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

(b) the agreement indicates that an employee to whom the agreement relates may present a complaint to an **[**F124employment tribunal**]** that his employer has failed to pay the whole or any part of any guaranteed remuneration to which the employee is entitled under the agreement.

(5) Where an order under this section is in force in respect of an agreement indicating as described in paragraph (b) of subsection (4) an **[**F124employment tribunal**]** shall have jurisdiction over a complaint such as is mentioned in that paragraph as if it were a complaint falling within section 34.

(6) An order varying or revoking an earlier order under this section may be made in pursuance of an application by all or any of the parties to the agreement in question, or the Board which made the order in question, or in the absence of such an application.

Textual Amendments

F122 S. 35(2)(a) repealed (1.10.2013 for E.) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 20 para. 2**; S.I. 2013/1455, art. 3(b), Sch. 2 (with art. 4(2)(4)) (as amended (7.9.2013) by S.I. 2013/2271, art. 2)

F123 S. 35(3)(b) and word in s. 35(3)(a) repealed (1.10.2013 for E.) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 20 para. 2**; S.I. 2013/1455, art. 3(b), Sch. 2 (with art. 4(2)(4)) (as amended (7.9.2013) by S.I. 2013/2271, art. 2)

F124 Words in s. 35(5) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

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Marginal Citations
M4 1949 c. 30.

PART IV

SUNDAY WORKING FOR SHOP AND BETTING WORKERS

Protected shop workers and betting workers

36 Protected shop workers and betting workers.

(1) Subject to subsection (5), a shop worker or betting worker is to be regarded as "protected" for the purposes of any provision of this Act if (and only if) subsection (2) or (3) applies to him.

(2) This subsection applies to a shop worker or betting worker if—

(a) on the day before the relevant commencement date he was employed as a shop worker or a betting worker but not to work only on Sunday,

(b) he has been continuously employed during the period beginning with that day and ending with the day which, in relation to the provision concerned, is the appropriate date, and

(c) throughout that period, or throughout every part of it during which his relations with his employer were governed by a contract of employment, he was a shop worker or a betting worker.

(3) This subsection applies to any shop worker or betting worker whose contract of employment is such that under it he—

(a) is not, and may not be, required to work on Sunday, and

(b) could not be so required even if the provisions of this Part were disregarded.

(4) Where on the day before the relevant commencement date an employee's relations with his employer had ceased to be governed by a contract of employment, he shall be regarded as satisfying subsection (2)(a) if—

(a) that day fell in a week which counts as a period of employment with that employer under section 212(2) or (3) or under regulations under section 219, and

(b) on the last day before the relevant commencement date on which his relations with his employer were governed by a contract of employment, the employee was employed as a shop worker or a betting worker but not to work only on Sunday.

(5) A shop worker is not a protected shop worker, and a betting worker is not a protected betting worker, if—

(a) he has given his employer an opting-in notice on or after the relevant commencement date, and

(b) after giving the notice, he has expressly agreed with his employer to do shop work, or betting work, on Sunday or on a particular Sunday.

(6) In this Act "opting-in notice", in relation to a shop worker or a betting worker, means written notice, signed and dated by the shop worker or betting worker, in which the

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shop worker or betting worker expressly states that he wishes to work on Sunday or that he does not object to Sunday working.

(7) **[**F125Subject to subsection (8),**]** in this Act "the relevant commencement date" means—

(a) in relation to a shop worker, 26th August 1994, and

(b) in relation to a betting worker, 3rd January 1995.

[F126(8) In any provision of this Act which applies to Scotland by virtue of section 1(5) of the Sunday Working (Scotland) Act 2003 (extension to Scotland of provisions which refer to shop workers and betting workers), " the relevant commencement date " means, in relation to Scotland, the date on which that section came into force. **]**

Extent Information

E1 S. 36, which previously extended to England and Wales only, extends to England and Wales and Scotland from 6.4.2004 by virtue of the amendment to s. 244(2) by Sunday Working (Scotland) Act 2003 (c. 18), **ss. 1(5)**, 3; S.I. 2004/958, **art. 2**

Textual Amendments

F125 Words in s. 36(7) inserted (6.4.2004) by Sunday Working (Scotland) Act 2003 (c. 18), **s. 1(2)(a)**; S.I. 2004/958, **art. 2**

F126 S. 36(8) added (6.4.2004) by Sunday Working (Scotland) Act 2003 (c. 18), **s. 1(2)(b)**; S.I. 2004/958, **art. 2**

37 Contractual requirements relating to Sunday work.

(1) Any contract of employment under which a shop worker or betting worker who satisfies section 36(2)(a) was employed on the day before the relevant commencement date is unenforceable to the extent that it—

(a) requires the shop worker to do shop work, or the betting worker to do betting work, on Sunday on or after that date, or

(b) requires the employer to provide the shop worker with shop work, or the betting worker with betting work, on Sunday on or after that date.

(2) Subject to subsection (3), any agreement entered into after the relevant commencement date between a protected shop worker, or a protected betting worker, and his employer is unenforceable to the extent that it—

(a) requires the shop worker to do shop work, or the betting worker to do betting work, on Sunday, or

(b) requires the employer to provide the shop worker with shop work, or the betting worker with betting work, on Sunday.

(3) Where, after giving an opting-in notice, a protected shop worker or a protected betting worker expressly agrees with his employer to do shop work or betting work on Sunday or on a particular Sunday (and so ceases to be protected), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.

F127(4) . . . . . .

(5) For the purposes of section 36(2)(b), the appropriate date—

(a) in relation to subsections (2) and (3) of this section, is the day on which the agreement is entered into, F128. . .

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F127(b) . . . . . .

Extent Information

E2 S. 37, which previously extended to England and Wales only, extends to England and Wales and Scotland from 6.4.2004 by virtue of the amendment to s. 244(2) by Sunday Working (Scotland) Act 2003 (c. 18), **ss. 1(5)**, 3; S.I. 2004/958, **art. 2**

Textual Amendments

F127 S. 37(4)(5)(b) repealed (15.12.1999) by 1999 c. 26, s. 9, Sch. 4 Pt. III para. 6(a)(c), **Sch. 9(2)**; S.I. 1999/2830, art. 2(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

F128 Word "and" after s. 37(5)(a) repealed (15.12.1999) by 1999 c. 26, s. 9, Sch. 4 Pt. III para. 6(b), **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

38 Contracts with guaranteed hours.

(1) This section applies where—

(a) under the contract of employment under which a shop worker or betting worker who satisfies section 36(2)(a) was employed on the day before the relevant commencement date, the employer is, or may be, required to provide him with shop work, or betting work, for a specified number of hours each week,

(b) under the contract the shop worker or betting worker was, or might have been, required to work on Sunday before that date, and

(c) the shop worker has done shop work, or the betting worker betting work, on Sunday in that employment (whether or not before that day) but has, on or after that date, ceased to do so.

(2) So long as the shop worker remains a protected shop worker, or the betting worker remains a protected betting worker, the contract shall not be regarded as requiring the employer to provide him with shop work, or betting work, on weekdays in excess of the hours normally worked by the shop worker or betting worker on weekdays before he ceased to do shop work, or betting work, on Sunday.

(3) For the purposes of section 36(2)(b), the appropriate date in relation to this section is any time in relation to which the contract is to be enforced.

39 Reduction of pay etc.

(1) This section applies where—

(a) under the contract of employment under which a shop worker or betting worker who satisfies section 36(2)(a) was employed on the day before the relevant commencement date, the shop worker or betting worker was, or might have been, required to work on Sunday before the relevant commencement date,

(b) the shop worker has done shop work, or the betting worker has done betting work, on Sunday in that employment (whether or not before that date) but has, on or after that date, ceased to do so, and

(c) it is not apparent from the contract what part of the remuneration payable, or of any other benefit accruing, to the shop worker or betting worker was intended to be attributable to shop work, or betting work, on Sunday.

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(2) So long as the shop worker remains a protected shop worker, or the betting worker remains a protected betting worker, the contract shall be regarded as enabling the employer to reduce the amount of remuneration paid, or the extent of the other benefit provided, to the shop worker or betting worker in respect of any period by the relevant proportion.

(3) In subsection (2) "the relevant proportion" means the proportion which the hours of shop work, or betting work, which (apart from this Part) the shop worker, or betting worker, could have been required to do on Sunday in the period ("the contractual Sunday hours") bears to the aggregate of those hours and the hours of work actually done by the shop worker, or betting worker, in the period.

(4) Where, under the contract of employment, the hours of work actually done on weekdays in any period would be taken into account in determining the contractual Sunday hours, they shall be taken into account in determining the contractual Sunday hours for the purposes of subsection (3).

(5) For the purposes of section 36(2)(b), the appropriate date in relation to this section is the end of the period in respect of which the remuneration is paid or the benefit accrues.

Opting-out of Sunday work

40 Notice of objection to Sunday working.

(1) A shop worker or betting worker to whom this section applies may at any time give his employer written notice, signed and dated by the shop worker or betting worker, to the effect that he objects to Sunday working.

(2) In this Act "opting-out notice" means a notice given under subsection (1) by a shop worker or betting worker to whom this section applies.

(3) This section applies to any shop worker or betting worker who under his contract of employment—

(a) is or may be required to work on Sunday (whether or not as a result of previously giving an opting-in notice), but

(b) is not employed to work only on Sunday.

Extent Information

E3 S. 40, which previously extended to England and Wales only, extends to England and Wales and Scotland from 6.4.2004 by virtue of the amendment to s. 244(2) by Sunday Working (Scotland) Act 2003 (c. 18), **ss. 1(5)**, 3; S.I. 2004/958, **art. 2**

41 Opted-out shop workers and betting workers.

(1) Subject to subsection (2), a shop worker or betting worker is to be regarded as "opted-out" for the purposes of any provision of this Act if (and only if)—

(a) he has given his employer an opting-out notice,

(b) he has been continuously employed during the period beginning with the day on which the notice was given and ending with the day which, in relation to the provision concerned, is the appropriate date, and

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(c) throughout that period, or throughout every part of it during which his relations with his employer were governed by a contract of employment, he was a shop worker or a betting worker.

(2) A shop worker is not an opted-out shop worker, and a betting worker is not an opted-out betting worker, if—

(a) after giving the opting-out notice concerned, he has given his employer an opting-in notice, and

(b) after giving the opting-in notice, he has expressly agreed with his employer to do shop work, or betting work, on Sunday or on a particular Sunday.

[F129(3) In this Act "notice period", in relation to an opted-out shop worker or an opted-out betting worker, means—

(a) in the case of an opted-out shop worker who does shop work in or about a large shop, the period of one month beginning with the day on which the opting-out notice concerned was given;

(b) in any other case, the period of three months beginning with that day.

This subsection is subject to sections 41D(2) and 42(2).**]**

Extent Information

E4 S. 41, which previously extended to England and Wales only, extends to England and Wales and Scotland from 6.4.2004 by virtue of the amendment to s. 244(2) by Sunday Working (Scotland) Act 2003 (c. 18), **ss. 1(5)**, 3; S.I. 2004/958, **art. 2**

Textual Amendments

F129 S. 41(3) substituted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 2**

Modifications etc. (not altering text)

C6 S. 41(3) modified (E.W.) (1.5.2012) by Sunday Trading (London Olympic Games and Paralympic Games) Act 2012 (c. 12), **s. 3(3)**

C7 S. 41(3) modified (E.W.) (1.5.2012) by Sunday Trading (London Olympic Games and Paralympic Games) Act 2012 (c. 12), **ss. 2(1)**, 3(1)

[F130**41A Notice of objection by shop workers to working additional hours on Sunday**

(1) A shop worker may at any time give to his or her employer a written notice, signed and dated by the shop worker, to the effect that he or she objects to doing shop work for additional hours on Sunday.

(2) In this Part—

"additional hours" means any number of hours of shop work that a shop worker is (or could be) required to work under a contract of employment on Sunday that are (or would be) in excess of the shop worker's normal Sunday working hours;

"objection notice" means a notice given under subsection (1).

(3) The "normal Sunday working hours" of a shop worker are to be calculated in accordance with regulations.

(4) Regulations under this section may provide—

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(a) for the calculation to be determined (for example) by reference to the average number of hours that the shop worker has worked on Sundays during a period specified or described in the regulations;

(b) for a calculation of the kind mentioned in paragraph (a) to be varied in special cases;

(c) for the right to give an objection notice not to be exercisable in special cases (and subsection (1) is subject to provision made by virtue of this paragraph).

(5) Provision under subsection (4)(b) or (c) may, in particular, include provision—

(a) about how the calculation of normal Sunday working hours is to be made in the case of a shop worker who has not been employed for a sufficient period of time to enable a calculation to be made as otherwise provided for in the regulations;

(b) for the right to give an objection notice not to be exercisable by such a shop worker until he or she has completed a period of employment specified or described in the regulations.

(6) But regulations under this section may not include provision preventing a shop worker who has been continuously employed under a contract of employment for a period of one year or more from giving to the employer an objection notice.

(7) Regulations under this section may make different provision for different purposes.

Textual Amendments

F130 Ss. 41A-41D inserted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 3**

41B Explanatory statement: persons who become shop workers

(1) This section applies where a person becomes a shop worker who, under a contract of employment, is or may be required to do shop work on Sundays.

(2) The employer must give to the shop worker a written statement informing the shop worker of the following rights—

(a) the right to object to working on Sundays by giving the employer an opting-out notice (if section 40 applies to the shop worker);

(b) the right to object to doing shop work for additional hours on Sundays by giving the employer an objection notice.

(3) The statement must be given before the end of the period of two months beginning with the day on which the person becomes a shop worker as mentioned in subsection (1).

(4) An employer does not fail to comply with subsections (2) and (3) in a case where, before the end of the period referred to in subsection (3), the shop worker has given to the employer an opting-out notice (and that notice has not been withdrawn).

(5) A statement under this section must comply with such requirements as to form and content as regulations may provide.

(6) Regulations under this section may make different provision for different purposes.

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Textual Amendments

F130 Ss. 41A-41D inserted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 3**

41C Explanatory statement: shop workers at commencement date

(1) This section applies where—

(a) under a contract of employment a shop worker is or may be required to do shop work on Sundays, and

(b) the shop worker was employed under that contract on the day before the commencement date.

(2) The shop worker's employer must give to the shop worker a written statement informing the shop worker of the rights mentioned in section 41B(2).

(3) The statement must be given before the end of the period of two months beginning with the commencement date.

(4) An employer does not fail to comply with subsections (2) and (3) in a case where, before the end of the period referred to in subsection (3), the shop worker has given to the employer an opting-out notice (and that notice has not been withdrawn).

(5) A statement under this section must comply with such requirements as to form and content as regulations may provide.

(6) Regulations under this section may make different provision for different purposes.

(7) In this section "commencement date" means the date appointed by regulations under section 44 of the Enterprise Act 2016 for the coming into force of section 33 of, and Schedule 5 to, that Act.

Textual Amendments

F130 Ss. 41A-41D inserted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 3**

41D Failure to give explanatory statement under section 41B or 41C

(1) This section applies if an employer fails to give to a shop worker a written statement in accordance with—

(a) section 41B(2) and (3), or

(b) section 41C(2) and (3).

(2) If the shop worker gives to the employer an opting-out notice, the notice period under section 41(3) that applies in relation to the shop worker is varied as follows—

(a) if the notice period under that provision would have been one month, it becomes 7 days instead;

(b) if the notice period under that provision would have been three months, it becomes one month instead.

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(3) If the shop worker gives to the employer an objection notice, the relevant period under section 43ZA(2) that applies in relation to the shop worker is varied as follows—

(a) if the relevant period under that provision would have been one month, it becomes 7 days instead;

(b) if the relevant period under that provision would have been three months, it becomes one month instead.**]**

Textual Amendments

F130 Ss. 41A-41D inserted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 3**

42 Explanatory statement [F131: betting workers].

(1) Where a person becomes a F132... betting worker to whom section 40 applies, his employer shall, before the end of the period of two months beginning with the day on which that person becomes such a worker, give him a written statement in the prescribed form.

(2) If—

(a) an employer fails to comply with subsection (1) in relation to any F133... betting worker, and

(b) the F134... betting worker, on giving the employer an opting-out notice, becomes F135... an opted-out betting worker,

section 41(3) has effect in relation to the F136... betting worker with the substitution for "three months" of "one month".

(3) An employer shall not be regarded as failing to comply with subsection (1) in any case where, before the end of the period referred to in that subsection, the F137... betting worker has given him an opting-out notice.

F138(4) . . . . . .

(5) Subject to subsection (6), the prescribed form in the case of a betting worker is as follows—

" Statutory Rights in Relation to Sunday Betting Work

You have become employed under a contract of employment under which you are or can be required to do Sunday betting work, that is to say, work—

at a track on a Sunday on which your employer is taking bets at the track, or

in a licensed betting office on a Sunday on which it is open for business.

However, if you wish, you can give a notice, as described in the next paragraph, to your employer and you will then have the right not to do Sunday betting work once three months have passed from the date on which you gave the notice.

Your notice must—

be in writing;

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be signed and dated by you;

say that you object to doing Sunday betting work.

For three months after you give the notice, your employer can still require you to do all the Sunday betting work your contract provides for. After the three month period has ended, you have the right to complain to an **[**F139employment tribunal**]** if, because of your refusal to do Sunday betting work, your employer—

dismisses you, or

does something else detrimental to you, for example, failing to promote you.

Once you have the rights described, you can surrender them only by giving your employer a further notice, signed and dated by you, saying that you wish to do Sunday betting work or that you do not object to doing Sunday betting work and then agreeing with your employer to do such work on Sundays or on a particular Sunday."

(6) The Secretary of State may by order amend the prescribed **[**F140form**]** set out in **[**F141subsection (5)**]**.

Extent Information

E5 S. 42, which previously extended to England and Wales only, extends to England and Wales and Scotland from 6.4.2004 by virtue of the amendment to s. 244(2) by Sunday Working (Scotland) Act 2003 (c. 18), **ss. 1(5)**, 3; S.I. 2004/958, **art. 2**

Textual Amendments

F131 Words in s. 42 heading inserted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 4(2)**

F132 Words in s. 42(1) omitted (4.5.2016 for specified purposes) by virtue of Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 4(3)**

F133 Words in s. 42(2)(a) omitted (4.5.2016 for specified purposes) by virtue of Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 4(4)(a)**

F134 Words in s. 42(2)(b) omitted (4.5.2016 for specified purposes) by virtue of Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 4(4)(b)(i)**

F135 Words in s. 42(2)(b) omitted (4.5.2016 for specified purposes) by virtue of Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 4(4)(b)(ii)**

F136 Words in s. 42(2) omitted (4.5.2016 for specified purposes) by virtue of Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 4(4)(c)**

F137 Words in s. 42(3) omitted (4.5.2016 for specified purposes) by virtue of Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 4(5)**

F138 S. 42(4) omitted (4.5.2016 for specified purposes) by virtue of Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 4(6)**

F139 Words in s. 42(4)(5) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F140 Word in s. 42(6) substituted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 4(7)(a)**

F141 Words in s. 42(6) substituted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 4(7)(b)**

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Modifications etc. (not altering text)

C8 S. 42(2) modified (E.W.) (1.5.2012) by Sunday Trading (London Olympic Games and Paralympic Games) Act 2012 (c. 12), **ss. 2(2)**, 3(1)

43 Contractual requirements relating to Sunday work [F142: opting-out notices].

(1) Where a shop worker or betting worker gives his employer an opting-out notice, the contract of employment under which he was employed immediately before he gave that notice becomes unenforceable to the extent that it—

(a) requires the shop worker to do shop work, or the betting worker to do betting work, on Sunday after the end of the notice period, or

(b) requires the employer to provide the shop worker with shop work, or the betting worker with betting work, on Sunday after the end of that period.

(2) Subject to subsection (3), any agreement entered into between an opted-out shop worker, or an opted-out betting worker, and his employer is unenforceable to the extent that it—

(a) requires the shop worker to do shop work, or the betting worker to do betting work, on Sunday after the end of the notice period, or

(b) requires the employer to provide the shop worker with shop work, or the betting worker with betting work, on Sunday after the end of that period.

(3) Where, after giving an opting-in notice, an opted-out shop worker or an opted-out betting worker expressly agrees with his employer to do shop work or betting work on Sunday or on a particular Sunday (and so ceases to be opted-out), his contract of employment shall be taken to be varied to the extent necessary to give effect to the terms of the agreement.

F143(4) . . . . . .

(5) For the purposes of section 41(1)(b), the appropriate date—

(a) in relation to subsections (2) and (3) of this section, is the day on which the agreement is entered into, F144. . .

F143(b) . . . . . .

Extent Information

E6 S. 43, which previously extended to England and Wales only, extends to England and Wales and Scotland from 6.4.2004 by virtue of the amendment to s. 244(2) by Sunday Working (Scotland) Act 2003 (c. 18), **ss. 1(5)**, 3; S.I. 2004/958, **art. 2**

Textual Amendments

F142 Words in s. 43 heading inserted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 5**

F143 S. 43(4)(5)(b) repealed (15.12.1999) by 1999 c. 26, s. 9, Sch. 4 Pt. III para. 7(a)(c), **Sch. 9(2)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

F144 Word "and" after s. 43(5)(a) repealed (15.12.1999) by 1999 c. 26, s. 9, Sch. 4 Pt. III para. 7(b), **Sch. 9(2)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

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[F145 43ZA Contractual requirements relating to working additional hours on Sundays: objection notices

(1) Where a shop worker gives to his or her employer an objection notice, any agreement entered into between the shop worker and the employer becomes unenforceable to the extent that—

(a) it requires the shop worker to do shop work for additional hours on Sunday after the end of the relevant period, or

(b) it requires the employer to provide the shop worker with shop work for additional hours on Sunday after the end of that period.

(2) The "relevant period" is—

(a) in the case of a shop worker who is or may be required to do shop work in or about a large shop, the period of one month beginning with the day on which the objection notice is given;

(b) in any other case, the period of three months beginning with that day.

This subsection is subject to section 41D(3).

(3) A shop worker who has given an objection notice may revoke the notice by giving a further written notice to the employer.

(4) Where—

(a) a shop worker gives to the employer a notice under subsection (3), and

(b) after giving the notice the shop worker expressly agrees with the employer to do shop work for additional hours on Sunday (whether on Sundays generally or on a particular Sunday),

the contract of employment between the shop worker and the employer is to be taken to be varied to the extent necessary to give effect to the terms of the agreement.

(5) The reference in subsection (1) to any agreement—

(a) includes the contract of employment under which the shop worker is employed immediately before giving the objection notice;

(b) includes an agreement of a kind mentioned in subsection (4), or a contract of employment as taken to be varied under that subsection, only if an objection notice is given in relation to the working of additional hours under that agreement or contract as varied.

Textual Amendments

F145 Ss. 43ZA, 43ZB inserted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 6**

43ZB Interpretation

(1) In this Part—

"additional hours" has the meaning given in section 41A(2);

"large shop" means a shop which has a relevant floor area exceeding 280 square metres;

"objection notice" has the meaning given in section 41A(2);

"regulations" means regulations made by the Secretary of State.

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(2) In the definition of "large shop" in subsection (1)—

(a) "shop" means any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods;

(b) "relevant floor area" means the internal floor area of so much of the large shop in question as consists of or is comprised in a building.

(3) For the purposes of subsection (2), any part of the shop which is not used for the serving of customers in connection with the sale or display of goods is to be disregarded.

(4) The references in subsections (2) and (3) to the sale of goods does not include—

(a) the sale of meals, refreshments or alcohol (within the meaning of the Licensing Act 2003 or, in relation to Scotland, the Licensing (Scotland) Act 2005 (asp 16)) for consumption on the premises on which they are sold, or

(b) the sale of meals or refreshments prepared to order for immediate consumption off those premises.**]**

Textual Amendments

F145 Ss. 43ZA, 43ZB inserted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 6**

[F146PART IVA

PROTECTED DISCLOSURES

Textual Amendments

F146 Pt. IVA (ss. 43A-43L) inserted (2.7.1998 for specified purposes and otherwise 2.7.1999) by 1998 c. 23, **s. 1**; S.I. 1999/1547, **art. 2**

43A Meaning of "protected disclosure".

In this Act a " protected disclosure " means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

43B Disclosures qualifying for protection.

(1) In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, **[**F147 is made in the public interest and **]** tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

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(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part " the relevant failure ", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

Textual Amendments

F147 Words in s. 43B(1) inserted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 17**, 103(2) (with s. 24(6))

43C Disclosure to employer or other responsible person.

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure [F148] ...—

(a) to his employer, or

(b) where the worker reasonably believes that the relevant failure relates solely or mainly to—

(i) the conduct of a person other than his employer, or

(ii) any other matter for which a person other than his employer has legal responsibility,

to that other person.

(2) A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer.

Textual Amendments

F148 Words in s. 43C(1) omitted (25.6.2013) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 18(1)(a)**, 103(2) (with s. 24(6))

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43D Disclosure to legal adviser.

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

43E Disclosure to Minister of the Crown.

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

(a) the worker's employer is—

(i) an individual appointed under any enactment **[**F149(including any enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament)**]** by a Minister of the Crown **[**F149or a member of the Scottish Executive**]**, or

(ii) a body any of whose members are so appointed, and

(b) the disclosure is made F150 ... to a Minister of the Crown **[**F149 or a member of the Scottish Executive **]** .

Textual Amendments

F149 Words in s. 43E inserted (27.7.2000) by S.I. 2000/2040, art. 2, **Sch. Pt. I para. 19(2)(3)** (with art. 3)

F150 Words in s. 43E(b) omitted (25.6.2013) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 18(1)(b)**, 103(2) (with s. 24(6))

43F Disclosure to prescribed person.

(1) A qualifying disclosure is made in accordance with this section if the worker—

(a) makes the disclosure F151 ... to a person prescribed by an order made by the Secretary of State for the purposes of this section, and

(b) reasonably believes—

(i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and

(ii) that the information disclosed, and any allegation contained in it, are substantially true.

(2) An order prescribing persons for the purposes of this section may specify persons or descriptions of persons, and shall specify the descriptions of matters in respect of which each person, or persons of each description, is or are prescribed.

Textual Amendments

F151 Words in s. 43F(1)(a) omitted (25.6.2013) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 18(1)(c)**, 103(2) (with s. 24(6))

[F152**43FA** Prescribed persons: duty to report on disclosures of information

(1) The Secretary of State may make regulations requiring a person prescribed for the purposes of section 43F to produce an annual report on disclosures of information made to the person by workers.

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(2) The regulations must set out the matters that are to be covered in a report, but must not require a report to provide detail that would enable either of the following to be identified—

(a) a worker who has made a disclosure;

(b) an employer or other person in respect of whom a disclosure has been made.

(3) The regulations must make provision about the publication of a report, and such provision may include (but is not limited to) any of the following requirements—

(a) to send the report to the Secretary of State for laying before Parliament;

(b) to include the report in another report or in information required to be published by the prescribed person;

(c) to publish the report on a website.

(4) The regulations may make provision about the time period within which a report must be produced and published.

(5) Regulations under subsections (2) to (4) may make different provision for different prescribed persons.**]**

Textual Amendments

F152 S. 43FA inserted (1.1.2016) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 148(2)**, 164(1); S.I. 2015/2029, reg. 2(a)

43G Disclosure in other cases.

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

F153(a) . . . . . .

(b) **[**F154the worker**]** reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,

(c) he does not make the disclosure for purposes of personal gain,

(d) any of the conditions in subsection (2) is met, and

(e) in all the circumstances of the case, it is reasonable for him to make the disclosure.

(2) The conditions referred to in subsection (1)(d) are—

(a) that, at the time he makes the disclosure, the worker reasonably believes that he will be subjected to a detriment by his employer if he makes a disclosure to his employer or in accordance with section 43F,

(b) that, in a case where no person is prescribed for the purposes of section 43F in relation to the relevant failure, the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed or destroyed if he makes a disclosure to his employer, or

(c) that the worker has previously made a disclosure of substantially the same information—

(i) to his employer, or

(ii) in accordance with section 43F.

(3) In determining for the purposes of subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to—

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(a) the identity of the person to whom the disclosure is made,
(b) the seriousness of the relevant failure,
(c) whether the relevant failure is continuing or is likely to occur in the future,
(d) whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person,
(e) in a case falling within subsection (2)(c)(i) or (ii), any action which the employer or the person to whom the previous disclosure in accordance with section 43F was made has taken or might reasonably be expected to have taken as a result of the previous disclosure, and
(f) in a case falling within subsection (2)(c)(i), whether in making the disclosure to the employer the worker complied with any procedure whose use by him was authorised by the employer.

(4) For the purposes of this section a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure as mentioned in subsection (2)(c) even though the subsequent disclosure extends to information about action taken or not taken by any person as a result of the previous disclosure.

Textual Amendments

F153 S. 43G(1)(a) omitted (25.6.2013) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 18(2)(a)**, 103(2) (with s. 24(6))

F154 Words in s. 43G(1)(b) substituted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 18(2)(b)**, 103(2) (with s. 24(6))

43H Disclosure of exceptionally serious failure.

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

F155(a) . . . . . .

(b) **[**F156the worker**]** reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,
(c) he does not make the disclosure for purposes of personal gain,
(d) the relevant failure is of an exceptionally serious nature, and
(e) in all the circumstances of the case, it is reasonable for him to make the disclosure.

(2) In determining for the purposes of subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to the identity of the person to whom the disclosure is made.

Textual Amendments

F155 S. 43H(1)(a) omitted (25.6.2013) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 18(3)(a)**, 103(2) (with s. 24(6))

F156 Words in s. 43H(1)(b) substituted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 18(3)(b)**, 103(2) (with s. 24(6))

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43J Contractual duties of confidentiality.

(1) Any provision in an agreement to which this section applies is void in so far as it purports to preclude the worker from making a protected disclosure.

(2) This section applies to any agreement between a worker and his employer (whether a worker's contract or not), including an agreement to refrain from instituting or continuing any proceedings under this Act or any proceedings for breach of contract.

43K Extension of meaning of "worker" etc. for Part IVA.

(1) For the purposes of this Part " worker " includes an individual who is not a worker as defined by section 230(3) but who—

(a) works or worked for a person in circumstances in which—

(i) he is or was introduced or supplied to do that work by a third person, and

(ii) the terms on which he is or was engaged to do the work are or were in practice substantially determined not by him but by the person for whom he works or worked, by the third person or by both of them,

(b) contracts or contracted with a person, for the purposes of that person's business, for the execution of work to be done in a place not under the control or management of that person and would fall within section 230(3)(b) if for "personally" in that provision there were substituted "(whether personally or otherwise)",

[F157(ba) works or worked as a person performing services under a contract entered into by him with **[**F158NHS England**][**F159under **[**F160section 83(2), 84, 92, 100, 107, 115(4), 117 or 134 of, or Schedule 12 to,**]** the National Health Service Act 2006 or with a Local Health Board under **[**F161section 41(2)(b), 42, 50, 57, 64 or 92 of, or Schedule 7 to,**]** the National Health Service (Wales) Act 2006**],]**

[F162(bb) works or worked as a person performing services under a contract entered into by him with a Health Board under section 17J **[**F163or 17Q**]** of the National Health Service (Scotland) Act 1978,**]**

(c) **[**F164works or worked as a person providing services**]** in accordance with arrangements made—

(i) by **[**F165**[**F158NHS England**][**F166under section 126 of the National Health Service Act 2006,**]** or**][**F167Local Health Board**]** under **[**F168section 71 or 80 of the National Health Service (Wales) Act 2006**]**, or

(ii) by a Health Board under section **[**F1692C, 17AA, 17C,**]**F170 . . . 25, 26 or 27 of the National Health Service (Scotland) Act 1978, or

[F171(cb) is or was provided with work experience provided pursuant to a course of education or training approved by, or under arrangements with, the Nursing and Midwifery Council in accordance with article 15(6)(a) of the Nursing and Midwifery Order 2001 (S.I. 2002/253), or**]**

(d) is or was provided with work experience provided pursuant to a training course or programme or with training for employment (or with both) otherwise than—

(i) under a contract of employment, or

(ii) by an educational establishment on a course run by that establishment;

and any reference to a worker's contract, to employment or to a worker being " employed " shall be construed accordingly.

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(2) For the purposes of this Part " employer " includes—

(a) in relation to a worker falling within paragraph (a) of subsection (1), the person who substantially determines or determined the terms on which he is or was engaged,

[F172(aa) in relation to a worker falling within paragraph (ba) of that subsection, **[**F173**[**F158NHS England**]**, or the**]** Local Health Board referred to in that paragraph,**]**

[F174(ab) in relation to a worker falling within paragraph (bb) of that subsection, the Health Board referred to in that paragraph,**]**

(b) in relation to a worker falling within paragraph (c) of that subsection, **[**F175NHS England or the board**]** referred to in that paragraph, and

(c) in relation to a worker falling within paragraph **[**F176(cb) or**]** (d) of that subsection, the person providing the work experience or training.

(3) In this section " educational establishment " includes any university, college, school or other educational establishment.

[F177(4) The Secretary of State may by order make amendments to this section as to what individuals count as " workers " for the purposes of this Part (despite not being within the definition in section 230(3)).

F177(5) An order under subsection (4) may not make an amendment that has the effect of removing a category of individual unless the Secretary of State is satisfied that there are no longer any individuals in that category.**]**

Textual Amendments

F157 S. 43K(1)(ba) inserted (1.4.2004 for E.W.) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 184, 199(1)(4), **Sch. 11 para. 65(2)**; S.I. 2004/288, **art. 5(2)(x)** (with transitional provision in art. 7(11)) (as amended by S.I. 2004/866, S.I. 2004/1009 and S.I. 2005/2925); S.I. 2004/480, **art. 4(2)(bb)** (as amended by S.I. 2004/1019 and S.I. 2006/345)

F158 Words in s. 43K substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 1 para. 1(1)**(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F159 Words in s. 43K(1)(ba) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 178(a)** (with Sch. 3 Pt. 1)

F160 Words in s. 43K(1)(ba) substituted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 20(2)(a)**, 103(2) (with s. 24(6))

F161 Words in s. 43K(1)(ba) substituted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 20(2)(b)**, 103(2) (with s. 24(6))

F162 S. 43K(1)(bb) inserted (1.4.2004) by The Primary Medical Services (Scotland) Act 2004 (Consequential Modifications) Order 2004 (S.I. 2004/957), art. 2, **Sch. para. 8(a)(i)**

F163 Words in s. 43K(1)(bb) inserted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 20(3)**, 103(2) (with s. 24(6))

F164 Words in s. 43K(1)(c) substituted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 20(4)(a)**, 103(2) (with s. 24(6))

F165 Words in s. 43K(1)(c)(i) inserted (1.10.2002) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), s. 2(5), **Sch. 2 Pt. 2 para. 63**; S.I. 2002/2478, arts. 2(1), **3(1)**

F166 Words in s. 43K(1)(c)(i) inserted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 178(b)(i)** (with Sch. 3 Pt. 1)

F167 Words in s. 43K(1)(c)(i) substituted (1.4.2007) by The References to Health Authorities Order 2007 (S.I. 2007/961), art. 3, **Sch.** {para. 27(2)}

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F168 Words in s. 43K(1)(c)(i) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 178(b)(ii)** (with Sch. 3 Pt. 1)

F169 Words in s. 43K(1)(c)(ii) inserted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 20(4)(b)**, 103(2) (with s. 24(6))

F170 Word in s. 43K(1)(c)(ii) repealed (1.4.2004) by The Primary Medical Services (Scotland) Act 2004 (Consequential Modifications) Order 2004 (S.I. 2004/957), art. 2, **Sch. para. 8(a)(iii)**

F171 S. 43K(1)(cb) inserted (6.4.2015) by The Protected Disclosures (Extension of Meaning of Worker) Order 2015 (S.I. 2015/491), arts. 1, **2(2)**

F172 S. 43K(2)(aa) inserted (1.4.2004 for E.W.) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 184, 199(1)(4), **Sch. 11 para. 65(3)**; S.I. 2004/288, **art. 5(2)(x)** (as amended by S.I. 2004/866, S.I. 2004/1009 and S.I. 2005/2925); S.I. 2004/480, **art. 4(2)(bb)** (as amended by S.I. 2004/1019 and S.I. 2006/345)

F173 Words in s. 43K(2)(aa) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 73(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F174 S. 43K(2)(ab) inserted (1.4.2004) by The Primary Medical Services (Scotland) Act 2004 (Consequential Modifications) Order 2004 (S.I. 2004/957), art. 2, **Sch. para. 8(b)**

F175 Words in s. 43K(2)(b) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 1 para. 5**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F176 Words in s. 43K(2)(c) inserted (6.4.2015) by The Protected Disclosures (Extension of Meaning of Worker) Order 2015 (S.I. 2015/491), arts. 1, **2(3)**

F177 S. 43K(4)(5) inserted (25.4.2013 for specified purposes) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 20(7)**, 103(1)(i)(2) (with s. 24(6))

Modifications etc. (not altering text)

C9 S. 43K(1)(ba) modified (E.) (1.4.2004) by The General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004 (S.I. 2004/865), **art. 109(2)(f)**

C10 S. 43K(1)(ba) modified (W.) (1.4.2004) by The General Medical Services Transitional and Consequential Provisions (Wales) (No. 2) Order 2004 (S.I. 2004/1016), **art. 85(2)(f)**

C11 S. 43K(1)(bb) modified (S.) (1.4.2004) by The General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004 (S.S.I. 2004/163), **art. 96(2)(d)**

C12 S. 43K(1)(c)(ii) modified (temp) (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 20(10)**, 103(2) (with s. 24(6))

[F178 43KA Application of this Part and related provisions to police

(1) For the purposes of—

(a) this Part,

(b) section 47B and sections 48 and 49 so far as relating to that section, and

(c) section 103A and the other provisions of Part 10 so far as relating to the right not to be unfairly dismissed in a case where the dismissal is unfair by virtue of section 103A,

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

(2) In this section " the relevant officer " means—

(a) in relation to a member of a police force or a special constable appointed for a police area, the chief officer of police;

[F179(b) in relation to a member of a police force seconded to the **[F180**National Crime Agency to serve as a National Crime Agency officer**]**, that Agency; and**]**

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(d) in relation to any other person holding the office of constable or an appointment as police cadet, the person who has the direction and control of the body of constables or cadets in question.**]**

Textual Amendments

F178 S. 43KA inserted (1.4.2004) by Police Reform Act 2002 (c. 30), **ss. 37(1)**, 108(2)-(5); S.I. 2004/913, **art. 2(b)**

F179 S. 43KA(2)(b) substituted for s. 43KA(2)(b)(c) (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 85**; S.I. 2006/378, art. 4(1), **Sch.** (subject to art. 4(2)-(7))

F180 Words in s. 43KA(2)(b) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 50**; S.I. 2013/1682, art. 3(v)

43L Other interpretative provisions.

(1) In this Part—

" qualifying disclosure " has the meaning given by section 43B;

" the relevant failure ", in relation to a qualifying disclosure, has the meaning given by section 43B(5).

(2) In determining for the purposes of this Part whether a person makes a disclosure for purposes of personal gain, there shall be disregarded any reward payable by or under any enactment.

(3) Any reference in this Part to the disclosure of information shall have effect, in relation to any case where the person receiving the information is already aware of it, as a reference to bringing the information to his attention.**]**

PART V

PROTECTION FROM SUFFERING DETRIMENT IN EMPLOYMENT

Rights not to suffer detriment

[F181 43M Jury service

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

(a) has been summoned under the Juries Act 1974, **[**F182 Part 1 of the Coroners and Justice Act 2009**]**, the Court of Session Act 1988 or the Criminal Procedure (Scotland) Act 1995 to attend for service as a juror, or

(b) has been absent from work because he attended at any place in pursuance of being so summoned.

(2) This section does not apply where the detriment in question amounts to dismissal within the meaning of Part 10.

(3) For the purposes of this section, an employee is not to be regarded as having been subjected to a detriment by a failure to pay remuneration in respect of a relevant period unless under his contract of employment he is entitled to be paid that remuneration.

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(4) In subsection (3) " a relevant period " means any period during which the employee is absent from work because of his attendance at any place in pursuance of being summoned as mentioned in subsection (1)(a). **]**

Textual Amendments

F181 S. 43M inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 40(1)**, 59(2)-(4); S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F182 Words in s. 43M(1)(a) substituted (25.7.2013) by Coroners and Justice Act 2009 (c. 25), s. 182(4)(e), **Sch. 21 para. 36(2)** (with s. 180); S.I. 2013/1869, art. 2(o)(xv)

44 Health and safety cases.

(1) An employee has the right not to be subjected to any detriment by any 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, the employee carried out (or proposed to carry out) any such activities,

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

(i) in accordance with arrangements established under or by virtue of any enactment, or

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

the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,

[F183(ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise),**]**

(c) being an employee at a place where—

(i) there was no such representative or safety committee, or

(ii) there was such a representative or safety committee but it was not reasonably practicable for the 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,

F184(d) . . . . . .

F185(e) . . . . . .

[F186(1A) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that—

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

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

(2) For the purposes of subsection **[**F187(1A)(b)**]** whether steps which **[**F188a worker**]** took (or proposed to take) were appropriate is to 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) **[**F189A worker**]** is not to be regarded as having been subjected to any detriment on the ground specified in subsection **[**F190(1A)(b)**]** if the employer shows that it was (or would have been) so negligent for **[**F191the worker**]** to take the steps which he took (or proposed to take) that a reasonable employer might have treated him as the employer did.

(4) F192. . . This section does not apply where the **[**F193worker is an employee and the**]** detriment in question amounts to dismissal (within the meaning of **[**F194Part X**]**).

Textual Amendments

F183 S. 44(1)(ba) inserted (1.10.1996) by S.I. 1996/1513, **reg. 8**

F184 S. 44(1)(d) omitted (31.5.2021) by virtue of The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **3(a)** (with art. 7(1)-(4))

F185 S. 44(1)(e) omitted (31.5.2021) by virtue of The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **3(a)** (with art. 7(1)-(4))

F186 S. 44(1A) inserted (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **3(b)** (with art. 7(1)-(4))

F187 Word in s. 44(2) substituted (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **3(c)(i)**

F188 Words in s. 44(2) substituted (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **3(c)(ii)**

F189 Words in s. 44(3) substituted (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **3(d)(i)**

F190 Word in s. 44(3) substituted (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **3(d)(ii)**

F191 Words in s. 44(3) substituted (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **3(d)(iii)**

F192 Words in s. 44(4) repealed (25.10.1999) by 1999 c. 26, ss. 18(2)(a), 44, **Sch. 9(3)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 2)

F193 Words in s. 44(4) inserted (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **3(e)**

F194 Words in s. 44(4) substituted (25.10.1999) by 1999 c. 26, **s. 18(2)(b)**; S.I. 1999/2830, art. 2(1)(3), **Sch. 1 Pt. I** (with Sch. 3 para. 2)

45 Sunday working for shop and betting workers.

(1) An employee who is—

(a) a protected shop worker or an opted-out shop worker, or

(b) a protected betting worker or an opted-out betting worker,

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has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee refused (or proposed to refuse) to do shop work, or betting work, on Sunday or on a particular Sunday.

(2) Subsection (1) does not apply to anything done in relation to an opted-out shop worker or an opted-out betting worker on the ground that he refused (or proposed to refuse) to do shop work, or betting work, on any Sunday or Sundays falling before the end of the notice period.

(3) An employee who is a shop worker or a betting worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee gave (or proposed to give) an opting-out notice to his employer.

(4) Subsections (1) and (3) do not apply where the detriment in question amounts to dismissal (within the meaning of Part X).

(5) For the purposes of this section a shop worker or betting worker who does not work on Sunday or on a particular Sunday is not to be regarded as having been subjected to any detriment by—

(a) a failure to pay remuneration in respect of shop work, or betting work, on a Sunday which he has not done,

(b) a failure to provide him with any other benefit, where that failure results from the application (in relation to a Sunday on which the employee has not done shop work, or betting work) of a contractual term under which the extent of that benefit varies according to the number of hours worked by the employee or the remuneration of the employee, or

(c) a failure to provide him with any work, remuneration or other benefit which by virtue of section 38 or 39 the employer is not obliged to provide.

(6) Where an employer offers to pay a sum specified in the offer to any one or more employees—

(a) who are protected shop workers or opted-out shop workers or protected betting workers or opted-out betting workers, or

(b) who under their contracts of employment are not obliged to do shop work, or betting work, on Sunday,

if they agree to do shop work, or betting work, on Sunday or on a particular Sunday subsections (7) and (8) apply.

(7) An employee to whom the offer is not made is not to be regarded for the purposes of this section as having been subjected to any detriment by any failure to make the offer to him or to pay him the sum specified in the offer.

(8) An employee who does not accept the offer is not to be regarded for the purposes of this section as having been subjected to any detriment by any failure to pay him the sum specified in the offer.

(9) For the purposes of section 36(2)(b) or 41(1)(b), the appropriate date in relation to this section is the date of the act or failure to act.

(10) For the purposes of subsection (9)—

(a) where an act extends over a period, the "date of the act" means the first day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on;

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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.

Extent Information

E7 S. 45, which previously extended to England and Wales only, extends to England and Wales and Scotland from 6.4.2004 by virtue of the amendment to s. 244(2) by Sunday Working (Scotland) Act 2003 (c. 18), **ss. 1(5)**, 3; S.I. 2004/958, **art. 2**

[F195 45ZA Sunday working for shop workers: additional hours

(1) Subsection (2) applies where a shop worker has given an objection notice to his or her employer and the notice has not been withdrawn.

(2) The shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the employer done on the ground that the shop worker refused (or proposed to refuse) to do shop work for additional hours on Sunday or on a particular Sunday.

(3) Subsection (2) does not apply to anything done on the ground that the shop worker refused (or proposed to refuse) to do shop work for additional hours on any Sunday or Sundays falling before the end of the relevant period.

(4) A shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer on the ground that the shop worker gave (or proposed to give) an objection notice to the employer.

(5) Subsections (2) and (4) do not apply where the detriment in question amounts to dismissal (within the meaning of Part 10).

(6) For the purposes of this section, a shop worker who does not do shop work for additional hours on Sunday or on a particular Sunday is not to be regarded as having been subjected to any detriment by—

(a) a failure to pay remuneration in respect of doing shop work for additional hours on Sunday which the shop worker has not done, or

(b) a failure to provide any other benefit where the failure results from the application (in relation to a Sunday on which the shop worker has not done shop work for additional hours) of a contractual term under which the extent of the benefit varies according to the number of hours worked by, or the remuneration paid to, the shop worker.

(7) Subsections (8) and (9) apply where—

(a) an employer offers to pay a sum specified in the offer to a shop worker if he or she agrees to do shop work for additional hours on Sunday or on a particular Sunday, and

(b) the shop worker—

(i) has given an objection notice to the employer that has not been withdrawn, or

(ii) is not obliged under a contract of employment to do shop work for additional hours on Sunday.

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(8) A shop worker to whom the offer is not made is not to be regarded for the purposes of this section as having been subjected to any detriment by any failure—

(a) to make the offer to the shop worker, or

(b) to pay the shop worker the sum specified in the offer.

(9) A shop worker who does not accept the offer is not to be regarded for the purposes of this section as having been subjected to any detriment by any failure to pay the shop worker the sum specified in the offer.

(10) In this section—

"additional hours" and "objection notice" have the meanings given by section 41A(2);

"relevant period" means the period determined by section 43ZA(2) (but subject to section 41D(3)).**]**

Textual Amendments

F195 S. 45ZA inserted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 7**

[F196 45A Working time cases.

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

(a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the M5 Working Time Regulations 1998,

(b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,

(c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations,

(d) being—

(i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or

(ii) a candidate in an election in which any person elected will, on being elected, be such a representative,

performed (or proposed to perform) any functions or activities as such a representative or candidate,

(e) brought proceedings against the employer to enforce a right conferred on him by those Regulations, or

(f) alleged that the employer had infringed such a right.

(2) It is immaterial for the purposes of subsection (1)(e) or (f)—

(a) whether or not the worker has the right, or

(b) whether or not the right has been infringed,

but, for those provisions to apply, the claim to the right and that it has been infringed must be made in good faith.

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(3) It is sufficient for subsection (1)(f) to apply that the worker, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

(4) This section does not apply where a worker is an employee and the detriment in question amounts to dismissal within the meaning of Part X [F197] . . ..

[[F198](5) A reference in this section to the Working Time Regulations 1998 includes a reference to

[[F199](a) the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.**]**

[[F200](b) the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.**]**

[[F201](c) the Cross-border Railway Services (Working Time) Regulations 2008**]**

[[F202](d) the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018 (S.I. 2018/58).**]]]**

Textual Amendments

F196 S. 45A inserted (1.10.1998) by S.I. 1998/1833, **reg. 31(1)**

F197 Words in s. 45A repealed (25.10.1999) by 1999 c. 26, ss. 18(3), 44, **Sch. 9(3)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 2(2))

F198 S. 45A(5) inserted (24.12.2003) by The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (S.I. 2003/3049), reg. 20, **Sch. 2 para. 3(2)**

F199 S. 45A(5): words renumbered as s. 45A(5)(a) inserted (16.8.2004) by The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (S.I. 2004/1713), reg. 22, **Sch. 2 para. 2(2)(a)**

F200 S. 45A(5)(b) inserted (16.8.2004) by The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (S.I. 2004/1713), reg. 22, **Sch. 2 para. 2(2)(b)**

F201 S. 45A(5)(c) inserted (27.7.2008) by The Cross-border Railway Services (Working Time) Regulations 2008 (S.I. 2008/1660), reg. 19, **Sch. 3 para. 2(2)**

F202 S. 45A(5)(d) substituted (6.4.2018) by The Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018 (S.I. 2018/58), reg. 1, **Sch. 2 para. 2(a)** (with regs. 3, 4)

Marginal Citations

M5 S.I. 1998/1833

46 Trustees of occupational pension schemes.

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being a trustee of a relevant occupational pension scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

(2) [F203]. . .this section does not apply where the detriment in question amounts to dismissal (within the meaning of **[**[F204]Part X**]**).

[[F205](2A) This section applies to an employee who is a director of a company which is a trustee of a relevant occupational pension scheme as it applies to an employee who is a trustee of such a scheme (references to such a trustee being read for this purpose as references to such a director).**]**

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(3) In this section "relevant occupational pension scheme" means an occupational pension scheme (as defined in section 1 of the [M6]Pension Schemes Act 1993) established under a trust.

Textual Amendments

F203 Words in s. 46(2) repealed (25.10.1999) by 1999 c. 26, ss. 18(2)(a), 44, **Sch. 9(3)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 2)

F204 Words in s. 46(2) substituted (25.10.1999) by 1999 c. 26, **s. 18(2)(b)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 2(2))

F205 S. 46(2A) inserted (11.11.1999 for specified purposes and otherwise 25.4.2000) by 1999 c. 30, s. 18, **Sch. 2 para. 19(2)**; S.I. 2000/1047, art. 2(2), **Sch. Pt. II**

Modifications etc. (not altering text)

C13 S. 46 applied (11.11.1999 for specified purposes and otherwise 8.10.2001) by 1999 c. 30, **s. 6(1)**, 89(1)(5)(a) (with s. 8(6)); S.I. 2000/1047, art. 2(2), **Sch. Pt. V**

Commencement Information

I1 S. 46 wholly in force at 6.10.1996, see Sch. 2 para. 15(1) and S.I. 1996/2514, **art. 2**

Marginal Citations

M6 1993 c. 48.

47 Employee representatives.

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

(a) an employee representative for the [M7]purposes of Chapter II of Part IV of the [M8]Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or **[**[F206]regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006**]** , or

(b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

he performed (or proposed to perform) any functions or activities as such an employee representative or candidate.

[[F207](1A) An employee has the right not to be subjected to any detriment by any act, or by any deliberate failure to act, by his employer done on the ground of his participation in an election of employee representatives for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or **[**[F208] regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 **]** . **]**

(2) [F209]. . . This section does not apply where the detriment in question amounts to a dismissal (within the meaning of **[**[F210]Part X**]**).

Textual Amendments

F206 Words in s. 47(1)(a) substituted (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), 20, **Sch. 2 para. 10(a)**

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F207 S. 47(1A) inserted (28.7.1999) by S.I. 1999/1925, **reg. 12**
F208 Words in s. 47(1A) substituted (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), 20, **Sch. 2 para. 10(a)**
F209 Words in s. 47(2) repealed (25.10.1999) by 1999 c. 26, ss. 18(2)(a), 44, **Sch. 9(3)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 2)
F210 Words in s. 47(2) substituted (25.10.1999) by 1999 c. 26, **s. 18(2)(b)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 2)

Marginal Citations
M7 S.I. 1981/1794.
M8 1992 c. 52.

[F211 47A Employees exercising right to time off work for study or training.

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer or the principal (within the meaning of section 63A(3)) done on the ground that, being a person entitled to—

(a) time off under section 63A(1) or (3), and

(b) remuneration under section 63B(1) in respect of that time taken off,

the employee exercised (or proposed to exercise) that right or received (or sought to receive) such remuneration.

(2) F212 . . . This section does not apply where the detriment in question amounts to dismissal (within the meaning of **[** F213 Part X **]**). **]**

Textual Amendments
F211 S. 47A inserted (1.9.1999) by 1998 c. 30, s. 44(1), **Sch. 3 para. 10** (with s. 42(8)); S.I. 1999/987, **art. 2**
F212 Words in s. 47A(2) repealed (25.10.1999) by 1999 c. 26, ss. 18(2)(a), 44, **Sch. 9(3)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 2)
F213 Words in s. 47A(2) substituted (25.10.1999) by 1999 c. 26, **s. 18(2)(b)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 2)

[F214 47B Protected disclosures.

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

[F215 (1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or

(b) by an agent of W's employer with the employer's authority,

on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

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(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

(1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—

(a) from doing that thing, or

(b) from doing anything of that description.

(1E) A worker or agent of W's employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—

(a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and

(b) it is reasonable for the worker or agent to rely on the statement.

But this does not prevent the employer from being liable by reason of subsection (1B).**]**

(2) **[F216** . . . This section does not apply where—

(a) the worker is an employee, and

(b) the detriment in question amounts to dismissal (within the meaning of **[F217**Part X**]**).

(3) For the purposes of this section, and of sections 48 and 49 so far as relating to this section, " worker ", " worker's contract ", " employment " and " employer " have the extended meaning given by section 43K. **]**

Textual Amendments

F214 S. 47B inserted (2.7.1999) by 1998 c. 23, **s. 2**; S.I. 1999/1547, **art. 2**

F215 S. 47B(1A)-(1E) inserted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 19(1)**, 103(3) (with s. 24(6)); S.I. 2013/1455, art. 2(a) (with art. 4(2))

F216 Words in s. 47B(2) repealed (25.10.1999) by 1999 c. 26, ss. 18(2)(a), 44, **Sch. 9(3)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 2(2))

F217 Words in s. 47B(2) substituted (25.10.1999) by 1999 c. 26, **s. 18(2)(b)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 2)

[F218 47C Leave for family and domestic reasons.

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done for a prescribed reason.

(2) A prescribed reason is one which is prescribed by regulations made by the Secretary of State and which relates to—

(a) pregnancy, childbirth or maternity,

[F219(aa) time off under section 57ZE,**]**

[F220(ab) time off under section 57ZJ or 57ZL,**]**

(b) ordinary, compulsory or additional maternity leave,

[F221(ba) ordinary or additional adoption leave,**]**

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[shared parental leave,**]** F222(bb)

[carer's leave,**]** F223(bc)

(c) parental leave,

[F225 ... paternity leave,**]** F224(ca)

[parental bereavement leave,**]** or F226(cb)

(d) time off under section 57A.

(3) A reason prescribed under this section in relation to parental leave may relate to action which an employee takes, agrees to take or refuses to take under or in respect of a collective or workforce agreement.

(4) Regulations under this section may make different provision for different cases or circumstances.

[F227(5) An agency worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the temporary work agency or the hirer done on the ground that—

(a) being a person entitled to—

(i) time off under section 57ZA, and

(ii) remuneration under section 57ZB in respect of that time off,

the agency worker exercised (or proposed to exercise) that right or received (or sought to receive) that remuneration,

(b) being a person entitled to time off under section 57ZG, the agency worker exercised (or proposed to exercise) that right,

(c) being a person entitled to—

(i) time off under section 57ZN, and

(ii) remuneration under section 57ZO in respect of that time off,

the agency worker exercised (or proposed to exercise) that right or received (or sought to receive) that remuneration, or

(d) being a person entitled to time off under section 57ZP, the agency worker exercised (or proposed to exercise) that right.

(6) Subsection (5) does not apply where the agency worker is an employee.

(7) In this section the following have the same meaning as in the Agency Workers Regulations 2010 (S.I. 2010/93)—

"agency worker";

"hirer";

"temporary work agency".**]]**

Textual Amendments

F218 S. 47C inserted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 8**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F219 S. 47C(2)(aa) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 127(2)(a)**, 139(6); S.I. 2014/1640, art. 3(1)(i)

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F220 S. 47C(2)(ab) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 128(2)(a)**, 139(6); S.I. 2014/1640, art. 3(1)(j)

F221 S. 47C(2)(ba) inserted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 26(2)**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2

F222 S. 47C(2)(bb) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 31(a)**; S.I. 2014/1640, art. 3(2)(g)

F223 S. 47C(2)(bc) inserted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 5**; S.I. 2023/1283, reg. 2

F224 S. 47C(2)(ca) substituted (3.3.2010) by Work and Families Act 2006 (c. 18), ss. 11, 19, **Sch. 1 para. 30**; S.I. 2010/495, **art. 3(c)**

F225 Words in s. 47C(2)(ca) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 31(b)**; S.I. 2014/1640, art. 7(n) (with art. 16)

F226 S. 47C(2)(cb) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 22**; S.I. 2020/45, reg. 2

F227 S. 47C(5)-(7) inserted (1.10.2014 for specified purposes, 5.4.2015 for specified purposes) by Children and Families Act 2014 (c. 6), **ss. 129(1)**, 139(6); S.I. 2014/1640, arts. 4(b), 6(e)

[F228 47D Tax credits

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

(a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right conferred on the employee by regulations under section 25 of the Tax Credits Act 2002,

(b) a penalty was imposed on the employer, or proceedings for a penalty were brought against him, under that Act, as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, such a right, or

(c) the employee is entitled, or will or may be entitled, to working tax credit.

(2) It is immaterial for the purposes of subsection (1)(a) or (b)—

(a) whether or not the employee has the right, or

(b) whether or not the right has been infringed,

but, for those provisions to apply, the claim to the right and (if applicable) the claim that it has been infringed must be made in good faith.

(3) Subsections (1) and (2) apply to a person who is not an employee within the meaning of this Act but who is an employee within the meaning of section 25 of the Tax Credits Act 2002, with references to his employer in those subsections (and sections 48(2) and (4) and 49(1)) being construed in accordance with that section.

(4) Subsections (1) and (2) do not apply to an employee if the detriment in question amounts to dismissal (within the meaning of Part 10).**]**

Textual Amendments

F228 S. 47D inserted (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, **Sch. 1 para. 1(2)**; S.I. 2002/1727, **art. 2**

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[F229 47E Flexible working

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

(a) made (or proposed to make) an application under section 80F,

F230(b) . . . . . .

(c) brought proceedings against the employer under section 80H, or

(d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.

(2) This section does not apply where the detriment in question amounts to dismissal within the meaning of Part 10.**]**

Textual Amendments

F229 S. 47E inserted (6.4.2003) by virtue of Employment Act 2002 (c. 22), **s. 47(3)**; S.I. 2002/2866, **arts. 2(3)**, 3, Sch. 1 Pt. 3 (with Sch. 3 para. 7)

F230 S. 47E(1)(b) repealed (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 132(5)(a)**, 139(6); S.I. 2014/1640, art. 3(1)(l) (with art. 10)

[F231 47F Study and training

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

(a) made (or proposed to make) a section 63D application,

(b) exercised (or proposed to exercise) a right conferred on the employee under section 63F,

(c) brought proceedings against the employer under section 63I, or

(d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.

(2) This section does not apply if the detriment in question amounts to dismissal within the meaning of Part 10.**]**

Textual Amendments

F231 S. 47F inserted (6.4.2010 for certain purposes and otherwise prosp.) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), **ss. 40(3)**, 269(4); S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)

[F232 47G Employee shareholder status

(1) An employee has the right not to be subjected to a detriment by any act, or any deliberate failure to act, by the employee's employer done on the ground that the employee refused to accept an offer by the employer for the employee to become an employee shareholder (within the meaning of section 205A).

(2) This section does not apply if the detriment in question amounts to dismissal within the meaning of Part 10.**]**

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Textual Amendments

F232 S. 47G inserted (1.9.2013) by Growth and Infrastructure Act 2013 (c. 27), **ss. 31(2)**, 35(1); S.I. 2013/1766, art. 2

Enforcement

48 Complaints to [F233employment tribunals].

(1) An employee may present a complaint to an **[**F233employment tribunal**]** that he has been subjected to a detriment in contravention of section **[**F234 43M,**][**F235 44(1)**]** , 45, **[**F236 46, 47, 47A,**][**F237 47C(1)**][**F238, 47E **[**F239, 47F or 47G**]]**.

[F240(1XA) A worker may present a complaint to an employment tribunal that the worker has been subjected to a detriment in contravention of section 44(1A).**]**

[F241(1YA) A shop worker may present a complaint to an employment tribunal that he or she has been subjected to a detriment in contravention of section 45ZA.**]**

[F242(1ZA) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 45A.**]**

[F243(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.**]**

[F244(1AA) An agency worker may present a complaint to an employment tribunal that the agency worker has been subjected to a detriment in contravention of section 47C(5) by the temporary work agency or the hirer.**]**

[F245(1B) A person may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47D.**]**

(2) On **[**F246a complaint under subsection (1), **[**F247(1XA),**]** (1ZA), (1A) or (1B)**]** it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

[F248(2A) On a complaint under subsection (1AA) it is for the temporary work agency or (as the case may be) the hirer to show the ground on which any act, or deliberate failure to act, was done.**]**

(3) An **[**F233employment tribunal**]** shall not consider a complaint under this section 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) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) For the purposes of subsection (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;

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and, in the absence of evidence establishing the contrary, an employer**[**F249, a temporary work agency or a hirer**]** 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.

[F250(4A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3)(a).**]**

[F251(5) In this section and section 49 any reference to the employer **[**F252includes—**]**

F252(a) **[** where**]** a person complains that he has been subjected to a detriment in contravention of section 47A, the principal (within the meaning of section 63A(3)).

F253(b) **[** in the case of proceedings against a worker or agent under section 47B(1A), the worker or agent.**]]**

[F254(6) In this section and section 49 the following have the same meaning as in the Agency Workers Regulations 2010 (S.I. 2010/93)—

"agency worker";

"hirer";

"temporary work agency".**]**

Textual Amendments

F233 Words in s. 48(1)(3) and sidenote to s. 48 substituted (1.8.1998) by 1998 c. 8 , **s. 1(2)(a)(b)** (with s. 16(2)); S.I. 1998/1658 , art. 2(1) , **Sch. 1**

F234 Words in s. 48(1) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24) , **ss. 40(2)** , 59(2)-(4) ; S.I. 2005/872 , **arts. 4** , 5 , Sch. (subject to arts. 6-12)

F235 Word in s. 48(1) substituted (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **4(a)**

F236 Words in s. 48(1) substituted (1.9.1999) by 1998 c. 30 , s. 44(1) , **Sch. 3 para. 11(a)** (with s. 42(8)); S.I. 1999/987 , **art. 2**

F237 Word in s. 48(1) substituted (1.10.2014) by Children and Families Act 2014 (c. 6), **ss. 129(2)(a)**, 139(6); S.I. 2014/1640, art. 4(b)

F238 Words in s. 48(1) substituted (6.4.2010 for certain purposes and otherwise prosp.) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) , ss. 40 , 269(4) , **Sch. 1 para. 2** ; S.I. 2010/303 , **art. 4** , Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151 , art. 22)

F239 Words in s. 48(1) substituted (1.9.2013) by Growth and Infrastructure Act 2013 (c. 27), **ss. 31(3)**, 35(1); S.I. 2013/1766, art. 2

F240 S. 48(1XA) inserted (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **4(b)**

F241 S. 48(1YA) inserted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 8**

F242 S. 48(1ZA) inserted (1.10.1998) by S.I. 1998/1833 , **reg. 31(2)**

F243 S. 48(1A) inserted (2.7.1999) by 1998 c. 23 , **s. 3** ; S.I. 1999/1547 , **art. 2**

F244 S. 48(1AA) inserted (1.10.2014) by Children and Families Act 2014 (c. 6), **ss. 129(2)(b)**, 139(6); S.I. 2014/1640, art. 4(b)

F245 S. 48(1B) inserted (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21) , s. 27 , **Sch. 1 para. 1(3)** ; S.I. 2002/1727 , **art. 2**

F246 Words in s. 48(2) substituted (1.10.2014) by Children and Families Act 2014 (c. 6), **ss. 129(2)(c)**, 139(6); S.I. 2014/1640, art. 4(b)

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F247 Word in s. 48(2) inserted (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **4(c)**

F248 S. 48(2A) inserted (1.10.2014) by Children and Families Act 2014 (c. 6), **ss. 129(2)(d)**, 139(6); S.I. 2014/1640, art. 4(b)

F249 Words in s. 48(4) inserted (1.10.2014) by Children and Families Act 2014 (c. 6), **ss. 129(2)(e)**, 139(6); S.I. 2014/1640, art. 4(b)

F250 S. 48(4A) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(5)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

F251 S. 48(5) inserted (1.9.1999) by 1998 c. 30 , s. 44(1) , **Sch. 3 para. 11(b)** (with s. 42(8)); S.I. 1999/987 , **art. 2**

F252 Words in s. 48(5) substituted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24) , **ss. 19(2)(a)** , 103(3) (with s. 24(6)); S.I. 2013/1455 , art. 2(a) (with art. 4(2))

F253 S. 48(5)(b) inserted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24) , **ss. 19(2)(b)** , 103(3) (with s. 24(6)); S.I. 2013/1455 , art. 2(a) (with art. 4(2))

F254 S. 48(6) inserted (1.10.2014) by Children and Families Act 2014 (c. 6), **ss. 129(2)(f)**, 139(6); S.I. 2014/1640, art. 4(b)

Modifications etc. (not altering text)

C14 S. 48 applied (4.9.2000) by 1999 c. 26 , **s. 12(2)** (with ss. 14 , 15); S.I. 2000/2242 , **art. 2**

C15 S. 48 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031) , regs. 1(1) , 47 , **Sch. 6 para. 13(3)** (with regs. 44-46 , Sch. 7)

C16 S. 48 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155) , **reg. 18(2)**

C17 S. 48(2)-(4) applied (with modifications) (1.11.1998) by 1998 c. 39 , **s. 24(2)(a)** ; S.I. 1998/2574 , art. 2(1) , **Sch. 1**
S. 48(2)-(4) extended (with modifications) (5.10.1999) by 1999 c. 10 , ss. 7 , 20(2) , **Sch. 3 para. 2(2)(a)**
S. 48(2)-(4) applied (with modifications) (15.1.2000) by S.I. 1999/3323 , **reg. 32(2)(a)**

C18 S. 48(2)-(4) applied (with modifications) (8.10.2004) by The European Public Limited- Liability Company Regulations 2004 (S.I. 2004/2326) , regs. 1(2) , **45(2)**

C19 S. 48(2)-(4) applied (with modifications)(6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426) , regs.1(1) , **33(2)** (with reg. 3)

C20 S. 48(2)-(4) applied (6.4.2006) by The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349) , regs. 1(2)(3) , 17 , **Sch. para. 8(2)**

C21 S. 48(2)-(4) applied (18.8.2006) by The European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059) , regs. 1(2) , **34(2)**

C22 S. 48(2)-(4) applied (with modifications) (prosp.) by Pensions Act 2008 (c. 30) , **ss. 56(2)** , 149(1) (with s. 56(3)-(6))

C23 S. 48(2)-(4) applied (with modifications) (1.10.2009) by The European Public Limited- Liability Company (Employee Involvement) (Great Britain) Regulations 2009 (S.I. 2009/2401) , **reg. 32(2)** (with reg. 41)

C24 S. 48(2)-(4) applied (with modifications) (30.6.2012) by Pensions Act 2008 (c. 30) , **ss. 56(2)** , 149(1) (with s. 56(3)-(6)); S.I. 2012/1682 , art. 2 , Sch. 2

C25 S. 48(4) applied (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **7(5)**

49 Remedies.

(1) Where an **[**[F255]employment tribunal**]** finds a complaint **[**[F256]under section 48(1), **[**[F257](1XA),**]** (1ZA), (1A) or (1B)**]** well-founded, the tribunal—

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(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.

[[F258](1A) Where an employment tribunal finds a complaint under section 48(1AA) well-founded, the tribunal—

(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the temporary work agency or (as the case may be) the hirer to the complainant in respect of the act or failure to act to which the complaint relates.**]**

(2) Subject to subsections **[**[F259](5ZA),**]** (5A) and (6) the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

(a) the infringement to which the complaint relates, and

(b) any loss which is attributable to the act, or failure to act, which infringed the complainant's right.

(3) The loss shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates, and

(b) loss of any benefit which he might reasonably be expected to have had but for that act or failure to act.

(4) In ascertaining the loss the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland.

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

[[F260](5ZA) Where—

(a) the complaint is made under section 48(1XA),

(b) the detriment to which the worker is subjected is the termination of his or her contract, and

(c) that contract is not a contract of employment,

any compensation must not exceed the compensation that would be payable under Chapter II of Part X if the worker had been an employee and had been dismissed for the reason specified in section 100.**]**

[[F261](5A) Where—

(a) the complaint is made under section 48 (1ZA),

(b) the detriment to which the worker is subjected is the termination of his worker's contract, and

(c) that contract is not a contract of employment,

any compensation must not exceed the compensation that would be payable under Chapter II of Part X if the worker had been an employee and had been dismissed for the reason specified in section 101A. **]**

[[F262](6) Where—

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(a) the complaint is made under section 48(1A),

(b) the detriment to which the worker is subjected is the termination of his worker's contract, and

(c) that contract is not a contract of employment,

any compensation must not exceed the compensation that would be payable under Chapter II of Part X if the worker had been an employee and had been dismissed for the reason specified in section 103A. **]**

[F263(6A) Where—

(a) the complaint is made under section 48(1A), and

(b) it appears to the tribunal that the protected disclosure was not made in good faith,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the worker by no more than 25%.**]**

[F264(7) Where—

(a) the complaint is made under section 48(1B) by a person who is not an employee, and

(b) the detriment to which he is subjected is the termination of his contract with the person who is his employer for the purposes of section 25 of the Tax Credits Act 2002,

any compensation must not exceed the compensation that would be payable under Chapter 2 of Part 10 if the complainant had been an employee and had been dismissed for the reason specified in section 104B.**]**

Textual Amendments

F255 Words in s. 49(1) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F256 Words in s. 49(1) substituted (1.10.2014) by Children and Families Act 2014 (c. 6), **ss. 129(3)(a)**, 139(6); S.I. 2014/1640, art. 4(b)

F257 Word in s. 49(1) inserted (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **5(a)**

F258 S. 49(1A) inserted (1.10.2014) by Children and Families Act 2014 (c. 6), **ss. 129(3)(b)**, 139(6); S.I. 2014/1640, art. 4(b)

F259 Word in s. 49(2) inserted (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **5(b)**

F260 S. 49(5ZA) inserted (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **5(c)**

F261 S. 49(5A) inserted (1.10.1998) by S.I. 1998/1833, **reg. 31(3)(b)**

F262 S. 49(6) inserted (2.7.1999) by 1998 c. 23, **s. 4(3)**; S.I. 1999/1547, **art. 2**

F263 S. 49(6A) inserted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 18(4)**, 103(2) (with s. 24(6))

F264 S. 49(7) inserted (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, **Sch. 1 para. 1(4)**; S.I. 2002/1727, **art. 2**

Modifications etc. (not altering text)

C26 S. 49 applied (with modifications) (1.11.1998) by 1998 c. 39, **s. 24(2)(a)**(with s. 36); S.I. 1998/2574, art. 2(1), **Sch. 1**

S. 49 restricted (1.11.1998) by 1998 c. 39, **s. 14(3)**(with s. 36); S.I. 1998/2574, art. 2(1), **Sch. 1**

S. 49 applied (with modifications) (15.1.2000) by S.I. 1999/3323, **reg. 32(2)(a)**

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S. 49 extended (with modifications) (5.10.1999) by 1999 c. 10, ss. 7, 20(2), **Sch. 3 para. 2(2)(a)**

C27 S. 49 applied (with modifications) (prosp.) by Pensions Act 2008 (c. 30), **ss. 56(2)**, 149(1) (with s. 56(3)-(6))

C28 S. 49 applied (with modifications) (30.6.2012) by Pensions Act 2008 (c. 30), **ss. 56(2)**, 149(1) (with s. 56(3)-(6)); S.I. 2012/1682, art. 2, Sch. 2

C29 S. 49(1)-(5) applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 1(2), **45(3)**

C30 S. 49(1)-(5) applied (with modifications) (6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), regs.1(1), **33(2)** (with reg. 3)

C31 S. 49(1)-(5) applied (6.4.2006) by The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349), regs. 1(2)(3), 17, **Sch. para. 8(2)**

C32 S. 49(1)-(5) applied (18.8.2006) by The European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), regs. 1(2), **34(3)**

C33 S. 49(1)-(5) applied (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 51(2)**

C34 S. 49(1)-(5) applied (1.10.2009) by The European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 (S.I. 2009/2401), **reg. 32(3)** (with reg. 41)

[F265 Application to police of rights relating to health and safety

Textual Amendments

F265 S. 49A and crossheading inserted (1.7.1998) by 1997 c. 42, **s. 3**; S.I. 1998/1542, **art. 2**

F266 49A Application to police of section 44 and related provisions.

(1) For the purposes of section 44, and of sections 48 and 49 so far as relating to that section, the holding, otherwise than under a contract of employment, of the office of constable or an appointment as police cadet shall be treated as employment by the relevant officer under a contract of employment.

[F267(2) In this section " the relevant officer ", in relation to—

(a) a person holding the office of constable, or

(b) a person holding an appointment as a police cadet,

means the person who under section 51A of the Health and Safety at Work etc. Act 1974 is to be treated as his employer for the purposes of Part 1 of that Act. **]]**

Textual Amendments

F266 S. 49A inserted (1.7.1998) by 1997 c. 42, **s. 3**; S.I. 1998/1542, **art. 2**

F267 S. 49A(2) substituted (7.4.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 158(2)(a)(3)**, 178

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[F268PART 5A

PROTECTION FOR APPLICANTS FOR EMPLOYMENT ETC IN THE HEALTH SERVICE

Textual Amendments

F268 Pt. 5A (s. 49B) inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 149(2)**, 164(1); S.I. 2015/1329, reg. 2(e)

49B Regulations prohibiting discrimination because of protected disclosure

(1) The Secretary of State may make regulations prohibiting an NHS employer from discriminating against an applicant because it appears to the NHS employer that the applicant has made a protected disclosure.

(2) An "applicant", in relation to an NHS employer, means an individual who applies to the NHS employer for—

(a) a contract of employment,

(b) a contract to do work personally, or

(c) appointment to an office or post.

(3) For the purposes of subsection (1), an NHS employer discriminates against an applicant if the NHS employer refuses the applicant's application or in some other way treats the applicant less favourably than it treats or would treat other applicants in relation to the same contract, office or post.

(4) Regulations under this section may, in particular—

(a) make provision as to circumstances in which discrimination by a worker or agent of an NHS employer is to be treated, for the purposes of the regulations, as discrimination by the NHS employer;

(b) confer jurisdiction (including exclusive jurisdiction) on employment tribunals or the Employment Appeal Tribunal;

(c) make provision for or about the grant or enforcement of specified remedies by a court or tribunal;

(d) make provision for the making of awards of compensation calculated in accordance with the regulations;

(e) make different provision for different cases or circumstances;

(f) make incidental or consequential provision, including incidental or consequential provision amending—

(i) an Act of Parliament (including this Act),

(ii) an Act of the Scottish Parliament,

(iii) a Measure or Act of the National Assembly for Wales, or

(iv) an instrument made under an Act or Measure within any of sub-paragraphs (i) to (iii).

(5) Subsection (4)(f) does not affect the application of section 236(5) to the power conferred by this section.

(6) "NHS employer" means an NHS public body prescribed by regulations under this section.

(7) "NHS public body" means—

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(a) **[**F269NHS England**]**;

[F270(b) an integrated care board;**]**

(c) a Special Health Authority;

(d) an NHS trust;

(e) an NHS foundation trust;

(f) the Care Quality Commission;

F271(g) . . . . . .

[the Health Services Safety Investigations Body;**]**

F272(ga)

(h) the Health Research Authority;

F273(i) . . . . . .

(j) the National Institute for Health and Care Excellence;

F274(k) . . . . . .

(l) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;

(m) the Common Services Agency for the Scottish Health Service;

(n) Healthcare Improvement Scotland;

(o) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;

(p) a Special Health Board constituted under that section.

(8) The Secretary of State must consult the Welsh Ministers before making regulations prescribing any of the following NHS public bodies for the purposes of the definition of "NHS employer"—

(a) a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006;

(b) an NHS trust established under section 18 of that Act;

(c) a Local Health Board established under section 11 of that Act.

(9) The Secretary of State must consult the Scottish Ministers before making regulations prescribing an NHS public body within any of paragraphs (m) to (p) of subsection (7) for the purposes of the definition of "NHS employer".

(10) For the purposes of subsection (4)(a)—

(a) "worker" has the extended meaning given by section 43K, and

(b) a person is a worker of an NHS employer if the NHS employer is an employer in relation to the person within the extended meaning given by that section.**]**

Textual Amendments

F269 Words in s. 49B substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 1 para. 1(1)**(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F270 S. 49B(7)(b) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 4 para. 47**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F271 S. 49B(7)(g) omitted (1.4.2023) by virtue of The Health Education England (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/368), reg. 1(2), **Sch. 1 para. 7** (with reg. 7)

F272 S. 49B(7)(ga) inserted (1.10.2023) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 15 para. 6(2)**; S.I. 2023/1035, reg. 2(c)

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F273 S. 49B(7)(i) omitted (1.2.2023) by virtue of The Health and Social Care Information Centre (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/98), reg. 1(2), **Sch. para. 8(2)** (with reg. 3)

F274 S. 49B(7)(k) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 7**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

[F275PART 5B

REDUNDANCY DURING A PROTECTED PERIOD OF PREGNANCY

Textual Amendments

F275 Pt. 5B inserted (E.W.S.) (24.7.2023) by Protection from Redundancy (Pregnancy and Family Leave) Act 2023 (c. 17), **ss. 1(2)**, 3(2)

49D Redundancy during a protected period of pregnancy

(1) The Secretary of State may, by regulations, make provision about redundancy during, or after, a protected period of pregnancy.

(2) A protected period of pregnancy is a period relating to the pregnancy of an employee that is calculated in accordance with regulations made by the Secretary of State.

(3) Provision made by virtue of subsection (1) may include—

(a) provision requiring an employer to offer alternative employment;

(b) provision for the consequences of failure to comply with the regulations (which may include provision for dismissal to be treated as unfair for the purposes of Part 10).

(4) Provision made by virtue of subsection (2) may include provision for the protected period of pregnancy to begin after the end of the pregnancy.**]**

PART VI

TIME OFF WORK

Public duties

50 Right to time off for public duties.

[F276(1) An employer shall permit an employee of his who is—

(a) a justice of the peace, or

(b) an independent prison monitor appointed in accordance with section 7B(2) of the Prisons (Scotland) Act 1989,

to take time off during the employee's working hours for the purpose of performing any of the duties of the office.**]**

(2) An employer shall permit an employee of his who is a member of—

(a) a local authority,

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(b) a statutory tribunal,

F277(c) . . . . . .

(ca) F278 . . . . . .

(d) **[**F279an independent monitoring board for a prison**][**F280or a prison visiting committee**]**,

(e) a relevant health body,

(f) a relevant education body, F281. . .

(g) the Environment Agency or the Scottish Environment Protection Agency, F282...

[F283(h) Scottish Water F284 . . . , **]**

[F285(i) a panel of lay observers appointed in accordance with section 81(1)(b) of the Criminal Justice Act 1991,

(j) a Visiting Committee appointed in accordance with section 152(1) of the Immigration and Asylum Act 1999, or

(k) a Visiting Committee appointed by the Secretary of State for a short-term holding facility (within the meaning given by section 147 of the Immigration and Asylum Act 1999).**]**

to take time off during the employee's working hours for the purposes specified in subsection (3).

(3) The purposes referred to in subsection (2) are—

(a) attendance at a meeting of the body or any of its committees or sub-committees, and

(b) the doing of any other thing approved by the body, or anything of a class so approved, for the purpose of the discharge of the functions of the body or of any of its committees or sub-committees.**[**F286 and

(c) in the case of a local authority which are operating executive arrangements—

(i) attendance at a meeting of the executive of that local authority or committee of that executive; and

(ii) the doing of any other thing, by an individual member of that executive, for the purposes of the discharge of any function which is to any extent the responsibility of that executive.**]**

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

(a) how much time off is required for the performance of the duties of the office or as a member of the body in question, and how much time off is required for the performance of the particular duty,

(b) how much time off the employee has already been permitted under this section or sections 168 and 170 of the M9Trade Union and Labour Relations (Consolidation) Act 1992 (time off for trade union duties and activities), and

(c) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.

(5) In subsection (2)(a) "a local authority" means—

(a) a local authority within the meaning of the M10Local Government Act 1972,

(b) a council constituted under section 2 of the M11Local Government etc. (Scotland) Act 1994,

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(c) the Common Council of the City of London,

(d) a National Park authority, or

(e) the Broads Authority.

(6) [F287] . . . . . .

(7) In subsection (2)(d)—

(a) **[**[F288] "independent monitoring board" means a board**]** appointed under section 6(2) of the [M12]Prison Act 1952, and

(b) **[**[F289]"a prison visiting committee" means a visiting committee appointed under section 19(3) of the [M13]Prisons (Scotland) Act 1989 or constituted by virtue of rules made under section 39 (as read with section 8(1)) of that Act.**]**

(8) In subsection (2)(e) "a relevant health body" means—

(za) **[**[F290]NHS England**]**,

[[F291](zb) an integrated care board established under section 14Z25 of the National Health Service Act 2006,**]**

(a) a National Health Service trust established under **[**[F292]section 25 of the National Health Service Act 2006, section 18 of the National Health Service (Wales) Act 2006**]** or the [M14]National Health Service (Scotland) Act 1978,

[[F293](ab) an NHS foundation trust, **]**

[[F294](ac) the National Institute for Health and Care Excellence,**]**

[F295](ad) . . . . . .

[[F296](ae) the Health Services Safety Investigations Body,**]**

(b) [F297]... **[**[F298]a**][**[F299] Local Health Board established under section 11 of the National Health Service (Wales) Act 2006**]**[F300]... **[**[F301], a Special Health Authority established under **[**[F302]section 28 of the National Health Service Act 2006 or section 22 of the National Health Service (Wales) Act 2006**]**[F303]...**]** or

(c) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978.

(9) In subsection (2)(f) "a relevant education body" means—

(a) a managing or governing body of an educational establishment maintained by a **[**[F304]local authority (as defined in section 579(1) of the Education Act 1996)**]**,

[[F305](b) a further education corporation, sixth form college corporation or higher education corporation,**]**

(c) a school council appointed under section 125(1) of the [M15]Local Government (Scotland) Act 1973,

[[F306](d) a parent council within the meaning of section 5(2) of the Scottish Schools (Parental Involvement) Act 2006 [M16] , **]**

[[F307](e) a board of management of a self-governing school within the meaning of section 135(1) of the [M17] Education (Scotland) Act 1980, **]**

(f) a board of management of a college of further education within the meaning of section 36(1) of the [M18]Further and Higher Education (Scotland) Act 1992,

(g) a governing body of a central institution within the meaning of section 135(1) of the Education (Scotland) Act 1980, [F308]. . .

(h) a governing body of a designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992.

[[F309](i) [F310]... or

(j) the General Teaching Council for Wales.**]**

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[F311(9A) In subsection (3)(c) of this section "executive" and "executive arrangements" have the same meaning as in Part II of the Local Government Act 2000.**]**

[F312(9B) In subsection (9)(b) " further education corporation ", " sixth form college corporation " and " higher education corporation " have the same meanings as in the Further and Higher Education Act 1992. **]**

(10) The Secretary of State may by order—

(a) modify the provisions of subsections (1) and (2) and (5) to (9) by adding any office or body, removing any office or body or altering the description of any office or body, or

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

(11) For the purposes of this section the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

Textual Amendments

F276 S. 50(1) substituted (1.10.2018) by The Time Off for Public Duties Order 2018 (S.I. 2018/665), arts. 1, **2(a)**

F277 S. 50(2)(c) omitted (22.11.2012) by virtue of Police Reform and Social Responsibility Act 2011 (c. 13), s. 157(1), **Sch. 16 para. 219**; S.I. 2012/2892, art. 2(i)

F278 S. 50(2)(ca) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 174, 178, Sch. 4 para. 86, **Sch. 17**; S.I. 2006/378, art. 4(1), **Sch.** (subject to art. 4(2)-(7))

F279 Words in s. 50(2)(d) substituted (1.11.2007) by Offender Management Act 2007 (c. 21), ss. 39, 41(1), **Sch. 3 para. 8(a)**; S.I. 2007/3001, **art. 2(1)(p)(r)**

F280 Words in s. 50(2)(d) repealed (S.) (31.8.2015) by The Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015 (S.S.I. 2015/39), art. 1, **Sch. para. 5(a)**

F281 Word at end of s. 50(2)(f) omitted (14.8.2000) by virtue of S.I. 2000/1737, **art. 2(a)**

F282 Word in s. 50(2) omitted (1.10.2018) by virtue of The Time Off for Public Duties Order 2018 (S.I. 2018/665), arts. 1, **2(b)(i)**

F283 S. 50(2)(h) substituted (14.7.2004) by The Water Industry (Scotland) Act 2002 (Consequential Modifications) Order 2004 (S.I. 2004/1822), art. 2, **Sch. para. 18**

F284 Words in s. 50(2)(h) omitted (28.10.2011) by virtue of The Public Services Reform (Scotland) Act 2010 (Consequential Modifications of Enactments) Order 2011 (S.I. 2011/2581), art. 2, **Sch. 3 para. 2**

F285 S. 50(2)(i)-(k) inserted (1.10.2018) by The Time Off for Public Duties Order 2018 (S.I. 2018/665), arts. 1, **2(b)(ii)**

F286 S. 50(3)(c) and preceding word inserted (E.) (11.7.2001) and (W.) (1.4.2002) by S.I. 2001/2237, art. 30(a) and S.I. 2002/808, **art. 29(a)**

F287 S. 50(6) repealed (1.4.2007) by Police and Justice Act 2006 (c. 48), ss. 52, 53, **Sch. 15 Pt. 1(B)**; S.I. 2007/709, **art. 3(s)(i)**

F288 Words in s. 50(7)(a) substituted (1.11.2007) by Offender Management Act 2007 (c. 21), ss. 39, 41(1), **Sch. 3 para. 8(b)**; S.I. 2007/3001, **art. 2(1)(p)(r)**

F289 S. 50(7)(b) repealed (S.) (31.8.2015) by The Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015 (S.S.I. 2015/39), art. 1, **Sch. para. 5(b)**

F290 Words in s. 50 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 1 para. 1(1)**(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F291 S. 50(8)(zb) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 4 para. 48**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F292 Words in s. 50(8)(a) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 179(a)** (with Sch. 3 Pt. 1)

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F293 S. 50(8)(ab) inserted (1.4.2004 for E.W.) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199(1)(4), **Sch. 4 para. 100**; S.I. 2004/759, **art. 2** (as amended by S.I. 2006/836 and S.I. 2007/1102)

F294 S. 50(8)(ac) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 17 para. 6(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F295 S. 50(8)(ad) omitted (1.2.2023) by virtue of The Health and Social Care Information Centre (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/98), reg. 1(2), **Sch. para. 8(3)** (with reg. 3)

F296 S. 50(8)(ae) inserted (1.10.2023) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 15 para. 6(3)**; S.I. 2023/1035, reg. 2(c)

F297 Words in s. 50(8)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 74(b)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F298 Words in s. 50(8)(b) originally substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 179(b)(i)** (with Sch. 3 Pt. 1)

F299 Words in s. 50(8)(b) substituted (1.4.2007) by virtue of The References to Health Authorities Order 2007 (S.I. 2007/961), art. 3, **Sch. para. 27(3)**

F300 Words in s. 50(8)(b) omitted (1.3.2007) by virtue of National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 179(b)(ii)** (with Sch. 3 Pt. 1)

F301 Words in s. 50(8)(b) substituted (8.2.2000) by S.I. 2000/90, art. 3, **Sch. 1 para. 30(2)** (with s. 2(5)

F302 Words in s. 50(8)(b) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 179(b)(iii)** (with Sch. 3 Pt. 1)

F303 Words in s. 50(8)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 74(b)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F304 Words in s. 50(9)(a) substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 41(2)**

F305 S. 50(9)(b) substituted (1.4.2010) by The Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments) (England and Wales) Order 2010 (S.I. 2010/1080), art. 1(2)(a), **Sch. 1 para. 96(a)**

F306 S. 50(9)(d) substituted (1.8.2007) by The Time Off for Public Duties (Parent Councils) Order 2007 (S.I. 2007/1837), **art. 2**

F307 S. 50(9)(e) repealed (S.) (31.12.2004) by 2000 asp 6, ss. 60(2), 61, Sch. 3; S.S.I. 2004/528, **art. 2(b)**

F308 Word in s. 50(9) after para. (g) omitted (5.10.2000) by virtue of S.I. 2000/2463, **art. 2(2)**

F309 S. 50(9)(i)(j) inserted (5.10.2000) by S.I. 2000/2463, 2(3)

F310 S. 50(9)(i) omitted (1.4.2012) by virtue of Education Act 2011 (c. 21), s. 82(3), **Sch. 2 para. 24**; S.I. 2012/924, art. 2

F311 S. 50(9A) inserted (E.) (11.7.2001) and (W.) (1.4.2002) by S.I. 2001/2237, art. 30(b) and S.I. 2002/808, **art. 29(b)**

F312 S. 50(9B) inserted (1.4.2010) by The Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments) (England and Wales) Order 2010 (S.I. 2010/1080), art. 1(2)(a), **Sch. 1 para. 96(b)**

Modifications etc. (not altering text)

C35 S. 50(3) applied (1.4.1998) by S.I. 1998/633, **art. J12(2)**

C36 S. 50(4) excluded (1.4.1998) by S.I. 1998/633, **art. J12(1)**

Marginal Citations

M9 1992 c. 52.

M10 1972 c. 70.

M11 1994 c. 39.

M12 1952 c. 52.

M13 1989 c. 45.

M14 1978 c. 29.

M15 1973 c. 65.

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M16 2006 asp 8.
M17 1980 c. 44.
M18 1992 c. 37.

51 Complaints to [F313employment tribunals].

(1) An employee may present a complaint to an **[**F313employment tribunal**]** that his employer has failed to permit him to take time off as required by section 50.

(2) An **[**F313employment tribunal**]** shall not consider a complaint under this section that an employer has failed to permit an employee to take time off unless it is presented—

(a) before the end of the period of three months beginning with the date on which the failure occurred, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[F314(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).**]**

(3) Where an **[**F313employment tribunal**]** finds a complaint under this section well-founded, the tribunal—

(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the employer to the employee.

(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

(a) the employer's default in failing to permit time off to be taken by the employee, and

(b) any loss sustained by the employee which is attributable to the matters to which the complaint relates.

Textual Amendments

F313 Words in s. 51(1)-(3) and sidenote to s. 51 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)(b)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F314 S. 51(2A) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(6)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

Looking for work and making arrangements for training

52 Right to time off to look for work or arrange training.

(1) An employee who is given notice of dismissal by reason of redundancy is entitled to be permitted by his employer to take reasonable time off during the employee's working hours before the end of his notice in order to—

(a) look for new employment, or

(b) make arrangements for training for future employment.

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(2) An employee is not entitled to take time off under this section unless, on whichever is the later of—

(a) the date on which the notice is due to expire, and

(b) the date on which it would expire were it the notice required to be given by section 86(1),

he will have been (or would have been) continuously employed for a period of two years or more.

(3) For the purposes of this section the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

53 Right to remuneration for time off under section 52.

(1) An employee who is permitted to take time off under section 52 is entitled to be paid remuneration by his employer for the period of absence at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the notice of dismissal was given.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the notice was given.

(4) If an employer unreasonably refuses to permit an employee to take time off from work as required by section 52, the employee is entitled to be paid an amount equal to the remuneration to which he would have been entitled under subsection (1) if he had been permitted to take the time off.

(5) The amount of an employer's liability to pay remuneration under subsection (1) shall not exceed, in respect of the notice period of any employee, forty per cent. of a week's pay of that employee.

(6) A right to any amount under subsection (1) or (4) does not affect any right of an employee in relation to remuneration under his contract of employment ("contractual remuneration").

(7) Any contractual remuneration paid to an employee in respect of a period of time off under section 52 goes towards discharging any liability of the employer to pay remuneration under subsection (1) in respect of that period; and, conversely, any payment of remuneration under subsection (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

54 Complaints to [F315employment tribunals].

(1) An employee may present a complaint to an **[**F315employment tribunal**]** that his employer—

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(a) has unreasonably refused to permit him to take time off as required by section 52, or

(b) has failed to pay the whole or any part of any amount to which the employee is entitled under section 53(1) or (4).

(2) An **[**[F315]employment tribunal**]** shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date on which it is alleged that the time off should have been permitted, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[[F316](2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).**]**

(3) Where an **[**[F315]employment tribunal**]** finds a complaint under this section well-founded, the tribunal shall—

(a) make a declaration to that effect, and

(b) order the employer to pay to the employee the amount which it finds due to him.

(4) The amount which may be ordered by a tribunal to be paid by an employer under subsection (3) (or, where the employer is liable to pay remuneration under section 53, the aggregate of that amount and the amount of that liability) shall not exceed, in respect of the notice period of any employee, forty per cent. of a week's pay of that employee.

Textual Amendments

F315 Words in s. 54(1)-(3) and sidenote to s. 54 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)(b)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F316 S. 54(2A) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(7)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

Ante-natal care

55 Right to time off for ante-natal care.

(1) An employee who—

(a) is pregnant, and

(b) has, on the advice of a registered medical practitioner, registered midwife or **[**[F317]registered nurse**]** , made an appointment to attend at any place for the purpose of receiving ante-natal care,

is entitled to be permitted by her employer to take time off during the employee's working hours in order to enable her to keep the appointment.

(2) An employee is not entitled to take time off under this section to keep an appointment unless, if her employer requests her to do so, she produces for his inspection—

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(a) a certificate from a registered medical practitioner, registered midwife or **[**F317registered nurse**]** stating that the employee is pregnant, and

(b) an appointment card or some other document showing that the appointment has been made.

(3) Subsection (2) does not apply where the employee's appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with subsection (1).

(4) For the purposes of this section the working hours of an employee shall be taken to be any time when, in accordance with her contract of employment, the employee is required to be at work.

[F318(5) References in this section to a registered nurse are to such a nurse—

(a) who is also registered in the Specialist Community Public Health Nurses' Part of the register maintained under article 5 of the Nursing and Midwifery Order 2001, and

(b) whose entry in that Part of the register is annotated to show that he holds a qualification in health visiting.**]**

Textual Amendments

F317 Words in s. 55(1)(b)(2)(a) substituted by The Nursing and Midwifery Order 2001 (S.I. 2002/253), art. 54, **Sch. 5 para. 13** (with art. 3(18)) (the amendment coming into force in accordance with art. 1(2)(3) of the amending S.I.)

F318 S. 55(5) added (1.8.2004) by The Health Act 1999 (Consequential Amendments) (Nursing and Midwifery) Order 2004 (S.I. 2004/1771), arts. 1(1), 3, **Sch. para. 3**

56 Right to remuneration for time off under section 55.

(1) An employee who is permitted to take time off under section 55 is entitled to be paid remuneration by her employer for the period of absence at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—

(a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken, or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in subsection (4) as are appropriate in the circumstances.

(4) The considerations referred to in subsection (3)(b) are—

(a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of her contract, and

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(b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(5) A right to any amount under subsection (1) does not affect any right of an employee in relation to remuneration under her contract of employment ("contractual remuneration").

(6) Any contractual remuneration paid to an employee in respect of a period of time off under section 55 goes towards discharging any liability of the employer to pay remuneration under subsection (1) in respect of that period; and, conversely, any payment of remuneration under subsection (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

57 Complaints to [F319employment tribunals].

(1) An employee may present a complaint to an **[**F319employment tribunal**]** that her employer—

(a) has unreasonably refused to permit her to take time off as required by section 55, or

(b) has failed to pay the whole or any part of any amount to which the employee is entitled under section 56.

(2) An **[**F319employment tribunal**]** shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the appointment concerned, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[F320(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).**]**

(3) Where an **[**F319employment tribunal**]** finds a complaint under this section well-founded, the tribunal shall make a declaration to that effect.

(4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer to pay to the employee **[**F321an amount that is twice the amount of**]** the remuneration to which she would have been entitled under section 56 if the employer had not refused.

(5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which she is entitled under section 56, the tribunal shall also order the employer to pay to the employee the amount which it finds due to her.

Textual Amendments

F319 Words in s. 57(1)-(3) and sidenote to s. 57 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)(b)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F320 S. 57(2A) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(8)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

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F321 Words in s. 57(4) substituted (1.10.2014) by Children and Families Act 2014 (c. 6), **ss. 130(1)**, 139(6); S.I. 2014/1640, art. 4(c) (with art. 11)

I[F322] Ante-natal care: agency workers

Textual Amendments

F322 Ss. 57ZA-57ZD and heading inserted (1.10.2011) by The Agency Workers Regulations 2010 (S.I. 2010/93), Reg. 25, **Sch. 2 para. 93**

57ZA Right to time off for ante-natal care (agency workers)

(1) An agency worker who—

(a) is pregnant, and

(b) has, on the advice of a registered medical practitioner, registered midwife or registered nurse, made an appointment to attend at any place for the purpose of receiving ante-natal care,

is entitled to be permitted, by the temporary work agency and the hirer, to take time off during the agency worker's working hours in order to enable her to keep the appointment. (2) An agency worker is not entitled to be permitted by either of those persons to take time off under this section to keep an appointment unless, if that person requests her to do so, she produces for that person's inspection—

(a) a certificate from a registered medical practitioner, registered midwife or registered nurse stating that the agency worker is pregnant, and

(b) an appointment card or some other document showing that the appointment has been made.

(3) Subsection (2) does not apply where the agency worker's appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with subsection (1). (4) For the purposes of this section the working hours of an agency worker shall be taken to be any time when, in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer, the agency worker is required to be at work. (5) In this section references to a registered nurse have the same meaning as in section 55.

57ZB Right to remuneration for time off under section 57ZA

( ) An agency worker who is permitted to take time off under section 57ZA is entitled to be paid remuneration by the temporary work agency for the period of absence at the appropriate hourly rate.

( ) The appropriate hourly rate, in relation to an agency worker, is the amount of one week's pay divided by the number of normal working hours in a week for that agency worker in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer that are in force on the day when the time off is taken.

( ) But where the number of normal working hours during the assignment differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the agency worker's normal working hours during the period

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of twelve weeks ending with the last complete week before the day on which the time off is taken.

( ) A right to any amount under subsection (1) does not affect any right of an agency worker in relation to remuneration under her contract with the temporary work agency ("contractual remuneration").

(5) Any contractual remuneration paid to an agency worker in respect of a period of time off under section 57ZA goes towards discharging any liability of the temporary work agency to pay remuneration under subsection (1) in respect of that period; and, conversely, any payment of remuneration under subsection (1) in respect of a period goes towards discharging any liability of the temporary work agency to pay contractual remuneration in respect of that period.

57ZC Complaint to employment tribunal: agency workers

( ) An agency worker may present a complaint to an employment tribunal that the temporary work agency—

(a) has unreasonably refused to permit her to take time off as required by section 57ZA, or

(b) has failed to pay the whole or any part of any amount to which she is entitled under section 57ZB.

( ) An agency worker may present a complaint to an employment tribunal that the hirer has unreasonably refused to permit her to take time off as required by section 57ZA.

( ) An employment tribunal shall not consider a complaint under subsection (1) or (2) unless it is presented—

(a) before the end of the period of three months beginning with the date of the appointment concerned, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[[F323](3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3)(a).**]**

( ) Where an employment tribunal finds a complaint under this section well-founded, the tribunal shall make a declaration to that effect.

( ) If the complaint is that the temporary work agency or hirer has unreasonably refused to permit the agency worker to take time off, the tribunal shall also order payment to the agency worker of **[**[F324]an amount that is twice the amount of**]** the remuneration to which she would have been entitled under section 57ZB if she had not been refused the time off.

( ) Where the tribunal orders payment under subsection (5), the amount payable by each party shall be such as may be found by the tribunal to be just and equitable having regard to the extent of each respondent's responsibility for the infringement to which the complaint relates.

(7) If the complaint is that the temporary work agency has failed to pay the agency worker the whole or part of any amount to which she is entitled under section 57ZB, the tribunal shall also order the temporary work agency to pay to the agency worker the amount which it finds due to her.

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Textual Amendments

F323 S. 57ZC(3A) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(9)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

F324 Words in s. 57ZC(5) substituted (1.10.2014) by Children and Families Act 2014 (c. 6), **ss. 130(2)**, 139(6); S.I. 2014/1640, art. 4(c) (with art. 11)

57ZD Agency workers: supplementary

( ) Without prejudice to any other duties of the hirer or temporary work agency under any enactment or rule of law sections 57ZA to 57ZC do not apply where the agency worker—

(a) has not completed the qualifying period, or

(b) is no longer entitled to the rights conferred by regulation 5 of the Agency Workers Regulations 2010 pursuant to regulation 8(a) or (b) of those Regulations.

( ) Nothing in those sections imposes a duty on the hirer or temporary work agency beyond the original intended duration, or likely duration of the assignment, whichever is the longer.

( ) Those sections do not apply where sections 55 to 57 apply.

( ) In this section and sections 57ZA to 57ZC the following have the same meaning as in the Agency Workers Regulations 2010—

"agency worker";
"assignment";
"hirer";
"qualifying period";
"temporary work agency".**]**

[F325 Accompanying to ante-natal appointments

Textual Amendments

F325 Ss. 57ZE-57ZI and cross-headings inserted (1.10.2014) by Children and Families Act 2014 (c. 6), **ss. 127(1)**, 139(6); S.I. 2014/1640, art. 4(a)

57ZE Right to time off to accompany to ante-natal appointment

(1) An employee who has a qualifying relationship with a pregnant woman or her expected child is entitled to be permitted by his or her employer to take time off during the employee's working hours in order that he or she may accompany the woman when she attends by appointment at any place for the purpose of receiving ante-natal care.

(2) In relation to any particular pregnancy, an employee is not entitled to take time off for the purpose specified in subsection (1) on more than two occasions.

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(3) On each of those occasions, the maximum time off during working hours to which the employee is entitled is six and a half hours.

(4) An employee is not entitled to take time off for the purpose specified in subsection (1) unless the appointment is made on the advice of a registered medical practitioner, registered midwife or registered nurse.

(5) Where the employer requests the employee to give the employer a declaration signed by the employee, the employee is not entitled to take time off for the purpose specified in subsection (1) unless the employee gives that declaration (which may be given in electronic form).

(6) The employee must state in the declaration—

(a) that the employee has a qualifying relationship with a pregnant woman or her expected child,

(b) that the employee's purpose in taking time off is the purpose specified in subsection (1),

(c) that the appointment in question is made on the advice of a registered medical practitioner, registered midwife or registered nurse, and

(d) the date and time of the appointment.

(7) A person has a qualifying relationship with a pregnant woman or her expected child if—

(a) the person is the husband or civil partner of the pregnant woman,

(b) the person, being of a different sex or the same sex, lives with the woman in an enduring family relationship but is not a relative of the woman,

(c) the person is the father of the expected child,

(d) the person is a parent of the expected child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008, [F326]...

(e) the person is a potential applicant for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the expected child, **[**[F327]or

(f) the person is a potential applicant for a parental order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of the expected child.**]**

(8) For the purposes of subsection (7) a relative of a person is the person's parent, grandparent, sister, brother, aunt or uncle.

(9) The references to relationships in subsection (8)—

(a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and

(b) include the relationship of a child with the child's adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.

(10) For the purposes of subsection (7)(e) a person ("A") is a potential applicant for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of an expected child only if—

(a) A intends to apply, jointly with another person ("B"), for such an order in respect of the expected child within the time allowed by section 54(3),

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(b) the expected child is being carried by the pregnant woman as a result of such procedure as is described in section 54(1)(a),

(c) the requirement in section 54(1)(b) is satisfied by reference to A or B,

(d) A and B would satisfy section 54(2) if they made an application under section 54 at the time that A seeks to exercise the right under this section, and

(e) A expects that A and B will satisfy the conditions in section 54(2), (4), (5) and (8) as regards the intended application.

F328 **[** (10A) For the purposes of subsection (7)(f) a person is a potential applicant for a parental order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of an expected child only if—

(a) the person intends to apply for such an order in respect of the expected child within the time allowed by section 54A(2),

(b) the expected child is being carried by the pregnant woman as a result of such procedure as is described in section 54A(1)(a),

(c) the requirement in section 54A(1)(b) is satisfied by reference to the person, and

(d) the person expects that he or she will satisfy the conditions in section 54A(3), (4) and (7) as regards the intended application.**]**

(11) The references in this section to a registered nurse are references to a registered nurse—

(a) who is also registered in the Specialist Community Public Health Nurses Part of the register maintained under article 5 of the Nursing and Midwifery Order 2001 (S.I. 2002/253), and

(b) whose entry in that Part of the register is annotated to show that the nurse holds a qualification in health visiting.

(12) For the purposes of this section the working hours of an employee are to be taken to be any time when, in accordance with the employee's contract of employment, the employee is required to be at work.

Textual Amendments

F326 Word in s. 57ZE(7) omitted (3.1.2019) by virtue of The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 1 para. 11(3)**

F327 S. 57ZE(7)(f) and word inserted (3.1.2019) by The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 1 para. 11(4)**

F328 S. 57ZE(10A) inserted (3.1.2019) by The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 1 para. 11(5)**

57ZF Complaint to employment tribunal

(1) An employee may present a complaint to an employment tribunal that his or her employer has unreasonably refused to let him or her take time off as required by section 57ZE.

(2) An employment tribunal may not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the day of the appointment in question, or

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(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[[F329](3) Section 207B applies for the purposes of subsection (2)(a).**]**

(4) Where an employment tribunal finds a complaint under subsection (1) well-founded, it—

(a) must make a declaration to that effect, and

(b) must order the employer to pay to the employee an amount determined in accordance with subsection (5).

(5) The amount payable to the employee is—

$$A \times B \times 2$$

where—

a A is the appropriate hourly rate for the employee, and

b B is the number of working hours for which the employee would have been entitled under section 57ZE to be absent if the time off had not been refused.

(6) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off would have been taken.

(7) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—

(a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off would have been taken, or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in subsection (8) as are appropriate in the circumstances.

(8) The considerations referred to in subsection (7)(b) are—

(a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of the employee's contract, and

(b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

Textual Amendments

F329 S. 57ZF(3) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(10)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

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Accompanying to ante-natal appointments: agency workers

57ZG Right to time off to accompany to ante-natal appointment: agency workers

(1) An agency worker who has a qualifying relationship with a pregnant woman or her expected child is entitled to be permitted, by the temporary work agency and the hirer, to take time off during the agency worker's working hours in order that he or she may accompany the woman when she attends by appointment at any place for the purpose of receiving ante-natal care.

(2) In relation to any particular pregnancy, an agency worker is not entitled to take time off for the purpose specified in subsection (1) on more than two occasions.

(3) On each of those occasions, the maximum time off during working hours to which the agency worker is entitled is six and a half hours.

(4) An agency worker is not entitled to take time off for the purpose specified in subsection (1) unless the appointment is made on the advice of a registered medical practitioner, registered midwife or registered nurse.

(5) Where the temporary work agency or the hirer requests the agency worker to give that person a declaration signed by the agency worker, the agency worker is not entitled to take time off for the purpose specified in subsection (1) unless the agency worker gives that declaration (which may be given in electronic form).

(6) The agency worker must state in the declaration—

(a) that the agency worker has a qualifying relationship with a pregnant woman or her expected child,

(b) that the agency worker's purpose in taking time off is the purpose specified in subsection (1),

(c) that the appointment in question is made on the advice of a registered medical practitioner, registered midwife or registered nurse, and

(d) the date and time of the appointment.

(7) A person has a qualifying relationship with a pregnant woman or her expected child if—

(a) the person is the husband or civil partner of the pregnant woman,

(b) the person, being of a different sex or the same sex, lives with the woman in an enduring family relationship but is not a relative of the woman,

(c) the person is the father of the expected child,

(d) the person is a parent of the expected child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008, **F330**...

(e) the person is a potential applicant for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the expected child**[F331**, or

(f) the person is a potential applicant for a parental order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of the expected child.**]**

(8) For the purposes of subsection (7) a relative of a person is the person's parent, grandparent, sister, brother, aunt or uncle.

(9) The references to relationships in subsection (8)—

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(a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and

(b) include the relationship of a child with the child's adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.

(10) For the purposes of subsection (7)(e) a person ("A") is a potential applicant for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of an expected child only if—

(a) A intends to apply, jointly with another person ("B"), for such an order in respect of the expected child within the time allowed by section 54(3),

(b) the expected child is being carried by the pregnant woman as a result of such procedure as is described in section 54(1)(a),

(c) the requirement in section 54(1)(b) is satisfied by reference to A or B,

(d) A and B would satisfy section 54(2) if they made an application under section 54 at the time that A seeks to exercise the right under this section, and

(e) A expects that A and B will satisfy the conditions in section 54(2), (4), (5) and (8) as regards the intended application.

F332 **[** (10A) For the purposes of subsection (7)(f) a person is a potential applicant for a parental order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of an expected child only if—

(a) the person intends to apply for such an order in respect of the expected child within the time allowed by section 54A(2),

(b) the expected child is being carried by the pregnant woman as a result of such procedure as is described in section 54A(1)(a),

(c) the requirement in section 54A(1)(b) is satisfied by reference to the person, and

(d) the person expects that he or she will satisfy the conditions in section 54A(3), (4) and (7) as regards the intended application.**]**

(11) The references in this section to a registered nurse are references to a registered nurse—

(a) who is also registered in the Specialist Community Public Health Nurses Part of the register maintained under article 5 of the Nursing and Midwifery Order 2001 (S.I. 2002/253), and

(b) whose entry in that Part of the register is annotated to show that the nurse holds a qualification in health visiting.

(12) For the purposes of this section the working hours of an agency worker are to be taken to be any time when, in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer, the agency worker is required to be at work.

Textual Amendments

F330 Word in s. 57ZG(7) omitted (3.1.2019) by virtue of The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 1 para. 11(7)**

F331 S. 57ZG(7)(f) and word inserted (3.1.2019) by The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 1 para. 11(8)**

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F332 S. 57ZG(10A) inserted (3.1.2019) by The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 1 para. 11(9)**

57ZH Complaint to employment tribunal: agency workers

(1) An agency worker may present a complaint to an employment tribunal that the temporary work agency has unreasonably refused to let him or her take time off as required by section 57ZG.

(2) An agency worker may present a complaint to an employment tribunal that the hirer has unreasonably refused to let him or her take time off as required by section 57ZG.

(3) An employment tribunal may not consider a complaint under subsection (1) or (2) unless it is presented—

(a) before the end of the period of three months beginning with the day of the appointment in question, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[[F333](4) Section 207B applies for the purposes of subsection (3)(a).**]**

(5) Where an employment tribunal finds a complaint under subsection (1) or (2) well-founded, it—

(a) must make a declaration to that effect, and

(b) must order the payment to the agency worker of an amount determined in accordance with subsection (7).

(6) Where the tribunal orders that payment under subsection (5) be made by the temporary work agency and the hirer, the proportion of that amount payable by each respondent is to be such as may be found by the tribunal to be just and equitable having regard to the extent of each respondent's responsibility for the infringement to which the complaint relates.

(7) The amount payable to the agency worker is—

$$A \times B \times 2$$

where—

a A is the appropriate hourly rate for the agency worker, and

b B is the number of working hours for which the agency worker would have been entitled under section 57ZG to be absent if the time off had not been refused.

(8) The appropriate hourly rate, in relation to an agency worker, is the amount of one week's pay divided by the number of normal working hours in a week for that agency worker in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer that are in force on the day when the time off would have been taken.

(9) But where the number of normal working hours during the assignment differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the agency worker's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off would have been taken.

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Textual Amendments

F333 S. 57ZH(4) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(11)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

57ZI Agency workers: supplementary

(1) Without prejudice to any other duties of the hirer or temporary work agency under any enactment or rule of law, sections 57ZG and 57ZH do not apply where the agency worker—

(a) has not completed the qualifying period, or

(b) pursuant to regulation 8(a) or (b) of the Agency Workers Regulations 2010 (S.I. 2010/93), is no longer entitled to the rights conferred by regulation 5 of those Regulations.

(2) Nothing in sections 57ZG and 57ZH imposes a duty on the hirer or temporary work agency beyond the original intended duration, or likely duration, of the assignment, whichever is the longer.

(3) Sections 57ZG and 57ZH do not apply where sections 57ZE and 57ZF apply.

(4) In this section and sections 57ZG and 57ZH the following have the same meaning as in the Agency Workers Regulations 2010—

"agency worker";
"assignment";
"hirer";
"qualifying period";
"temporary work agency".**]**

[F334 Adoption appointments

Textual Amendments

F334 Ss. 57ZJ-57ZS and cross-headings inserted (5.4.2015) by Children and Families Act 2014 (c. 6), **ss. 128(1)**, 139(6); S.I. 2014/1640, art. 6(d)

57ZJ Right to paid time off to attend adoption appointments

(1) An employee who has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the employee alone is entitled to be permitted by his or her employer to take time off during the employee's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(2) An employee who—

(a) has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the employee and another person jointly, and

(b) has elected to exercise the right to take time off under this section in connection with the adoption,

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is entitled to be permitted by his or her employer to take time off during the employee's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(3) An employee may not make an election for the purposes of subsection (2)(b) if—

(a) the employee has made an election for the purposes of section 57ZL(1)(b) in connection with the adoption, or

(b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of subsection (2)(b) or section 57ZN(2)(b) in connection with the adoption.

(4) An employee is not entitled to take time off under this section on or after the date of the child's placement for adoption with the employee.

(5) In relation to any particular adoption, an employee is not entitled to take time off under this section on more than five occasions.

(6) On each of those occasions, the maximum time off during working hours to which the employee is entitled is six and a half hours.

(7) An employee is not entitled to take time off under this section unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in subsection (1) or (2)(a).

(8) An employee is not entitled to take time off under subsection (1) unless, if the employer requests it, the employee gives the employer a document showing the date and time of the appointment in question and that it has been arranged as described in subsection (7).

(9) An employee is not entitled to take time off under subsection (2) unless, if the employer requests it, the employee gives the employer—

(a) a declaration signed by the employee stating that the employee has made an election for the purposes of subsection (2)(b) in connection with the adoption, and

(b) a document showing the date and time of the appointment in question and that it has been arranged as described in subsection (7).

(10) A document or declaration requested under subsection (8) or (9) may be given in electronic form.

(11) In cases where more than one child is to be, or is expected to be, placed for adoption with an employee as part of the same arrangement, this section has effect as if—

(a) the purposes specified in subsections (1) and (2) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement;

(b) the references in subsections (2)(b) and (9)(a) to the adoption were references to all of the adoptions that are part of the arrangement;

(c) the references in subsection (3) to the adoption were references to any of the adoptions that are part of the arrangement;

(d) the reference in subsection (4) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement;

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(e) the reference in subsection (5) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.

(12) For the purposes of this section the working hours of an employee are to be taken to be any time when, in accordance with the employee's contract of employment, the employee is required to be at work.

(13) In this section " adoption agency " means an adoption agency within the meaning of section 2 of the Adoption and Children Act 2002 or as defined in section 119(1)(a) of the Adoption and Children (Scotland) Act 2007.

57ZK Right to remuneration for time off under section 57ZJ

(1) An employee who is permitted to take time off under section 57ZJ is entitled to be paid remuneration by his or her employer for the number of working hours for which the employee is entitled to be absent at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—

(a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken, or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in subsection (4) as are appropriate in the circumstances.

(4) The considerations referred to in subsection (3)(b) are—

(a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of the employee's contract, and

(b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(5) A right to any amount under subsection (1) does not affect any right of an employee in relation to remuneration under the employee's contract of employment ("contractual remuneration").

(6) Any contractual remuneration paid to an employee in respect of a period of time off under section 57ZJ goes towards discharging any liability of the employer to pay remuneration under subsection (1) in respect of that period.

(7) Any payment of remuneration under subsection (1) in respect of a period of time off under section 57ZJ goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

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57ZL Right to unpaid time off to attend adoption appointments

(1) An employee who—

(a) has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the employee and another person jointly, and

(b) has elected to exercise the right to take time off under this section in connection with the adoption,

is entitled to be permitted by his or her employer to take time off during the employee's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(2) An employee may not make an election for the purposes of subsection (1)(b) if—

(a) the employee has made an election for the purposes of section 57ZJ(2)(b) in connection with the adoption, or

(b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of subsection (1)(b) or section 57ZP(1)(b) in connection with the adoption.

(3) An employee is not entitled to take time off under this section on or after the date of the child's placement for adoption with the employee.

(4) In relation to any particular adoption, an employee is not entitled to take time off under this section on more than two occasions.

(5) On each of those occasions, the maximum time off during working hours to which the employee is entitled is six and a half hours.

(6) An employee is not entitled to take time off under this section unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in subsection (1)(a).

(7) An employee is not entitled to take time off under this section unless, if the employer requests it, the employee gives the employer—

(a) a declaration signed by the employee stating that the employee has made an election for the purposes of subsection (1)(b) in connection with the adoption, and

(b) a document showing the date and time of the appointment in question and that it has been arranged as described in subsection (6).

(8) A declaration or document requested under subsection (7) may be given in electronic form.

(9) In cases where more than one child is to be, or is expected to be, placed for adoption with an employee and another person jointly as part of the same arrangement, this section has effect as if—

(a) the purposes specified in subsection (1) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement;

(b) the references in subsections (1)(b) and (7)(a) to the adoption were references to all of the adoptions that are part of the arrangement;

(c) the references in subsection (2) to the adoption were references to any of the adoptions that are part of the arrangement;

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(d) the reference in subsection (3) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement;

(e) the reference in subsection (4) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.

(10) For the purposes of this section the working hours of an employee are to be taken to be any time when, in accordance with the employee's contract of employment, the employee is required to be at work.

(11) In this section " adoption agency " means an adoption agency within the meaning of section 2 of the Adoption and Children Act 2002 or as defined in section 119(1)(a) of the Adoption and Children (Scotland) Act 2007.

57ZM Complaint to employment tribunal

(1) An employee may present a complaint to an employment tribunal that his or her employer—

(a) has unreasonably refused to let him or her take time off as required by section 57ZJ or 57ZL, or

(b) has failed to pay the whole or any part of any amount to which the employee is entitled under section 57ZK.

(2) An employment tribunal may not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the day of the appointment in question, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[[F335](3) Section 207B applies for the purposes of subsection (2)(a).**]**

(4) Where an employment tribunal finds a complaint under subsection (1) well-founded, it must make a declaration to that effect.

(5) If the complaint is that the employer has unreasonably refused to let the employee take time off as required by section 57ZJ, the tribunal must also order the employer to pay to the employee an amount that is twice the amount of the remuneration to which the employee would have been entitled under section 57ZK if the employer had not refused.

(6) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which the employee is entitled under section 57ZK, the tribunal must also order the employer to pay to the employee the amount which it finds due to the employee.

(7) If the complaint is that the employer has unreasonably refused to let the employee take time off as required by section 57ZL, the tribunal must also order the employer to pay to the employee an amount determined in accordance with subsection (8).

(8) The amount payable to the employee is—

$$A \times B \times 2$$

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where—

a A is the appropriate hourly rate for the employee determined in accordance with section 57ZK(2) to (4), and

b B is the number of working hours for which the employee would have been entitled under section 57ZL to be absent if the time off had not been refused.

Textual Amendments

F335 S. 57ZM(3) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(12)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

Adoption appointments: agency workers

57ZN Right to paid time off to attend adoption appointments: agency workers

(1) An agency worker who has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the agency worker alone is entitled to be permitted by the temporary work agency and the hirer to take time off during the agency worker's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(2) An agency worker who—

(a) has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the agency worker and another person jointly, and

(b) has elected to exercise the right to take time off under this section in connection with the adoption,

is entitled to be permitted by the temporary work agency and the hirer to take time off during the agency worker's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(3) An agency worker may not make an election for the purposes of subsection (2)(b) if—

(a) the agency worker has made an election for the purposes of section 57ZP(1)(b) in connection with the adoption, or

(b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of subsection (2)(b) or section 57ZJ(2)(b) in connection with the adoption.

(4) An agency worker is not entitled to take time off under this section on or after the date of the child's placement for adoption with the agency worker.

(5) In relation to any particular adoption, an agency worker is not entitled to take time off under this section on more than five occasions.

(6) On each of those occasions, the maximum time off during working hours to which the agency worker is entitled is six and a half hours.

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(7) An agency worker is not entitled to take time off under this section unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in subsection (1) or (2)(a).

(8) An agency worker is not entitled to take time off under subsection (1) unless, if the temporary work agency or the hirer requests it, the agency worker gives that person a document showing the date and time of the appointment in question and that it has been arranged as described in subsection (7).

(9) An agency worker is not entitled to take time off under subsection (2) unless, if the temporary work agency or the hirer requests it, the agency worker gives that person—

(a) a declaration signed by the agency worker stating that the agency worker has made an election for the purposes of subsection (2)(b) in connection with the adoption, and

(b) a document showing the date and time of the appointment in question and that it has been arranged as described in subsection (7).

(10) A document or declaration requested under subsection (8) or (9) may be given in electronic form.

(11) In cases where more than one child is to be, or is expected to be, placed for adoption with an agency worker as part of the same arrangement, this section has effect as if—

(a) the purposes specified in subsections (1) and (2) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement;

(b) the references in subsections (2)(b) and (9)(a) to the adoption were references to all of the adoptions that are part of the arrangement;

(c) the references in subsection (3) to the adoption were references to any of the adoptions that are part of the arrangement;

(d) the reference in subsection (4) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement;

(e) the reference in subsection (5) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.

(12) For the purposes of this section the working hours of an agency worker are to be taken to be any time when, in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer, the agency worker is required to be at work.

(13) In this section " adoption agency " means an adoption agency within the meaning of section 2 of the Adoption and Children Act 2002 or as defined in section 119(1)(a) of the Adoption and Children (Scotland) Act 2007.

57ZO Right to remuneration for time off under section 57ZN

(1) An agency worker who is permitted to take time off under section 57ZN is entitled to be paid remuneration by the temporary work agency for the number of working hours for which the agency worker is entitled to be absent at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an agency worker, is the amount of one week's pay divided by the number of normal working hours in a week for that agency worker in accordance with the terms under which the agency worker works

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temporarily for and under the supervision and direction of the hirer that are in force on the day when the time off is taken.

(3) But where the number of normal working hours during the assignment differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the agency worker's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken.

(4) A right to any amount under subsection (1) does not affect any right of an agency worker in relation to remuneration under the agency worker's contract with the temporary work agency ("contractual remuneration").

(5) Any contractual remuneration paid to an agency worker in respect of a period of time off under section 57ZN goes towards discharging any liability of the temporary work agency to pay remuneration under subsection (1) in respect of that period.

(6) Any payment of remuneration under subsection (1) in respect of a period of time off under section 57ZN goes towards discharging any liability of the temporary work agency to pay contractual remuneration in respect of that period.

57ZP Right to unpaid time off to attend adoption meetings: agency workers

(1) An agency worker who—

(a) has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the agency worker and another person jointly, and

(b) has elected to exercise the right to take time off under this section in connection with the adoption,

is entitled to be permitted by the temporary work agency and the hirer to take time off during the agency worker's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(2) An agency worker may not make an election for the purposes of subsection (1)(b) if—

(a) the agency worker has made an election for the purposes of section 57ZN(2)(b) in connection with the adoption, or

(b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of subsection (1)(b) or section 57ZL(1)(b) in connection with the adoption.

(3) An agency worker is not entitled to take time off under this section on or after the date of the child's placement for adoption with the agency worker.

(4) In relation to any particular adoption, an agency worker is not entitled to take time off under this section on more than two occasions.

(5) On each of those occasions, the maximum time off during working hours to which the agency worker is entitled is six and a half hours.

(6) An agency worker is not entitled to take time off under this section unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in subsection (1)(a).

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(7) An agency worker is not entitled to take time off under this section unless, if the temporary work agency or the hirer requests it, the agency worker gives that person—

(a) a declaration signed by the agency worker stating that the agency worker has made an election for the purposes of subsection (1)(b) in connection with the adoption, and

(b) a document showing the date and time of the appointment in question and that it has been arranged as described in subsection (6).

(8) A declaration or document requested under subsection (7) may be given in electronic form.

(9) In cases where more than one child is to be, or is expected to be, placed for adoption with an agency worker and another person jointly as part of the same arrangement, this section has effect as if—

(a) the purposes specified in subsection (1) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement;

(b) the references in subsections (1)(b) and (7)(a) to the adoption were references to all of the adoptions that are part of the arrangement;

(c) the references in subsection (2) to the adoption were references to any of the adoptions that are part of the arrangement;

(d) the reference in subsection (3) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement;

(e) the reference in subsection (4) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.

(10) For the purposes of this section the working hours of an agency worker are to be taken to be any time when, in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer, the agency worker is required to be at work.

(11) In this section " adoption agency " means an adoption agency within the meaning of section 2 of the Adoption and Children Act 2002 or as defined by section 119(1)(a) of the Adoption and Children (Scotland) Act 2007.

57ZQ Complaint to employment tribunal: agency workers

(1) An agency worker may present a complaint to an employment tribunal that the temporary work agency—

(a) has unreasonably refused to let him or her take time off as required by section 57ZN or 57ZP, or

(b) has failed to pay the whole or any part of any amount to which the agency worker is entitled under section 57ZO.

(2) An agency worker may present a complaint to an employment tribunal that the hirer has unreasonably refused to let him or her take time off as required by section 57ZN or 57ZP.

(3) An employment tribunal may not consider a complaint under subsection (1) or (2) unless it is presented—

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(a) before the end of the period of three months beginning with the day of the appointment in question, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[[F336](4) Section 207B applies for the purposes of subsection (3)(a).**]**

(5) Where an employment tribunal finds a complaint under subsection (1) or (2) well-founded, it must make a declaration to that effect.

(6) If the complaint is that the temporary work agency or hirer has unreasonably refused to let the agency worker take time off as required by section 57ZN, the tribunal must also order payment to the agency worker of an amount that is twice the amount of the remuneration to which the agency worker would have been entitled under section 57ZO if the agency worker had not been refused the time off.

(7) If the complaint is that the temporary work agency has failed to pay the agency worker the whole or part of any amount to which the agency worker is entitled under section 57ZO, the tribunal must also order the temporary work agency to pay to the agency worker the amount which it finds due to the agency worker.

(8) If the complaint is that the temporary work agency or hirer has unreasonably refused to let the agency worker take time off as required by section 57ZP, the tribunal must also order payment to the agency worker of an amount determined in accordance with subsection (9).

(9) The amount payable to the agency worker under subsection (8) is—

$$A \times B \times 2$$

where—

a A is the appropriate hourly rate for the agency worker determined in accordance with section 57ZO(2) and (3), and

b B is the number of working hours for which the agency worker would have been entitled under section 57ZP to be absent if the time off had not been refused.

(10) Where the tribunal orders that payment under subsection (6) or (8) be made by the temporary work agency and the hirer, the proportion of that amount payable by each respondent is to be such as may be found by the tribunal to be just and equitable having regard to the extent of each respondent's responsibility for the infringement to which the complaint relates.

Textual Amendments

F336 S. 57ZQ(4) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(13)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

57ZR Agency workers: supplementary

(1) Without prejudice to any other duties of the hirer or temporary work agency under any enactment or rule of law, sections 57ZN to 57ZQ do not apply where the agency worker—

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(a) has not completed the qualifying period, or

(b) pursuant to regulation 8(a) or (b) of the Agency Workers Regulations 2010 (S.I. 2010/93), is no longer entitled to the rights conferred by regulation 5 of those Regulations.

(2) Nothing in sections 57ZN to 57ZQ imposes a duty on the hirer or temporary work agency beyond the original intended duration, or likely duration, of the assignment, whichever is the longer.

(3) Sections 57ZN to 57ZQ do not apply where sections 57ZJ to 57ZM apply.

(4) In this section and sections 57ZN to 57ZQ the following have the same meaning as in the Agency Workers Regulations 2010—

"agency worker";

"assignment";

"hirer";

"qualifying period";

"temporary work agency".

57ZS Placement of looked after children with prospective adopters

(1) Subsection (2) applies where a local authority in England notifies a person—

(a) who is a local authority foster parent, and

(b) who has been approved as a prospective adopter,

that a child is to be, or is expected to be, placed with that person under section 22C of the Children Act 1989.

(2) Where this subsection applies, sections 57ZJ, 57ZL, 57ZN and 57ZP have effect as if—

(a) references to adoption or placement for adoption were references to placement of a child under section 22C of the Children Act 1989 with a local authority foster parent who has been approved as a prospective adopter;

(b) references to placing for adoption were references to placing a child under section 22C of that Act with a local authority foster parent who has been approved as a prospective adopter;

(c) references to an adoption agency were references to a local authority in England.

[Subsection (2B) applies where a local authority in Wales notifies a person—

F337(2A) (a) who is a local authority foster parent, and

(b) who has been approved as prospective adopter,

that a child is to be, or is expected to be, placed with that person under section 81 of the Social Services and Well-being (Wales) Act 2014.

(2B) Where this subsection applies, sections 57ZJ, 57ZL, 57ZN and 57ZP have effect as if—

(a) references to adoption or placement for adoption were references to placement of a child under section 81 of the Social Services and Well-being (Wales) Act 2014 with a local authority foster parent who has been approved as a prospective adopter;

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(b) references to placing for adoption were references to placing a child under section 81 of that Act with a local authority foster parent who has been approved as a prospective adopter;

(c) references to an adoption agency were references to a local authority in Wales.**]**

(3) Where a child is placed under section 22C of the Children Act 1989**[**F338or section 81 of the Social Services and Well-being (Wales) Act 2014**]** with a local authority foster parent who has been approved as a prospective adopter, notification of that person by an adoption agency during that placement that the child is to be, or is expected to be, placed with that person for adoption is not to give rise to a right to time off under section 57ZJ, 57ZL, 57ZN or 57ZP for that person or another person.**]**

Textual Amendments

F337 S. 57ZS(2A)(2B) inserted (E.W.) (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **144(a)**

F338 Words in s. 57ZS(3) inserted (E.W.) (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **144(b)**

*I*F339*Dependants*

Textual Amendments

F339 Ss. 57A, 57B and heading inserted (15.12.1999) by 1999 c. 26, s. 8, **Sch. 4 Pt. II**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II**

F340 57A Time off for dependants.

(1) An employee is entitled to be permitted by his employer to take a reasonable amount of time off during the employee's working hours in order to take action which is necessary—

(a) to provide assistance on an occasion when a dependant falls ill, gives birth or is injured or assaulted,

(b) to make arrangements for the provision of care for a dependant who is ill or injured,

(c) in consequence of the death of a dependant,

(d) because of the unexpected disruption or termination of arrangements for the care of a dependant, or

(e) to deal with an incident which involves a child of the employee and which occurs unexpectedly in a period during which an educational establishment which the child attends is responsible for him.

(2) Subsection (1) does not apply unless the employee—

(a) tells his employer the reason for his absence as soon as reasonably practicable, and

(b) except where paragraph (a) cannot be complied with until after the employee has returned to work, tells his employer for how long he expects to be absent.

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(3) Subject to subsections (4) and (5), for the purposes of this section " dependant " means, in relation to an employee—

(a) a spouse **[**F341or civil partner**]** ,

(b) a child,

(c) a parent,

(d) a person who lives in the same household as the employee, otherwise than by reason of being his employee, tenant, lodger or boarder.

(4) For the purposes of subsection (1)(a) or (b) " dependant " includes, in addition to the persons mentioned in subsection (3), any person who reasonably relies on the employee—

(a) for assistance on an occasion when the person falls ill or is injured or assaulted, or

(b) to make arrangements for the provision of care in the event of illness or injury.

(5) For the purposes of subsection (1)(d) " dependant " includes, in addition to the persons mentioned in subsection (3), any person who reasonably relies on the employee to make arrangements for the provision of care.

(6) A reference in this section to illness or injury includes a reference to mental illness or injury.

Textual Amendments

F340 Ss. 57A, 57B and heading inserted (15.12.1999) by 1999 c. 26, s. 8, **Sch. 4 Pt. II**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II**

F341 Words in s. 57A(3)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 151**; S.I. 2005/3175, **art. 2(2)** (Subject to art. 2(3)-(5))

F342 57B Complaint to employment tribunal.

(1) An employee may present a complaint to an employment tribunal that his employer has unreasonably refused to permit him to take time off as required by section 57A.

(2) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date when the refusal occurred, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[F343(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).**]**

(3) Where an employment tribunal finds a complaint under subsection (1) well-founded, it—

(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the employer to the employee.

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(4) The amount of compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

(a) the employer's default in refusing to permit time off to be taken by the employee, and

(b) any loss sustained by the employee which is attributable to the matters complained of.**]**

Textual Amendments

F342 Ss. 57A, 57B and heading inserted (15.12.1999) by 1999 c. 26, s. 8, **Sch. 4 Pt. II**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II**

F343 S. 57B(2A) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(14)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

Occupational pension scheme trustees

58 Right to time off for pension scheme trustees.

(1) The employer in relation to a relevant occupational pension scheme shall permit an employee of his who is a trustee of the scheme to take time off during the employee's working hours for the purpose of—

(a) performing any of his duties as such a trustee, or

(b) undergoing training relevant to the performance of those duties.

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

(a) how much time off is required for the performance of the duties of a trustee of the scheme and the undergoing of relevant training, and how much time off is required for performing the particular duty or for undergoing the particular training, and

(b) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.

[F344(2A) This section applies to an employee who is a director of a company which is a trustee of a relevant occupational pension scheme as it applies to an employee who is a trustee of such a scheme (references to such a trustee being read for this purpose as references to such a director).**]**

(3) In this section—

(a) " relevant occupational pension scheme " means an occupational pension scheme (as defined in section 1 of the M19 Pension Schemes Act 1993) established under a trust, and

(b) references to the employer, in relation to such a scheme, are to an employer of persons in the description or category of employment to which the scheme relates **[**F345, and

F345(c) references to training are to training on the employer's premises or elsewhere.**]**

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(4) For the purposes of this section the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

Textual Amendments

F344 S. 58(2A) inserted (11.11.1999 for specified purposes and otherwise 25.4.2000) by 1999 c. 30, ss. 18, 89(1)(5)(a), **Sch. 2 para. 19(3)**; S.I. 2000/1047, art. 2(2), **Sch. Pt. II**

F345 S. 58(3)(c) and preceding word "and" inserted (1.9.1999) by 1998 c. 30, s. 44(1), **Sch. 3 para. 12** (with s. 42(8)); S.I. 1999/987, **art. 2**

Modifications etc. (not altering text)

C37 S. 58 applied (11.11.1999 for specified purposes and otherwise 8.10.2001) by 1999 c. 30, **s. 6(2)**, (with s. 8(6)); S.I. 2000/1047, art. 2(2), **Sch. Pt. V**

Commencement Information

I2 S. 58 wholly in force at 6.10.1996, see Sch. 2 para. 15(1) and S.I. 1996/2514, **art. 2**

Marginal Citations

M19 1993 c. 48.

59 Right to payment for time off under section 58.

(1) An employer who permits an employee to take time off under section 58 shall pay him for the time taken off pursuant to the permission.

(2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he must be paid as if he had worked at that work for the whole of that time.

(3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he must be paid an amount calculated by reference to the average hourly earnings for that work.

(4) The average hourly earnings mentioned in subsection (3) are—

(a) those of the employee concerned, or

(b) if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

(5) A right to be paid an amount under subsection (1) does not affect any right of an employee in relation to remuneration under his contract of employment ("contractual remuneration").

(6) Any contractual remuneration paid to an employee in respect of a period of time off under section 58 goes towards discharging any liability of the employer under subsection (1) in respect of that period; and, conversely, any payment under subsection (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

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Commencement Information

I3 S. 59 wholly in force at 6.10.1996, see Sch. 2 para. 15(1) and S.I. 1996/2514, **art. 2**

60 Complaints to [F346employment tribunals].

(1) An employee may present a complaint to an **[**F346employment tribunal**]** that his employer—

(a) has failed to permit him to take time off as required by section 58, or

(b) has failed to pay him in accordance with section 59.

(2) An **[**F346employment tribunal**]** shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date when the failure occurred, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[F347(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).**]**

(3) Where an **[**F346employment tribunal**]** finds a complaint under subsection (1)(a) well-founded, the tribunal—

(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the employer to the employee.

(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

(a) the employer's default in failing to permit time off to be taken by the employee, and

(b) any loss sustained by the employee which is attributable to the matters complained of.

(5) Where on a complaint under subsection (1)(b) an **[**F346employment tribunal**]** finds that an employer has failed to pay an employee in accordance with section 59, it shall order the employer to pay the amount which it finds to be due.

Textual Amendments

F346 Words in s. 60(1)-(3)(5) and sidenote to s. 60 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)(b)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F347 S. 60(2A) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(15)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I4 S. 60 wholly in force at 6.10.1996, see Sch. 2 para. 15(1) and S.I. 1996/2514, **art. 2**

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Employee representatives

61 Right to time off for employee representatives.

(1) An employee who is—

(a) an employee representative for the [M20] purposes of Chapter II of Part IV of the [M21] Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or **[**[F348] regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 **]** , or

(b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

is entitled to be permitted by his employer to take reasonable time off during the employee's working hours in order to perform his functions as such an employee representative or candidate **[**[F349]or in order to undergo training to perform such functions**]**.

(2) For the purposes of this section the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

Textual Amendments

F348 Words in s. 61(1)(a) substituted (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), 20, **Sch. 2 para. 10(b)**

F349 Words in s. 61(1) inserted (28.7.1999) by S.I. 1999/1925, **reg. 15**

Marginal Citations

M20 S.I. 1981/1794.

M21 1992 c. 52.

62 Right to remuneration for time off under section 61.

(1) An employee who is permitted to take time off under section 61 is entitled to be paid remuneration by his employer for the time taken off at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—

(a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken, or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in subsection (4) as are appropriate in the circumstances.

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(4) The considerations referred to in subsection (3)(b) are—

(a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract, and

(b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(5) A right to any amount under subsection (1) does not affect any right of an employee in relation to remuneration under his contract of employment ("contractual remuneration").

(6) Any contractual remuneration paid to an employee in respect of a period of time off under section 61 goes towards discharging any liability of the employer to pay remuneration under subsection (1) in respect of that period; and, conversely, any payment of remuneration under subsection (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

63 Complaints to [F350employment tribunals].

(1) An employee may present a complaint to an **[**F350employment tribunal**]** that his employer—

(a) has unreasonably refused to permit him to take time off as required by section 61, or

(b) has failed to pay the whole or any part of any amount to which the employee is entitled under section 62.

(2) An **[**F350employment tribunal**]** shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the day on which the time off was taken or on which it is alleged the time off should have been permitted, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[F351(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).**]**

(3) Where an **[**F350employment tribunal**]** finds a complaint under this section well-founded, the tribunal shall make a declaration to that effect.

(4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer to pay to the employee an amount equal to the remuneration to which he would have been entitled under section 62 if the employer had not refused.

(5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which he is entitled under section 62, the tribunal shall also order the employer to pay to the employee the amount which it finds due to him.

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Textual Amendments

F350 Words in s. 63(1)-(3) and sidenote to s. 63 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)(b)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F351 S. 63(2A) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(16)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

[F352 63A Right to time off for young person [F353 in Wales or Scotland] for study or training.

(1) An employee who—

(a) is aged 16 or 17,

(b) is not receiving full-time secondary or further education, and

(c) has not attained such standard of achievement as is prescribed by regulations made by the Secretary of State,

is entitled to be permitted by his employer to take time off during the employee's working hours in order to undertake study or training leading to a relevant qualification.

(2) In this section—

(a) " secondary education "—

(i) in relation to England and Wales, has the same meaning as in the M22 Education Act 1996, and

(ii) in relation to Scotland, has the same meaning as in section 135(2)(b) of the M23 Education (Scotland) Act 1980;

(b) " further education "—

(i) in relation to England and Wales, [F354 has the same meaning as in the Education Act 1996,] and

(ii) in relation to Scotland, has the same meaning as in section 1(3) of the M24 Further and Higher Education (Scotland) Act 1992; and

(c) " relevant qualification " means an external qualification the attainment of which—

(i) would contribute to the attainment of the standard prescribed for the purposes of subsection (1)(c), and

(ii) would be likely to enhance the employee's employment prospects (whether with his employer or otherwise);

and for the purposes of paragraph (c) " external qualification " means an academic or vocational qualification awarded or authenticated by such person or body as may be specified in or under regulations made by the Secretary of State.

(3) An employee who—

(a) satisfies the requirements of paragraphs (a) to (c) of subsection (1), and

(b) is for the time being supplied by his employer to another person (" the principal ") to perform work in accordance with a contract made between the employer and the principal,

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is entitled to be permitted by the principal to take time off during the employee's working hours in order to undertake study or training leading to a relevant qualification.

(4) Where an employee—

(a) is aged 18,

(b) is undertaking study or training leading to a relevant qualification, and

(c) began such study or training before attaining that age,

subsections (1) and (3) shall apply to the employee, in relation to that study or training, as if "or 18" were inserted at the end of subsection (1)(a).

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

(a) the requirements of the employee's study or training, and

(b) the circumstances of the business of the employer or the principal and the effect of the employee's time off on the running of that business.

[F355(5A) References in this section to an employee do not include a person to whom Part 1 of the Education and Skills Act 2008 (duty to participate in education or training for 16 and 17 year olds in England) applies, or is treated by section 29 of that Act (extension for person reaching 18) as applying.**]**

(6) Regulations made for the purposes of subsections (1)(c) and (2) may make different provision for different cases, and in particular may make different provision in relation to England, Wales and Scotland respectively.

(7) References in this section to study or training are references to study or training on the premises of the employer or (as the case may be) principal or elsewhere.

(8) For the purposes of this section the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.**]**

Textual Amendments

F352 S. 63A inserted (1.9.1999) by 1998 c. 30, **s. 32** (with s. 42(8)); S.I. 1999/987, **art. 2**

F353 Words in s. 63A title inserted (28.6.2013) by Education and Skills Act 2008 (c. 25), **ss. 39(2)**, 173(4) (with ss. 62(3)-(6), 64(4)-(6)); S.I. 2013/1204, art. 2(q) (with art. 4)

F354 Words in s. 63A substituted (1.4.2001) by 2000 c. 21, s. 149, **Sch. 9 para. 50**, S.I. 2001/654, art. 2(2), Sch. Pt. II (with art. 3)

F355 S. 63A(5A) inserted (28.6.2013) by Education and Skills Act 2008 (c. 25), **ss. 39(2)**, 173(4) (with ss. 62(3)-(6), 64(4)-(6)); S.I. 2013/1204, art. 2(q) (with art. 4)

Modifications etc. (not altering text)

C38 S. 63A(1)(c)(2): transfer of certain functions (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7); S.I. 1998/3178, **art. 3**

C39 S. 63A(2)(c) extended (1.9.2001) by S.I. 2001/2801, **reg. 5**

Marginal Citations

M22 1996 c. 56.

M23 1980 c. 44.

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M24 1992 c. 37.

[F356 63B Right to remuneration for time off under section 63A.

(1) An employee who is permitted to take time off under section 63A is entitled to be paid remuneration by his employer for the time taken off at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—

(a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken, or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in subsection (4) as are appropriate in the circumstances.

(4) The considerations referred to in subsection (3)(b) are—

(a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract, and

(b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(5) A right to any amount under subsection (1) does not affect any right of an employee in relation to remuneration under his contract of employment (" contractual remuneration ").

(6) Any contractual remuneration paid to an employee in respect of a period of time off under section 63A goes towards discharging any liability of the employer to pay remuneration under subsection (1) in respect of that period; and, conversely, any payment of remuneration under subsection (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.**]**

Textual Amendments

F356 Ss. 63B, 63C inserted (1.9.1999) by 1998 c. 30, **s. 33** (with s. 42(8)); S.I. 1999/987, **art. 2**

F357 63C Complaints to employment tribunals.

(1) An employee may present a complaint to an employment tribunal that—

(a) his employer, or the principal referred to in subsection (3) of section 63A, has unreasonably refused to permit him to take time off as required by that section, or

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(b) his employer has failed to pay the whole or any part of any amount to which the employee is entitled under section 63B.

(2) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the day on which the time off was taken or on which it is alleged the time off should have been permitted, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[[F358](2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).**]**

(3) Where an employment tribunal finds a complaint under this section well-founded, the tribunal shall make a declaration to that effect.

(4) If the complaint is that the employer or the principal has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer or the principal, as the case may be, to pay to the employee an amount equal to the remuneration to which he would have been entitled under section 63B if the employer or the principal had not refused.

(5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which he is entitled under section 63B, the tribunal shall also order the employer to pay to the employee the amount which it finds due to him.

Textual Amendments

F357 Ss. 63B, 63C inserted (1.9.1999) by 1998 c. 30, **s. 33** (with s. 42(8)); S.I. 1999/987, **art. 2**

F358 S. 63C(2A) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(17)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

[[F359]PART 6A

STUDY AND TRAINING

Textual Amendments

F359 Pt. 6A inserted (6.4.2010 for certain purposes and otherwise prosp.) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), **ss. 40(2)**, 269(4); S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)

63D Statutory right to make request in relation to study or training

(1) A qualifying employee may make an application under this section to his or her employer.

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(2) An application under this section (a "section 63D application") is an application that meets—

(a) the conditions in subsections (3) to (5), and

(b) any further conditions specified by the Secretary of State in regulations.

(3) The application must be made for the purpose of enabling the employee to undertake study or training (or both) within subsection (4).

(4) Study or training is within this subsection if its purpose is to improve—

(a) the employee's effectiveness in the employer's business, and

(b) the performance of the employer's business.

(5) The application must state that it is an application under this section.

(6) An employee is a qualifying employee for the purposes of this section if the employee—

(a) satisfies any conditions about duration of employment specified by the Secretary of State in regulations, and

(b) is not a person within subsection (7).

(7) The following persons are within this subsection—

(a) a person of compulsory school age (or, in Scotland, school age);

(b) a person to whom Part 1 of the Education and Skills Act 2008 (duty to participate in education or training for 16 and 17 year olds) applies;

(c) a person who, by virtue of section 29 of that Act, is treated as a person to whom that Part applies for the purposes specified in that section (extension for person reaching 18);

(d) a person to whom section 63A of this Act (right to time off for young person for study or training) applies;

(e) an agency worker;

(f) a person of a description specified by the Secretary of State in regulations.

(8) Nothing in this Part prevents an employee and an employer from making any other arrangements in relation to study or training.

(9) In this section—

" agency worker " means a worker supplied by a person (the "agent") to do work for another person (the "principal") under a contract or other arrangement between the agent and principal;

" compulsory school age " has the meaning given in section 8 of the Education Act 1996;

" school age " has the meaning given in section 31 of the Education (Scotland) Act 1980.

63E Section 63D application: supplementary

(1) A section 63D application may—

(a) be made in relation to study or training of any description (subject to section 63D(3) and (4) and regulations under section 63D(2));

(b) relate to more than one description of study or training.

(2) The study or training may (in particular) be study or training that (if undertaken)—

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(a) would be undertaken on the employer's premises or elsewhere (including at the employee's home);
(b) would be undertaken by the employee while performing the duties of the employee's employment or separately;
(c) would be provided or supervised by the employer or by someone else;
(d) would be undertaken without supervision;
(e) would be undertaken within or outside the United Kingdom.

(3) The study or training need not be intended to lead to the award of a qualification to the employee.

(4) A section 63D application must—
(a) give the following details of the proposed study or training—
(i) its subject matter;
(ii) where and when it would take place;
(iii) who would provide or supervise it;
(iv) what qualification (if any) it would lead to;
(b) explain how the employee thinks the proposed study or training would improve—
(i) the employee's effectiveness in the employer's business, and
(ii) the performance of the employer's business;
(c) contain information of any other description specified by the Secretary of State in regulations.

(5) The Secretary of State may make regulations about—
(a) the form of a section 63D application;
(b) when a section 63D application is to be taken to be received for the purposes of this Part.

63F Employer's duties in relation to application

(1) Subsections (4) to (7) apply if—
(a) an employer receives a section 63D application (the "current application") from an employee, and
(b) during the relevant 12 month period the employer has not received another section 63D application (an "earlier application") from the employee.

(2) The "relevant 12 month period" is the 12 month period ending with the day on which the employer receives the current application.

(3) The Secretary of State may make regulations about circumstances in which, at an employee's request, an employer is to be required to ignore an earlier application for the purposes of subsection (1).

(4) The employer must deal with the application in accordance with regulations made by the Secretary of State.

(5) The employer may refuse a section 63D application only if the employer thinks that one or more of the permissible grounds for refusal applies in relation to the application.

(6) The employer may refuse part of a section 63D application only if the employer thinks that one or more of the permissible grounds for refusal applies in relation to that part.

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(7) The permissible grounds for refusal are—

(a) that the proposed study or training to which the application, or the part in question, relates would not improve—

(i) the employee's effectiveness in the employer's business, or

(ii) the performance of the employer's business;

(b) the burden of additional costs;

(c) detrimental effect on ability to meet customer demand;

(d) inability to re-organise work among existing staff;

(e) inability to recruit additional staff;

(f) detrimental impact on quality;

(g) detrimental impact on performance;

(h) insufficiency of work during the periods the employee proposes to work;

(i) planned structural changes;

(j) any other grounds specified by the Secretary of State in regulations.

63G Regulations about dealing with applications

(1) Regulations under section 63F(4) may, in particular, include provision—

(a) for the employee to have a right to be accompanied by a person of a specified description when attending meetings held in relation to a section 63D application in accordance with any such regulations;

(b) for the postponement of such a meeting if the employee's companion under paragraph (a) is not available to attend it;

(c) in relation to companions under paragraph (a), corresponding to section 10(6) and (7) of the Employment Relations Act 1999 (right to paid time off to act as companion, etc.);

(d) in relation to the rights under paragraphs (a) to (c), for rights to complain to an employment tribunal and not to be subjected to a detriment, and about unfair dismissal;

(e) for section 63D applications to be treated as withdrawn in specified circumstances.

(2) In this section " specified " means specified in the regulations.

63H Employee's duties in relation to agreed study or training

(1) This section applies if an employer has agreed to a section 63D application, or part of a section 63D application, made by an employee in relation to particular study or training (the "agreed study or training").

(2) The employee must inform the employer if the employee—

(a) fails to start the agreed study or training;

(b) fails to complete the agreed study or training;

(c) undertakes, or proposes to undertake, study or training that differs from the agreed study or training in any respect (including those specified in section 63E(4)(a)).

(3) The Secretary of State may make regulations about the way in which the employee is to comply with the duty under subsection (2).

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63I Complaints to employment tribunals

(1) An employee who makes a section 63D application may present a complaint to an employment tribunal that—

(a) the employer has failed to comply with section 63F(4), (5) or (6), or

(b) the employer's decision to refuse the application, or part of it, is based on incorrect facts.

This is subject to the following provisions of this section.

(2) No complaint under this section may be made in respect of a section 63D application which has been disposed of by agreement or withdrawn.

(3) In the case of a section 63D application that has not been disposed of by agreement or withdrawn, a complaint under this section may only be made if the employer—

(a) notifies the employee of a decision to refuse the application (or part of it) on appeal, or

(b) commits a breach of regulations under section 63F(4), where the breach is of a description specified by the Secretary of State in regulations.

(4) No complaint under this section may be made in respect of failure to comply with provision included in regulations under section 63F(4) because of—

(a) section 63G(1)(a) or (b), if provision is included in regulations under section 63F(4) by virtue of section 63G(1)(d), or

(b) section 63G(1)(c).

(5) An employment tribunal may not consider a complaint under this section unless the complaint is presented—

(a) before the end of the period of three months beginning with the relevant date, or

(b) within any further period that the tribunal considers reasonable, if the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(6) The relevant date is—

(a) in the case of a complaint permitted by subsection (3)(a), the date on which the employee is notified of the decision on the appeal;

(b) in the case of a complaint permitted by subsection (3)(b), the date on which the breach was committed.

[[F360](7) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies to subsection (5)(a).**]**

Textual Amendments

F360 S. 63I(7) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(18)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

63J Remedies

(1) If an employment tribunal finds a complaint under section 63I well-founded it must make a declaration to that effect and may—

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(a) make an order for reconsideration of the section 63D application;

(b) make an award of compensation to be paid by the employer to the employee.

(2) The amount of any compensation must be the amount the tribunal considers just and equitable in all the circumstances, but must not exceed the permitted maximum.

(3) The permitted maximum is the number of weeks' pay specified by the Secretary of State in regulations.

(4) If an employment tribunal makes an order under subsection (1)(a), section 63F and regulations under that section apply as if the application had been received on the date of the order (instead of on the date it was actually received).

63K Supplementary

Regulations under this Part may make different provision for different cases.**]**

PART VII

SUSPENSION FROM WORK

Suspension on medical grounds

64 Right to remuneration on suspension on medical grounds.

(1) An employee who is suspended from work by his employer on medical grounds is entitled to be paid by his employer remuneration while he is so suspended for a period not exceeding twenty-six weeks.

(2) For the purposes of this Part an employee is suspended from work on medical grounds if he is suspended from work in consequence of—

(a) a requirement imposed by or under a provision of an enactment or of an instrument made under an enactment, or

(b) a recommendation in a provision of a code of practice issued or approved under section 16 of the [M25]Health and Safety at Work etc. Act 1974,

and the provision is for the time being specified in subsection (3).

(3) The provisions referred to in subsection (2) are—

Regulation 16 of the [M26]Control of Lead at Work Regulations 1980,

[[F361]Regulation 25 of the Ionising Radiations Regulation 2017 [SI 2017/1075]**]** , and

Regulation 11 of the [M27]Control of Substances Hazardous to Health Regulations 1988.

(4) The Secretary of State may by order add provisions to or remove provisions from the list of provisions specified in subsection (3).

(5) For the purposes of this Part an employee shall be regarded as suspended from work on medical grounds only if and for so long as he—

(a) continues to be employed by his employer, but

(b) is not provided with work or does not perform the work he normally performed before the suspension.

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Textual Amendments

F361 Words in s. 64(3) substituted (1.1.2018) by The Ionising Radiations Regulations 2017 (S.I. 2017/1075), reg. 1(2), **Sch. 9 para. 2** (with regs. 2(5), 3, Sch. 8)

Marginal Citations

M25 1974 c. 37.
M26 S.I. 1980/1248.
M27 S.I. 1988/1657.

65 Exclusions from right to remuneration.

(1) An employee is not entitled to remuneration under section 64 unless he has been continuously employed for a period of not less than one month ending with the day before that on which the suspension begins.

(2) [F362] . . . . . .

(3) An employee is not entitled to remuneration under section 64 in respect of any period during which he is incapable of work by reason of disease or bodily or mental disablement.

(4) An employee is not entitled to remuneration under section 64 in respect of any period if—

(a) his employer has offered to provide him with suitable alternative work during the period (whether or not it is work which the employee is under his contract, or was under the contract in force before the suspension, employed to perform) and the employee has unreasonably refused to perform that work, or

(b) he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

Textual Amendments

F362 S. 65(2) omitted (1.10.2002) by virtue of The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(3)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

Suspension on maternity grounds

66 Meaning of suspension on maternity grounds.

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

(2) In subsection (1)—

"relevant requirement" means a requirement imposed by or under a specified provision of an enactment or of an instrument made under an enactment, and

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"relevant recommendation" means a recommendation in a specified provision of a code of practice issued or approved under section 16 of the [M28]Health and Safety at Work etc. Act 1974;

and in this subsection "specified provision" means a provision for the time being specified in an order made by the Secretary of State under this subsection.

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

(a) continues to be employed by her employer, but

(b) is not provided with work or (disregarding alternative work for the purposes of section 67) does not perform the work she normally performed before the suspension.

Modifications etc. (not altering text)

C40 Ss. 66-68, 70-71, 92-93, Pt. X (ss. 94-134) modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.** (which S.I. was revoked (1.9.1999) by S.I. 1999/2256, **art. 1(2)**)

C41 Ss. 66-68 modified (E.W.) (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**

C42 Ss. 66-68 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

C43 Ss. 66-68 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), **arts. 1(1)**, 3, {Sch. }

Marginal Citations

M28 1974 c. 37.

67 Right to offer of alternative work.

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

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

(a) the work must be of a kind which is both suitable in relation to her and appropriate for her to do in the circumstances, and

(b) the terms and conditions applicable to her for performing the work, if they differ from the corresponding terms and conditions applicable to her for performing the work she normally performs under her contract of employment, must not be substantially less favourable to her than those corresponding terms and conditions.

Modifications etc. (not altering text)

C44 Ss. 66-68, 70-71, 92-93, Pt. X (ss. 94-134) modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.** (which S.I. was revoked (1.9.1999) by S.I. 1999/2256, **art. 1(2)**)

C45 Ss. 66-68 modified (E.W.) (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**

C46 Ss. 66-68 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

C47 Ss. 66-68 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), **arts. 1(1)**, 3, {Sch. }

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68 Right to remuneration.

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

(2) An employee is not entitled to remuneration under this section in respect of any period if—

(a) her employer has offered to provide her during the period with work which is suitable alternative work for her for the purposes of section 67, and

(b) the employee has unreasonably refused to perform that work.

Modifications etc. (not altering text)

C48 Ss. 66-68, 70-71, 92-93, Pt. X (ss. 94-134) modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.** (which S.I. was revoked (1.9.1999) by S.I. 1999/2256, **art. 1(2)**)

C49 Ss. 66-68 modified (E.W.) (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**

C50 Ss. 66-68 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

C51 Ss. 66-68 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), **arts. 1(1)**, 3, {Sch. }

I[F363] Ending the supply of an agency worker on maternity grounds

Textual Amendments

F363 Ss. 68A-68D and heading inserted (1.10.2011) by The Agency Workers Regulations 2010 (S.I. 2010/93), reg. 25, **Sch. 2 para. 12**

68A Meaning of ending the supply of an agency worker on maternity grounds

(1) For the purposes of this Part the supply of an agency worker to a hirer is ended on maternity grounds if, in consequence of action taken pursuant to a provision listed in subsection (2), the supply of the agency worker to the hirer is ended on the ground that she is pregnant, has recently given birth or is breastfeeding a child. (2) The provisions are—

(a) regulations 8(3) or 9(2) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997;

(b) regulation 16A(2) or 17A of the Management of Health and Safety at Work Regulations 1999; or

(c) regulation 20 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

68B Right to offer of alternative work

(1) Where the supply of an agency worker to a hirer is ended on maternity grounds and the temporary work agency has available suitable alternative work, the agency worker has a right to be offered to be proposed for such alternative work. (2) For alternative work to be suitable for an agency worker for the purposes of this section—

(a) the work must be of a kind which is both suitable in relation to her and appropriate for her to do in the circumstances, and

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(b) the terms and conditions applicable to her whilst performing the work, if they differ from the corresponding terms and conditions which would have applied to her but for the fact that the supply of the agency worker to the hirer was ended on maternity grounds, must not be substantially less favourable to her than those corresponding terms and conditions.

(3) Subsection (1) does not apply—

(a) where the agency worker has confirmed in writing that she no longer requires the work-finding services of the temporary work agency, or

(b) beyond the original intended duration, or likely duration, whichever is the longer, of the assignment which ended when the supply of the agency worker to the hirer was ended on maternity grounds.

68C Right to remuneration

(1) Where the supply of an agency worker to a hirer is ended on maternity grounds, that agency worker is entitled to be paid remuneration by the temporary work agency.

(2) An agency worker is not entitled to remuneration under this section in respect of any period if—

(a) the temporary work agency has—

(i) offered to propose the agency worker to a hirer that has alternative work available which is suitable alternative work for her for the purposes of section 68B, or

(ii) proposed the agency worker to a hirer that has such suitable alternative work available, and that hirer has agreed to the supply of that agency worker, and

(b) the agency worker has unreasonably refused that offer or to perform that work.

(3) Nothing in this section imposes a duty on the temporary work agency to pay remuneration beyond the original intended duration, or likely duration, whichever is the longer, of the assignment which ended when the supply of the agency worker to the hirer was ended on maternity grounds.

68D Agency workers: supplementary

(1) Without prejudice to any other duties of the hirer or temporary work agency under any enactment or rule of law sections 68A, 68B and 68C do not apply where the agency worker—

(a) has not completed the qualifying period, or

(b) is no longer entitled to the rights conferred by regulation 5 of the Agency Workers Regulations 2010 pursuant to regulation 8(a) or (b) of those Regulations.

(2) Nothing in those sections imposes a duty on the hirer or temporary work agency beyond the original intended duration, or likely duration of the assignment, whichever is the longer. (3) Those sections do not apply where sections 66 to 68 apply. (4) In this section and sections 68A to 68C the following have the same meaning as in the Agency Workers Regulations 2010—

"agency worker"

"assignment";

"hirer";

"qualifying period";

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"temporary work agency".**]**

General

69 Calculation of remuneration.

(1) The amount of remuneration payable by an employer to an employee under section 64 or 68 is a week's pay in respect of each week of the period of suspension; and if in any week remuneration is payable in respect of only part of that week the amount of a week's pay shall be reduced proportionately.

(2) A right to remuneration under section 64 or 68 does not affect any right of an employee in relation to remuneration under the employee's contract of employment ("contractual remuneration").

(3) Any contractual remuneration paid by an employer to an employee in respect of any period goes towards discharging the employer's liability under section 64 or 68 in respect of that period; and, conversely, any payment of remuneration in discharge of an employer's liability under section 64 or 68 in respect of any period goes towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.

[F364 69A Calculation of remuneration (agency workers)

( ) The amount of remuneration payable by a temporary work agency to an agency worker under section 68C is a week's pay in respect of each week for which remuneration is payable in accordance with section 68C; and if in any week remuneration is payable in respect of only part of that week the amount of a week's pay shall be reduced proportionately.

( ) A right to remuneration under section 68C does not affect any right of the agency worker in relation to remuneration under the contract with the temporary work agency ("contractual remuneration").

( ) Any contractual remuneration paid by the temporary work agency to an agency worker in respect of any period goes towards discharging the temporary work agency's liability under section 68C in respect of that period; and, conversely, any payment of remuneration in discharge of a temporary work agency's liability under section 68C in respect of any period goes towards discharging any obligation of the temporary work agency to pay contractual remuneration in respect of that period.

( ) For the purposes of subsection (1), a week's pay is the weekly amount that would have been payable to the agency worker for performing the work, according to the terms of the contract with the temporary work agency, but for the fact that the supply of the agency worker to the hirer was ended on maternity grounds.

( ) Expressions used in this section and sections 68A to 68C have the same meaning as in those sections (see section 68D).**]**

Textual Amendments

F364 S. 69A inserted (1.10.2011) by The Agency Workers Regulations 2010 (S.I. 2010/93), Reg. 25, **Sch. 2 para. 13**

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70 Complaints to [F365employment tribunals].

(1) An employee may present a complaint to an **[**F365employment tribunal**]** that his or her employer has failed to pay the whole or any part of remuneration to which the employee is entitled under section 64 or 68.

(2) An **[**F365employment tribunal**]** shall not consider a complaint under subsection (1) relating to remuneration in respect of any day unless it is presented—

(a) before the end of the period of three months beginning with that day, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within that period of three months.

(3) Where an **[**F365employment tribunal**]** finds a complaint under subsection (1) well-founded, the tribunal shall order the employer to pay the employee the amount of remuneration which it finds is due to him or her.

(4) An employee may present a complaint to an **[**F365employment tribunal**]** that in contravention of section 67 her employer has failed to offer to provide her with work.

(5) An **[**F365employment tribunal**]** shall not consider a complaint under subsection (4) unless it is presented—

(a) before the end of the period of three months beginning with the first day of the suspension, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within that period of three months.

(6) Where an **[**F365employment tribunal**]** finds a complaint under subsection (4) well-founded, the tribunal may make an award of compensation to be paid by the employer to the employee.

(7) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

(a) the infringement of the employee's right under section 67 by the failure on the part of the employer to which the complaint relates, and

(b) any loss sustained by the employee which is attributable to that failure.

[F366(8) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsections (2)(a) and (5)(a).**]**

Textual Amendments

F365 Words in s. 70(1)-(6) and sidenote to s. 70 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)(b)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F366 S. 70(8) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(19)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

C52 Ss. 66-68, 70-71, 92-93, Pt. X (ss. 94-134) modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.** (which S.I. was revoked (1.9.1999) by S.I. 1999/2256, **art. 1(2)**)

C53 S. 70 modified (E.W.) (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**

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C54 S. 70 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

C55 Ss. 70, 71 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), **arts. 1(1)**, 3, {Sch. }

[F367 70A Complaints to employment tribunals: agency workers

( ) An agency worker may present a complaint to an employment tribunal that the temporary work agency has failed to pay the whole or any part of remuneration to which the agency worker is entitled under section 68C.

( ) An employment tribunal shall not consider a complaint under subsection (1) relating to remuneration in respect of any day unless it is presented—

(a) before the end of the period of three months beginning with the day on which the supply of the agency worker to a hirer was ended on maternity grounds, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within that period of three months.

( ) Where an employment tribunal finds a complaint under subsection (1) well-founded, the tribunal shall order the temporary work agency to pay the agency worker the amount of remuneration which it finds is due to her.

( ) An agency worker may present a complaint to an employment tribunal that in contravention of section 68B the temporary work agency has failed to offer to propose the agency worker to a hirer that has suitable alternative work available.

( ) An employment tribunal shall not consider a complaint under subsection (4) unless it is presented—

(a) before the end of the period of three months beginning with the day on which the supply of the agency worker to a hirer was ended on maternity grounds, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within that period of three months.

( ) Where an employment tribunal finds a complaint under subsection (4) well-founded, the tribunal shall order the temporary work agency to pay the agency worker the amount of compensation which it finds is due to her.

( ) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

(a) the infringement of the agency worker's right under section 68B by the failure on the part of the temporary work agency to which the complaint relates, and

(b) any loss sustained by the agency worker which is attributable to that failure.

[F368(7A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsections (2)(a) and (5)(a).]

( ) Expressions used in this section and sections 68A to 68C have the same meaning as in those sections (see section 68D).]

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Textual Amendments

F367 S. 70A inserted (1.10.2011) by The Agency Workers Regulations 2010 (S.I. 2010/93), reg. 25, **Sch. 2 para. 14**

F368 S. 70A(7A) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(20)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

[F369PART VIII

Textual Amendments

F369 Pt. 8 (ss. 71-80) substituted for Pt. 8 (ss. 71-85) (15.12.1999) by 1999 c. 26, s. 7, **Sch. 4 Pt. 1**; S.I. 1999/2830, art. 2(1)(2), **Sch. 1 Pt. 2** (with transitional provisions in Sch. 3 para. 10)

CHAPTER I

MATERNITY LEAVE

71

(1) An employee may, provided that she satisfies any conditions which may be prescribed, be absent from work at any time during an ordinary maternity leave period.

(2) An ordinary maternity leave period is a period calculated in accordance with regulations made by the Secretary of State.

[F370(3) Regulations under subsection (2)—

(a) shall secure that, where an employee has a right to leave under this section, she is entitled to an ordinary maternity leave period of at least 26 weeks;

(b) may allow an employee to choose, subject to prescribed restrictions, the date on which an ordinary maternity leave period starts;

[F371(ba) may allow an employee to bring forward the date on which an ordinary maternity leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions;

(bb) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date;**]**

(c) may specify circumstances in which an employee may work for her employer during an ordinary maternity leave period without bringing the period to an end.**]**

[F372(3A) Provision under subsection (3)(ba) is to secure that an employee may bring forward the date on which an ordinary maternity leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards leave under section 75E or statutory shared parental pay in respect of the child.**]**

(4) Subject to section 74, an employee who exercises her right under subsection (1)—

(a) is entitled **[**F373, for such purposes and to such extent as may be prescribed,**]** to the benefit of the terms and conditions of employment which would have applied if she had not been absent,

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(b) is bound **[**F374, for such purposes and to such extent as may be prescribed**]** by any obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1)), and

[F375(c) is entitled to return from leave to a job of a prescribed kind.**]**

(5) In subsection (4)(a) "terms and conditions of employment"—

(a) includes matters connected with an employee's employment whether or not they arise under her contract of employment, but

(b) does not include terms and conditions about remuneration.

(6) The Secretary of State may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this section.

[F376(7) The Secretary of State may make regulations making provision, in relation to the right to return under subsection (4)(c) above, about—

(a) seniority, pension rights and similar rights;

(b) terms and conditions of employment on return.**]**

Textual Amendments

F370 S. 71(3) substituted (27.6.2006 for certain purposes, otherwise 1.10.2006) by Work and Families Act 2006 (c. 18), ss. 11, 19, **Sch. 1 para. 31**; S.I. 2006/1682, **art. 2(c)**, **3(c)(d)**

F371 S. 71(3)(ba)(bb) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 118(2)(a)**, 139(6); S.I. 2014/1640, art. 3(1)(b)

F372 S. 71(3A) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 118(2)(b)**, 139(6); S.I. 2014/1640, art. 3(1)(b)

F373 Words in s. 71(4)(a) inserted (24.11.2002) by Employment Act 2002 (c. 22), **s. 17(2)(a)**; S.I. 2002/2866, **arts. 2(1)**, 3, Sch. 1 Pt. 1 (with Sch. 3 para. 3)

F374 Words in s. 71(4)(b) inserted (24.11.2002) by Employment Act 2002 (c. 22), **s. 17(2)(b)**; S.I. 2002/2866, **arts. 2(1)**, 3, Sch. 1 Pt. 1 (with Sch. 3 para. 3)

F375 S. 71(4)(c) substituted (24.11.2002) by Employment Act 2002 (c. 22), **s. 17(2)(c)**; S.I. 2002/2866, **arts. 2(1)**, 3, Sch. 1 Pt. 1 (with Sch. 3 para. 3)

F376 S. 71(7) substituted (24.11.2002) by Employment Act 2002 (c. 22), **s. 17(3)**; S.I. 2002/2866, **arts. 2(1)**, 3, Sch. 1 Pt. 1 (with Sch. 3 para. 3)

Modifications etc. (not altering text)

C56 S. 71 restricted (15.12.1999) by S.I. 1999/3312, **reg. 9**

C57 S. 71 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

C58 Ss. 70, 71 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), **arts. 1(1)**, 3, {Sch. }

72 Compulsory maternity leave.

(1) An employer shall not permit an employee who satisfies prescribed conditions to work during a compulsory maternity leave period.

(2) A compulsory maternity leave period is a period calculated in accordance with regulations made by the Secretary of State.

(3) Regulations under subsection (2) shall secure—

(a) that no compulsory leave period is less than two weeks, and

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(b) that every compulsory maternity leave period falls within an ordinary maternity leave period.

(4) Subject to subsection (5), any provision of or made under the [M29] Health and Safety at Work etc. Act 1974 shall apply in relation to the prohibition under subsection (1) as if it were imposed by regulations under section 15 of that Act.

(5) Section 33(1)(c) of the 1974 Act shall not apply in relation to the prohibition under subsection (1); and an employer who contravenes that subsection shall be—

(a) guilty of an offence, and

(b) liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Marginal Citations

M29 1974 c. 37.

73 Additional maternity leave.

(1) An employee who satisfies prescribed conditions may be absent from work at any time during an additional maternity leave period.

(2) An additional maternity leave period is a period calculated in accordance with regulations made by the Secretary of State.

[[F377](3) Regulations under subsection (2)—

(a) may allow an employee **[**[F378]to bring forward the date on which an additional maternity leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions;**]**

[[F379](aa) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date;**]**

(b) may specify circumstances in which an employee may work for her employer during an additional maternity leave period without bringing the period to an end.**]**

[[F380](3A) Provision under subsection (3)(a) is to secure that an employee may bring forward the date on which an additional maternity leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards leave under section 75E or statutory shared parental pay in respect of the child.**]**

(4) Subject to section 74, an employee who exercises her right under subsection (1)—

(a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if she had not been absent,

(b) is bound, for such purposes and to such extent as may be prescribed, by obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1)), and

(c) is entitled to return from leave to a job of a prescribed kind.

(5) In subsection (4)(a) "terms and conditions of employment"—

(a) includes matters connected with an employee's employment whether or not they arise under her contract of employment, but

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(b) does not include terms and conditions about remuneration.

[F381(5A) In subsection (4)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to additional maternity leave and partly to ordinary maternity leave.**]**

(6) The Secretary of State may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this section.

(7) The Secretary of State may make regulations making provision, in relation to the right to return under subsection (4)(c), about—

(a) seniority, pension rights and similar rights;

(b) terms and conditions of employment on return.

Textual Amendments

F377 S. 73(3) substituted (27.6.2006 for certain purposes, otherwise 1.10.2006) by Work and Families Act 2006 (c. 18), ss. 11, 19, **Sch. 1 para. 32**; S.I. 2006/1682, **art. 2(c)**, **3(c)(d)**

F378 Words in s. 73(3)(a) substituted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 118(3)(a)**, 139(6); S.I. 2014/1640, art. 3(1)(b)

F379 S. 73(3)(aa) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 118(3)(b)**, 139(6); S.I. 2014/1640, art. 3(1)(b)

F380 S. 73(3A) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 118(3)(c)**, 139(6); S.I. 2014/1640, art. 3(1)(b)

F381 S. 73(5A) inserted (24.11.2002) by Employment Act 2002 (c. 22), **s. 17(4)**; S.I. 2002/2866, **arts. 2(1)**, 3, Sch. 1 Pt. 1 (with Sch. 3 para. 3)

74 Redundancy and dismissal.

(1) Regulations under section 71 or 73 may make provision about redundancy during **[**F382, or after,**]** an ordinary or additional maternity leave period.

(2) Regulations under section 71 or 73 may make provision about dismissal (other than by reason of redundancy) during an ordinary or additional maternity leave period.

(3) Regulations made by virtue of subsection (1) or (2) may include—

(a) provision requiring an employer to offer alternative employment;

(b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part X).

(4) Regulations under section **[**F383 71 or**]** 73 may make provision—

(a) for section **[**F384 71(4)(c) or**]** 73(4)(c) not to apply in specified cases, and

(b) about dismissal at the conclusion of an **[**F385 ordinary or**]** additional maternity leave period.

Textual Amendments

F382 Words in s. 74(1) inserted (24.7.2023) by Protection from Redundancy (Pregnancy and Family Leave) Act 2023 (c. 17), **ss. 2(2)**, 3(2)

F383 Words in s. 74(4) inserted (24.11.2002) by Employment Act 2002 (c. 22), **s. 17(5)(a)**; S.I. 2002/2866, **arts. 2(1)**, 3, Sch. 1 Pt. 1 (with Sch. 3 para. 3)

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F384 Words in s. 74(4)(a) inserted (24.11.2002) by Employment Act 2002 (c. 22), **s. 17(5)(b)**; S.I. 2002/2866, **arts. 2(1)**, 3, Sch. 1 Pt. 1 (with Sch. 3 para. 3)

F385 Words in s. 74(4)(b) inserted (24.11.2002) by Employment Act 2002 (c. 22), **s. 17(5)(c)**; S.I. 2002/2866, **arts. 2(1)**, 3, Sch. 1 Pt. 1 (with Sch. 3 para. 3)

75 Sections 71 to 73: supplemental.

(1) Regulations under section 71, 72 or 73 may—

(a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;

(b) make provision for the consequences of failure to give notices, to produce evidence or to comply with other procedural requirements;

(c) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);

(d) make special provision for cases where an employee has a right which corresponds to a right under this Chapter and which arises under her contract of employment or otherwise;

(e) make provision modifying the effect of Chapter II of Part XIV (calculation of a week's pay) in relation to an employee who is or has been absent from work on ordinary or additional maternity leave;

(f) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to ordinary, compulsory or additional maternity leave;

(g) make different provision for different cases or circumstances.

(2) In sections 71 to 73 " prescribed " means prescribed by regulations made by the Secretary of State.

[F386 CHAPTER 1A

ADOPTION LEAVE

Textual Amendments

F386 Pt. 8 Ch. 1A inserted (8.12.2002) by Employment Act 2002 (c. 22), **s. 3**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2

75A Ordinary adoption leave

(1) An employee who satisfies prescribed conditions may be absent from work at any time during an ordinary adoption leave period.

[F387(1A) The conditions that may be prescribed under subsection (1) include conditions as to—

(a) being a local authority foster parent;

(b) being approved as a prospective adopter;

(c) **[**F388being notified—

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(i) by a local authority in England that a child is to be, or is expected to be, placed with the employee under section 22C of the Children Act 1989;

(ii) by a local authority in Wales that a child is to be, or is expected to be, placed with the employee under section 81 of the Social Services and Well-being (Wales) Act 2014.**]**

(2) An ordinary adoption leave period is a period calculated in accordance with regulations made by the Secretary of State.

[Regulations under subsection (2)**[**F390—**]**

F389(2A) **[**

F390(a) may allow an employee to bring forward the date on which an ordinary adoption leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions;

(b) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date;**]**

F391(c)**]** **[** may specify circumstances in which an employee may work for his employer during an ordinary adoption leave period without bringing the period to an end.**]**

F392(2B) **[** Provision under subsection (2A)(a) is to secure that an employee may bring forward the date on which an ordinary adoption leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards leave under section 75G or statutory shared parental pay in respect of the child.**]**

(3) Subject to section 75C, an employee who exercises his right under subsection (1)—

(a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he had not been absent,

(b) is bound, for such purposes and to such extent as may be prescribed, by any obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1)), and

(c) is entitled to return from leave to a job of a prescribed kind.

(4) In subsection (3)(a) " terms and conditions of employment "—

(a) includes matters connected with an employee's employment whether or not they arise under his contract of employment, but

(b) does not include terms and conditions about remuneration.

(5) In subsection (3)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to ordinary adoption leave and partly to maternity leave.

(6) The Secretary of State may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this section.

(7) The Secretary of State may make regulations making provision, in relation to the right to return under subsection (3)(c), about—

(a) seniority, pension rights and similar rights;

(b) terms and conditions of employment on return.

[F393(8) The Secretary of State may by regulations provide for this section to have effect, with such modifications as the regulations may prescribe, in relation to—

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(a) cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order,

(b) cases which involve an employee who has applied, or intends to apply, for a parental order under section 54A of that Act and a child who is, or will be, the subject of the order.**]**

Textual Amendments

F387 S. 75A(1A) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 121(1)**, 139(6); S.I. 2014/1640, art. 3(1)(e)

F388 S. 75A(1A)(c) substituted (E.W.) (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **145**

F389 S. 75A(2A) inserted (27.6.2006 for certain purposes, otherwise 1.10.2006) by Work and Families Act 2006 (c. 18), ss. 11, 19, **Sch. 1 para. 33**; S.I. 2006/1682, **art. 2(c)**, **3(c)(d)**

F390 Words in s. 75A(2A) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 118(4)(a)**, 139(6); S.I. 2014/1640, art. 3(1)(b)

F391 Words in s. 75A(2A)(c) renumbered as s. 75A(2A)(c) (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 118(4)(b)**, 139(6); S.I. 2014/1640, art. 3(1)(b)

F392 S. 75A(2B) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 118(4)(c)**, 139(6); S.I. 2014/1640, art. 3(1)(b)

F393 S. 75A(8) substituted (3.1.2019) by The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 1 para. 11(10)**

Modifications etc. (not altering text)

C59 S. 75A applied (25.11.2014) by The Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases) Regulations 2014 (S.I. 2014/3095), regs. 1(1), **2**

C60 S. 75A amendment to earlier affecting provision S.I. 2014/3095, reg. 2 (3.1.2019) by The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 2 para. 8**

75B Additional adoption leave

(1) An employee who satisfies prescribed conditions may be absent from work at any time during an additional adoption leave period.

(2) An additional adoption leave period is a period calculated in accordance with regulations made by the Secretary of State.

[F394(3) Regulations under subsection (2)—

(a) may allow an employee **[**F395to bring forward the date on which an additional adoption leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions;**]**

[F396(aa) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date;**]**

(b) may specify circumstances in which an employee may work for his employer during an additional adoption leave period without bringing the period to an end.**]**

[F397(3A) Provision under subsection (3)(a) is to secure that an employee may bring forward the date on which an additional adoption leave period ends only if the employee or another

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person has taken, or is taking, prescribed steps as regards leave under section 75G or statutory shared parental pay in respect of the child.**]**

(4) Subject to section 75C, an employee who exercises his right under subsection (1)—

(a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he had not been absent,

(b) is bound, for such purposes and to such extent as may be prescribed, by obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1)), and

(c) is entitled to return from leave to a job of a prescribed kind.

(5) In subsection (4)(a) " terms and conditions of employment "—

(a) includes matters connected with an employee's employment whether or not they arise under his contract of employment, but

(b) does not include terms and conditions about remuneration.

(6) In subsection (4)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to additional adoption leave and partly to—

(a) maternity leave, or

(b) ordinary adoption leave,

or to both.

(7) The Secretary of State may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this section.

(8) The Secretary of State may make regulations making provision, in relation to the right to return under subsection (4)(c), about—

(a) seniority, pension rights and similar rights;

(b) terms and conditions of employment on return.

[F398(9) The Secretary of State may by regulations provide for this section to have effect, with such modifications as the regulations may prescribe, in relation to—

(a) cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order,

(b) cases which involve an employee who has applied, or intends to apply, for a parental order under section 54A of that Act and a child who is, or will be, the subject of the order.**]**

Textual Amendments

F394 S. 75B(3) substituted (27.6.2006 for certain purposes, otherwise 1.10.2006) by Work and Families Act 2006 (c. 18), ss. 11, 19, **Sch. 1 para. 34**; S.I. 2006/1682, **art. 2(c)**, 3(c)(d)

F395 Words in s. 75B(3)(a) substituted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 118(5)(a)**, 139(6); S.I. 2014/1640, art. 3(1)(b)

F396 S. 75B(3)(aa) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 118(5)(b)**, 139(6); S.I. 2014/1640, art. 3(1)(b)

F397 S. 75B(3A) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 118(5)(c)**, 139(6); S.I. 2014/1640, art. 3(1)(b)

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F398 S. 75B(9) substituted (3.1.2019) by The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 1 para. 11(11)**

Modifications etc. (not altering text)

C61 S. 75B applied (25.11.2014) by The Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases) Regulations 2014 (S.I. 2014/3095), regs. 1(1), **2**

C62 S. 75B amendment to earlier affecting provision S.I. 2014/3095, reg. 2 (3.1.2019) by The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 2 para. 8**

75C Redundancy and dismissal

(1) Regulations under section 75A or 75B may make provision about—

[[F399](a) redundancy during, or after, an ordinary or additional adoption leave period, or

(b) dismissal (other than by reason of redundancy) during an ordinary or additional adoption leave period.**]**

(2) Regulations made by virtue of subsection (1) may include—

(a) provision requiring an employer to offer alternative employment;

(b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part 10).

(3) Regulations under section 75A or 75B may make provision—

(a) for section 75A(3)(c) or 75B(4)(c) not to apply in specified cases, and

(b) about dismissal at the conclusion of an ordinary or additional adoption leave period.

Textual Amendments

F399 S. 75C(1)(a)(b) substituted for s. 75C(1)(a)(b) and words (24.7.2023) by Protection from Redundancy (Pregnancy and Family Leave) Act 2023 (c. 17), **ss. 2(3)**, 3(2)

75D Chapter 1A: supplemental

(1) Regulations under section 75A or 75B may—

(a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;

(b) make provision requiring employers or employees to keep records;

(c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;

(d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);

(e) make special provision for cases where an employee has a right which corresponds to a right under this Chapter and which arises under his contract of employment or otherwise;

(f) make provision modifying the effect of Chapter 2 of Part 14 (calculation of a week's pay) in relation to an employee who is or has been absent from work on ordinary or additional adoption leave;

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(g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to ordinary or additional adoption leave;

(h) make different provision for different cases or circumstances.

F400 **[** Where section 75A or 75B has effect in relation to such cases as are described in (1A) section 75A(8) or 75B(9), regulations under section 75A or 75B about evidence to be produced may require statutory declarations as to—

(a) eligibility to apply for a parental order **[**F401 under section 54 or 54A of the Human Fertilisation and Embryology Act 2008**]**;

(b) intention to apply for such an order.**]**

(2) In sections 75A and 75B " prescribed " means prescribed by regulations made by the Secretary of State. **]**

Textual Amendments

F400 S. 75D(1A) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 122(3)**, 139(6); S.I. 2014/1640, art. 3(1)(f)

F401 Words in s. 75D(1A)(a) inserted (3.1.2019) by The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 1 para. 11(12)**

[F402 CHAPTER 1B

SHARED PARENTAL LEAVE

Textual Amendments

F402 Pt. 8 Ch. 1B (ss. 75E-75K) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 117(1)**, 139(6); S.I. 2014/1640, **art. 3(1)(a)**

75E Entitlement to shared parental leave: birth

(1) The Secretary of State may make regulations entitling an employee who satisfies specified conditions—

(a) as to duration of employment,

(b) as to being, or expecting to be, the mother of a child,

(c) as to caring or intending to care, with another person ("P"), for the child,

(d) as to entitlement to maternity leave,

(e) as to the exercise of that entitlement and the extent of any such exercise,

(f) as to giving notice of an intention to exercise an entitlement to leave under this subsection, and

(g) as to the consent of P to the amount of leave under this subsection that the employee intends to take,

to be absent from work on leave under this subsection for the purpose of caring for the child.

(2) Regulations under subsection (1) may provide that the employee's entitlement is subject to the satisfaction by P of specified conditions—

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(a) as to employment or self-employment,
(b) as to having earnings of a specified amount for a specified period,
(c) as to caring or intending to care, with the employee, for the child, and
(d) as to relationship with the child or the employee.

(3) Provision under subsection (1)(f) may require the employee to give notice to the employer about—
(a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of P to exercise an entitlement to leave under subsection (4) or to statutory shared parental pay);
(b) how much of the entitlement to leave the employee intends to exercise;
(c) the extent to which P intends to exercise an entitlement to leave under subsection (4) or to statutory shared parental pay.

(4) The Secretary of State may make regulations entitling an employee who satisfies specified conditions—
(a) as to duration of employment,
(b) as to relationship with a child or expected child or with the child's mother,
(c) as to caring or intending to care, with the child's mother, for the child,
(d) as to giving notice of an intention to exercise an entitlement to leave under this subsection, and
(e) as to the consent of the child's mother to the amount of leave under this subsection that the employee intends to take,

to be absent from work on leave under this subsection for the purpose of caring for the child.

(5) Regulations under subsection (4) may provide that the employee's entitlement is subject to the satisfaction by the child's mother of specified conditions—
(a) as to employment or self-employment,
(b) as to having earnings of a specified amount for a specified period,
(c) as to caring or intending to care, with the employee, for the child,
(d) as to entitlement (or lack of entitlement) to maternity leave, statutory maternity pay or maternity allowance, and
(e) as to the exercise of any such entitlement and the extent of any such exercise.

(6) Provision under subsection (4)(d) may require the employee to give notice to the employer about—
(a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of the child's mother to exercise an entitlement to leave under subsection (1) or to statutory shared parental pay);
(b) how much of the entitlement to leave the employee intends to exercise;
(c) the extent to which the child's mother intends to exercise an entitlement to leave under subsection (1) or to statutory shared parental pay.

75F Entitlement to leave under section 75E: further provision

(1) Regulations under section 75E are to include provision for determining—

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(a) the amount of leave under section 75E(1) or (4) to which an employee is entitled in respect of a child;

(b) when leave under section 75E(1) or (4) may be taken.

(2) Provision under subsection (1)(a) is to secure that the amount of leave to which an employee is entitled in respect of a child does not exceed—

(a) in a case where the child's mother became entitled to maternity leave, the relevant amount of time reduced by—

(i) where her maternity leave ends without her ordinary or additional maternity leave period having been curtailed by virtue of section 71(3)(ba) or 73(3)(a), the amount of maternity leave taken by the child's mother, or

(ii) except where sub-paragraph (i) applies, the amount of time between the beginning of her maternity leave and the time when her ordinary or additional maternity leave period, as curtailed by virtue of section 71(3)(ba) or 73(3)(a), comes to an end;

(b) in a case where the child's mother became entitled to statutory maternity pay or maternity allowance but not maternity leave, the relevant amount of time reduced by an amount determined in accordance with paragraph (a) or, as the case may be, paragraph (b) of section 171ZU(6) of the Social Security Contributions and Benefits Act 1992.

(3) In subsection (2) " the relevant amount of time " means an amount of time specified in or determined in accordance with regulations under section 75E.

(4) Provision under subsection (1)(a) is to secure that the amount of leave that an employee is entitled to take in respect of a child takes into account—

(a) in a case where another person is entitled to leave under section 75E in respect of the child, the amount of such leave taken by the other person;

(b) in a case where another person is entitled to statutory shared parental pay in respect of the child but not leave under section 75E, the number of weeks in respect of which such pay is payable to the other person.

(5) In reckoning for the purposes of subsection (2) the amount of maternity leave taken, a part of a week is to be treated as a full week.

(6) In reckoning for the purposes of subsection (4) the amount of leave under section 75E taken during a period of such leave, a part of a week is to be treated as a full week.

(7) Provision under subsection (1)(b) is to secure that leave under section 75E must be taken before the end of such period as may be specified by the regulations.

(8) Regulations under section 75E are to provide for the taking of leave under section 75E in a single period or in non-consecutive periods.

(9) Regulations under section 75E may—

(a) provide for an employer, subject to such restrictions as may be specified, to require an employee who proposes to take non-consecutive periods of leave under section 75E to take that amount of leave as a single period of leave;

(b) provide for a single period of leave that is so imposed on an employee to start with a day proposed by the employee or, if no day is proposed, with the first day of the first period of leave proposed by the employee.

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(10) Regulations under section 75E may provide for the variation, subject to such restrictions as may be specified, of—

(a) the period or periods during which an amount of leave under section 75E may be taken;

(b) the amount of leave under section 75E that the employee previously specified in accordance with provision under section 75E(3)(b) or (6)(b) or subsection (13)(b) of this section.

(11) Provision under subsection (10)(a) may provide for variation to be subject to the consent of an employer in circumstances specified by the regulations.

(12) Provision under subsection (10)(b) may require an employee to satisfy specified conditions—

(a) as to giving notice of an intention to vary the amount of leave under section 75E to be taken by the employee;

(b) if the employee proposes to vary the amount of leave under section 75E(1) to be taken by the employee, as to the consent of P to that variation;

(c) if the employee proposes to vary the amount of leave under section 75E(4) to be taken by the employee, as to the consent of the child's mother to that variation.

(13) Provision under subsection (12)(a) may require an employee to give notice to the employer about—

(a) the extent to which the employee has exercised an entitlement to leave under section 75E(1) or (4) in respect of the child;

(b) how much of the entitlement to leave the employee intends to exercise;

(c) the extent to which a person other than the employee has exercised an entitlement to leave under section 75E or to statutory shared parental pay in respect of the child;

(d) the extent to which a person other than the employee intends to exercise such an entitlement.

(14) Regulations under section 75E may—

(a) specify things which are, or are not, to be taken as done for the purpose of caring for a child;

(b) make provision excluding the right to be absent on leave under section 75E in respect of a child where more than one child is born as a result of the same pregnancy;

(c) specify a minimum amount of leave under section 75E which may be taken;

(d) make provision about how leave under section 75E may be taken;

(e) specify circumstances in which an employee may work for the employer during a period of leave under section 75E without bringing the particular period of leave, or the employee's entitlement to leave under section 75E, to an end;

(f) specify circumstances in which an employee may be absent on leave under section 75E otherwise than for the purpose of caring for a child without bringing the person's entitlement to leave under section 75E to an end.

(15) In this section " week " means any period of seven days.

(16) The Secretary of State may by regulations provide that the following do not have effect, or have effect with modifications specified by the regulations, in a case where

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the mother of a child dies before another person has become entitled to leave under section 75E in respect of the child—

(a) section 75E(4)(b), (c) and (e);
(b) section 75E(5);
(c) section 75E(6)(c);
(d) subsection (12)(c);
(e) subsection (13)(c) and (d).

75G Entitlement to shared parental leave: adoption

(1) The Secretary of State may make regulations entitling an employee who satisfies specified conditions—

(a) as to duration of employment,
(b) as to being a person with whom a child is, or is expected to be, placed for adoption under the law of any part of the United Kingdom,
(c) as to caring or intending to care, with another person ("P"), for the child,
(d) as to entitlement to adoption leave,
(e) as to the exercise of that entitlement and the extent of any such exercise,
(f) as to giving notice of an intention to exercise an entitlement to leave under this subsection, and
(g) as to the consent of P to the amount of leave under this subsection that the employee intends to take,

to be absent from work on leave under this subsection for the purpose of caring for the child.

(2) Regulations under subsection (1) may provide that the employee's entitlement is subject to the satisfaction by P of specified conditions—

(a) as to employment or self-employment,
(b) as to having earnings of a specified amount for a specified period,
(c) as to caring or intending to care, with the employee, for the child, and
(d) as to relationship with the child or the employee.

(3) Provision under subsection (1)(f) may require the employee to give notice to the employer about—

(a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of P to exercise an entitlement to leave under subsection (4) or to statutory shared parental pay);
(b) how much of the entitlement to leave the employee intends to exercise;
(c) the extent to which P intends to exercise an entitlement to leave under subsection (4) or to statutory shared parental pay.

(4) The Secretary of State may make regulations entitling an employee who satisfies specified conditions—

(a) as to duration of employment,
(b) as to relationship with a child placed, or expected to be placed, for adoption under the law of any part of the United Kingdom or with a person ("A") with whom the child is, or is expected to be, so placed,
(c) as to caring or intending to care, with A, for the child,

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(d) as to giving notice of an intention to exercise an entitlement to leave under this subsection, and

(e) as to the consent of A to the amount of leave under this subsection that the employee intends to take,

to be absent from work on leave under this subsection for the purpose of caring for the child.

(5) Regulations under subsection (4) may provide that the employee's entitlement is subject to the satisfaction by A of specified conditions—

(a) as to employment or self-employment,

(b) as to having earnings of a specified amount for a specified period,

(c) as to caring or intending to care, with the employee, for the child,

(d) as to entitlement (or lack of entitlement) to adoption leave or statutory adoption pay, and

(e) as to the exercise of any such entitlement and the extent of any such exercise.

(6) Provision under subsection (4)(d) may require the employee to give notice to the employer about—

(a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of A to exercise an entitlement to leave under subsection (1) or to statutory shared parental pay);

(b) how much of the entitlement to leave the employee intends to exercise;

(c) the extent to which A intends to exercise an entitlement to leave under subsection (1) or to statutory shared parental pay.

(7) **[**[F403]Regulations under subsections (1) and (4) are to provide for leave in respect of a child placed, or expected to be placed—

(a) under section 22C of the Children Act 1989 by a local authority in England, or

(b) under section 81 of the Social Services and Well-being (Wales) Act 2014 by a local authority in Wales,

with a local authority foster parent who has been approved as a prospective adopter.**]**

(8) This section and section 75H have effect in relation to regulations made by virtue of subsection (7) as if references to a child being placed for adoption under the law of any part of the United Kingdom were references to being placed under section 22C of the Children Act 1989**[**[F404], or section 81 of the Social Services and Well-being (Wales) Act 2014**]** with a local authority foster parent who has been approved as a prospective adopter.

Textual Amendments

F403 S. 75G(7) substituted (E.W.) (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **146(a)**

F404 Words in s. 75G(8) inserted (E.W.) (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **146(b)**

Modifications etc. (not altering text)

C63 S. 75G modified (E.W.) (25.11.2014) by The Employment Rights Act 1996 (Application of Sections 75G and 75H to Adoptions from Overseas) Regulations 2014 (S.I. 2014/3091), regs. 1, 2, **Sch.**

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C64 S. 75G applied (with modifications) (25.11.2014) by The Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases) Regulations 2014 (S.I. 2014/3095), regs. 1(1), 3, **Sch. 1**

C65 S. 75G amendment to earlier affecting provision S.I. 2014/3095, reg. 3, Sch. 1 (3.1.2019) by The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 2 para. 8**

75H Entitlement to leave under section 75G: further provision

(1) Regulations under section 75G are to include provision for determining—

(a) the amount of leave under section 75G(1) or (4) to which an employee is entitled in respect of a child;

(b) when leave under section 75G(1) or (4) may be taken.

(2) Provision under subsection (1)(a) is to secure that the amount of leave to which an employee is entitled in respect of a child does not exceed—

(a) in a case where a person with whom the child is, or is expected to be, placed for adoption became entitled to adoption leave, the relevant amount of time reduced by—

(i) where the person's adoption leave ends without the person's ordinary or additional adoption leave period having been curtailed by virtue of section 75A(2A)(a) or 75B(3)(a), the amount of adoption leave taken by that person, or

(ii) except where sub-paragraph (i) applies, the amount of time between the beginning of the person's adoption leave and the time when the person's ordinary or additional adoption leave period, as curtailed by virtue of section 75A(2A)(a) or 75B(3)(a), comes to an end;

(b) in a case where a person with whom the child is, or is expected to be, placed for adoption became entitled to statutory adoption pay but not adoption leave, the relevant amount of time reduced by an amount determined in accordance with paragraph (a) or, as the case may be, paragraph (b) of section 171ZV(6) of the Social Security Contributions and Benefits Act 1992.

(3) In subsection (2) " the relevant amount of time " means an amount of time specified in or determined in accordance with regulations under section 75G.

(4) Provision under subsection (1)(a) is to secure that the amount of leave that an employee is entitled to take in respect of a child takes into account—

(a) in a case where another person is entitled to leave under section 75G in respect of the child, the amount of such leave taken by the other person;

(b) in a case where another person is entitled to statutory shared parental pay in respect of the child but not leave under section 75G, the number of weeks in respect of which such pay is payable to the other person.

(5) In reckoning for the purposes of subsection (2) the amount of adoption leave taken, a part of a week is to be treated as a full week.

(6) In reckoning for the purposes of subsection (4) the amount of leave under section 75G taken during a period of such leave, a part of a week is to be treated as a full week.

(7) Provision under subsection (1)(b) is to secure that leave under section 75G must be taken before the end of such period as may be prescribed by the regulations.

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(8) Regulations under section 75G are to provide for the taking of leave under section 75G in a single period or in non-consecutive periods.

(9) Regulations under section 75G may—

(a) provide for an employer, subject to such restrictions as may be specified, to require an employee who proposes to take non-consecutive periods of leave under section 75G to take that amount of leave as a single period of leave, and

(b) provide for a single period of leave that is so imposed on an employee to start with a day proposed by the employee or, if no day is proposed, with the first day of the first period of leave proposed by the employee.

(10) Regulations under section 75G may provide for the variation, subject to such restrictions as may be specified, of—

(a) the period or periods during which an amount of leave under section 75G is to be taken;

(b) the amount of leave under section 75G that the employee previously specified in accordance with provision under section 75G(3)(b) or (6)(b) or subsection (13)(b) of this section.

(11) Provision under subsection (10)(a) may provide for variation to be subject to the consent of an employer in circumstances specified by the regulations.

(12) Provision under subsection (10)(b) may require an employee to satisfy specified conditions—

(a) as to giving notice of an intention to vary the amount of leave under section 75G to be taken by the employee;

(b) if the employee proposes to vary the amount of leave under section 75G(1) to be taken by the employee, as to the consent of P to that variation;

(c) if the employee proposes to vary the amount of leave under section 75G(4) to be taken by the employee, as to the consent of A to that variation.

(13) Provision under subsection (12)(a) may require an employee to give notice to the employer about—

(a) the extent to which the employee has exercised an entitlement to leave under section 75G(1) or (4) in respect of the child;

(b) how much of the entitlement to leave the employee intends to exercise;

(c) the extent to which a person other than the employee has exercised an entitlement to leave under section 75G or to statutory shared parental pay in respect of the child;

(d) the extent to which a person other than the employee intends to exercise such an entitlement.

(14) Regulations under section 75G may—

(a) specify things which are, or are not, to be taken as done for the purpose of caring for a child;

(b) make provision excluding the right to be absent on leave under section 75G in respect of a child where more than one child is placed for adoption as part of the same arrangement;

(c) specify a minimum amount of leave under section 75G which may be taken;

(d) make provision about how leave under section 75G may be taken;

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(e) specify circumstances in which an employee may work for the employer during a period of leave under section 75G without bringing the particular period of leave, or the employee's entitlement to leave under section 75G, to an end;

(f) specify circumstances in which an employee may be absent on leave under section 75G otherwise than for the purpose of caring for a child without bringing the person's entitlement to leave under section 75G to an end.

(15) In this section " week " means any period of seven days.

(16) The Secretary of State may by regulations provide that the following do not have effect, or have effect with modifications specified by the regulations, in a case where a person who is taking adoption leave or is entitled to be paid statutory adoption pay in respect of a child dies before another person has become entitled to leave under section 75G in respect of the child—

(a) section 75G(4)(b), (c) and (e);

(b) section 75G(5);

(c) section 75G(6)(c);

(d) subsection (12)(c);

(e) subsection (13)(c) and (d).

(17) The Secretary of State may by regulations provide for section 75G and this section to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.

(18) The Secretary of State may by regulations provide for section 75G and this section to have effect in relation to cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as the regulations may prescribe.

Modifications etc. (not altering text)

C66 S. 75H applied (with modifications) (25.11.2014) by The Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases) Regulations 2014 (S.I. 2014/3095), regs. 1(1), 3, **Sch. 1**

C67 S. 75H modified (E.W.) (25.11.2014) by The Employment Rights Act 1996 (Application of Sections 75G and 75H to Adoptions from Overseas) Regulations 2014 (S.I. 2014/3091), regs. 1, 2, **Sch.**

C68 S. 75H amendment to earlier affecting provision S.I. 2014/3095, reg. 3, Sch. 1 (3.1.2019) by The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 2 para. 8**

75I Rights during and after shared parental leave

(1) Regulations under section 75E or 75G are to provide—

(a) that an employee who is absent on leave under that section is entitled, for such purposes and to such extent as the regulations may prescribe, to the benefit of the terms and conditions of employment which would have applied if the employee had not been absent;

(b) that an employee who is absent on leave under that section is bound, for such purposes and to such extent as the regulations may prescribe, by

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obligations arising under those terms and conditions, except in so far as they are inconsistent with section 75E(1) or (4) or 75G(1) or (4), as the case may be; and

(c) that an employee who is absent on leave under that section is entitled to return from leave to a job of a kind prescribed by the regulations, subject to section 75J(1).

(2) In subsection (1)(a) "terms and conditions of employment"—

(a) includes matters connected with an employee's employment whether or not they arise under the employee's contract of employment, but

(b) does not include terms and conditions about remuneration.

(3) The reference in subsection (1)(c) to absence on leave under section 75E or 75G includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under one of those sections and partly to any one or more of the following—

(a) leave under the other of those sections,

(b) maternity leave,

(c) paternity leave,

(d) adoption leave, [F405]...

(e) parental leave**[**[F406], and

(f) parental bereavement leave.**]**

(4) Regulations under section 75E or 75G may specify matters which are, or are not, to be treated as remuneration for the purposes of this section.

(5) Regulations under section 75E or 75G may make provision, in relation to the right to return mentioned in subsection (1)(c), about—

(a) seniority, pension rights and similar rights;

(b) terms and conditions of employment on return.

Textual Amendments

F405 Word in s. 75I(3)(d) omitted (18.1.2020) by virtue of Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 23(a)**; S.I. 2020/45, reg. 2

F406 S. 75I(3)(f) and preceding word inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 23(b)**; S.I. 2020/45, reg. 2

75J Redundancy and dismissal

(1) Regulations under section 75E or 75G may make provision about—

[[F407](a) redundancy during, or after, a period of leave under that section, or

(b) dismissal (other than by reason of redundancy) during a period of leave under that section.**]**

(2) Provision made by virtue of subsection (1) may include—

(a) provision requiring an employer to offer alternative employment;

(b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part 10).

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Textual Amendments

F407 S. 75J(1)(a)(b) substituted for s. 75J(1)(a)(b) and words (24.7.2023) by Protection from Redundancy (Pregnancy and Family Leave) Act 2023 (c. 17), **ss. 2(4)**, 3(2)

75K Chapter 1B: supplemental

(1) Regulations under section 75E or 75G may—

(a) make provision about notices to be given, evidence to be produced and other procedures to be followed by—

(i) employees,

(ii) employers, and

(iii) relevant persons;

(b) make provision requiring such persons to keep records;

(c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;

(d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);

(e) make special provision for cases where an employee has a right which corresponds to a right under section 75E or 75G and which arises under the employee's contract of employment or otherwise;

(f) make provision modifying the effect of Chapter 2 of Part 14 (calculation of a week's pay) in relation to an employee who is or has been absent from work on leave under section 75E or 75G;

(g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions which may be specified, in relation to a person entitled to take leave under section 75E or 75G.

(2) In subsection (1) " relevant person " means—

(a) a person who, in connection with an employee's claim to be entitled to leave under section 75E or 75G, is required to satisfy conditions specified in provision under section 75E(2) or (5) or 75G(2) or (5), or

(b) a person who is an employer or former employer of such a person.

(3) In subsection (2)(b) " employer ", in relation to a person falling within subsection (2)(a) who is an employed earner, includes a person who is a secondary contributor as regards that employed earner.

(4) The conditions as to employment or self-employment that may be specified in provision under section 75E(2) or (5) or 75G(2) or (5) include conditions as to being in employed or self-employed earner's employment.

(5) In subsections (3) and (4)—

"employed earner" and "self-employed earner" have the meaning given by section 2 of the Social Security Contributions and Benefits Act 1992, subject for these purposes to the effect of regulations made under section 2(2)(b) of that Act (persons who are to be treated as employed or self-employed earners);

"employment", in the case of employment as an employed or self-employed earner, has the meaning given by section 122 of that Act;

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"secondary contributor", as regards an employed earner, means a person who—

(a) is indicated by section 7(1) of that Act, as that subsection has effect subject to section 7(2) of that Act, as being a secondary contributor as regards the earner, or

(b) is indicated by regulations under section 7(2) of that Act as being a person to be treated as a secondary contributor as regards the earner.

(6) Regulations under any of sections 75E to 75H may make different provision for different cases or circumstances.

(7) Where sections 75G and 75H have effect in relation to such cases as are described in section 75H(18), regulations under section 75G about evidence to be produced may require statutory declarations as to—

(a) eligibility to apply for a parental order;

(b) intention to apply for such an order.**]**

CHAPTER II

PARENTAL LEAVE

76 Entitlement to parental leave.

(1) The Secretary of State shall make regulations entitling an employee who satisfies specified conditions—

(a) as to duration of employment, and

(b) as to having, or expecting to have, responsibility for a child,

to be absent from work on parental leave for the purpose of caring for a child.

(2) The regulations shall include provision for determining—

(a) the extent of an employee's entitlement to parental leave in respect of a child;

(b) when parental leave may be taken.

(3) Provision under subsection (2)(a) shall secure that where an employee is entitled to parental leave in respect of a child he is entitled to a period or total period of leave of at least three months; but this subsection is without prejudice to any provision which may be made by the regulations for cases in which—

(a) a person ceases to satisfy conditions under subsection (1);

(b) an entitlement to parental leave is transferred.

(4) Provision under subsection (2)(b) may, in particular, refer to—

(a) a child's age, or

(b) a specified period of time starting from a specified event.

(5) Regulations under subsection (1) may—

(a) specify things which are, or are not, to be taken as done for the purpose of caring for a child;

(b) require parental leave to be taken as a single period of absence in all cases or in specified cases;

(c) require parental leave to be taken as a series of periods of absence in all cases or in specified cases;

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(d) require all or specified parts of a period of parental leave to be taken at or by specified times;

(e) make provision about the postponement by an employer of a period of parental leave which an employee wishes to take;

(f) specify a minimum or maximum period of absence which may be taken as part of a period of parental leave.

(g) specify a maximum aggregate of periods of parental leave which may be taken during a specified period of time.

77 Rights during and after parental leave.

(1) Regulations under section 76 shall provide—

(a) that an employee who is absent on parental leave is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he had not been absent,

(b) that an employee who is absent on parental leave is bound, for such purposes and to such extent as may be prescribed, by any obligations arising under those terms and conditions (except in so far as they are inconsistent with section 76(1)), and

(c) that an employee who is absent on parental leave is entitled, subject to section 78(1), to return from leave to a job of such kind as the regulations may specify.

(2) In subsection (1)(a) "terms and conditions of employment"—

(a) includes matters connected with an employee's employment whether or not they arise under a contract of employment, but

(b) does not include terms and conditions about remuneration.

(3) Regulations under section 76 may specify matters which are, or are not, to be treated as remuneration for the purposes of subsection (2)(b) above.

(4) The regulations may make provision, in relation to the right to return mentioned in subsection (1)(c), about—

(a) seniority, pension rights and similar rights;

(b) terms and conditions of employment on return.

78 Special cases.

(1) Regulations under section 76 may make provision—

(a) about redundancy during a period of parental leave;

(b) about dismissal (other than by reason of redundancy) during a period of parental leave.

(2) Provision by virtue of subsection (1) may include—

(a) provision requiring an employer to offer alternative employment;

(b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part X).

(3) Regulations under section 76 may provide for an employee to be entitled to choose to exercise all or part of his entitlement to parental leave—

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(a) by varying the terms of his contract of employment as to hours of work, or

(b) by varying his normal working practice as to hours of work,

in a way specified in or permitted by the regulations for a period specified in the regulations.

(4) Provision by virtue of subsection (3)—

(a) may restrict an entitlement to specified circumstances;

(b) may make an entitlement subject to specified conditions (which may include conditions relating to obtaining the employer's consent);

(c) may include consequential and incidental provision.

(5) Regulations under section 76 may make provision permitting all or part of an employee's entitlement to parental leave in respect of a child to be transferred to another employee in specified circumstances.

(6) The reference in section 77(1)(c) to absence on parental leave includes, where appropriate, a reference to a continuous period of absence attributable partly **[**[F408] to parental leave and partly to—

(a) maternity leave, or

(b) adoption leave,

or to both.**]**

(7) Regulations under section 76 may provide for specified provisions of the regulations not to apply in relation to an employee if any provision of his contract of employment—

(a) confers an entitlement to absence from work for the purpose of caring for a child, and

(b) incorporates or operates by reference to all or part of a collective agreement, or workforce agreement, of a kind specified in the regulations.

Textual Amendments

F408 Words in s. 78(6) substituted (24.11.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 28**; S.I. 2002/2866, **art. 2(1)**, Sch. 1 Pt. 1

79 Supplemental.

(1) Regulations under section 76 may, in particular—

(a) make provision about notices to be given and evidence to be produced by employees to employers, by employers to employees, and by employers to other employers;

(b) make provision requiring employers or employees to keep records;

(c) make provision about other procedures to be followed by employees and employers;

(d) make provision (including provision creating criminal offences) specifying the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;

(e) make provision specifying the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);

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(f) make special provision for cases where an employee has a right which corresponds to a right conferred by the regulations and which arises under his contract of employment or otherwise;

(g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to parental leave;

(h) make different provision for different cases or circumstances.

(2) The regulations may make provision modifying the effect of Chapter II of Part XIV (calculation of a week's pay) in relation to an employee who is or has been absent from work on parental leave.

F409(3) . . . . . .

Textual Amendments

F409 S. 79(3) omitted (31.12.2020) by virtue of The Employment Rights (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/535), reg. 1(1), **Sch. 1 para. 2** (with Sch. 1 para. 22); 2020 c. 1, Sch. 5 para. 1(1)

80 Complaint to employment tribunal.

(1) An employee may present a complaint to an employment tribunal that his employer—

(a) has unreasonably postponed a period of parental leave requested by the employee, or

(b) has prevented or attempted to prevent the employee from taking parental leave.

(2) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date (or last date) of the matters complained of, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[F410(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply] for the purposes of subsection (2)(a).**]**

(3) Where an employment tribunal finds a complaint under this section well-founded it—

(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the employer to the employee.

(4) The amount of compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

(a) the employer's behaviour, and

(b) any loss sustained by the employee which is attributable to the matters complained of.**]**

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Textual Amendments

F410 S. 80(2A) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(21)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

[F411 CHAPTER 3

PATERNITY LEAVE

Textual Amendments

F411 Pt. 8 Ch. 3 inserted (8.12.2002) by Employment Act 2002 (c. 22), **s. 1**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2

80A Entitlement to F412... paternity leave: birth

(1) The Secretary of State shall make regulations entitling an employee who satisfies specified conditions—

(a) as to duration of employment,

(b) as to relationship with a newborn, or expected, child, and

(c) as to relationship with the child's mother,

to be absent from work on leave under this section for the purpose of caring for the child or supporting the mother.

(2) The regulations shall include provision for determining—

(a) the extent of an employee's entitlement to leave under this section in respect of a child;

(b) when leave under this section may be taken.

(3) Provision under subsection (2)(a) shall secure that where an employee is entitled to leave under this section in respect of a child he is entitled to at least two weeks' leave.

(4) Provision under subsection (2)(b) shall secure that leave under this section must be taken before the end of a period of at least 56 days beginning with the date of the child's birth.

F413(4A) **[** Provision under subsection (2)(b) must secure that, once an employee takes leave under section 75E in respect of a child, the employee may not take leave under this section in respect of the child.**]**

(5) Regulations under subsection (1) may—

(a) specify things which are, or are not, to be taken as done for the purpose of caring for a child or supporting the child's mother;

(b) make provision excluding the right to be absent on leave under this section in respect of a child where more than one child is born as a result of the same pregnancy;

(c) make provision about how leave under this section may be taken.

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(6) Where more than one child is born as a result of the same pregnancy, the reference in subsection (4) to the date of the child's birth shall be read as a reference to the date of birth of the first child born as a result of the pregnancy.

(7) In this section—

" newborn child " includes a child stillborn after twenty-four weeks of pregnancy;

" week " means any period of seven days.

Textual Amendments

F412 Word in s. 80A heading repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 32**; S.I. 2014/1640, art. 7(o) (with art. 16)

F413 S. 80A(4A) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 118(6)**, 139(6); S.I. 2014/1640, art. 3(1)(b)

Modifications etc. (not altering text)

C69 S. 80A applied (with modifications) (25.11.2014) by The Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases) Regulations 2014 (S.I. 2014/3095), regs. 1(1), 4, **Sch. 2**

C70 S. 80A amendment to earlier affecting provision S.I. 2014/3095, reg. 4, Sch. 2 (3.1.2019) by The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 2 para. 8**

F414 80AA Entitlement to additional paternity leave: birth

. . . . . .

Textual Amendments

F414 S. 80AA repealed (5.4.2015) by Children and Families Act 2014 (c. 6), **ss. 125(1)**, 139(6); S.I. 2014/1640, art. 6(b) (with art. 14)

80B Entitlement to F415 ... paternity leave: adoption

(1) The Secretary of State shall make regulations entitling an employee who satisfies specified conditions—

(a) as to duration of employment,

(b) as to relationship with a child placed, or expected to be placed, for adoption under the law of any part of the United Kingdom, and

(c) as to relationship with a person with whom the child is, or is expected to be, so placed for adoption,

to be absent from work on leave under this section for the purpose of caring for the child or supporting the person by reference to whom he satisfies the condition under paragraph (c).

(2) The regulations shall include provision for determining—

(a) the extent of an employee's entitlement to leave under this section in respect of a child;

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(b) when leave under this section may be taken.

(3) Provision under subsection (2)(a) shall secure that where an employee is entitled to leave under this section in respect of a child he is entitled to at least two weeks' leave.

(4) Provision under subsection (2)(b) shall secure that leave under this section must be taken before the end of a period of at least 56 days beginning with the date of the child's placement for adoption.

[F416(4A) Provision under subsection (2)(b) must secure that, once an employee takes leave under section 75G in respect of a child, the employee may not take leave under this section in respect of the child.**]**

(5) Regulations under subsection (1) may—

(a) specify things which are, or are not, to be taken as done for the purpose of caring for a child or supporting a person with whom a child is placed for adoption;

[F417(aa) make provision excluding the right to be absent on leave under this section in the case of an employee who, by virtue of provision under subsection (6A), has already exercised a right to be absent on leave under this section in connection with the same child;**]**

(b) make provision excluding the right to be absent on leave under this section in the case of an employee who exercises a right to be absent from work on adoption leave;

[F418(ba) make provision excluding the right to be absent on leave under this section in the case of an employee who has exercised a right to take time off under section 57ZJ;**]**

(c) make provision excluding the right to be absent on leave under this section in respect of a child where more than one child is placed for adoption as part of the same arrangement;

(d) make provision about how leave under this section may be taken.

(6) Where more than one child is placed for adoption as part of the same arrangement, the reference in subsection (4) to the date of the child's placement shall be read as a reference to the date of placement of the first child to be placed as part of the arrangement.

[[F419(6A) F420Regulations under subsection (1) shall include provision for leave in respect of a child placed, or expected to be placed—

(a) under section 22C of the Children Act 1989 by a local authority in England, or

(b) under section 81 of the Social Services and Well-being (Wales) Act 2014 by a local authority in Wales,

with a local authority foster parent who has been approved as a prospective adopter.**]**

(6B) This section has effect in relation to regulations made by virtue of subsection (6A) as if—

(a) references to being placed for adoption were references to being placed under section 22C of the Children Act 1989**[**F421, or section 81 of the Social Services and Well-being (Wales) Act 2014**]** with a local authority foster parent who has been approved as a prospective adopter;

(b) references to placement for adoption were references to placement under section 22C**[**F422of the Children Act 1989, or section 81 of the Social Services and Well-being (Wales) Act 2014**]** with such a person;

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(c) paragraph (aa) of subsection (5) were omitted.**]**

(7) In this section, " week " means any period of seven days.

(8) The Secretary of State may by regulations provide for this section to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.

F423 **[** (9) The Secretary of State may by regulations provide for this section to have effect in relation to cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as the regulations may prescribe.**]**

Textual Amendments

F415 Word in s. 80B heading repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 33**; S.I. 2014/1640, art. 7(o) (with art. 16)

F416 S. 80B(4A) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 118(7)**, 139(6); S.I. 2014/1640, art. 3(1)(b)

F417 S. 80B(5)(aa) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 121(2)(a)**, 139(6); S.I. 2014/1640, art. 3(1)(e)

F418 S. 80B(5)(ba) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 128(2)(b)**, 139(6); S.I. 2014/1640, art. 3(1)(j)

F419 S. 80B(6A)(6B) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 121(2)(b)**, 139(6); S.I. 2014/1640, art. 3(1)(e)

F420 S. 80B(6A) substituted (E.W.) (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **147(a)**

F421 Words in s. 80B(6B)(a) inserted (E.W.) (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **147(b)**

F422 Words in s. 80B(6B)(b) inserted (E.W.) (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **147(c)**

F423 S. 80B(9) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 122(4)**, 139(6); S.I. 2014/1640, art. 3(1)(f)

Modifications etc. (not altering text)

C71 S. 80B applied (with modifications) (1.4.2003) by The Employment Rights Act 1996 (Application of Section 80B to Adoptions from Overseas) Regulations 2003 (S.I. 2003/920), **reg. 2**

C72 S. 80B applied (with modifications) (25.11.2014) by The Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases) Regulations 2014 (S.I. 2014/3095), regs. 1(1), 4, **Sch. 2**

C73 S. 80B amendment to earlier affecting provision S.I. 2014/3095, reg. 4, Sch. 2 (3.1.2019) by The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 2 para. 8**

F424

80BB Entitlement to additional paternity leave: adoption

. . . . . .

***Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Employment Rights Act 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F424 S. 80BB repealed (5.4.2015) by Children and Families Act 2014 (c. 6), **ss. 125(1)**, 139(6); S.I. 2014/1640, art. 6(b) (with art. 14)

80C Rights during and after paternity leave

(1) Regulations under section 80A [F425] ... shall provide—

(a) that an employee who is absent on leave under that section is entitled, for such purposes and to such extent as the regulations may prescribe, to the benefit of the terms and conditions of employment which would have applied if he had not been absent;

(b) that an employee who is absent on leave under that section is bound, for such purposes and to such extent as the regulations may prescribe, by obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1) of that section), and

(c) that an employee who is absent on leave under that section is entitled to return from leave to a job of a kind prescribed by regulations, subject to section 80D(1).

(2) The reference in subsection (1)(c) to absence on leave under section 80A [F426] ... includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that section and partly to any one or more of the following—

[F427](za) . . . . . .

(a) maternity leave,

(b) adoption leave, [F428] ...

[F429](ba) **[** shared parental leave,**]**

[F430](bb) **[** parental bereavement leave,**]** and

(c) parental leave.

(3) Subsection (1) shall apply to regulations under section 80B [F431]**[**[F432] ... as it applies to regulations under section 80A [F433] ....**]**

(4) In the application of subsection (1)(c) to regulations under section 80B [F434] ..., the reference to absence on leave under that section includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that section and partly to any one or more of the following—

[F435](za) . . . . . .

(a) maternity leave,

(b) adoption leave,

[F436](ba) **[** shared parental leave,**]**

[F437](bb) **[** parental bereavement leave,**]**

(c) parental leave, and

(d) leave under section 80A [F438] ....

(5) In subsection (1)(a), " terms and conditions of employment "—

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(a) includes matters connected with an employee's employment whether or not they arise under his contract of employment, but

(b) does not include terms and conditions about remuneration.

(6) Regulations under **[**F439section 80A or 80B**]** may specify matters which are, or are not, to be treated as remuneration for the purposes of this section.

(7) Regulations under **[**F440section 80A or 80B**]** may make provision, in relation to the right to return mentioned in subsection (1)(c), about—

(a) seniority, pension rights and similar rights;

(b) terms and conditions of employment on return.

Textual Amendments

F425 Words in s. 80C(1) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(2)**; S.I. 2014/1640, art. 7(p) (with art. 16)

F426 Words in s. 80C(2) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(3)(a)**; S.I. 2014/1640, art. 7(p) (with art. 16)

F427 S. 80C(2)(za) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(3)(b)**; S.I. 2014/1640, art. 7(p) (with art. 16)

F428 Word in s. 80C(2)(b) repealed (30.6.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(3)(c)**; S.I. 2014/1640, art. 3(2)(h)

F429 S. 80C(2)(ba) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(3)(d)**; S.I. 2014/1640, art. 3(2)(h)

F430 S. 80C(2)(bb) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 24(2)**; S.I. 2020/45, reg. 2

F431 Words in s. 80C(3) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(4)(a)**; S.I. 2014/1640, art. 7(p) (with art. 16)

F432 Words in s. 80C(3) substituted (3.3.2010) by Work and Families Act 2006 (c. 18), **ss. 5(4)**, 19; S.I. 2010/495, **art. 3(a)**

F433 Words in s. 80C(3) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(4)(b)**; S.I. 2014/1640, art. 7(p) (with art. 16)

F434 Words in s. 80C(4) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(5)(a)**; S.I. 2014/1640, art. 7(p) (with art. 16)

F435 S. 80C(4)(za) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(5)(b)**; S.I. 2014/1640, art. 7(p) (with art. 16)

F436 S. 80C(4)(ba) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(5)(c)**; S.I. 2014/1640, art. 3(2)(h)

F437 S. 80C(4)(bb) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 24(3)**; S.I. 2020/45, reg. 2

F438 Words in s. 80C(4)(d) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(5)(d)**; S.I. 2014/1640, art. 7(p) (with art. 16)

F439 Words in s. 80C(6) substituted (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(6)**; S.I. 2014/1640, art. 7(p) (with art. 16)

F440 Words in s. 80C(7) substituted (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 34(7)**; S.I. 2014/1640, art. 7(p) (with art. 16)

80D Special cases

(1) Regulations under section **[**F441 80A **[**F442 or 80B **]]** may make provision about—

(a) redundancy, or

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(b) dismissal (other than by reason of redundancy),

during a period of leave under that section.

(2) Provision by virtue of subsection (1) may include—

(a) provision requiring an employer to offer alternative employment;

(b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part 10).

Textual Amendments

F441 Words in s. 80D(1) substituted (3.3.2010) by Work and Families Act 2006 (c. 18), ss. 11, 19, **Sch. 1 para. 37**; S.I. 2010/495, **art. 3(c)**

F442 Words in s. 80D(1) substituted (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 35**; S.I. 2014/1640, art. 7(q) (with art. 16)

80E Chapter 3: supplemental

[Regulations under **[**F444section 80A or 80B**]** may—

F443(1)**]** (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;

(b) make provision requiring employers or employees to keep records;

(c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;

(d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);

(e) make special provision for cases where an employee has a right which corresponds to a right under **[**F444section 80A or 80B**]** and which arises under his contract of employment or otherwise;

(f) make provision modifying the effect of Chapter 2 of Part 14 (calculation of a week's pay) in relation to an employee who is or has been absent from work on leave under **[**F444section 80A or 80B**]**;

(g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions which may be specified, in relation to a person entitled to take leave under **[**F444section 80A or 80B**]**;

(h) make different provision for different cases or circumstances.

F445(2) . . . . . .**]**

Textual Amendments

F443 S. 80E renumbered (3.3.2010) as s. 80E(1) by Work and Families Act 2006 (c. 18), ss. 11, 19, **Sch. 1 para. 38(3)**; S.I. 2010/495, **art. 3(c)**

F444 Words in s. 80E(1) substituted (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 36(2)**; S.I. 2014/1640, art. 7(q) (with art. 16)

F445 S. 80E(2) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 36(3)**; S.I. 2014/1640, art. 7(q) (with art. 16)

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[F446CHAPTER 4

PARENTAL BEREAVEMENT LEAVE

Textual Amendments

F446 Pt. 8 Ch. 4 inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 2**; S.I. 2020/45, reg. 2

80EA Parental bereavement leave

(1) The Secretary of State must make regulations entitling an employee who is a bereaved parent to be absent from work on leave under this section.

(2) For the purposes of subsection (1) an employee is a "bereaved parent" if the employee satisfies conditions specified in the regulations as to relationship with a child who has died.

(3) The conditions specified under subsection (2) may be framed, in whole or in part, by reference to the employee's care of the child before the child's death.

(4) The regulations must include provision for determining—

(a) the extent of an employee's entitlement to leave under this section in respect of a child;

(b) when leave under this section may be taken.

(5) Provision under subsection (4)(a) must secure that where an employee is entitled to leave under this section in respect of a child the employee is entitled to at least two weeks' leave.

(6) Provision under subsection (4)(b) must secure that leave under this section must be taken before the end of a period of at least 56 days beginning with the date of the child's death.

(7) The regulations must secure that where a person is eligible under subsection (1) as the result of the death of more than one child, the person is entitled to leave in respect of each child.

(8) The regulations may make provision about how leave under this section is to be taken.

(9) In this section—

"child" means a person under the age of 18 (see also section 80EE for the application of this Chapter in relation to stillbirths);

"week" means any period of seven days.

80EB Rights during and after bereavement leave

(1) Regulations under section 80EA must provide—

(a) that an employee who is absent on leave under that section is entitled, for such purposes and to such extent as the regulations may prescribe, to the benefit of the terms and conditions of employment which would have applied but for the absence,

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(b) that an employee who is absent on leave under that section is bound, for such purposes and to such extent as the regulations may prescribe, by obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1) of that section), and

(c) that an employee who is absent on leave under that section is entitled to return from leave to a job of a kind prescribed by regulations, subject to section 80EC(1).

(2) The reference in subsection (1)(c) to absence on leave under section 80EA includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that section and partly to any one or more of the following—

(a) maternity leave,

(b) paternity leave,

(c) adoption leave,

(d) shared parental leave, and

(e) parental leave.

(3) In subsection (1)(a), "terms and conditions of employment"—

(a) includes matters connected with an employee's employment whether or not they arise under the contract of employment, but

(b) does not include terms and conditions about remuneration.

(4) Regulations under section 80EA may specify matters which are, or are not, to be treated as remuneration for the purposes of this section.

(5) Regulations under section 80EA may make provision, in relation to the right to return mentioned in subsection (1)(c), about—

(a) seniority, pension rights and similar rights;

(b) terms and conditions of employment on return.

80EC Special cases

(1) Regulations under section 80EA may make provision about—

(a) redundancy, or

(b) dismissal (other than by reason of redundancy),

during a period of leave under that section.

(2) Provision by virtue of subsection (1) may include—

(a) provision requiring an employer to offer alternative employment;

(b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part 10).

80ED Chapter 4: supplemental

Regulations under section 80EA may—

(a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;

(b) make provision requiring employers or employees to keep records;

(c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;

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(d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);

(e) make special provision for cases where an employee has a right which corresponds to a right under section 80EA and which arises under the person's contract of employment or otherwise;

(f) make provision modifying the effect of Chapter 2 of Part 14 (calculation of a week's pay) in relation to an employee who is or has been absent from work on leave under section 80EA;

(g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions which may be specified, in relation to a person entitled to take leave under section 80EA;

(h) make different provision for different cases or circumstances;

(i) make consequential provision.

80EE Application in relation to stillbirths

In this Chapter—

(a) references to a child include a child stillborn after twenty-four weeks of pregnancy, and

(b) references to the death of a child are to be read, in relation to a stillborn child, as references to the birth of the child.**]**

[F447PART 8A

FLEXIBLE WORKING

Textual Amendments

F447 Pt. 8A inserted (6.4.2003) by Employment Act 2002 (c. 22), **s. 47(2)**; S.I. 2002/2866, **art. 2(3)**, Sch. 1 Pt. 3

80F Statutory right to request contract variation

(1) A qualifying employee may apply to his employer for a change in his terms and conditions of employment if—

(a) the change relates to—

(i) the hours he is required to work,

(ii) the times when he is required to work,

(iii) where, as between his home and a place of business of his employer, he is required to work, or

(iv) such other aspect of his terms and conditions of employment as the Secretary of State may specify by regulations, F448 ...

F449(b) . . . . . .

(2) An application under this section must—

(a) state that it is such an application, **[**F450and**]**

(b) specify the change applied for and the date on which it is proposed the change should become effective, F451...

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F451(c) . . . . . .
F452(d) . . . . . .

(3) F453 . . . . . .

[F454(4) An employee may not—

(a) make more than two applications under this section to the same employer during any period of 12 months;

(b) make an application under this section to an employer if another such application to the same employer is proceeding.

(4A) For the purposes of this section an application is "proceeding" during any of these periods—

(a) the period—

(i) beginning when the application is made, and

(ii) ending when the application is concluded;

(b) any period—

(i) beginning when an appeal against a decision to refuse the application is brought, and

(ii) ending when the appeal is concluded;

(c) any period—

(i) beginning when, in accordance with section 80G(1C)(b), the decision period for an application or appeal is extended with retrospective effect, and

(ii) ending when the application or appeal is concluded.

(4B) For the purposes of this section an application or appeal is "concluded" when any of these events occurs—

(a) a decision is made on the application or appeal under section 80G;

(b) the application or appeal is withdrawn;

(c) the application or appeal is disposed of by agreement;

(d) the decision period specified in section 80G for the application or appeal ends without a decision, withdrawal or agreed disposal.**]**

(5) The Secretary of State may by regulations make provision about—

(a) the form of applications under this section, and

(b) when such an application is to be taken as made.

(6) F453 . . . . . .

(7) F453 . . . . . .

(8) For the purposes of this section, an employee is—

(a) a qualifying employee if he—

(i) satisfies such conditions as to duration of employment as the Secretary of State may specify by regulations, and

(ii) is not an agency worker **[**F455(other than an agency worker who is returning to work from a period of parental leave under regulations under section 76)**]**;

(b) an agency worker if he is supplied by a person (" the agent ") to do work for another (" the principal ") under a contract or other arrangement made between the agent and the principal.

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[Regulations under this section may make different provision for different cases.

F456(9)

F457(10) . . . . . .**]**

Textual Amendments

F448 Word in s. 80F(1)(a)(iv) repealed (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 131(2)(a)**, 139(6); S.I. 2014/1640, art. 3(1)(k) (with art. 10)

F449 S. 80F(1)(b) repealed (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 131(1)**, 139(6); S.I. 2014/1640, art. 3(1)(k) (with art. 10)

F450 Word in s. 80F(2)(a) inserted (6.4.2024) by Employment Relations (Flexible Working) Act 2023 (c. 33), **ss. 1(2)(a)**, 2(2) (with s. 1(7)); S.I. 2024/438, reg. 2

F451 S. 80F(2)(c) and word omitted (6.4.2024) by virtue of Employment Relations (Flexible Working) Act 2023 (c. 33), **ss. 1(2)(b)**, 2(2) (with s. 1(7)); S.I. 2024/438, reg. 2

F452 S. 80F(2)(d) and word preceding it repealed (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 131(2)(c)**, 139(6); S.I. 2014/1640, art. 3(1)(k) (with art. 10)

F453 S. 80F(3)(6)(7) repealed (6.4.2007) by Work and Families Act 2006 (c. 18), ss. 12(4), 15, 19, **Sch. 2**; S.I. 2006/1682, **art. 4**

F454 S. 80F(4)-(4B) substituted for s. 80F(4) (6.4.2024) by Employment Relations (Flexible Working) Act 2023 (c. 33), **ss. 1(3)**, 2(2) (with s. 1(7)); S.I. 2024/438, reg. 2

F455 Words in s. 80F(8)(a)(ii) inserted (8.3.2013) by The Parental Leave (EU Directive) Regulations 2013 (S.I. 2013/283), regs. 1, **2**

F456 S. 80F(9)(10) inserted (6.4.2007) by Work and Families Act 2006 (c. 18), **ss. 12(5)**, 19; S.I. 2006/1682, **art. 4(a)**

F457 S. 80F(10) repealed (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 131(2)(d)**, 139(6); S.I. 2014/1640, art. 3(1)(k) (with art. 10)

80G Employer's duties in relation to application under section 80F

(1) An employer to whom an application under section 80F is made—

[F458(a) shall deal with the application in a reasonable manner,

[F459(aza) shall not refuse the application unless the employee has been consulted about the application,**]**

(aa) shall notify the employee of the decision on the application within the decision period, and**]**

(b) shall only refuse the application because he considers that one or more of the following grounds applies—

(i) the burden of additional costs,

(ii) detrimental effect on ability to meet customer demand,

(iii) inability to re-organise work among existing staff,

(iv) inability to recruit additional staff,

(v) detrimental impact on quality,

(vi) detrimental impact on performance,

(vii) insufficiency of work during the periods the employee proposes to work,

(viii) planned structural changes, and

(ix) such other grounds as the Secretary of State may specify by regulations.

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[F460(1A) If an employer allows an employee to appeal a decision to reject an application, the reference in subsection (1)(aa) to the decision on the application is a reference to—

(a) the decision on the appeal, or

(b) if more than one appeal is allowed, the decision on the final appeal.

(1B) For the purposes of subsection (1)(aa) the decision period applicable to an employee's application under section 80F is—

(a) the period of **[**F461two months**]** beginning with the date on which the application is made, or

(b) such longer period as may be agreed by the employer and the employee.

(1C) An agreement to extend the decision period in a particular case may be made—

(a) before it ends, or

(b) with retrospective effect, before the end of a period of three months beginning with the day after that on which the decision period that is being extended came to an end.**]**

[F462(1D) An application under section 80F is to be treated as having been withdrawn by the employee if—

(a) the employee without good reason has failed to attend both the first meeting arranged by the employer to discuss the application and the next meeting arranged for that purpose, or

(b) where the employer allows the employee to appeal a decision to reject an application or to make a further appeal, the employee without good reason has failed to attend both the first meeting arranged by the employer to discuss the appeal and the next meeting arranged for that purpose,

and the employer has notified the employee that the employer has decided to treat that conduct of the employee as a withdrawal of the application.**]**

F463(2) . . . . . .

F463(3) . . . . . .

F463(4) . . . . . .

Textual Amendments

F458 S. 80G(1)(a)(aa) substituted for s. 80G(1)(a) (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 132(2)**, 139(6); S.I. 2014/1640, art. 3(1)(l) (with art. 10)

F459 S. 80G(1)(aza) inserted (6.4.2024) by Employment Relations (Flexible Working) Act 2023 (c. 33), **ss. 1(5)**, 2(2) (with s. 1(7)); S.I. 2024/438, reg. 2

F460 S. 80G(1A)-(1C) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 132(3)**, 139(6); S.I. 2014/1640, art. 3(1)(l) (with art. 10)

F461 Words in s. 80G(1B)(a) substituted (6.4.2024) by Employment Relations (Flexible Working) Act 2023 (c. 33), **ss. 1(6)**, 2(2) (with s. 1(7)); S.I. 2024/438, reg. 2

F462 S. 80G(1D) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 132(4)**, 139(6); S.I. 2014/1640, art. 3(1)(l) (with art. 10)

F463 S. 80G(2)-(4) repealed (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 132(5)(b)**, 139(6); S.I. 2014/1640, art. 3(1)(l) (with art. 10)

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80H Complaints to employment tribunals

(1) An employee who makes an application under section 80F may present a complaint to an employment tribunal—

(a) that his employer has failed in relation to the application to comply with section 80G(1), [F464] ...

(b) that a decision by his employer to reject the application was based on incorrect facts[F465], or]

[F465](c) that the employer's notification under section 80G(1D) was given in circumstances that did not satisfy one of the requirements in section 80G(1D) (a) and (b)].

(2) No complaint [F466under subsection (1)(a) or (b)] may be made in respect of an application which has been disposed of by agreement or withdrawn.

[F467(3) In the case of an application which has not been disposed of by agreement or withdrawn, no complaint under subsection (1)(a) or (b) may be made until—

(a) the employer notifies the employee of the employer's decision on the application, or

(b) if the decision period applicable to the application (see section 80G(1B)) comes to an end without the employer notifying the employee of the employer's decision on the application, the end of the decision period.

(3A) If an employer allows an employee to appeal a decision to reject an application, a reference in other subsections of this section to the decision on the application is a reference to the decision on the appeal or, if more than one appeal is allowed, the decision on the final appeal.

(3B) If an agreement to extend the decision period is made as described in section 80G(1C)(b), subsection (3)(b) is to be treated as not allowing a complaint until the end of the extended period.]

[F468(3C) A complaint under subsection (1)(c) may be made as soon as the notification under section 80G(1D) complained of is given to the employee.]

F469(4) . . . . . .

(5) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the relevant date, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(6) In subsection (5)(a), the reference to the [F470relevant date is a reference to the first date on which the employee may make a complaint under subsection (1)(a), (b) or (c), as the case may be.]

[F471(7) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (5)(a).]

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Textual Amendments

F464 Word in s. 80H(1) repealed (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 133(2)(a)**, 139(6); S.I. 2014/1640, art. 3(1)(m) (with art. 10)

F465 S. 80H(1)(c) and word preceding it inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 133(2)(b)**, 139(6); S.I. 2014/1640, art. 3(1)(m) (with art. 10)

F466 Words in s. 80H(2) substituted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 133(3)**, 139(6); S.I. 2014/1640, art. 3(1)(m) (with art. 10)

F467 S. 80H(3)-(3B) substituted for s. 80H(3) (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 133(4)**, 139(6); S.I. 2014/1640, art. 3(1)(m) (with art. 10)

F468 S. 80H(3C) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 133(5)**, 139(6); S.I. 2014/1640, art. 3(1)(m) (with art. 10)

F469 S. 80H(4) repealed (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 132(5)(c)**, 139(6); S.I. 2014/1640, art. 3(1)(l) (with art. 10)

F470 Words in s. 80H(6) substituted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 133(6)**, 139(6); S.I. 2014/1640, art. 3(1)(m) (with art. 10)

F471 S. 80H(7) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(22)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

80I Remedies

(1) Where an employment tribunal finds a complaint under section 80H well-founded it shall make a declaration to that effect and may—

(a) make an order for reconsideration of the application, and

(b) make an award of compensation to be paid by the employer to the employee.

(2) The amount of compensation shall be such amount, not exceeding the permitted maximum, as the tribunal considers just and equitable in all the circumstances.

(3) For the purposes of subsection (2), the permitted maximum is such number of weeks' pay as the Secretary of State may specify by regulations.

(4) Where an employment tribunal makes an order under subsection (1)(a), section 80G[F472]... shall apply as if the application had been made on the date of the order.**]**

Textual Amendments

F472 Words in s. 80I(4) repealed (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 132(5)(d)**, 139(6); S.I. 2014/1640, art. 3(1)(l) (with art. 10)

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[F473PART 8B

CARER'S LEAVE

Textual Amendments

F473 Pt. 8B inserted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 2**; S.I. 2023/1283, reg. 2

80J Carer's leave

(1) The Secretary of State must make regulations entitling an employee to be absent from work on leave under this section in order to provide or arrange care for a dependant with a long-term care need.

(2) For the purposes of subsection (1)—

(a) a person is a dependant of an employee if they—

(i) are a spouse, civil partner, child or parent of the employee,

(ii) live in the same household as the employee, otherwise than by reason of being the employee's boarder, employee, lodger or tenant, or

(iii) reasonably rely on the employee to provide or arrange care, and

(b) a dependant of an employee has a long-term care need if—

(i) they have an illness or injury (whether physical or mental) that requires, or is likely to require, care for more than three months,

(ii) they have a disability for the purposes of the Equality Act 2010, or

(iii) they require care for a reason connected with their old age.

(3) The regulations must include provision for determining—

(a) the extent of an employee's entitlement to leave under this section;

(b) when leave under this section may be taken.

(4) Provision under subsection (3)(a) must secure that where an employee is entitled to leave under this section the employee is entitled to at least a week's leave during any period of 12 months.

(5) The regulations may make provision about how leave under this section is to be taken (including by providing for it to be taken non-continuously).

(6) The regulations may provide that particular activities are, or are not, to be treated as providing or arranging care for the purposes of this Part.

80K Rights during and after carer's leave

(1) Regulations under section 80J must provide—

(a) that an employee who is absent on leave under that section is entitled, for such purposes and to such extent as the regulations may prescribe, to the benefit of the terms and conditions of employment which would have applied but for the absence,

(b) that an employee who is absent on leave under that section is bound, for such purposes and to such extent as the regulations may prescribe, by

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obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1) of that section), and

(c) that an employee who is absent on leave under that section is entitled to return from leave to a job of a kind prescribed by regulations, subject to section 80L.

(2) Regulations under section 80J may provide that where provision made by or under Part 8 provides for a reference to absence on leave under a section of that Part to include a reference to a continuous period of absence attributable—

(a) partly to leave under that section of Part 8, and

(b) partly to leave under another section of that Part,

absence attributable to leave under section 80J is to be ignored in any determination of the continuity or duration of such a period.

(3) In subsection (1)(a), "terms and conditions of employment"—

(a) includes matters connected with an employee's employment whether or not they arise under the contract of employment, but

(b) does not include terms and conditions about remuneration.

(4) Regulations under section 80J may specify matters which are, or are not, to be treated as remuneration for the purposes of this section.

(5) Regulations under section 80J may make provision, in relation to the right to return mentioned in subsection (1)(c), about—

(a) seniority, pension rights and similar rights;

(b) terms and conditions of employment on return.

80L Special cases

(1) Regulations under section 80J may make provision about—

(a) redundancy during or after a period of leave under that section;

(b) dismissal (other than by reason of redundancy) during a period of leave under that section.

(2) Provision by virtue of subsection (1) may include provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part 10).

80M Part 8B: supplemental

(1) Regulations under section 80J may—

(a) make provision about notices to be given and other procedures to be followed by employees and employers;

(b) make provision requiring employers or employees to keep records;

(c) make provision for the consequences of failure to give notices, to keep records or to comply with other procedural requirements;

(d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);

(e) make provision about the postponement by an employer of a period of leave under section 80J;

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(f) make special provision for cases where an employee has a right which corresponds to a right under section 80J and which arises under the person's contract of employment or otherwise;

(g) make provision modifying the effect of Chapter 2 of Part 14 (calculation of a week's pay) in relation to an employee who is or has been absent from work on leave under section 80J;

(h) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions which may be specified, in relation to a person entitled to take leave under section 80J;

(i) make different provision for different cases or circumstances;

(j) make consequential provision.

(2) Provision under subsection (1)(a) may, in particular, provide that an employer cannot require an employee to supply evidence in relation to a request for leave under section 80J before granting that leave.

(3) Provision under subsection (1)(i) may, in particular, provide for the meaning of "a week's leave" in section 80J(4) to be determined by reference to the number of days normally worked, or required to be worked, by an employee in a particular period.

(4) The cases or circumstances mentioned in subsection (1)(i) include an employee providing or arranging care for more than one dependant during any period of 12 months; and regulations may, in particular, make special provision regarding the applicability and extent of the entitlement to leave in such circumstances.

80N Complaint to employment tribunal

(1) An employee may complain to an employment tribunal that their employer—

(a) has unreasonably postponed a period of carer's leave, or

(b) has prevented or attempted to prevent the employee from taking carer's leave.

(2) The tribunal must not consider the complaint unless it is made—

(a) before the end of the period of three months beginning with the date (or last date) of the matter complained of, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be made before the end of that period of three months.

(3) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).

(4) The tribunal, if satisfied that an employer has acted as described in subsection (1)(a) or (b)—

(a) must make a declaration to that effect, and

(b) may award compensation to be paid by the employer to the employee.

(5) The amount of any compensation must be the amount the tribunal considers just and equitable in all the circumstances, including—

(a) the employer's behaviour, and

(b) any consequential loss sustained by the employee.**]**

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PART IX

TERMINATION OF EMPLOYMENT

Minimum period of notice

86 Rights of employer and employee to minimum notice.

(1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—

(a) is not less than one week's notice if his period of continuous employment is less than two years,

(b) is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and

(c) is not less than twelve weeks' notice if his period of continuous employment is twelve years or more.

(2) The notice required to be given by an employee who has been continuously employed for one month or more to terminate his contract of employment is not less than one week.

(3) Any provision for shorter notice in any contract of employment with a person who has been continuously employed for one month or more has effect subject to subsections (1) and (2); but this section does not prevent either party from waiving his right to notice on any occasion or from accepting a payment in lieu of notice.

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

F474(5) . . . . . .

(6) This section does not affect any right of either party to a contract of employment to treat the contract as terminable without notice by reason of the conduct of the other party.

Textual Amendments

F474 S. 86(5) omitted (1.10.2002) by virtue of The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(4)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

Modifications etc. (not altering text)

C74 S. 86(2) excluded (17.11.2021) by 1972 c. 70, s. 80B(6) (with s. 80B(7)) (as inserted by Local Government and Elections (Wales) Act 2021 (asc 1), **ss. 20**, 175(7); S.I. 2021/1249, art. 2(a) (with art. 4))

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87 Rights of employee in period of notice.

(1) If an employer gives notice to terminate the contract of employment of a person who has been continuously employed for one month or more, the provisions of sections 88 to 91 have effect as respects the liability of the employer for the period of notice required by section 86(1).

(2) If an employee who has been continuously employed for one month or more gives notice to terminate his contract of employment, the provisions of sections 88 to 91 have effect as respects the liability of the employer for the period of notice required by section 86(2).

(3) In sections 88 to 91 "period of notice" means—

(a) where notice is given by an employer, the period of notice required by section 86(1), and

(b) where notice is given by an employee, the period of notice required by section 86(2).

(4) This section does not apply in relation to a notice given by the employer or the employee if the notice to be given by the employer to terminate the contract must be at least one week more than the notice required by section 86(1).

88 Employments with normal working hours.

(1) If an employee has normal working hours under the contract of employment in force during the period of notice and during any part of those normal working hours—

(a) the employee is ready and willing to work but no work is provided for him by his employer,

(b) the employee is incapable of work because of sickness or injury,

(c) the employee is absent from work wholly or partly because of pregnancy or childbirth **[**F475 or on **[**F476adoption leave, **[**F477shared parental leave,**]][**F478carer's leave,**][**F479parental bereavement leave,**]** parental leave or **[**F480paternity leave**]]]**, or

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

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

(2) Any payments made to the employee by his employer in respect of the relevant part of the period of notice (whether by way of sick pay, statutory sick pay, maternity pay, statutory maternity pay, **[**F481paternity pay, **[**F482statutory paternity pay**]**, adoption pay, statutory adoption pay,**][**F483shared parental pay, statutory shared parental pay,**][**F484parental bereavement pay, statutory parental bereavement pay,**]** holiday pay or otherwise) go towards meeting the employer's liability under this section.

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

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Textual Amendments

F475 Words in s. 88(1)(c) inserted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 10**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F476 Words in s. 88(1)(c) substituted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 29(2)**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2

F477 Words in s. 88(1)(c) inserted (1.12.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 37(2)(a)**; S.I. 2014/1640, art. 5(2)(l)

F478 Words in s. 88(1)(c) inserted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 6**; S.I. 2023/1283, reg. 2

F479 Words in s. 88(1)(c) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 25(2)**; S.I. 2020/45, reg. 2

F480 Words in s. 88(1)(c) substituted (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 37(2)(b)**; S.I. 2014/1640, art. 7(r) (with art. 16)

F481 Words in s. 88(2) inserted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 29(3)**; S.I. 2002/2866), {art. 2(2)}, Sch. 1 Pt. 2

F482 Words in s. 88(2) substituted (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 37(3)(a)**; S.I. 2014/1640, art. 7(r) (with art. 16)

F483 Words in s. 88(2) inserted (1.12.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 37(3)(b)**; S.I. 2014/1640, art. 5(2)(l)

F484 Words in s. 88(2) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 25(3)**; S.I. 2020/45, reg. 2

89 Employments without normal working hours.

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

(2) The employer's liability under this section is conditional on the employee being ready and willing to do work of a reasonable nature and amount to earn a week's pay.

(3) Subsection (2) does not apply—

(a) in respect of any period during which the employee is incapable of work because of sickness or injury,

(b) in respect of any period during which the employee is absent from work wholly or partly because of pregnancy or childbirth **[**F485or on **[**F486adoption leave, **[**F487shared parental leave,**][**F488carer's leave,**][**F489parental bereavement leave,**]** parental leave or **[**F490paternity leave**]]**, or

(c) in respect of any period during which the employee is absent from work in accordance with the terms of his employment relating to holidays.

(4) Any payment made to an employee by his employer in respect of a period within subsection (3) (whether by way of sick pay, statutory sick pay, maternity pay, statutory maternity pay, **[**F491paternity pay, **[**F492statutory paternity pay**]**, adoption pay, statutory adoption pay,**][**F493shared parental pay, statutory shared parental pay,**][**F494parental bereavement pay, statutory parental bereavement pay,**]** holiday pay or otherwise) shall be taken into account for the purposes of this section as if it were remuneration paid by the employer in respect of that period.

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

Textual Amendments

F485 Words in s. 89(3)(b) inserted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 11**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F486 Words in s. 89(3)(b) substituted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 30(2)**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2

F487 Words in s. 89(3)(b) inserted (1.12.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 38(2)(a)**; S.I. 2014/1640, art. 5(2)(m)

F488 Words in s. 89(3)(b) inserted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 7**; S.I. 2023/1283, reg. 2

F489 Words in s. 89(3)(b) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 26(2)**; S.I. 2020/45, reg. 2

F490 Words in s. 89(3)(b) substituted (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 38(2)(b)**; S.I. 2014/1640, art. 7(s) (with art. 16)

F491 Words in s. 89(4) inserted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 30(3)**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2

F492 Words in s. 89(4) substituted (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 38(3)(a)**; S.I. 2014/1640, art. 7(s) (with art. 16)

F493 Words in s. 89(4) inserted (1.12.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 38(3)(b)**; S.I. 2014/1640, art. 5(2)(m)

F494 Words in s. 89(4) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 26(3)**; S.I. 2020/45, reg. 2

90 Short-term incapacity benefit [F495, contributory employment and support allowance] and industrial injury benefit.

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

(a) payments by way of sick pay are made by the employer to employees to whom the arrangements apply, in cases where any such employees are incapable of work because of sickness or injury, and

(b) in calculating any payment so made to any such employee an amount representing, or treated as representing, short-term incapacity benefit **[**F496, contributory employment and support allowance**]** or industrial injury benefit is taken into account, whether by way of deduction or by way of calculating the payment as a supplement to that amount.

(2) If—

(a) during any part of the period of notice the employee is incapable of work because of sickness or injury,

(b) one or more payments by way of sick pay are made to him by the employer in respect of that part of the period of notice, and

(c) in calculating any such payment such an amount as is referred to in paragraph (b) of subsection (1) is taken into account as mentioned in that paragraph,

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for the purposes of section 88 or 89 the amount so taken into account shall be treated as having been paid by the employer to the employee by way of sick pay in respect of that part of that period, and shall go towards meeting the liability of the employer under that section accordingly.

Textual Amendments

F495 Words in heading inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) (No. 3) Regulations 2008 (S.I. 2008/1879), **reg. 2(a)**

F496 Words in s. 90(1)(b) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) (No. 3) Regulations 2008 (S.I. 2008/1879), **reg. 2(b)**

91 Supplementary.

(1) An employer is not liable under section 88 or 89 to make any payment in respect of a period during which an employee is absent from work with the leave of the employer granted at the request of the employee, including any period of time off taken in accordance with—

(a) Part VI of this Act, or

(b) section 168 or 170 of the [M30]Trade Union and Labour Relations (Consolidation) Act 1992 (trade union duties and activities).

(2) No payment is due under section 88 or 89 in consequence of a notice to terminate a contract given by an employee if, after the notice is given and on or before the termination of the contract, the employee takes part in a strike of employees of the employer.

(3) If, during the period of notice, the employer breaks the contract of employment, payments received under section 88 or 89 in respect of the part of the period after the breach go towards mitigating the damages recoverable by the employee for loss of earnings in that part of the period of notice.

(4) If, during the period of notice, the employee breaks the contract and the employer rightfully treats the breach as terminating the contract, no payment is due to the employee under section 88 or 89 in respect of the part of the period falling after the termination of the contract.

(5) If an employer fails to give the notice required by section 86, the rights conferred by sections 87 to 90 and this section shall be taken into account in assessing his liability for breach of the contract.

(6) Sections 86 to 90 and this section apply in relation to a contract all or any of the terms of which are terms which take effect by virtue of any provision contained in or having effect under an Act (whether public or local) as in relation to any other contract; and the reference in this subsection to an Act includes, subject to any express provision to the contrary, an Act passed after this Act.

Marginal Citations

M30 1992 c. 52.

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Written statement of reasons for dismissal

92 Right to written statement of reasons for dismissal.

(1) An employee is entitled to be provided by his employer with a written statement giving particulars of the reasons for the employee's dismissal—

(a) if the employee is given by the employer notice of termination of his contract of employment,

(b) if the employee's contract of employment is terminated by the employer without notice, or

[F497(c) if the employee is employed under a limited-term contract and the contract terminates by virtue of the limiting event without being renewed under the same contract.**]**

(2) Subject to **[**F498subsections (4) and (4A)**]** , an employee is entitled to a written statement under this section only if he makes a request for one; and a statement shall be provided within fourteen days of such a request.

(3) Subject to **[**F499subsections (4) and (4A)**]** , an employee is not entitled to a written statement under this section unless on the effective date of termination he has been, or will have been, continuously employed for a period of not less than **[**F500two years**]** ending with that date.

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

(a) at any time while she is pregnant, or

(b) after childbirth in circumstances in which her **[**F501ordinary or additional maternity leave period**]** ends by reason of the dismissal.

[F502(4A) An employee who is dismissed while absent from work during an ordinary or additional adoption leave period is entitled to a written statement under this section without having to request it and irrespective of whether he has been continuously employed for any period if he is dismissed in circumstances in which that period ends by reason of the dismissal.**]**

(5) A written statement under this section is admissible in evidence in any proceedings.

(6) Subject to subsection (7), in this section "the effective date of termination"—

(a) in relation to an employee whose contract of employment is terminated by notice, means the date on which the notice expires,

(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and

[F503(c) in relation to an employee who is employed under a limited-term contract which terminates by virtue of the limiting event without being renewed under the same contract, means the date on which the termination takes effect.**]**

(7) Where—

(a) the contract of employment is terminated by the employer, and

(b) the notice required by section 86 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by subsection (6)),

the later date is the effective date of termination.

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(8) In subsection (7)(b) "the material date" means—

(a) the date when notice of termination was given by the employer, or

(b) where no notice was given, the date when the contract of employment was terminated by the employer.

Textual Amendments

F497 S. 92(1)(c) substituted (1.10.2002) by The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(5)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

F498 Words in s. 92(2) substituted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 31**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2

F499 Words in s. 92(3) substituted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 31**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2

F500 Words in s. 92(3) substituted (6.4.2012) by The Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 2012 (S.I. 2012/989), arts. 1, **2** (with art. 4)

F501 Words in s. 92(4)(b) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 12**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F502 S. 92(4A) inserted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 31**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2

F503 S. 92(6)(c) substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 28**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

Modifications etc. (not altering text)

C75 S. 92 modified (E.W.) (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**

C76 S. 92 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), **arts. 1(1)**, 3, {Sch. }

C77 S. 92 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

C78 S. 92 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), **art. 4(a)**

C79 S. 92 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), arts. 1(1), **4(a)**

93 Complaints to [F504employment tribunal].

(1) A complaint may be presented to an **[**F504employment tribunal**]** by an employee on the ground that—

(a) the employer unreasonably failed to provide a written statement under section 92, or

(b) the particulars of reasons given in purported compliance with that section are inadequate or untrue.

(2) Where an **[**F504employment tribunal**]** finds a complaint under this section well-founded, the tribunal—

(a) may make a declaration as to what it finds the employer's reasons were for dismissing the employee, and

(b) shall make an award that the employer pay to the employee a sum equal to the amount of two weeks' pay.

***Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Employment Rights Act 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) An **[**[F504]employment tribunal**]** shall not consider a complaint under this section relating to the reasons for a dismissal unless it is presented to the tribunal at such a time that the tribunal would, in accordance with section 111, consider a complaint of unfair dismissal in respect of that dismissal presented at the same time.

Textual Amendments

F504 Words in s. 93(1)-(3) and sidenote to s. 93 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C80 Ss. 66-68, 70-71, 92-93, Pt. X (ss. 94-134) modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.** (which S.I. was revoked (1.9.1999) by S.I. 1999/2256, **art. 1(2)**)

C81 S. 93 modified (E.W.) (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**

C82 S. 93 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

C83 S. 93 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), **arts. 1(1)**, 3, {Sch. }

PART X

UNFAIR DISMISSAL

Modifications etc. (not altering text)

C84 Ss. 66-68, 70-71, 92-93, Pt. 10 (ss. 94-134) modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.**
Pt. 10 (ss. 94-134) applied (with modifications) (E.W.) by S.I. 1998/218, **art. 4(b)**
Pt. 10 (ss. 94-134) modified (1.1.1999) by 1998 Measure No. 1, s. 6(1), **Sch. 3 para. 3(1)(2)**; Instrument dated 14.10.1998 made by the Archbishops of Canterbury and York
Pt. 10 (ss. 94-134) modified (6.6.2000) by 1992 c. 52, s. 70A, Sch. A1 para. 161(1), **162** (as inserted (6.6.2000) by 1999 c. 26, s. 1, **Sch. 1**; S.I. 2000/1338, **art. 2(a)**)
Pt. 10 (ss. 94-134) modified (4.9.2000) by 1999 c. 26, **ss. 12(3)(6)**, (with ss. 14, 15); S.I. 2000/2242, **art. 2(1)**
Pt. 10 (ss. 94-134) modified (24.4.2000) by 1992 c. 52, **s. 238A(2)** (as inserted (24.4.2000) by 1999 c. 26, ss. 16, **Sch. 5 para. 3**; S.I. 2000/875, **art. 2** (with transitional provision in art. 3))
Pt. 10 (ss. 94-134) modified (E.W.) (1.9.1999) by S.I. 1999/2256, arts. 3, 4(b), **Sch.**

C85 Pt. 10 (ss. 94-134) applied for certain purposes (14.8.2000) by S.I. 2000/1828, **art. 2**
Pt. 10 (ss. 94-134) applied (E.W.) (21.5.2001) by S.I. 2001/1185, arts. 2, 3, **Sch. para. 95**

C86 Pt. 10 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

C87 Pt. 10 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), **art. 4(b)**

C88 Pt. 10 modified (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **7**

C89 Pt. 10 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), arts. 1(1), 3, **Sch.**

C90 Pt. 10 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), **arts. 1(1)**, 4(b)

C91 Pt. 10 modified (18.8.2006) by The European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), regs.1(2), **31(1)**

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C92 Pt. 10 modfied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, **Sch. 6 para. 13(5)** (with regs. 44-46, Sch. 7)
C93 Pt. 10 modified (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 46**
C94 Pt. 10 modified (1.10.2009) by The European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 (S.I. 2009/2401), **reg. 29** (with reg. 41)
C95 Pt. 10 applied (with modifications) (1.1.2010) by The Ecclesiastical Offices (Terms of Service) Regulations 2009 (S.I. 2009/2108), regs. 2(2), **33**
C96 Pt. 10 modified (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(3)**
C97 Pt. 10 modified (1.10.2011) by The Agency Workers Regulations 2010 (S.I. 2010/93), **reg. 17(1)**
C98 Pt. 10 modified (E.) (1.11.2017) by The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017 (S.I. 2017/958), arts. 1(1), **8(12)** (with arts. 4(5), 7(2), 8(13)-(15), Sch. 3 para. 6)
C99 Pt. 10 modified (E.) (1.11.2017) by The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017 (S.I. 2017/958), art. 1(1), **Sch. 3 para. 3** (with art. 4(5), Sch. 3 para. 6)
C100 Pt. 10 modified (10.3.2020) by The Parental Bereavement Leave Regulations 2020 (S.I. 2020/249), regs. 1, **13** (with reg. 2)
C101 Pt. 10 applied (with modifications) (6.4.2020) by The Agency Workers (Amendment) Regulations 2019 (S.I. 2019/724), regs. 1(1), **5(1)** (with reg. 7)
C102 Pt. 10 modified (21.10.2022) by The Transfer of Undertakings (Protection of Employment) (Transfer of Staff to the Scottish Courts and Tribunals Service) Regulations 2022 (S.I. 2022/1012), regs. 1(1), **4** (with reg. 2)
C103 Pt. 10 modified (5.12.2022) by The Exclusivity Terms for Zero Hours Workers (Unenforceability and Redress) Regulations 2022 (S.I. 2022/1145), regs. 1(2), **7(1)**
C104 Pt. 10 modified (6.4.2024) by The Carer's Leave Regulations 2024 (S.I. 2024/251), regs. 1(2), **12** (with reg. 2(5))

CHAPTER I

RIGHT NOT TO BE UNFAIRLY DISMISSED

The right

94 The right.

(1) An employee has the right not to be unfairly dismissed by his employer.

(2) Subsection (1) has effect subject to the following provisions of this Part (in particular sections 108 to 110) and to the provisions of the [M31]Trade Union and Labour Relations (Consolidation) Act 1992 (in particular sections 237 to 239).

Marginal Citations
M31 1992 c. 52.

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Dismissal

95 Circumstances in which an employee is dismissed.

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) [F505]. . . , only if)—

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

[[F506](b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or**]**

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

(2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—

(a) the employer gives notice to the employee to terminate his contract of employment, and

(b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;

and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

Textual Amendments

F505 Words in s. 95(1) repealed (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1)(2), 59(2)-(4), Sch. 1 para. 29, **Sch. 2**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F506 S. 95(1)(b) substituted (1.10.2002) by virtue of The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(7)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

Modifications etc. (not altering text)

C105 S. 95(1)(c) restricted (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **10(3)(b)**

[F507]96 . . . . . .

Textual Amendments

F507 S. 96 repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 13, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

97 Effective date of termination.

(1) Subject to the following provisions of this section, in this Part "the effective date of termination"—

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(a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,

(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and

[F508(c) in relation to an employee who is employed under a limited-term contract which terminates by virtue of the limiting event without being renewed under the same contract, means the date on which the termination takes effect.**]**

(2) Where—

(a) the contract of employment is terminated by the employer, and

(b) the notice required by section 86 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by subsection (1)),

for the purposes of sections 108(1), 119(1) and 227(3) the later date is the effective date of termination.

(3) In subsection (2)(b) "the material date" means—

(a) the date when notice of termination was given by the employer, or

(b) where no notice was given, the date when the contract of employment was terminated by the employer.

(4) Where—

(a) the contract of employment is terminated by the employee,

(b) the material date does not fall during a period of notice given by the employer to terminate that contract, and

(c) had the contract been terminated not by the employee but by notice given on the material date by the employer, that notice would have been required by section 86 to expire on a date later than the effective date of termination (as defined by subsection (1)),

for the purposes of sections 108(1), 119(1) and 227(3) the later date is the effective date of termination.

(5) In subsection (4) "the material date" means—

(a) the date when notice of termination was given by the employee, or

(b) where no notice was given, the date when the contract of employment was terminated by the employee.

F509(6) . . . . . .

Textual Amendments

F508 S. 97(1)(c) substituted (1.10.2002) by The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(8)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

F509 S. 97(6) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 14, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

***Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Employment Rights Act 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Fairness

98 General.

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

[F510(ba) F511. . . . . .**]**

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

[F512(2A) F511. . . . . .**]**

(3) In subsection (2)(a)—

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

[F513(3A) F511. . . . . .**]**

(4) **[**F514Where**]** the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

F515(5) . . . . . .

(6) **[**F516Subsection (4)**][**F517is**]** subject to—

(a) sections **[**F518**]**98A**]** to 107 of this Act, and

(b) sections 152, 153 **[**F519, 238 and 238A**]** of the M32Trade Union and Labour Relations (Consolidation) Act 1992 (dismissal on ground of trade union membership or activities or in connection with industrial action).

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Textual Amendments

F510 S. 98(2)(ba) inserted (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 49(1), **Sch. 8 para. 22(2)** (with regs. 44-46)

F511 S. 98(2)(ba)(2A)(3A) omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(2)(a)** (with regs. 5, 6, 9)

F512 S. 98(2A) inserted (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 49(1), **Sch. 8 para. 22(3)** (with regs. 44-46)

F513 S. 98(3A) inserted (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 49(1), **Sch. 8 para. 22(4)** (with regs. 44-46)

F514 Word in s. 98(4) substituted (6.4.2011) by The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(2)(b)** (with regs. 5, 6, 9)

F515 S. 98(5) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 15(a), **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

F516 Words in s. 98(6) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 15(b)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F517 Word in s. 98(6) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 32(a)**; S.I. 2004/2185, **art. 2**

F518 Word in s. 98(6)(a) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 32(b)**; S.I. 2004/2185, **art. 2**

F519 Words in s. 98(6)(b) substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 30**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

Modifications etc. (not altering text)

C106 S. 98(1) modified (1.1.1999) by 1998 Measure No. 1, s. 6(1), **Sch. 3 para. 3(2)(b)**; Instrument dated 14.10.1998 made by the Archbishops of Canterbury and York

C107 S. 98(1) modified by SI 2006/246 reg. 7(3)(b) (as substituted (31.1.2014) by The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (S.I. 2014/16), regs. 1(2), **8(1)** (with reg. 8(2)))

Marginal Citations

M32 1992 c. 52.

[F520 Retirement

Textual Amendments

F520 Ss. 98ZA-98ZH and cross-headings inserted (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), reg. 49(1), **Sch. 8 para. 23** (with regs. 44-46)

98ZA No normal retirement age: dismissal before 65

F521 . . . . . .

Textual Amendments

F521 Ss. 98ZA-98ZH omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(3)** (with regs. 5, 6, 9)

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98ZB No normal retirement age: dismissal at or after 65

F522 . . . . . .

Textual Amendments

F522 Ss. 98ZA-98ZH omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(3)** (with regs. 5, 6, 9)

98ZC Normal retirement age: dismissal before retirement age

F523 . . . . . .

Textual Amendments

F523 Ss. 98ZA-98ZH omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(3)** (with regs. 5, 6, 9)

98ZD Normal retirement age 65 or higher: dismissal at or after retirement age

F524 . . . . . .

Textual Amendments

F524 Ss. 98ZA-98ZH omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(3)** (with regs. 5, 6, 9)

98ZE Normal retirement age below 65: dismissal at or after retirement age

F525 . . . . . .

Textual Amendments

F525 Ss. 98ZA-98ZH omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(3)** (with regs. 5, 6, 9)

98ZF Reason for dismissal: particular matters

F526 . . . . . .

Textual Amendments

F526 Ss. 98ZA-98ZH omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(3)** (with regs. 5, 6, 9)

98ZG Retirement dismissals: fairness

F527 . . . . . .

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Textual Amendments

F527 Ss. 98ZA-98ZH omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(3)** (with regs. 5, 6, 9)

98ZH Interpretation

[F528 . . . . . **]**

Textual Amendments

F528 Ss. 98ZA-98ZH omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(3)** (with regs. 5, 6, 9)

Other dismissals

[F529 98A Procedural fairness

[F530 . . . . . **]**

Textual Amendments

F529 S. 98A inserted (1.10.2004) by Employment Act 2002 (c. 22), **ss. 34(2)**, 55(2); S.I. 2004/1717, **art. 2(2)** (subject to art. 3)

F530 S. 98A repealed (6.4.2009) by Employment Act 2008 (c. 24), ss. 2, 20, 22(1)(a), **Sch. Pt. 1**; S.I. 2008/3232, **art. 2** (with Sch. paras. 1, 5)

[F531 98B Jury service

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

(a) has been summoned under the Juries Act 1974, **[**F532 Part 1 of the Coroners and Justice Act 2009**]**, the Court of Session Act 1988 or the Criminal Procedure (Scotland) Act 1995 to attend for service as a juror, or

(b) has been absent from work because he attended at any place in pursuance of being so summoned.

(2) Subsection (1) does not apply in relation to an employee who is dismissed if the employer shows—

(a) that the circumstances were such that the employee's absence in pursuance of being so summoned was likely to cause substantial injury to the employer's undertaking,

(b) that the employer brought those circumstances to the attention of the employee,

(c) that the employee refused or failed to apply to the appropriate officer for excusal from or a deferral of the obligation to attend in pursuance of being so summoned, and

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(d) that the refusal or failure was not reasonable.

(3) In paragraph (c) of subsection (2) " the appropriate officer " means—

(a) in the case of a person who has been summoned under the Juries Act 1974, the officer designated for the purposes of section 8, 9 or, as the case may be, 9A of that Act;

(b) in the case of a person who has been summoned under the Coroners Act 1988, a person who is the appropriate officer for the purposes of any rules made under subsection (1) of section 32 of that Act by virtue of subsection (2) of that section;

(c) in the case of a person who has been summoned under the Court of Session Act 1988, either—

(i) the clerk of court issuing the citation to attend for jury service; or

(ii) the clerk of the court before which the person is cited to attend for jury service;

(d) in the case of a person who has been summoned under the Criminal Procedure (Scotland) Act 1995, either—

(i) the clerk of court issuing the citation to attend for jury service; or

(ii) the clerk of the court before which the person has been cited to attend for jury service;

and references in that paragraph to a refusal or failure to apply include references to a refusal or failure to give a notice under section 1(2)(b) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980.**]**

Textual Amendments

F531 S. 98B inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 40(3)**, 59(2)-(4); S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F532 Words in s. 98B(1)(a) substituted (25.7.2013) by Coroners and Justice Act 2009 (c. 25), s. 182(4)(e), **Sch. 21 para. 36(3)** (with s. 180); S.I. 2013/1869, art. 2(o)(xv)

[F533 99 Leave for family reasons.

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

(a) the reason or principal reason for the dismissal is of a prescribed kind, or

(b) the dismissal takes place in prescribed circumstances.

(2) In this section " prescribed " means prescribed by regulations made by the Secretary of State.

(3) A reason or set of circumstances prescribed under this section must relate to—

(a) pregnancy, childbirth or maternity,

[F534(aa) time off under section 57ZE,**]**

[F535(ab) time off under section 57ZJ or 57ZL,**]**

(b) ordinary, compulsory or additional maternity leave,

[F536(ba) ordinary or additional adoption leave,**]**

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[shared parental leave,**]** F537(bb)

[carer's leave,**]** F538(bc)

(c) parental leave,

[F539(ca) **[**F540paternity leave**]**,**]**

[parental bereavement leave,**]** or F541(cb)

(d) time off under section 57A;

and it may also relate to redundancy or other factors.

(4) A reason or set of circumstances prescribed under subsection (1) satisfies subsection (3)(c) or (d) if it relates to action which an employee—

(a) takes,

(b) agrees to take, or

(c) refuses to take,

under or in respect of a collective or workforce agreement which deals with parental leave.

(5) Regulations under this section may—

(a) make different provision for different cases or circumstances;

(b) apply any enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to persons regarded as unfairly dismissed by reason of this section.**]**

Textual Amendments

F533 S. 99 substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 16**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F534 S. 99(3)(aa) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 127(2)(b)**, 139(6); S.I. 2014/1640, art. 3(1)(i)

F535 S. 99(3)(ab) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 128(2)(c)**, 139(6); S.I. 2014/1640, art. 3(1)(j)

F536 S. 99(3)(ba) inserted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 33(2)**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2

F537 S. 99(3)(bb) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 39(a)**; S.I. 2014/1640, art. 3(2)(i)

F538 S. 99(3)(bc) inserted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 8**; S.I. 2023/1283, reg. 2

F539 S. 99(3)(ca) substituted (3.3.2010) by Work and Families Act 2006 (c. 18), ss. 11, 19, **Sch. 1 para. 41**; S.I. 2010/495, **art. 3(c)**

F540 Words in s. 99(3)(ca) substituted (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 39(b)**; S.I. 2014/1640, art. 7(t) (with art. 16)

F541 S. 99(3)(cb) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 27**; S.I. 2020/45, reg. 2

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100 Health and safety cases.

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

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

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

(i) in accordance with arrangements established under or by virtue of any enactment, or

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

the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,

(c) being an employee at a place where—

(i) there was no such representative or safety committee, or

(ii) there was such a representative or safety committee but it was not reasonably practicable for the 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 the employee 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 the employee 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 subsection (1)(e) whether steps which an employee took (or proposed to take) were appropriate is to 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 is that specified in subsection (1)(e), he shall not be regarded as unfairly dismissed if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he took (or proposed to take) that a reasonable employer might have dismissed him for taking (or proposing to take) them.

101 Shop workers and betting workers who refuse Sunday work.

(1) Where an employee who is—

(a) a protected shop worker or an opted-out shop worker, or

(b) a protected betting worker or an opted-out betting worker,

is dismissed, he shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that he refused (or proposed to refuse) to do shop work, or betting work, on Sunday or on a particular Sunday.

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(2) Subsection (1) does not apply in relation to an opted-out shop worker or an opted-out betting worker where the reason (or principal reason) for the dismissal is that he refused (or proposed to refuse) to do shop work, or betting work, on any Sunday or Sundays falling before the end of the notice period.

(3) A shop worker or betting worker who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the shop worker or betting worker gave (or proposed to give) an opting-out notice to the employer.

(4) For the purposes of section 36(2)(b) or 41(1)(b), the appropriate date in relation to this section is the effective date of termination.

Extent Information

E8 S. 101, which previously extended to England and Wales only, extends to England and Wales and Scotland from 6.4.2004 by virtue of the amendment to s. 244(2) by Sunday Working (Scotland) Act 2003 (c. 18), **ss. 1(5)**, 3; S.I. 2004/958, **art. 2**

[F542 101ZA Shop workers who refuse to work additional hours on Sunday

(1) Subsection (2) applies where a shop worker has given an objection notice that has not been withdrawn and he or she is dismissed.

(2) The shop worker is to be regarded for the purposes of this Part as unfairly dismissed if the reason (or the principal reason) for the dismissal is that he or she refused, or proposed to refuse, to do shop work for additional hours on Sunday or on a particular Sunday.

(3) Subsection (2) does not apply where the reason (or principal reason) for the dismissal is that the shop worker refused (or proposed to refuse) to do shop work for additional hours on any Sunday or Sundays falling before the end of the relevant period.

(4) A shop worker who is dismissed is to be regarded for the purposes of this Part as unfairly dismissed if the reason (or principal reason) for the dismissal is that the worker gave (or proposed to give) an objection notice to the employer.

(5) In this section—

"additional hours" and "objection notice" have the meanings given by section 41A(2);

"relevant period" means the period determined by section 43ZA(2) (but subject to section 41D(3)).**]**

Textual Amendments

F542 S. 101ZA inserted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 9**

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[F543 101A Working time cases.

[An employee who is dismissed shall be regarded for the purposes of this Part as F544(1)] unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the M33 Working Time Regulations 1998,

(b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,

(c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations, or

(d) being—

(i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or

(ii) a candidate in an election in which any person elected will, on being elected, be such a representative,

performed (or proposed to perform) any functions or activities as such a representative or candidate.

[A reference in this section to the Working Time Regulations 1998 includes a reference F545(2) to

[F546(a)] the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.

[F547(b) the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.]

[F548(c) the Cross-border Railway Services (Working Time) Regulations 2008]

[F549(d) the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018 (S.I. 2018/58).]]]

Textual Amendments

F543 S. 101A inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(1)**

F544 S. 101A renumbered as s. 101A(1) (24.12.2003) by The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (S.I. 2003/3049), reg. 20, **Sch. 2 para. 3(3)**

F545 S. 101A(2) inserted (24.12.2003) by The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (S.I. 2003/3049), reg. 20, **Sch. 2 para. 3(3)**

F546 Words in s. 101A(2) renumbered as s. 101A(2)(a) (16.8.2004) by The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (S.I. 2004/1713), regs. 1, 22, **Sch. 2 para. 2(3)(a)**

F547 S. 101A(2)(b) inserted (16.8.2004) by The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (S.I. 2004/1713), regs. 1, 22, **Sch. 2 para. 2(3)(b)**

F548 S. 101A(2)(c) inserted (27.7.2008) by The Cross-border Railway Services (Working Time) Regulations 2008 (S.I. 2008/1660), reg. 19, **Sch. 3 para. 2(3)**

F549 S. 101A(2)(d) substituted (6.4.2018) by The Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018 (S.I. 2018/58), reg. 1, **Sch. 2 para. 2(b)** (with regs. 3, 4)

Marginal Citations

M33 S.I. 1998/1833

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102 Trustees of occupational pension schemes.

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

[F550(1A) This section applies to an employee who is a director of a company which is a trustee of a relevant occupational pension scheme as it applies to an employee who is a trustee of such a scheme (references to such a trustee being read for this purpose as references to such a director).**]**

(2) In this section "relevant occupational pension scheme" means an occupational pension scheme (as defined in section 1 of the M34Pension Schemes Act 1993) established under a trust.

Textual Amendments

F550 S. 102(1A) inserted (11.11.1999 for specified purposes and otherwise 25.4.2000) by 1999 c. 30, ss. 18, 89(1)(5)(a), **Sch. 2 para. 19(4)**; S.I. 2000/1047, art. 2(2), **Sch. Pt. II**

Modifications etc. (not altering text)

C108 S. 102 applied (11.11.1999 for specified purposes and otherwise 8.10.2001) by 1999 c. 30, **s. 6(1)**, (with s. 8(6)); S.I. 2000/1047, art. 2(2), **Sch. Pt. V**

Commencement Information

I5 S. 102 wholly in force at 6.10.1996, see Sch. 2 para. 15(1) and S.I. 1996/2514, **art. 2**

Marginal Citations

M34 1993 c. 48.

103 Employee representatives.

[F551(1)**]** An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee, being—

(a) an employee representative for the purposes of Chapter II of Part IV of the M35Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or **[**F552regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006**]**, or

(b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

performed (or proposed to perform) any functions or activities as such an employee representative or candidate.

[F553(2) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee took part in an election of employee representatives for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or **[**F554 regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 **]** . **]**

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Textual Amendments

F551 S. 103 renumbered as s. 103(1) (28.7.1999) by S.I. 1999/1925, **reg. 13**

F552 Words in s. 103(1)(a) substituted (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), 20, **Sch. 2 para. 10(c)** (with application as mentioned in reg. 21(1))

F553 S. 103(2) inserted (28.7.1999) by S.I. 1999/1925, **reg. 13**

F554 Words in s. 103(2) substituted (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), 20, **Sch. 2 para. 10(c)** (with application as mentioned in reg. 21(1))

Marginal Citations

M35 1992 c. 52.

[F555 103A Protected disclosure.

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

Textual Amendments

F555 S. 103A inserted (2.7.1999) by 1998 c. 23, **s. 5**; S.I. 1999/1547, **art. 2**

104 Assertion of statutory right.

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

(a) brought proceedings against the employer to enforce a right 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 subsection (1)—

(a) whether or not the employee has the right, or

(b) whether or not the right has been infringed;

but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.

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

(4) The following are relevant statutory rights for the purposes of this section—

(a) any right conferred by this Act for which the remedy for its infringement is by way of a complaint or reference to an [F556 employment tribunal],

(b) the right conferred by section 86 of this Act, F557 . . .

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(c) the rights conferred by sections 68, 86, **[**F558145A, 145B,**]** 146, 168, **[**F559168A,**]** 169 and 170 of the Trade Union and Labour Relations (Consolidation) Act 1992 (deductions from pay, union activities and time off) F560**[**F561. . .

F562**[**F563(d) the rights conferred by the Working Time Regulations 1998, **[**F564the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018 (S.I. 2018/58)**]**, the Merchant Shipping (Working Time: Inland Waterway) Regulations 2003 **[**F565, the Fishing Vessels (Working Time: Sea-fisherman) Regulations 2004 or the Cross-border Railway Services (Working Time) Regulations 2008**]**.**]][**F566, and

(e) the rights conferred by the Transfer of Undertakings (Protection of Employment) Regulations 2006.**]**

[F567(5) In this section any reference to an employer includes, where the right in question is conferred by section 63A, the principal (within the meaning of section 63A(3)).**]**

Textual Amendments

F556 Words in s. 104(4)(a) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F557 Word in s. 104(4)(b) omitted (1.10.1998) by virtue of S.I. 1998/1833, **reg. 32(2)(a)**

F558 Words in s. 104(4)(c) inserted (1.10.2004) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 31**; S.I. 2004/2566, **art. 3(b)** (subject to arts. 5-8)

F559 Word in s. 104(4)(c) inserted (27.4.2003) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 34**; S.I. 2003/1190, **art. 2(2)(c)**

F560 Word in s. 104(4)(c) omitted (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by virtue of The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **19(a)**

F561 S. 104(4)(d) and preceding word inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(2)(b)**

F562 S. 104(4)(d) and preceding word inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(2)(b)**

F563 S. 104(4)(d) substituted (16.8.2004) by The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (S.I. 2004/1713), regs. 1, 22, **Sch. 2 para. 2(4)**

F564 Words in s. 104(4)(d) substituted (6.4.2018) by The Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018 (S.I. 2018/58), reg. 1, **Sch. 2 para. 2(c)** (with regs. 3, 4)

F565 Words in s. 104(4)(d) substituted (27.7.2008) by The Cross-border Railway Services (Working Time) Regulations 2008 (S.I. 2008/1660), reg. 19, **Sch. 3 para. 2(4)**

F566 S. 104(4)(e) and word inserted (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **19(b)**

F567 S. 104(5) inserted (1.9.1999) by 1998 c. 30, s. 44(1), **Sch. 3 para. 13** (with s. 42(8)); S.I. 1999/987, **art. 2**

[F568 **104A** The national minimum wage.

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

(a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right of the employee's to which this section applies; or

(b) the employer was prosecuted for an offence under section 31 of the National Minimum Wage Act 1998 as a result of action taken by or on behalf of the

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employee for the purpose of enforcing, or otherwise securing the benefit of, a right of the employee's to which this section applies; or

(c) the employee qualifies, or will or might qualify, for the national minimum wage or for a particular rate of national minimum wage.

(2) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above—

(a) whether or not the employee has the right, or

(b) whether or not the right has been infringed,

but, for that subsection to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

(3) The following are the rights to which this section applies—

(a) any right conferred by, or by virtue of, any provision of the National Minimum Wage Act 1998 for which the remedy for its infringement is by way of a complaint to an employment tribunal; and

(b) any right conferred by section 17 of the National Minimum Wage Act 1998 (worker receiving less than national minimum wage entitled to additional remuneration).**]**

Textual Amendments

F568 S. 104A inserted (1.11.1998) by 1998 c. 39, **s. 25(1)**; S.I. 1998/2574, art. 2(1), **Sch. 1** (with art. 3)

Modifications etc. (not altering text)

C109 S. 104A modified (1.4.1999) by 1948 c. 47, **s. 3A(5)** (as inserted (1.4.1999) by 1998 c. 39, s. 47, **Sch. 2 Pt. I para. 3**; S.I. 1999/685, **art. 2 Sch.**)
S. 104A extended (1.4.1999) by 1949 c. 30, **s. 3A(4)** (as inserted (1.4.1999) by 1998 c. 39, s. 47, **Sch. 2 Pt. II para. 13**; S.I. 1999/685, art.2, **Sch.**)

C110 S. 104A(1)(c) modified (E.W.) (30.7.2014) by Agricultural Sector (Wales) Act 2014 (anaw 6), **ss. 5(8)**, 19 (with s. 14(1))

[F569**104B Tax credits**

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

(a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right conferred on the employee by regulations under section 25 of the Tax Credits Act 2002,

(b) a penalty was imposed on the employer, or proceedings for a penalty were brought against him, under that Act, as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, such a right, or

(c) the employee is entitled, or will or may be entitled, to working tax credit.

(2) It is immaterial for the purposes of subsection (1)(a) or (b)—

(a) whether or not the employee has the right, or

(b) whether or not the right has been infringed,

but, for those provisions to apply, the claim to the right and (if applicable) the claim that it has been infringed must be made in good faith.**]**

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Textual Amendments

F569 S. 104B substituted (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, **Sch. 1 para. 3(2)**; S.I. 2002/1727, **art. 2**

[F570 104C Flexible working

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

(a) made (or proposed to make) an application under section 80F,

F571(b) . . . . . .

(c) brought proceedings against the employer under section 80H, or

(d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.**]**

Textual Amendments

F570 S. 104C inserted (6.4.2003) by Employment Act 2002 (c. 22), **s. 47(4)**; S.I. 2002/2866, **art. 2(3)**, Sch. 1 Pt. 3

F571 S. 104C(1)(b) repealed (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 132(5)(e)**, 139(6); S.I. 2014/1640, art. 3(1)(l) (with art. 10)

[F572 104D Pension enrolment

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

(a) any action was taken, or was proposed to be taken, with a view to enforcing in favour of the employee a requirement to which this section applies;

(b) the employer was prosecuted for an offence under section 45 of the Pensions Act 2008 as a result of action taken for the purpose of enforcing in favour of the employee a requirement to which this section applies; or

(c) any provision of Chapter 1 of that Part of that Act applies to the employee, or will or might apply.

(2) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above—

(a) whether or not the requirement applies in favour of the employee, or

(b) whether or not the requirement has been contravened,

but, for that subsection to apply, the claim that the requirement applies and, if applicable, the claim that it has been contravened must be made in good faith.

(3) This section applies to any requirement imposed on the employer by or under any provision of Chapter 1 of Part 1 of the Pensions Act 2008.

(4) In this section references to enforcing a requirement include references to securing its benefit in any way.**]**

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Textual Amendments

F572 S. 105(7JA) inserted (30.6.2012) by Pensions Act 2008 (c. 30), **ss. 57(4)**, 149(1); S.I. 2012/1682, art. 2, Sch. 2

[F573 104E Study and training

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

(a) made (or proposed to make) a section 63D application,

(b) exercised (or proposed to exercise) a right conferred on the employee under section 63F,

(c) brought proceedings against the employer under section 63I, or

(d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.**]**

Textual Amendments

F573 S. 104E inserted (6.4.2010 for certain purposes and otherwise prosp.) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), **ss. 40(4)**, 269(4); S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)

[F574 104F Blacklists

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal relates to a prohibited list, and either—

(a) the employer contravenes regulation 3 of the 2010 Regulations in relation to that prohibited list, or

(b) the employer—

(i) relies on information supplied by a person who contravenes that regulation in relation to that list, and

(ii) knows or ought reasonably to know that the information relied on is supplied in contravention of that regulation.

(2) If there are facts from which the tribunal could conclude, in the absence of any other explanation, that the employer—

(a) contravened regulation 3 of the 2010 Regulations, or

(b) relied on information supplied in contravention of that regulation,

the tribunal must find that such a contravention or reliance on information occurred, unless the employer shows that it did not.

(3) In this section—

" the 2010 Regulations " means the Employment Relations Act 1999 (Blacklists) Regulations 2010, and

" prohibited list " has the meaning given in those Regulations (see regulation 3(2)). **]**

***Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Employment Rights Act 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F574 S. 104F inserted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(2)**

[F575104CEmployee shareholder status

An employee who is dismissed is to be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee refused to accept an offer by the employer for the employee to become an employee shareholder (within the meaning of section 205A).**]**

Textual Amendments

F575 S. 104G inserted (1.9.2013) by Growth and Infrastructure Act 2013 (c. 27), **ss. 31(4)**, 35(1); S.I. 2013/1766, art. 2

105 Redundancy.

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

(a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,

(b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and

F576**[**F577(c) it is shown that any of subsections **[**F578(2A) to **[**F579(7N)**]]** applies.**]**

F580(2) . . . . . .

[F581(2A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 98B (unless the case is one to which subsection (2) of that section applies).**]**

(3) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 100 (read with subsections (2) and (3) of that section).

(4) This subsection applies if either—

(a) the employee was a protected shop worker or an opted-out shop worker, or a protected betting worker or an opted-out betting worker, and the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in subsection (1) of section 101 (read with subsection (2) of that section), or

(b) the employee was a shop worker or a betting worker and the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in subsection (3) of that section.

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[F582(4A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 101A.**]**

(5) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 102(1).

(6) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 103.

[F583(6A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 103A.**]**

(7) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 104 (read with subsections (2) and (3) of that section).

[F584(7A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 104A (read with subsection (2) of that section).**]**

[F585(7B) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 104B (read with subsection (2) of that section).**]**

[F586(7BA) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 104C.**]**

[F587(7BB) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 104E.**]**

[F588(7C) This subsection applies if—

(a) the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the reason mentioned in section 238A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (participation in official industrial action), and

(b) subsection (3), (4) or (5) of that section applies to the dismissal.**]**

[F589(7D) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulation).**]**

[F590(7E) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (unless the case is one to which paragraph (4) of that regulation applies).**]**

[F591(7F) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 6 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (unless the case is one to which paragraph (4) of that regulation applies).**]**

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[F592(7G) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 42 of the European Public Limited-Liability Company Regulations 2004 (read with paragraphs (4) and (7) of that regulation).**]**

[F593(7H) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 30 of the Information and Consultation of Employees Regulations 2004 (read with paragraphs (4) and (7) of that regulation).**]**

[F594(7I) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (read with paragraph 5(6) of that Schedule).**]**

[F595(7IA) F596 . . . . . **]**

[F597(7J) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 31 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (read with paragraphs (4) and (7) of that regulation).**]**

[F598(7JA) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 104D (read with subsection (2) of that section).**]**

F599(7K) . . . . . .

[F600(7L) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 29 of the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009(S.I. 2009/2401) (read with paragraphs (4) and (7) of that regulation). **]**

[F601(7M) This subsection applies if—

(a) the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1), and

(b) the condition in paragraph (a) or (b) of that subsection was met.**]**

[F602(7N) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in—

(a) paragraph (3) of regulation 17 of the Agency Workers Regulations 2010 (unless the case is one to which paragraph (4) of that regulation applies); or

(b) paragraph (3) of regulation 5 of the Agency Workers (Amendment) Regulations 2019 (unless the case is one to which paragraph (4) of that regulation applies).**]**

(8) For the purposes of section 36(2)(b) or 41(1)(b), the appropriate date in relation to this section is the effective date of termination.

(9) In this Part "redundancy case" means a case where paragraphs (a) and (b) of subsection (1) of this section are satisfied.

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Textual Amendments

F576 By Pensions Act 2008 (c. 30), **ss. 57(3)**, 149(1), it is provided (prosp.) that in s. 105(1)(c) for "(7J)" there be substituted "(7K)"

F577 S. 105(1)(c) substituted (18.8.2006) by The European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), **reg. 32(1)(a)**

F578 Words in s. 105(1)(c) substituted (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 48(1)(a)**

F579 Words in s. 105(1)(c) substituted (1.10.2011) by The Agency Workers Regulations 2010 (S.I. 2010/93), reg. 25, **Sch. 2 para. 15**

F580 S. 105(2) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 17, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

F581 S. 105(2A) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 40(5)**, 59(2)-(4); S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F582 S. 105(4A) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(3)**

F583 S. 105(6A) inserted (2.7.1999) by 1998 c. 23, **s. 6**; S.I. 1999/1547, **art. 2**

F584 S. 105(7A) inserted (1.11.1998) by 1998 c. 39, **s. 25(2)**; S.I. 1998/2574, art. 2(1), **Sch. 1** (with art. 3)

F585 S. 105(7B) inserted (5.10.1999) by 1999 c. 10, ss. 7, 20(2), Sch. 3 para. 3(2) (which amending Act was repealed (in part on 27.8.2002 and 4.12.2002, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 60, **Sch. 6**; S.I. 2002/1727, **art. 2**) and insertion continued (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, **Sch. 1 para. 3(3)**; S.I. 2002/1727, **art. 2**

F586 S. 105(7BA) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 41(4)**, 59(2)-(4); S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F587 S. 105(7BB) inserted (6.4.2010 for certain purposes and otherwise prosp.) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), ss. 40, 269(4), **Sch. 1 para. 3**; S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)

F588 S. 105(7C) inserted (24.4.2000) by 1999 c. 26, s. 16, **Sch. 5 para. 5(3)**; S.I. 2000/875, **art. 2** (with transitional provision in art. 3)

F589 S. 105(7D) inserted after subsection (7C) (15.1.2000) by virtue of S.I. 1999/3323, **reg. 29(1)**

F590 S. 105(7E) inserted (1.7.2000) by S.I. 2000/1551, reg. 10, **Sch. para. 2(1)**

F591 S. 105(7F) inserted (1.10.2002) by The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(10)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

F592 S. 105(7G) inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 1(2), **43(1)(b)**

F593 S. 105(7H) inserted (6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), regs. 1(1), **31(1)(b)** (with reg. 3)

F594 S. 105(7I) inserted (6.4.2006) by The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349), regs. 1(3), 17, **Sch. para. 6(b)**

F595 S. 105(7IA) inserted (6.4.2007) by The Employment Equality (Age) (Consequential Amendments) Regulations 2007 (S.I. 2007/825), **reg. 3(2)**

F596 S. 105(7IA) omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), reg. 3(4) (with regs. 5, 6, 9)

F597 S. 105(7J) inserted (18.8.2006) by The European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), **reg. 32(1)(b)**

F598 S. 105(7JA) inserted (30.6.2012) by Pensions Act 2008 (c. 30), **ss. 57(4)**, 149(1); S.I. 2012/1682, art. 2, **Sch. 2**

F599 S. 105(7K) omitted (31.12.2020) by virtue of The Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/348), reg. 2, **Sch. 3 para. 6**; 2020 c. 1, Sch. 5 para. 1(1)

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F600 S. 105(7L) inserted (1.10.2009) by The European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 (S.I. 2009/2401), **reg. 30(2)** (with reg. 41)
F601 S. 105(7M) inserted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(3)(b)**
F602 S. 105(7N) substituted (6.4.2020) by The Agency Workers (Amendment) Regulations 2019 (S.I. 2019/794), regs. 1(1), 8(2) (with reg. 7)

106 Replacements.

(1) Where this section applies to an employee he shall be regarded for the purposes of section 98(1)(b) as having been dismissed for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) This section applies to an employee where—

(a) on engaging him the employer informs him in writing that his employment will be terminated on the resumption of work by another employee who is, or will be, absent wholly or partly because of pregnancy or childbirth, **[**F603or on adoption leave**][**F604or **[**F605shared parental leave**]]** and

(b) the employer dismisses him in order to make it possible to give work to the other employee.

(3) This section also applies to an employee where—

(a) on engaging him the employer informs him in writing that his employment will be terminated on the end of a suspension of another employee from work on medical grounds or maternity grounds (within the meaning of Part VII), and

(b) the employer dismisses him in order to make it possible to allow the resumption of work by the other employee.

(4) Subsection (1) does not affect the operation of section 98(4) in a case to which this section applies.

Textual Amendments

F603 Words in s. 106(2)(a) inserted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 35**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2
F604 Words in s. 106(2)(a) inserted (6.4.2010) by Work and Families Act 2006 (c. 18), ss. 11, 19, **Sch. 1 para. 42**; S.I. 2010/495, **art. 4(d)**
F605 Words in s. 106(2)(a) substituted (1.12.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 40**; S.I. 2014/1640, art. 5(2)(n) (with art. 12)

107 Pressure on employer to dismiss unfairly.

(1) This section applies where there falls to be determined for the purposes of this Part a question—

(a) as to the reason, or principal reason, for which an employee was dismissed,

(b) whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirement of section 98(1)(b), or

(c) whether an employer acted reasonably in treating the reason or principal reason for which an employee was dismissed as a sufficient reason for dismissing him.

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(2) In determining the question no account shall be taken of any pressure which by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee; and the question shall be determined as if no such pressure had been exercised.

Exclusion of right

108 Qualifying period of employment.

(1) Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than **[**F606two years**]** ending with the effective date of termination.

(2) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in section 64(2), subsection (1) has effect in relation to that dismissal as if for the words **[**F606"two years"**]** there were substituted the words " one month ".

(3) Subsection (1) does not apply if—

F607(a) . . . . . .

[F608(aa) subsection (1) of section 98B (read with subsection (2) of that section) applies,**]**

[F609(b) subsection (1) of section 99 (read with any regulations made under that section) applies,**]**

(c) subsection (1) of section 100 (read with subsections (2) and (3) of that section) applies,

(d) subsection (1) of section 101 (read with subsection (2) of that section) or subsection (3) of that section applies,

[F610(da) subsection (2) of section 101ZA applies (read with subsection (3) of that section) or subsection (4) of that section applies,**]**

[F611(dd) section 101A applies,**]**

(e) section 102 applies,

(f) section 103 applies,

[F612(ff) section 103A applies,**]**

(g) subsection (1) of section 104 (read with subsections (2) and (3) of that section) applies, F613. . .

[F614(gg) subsection (1) of section 104A (read with subsection (2) of that section) applies, F615 . . . **]**

[F616(gh) subsection (1) of section 104B (read with subsection (2) of that section) applies, F617 . . . **]**

[F618(gi) section 104C applies,**]**

[F619(gj) subsection (1) of section 104D (read with subsection (2) of that section) applies,**]**

[F620(gk) section 104E applies,**]**

[F621(gl) subsection (1) of section 104F (read with subsection (2) of that section) applies,**]**

[F622(gm) section 104G applies,**]**

(h) section 105 applies,F623**[**F624. . .

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(hh) paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulation) applies, **]**[F625]**[**[F626] . . .

(i) paragraph (1) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 applies,**]**

[F627] . . . . . .

[[F628](j) paragraph (1) of regulation 6 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 applies,**]**

[F629]**[**[F630] . . .

(k) paragraph (3) or (6) of regulation 42 of the European Public Limited-Liability Company Regulations 2004 applies,**]**

[F631]**[**[F632] . . .

(l) paragraph (3) or (6) of regulation 30 of the Information and Consultation of Employees Regulations 2004 (read with paragraphs (4) and (7) of that regulation) applies,**]**[F633]**[**[F634] . . .

(m) paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (read with paragraph 5(6) of that Schedule) applies**][**[F635]...**][**[F636], or

(n) [F637] . . . . . .

(o) paragraph (3) or (6) of regulation 31 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (read with paragraphs (4) and (7) of that regulation) applies,

[F638]

[F639](p) . . . . . .

[[F640](q) paragraph (1)(a) or (b) of regulation 29 of the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009(S.I. 2009/2401) applies, **[**[F641] or

(r) paragraph (1) of regulation 17 of the Agency Workers Regulations 2010 applies**]]]**

[[F642](4) Subsection (1) does not apply if the reason (or, if more than one, the principal reason) for the dismissal is, or relates to, the employee's political opinions or affiliation.**]**

[[F643](5) Subsection (1) does not apply if the reason (or, if more than one, the principal reason) for the dismissal is, or is connected with, the employee's membership of a reserve force (as defined in section 374 of the Armed Forces Act 2006).**]**

Textual Amendments

F606 Words in s. 108(1)(2) substituted (6.4.2012) by The Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 2012 (S.I. 2012/989), arts. 1, **3** (with art. 4)

F607 S. 108(3)(a) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 18, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

F608 S. 108(3)(aa) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 40(6)**, 59(2)-(4); S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F609 S. 108(3)(b) substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 32**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

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F610 S. 108(3)(da) inserted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 10**

F611 S. 108(3)(dd) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(4)**

F612 S. 108(3)(ff) inserted (2.7.1999) by 1998 c. 23, **s. 7(1)**; S.I. 1999/1547, **art. 2**

F613 Word in s. 108(3)(g) repealed (1.11.1998) by 1998 c. 39, ss. 25(3), 53, **Sch. 3**; S.I. 1998/2574, art. 2(1), **Sch. 1** (with art. 3)

F614 S. 108(3)(gg) inserted (1.11.1998) by 1998 c. 39, **s. 25(3)**; S.I. 1998/2574, art. 2(1), **Sch. 1** (with art. 3)

F615 Word in s. 108(3)(gg) repealed (5.10.1999) by 1999 c. 10, ss. 7, 19(4), 20(2), Sch. 3 para. 3(3), **Sch. 6**

F616 S. 108(3)(gh) inserted (5.10.1999) by 1999 c. 10, ss. 7, 20(2), Sch. 3 para. 3(3) (which amending Act was repealed (in part on 27.8.2002 and 4.12.2002, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 60, **Sch. 6**; S.I. 2002/1727, **art. 2**) and insertion continued (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, **Sch. 1 para. 3(4)**; S.I. 2002/1727, **art. 2**

F617 Word in s. 108(3)(gh) omitted (15.1.2000) by virtue of S.I. 1999/3323, **reg. 29(2)**

F618 S. 108(3)(gi) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 41(5)**, 59(2)-(4); S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F619 S. 108(3)(gj) inserted (30.6.2012) by Pensions Act 2008 (c. 30), **ss. 57(5)**, 149(1); S.I. 2012/1682, art. 2, Sch. 2

F620 S. 108(3)(gk) inserted "after paragraph (gj)" (6.4.2010 for certain purposes and otherwise prosp.) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), ss. 40, 269(4), **Sch. 1 para. 4**; S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)

F621 S. 108(3)(gl) inserted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(4)**

F622 S. 108(3)(gm) inserted (1.9.2013) by Growth and Infrastructure Act 2013 (c. 27), **ss. 31(5)**, 35(1); S.I. 2013/1766, art. 2

F623 Word at the end of s. 108(3)(h) omitted (1.7.2000) by virtue of S.I. 2000/1551, reg. 10, **Sch. para. 2(2)**

F624 S. 108(hh) and preceding word inserted (15.1.2000) by S.I. 1999/3323, **reg. 29(2)**

F625 Word in s. 108(3)(hh) omitted (1.10.2002) by virtue of The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(11)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

F626 S. 108(3)(i) and word "or" preceding it inserted (1.7.2000) by S.I. 2000/1551, reg. 10, **Sch. para. 2(2)**

F627 Word in s. 108(3)(i) repealed (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 1(2), **43(2)(a)**

F628 S. 108(3)(j) and preceding word inserted (1.10.2002) by The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(11)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

F629 Word in s. 108(3)(j) repealed (6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), regs. 1(1), **31(2)(a)** (with reg. 3)

F630 S. 108(3)(k) and the preceding word "or" inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 1(2), **43(2)(b)**

F631 Word in s. 108(3)(k) omitted (6.4.2006) by virtue of The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349), regs. 1(3), 17, **Sch. para. 6(2)(a)**

F632 S. 108(3)(l) and the preceding word "or" inserted (6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), regs. 1(1), **31(2)(b)** (with reg. 3)

F633 Word in s. 108(3)(I) omitted (1.10.2006) by virtue of The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), reg. 49(1), **Sch. 8 para. 24(a)** (with regs. 44-46)

F634 S. 108(3)(m) and word inserted (6.4.2006) by The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349), regs. 1(3), 17, **Sch. para. 6(2)(b)**

F635 By virtue of The European Cooperative Society (Involvement of Emplees) Regulation Regulations 2006 (S.I. 2006/2059), **reg. 32(2)(a)** it is provided that the word "or" at the end of s. 108(3)(m) is omitted (18.8.2006)

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F636 S. 108(3)(n) and word inserted (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), reg. 49(1), **Sch. 8 para. 24(b)** (with regs. 44-46)

F637 S. 108(3)(n) omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011(S.I. 2011/1069), {reg. 3(5)} (with regs. 5, 6, 9)

F638 S. 108: word immediately preceding para. 3(p) omitted (1.10.2009) by virtue of The European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 (S.I. 2009/2401), **reg. 30(3)** (with reg. 41)

F639 S. 108(3)(p) omitted (31.12.2020) by virtue of The Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/348), reg. 2, **Sch. 3 para. 7**; 2020 c. 1, Sch. 5 para. 1(1)

F640 S. 108(3)(q) and preceding word inserted (1.10.2009) by The European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 (S.I. 2009/2401), **reg. 30(3)** (with reg. 41)

F641 S. 108(3)(r) and preceding word inserted (1.10.2011) by The Agency Workers Regulations 2010 (S.I. 2010/93), reg. 25, **Sch. 2 para. 16** (as amended by S.I. 2011/1941, reg. 2(5)(b)(c))

F642 S. 108(4) inserted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 13**, 103(2) (with s. 24(3))

F643 S. 108(5) inserted (1.10.2014) by Defence Reform Act 2014 (c. 20), **ss. 48(2)**, 50(1) (with s. 48(4)); S.I. 2014/2370, art. 4(d)

Modifications etc. (not altering text)

C111 S. 108 excluded (4.9.2000) by 1999 c. 26, **s. 12(4)**, (with ss. 14, 15); S.I. 2000/2242, **art. 2**
S. 108 excluded (6.6.2000) by 1992 c. 52, s. 70A, **Sch. A1 para. 164** (as inserted (6.6.2000) by 1999 c. 26, ss. 1, 45(1), **Sch. 1**; S.I. 2000/1338, **art. 2(a)**)

C112 S. 108 excluded (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(4)**

C113 S. 108 excluded (11.1.2016) by The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015 (S.I. 2015/2021), regs. 1(2), **2(5)**

C114 S. 108 excluded (5.12.2022) by The Exclusivity Terms for Zero Hours Workers (Unenforceability and Redress) Regulations 2022 (S.I. 2022/1145), regs. 1(2), **7(5)**

C115 S. 108(1) excluded by 1992 c. 52, s. 154 (as substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 35**, 59(2)-(4); S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12))

109 Upper age limit.

F644 . . . . . .

Textual Amendments

F644 S. 109 omitted (1.10.2006) by virtue of The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), reg. 49(1), **Sch. 8 para. 25** (with regs. 44-46)

Modifications etc. (not altering text)

C116 S. 109 excluded (4.9.2000) by 1999 c. 26, **s. 12(4)**, (with ss. 14, 15); S.I. 2000/2242, **art. 2**
S. 109 excluded (6.6.2000) by 1992 c. 52, s. 70A, **Sch. A1 para. 164** (as inserted (6.6.2000) by 1999 c. 26, s. 1, **Sch. 1**; S.I. 2000/1338, **art. 2(a)**)

110 Dismissal procedures agreements.

(1) Where a dismissal procedures agreement is designated by an order under subsection (3) which is for the time being in force—

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(a) the provisions of that agreement relating to dismissal shall have effect in substitution for any rights under section 94, and

(b) accordingly, section 94 does not apply to the dismissal of an employee from any employment if it is employment to which, and he is an employee to whom, those provisions of the agreement apply.

[F645(2) But if the agreement includes provision that it does not apply to dismissals of particular descriptions, subsection (1) does not apply in relation to a dismissal of any such description.**]**

(3) An order designating a dismissal procedures agreement may be made by the Secretary of State, on an application being made to him jointly by all the parties to the agreement, if he is satisfied that—

(a) every trade union which is a party to the agreement is an independent trade union,

(b) the agreement provides for procedures to be followed in cases where an employee claims that he has been, or is in the course of being, unfairly dismissed,

(c) those procedures are available without discrimination to all employees falling within any description to which the agreement applies,

(d) the remedies provided by the agreement in respect of unfair dismissal are on the whole as beneficial as (but not necessarily identical with) those provided in respect of unfair dismissal by this Part,

[F646(e) the agreement includes provision either for arbitration in every case or for—

(i) arbitration where (by reason of equality of votes or for any other reason) a decision under the agreement cannot otherwise be reached, and

(ii) a right to submit to arbitration any question of law arising out of such a decision, and**]**

(f) the provisions of the agreement are such that it can be determined with reasonable certainty whether or not a particular employee is one to whom the agreement applies.

(4) If at any time when an order under subsection (3) is in force in relation to a dismissal procedures agreement the Secretary of State is satisfied, whether on an application made to him by any of the parties to the agreement or otherwise, either—

(a) that it is the desire of all the parties to the agreement that the order should be revoked, or

(b) that the agreement no longer satisfies all the conditions specified in subsection (3),

the Secretary of State shall revoke the order by an order under this subsection.

(5) The transitional provisions which may be made in an order under subsection (4) include, in particular, provisions directing—

(a) that an employee—

(i) shall not be excluded from his right under section 94 where the effective date of termination falls within a transitional period which ends with the date on which the order takes effect and which is specified in the order, and

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(ii) shall have an extended time for presenting a complaint under section 111 in respect of a dismissal where the effective date of termination falls within that period, and

(b) that, where the effective date of termination falls within such a transitional period, an **[**F647employment tribunal**]** shall, in determining any complaint of unfair dismissal presented by an employee to whom the dismissal procedures agreement applies, have regard to such considerations as are specified in the order (in addition to those specified in this Part and section 10(4) and (5) of **[**F647the Employment Tribunals Act 1996**]**).

[F648(6) Where an award is made under a designated dismissal procedures agreement—

(a) in England and Wales it may be enforced, by leave of **[**F649the county court**]**, in the same manner as a judgment of the court to the same effect and, where leave is given, judgment may be entered in terms of the award, and

(b) in Scotland it may be recorded for execution in the Books of Council and Session and shall be enforceable accordingly.**]**

Textual Amendments

F645 S. 110(2) substituted (1.8.1998) by 1998 c. 8, **s. 12(1)** (with s. 12(5)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F646 S. 110(3)(e) substituted (1.8.1998) by 1998 c. 8, **s. 12(2)** (with s. 12(5)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F647 Words in s. 110(5)(b) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)(c)** (with s 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F648 S. 110(6) inserted (1.8.1998) by 1998 c. 8, **s. 12(3)**; S.I. 1998/1658, art. 2(1), **Sch. 1**

F649 Words in s. 110(6)(a) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

CHAPTER II

REMEDIES FOR UNFAIR DISMISSAL

Modifications etc. (not altering text)

C117 Pt. 10 Ch. 2 modified (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(6)**

Introductory

111 Complaints to **[**F650employment tribunal**]**.

(1) A complaint may be presented to an **[**F650employment tribunal**]** against an employer by any person that he was unfairly dismissed by the employer.

(2) **[**F651Subject to the following provisions of this section**]**, an **[**F650employment tribunal**]** shall not consider a complaint under this section unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the effective date of termination, or

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(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[[F652](2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).**]**

(3) Where a dismissal is with notice, an **[**[F650]employment tribunal**]** shall consider a complaint under this section if it is presented after the notice is given but before the effective date of termination.

(4) In relation to a complaint which is presented as mentioned in subsection (3), the provisions of this Act, so far as they relate to unfair dismissal, have effect as if—

(a) references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such circumstances that he will be unfairly dismissed when the notice expires,

(b) references to reinstatement included references to the withdrawal of the notice by the employer,

(c) references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice, and

(d) references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

[[F653](5) Where the dismissal is alleged to be unfair by virtue of section 104F (blacklists),

(a) subsection (2)(b) does not apply, and

(b) an employment tribunal may consider a complaint that is otherwise out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.**]**

Textual Amendments

F650 Words in s. 111(1)-(3) and sidenote to s. 111 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F651 Words in s. 111(2) substituted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(5)(a)**

F652 S. 111(2A) substituted (31.12.2020) by The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(23)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

F653 S. 111(5) inserted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(5)(b)**

[[F654]111A Confidentiality of negotiations before termination of employment

(1) Evidence of pre-termination negotiations is inadmissible in any proceedings on a complaint under section 111.

This is subject to subsections (3) to (5).

(2) In subsection (1) " pre-termination negotiations " means any offer made or discussions held, before the termination of the employment in question, with a view to it being terminated on terms agreed between the employer and the employee.

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(3) Subsection (1) does not apply where, according to the complainant's case, the circumstances are such that a provision (whenever made) contained in, or made under, this or any other Act requires the complainant to be regarded for the purposes of this Part as unfairly dismissed.

(4) In relation to anything said or done which in the tribunal's opinion was improper, or was connected with improper behaviour, subsection (1) applies only to the extent that the tribunal considers just.

(5) Subsection (1) does not affect the admissibility, on any question as to costs or expenses, of evidence relating to an offer made on the basis that the right to refer to it on any such question is reserved.**]**

Textual Amendments

F654 S. 111A inserted (29.7.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 14**, 103(3) (with s. 24(4)); S.I. 2013/1648, art. 2(a)

112 The remedies: orders and compensation.

(1) This section applies where, on a complaint under section 111, an **[**[F655]employment tribunal**]** finds that the grounds of the complaint are well-founded.

(2) The tribunal shall—

(a) explain to the complainant what orders may be made under section 113 and in what circumstances they may be made, and

(b) ask him whether he wishes the tribunal to make such an order.

(3) If the complainant expresses such a wish, the tribunal may make an order under section 113.

(4) If no order is made under section 113, the tribunal shall make an award of compensation for unfair dismissal (calculated in accordance with sections 118 to **[**[F656]126**]**[F657]. . .) to be paid by the employer to the employee.

[[F658](5) [F659] . . . . . .

(6) [F659] . . . . . **]**

Textual Amendments

F655 Words in s. 112(1) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F656 Word in s. 112(4) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 36**; S.I. 2004/2185, **art. 2**

F657 Words in s. 112(4) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(11)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I**

F658 S. 112(5)(6) inserted (1.10.2004) by Employment Act 2002 (c. 22), **ss. 34(3)**, 55(2); S.I. 2004/1717, **art. 2(2)** (subject to art. 3)

F659 S. 112(5)(6) omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(6)** (with regs. 5-7, 9)

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Orders for reinstatement or re-engagement

113 The orders.

An order under this section may be—

(a) an order for reinstatement (in accordance with section 114), or

(b) an order for re-engagement (in accordance with section 115),

as the tribunal may decide.

Modifications etc. (not altering text)

C118 S. 113 restricted (24.4.2000) by 1992 c. 52, **s. 239(4)(a)** (as added (24.4.2000) by 1999 c. 26, s. 16, **Sch. 5 para. 4(5)**; S.I. 2000/875, **art. 2** (with transitional provision in art. 3))

114 Order for reinstatement.

(1) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed.

(2) On making an order for reinstatement the tribunal shall specify—

(a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,

(b) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and

(c) the date by which the order must be complied with.

(3) If the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.

(4) In calculating for the purposes of subsection (2)(a) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement by way of—

(a) wages in lieu of notice or ex gratia payments paid by the employer, or

(b) remuneration paid in respect of employment with another employer,

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

F660(5) . . . . . .

Textual Amendments

F660 S. 114(5) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 20, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

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115 Order for re-engagement.

(1) An order for re-engagement is an order, on such terms as the tribunal may decide, that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment.

(2) On making an order for re-engagement the tribunal shall specify the terms on which re-engagement is to take place, including—

(a) the identity of the employer,

(b) the nature of the employment,

(c) the remuneration for the employment,

(d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of re-engagement,

(e) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and

(f) the date by which the order must be complied with.

(3) In calculating for the purposes of subsection (2)(d) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of re-engagement by way of—

(a) wages in lieu of notice or ex gratia payments paid by the employer, or

(b) remuneration paid in respect of employment with another employer,

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

F661(4) . . . . . .

Textual Amendments

F661 S. 115(4) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 21, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

116 Choice of order and its terms.

(1) In exercising its discretion under section 113 the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account—

(a) whether the complainant wishes to be reinstated,

(b) whether it is practicable for the employer to comply with an order for reinstatement, and

(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.

(2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.

(3) In so doing the tribunal shall take into account—

(a) any wish expressed by the complainant as to the nature of the order to be made,

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(b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and

(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.

(4) Except in a case where the tribunal takes into account contributory fault under subsection (3)(c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.

(5) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining, for the purposes of subsection (1)(b) or (3)(b), whether it is practicable to comply with an order for reinstatement or re-engagement.

(6) Subsection (5) does not apply where the employer shows—

(a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement, or

(b) that—

(i) he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he wished to be reinstated or re-engaged, and

(ii) when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

117 Enforcement of order and compensation.

(1) An **[**F662employment tribunal**]** shall make an award of compensation, to be paid by the employer to the employee, if—

(a) an order under section 113 is made and the complainant is reinstated or re-engaged, but

(b) the terms of the order are not fully complied with.

(2) Subject to section 124 F663. . ., the amount of the compensation shall be such as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.

[F664(2A) There shall be deducted from any award under subsection (1) the amount of any award made under section 112(5) at the time of the order under section 113.**]**

(3) Subject to subsections (1) and (2) F663. . ., if an order under section 113 is made but the complainant is not reinstated or re-engaged in accordance with the order, the tribunal shall make—

(a) an award of compensation for unfair dismissal (calculated in accordance with sections 118 to **[**F665126**]**), and

(b) except where this paragraph does not apply, an additional award of compensation of **[**F666an amount not less than twenty-six nor more than fifty-two weeks' pay**]**,

to be paid by the employer to the employee.

(4) Subsection (3)(b) does not apply where—

(a) the employer satisfies the tribunal that it was not practicable to comply with the order, F667. . .

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F667(b) . . . . . .

F668(5) . . . . . .

F668(6) . . . . . .

(7) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining for the purposes of subsection (4)(a) whether it was practicable to comply with the order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement.

(8) Where in any case an **[**F669employment tribunal**]** finds that the complainant has unreasonably prevented an order under section 113 from being complied with, in making an award of compensation for unfair dismissal F670. . . it shall take that conduct into account as a failure on the part of the complainant to mitigate his loss.

Textual Amendments

F662 Words in s. 117(1)(8) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F663 Words in s. 117(2)(3) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(11)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I**

F664 S. 117(2A) inserted (1.10.2004) by Employment Act 2002 (c. 22), **ss. 34(4)**, 55(2); S.I. 2004/1717, **art. 2(2)** (subject to art. 3)

F665 Word in s. 117(3)(a) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 37**; S.I. 2004/2185, **art. 2**

F666 Words in s. 117(3)(b) substituted (25.10.1999) by 1999 c. 26, **s. 33(2)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 8)

F667 S. 117(4)(b) and the preceding word "or" repealed (25.10.1999) by 1999 c. 26, ss. 33(1)(a), 44, **Sch. 9(10)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 8)

F668 S. 117(5)(6) repealed (25.10.1999) by 1999 c. 26, ss. 33(2), 44, **Sch. 9(10)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 8)

F669 S. 117(6)(c) and preceding word "and" inserted (1.8.1998) by 1998 c. 8, **s. 14(1)**; S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(7))

F670 Words in s. 117(8) repealed (1.8.1998) by 1998 c. 8, s. 15, **Sch. 2**; S.I. 1998/1658, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C119 S. 117: power to modify conferred (1.8.1998) by 1992 c. 52, **s. 212A(8)(a)** (as inserted (1.8.1998) by 1998 c. 8, **s. 7**; S.I. 1998/1658, art. 2(1), **Sch. 1**)
S. 117 applied (21.5.2001) by S.I. 2001/1185, arts. 2, 3, **Sch. para. 160**
S. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**
S. 117 modified (21.5.2001) by S.I. 2001/1185, **art. 5**

C120 S. 117 applied (6.4.2004) by The ACAS Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/753), arts. 1(1), 2, 3, **Sch. para. 185**
S. 117 applied (with modifications) (6.4.2004) by The ACAS Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/753), arts. 1(1), **6**

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Compensation

118 General.

(1) F671. . .Where a tribunal makes an award of compensation for unfair dismissal under section 112(4) or 117(3)(a) the award shall consist of—

(a) a basic award (calculated in accordance with sections 119 to 122 and 126), and

(b) a compensatory award (calculated in accordance with sections 123, 124, **[**F672124A and 126**]**).

F673(2) . . . . . .

F673(3) . . . . . .

(4) F674. . . . . .

Textual Amendments

F671 Words in s. 118(1) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(11)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I**

F672 Words in s. 118(1)(b) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 38**; S.I. 2004/2185, **art. 2**

F673 S. 118(2)(3) repealed (25.10.1999) by 1999 c. 26, ss. 33(1)(a), 44, **Sch. 9(10)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 8)

F674 S. 118(4) repealed (1.11.2004) by Employment Act 2002 (c. 22), ss. 54, 55(2), **Sch. 8**; S.I. 2004/2822, **art. 2(b)**

Modifications etc. (not altering text)

C121 S. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**

119 Basic award.

(1) Subject to the provisions of this section, sections 120 to 122 and section 126, the amount of the basic award shall be calculated by—

(a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,

(b) reckoning backwards from the end of that period the number of years of employment falling within that period, and

(c) allowing the appropriate amount for each of those years of employment.

(2) In subsection (1)(c) "the appropriate amount" means—

(a) one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,

(b) one week's pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and

(c) half a week's pay for a year of employment not within paragraph (a) or (b).

(3) Where twenty years of employment have been reckoned under subsection (1), no account shall be taken under that subsection of any year of employment earlier than those twenty years.

(4) F675. . . . . .

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(5) [F675] . . . . . .

[F676](6) . . . . . .

Textual Amendments

F675 S. 119(4)(5) omitted (1.10.2006) by virtue of The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 49(1), **Sch. 8 para. 27(2)** (with regs. 44-46)

F676 S. 119(6) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 23, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

Modifications etc. (not altering text)

C122 S. 119 applied (1.11.1998) by 1998 c. 39, **s. 24(4)(a)**; S.I. 1998/2574, art. 2(1), **Sch. 1**
S. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**
S. 119 applied (6.6.2000) by 1992 c. 52, s. 70A, **Sch. A1 para. 160(2)** (as inserted (6.6.2000) by 1999 c. 26, s. 1, **Sch. 1**; S.I. 2000/1338, **art. 2** with transitional provisions in art. 3)

120 Basic award: minimum in certain cases.

(1) The amount of the basic award (before any reduction under section 122) shall not be less than **[**[F677]£8,533 **]** where the reason (or, if more than one, the principal reason)—

(a) in a redundancy case, for selecting the employee for dismissal, or

(b) otherwise, for the dismissal,

is one of those specified in section 100(1)(a) and (b), **[**[F678]101A(d),**]** 102(1) or 103.

[F679](1A) . . . . . .

[F679](1B) . . . . . .

[[F680](1C) Where an employee is regarded as unfairly dismissed by virtue of section 104F (blacklists) (whether or not the dismissal is unfair or regarded as unfair for any other reason), the amount of the basic award of compensation (before any reduction is made under section 122) shall not be less than £5,000.**]**

[F681](2) . . . . . .

Textual Amendments

F677 Sum in s. 120(1) substituted (6.4.2024) by The Employment Rights (Increase of Limits) Order 2024 (S.I. 2024/213), art. 1(2), **Sch.** (with art. 4)

F678 Words in s. 120(1) substituted (1.10.1998) by S.I. 1998/1833, **reg. 32(5)**

F679 S. 120(1A)(1B) omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(7)** (with regs. 5-7, 9)

F680 S. 120(1C) inserted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(6)**

F681 S. 120(2) repealed (17.12.1999) by 1999 c. 26, ss. 36(1)(a)(3), 44, **Sch. 9(10)**; S.I. 1999/3374, art. 2(b)(c), **Sch.**

Modifications etc. (not altering text)

C123 S. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**

C124 S. 120(1): power to amend conferred (17.12.1999) by 1999 c. 26, **s. 34(1)(b)**; S.I. 1999/3374, **art. 2(b)**

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121 Basic award of two weeks' pay in certain cases.

The amount of the basic award shall be two weeks' pay where the tribunal finds that the reason (or, where there is more than one, the principal reason) for the dismissal of the employee is that he was redundant and the employee—

(a) by virtue of section 138 is not regarded as dismissed for the purposes of Part XI, or

(b) by virtue of section 141 is not, or (if he were otherwise entitled) would not be, entitled to a redundancy payment.

Modifications etc. (not altering text)

C125 Ss. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**

122 Basic award: reductions.

(1) Where the tribunal finds that the complainant has unreasonably refused an offer by the employer which (if accepted) would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that finding.

(2) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

(3) Subsection (2) does not apply in a redundancy case unless the reason for selecting the employee for dismissal was one of those specified in section 100(1)(a) and (b), **[**[F682]101A(d),**]** 102(1) or 103; and in such a case subsection (2) applies only to so much of the basic award as is payable because of section 120.

[[F683](3A) Where the complainant has been awarded any amount in respect of the dismissal under a designated dismissal procedures agreement, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that award.**]**

(4) The amount of the basic award shall be reduced or further reduced by the amount of—

(a) any redundancy payment awarded by the tribunal under Part XI in respect of the same dismissal, or

(b) any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI or otherwise).

[[F684](5) Where a dismissal is regarded as unfair by virtue of section 104F (blacklists), the amount of the basic award shall be reduced or further reduced by the amount of any basic award in respect of the same dismissal under section 156 of the Trade Union and Labour Relations (Consolidation) Act 1992 (minimum basic award in case of dismissal on grounds related to trade union membership or activities).**]**

Textual Amendments

F682 Words in s. 122(3) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(5)**

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F683 S. 122(3A) inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch.1 para. 22**; S.I. 1998/1658, art. 2(1), **Sch. 1**
F684 S. 122(5) inserted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(7)**

Modifications etc. (not altering text)
C126 Ss. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**

123 Compensatory award.

(1) Subject to the provisions of this section and sections 124 **[**F685, 124A and 126**]** , the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

(2) The loss referred to in subsection (1) shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and

(b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.

(3) The loss referred to in subsection (1) shall be taken to include in respect of any loss of—

(a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or otherwise), or

(b) any expectation of such a payment,

only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 122) in respect of the same dismissal.

(4) In ascertaining the loss referred to in subsection (1) 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 of England and Wales or (as the case may be) Scotland.

(5) In determining, for the purposes of subsection (1), how far any loss sustained by the complainant was attributable to action taken by the employer, no account shall be taken of any pressure which by—

(a) calling, organising, procuring or financing a strike or other industrial action, or

(b) threatening to do so,

was exercised on the employer to dismiss the employee; and that question shall be determined as if no such pressure had been exercised.

(6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

[F686(6A) Where—

(a) the reason (or principal reason) for the dismissal is that the complainant made a protected disclosure, and

(b) it appears to the tribunal that the disclosure was not made in good faith,

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the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the complainant by no more than 25%.**]**

(7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI or otherwise) exceeds the amount of the basic award which would be payable but for section 122(4), that excess goes to reduce the amount of the compensatory award.

[F687(8) Where the amount of the compensatory award falls to be calculated for the purposes of an award under section 117(3)(a), there shall be deducted from the compensatory award any award made under section 112(5) at the time of the order under section 113.**]**

Textual Amendments

F685 Words in s. 123(1) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 39**; S.I. 2004/2185, **art. 2**

F686 S. 123(6A) inserted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 18(5)**, 103(2) (with s. 24(6))

F687 S. 123(8) inserted (1.10.2004) by Employment Act 2002 (c. 22), **ss. 34(5)**, 55(2); S.I. 2004/1717, **art. 2(2)** (subject to art. 3)

Modifications etc. (not altering text)

C127 S. 123 applied (1.11.1998) by 1998 c. 39, **s. 24(4)(b)**
Ss. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**
S. 123 applied (6.6.2000) by 1992 c. 52, s. 70A, **Sch. A1 para. 160(2)(b)** (as inserted (6.6.2000) by 1999 c. 26, s. 1, **Sch. 1**; S.I. 2000/1338, **art. 2** (with transitional provisions in art. 3)

124 Limit of compensatory award etc.

(1) The amount of—

(a) any compensation awarded to a person under section 117(1) and (2), or

(b) a compensatory award to a person calculated in accordance with section 123,

shall not exceed **[**F688the amount specified in subsection (1ZA)**]**.

[F689(1ZA) The amount specified in this subsection is the lower of—

(a) **[**F690£115,115**]**, and

(b) 52 multiplied by a week's pay of the person concerned.**]**

[F691(1A) Subsection (1) shall not apply to compensation awarded, or a compensatory award made, to a person in a case where he is regarded as unfairly dismissed by virtue of section 100, 103A, 105(3) or 105(6A).**]**

F692(2) . . . . . .

(3) In the case of compensation awarded to a person under section 117(1) and (2), the limit imposed by this section may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under section 114(2)(a) or section 115(2)(d).

(4) Where—

(a) a compensatory award is an award under paragraph (a) of subsection (3) of section 117, and

(b) an additional award falls to be made under paragraph (b) of that subsection,

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the limit imposed by this section on the compensatory award may be exceeded to the extent necessary to enable the aggregate of the compensatory and additional awards fully to reflect the amount specified as payable under section 114(2)(a) or section 115(2)(d).

(5) The limit imposed by this section applies to the amount which the **[**F693employment tribunal**]** would, apart from this section, award in respect of the subject matter of the complaint after taking into account—

(a) any payment made by the respondent to the complainant in respect of that matter, and

(b) any reduction in the amount of the award required by any enactment or rule of law.

Textual Amendments

F688 Words in s. 124(1) substituted (29.7.2013) by The Unfair Dismissal (Variation of the Limit of Compensatory Award) Order 2013 (S.I. 2013/1949), arts. 1, **2(2)** (with art. 4)

F689 S. 124(1ZA) inserted (29.7.2013) by The Unfair Dismissal (Variation of the Limit of Compensatory Award) Order 2013 (S.I. 2013/1949), arts. 1, **2(3)** (with art. 4)

F690 Sum in s. 124(1ZA)(a) substituted (6.4.2024) by The Employment Rights (Increase of Limits) Order 2024 (S.I. 2024/213), art. 1(2), **Sch.** (with art. 4)

F691 S. 124(1A) inserted (25.10.1999) by 1999 c. 26, **s. 37(1)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I**

F692 S. 124(2) repealed (17.12.1999) by 1999 c. 26, ss. 36(1)(3), 44, **Sch. 9(10)**; S.I. 1999/3374, art. 2(b)(c), **Sch.**

F693 Words in s. 124(5) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C128 Ss. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**

C129 S. 124 power to amend conferred (25.4.2013 for specified purposes, 25.6.2013 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 15(1)-(9)**, 103(1)(i), 103(2) (with s. 24(4))

C130 S. 124(1) applied (1.11.1998) by 1998 c. 39, **s. 24(4)(b)**; S.I. 1998/2574, art. 2(1), **Sch. 1**
S. 124(1): power to amend conferred (17.12.1999) by 1999 c. 26, **s. 34(1)(c)**; S.I. 1999/3374, **art. 2(a)**
S. 124(1) applied (6.6.2000) by 1992 c. 52, s. 70A, **Sch. A1 para. 160(2)(b)** (as inserted (6.6.2000) by 1999 c. 26, s. 1, **Sch. 1**; S.I. 2000/1338, **art. 2** (with transitional provisions in art. 3)

[F694**124AAdjustments under the Employment Act 2002**

Where an award of compensation for unfair dismissal falls to be—

(a) reduced or increased under **[**F695section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 (effect of failure to comply with Code: adjustment of awards)**]**, or

(b) increased under section 38 of that Act (failure to give statement of employment particulars),

the adjustment shall be in the amount awarded under section 118(1)(b) and shall be applied immediately before any reduction under section 123(6) or (7).**]**

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Textual Amendments

F694 S. 124A inserted (1.10.2004) by Employment Act 2002 (c. 22), **ss. 39**, 55(2); S.I. 2004/1717, **art. 2(2)** (subject to art. 3)

F695 Words in s. 124A substituted (6.4.2009) by Employment Act 2008 (c. 24), **ss. 3(4)**, 22(1)(a); S.I. 2008/3232, **art. 2** (with Sch. paras. 1, 5)

F696 125 . . . . . .

Textual Amendments

F696 S. 125 repealed (25.10.1999) by 1999 c. 26, ss. 33(1)(a), 44, **Sch. 9(10)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 8)

126 Acts which are both unfair dismissal and discrimination.

(1) This section applies where compensation falls to be awarded in respect of any act both under—

(a) the provisions of this Act relating to unfair dismissal, and

[F697(b) the Equality Act 2010.**]**

(2) An **[**F698employment tribunal**]** shall not award compensation under **[**F699either of those Acts**]** in respect of any loss or other matter which is or has been taken into account under **[**F700the other**]** by the tribunal (or another **[**F698employment tribunal**]**) in awarding compensation on the same or another complaint in respect of that act.

Textual Amendments

F697 S. 126(1)(b) substituted (1.10.2010) by Equality Act 2010 (c. 15), ss. 211, 216, **Sch. 26 para. 33(2)** (with ss. 6(4), 205) (as inserted by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), art. 1, **Sch. 1 para. 5**); S.I. 2010/2317, art. 2(15)(e)(ii) (with art. 15)

F698 Words in s. 126(2) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F699 Words in s. 126(2) substituted (1.10.2010) by Equality Act 2010 (c. 15), ss. 211, 216, **Sch. 26 para. 33(3)(a)** (with ss. 6(4), 205) (as inserted by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), art. 1, **Sch. 1 para. 5**); S.I. 2010/2317, art. 2(15)(e)(ii) (with art. 15)

F700 Words in s. 126(2) substituted (1.10.2010) by Equality Act 2010 (c. 15), ss. 211, 216, **Sch. 26 para. 33(3)(b)** (with ss. 6(4), 205) (as inserted by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), art. 1, **Sch. 1 para. 5**); S.I. 2010/2317, art. 2(15)(e)(ii) (with art. 15)

Modifications etc. (not altering text)

C131 Ss. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**

F701 127 . . . . . .

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Textual Amendments

F701 S. 127 repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 24, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

127A Internal appeal procedures.

No commentary item could be found for this reference c20323811. . . . . .

F702 127B . . . . . .

Textual Amendments

F702 S. 127B repealed (25.10.1999) by 1999 c. 26, ss. 37(2), 44, **Sch. 9(11)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I**

Interim relief

128 Interim relief pending determination of complaint.

[F703(1) An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and—

(a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—

(i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or

(ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or

(b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met,

may apply to the tribunal for interim relief.**]**

(2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

(3) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application.

(4) The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application together with notice of the date, time and place of the hearing.

(5) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

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Textual Amendments

F703 S. 128(1) substituted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(8)**

Modifications etc. (not altering text)

C132 Ss. 128-132 extended (4.9.2000) by 1999 c. 26, **s. 12(5)** (with ss. 14, 15); S.I. 2000/2242, **art. 2**

C133 Ss. 128-132 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, **Sch. 6 para. 13(6)** (with regs. 44-46, Sch. 7)

C134 Ss. 128-132 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(5)**

129 Procedure on hearing of application and making of order.

[F704(1) This section applies where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find—

(a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—

(i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or

(ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or

(b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met.**]**

(2) The tribunal shall announce its findings and explain to both parties (if present)—

(a) what powers the tribunal may exercise on the application, and

(b) in what circumstances it will exercise them.

(3) The tribunal shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—

(a) to reinstate the employee (that is, to treat him in all respects as if he had not been dismissed), or

(b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.

(4) For the purposes of subsection (3)(b) "terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed" means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal should be regarded as continuous with his employment following the dismissal.

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

(6) If the employer—

(a) states that he is willing to re-engage the employee in another job, and

(b) specifies the terms and conditions on which he is willing to do so,

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the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions.

(7) If the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect.

(8) If the employee is not willing to accept the job on those terms and conditions—

(a) where the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, and

(b) otherwise, the tribunal shall make no order.

(9) If on the hearing of an application for interim relief the employer—

(a) fails to attend before the tribunal, or

(b) states that he is unwilling either to reinstate or re-engage the employee as mentioned in subsection (3),

the tribunal shall make an order for the continuation of the employee's contract of employment.

Textual Amendments

F704 S. 129(1) substituted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(9)**

Modifications etc. (not altering text)

C135 Ss. 128-132 extended (4.9.2000) by 1999 c. 26, **s. 12(5)** (with ss. 14, 15); S.I. 2000/2242, **art. 2**

C136 Ss. 128-132 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, **Sch. 6 para. 13(6)** (with regs. 44-46, Sch. 7)

C137 Ss. 128-132 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(5)**

130 Order for continuation of contract of employment.

(1) An order under section 129 for the continuation of a contract of employment is an order that the contract of employment continue in force—

(a) for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters, and

(b) for the purposes of determining for any purpose the period for which the employee has been continuously employed,

from the date of its termination (whether before or after the making of the order) until the determination or settlement of the complaint.

(2) Where the tribunal makes such an order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period, or part of any such period, falling between the date of dismissal and the determination or settlement of the complaint.

(3) Subject to the following provisions, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period, or part, and shall be paid—

(a) in the case of a payment for any such period falling wholly or partly after the making of the order, on the normal pay day for that period, and

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(b) in the case of a payment for any past period, within such time as may be specified in the order.

(4) If an amount is payable in respect only of part of a normal pay period, the amount shall be calculated by reference to the whole period and reduced proportionately.

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

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

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

Modifications etc. (not altering text)

C138 Ss. 128-132 extended (4.9.2000) by 1999 c. 26, **s. 12(5)** (with ss. 14, 15); S.I. 2000/2242, **art. 2**

C139 Ss. 128-132 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, **Sch. 6 para. 13(6)** (with regs. 44-46, Sch. 7)

C140 Ss. 128-132 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(5)**

131 Application for variation or revocation of order.

(1) At any time between—

(a) the making of an order under section 129, and

(b) the determination or settlement of the complaint,

the employer or the employee may apply to an **[**[F705]employment tribunal**]** for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order.

(2) Sections 128 and 129 apply in relation to such an application as in relation to an original application for interim relief except that, in the case of an application by the employer, section 128(4) has effect with the substitution of a reference to the employee for the reference to the employer.

Textual Amendments

F705 Words in s. 131(1) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C141 Ss. 128-132 extended (4.9.2000) by 1999 c. 26, **s. 12(5)** (with ss. 14, 15); S.I. 2000/2242, **art. 2**

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C142 Ss. 128-132 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, **Sch. 6 para. 13(6)** (with regs. 44-46, Sch. 7)
C143 Ss. 128-132 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(5)**

132 Consequence of failure to comply with order.

(1) If, on the application of an employee, an **[**[F706]employment tribunal**]** is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under section 129(5) or (7), the tribunal shall—

(a) make an order for the continuation of the employee's contract of employment, and

(b) order the employer to pay compensation to the employee.

(2) Compensation under subsection (1)(b) shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard—

(a) to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order, and

(b) to any loss suffered by the employee in consequence of the non-compliance.

(3) Section 130 applies to an order under subsection (1)(a) as in relation to an order under section 129.

(4) If on the application of an employee an **[**[F706]employment tribunal**]** is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment subsection (5) or (6) applies.

(5) Where the non-compliance consists of a failure to pay an amount by way of pay specified in the order—

(a) the tribunal shall determine the amount owed by the employer on the date of the determination, and

(b) if on that date the tribunal also determines the employee's complaint that he has been unfairly dismissed, it shall specify that amount separately from any other sum awarded to the employee.

(6) In any other case, the tribunal shall order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.

Textual Amendments

F706 Words in s. 132(1)(4) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C144 Ss. 128-132 extended (4.12.2000) by 1999 c. 26, **s. 12(5)** (with ss. 14, 15); S.I. 2000/2242, **art. 2**
C145 Ss. 128-132 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, **Sch. 6 para. 13(6)** (with regs. 44-46, Sch. 7)
C146 Ss. 128-132 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(5)**

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CHAPTER III

SUPPLEMENTARY

133 Death of employer or employee.

(1) Where—

(a) an employer has given notice to an employee to terminate his contract of employment, and

(b) before that termination the employee or the employer dies,

this Part applies as if the contract had been duly terminated by the employer by notice expiring on the date of the death.

(2) Where—

(a) an employee's contract of employment has been terminated,

(b) by virtue of subsection (2) or (4) of section 97 a date later than the effective date of termination as defined in subsection (1) of that section is to be treated for certain purposes as the effective date of termination, and

(c) the employer or the employee dies before that date,

subsection (2) or (4) of section 97 applies as if the notice referred to in that subsection as required by section 86 expired on the date of the death.

(3) Where an employee has died, sections 113 to 116 do not apply; and, accordingly, if the **[**[F707]employment tribunal**]** finds that the grounds of the complaint are well-founded, the case shall be treated as falling within section 112(4) as a case in which no order is made under section 113.

(4) Subsection (3) does not prejudice an order for reinstatement or re-engagement made before the employee's death.

(5) Where an order for reinstatement or re-engagement has been made and the employee dies before the order is complied with—

(a) if the employer has before the death refused to reinstate or re-engage the employee in accordance with the order, subsections (3) to (6) of section 117 apply, and an award shall be made under subsection (3)(b) of that section, unless the employer satisfies the tribunal that it was not practicable at the time of the refusal to comply with the order, and

(b) if there has been no such refusal, subsections (1) and (2) of that section apply if the employer fails to comply with any ancillary terms of the order which remain capable of fulfilment after the employee's death as they would apply to such a failure to comply fully with the terms of an order where the employee had been reinstated or re-engaged.

Textual Amendments

F707 Words in s. 133(3) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

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134 Teachers in aided schools.

(1) Where a teacher in **[**F708a foundation, voluntary aided or foundation special school is dismissed by the governing body of the school in pursuance of a requirement of the **[**F709local authority**]** under **[**F710paragraph 7 of Schedule 2 to the Education Act 2002**]]**, this Part has effect in relation to the dismissal as if—

(a) the **[**F709local authority**]** had at all material times been the teacher's employer,

(b) the **[**F709local authority**]** had dismissed him, and

(c) the reason or principal reason for which they did so had been the reason or principal reason for which they required his dismissal.

(2) For the purposes of a complaint under section 111 as it has effect by virtue of subsection (1)—

(a) section 117(4)(a) applies as if for the words "not practicable to comply" there were substituted the words " not practicable for the local education authority to permit compliance ", and

(b) section 123(5) applies as if the references in it to the employer were to the **[**F709local authority**]**.

[F711(3) In this section " local authority " has the meaning given by section 579(1) of the Education Act 1996. **]**

Textual Amendments

F708 Words in s. 134(1) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 55** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

F709 Words in s. 134 substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 41(3)(a)**

F710 Words in s. 134(1) substituted (1.9.2003 for E.S. and 1.4.2006 for W.) by Education Act 2002 (c. 32), ss. 215(1), 216, **Sch. 21 para. 30** (with ss. 210(8), 214(4)); S.I. 2003/1667, **art. 4** (with Sch. 1 (as amended (1.4.2004) by S.I. 2004/571, reg. 3 and S.I. 2005/2570, (art. 2))); S.I. 2006/879, **art. 4**, Sch.

F711 S. 134(3) inserted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 41(3)(b)**

[F712134AApplication to police.

(1) For the purposes of section 100, and of the other provisions of this Part so far as relating to the right not to be unfairly dismissed in a case where the dismissal is unfair by virtue of section 100, the holding, otherwise than under a contract of employment, of the office of constable or an appointment as police cadet shall be treated as employment by the relevant officer under a contract of employment.

[F713(2) In this section " the relevant officer ", in relation to—

(a) a person holding the office of constable, or

(b) a person holding an appointment as a police cadet,

means the person who under section 51A of the Health and Safety at Work etc. Act 1974 is to be treated as his employer for the purposes of Part 1 of that Act. **]**

[Subsection (1) does not apply to the holding of the office of constable by a member **[**F714(3) of a police force on secondment to the **[**F715National Crime Agency**]**.**]]**

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Textual Amendments

F712 S. 134A inserted (1.7.1998) by 1997 c. 42, **s. 4**; S.I. 1998/1542, **art. 2**

F713 S. 134A(2) substituted (7.4.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 158(2)(b)(3)**, 178

F714 S. 134A(3) added (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 87**; S.I. 2006/378, art. 4(1), **Sch.** (subject to art. 4(2)-(7))

F715 Words in s. 134A(3) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 51**; S.I. 2013/1682, art. 3(v)

PART XI

REDUNDANCY PAYMENTS ETC.

Modifications etc. (not altering text)

C147 Pt. 11 (ss. 135-181) modified (25.11.1998 for specified purposes and otherwise 3.7.2000) by 1998 c. 45, s. 34, **Sch. 8 para. 9(3)(4)**; S.I. 1998/2952, **art. 2**; S.I. 2000/1173, **art. 2**
Pt. 11 (ss. 135-181) modified (25.11.1998 for specified purposes and otherwise 3.7.2000) by 1998 c. 45, s. 36, **Sch. 9 para. 9(3)(4)**; S.I. 1998/2952, **art. 2**; S.I. 2000/1173, **art. 2**
Pt. 11 (ss. 135-181) modified (27.9.1999) by 1999 c. 22, ss. 105, 108(1), Sch. 14 Pt. II paras. 2(1)(b), **4(a)** (with Sch. 14 Pt. II para. 7(2))
Pt. 11 (ss. 135-181) modified (27.9.1999) by 1999 c. 22, ss. 105, 108(1), **Sch. 14 Pt. V para. 33(7)(a)** (with Sch. 14 Pt. II para. 7(2))
Pt. 11 (ss. 135-181) modified (3.7.2000) by 1999 c. 29, ss. 165(4), 217(7), **Sch. 12 para. 10(3)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
Pt. 11 (ss. 135-181) modified (3.7.2000) by 1980 c. 66, **s. 266B(6)** (as inserted (3.7.2000) by 1999 c. 29, s. 265 (with **Sch. 12 para. 9(1)**); S.I. 2000/801, art. 2(2)(c), **Sch.**
Pt. 11 (ss. 135-181) modified (12.1.2000) by 1999 c. 29, **s. 410(4)** (with Sch. 12 para. 9(1)); S.I. 1999/3434, **art. 2**
Pt. 11 (ss. 135-181) modified (1.9.2000 (E.), 1.1.2001 (W.)) by 2000 c. 21, **s. 95(3)**; S.I. 2000/2114, **art. 2(3) Sch. Pt. III**; S.I. 2000/3230, art. 2, **Sch.**
Pt. 11 (ss. 135-181) modified (1.2.2001) by 2000 c. 38, s. 217, **Sch. 18 para. 16(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings in Sch. 2 Pt. II)
Pt. 11 (ss. 135-181) modified (30.1.2001) by 2000 c. 38, s. 218, **Sch. 19 para. 12(a)**; S.I. 2001/57, art. 2, **Sch. 1**
Pt. 11 (ss. 135-181) modified (1.2.2001) by 2000 c. 38, s. 220, **Sch. 21 para. 13(a)**; S.I. 2001/57, art. 2, **Sch. 2 Pt. I** (subject to savings in Sch. 2 Pt. II)
Pt. 11 (ss. 135-181) modified (1.2.2001) by 2000 c. 38, s. 240, **Sch. 25 para. 12(a)**, S.I. 2001/57, art. 3, Sch. 2 Pt. I (subject to savings in Sch. 2 Pt. II)

C148 Pt. 11 (ss. 135-181) excluded (1.4.2000) by S.I. 2000/935, **art. 3**
Pt. 11 (ss. 135-181) excluded (S.) (8.9.2000) by 2000 asp 10, s. 29, **Sch. 4 para. 6(4)(b)** (with s. 32); S.I. 2000/312, **art. 2**
Pt. 11 (ss. 135-181) excluded (1.11.2000) by 2000 c. 27, s. 3(8), **Sch. 3 para. 9**; S.I. 2000/2917, art. 2, **Sch.**
Pt. 11 (ss. 135-181) modified (S.) (*prosp.*) by 2001 asp 10, **ss. 86(4)(b)**, 113(1)
Pt. 11 (ss. 135-181) applied (E.W.) (21.5.2001) by S.I. 2001/1185, arts. 2, 3, **Sch. para. 129(ii)**

C149 Pt. 11 modified (1.7.2004) by The British Transport Police (Transitional and Consequential Provisions) Order 2004 (S.I. 2004/1573), arts. 1, **6(8)(a)**

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C150 Pt. 11 modified (31.1.2005) by Public Audit (Wales) Act 2004 (c. 23), ss. 68, 73, **Sch. 3 para. 3(2)(a)**; S.I. 2005/71, art. 2, **Sch.**
C151 Pt. 11 modified (8.6.2005 for certain purposes, otherwise 24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 12, 60, **Sch. 2 para. 9(1)(a)**; S.I. 2005/1444, **art. 2**, Sch. 1; S.I. 2005/1909, **art. 2**, Sch.
C152 Pt. 11 modified (E.W.) (1.3.2007) by National Health Service Act 2006 (c. 41), ss. 25, 277, **Sch. 4 para. 8(11)(b)**
C153 Pt. 11 modified (22.7.2008) by Crossrail Act 2008 (c. 18), s. 36, **Sch. 12 para. 16**
C154 Pt. 11 excluded (5.3.2015) by Infrastructure Act 2015 (c. 7), s. 57(1), **Sch. 3 para. 9(1)(a)**; S.I. 2015/481, reg. 2(a)
C155 Pt. 11 modified (E.W.) (2.8.2019) by The Cardiff and Valleys Railways (Transfer) Order 2019 (S.I. 2019/1132), art. 1, **Sch. 2 para. 10(1)(a)** (with reg. 5)

CHAPTER I

RIGHT TO REDUNDANCY PAYMENT

135 The right.

(1) An employer shall pay a redundancy payment to any employee of his if the employee—
(a) is dismissed by the employer by reason of redundancy, or
(b) is eligible for a redundancy payment by reason of being laid off or kept on short-time.

(2) Subsection (1) has effect subject to the following provisions of this Part (including, in particular, sections 140 to 144, 149 to 152, 155 to 161 and 164).

Modifications etc. (not altering text)
C156 S. 135 modified by SI 2006/246 reg. 7(3)(b) (as substituted (31.1.2014) by The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (S.I. 2014/16), regs. 1(2), **8(1)** (with reg. 8(2)))
C157 S. 135 modified (E.) (1.11.2017) by The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017 (S.I. 2017/958), arts. 1(1), **8(12)** (with arts. 4(5), 7(2), 8(13)-(15), Sch. 3 para. 6)

CHAPTER II

RIGHT ON DISMISSAL BY REASON OF REDUNDANCY

Dismissal by reason of redundancy

136 Circumstances in which an employee is dismissed.

(1) Subject to the provisions of this section and sections 137 and 138, for the purposes of this Part an employee is dismissed by his employer if (and only if)—
(a) the contract under which he is employed by the employer is terminated by the employer (whether with or without notice),

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[F716(b) he is employed under a limited term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or**]**

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

(2) Subsection (1)(c) does not apply if the employee terminates the contract without notice in circumstances in which he is entitled to do so by reason of a lock-out by the employer.

(3) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—

(a) the employer gives notice to the employee to terminate his contract of employment, and

(b) at a time within the obligatory period of 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.

(4) In this Part the "obligatory period of notice", in relation to notice given by an employer to terminate an employee's contract of employment, means—

(a) the actual period of the notice in a case where 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 (by virtue of any enactment or otherwise) is required to be given by the employer to terminate the contract of employment, and

(b) the period which—

(i) is equal to the minimum period referred to in paragraph (a), and

(ii) ends at the time when the notice expires,

in any other case.

(5) Where in accordance with any enactment or rule of law—

(a) an act on the part of an employer, or

(b) an event affecting an employer (including, in the case of an individual, his death),

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

Textual Amendments

F716 S. 136(1)(b) substituted (1.10.2002) by The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(13)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

F717137 . . . . . .

Textual Amendments

F717 S. 137 repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 25, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with transitional provisions in Sch. 3 paras. 10, 11)

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138 No dismissal in cases of renewal of contract or re-engagement.

(1) Where—

(a) an employee's contract of employment is renewed, or he is re-engaged under a new contract of employment in pursuance of an offer (whether in writing or not) made before the end of his employment under the previous contract, and

(b) the renewal or re-engagement takes effect either immediately on, or after an interval of not more than four weeks after, the end of that employment,

the employee shall not be regarded for the purposes of this Part as dismissed by his employer by reason of the ending of his employment under the previous contract.

(2) Subsection (1) does not apply if—

(a) the provisions of the contract as renewed, or of the new contract, as to—

(i) the capacity and place in which the employee is employed, and

(ii) the other terms and conditions of his employment,

differ (wholly or in part) from the corresponding provisions of the previous contract, and

(b) during the period specified in subsection (3)—

(i) the employee (for whatever reason) terminates the renewed or new contract, or gives notice to terminate it and it is in consequence terminated, or

(ii) the employer, for a reason connected with or arising out of any difference between the renewed or new contract and the previous contract, terminates the renewed or new contract, or gives notice to terminate it and it is in consequence terminated.

(3) The period referred to in subsection (2)(b) is the period—

(a) beginning at the end of the employee's employment under the previous contract, and

(b) ending with—

(i) the period of four weeks beginning with the date on which the employee starts work under the renewed or new contract, or

(ii) such longer period as may be agreed in accordance with subsection (6) for the purpose of retraining the employee for employment under that contract;

and is in this Part referred to as the "trial period".

(4) Where subsection (2) applies, for the purposes of this Part—

(a) the employee shall be regarded as dismissed on the date on which his employment under the previous contract (or, if there has been more than one trial period, the original contract) ended, and

(b) the reason for the dismissal shall be taken to be the reason for which the employee was then dismissed, or would have been dismissed had the offer (or original offer) of renewed or new employment not been made, or the reason which resulted in that offer being made.

(5) Subsection (2) does not apply if the employee's contract of employment is again renewed, or he is again re-engaged under a new contract of employment, in circumstances such that subsection (1) again applies.

(6) For the purposes of subsection (3)(b)(ii) a period of retraining is agreed in accordance with this subsection only if the agreement—

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(a) is made between the employer and the employee or his representative before the employee starts work under the contract as renewed, or the new contract,

(b) is in writing,

(c) specifies the date on which the period of retraining ends, and

(d) specifies the terms and conditions of employment which will apply in the employee's case after the end of that period.

139 Redundancy.

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.

(2) For the purposes of subsection (1) the business of the employer together with the business or businesses of his associated employers shall be treated as one (unless either of the conditions specified in paragraphs (a) and (b) of that subsection would be satisfied without so treating them).

(3) For the purposes of subsection (1) the activities carried on by a **[**F718local authority**]** with respect to the schools maintained by it, and the activities carried on by the **[**F719governing bodies**]** of those schools, shall be treated as one business (unless either of the conditions specified in paragraphs (a) and (b) of that subsection would be satisfied without so treating them).

(4) Where—

(a) the contract under which a person is employed is treated by section 136(5) as terminated by his employer by reason of an act or event, and

(b) the employee's contract is not renewed and he is not re-engaged under a new contract of employment,

he shall be taken for the purposes of this Act to be dismissed by reason of redundancy if the circumstances in which his contract is not renewed, and he is not re-engaged, are wholly or mainly attributable to either of the facts stated in paragraphs (a) and (b) of subsection (1).

(5) In its application to a case within subsection (4), paragraph (a)(i) of subsection (1) has effect as if the reference in that subsection to the employer included a reference to any person to whom, in consequence of the act or event, power to dispose of the business has passed.

(6) In subsection (1) "cease" and "diminish" mean cease and diminish either permanently or temporarily and for whatever reason.

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[F720(7) In subsection (3) " local authority " has the meaning given by section 579(1) of the Education Act 1996. **]**

Textual Amendments

F718 Words in s. 139(3) substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 41(4)(a)**

F719 Words in s. 139(3) substituted (1.10.2002 except in relation to W. and otherwise 19.12.2002) by Education Act 2002 (c. 32), s. 215(1), **Sch. 21 para. 31** (with ss. 210(8), 214(4)); S.I. 2002/2439, **art. 3**; S.I. 2002/3185, **art. 4**, Sch. Pt. 1

F720 S. 139(7) inserted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 41(4)(b)**

Modifications etc. (not altering text)

C158 S. 139 applied (1.4.1999) by 1998 c. 31, **s. 57(6)(7)**; S.I. 1999/1016, art. 2(1), **Sch. 1**
S. 139 applied (21.5.2001) by S.I. 2001/1185, arts. 2, 3, **Sch. para. 129(i)**

C159 S. 139 applied (1.10.2002 except in relation to W.) by Education Act 2002 (c. 32), **s. 37(6)** (with ss. 210(8), 214(4)); S.I. 2002/2439, **art. 3**

C160 S. 139 applied by 2015 c. 26, s. 153A(5) (as inserted (1.2.2017) by Enterprise Act 2016 (c. 12), **ss. 41**, 44(4)(b); S.I. 2017/70, reg. 2(b))

C161 S. 139(3) extended (temp. from 1.4.1999 to 1.9.1999) by S.I. 1999/638, **reg. 4**

Exclusions

140 Summary dismissal.

(1) Subject to subsections (2) and (3), an employee is not entitled to a redundancy payment by reason of dismissal where his employer, being entitled to terminate his contract of employment without notice by reason of the employee's conduct, terminates it either—

(a) without notice,

(b) by giving shorter notice than that which, in the absence of conduct entitling the employer to terminate the contract without notice, the employer would be required to give to terminate the contract, or

(c) by giving notice which includes, or is accompanied by, a statement in writing that the employer would, by reason of the employee's conduct, be entitled to terminate the contract without notice.

(2) Where an employee who—

(a) has been given notice by his employer to terminate his contract of employment, or

(b) has given notice to his employer under section 148(1) indicating his intention to claim a redundancy payment in respect of lay-off or short-time,

takes part in a strike at any relevant time in circumstances which entitle the employer to treat the contract of employment as terminable without notice, subsection (1) does not apply if the employer terminates the contract by reason of his taking part in the strike.

(3) Where the contract of employment of an employee who—

(a) has been given notice by his employer to terminate his contract of employment, or

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(b) has given notice to his employer under section 148(1) indicating his intention to claim a redundancy payment in respect of lay-off or short-time,

is terminated as mentioned in subsection (1) at any relevant time otherwise than by reason of his taking part in a strike, an **[**[F721]employment tribunal**]** may determine that the employer is liable to make an appropriate payment to the employee if on a reference to the tribunal it appears to the tribunal, in the circumstances of the case, to be just and equitable that the employee should receive it.

(4) In subsection (3) "appropriate payment" means—

(a) the whole of the redundancy payment to which the employee would have been entitled apart from subsection (1), or

(b) such part of that redundancy payment as the tribunal thinks fit.

(5) In this section "relevant time"—

(a) in the case of an employee who has been given notice by his employer to terminate his contract of employment, means any time within the obligatory period of notice, and

(b) in the case of an employee who has given notice to his employer under section 148(1), means any time after the service of the notice.

Textual Amendments

F721 Words in s. 140(3) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

141 Renewal of contract or re-engagement.

(1) This section applies where an offer (whether in writing or not) is made to an employee before the end of his employment—

(a) to renew his contract of employment, or

(b) to re-engage him under a new contract of employment,

with renewal or re-engagement to take effect either immediately on, or after an interval of not more than four weeks after, the end of his employment.

(2) Where subsection (3) is satisfied, the employee is not entitled to a redundancy payment if he unreasonably refuses the offer.

(3) This subsection is satisfied where—

(a) the provisions of the contract as renewed, or of the new contract, as to—

(i) the capacity and place in which the employee would be employed, and

(ii) the other terms and conditions of his employment,

would not differ from the corresponding provisions of the previous contract, or

(b) those provisions of the contract as renewed, or of the new contract, would differ from the corresponding provisions of the previous contract but the offer constitutes an offer of suitable employment in relation to the employee.

(4) The employee is not entitled to a redundancy payment if—

(a) his contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of the offer,

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(b) the provisions of the contract as renewed or new contract as to the capacity or place in which he is employed or the other terms and conditions of his employment differ (wholly or in part) from the corresponding provisions of the previous contract,

(c) the employment is suitable in relation to him, and

(d) during the trial period he unreasonably terminates the contract, or unreasonably gives notice to terminate it and it is in consequence terminated.

142 Employee anticipating expiry of employer's notice.

(1) Subject to subsection (3), an employee is not entitled to a redundancy payment where—

(a) he is taken to be dismissed by virtue of section 136(3) by reason of giving to his employer notice terminating his contract of employment on a date earlier than the date on which notice by the employer terminating the contract is due to expire,

(b) before the employee's notice is due to expire, the employer gives him a notice such as is specified in subsection (2), and

(c) the employee does not comply with the requirements of that notice.

(2) The employer's notice referred to in subsection (1)(b) is a notice in writing—

(a) requiring the employee to withdraw his notice terminating the contract of employment and to continue in employment until the date on which the employer's notice terminating the contract expires, and

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

(3) An **[**[F722]employment tribunal**]** may determine that the employer is liable to make an appropriate payment to the employee if on a reference to the tribunal it appears to the tribunal, having regard to—

(a) the reasons for which the employee seeks to leave the employment, and

(b) the reasons for which the employer requires him to continue in it,

to be just and equitable that the employee should receive the payment.

(4) In subsection (3) "appropriate payment" means—

(a) the whole of the redundancy payment to which the employee would have been entitled apart from subsection (1), or

(b) such part of that redundancy payment as the tribunal thinks fit.

Textual Amendments

F722 Words in s. 142(3) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

143 Strike during currency of employer's notice.

(1) This section applies where—

(a) an employer has given notice to an employee to terminate his contract of employment ("notice of termination"),

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(b) after the notice is given the employee begins to take part in a strike of employees of the employer, and

(c) the employer serves on the employee a notice of extension.

(2) A notice of extension is a notice in writing which—

(a) requests the employee to agree to extend the contract of employment beyond the time of expiry by a period comprising as many available days as the number of working days lost by striking ("the proposed period of extension"),

(b) indicates the reasons for which the employer makes that request, and

(c) states that the employer will contest any liability to pay the employee a redundancy payment in respect of the dismissal effected by the notice of termination unless either—

(i) the employee complies with the request, or

(ii) the employer is satisfied that, in consequence of sickness or injury or otherwise, the employee is unable to comply with it or that (even though he is able to comply with it) it is reasonable in the circumstances for him not to do so.

(3) Subject to subsections (4) and (5), if the employee does not comply with the request contained in the notice of extension, he is not entitled to a redundancy payment by reason of the dismissal effected by the notice of termination.

(4) Subsection (3) does not apply if the employer agrees to pay a redundancy payment to the employee in respect of the dismissal effected by the notice of termination even though he has not complied with the request contained in the notice of extension.

(5) An **[**[F723]employment tribunal**]** may determine that the employer is liable to make an appropriate payment to the employee if on a reference to the tribunal it appears to the tribunal that—

(a) the employee has not complied with the request contained in the notice of extension and the employer has not agreed to pay a redundancy payment in respect of the dismissal effected by the notice of termination, but

(b) either the employee was unable to comply with the request or it was reasonable in the circumstances for him not to comply with it.

(6) In subsection (5) "appropriate payment" means—

(a) the whole of the redundancy payment to which the employee would have been entitled apart from subsection (3), or

(b) such part of that redundancy payment as the tribunal thinks fit.

(7) If the employee—

(a) complies with the request contained in the notice of extension, 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 has effect, and shall be deemed at all material times to have had effect, as if the period specified in it had been appropriately extended; and sections 87 to 91 accordingly apply as if the period of notice required by section 86 were extended to a corresponding extent.

(8) In subsection (7) "appropriately extended" means—

(a) in a case within paragraph (a) of that subsection, extended beyond the time of expiry by an additional period equal to the proposed period of extension, and

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(b) in a case within paragraph (b) of that subsection, extended beyond the time of expiry up to the end of the day (or last of the days) on which he attends at his proper or usual place of work and is ready and willing to work.

Textual Amendments

F723 Words in s. 143(5) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

144 Provisions supplementary to section 143.

(1) For the purposes of section 143 an employee complies with the request contained in a notice of extension if, but only if, on each available day within the proposed period of extension, he—

(a) attends at his proper or usual place of work, and

(b) is ready and willing to work,

whether or not he has signified his agreement to the request in any other way.

(2) The reference in section 143(2) to the number of working days lost by striking is a reference to the number of working days in the period—

(a) beginning with the date of service of the notice of termination, and

(b) ending with the time of expiry,

which are days on which the employee in question takes part in a strike of employees of his employer.

(3) In section 143 and this section—

"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,

"available day within the proposed period of extension" means an available day which begins before the end of the proposed period of extension,

"time of expiry", in relation to a notice of termination, means the time at which the notice would expire apart from section 143, and

"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.

(4) Neither the service of a notice of extension nor any extension by virtue of section 143(7) of the period specified in a notice of termination affects—

(a) 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, or

(b) the operation of this Part in relation to any such termination of the contract of employment.

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Supplementary

145 The relevant date.

(1) For the purposes of the provisions of this Act relating to redundancy payments "the relevant date" in relation to the dismissal of an employee has the meaning given by this section.

(2) Subject to the following provisions of this section, "the relevant date"—

(a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,

(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and

[F724(c) in relation to an employee who is employed under a limited-term contract which terminates by virtue of the limiting event without being renewed under the same contract, means the date on which the termination takes effect.**]**

(3) Where the employee is taken to be dismissed by virtue of section 136(3) the "relevant date" means the date on which the employee's notice to terminate his contract of employment expires.

(4) Where the employee is regarded by virtue of section 138(4) as having been dismissed on the date on which his employment under an earlier contract ended, "the relevant date" means—

(a) for the purposes of section 164(1), the date which is the relevant date as defined by subsection (2) in relation to the renewed or new contract or, where there has been more than one trial period, the last such contract, and

(b) for the purposes of any other provision, the date which is the relevant date as defined by subsection (2) in relation to the previous contract or, where there has been more than one such trial period, the original contract.

(5) Where—

(a) the contract of employment is terminated by the employer, and

(b) the notice required by section 86 to be given by an employer would, if duly given on the material date, expire on a date later than the relevant date (as defined by the previous provisions of this section),

for the purposes of sections 155, 162(1) and 227(3) the later date is the relevant date.

(6) In subsection (5)(b) "the material date" means—

(a) the date when notice of termination was given by the employer, or

(b) where no notice was given, the date when the contract of employment was terminated by the employer.

F725(7) . . . . . .

Textual Amendments

F724 S. 145(2)(c) substituted (1.10.2002) by The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(14)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

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F725 S. 145(7) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 26, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with transitional provisions in Sch. 3 paras. 10, 11)

146 Provisions supplementing sections 138 and 141.

(1) In sections 138 and 141—

(a) references to re-engagement are to re-engagement by the employer or an associated employer, and

(b) references to an offer are to an offer made by the employer or an associated employer.

(2) For the purposes of the application of section 138(1) or 141(1) to a contract under which the employment ends on a Friday, Saturday or Sunday—

(a) the renewal or re-engagement shall be treated as taking effect immediately on the ending of the employment 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 to which those provisions refer shall be calculated as if the employment had ended on that next Monday.

F726(3) . . . . . .

Textual Amendments

F726 S. 146(3) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 27, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with transitional provisions in Sch. 3 paras. 10, 11)

Modifications etc. (not altering text)

C162 S. 146 modified (1.9.1999) by S.I. 1999/2277, art. 3, **Sch. 2 Pt. I para. 1**

CHAPTER III

RIGHT BY REASON OF LAY-OFF OR SHORT-TIME

Lay-off and short-time

147 Meaning of "lay-off" and "short-time".

(1) For the purposes of this Part an employee shall be taken to be laid off for a week if—

(a) he is employed under a contract on terms and conditions such that his remuneration under the contract depends on his being provided by the employer with work of the kind which he is employed to do, but

(b) he is not entitled to any remuneration under the contract in respect of the week because the employer does not provide such work for him.

(2) For the purposes of this Part an employee shall be taken to be kept on short-time for a week if by reason of a diminution in the work provided for the employee by his employer (being work of a kind which under his contract the employee is employed to do) the employee's remuneration for the week is less than half a week's pay.

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148 Eligibility by reason of lay-off or short-time.

(1) Subject to the following provisions of this Part, for the purposes of this Part an employee is eligible for a redundancy payment by reason of being laid off or kept on short-time if—

(a) he gives notice in writing to his employer indicating (in whatever terms) his intention to claim a redundancy payment in respect of lay-off or short-time (referred to in this Part as "notice of intention to claim"), and

(b) before the service of the notice he has been laid off or kept on short-time in circumstances in which subsection (2) applies.

(2) This subsection applies if the employee has been laid off or kept on short-time—

(a) for four or more consecutive weeks of which the last before the service of the notice ended on, or not more than four weeks before, the date of service of the notice, or

(b) for a series of six or more weeks (of which not more than three were consecutive) within a period of thirteen weeks, where the last week of the series before the service of the notice ended on, or not more than four weeks before, the date of service of the notice.

Exclusions

149 Counter-notices.

Where an employee gives to his employer notice of intention to claim but—

(a) the employer gives to the employee, within seven days after the service of that notice, notice in writing (referred to in this Part as a "counter-notice") that he will contest any liability to pay to the employee a redundancy payment in pursuance of the employee's notice, and

(b) the employer does not withdraw the counter-notice by a subsequent notice in writing,

the employee is not entitled to a redundancy payment in pursuance of his notice of intention to claim except in accordance with a decision of an **[**[F727]employment tribunal**]**.

Textual Amendments

F727 Words in s. 149 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

150 Resignation.

(1) An employee is not entitled to a redundancy payment by reason of being laid off or kept on short-time unless he terminates his contract of employment by giving such period of notice as is required for the purposes of this section before the end of the relevant period.

(2) The period of notice required for the purposes of this section—

(a) where the employee is required by his contract of employment to give more than one week's notice to terminate the contract, is the minimum period which he is required to give, and

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(b) otherwise, is one week.

(3) In subsection (1) "the relevant period"—

(a) if the employer does not give a counter-notice within seven days after the service of the notice of intention to claim, is three weeks after the end of those seven days,

(b) if the employer gives a counter-notice within that period of seven days but withdraws it by a subsequent notice in writing, is three weeks after the service of the notice of withdrawal, and

(c) if—

(i) the employer gives a counter-notice within that period of seven days, and does not so withdraw it, and

(ii) a question as to the right of the employee to a redundancy payment in pursuance of the notice of intention to claim is referred to an **[**[F728]employment tribunal**]**,

is three weeks after the tribunal has notified to the employee its decision on that reference.

(4) For the purposes of subsection (3)(c) no account shall be taken of—

(a) any appeal against the decision of the tribunal, or

(b) any proceedings or decision in consequence of any such appeal.

Textual Amendments

F728 Words in s. 150(c)(ii) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

151 Dismissal.

(1) An employee is not entitled to a redundancy payment by reason of being laid off or kept on short-time if he is dismissed by his employer.

(2) Subsection (1) does not prejudice any right of the employee to a redundancy payment in respect of the dismissal.

152 Likelihood of full employment.

(1) An employee is not entitled to a redundancy payment in pursuance of a notice of intention to claim if—

(a) on the date of service of the 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 on a period of employment of not less than thirteen weeks during which he would not be laid off or kept on short-time for any week, and

(b) the employer gives a counter-notice to the employee within seven days after the service of the notice of intention to claim.

(2) Subsection (1) does not apply where the employee—

(a) 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

(b) is or has been laid off or kept on short-time for each of those weeks.

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Supplementary

153 The relevant date.

For the purposes of the provisions of this Act relating to redundancy payments "the relevant date" in relation to a notice of intention to claim or a right to a redundancy payment in pursuance of such a notice—

(a) in a case falling within paragraph (a) of subsection (2) of section 148, means the date on which the last of the four or more consecutive weeks before the service of the notice came to an end, and

(b) in a case falling within paragraph (b) of that subsection, means the date on which the last of the series of six or more weeks before the service of the notice came to an end.

154 Provisions supplementing sections 148 and 152.

For the purposes of sections 148(2) and 152(2)—

(a) it is immaterial whether a series of weeks consists wholly of weeks for which the employee is laid off or wholly of weeks for which he is kept on short-time or partly of the one and partly of the other, and

(b) 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 or not in the trade or industry in which the employee is employed and whether in Great Britain or elsewhere).

CHAPTER IV

GENERAL EXCLUSIONS FROM RIGHT

155 Qualifying period of employment.

An employee does not have any right to a redundancy payment unless he has been continuously employed for a period of not less than two years ending with the relevant date.

Modifications etc. (not altering text)

C163 S. 155 modified (1.9.1999) by S.I. 1999/2277, art. 3, **Sch. 2 Pt. I para. 2**

156 Upper age limit.

F729 . . . . . .

Textual Amendments

F729 S. 156 repealed (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 49(1), **Sch. 8 para. 30** (with regs. 44-46, Sch. 8 para. 33)

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157 Exemption orders.

(1) Where an order under this section is in force in respect of an agreement covered by this section, an employee who, immediately before the relevant date, is an employee to whom the agreement applies does not have any right to a redundancy payment.

(2) An agreement is covered by this section if it is an agreement between—

(a) one or more employers or organisations of employers, and

(b) one or more trade unions representing employees,

under which employees to whom the agreement applies have a right in certain circumstances to payments on the termination of their contracts of employment.

(3) Where, on the application of all the parties to an agreement covered by this section, the Secretary of State is satisfied, having regard to the provisions of the agreement, that the employees to whom the agreement applies should not have any right to a redundancy payment, he may make an order under this section in respect of the agreement.

(4) The Secretary of State shall not make an order under this section in respect of an agreement unless the agreement indicates (in whatever terms) the willingness of the parties to it to submit to an **[**F730employment tribunal**]** any question arising under the agreement as to—

(a) the right of an employee to a payment on the termination of his employment, or

(b) the amount of such a payment.

(5) An order revoking an earlier order under this section may be made in pursuance of an application by all or any of the parties to the agreement in question or in the absence of such an application.

F731(6) . . . . . .

Textual Amendments

F730 Words in s. 157(4) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F731 S. 157(6) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 29, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

158 Pension rights.

F732 . . . . . .

Textual Amendments

F732 S. 158 repealed (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 49(1), **Sch. 8 para. 31** (with regs. 44-46, Sch. 8 para. 33)

159 Public offices etc.

A person does not have any right to a redundancy payment in respect of any employment which—

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(a) is employment in a public office within the meaning of section 39 of the [M36]Superannuation Act 1965, or

(b) is for the purposes of pensions and other superannuation benefits treated (whether by virtue of that Act or otherwise) as service in the civil service of the State.

Marginal Citations

M36 1965 c. 74.

160 Overseas government employment.

(1) A person does not have any right to a redundancy payment in respect of employment in any capacity under the Government of an overseas territory.

(2) The reference in subsection (1) to the Government of an overseas territory includes a reference to—

(a) a Government constituted for two or more overseas territories, and

(b) any authority established for the purpose of providing or administering services which are common to, or relate to matters of common interest to, two or more overseas territories.

(3) In this section references to an overseas territory are to any territory or country outside the United Kingdom.

161 Domestic servants.

(1) A person does not have any right to a redundancy payment in respect of employment as a domestic servant in a private household where the employer is the parent (or step-parent), grandparent, child (or step-child), grandchild or brother or sister (or half-brother or half-sister) of the employee.

(2) Subject to that, the provisions of this Part apply to an employee who is employed as a domestic servant in a private household as if—

(a) the household were a business, and

(b) the maintenance of the household were the carrying on of that business by the employer.

CHAPTER V

OTHER PROVISIONS ABOUT REDUNDANCY PAYMENTS

162 Amount of a redundancy payment.

(1) The amount of a redundancy payment shall be calculated by—

(a) determining the period, ending with the relevant date, during which the employee has been continuously employed,

(b) reckoning backwards from the end of that period the number of years of employment falling within that period, and

(c) allowing the appropriate amount for each of those years of employment.

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(2) In subsection (1)(c) "the appropriate amount" means—

(a) one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,

(b) one week's pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and

(c) half a week's pay for each year of employment not within paragraph (a) or (b).

(3) Where twenty years of employment have been reckoned under subsection (1), no account shall be taken under that subsection of any year of employment earlier than those twenty years.

(4) F733 . . . . . .

(5) F733 . . . . . .

(6) **[**F734Subsections (1) to (3)**]** apply for the purposes of any provision of this Part by virtue of which an **[**F735employment tribunal**]** may determine that an employer is liable to pay to an employee—

(a) the whole of the redundancy payment to which the employee would have had a right apart from some other provision, or

(b) such part of the redundancy payment to which the employee would have had a right apart from some other provision as the tribunal thinks fit,

as if any reference to the amount of a redundancy payment were to the amount of the redundancy payment to which the employee would have been entitled apart from that other provision.

F736(7) . . . . . .

(8) F733 . . . . . .

Textual Amendments

F733 S. 162(4)(5)(8) repealed (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 49(1), **Sch. 8 para. 32(2)** (with regs. 44-46, Sch. 8 para. 33)

F734 Words in s. 162(6) substituted (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 49(1), **Sch. 8 para. 32(3)** (with regs. 44-46, Sch. 8 para. 33)

F735 Words in s. 162(6) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F736 S. 162(7) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 30, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

Modifications etc. (not altering text)

C164 S. 162 modified (1.9.1999) by S.I. 1999/2277, art. 3, **Sch. 2 Pt. I para. 3**

163 References to [F737employment tribunals].

(1) Any question arising under this Part as to—

(a) the right of an employee to a redundancy payment, or

(b) the amount of a redundancy payment,

shall be referred to and determined by an **[**F737employment tribunal**]**.

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

(3) Any question whether an employee will become entitled to a redundancy payment if he is not dismissed by his employer and he terminates his contract of employment as mentioned in section 150(1) shall for the purposes of this Part be taken to be a question as to the right of the employee to a redundancy payment.

(4) Where an order under section 157 is in force in respect of an agreement, this section has 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 redundancy payment and the question arose under this Part.

[F738(5) Where a tribunal determines under subsection (1) that an employee has a right to a redundancy payment it may order the employer to pay to the worker such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the non-payment of the redundancy payment.**]**

Textual Amendments

F737 Words in s. 163(1) and sidenote to s. 163 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)(b)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F738 S. 163(5) inserted (6.4.2009) by Employment Act 2008 (c. 24), **ss. 7(2)**, 22(1)(a); S.I. 2008/3232, **art. 2** (with Sch. paras. 1, 5)

164 Claims for redundancy payment.

(1) An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date—

(a) the payment has been agreed and paid,

(b) the employee has made a claim for the payment by notice in writing given to the employer,

(c) a question as to the employee's right to, or the amount of, the payment has been referred to an **[**F739employment tribunal**]**, or

(d) a complaint relating to his dismissal has been presented by the employee under section 111.

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

(a) makes a claim for the payment by notice in writing given to the employer,

(b) refers to an **[**F739employment tribunal**]** a question as to his right to, or the amount of, the payment, or

(c) presents a complaint relating to his dismissal under section 111,

and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment.

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(3) In determining under subsection (2) whether it is just and equitable that an employee should receive a redundancy payment an **[**F739employment tribunal**]** shall have regard to—

(a) the reason shown by the employee for his failure to take any such step as is referred to in subsection (2) within the period mentioned in subsection (1), and

(b) all the other relevant circumstances.

F740(4) . . . . . .

[F741(5) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsections (1)(c) and (2).**]**

Textual Amendments

F739 Words in s. 164(1)(c)(2)(b)(3) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F740 S. 164(4) omitted (31.12.2020) by virtue of The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(24)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

F741 S. 164(5) inserted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 2 para. 34**; S.I. 2014/253, art. 3(g)

165 Written particulars of redundancy payment.

(1) On making any redundancy 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) An employer who without reasonable excuse fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(3) If an employer fails to comply with the requirements of subsection (1), the employee may by notice in writing to the employer require him to give to the employee a written statement complying with those requirements within such period (not being less than one week beginning with the day on which the notice is given) as may be specified in the notice.

(4) An employer who without reasonable excuse fails to comply with a notice under subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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CHAPTER VI

PAYMENTS BY SECRETARY OF STATE

Modifications etc. (not altering text)

C165 Pt. 11 Ch. 6 modified (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **8**

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, [F742]. . .

[[F743](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 **[**[F744]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 **[**[F744]employment tribunal**]**, but

(b) includes any proceedings to enforce a decision or award of an **[**[F744]employment tribunal**]**.

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

(a) where the employer is an individual, if (but only if) subsection **[**[F745](6), (8ZA) or (8A)**]** is satisfied, [F746]. . .

(b) where the employer is a company, if (but only if) subsection **[**[F747](7), (8ZA) or (8A)**]** is satisfied **[**[F748], [F749]...

[F748](c) where the employer is a limited liability partnership, if (but only if) subsection **[**[F750](8), (8ZA) or (8A)**]** is satisfied.**][**[F751]; and

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(d) where the employer is not any of the above, if (but only if) subsection **[**F752(8ZA) or (8A)**]** 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 **[**F753made**]** 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 M37Insolvency 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 M38Judicial 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 F754. . . has been made, or a resolution for voluntary winding up has been passed, with respect to the company,

[F755(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.

[F756(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.**]**

[F757(8ZA) This subsection is satisfied in the case of an employer if—

(a) the employer is a legal person,

(b) a request has been made for the first opening of collective proceedings—

(i) based on the insolvency of the employer, as provided for under the law of any part of the United Kingdom, and

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(ii) involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and

(c) any of the following has decided to open the proceedings—

(i) a court,

(ii) a meeting of creditors, or

(iii) the creditors by a decision procedure.**]**

[F758(8A) This subsection is satisfied in the case of an employer if—

(a) a request has been made for the first opening of collective proceedings—

(i) based on the insolvency of the employer, as provided for under the laws, regulations and administrative provisions of a member State, and

(ii) involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and

(b) the competent authority has—

(i) decided to open the proceedings, or

(ii) established that the employer's undertaking or business has been definitively closed down and the available assets of the employer are insufficient to warrant the opening of the proceedings.

(8B) For the purposes of **[**F759this section**]**—

(a) "liquidator or person performing a similar task" includes the official receiver or an administrator, trustee in bankruptcy, judicial factor, supervisor of a voluntary arrangement, or person performing a similar task,

(b) "competent authority" includes—

(i) a court,

(ii) a meeting of creditors,

(iii) a creditors' committee,

(iv) the creditors by a decision procedure, and

(v) an authority of a member State empowered to open insolvency proceedings, to confirm the opening of such proceedings or to take decisions in the course of such proceedings.

(8C) An employee may apply under this section only if he or she worked or habitually worked in Great Britain in that employment to which the application relates.**]**

[F760(9) In this section—

(a) references to a company are to be read as including references to a charitable incorporated organisation, and

(b) any reference to the Insolvency Act 1986 in relation to a company is to be read as including a reference to that Act as it applies to charitable incorporated organisations.**]**

Textual Amendments

F742 Word in s. 166(2)(a) repealed (1.10.1998) by 1998 c. 8, s. 15, **Sch. 2**; S.I. 1998/1658, art. 2(2), **Sch. 2** (with art. 3(5))

F743 S. 166(2)(aa) inserted (1.10.1998) by 1998 c. 8, **s. 11(2)**; S.I. 1998/1658, art. 2(2), **Sch. 2** (with art. 3(5))

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F744 Words in s. 166(3)(4)(a)(b) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F745 Words in s. 166(5)(a) substituted (31.12.2020) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 253(2)(a)(i)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F746 Word in s. 166(5)(a) omitted (6.4.2001) by virtue of S.I. 2001/1090, reg. 5, **Sch. 5 para. 18(1)(2)**

F747 Words in s. 166(5)(b) substituted (31.12.2020) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 253(2)(a)(ii)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F748 S. 166(5)(c) and word "and" immediately preceding it inserted (6.4.2001) by S.I. 2001/1090, reg. 5, **Sch. 5 para. 18(1)(2)**

F749 Word in s. 166(5)(b) omitted (26.12.2017) by virtue of The Employment Rights Act 1996 and Pension Schemes Act 1993 (Amendment) Regulations 2017 (S.I. 2017/1205), regs. 1, **2(2)(a)(ii)**

F750 Words in s. 166(5)(c) substituted (31.12.2020) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 253(2)(a)(iii)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F751 S. 166(5)(d) and word inserted (26.12.2017) by The Employment Rights Act 1996 and Pension Schemes Act 1993 (Amendment) Regulations 2017 (S.I. 2017/1205), regs. 1, **2(2)(a)(iv)**

F752 Words in s. 166(5)(d) substituted (31.12.2020) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 253(2)(a)(iv)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F753 Word in s. 166(6)(a)(i) substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 18**

F754 Words in s. 166(7)(a) repealed (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248, 278, 279, Sch. 17 para. 49(2)(a), **Sch. 26** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)** (subject to arts. 5-8) (as amended by S.I. 2003/3340, art. 2)

F755 S. 166(7)(aa) inserted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248, 278, **Sch. 17 para. 49(2)(b)** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)** (subject to arts. 5-8) (as amended by S.I. 2003/3340, art. 2)

F756 S. 166(8) inserted (6.4.2001) by S.I. 2001/1090, **reg. 5 Sch. 5**, para. 18(1)(3)

F757 S. 166(8ZA) inserted (31.12.2020) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 253(2)(b)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F758 S. 166(8A)-(8C) inserted (26.12.2017) by The Employment Rights Act 1996 and Pension Schemes Act 1993 (Amendment) Regulations 2017 (S.I. 2017/1205), regs. 1, **2(2)(b)**

F759 Words in s. 166(8B) substituted (31.12.2020) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 253(2)(c)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F760 S. 166(9) inserted (E.W.) (2.1.2013) by The Charitable Incorporated Organisations (Consequential Amendments) Order 2012 (S.I. 2012/3014), arts. 1, **3**

Marginal Citations

M37 1986 c. 45.

M38 1889 c. 39.

167 Making of payments.

(1) Where, on an application under section 166 by an employee in relation to an employer's payment, the Secretary of State is satisfied that the requirements specified in subsection (2) are met, he shall pay to the employee out of the National Insurance Fund a sum calculated in accordance with section 168 but reduced by so much (if any) of the employer's payment as has already been paid.

(2) The requirements referred to in subsection (1) are—

(a) that the employee is entitled to the employer's payment, and

(b) that one of the conditions specified in paragraphs (a) and (b) of subsection (1) of section 166 is fulfilled,

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and, in a case where the employer's payment is a payment such as is mentioned in subsection (2)(b) of that section, that the employee's right to the payment arises by virtue of a period of continuous employment (computed in accordance with the provisions of the agreement in question) which is not less than two years.

(3) Where under this section the Secretary of State 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 Secretary of State has paid only part of it) all the rights and remedies of the employee with respect to that part of the employer's payment, are transferred to and vest in the Secretary of State, and

(b) any decision of an **[**F761employment tribunal**]** requiring the employer's payment to be paid to the employee has effect as if it required that payment, or that part of it which the Secretary of State has paid, to be paid to the Secretary of State.

(4) Any money recovered by the Secretary of State by virtue of subsection (3) shall be paid into the National Insurance Fund.

Textual Amendments

F761 Words in s. 167(3)(b) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

168 Amount of payments.

(1) The sum payable to an employee by the Secretary of State under section 167—

(a) where the employer's payment to which the employee's application under section 166 relates is a redundancy payment or a part of a redundancy payment, is a sum equal to the amount of the redundancy payment or part,

F762 . . .

[F763(aa) where the employer's payment to which the employee's application under section 166 relates is a payment which his employer is liable to make to him under an agreement having effect by virtue of section 203(2)(e) or (f), is a sum equal to the amount of the employer's payment or of any redundancy payment which the employer would have been liable to pay to the employee but for the agreement, whichever is less, and**]**

(b) where the employer's payment to which the employee's application under section 166 relates is a payment which the employer is liable to make under an agreement in respect of which an order is in force under section 157, is a sum equal to the amount of the employer's payment or of the relevant redundancy payment, whichever is less **[**F764, or

(c) receipt of information from the employer and consultation by the employer under section 188 (redundancies) or under the Transfer of Undertakings (Protection of Employment) Regulations 1981.**]**

(2) The reference in subsection (1)(b) to the amount of the relevant redundancy payment is to the amount of the redundancy payment which the employer would have been liable to pay to the employee on the assumptions specified in subsection (3).

(3) The assumptions referred to in subsection (2) are that—

(a) the order in force in respect of the agreement had not been made,

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(b) the circumstances in which the employer's payment is payable had been such that the employer was liable to pay a redundancy payment to the employee in those circumstances,

(c) the relevant date, in relation to any such redundancy payment, had been the date on which the termination of the employee's contract of employment is treated as having taken effect for the purposes of the agreement, and

(d) in so far as the provisions of the agreement relating to the circumstances in which the continuity of an employee's period of employment is to be treated as broken, and the weeks which are to count in computing a period of employment, are inconsistent with the provisions of Chapter I of Part XIV, the provisions of the agreement were substituted for those provisions.

Textual Amendments

F762 Words in s. 168(1)(a) repealed (1.10.1998) by 1998 c. 8, s. 15, **Sch. 2**; S.I. 1998/1658, art. 2(2), **Sch. 2** (with art. 3(5))

F763 S. 168(1)(aa) inserted (1.10.1998) by 1998 c. 8, **s. 11(3)**; S.I. 1998/1658, art. 2(2), **Sch. 2** (with art. 3(5))

F764 S. 168(1)(c) and the preceding word ", or" inserted (28.7.1999) by S.I. 1999/1925, **reg. 14**

169 Information relating to applications for payments.

(1) Where an employee makes an application to the Secretary of State under section 166, the Secretary of State may, by notice in writing given to the employer, require the employer—

(a) to provide the Secretary of State with such information, and

(b) to produce for examination on behalf of the Secretary of State documents in his custody or under his control of such description,

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

(2) Where a person on whom a notice is served under subsection (1) fails without reasonable excuse to comply with a requirement imposed by the notice, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) A person is guilty of an offence if—

(a) in providing any information required by a notice under subsection (1), he 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) he produces for examination in accordance with a notice under subsection (1) a document which to his knowledge has been wilfully falsified.

(4) A person guilty of an offence under subsection (3) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

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170 References to [F765employment tribunals].

(1) Where on an application made to the Secretary of State for a payment under section 166 it is claimed that an employer is liable to pay an employer's payment, there shall be referred to an **[**F765employment tribunal**]**—

(a) any question as to the liability of the employer to pay the employer's payment, and

(b) any question as to the amount of the sum payable in accordance with section 168.

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

Textual Amendments

F765 Words in s. 170(1) and sidenote to s. 170 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)(b)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

CHAPTER VII

SUPPLEMENTARY

Application of Part to particular cases

171 Employment not under contract of employment.

(1) The Secretary of State may by regulations provide that, subject to such exceptions and modifications as may be prescribed by the regulations, this Part and the provisions of this Act supplementary to this Part have effect in relation to any employment of a description to which this section applies as may be so prescribed as if—

(a) it were employment under a contract of employment,

(b) any person engaged in employment of that description were an employee, and

(c) such person as may be determined by or under the regulations were his employer.

(2) This section applies to employment of any description which—

(a) is employment in the case of which secondary Class 1 contributions are payable under Part I of the M39Social Security Contributions and Benefits Act 1992 in respect of persons engaged in it, but

(b) is not employment under a contract of service or of apprenticeship or employment of any description falling within subsection (3).

(3) The following descriptions of employment fall within this subsection—

(a) any employment such as is mentioned in section 159 (whether as originally enacted or as modified by an order under section 209(1)),

(b) any employment remunerated out of the revenue of the Duchy of Lancaster or the Duchy of Cornwall,

(c) any employment remunerated out of **[**F766the Sovereign Grant**]**, and

(d) any employment remunerated out of Her Majesty's Privy Purse.

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Textual Amendments

F766 Words in s. 171(3)(c) substituted (1.4.2012) by Sovereign Grant Act 2011 (c. 15), s. 15(1), **Sch. 1 para. 31**

Marginal Citations

M39 1992 c. 4.

172 Termination of employment by statute.

(1) The Secretary of State may by regulations provide that, subject to such exceptions and modifications as may be prescribed by the regulations, this Part has effect in relation to any person who by virtue of any statutory provisions—

(a) is transferred to, and becomes a member of, a body specified in those provisions, but

(b) at a time so specified ceases to be a member of that body unless before that time certain conditions so specified have been fulfilled,

as if the cessation of his membership of that body by virtue of those provisions were dismissal by his employer by reason of redundancy.

(2) The power conferred by subsection (1) is exercisable whether or not membership of the body in question constitutes employment within the meaning of section 230(5); and, where that membership does not constitute such employment, that power may be exercised in addition to any power exercisable under section 171.

173 Employees paid by person other than employer.

(1) For the purposes of the operation of the provisions of this Part (and Chapter I of Part XIV) in relation to any employee whose remuneration is, by virtue of any statutory provision, payable to him by a person other than his employer, each of the references to the employer specified in subsection (2) shall be construed as a reference to the person by whom the remuneration is payable.

(2) The references referred to in subsection (1) are the first reference in section 135(1), the third reference in section 140(3), the first reference in section 142(3) and the first reference in section 143(2)(c) and the references in sections 142(2)(b), 143(4) and (5), 149(a) and (b), 150(3), 152(1)(b), 158(4), 162(6), 164 to 169, 170(1) and 214(5).

Death of employer or employee

174 Death of employer: dismissal.

(1) Where the contract of employment of an employee is taken for the purposes of this Part to be terminated by his employer by reason of the employer's death, this Part has effect in accordance with the following provisions of this section.

(2) Section 138 applies as if—

(a) in subsection (1)(a), for the words "in pursuance" onwards there were substituted " by a personal representative of the deceased employer ",

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(b) in subsection (1)(b), for the words "either immediately" onwards there were substituted " not later than eight weeks after the death of the deceased employer ", and

(c) in subsections (2)(b) and (6)(a), for the word "employer" there were substituted " personal representative of the deceased employer ".

(3) Section 141(1) applies as if—

(a) for the words "before the end of his employment" there were substituted " by a personal representative of the deceased employer ", and

(b) for the words "either immediately" onwards there were substituted " not later than eight weeks after the death of the deceased employer. "

(4) For the purposes of section 141—

(a) provisions of the contract as renewed, or of the new contract, do not differ from the corresponding provisions of the contract in force immediately before the death of the deceased employer by reason only that the personal representative would be substituted for the deceased employer as the employer, and

(b) no account shall be taken of that substitution in determining whether refusal of the offer was unreasonable or whether the employee acted reasonably in terminating or giving notice to terminate the new or renewed employment.

(5) Section 146 has effect as if—

(a) subsection (1) were omitted, and

(b) in subsection (2), paragraph (a) were omitted and, in paragraph (b), for the word "four" there were substituted " eight ".

(6) For the purposes of the application of this Part (in accordance with section 161(2)) in relation to an employee who was employed as a domestic servant in a private household, references in this section and sections 175 and 218(4) and (5) to a personal representative include a person to whom the management of the household has passed, otherwise than in pursuance of a sale or other disposition for valuable consideration, in consequence of the death of the employer.

175 Death of employer: lay-off and short-time.

(1) Where an employee is laid off or kept on short-time and his employer dies, this Part has effect in accordance with the following provisions of this section.

(2) Where the employee—

(a) has been laid off or kept on short-time for one or more weeks before the death of the employer,

(b) has not given the deceased employer notice of intention to claim before the employer's death,

(c) after the employer's death has his contract of employment renewed, or is re-engaged under a new contract, by a personal representative of the deceased employer, and

(d) after renewal or re-engagement is laid off or kept on short-time for one or more weeks by the personal representative,

the week in which the employer died and the first week of the employee's employment by the personal representative shall be treated for the purposes of Chapter III as

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consecutive weeks (and references to four weeks or thirteen weeks shall be construed accordingly).

(3) The following provisions of this section apply where—

(a) the employee has given the deceased employer notice of intention to claim before the employer's death,

(b) the employer's death occurred before the end of the period of four weeks after the service of the notice, and

(c) the employee has not terminated his contract of employment by notice expiring before the employer's death.

(4) If the contract of employment is not renewed, and the employee is not re-engaged under a new contract, by a personal representative of the deceased employer before the end of the period of four weeks after the service of the notice of intention to claim—

(a) sections 149 and 152 do not apply, but

(b) (subject to that) Chapter III applies as if the employer had not died and the employee had terminated the contract of employment by a week's notice, or by the minimum notice which he is required to give to terminate the contract (if longer than a week), expiring at the end of that period.

(5) If—

(a) the contract of employment is renewed, or the employee is re-engaged under a new contract, by a personal representative of the deceased employer before the end of the period of four weeks after the service of the notice of intention to claim, and

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

subsection (6) has effect.

(6) Where this subsection has effect Chapter III applies as if—

(a) all the weeks mentioned in subsection (5) were consecutive weeks during which the employee was employed (but laid off or kept on short-time) by the same employer, and

(b) the periods specified by section 150(3)(a) and (b) as the relevant period were extended by any week or weeks any part of which was after the death of the employer and before the date on which the renewal or re-engagement took effect.

176 Death of employee.

(1) Where an employee whose employer has given him notice to terminate his contract of employment dies before the notice expires, this Part applies as if the contract had been duly terminated by the employer by notice expiring on the date of the employee's death.

(2) Where—

(a) an employee's contract of employment has been terminated by the employer,

(b) (by virtue of subsection (5) of section 145) a date later than the relevant date as defined by the previous provisions of that section is the relevant date for the purposes of certain provisions of this Act, and

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(c) the employee dies before that date,

that subsection applies as if the notice to which it refers would have expired on the employee's death.

(3) Where—

(a) 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, and

(b) the employee dies without having accepted or refused the offer and without the offer having been withdrawn,

section 141(2) applies as if for the words "he unreasonably refuses" there were substituted " it would have been unreasonable on his part to refuse ".

(4) Where an employee's contract of employment has been renewed or he has been re-engaged under a new contract—

(a) if he dies during the trial period without having terminated, or given notice to terminate, the contract, section 141(4) applies as if for paragraph (d) there were substituted—

"(d) it would have been unreasonable for the employee during the trial period to terminate or give notice to terminate the contract.", and

(b) if during that trial period he gives notice to terminate the contract but dies before the notice expires, sections 138(2) and 141(4) apply as if the notice had expired (and the contract had been terminated by its expiry) on the date of the employee's death.

(5) Where in the circumstances specified in paragraphs (a) and (b) of subsection (3) of section 136 the employee dies before the notice given by him under paragraph (b) of that subsection expires—

(a) if he dies before his employer has given him a notice such as is specified in subsection (2) of section 142, subsections (3) and (4) of that section apply as if the employer had given him such a notice and he had not complied with it, and

(b) if he dies after his employer has given him such a notice, that section applies as if the employee had not died but did not comply with the notice.

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

(a) if he dies before he has given notice to terminate his contract of employment and before the relevant period (as defined in subsection (3) of section 150) has expired, that section does not apply, and

(b) if he dies within the period of seven days after the service of the notice of intention to claim, and before the employer has given a counter-notice, Chapter III applies as if the employer had given a counter-notice within that period of seven days.

(7) Where a claim for a redundancy payment is made by a personal representative of a deceased employee—

(a) if the employee died before the end of the period of six months beginning with the relevant date, subsection (1) of section 164, and

(b) if the employee died after the end of the period of six months beginning with the relevant date but before the end of the following period of six months, subsection (2) of that section,

applies as if for the words "six months" there were substituted " one year ".

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Equivalent payments

177 References to [F767employment tribunals].

(1) Where the terms and conditions (whether or not they constitute a contract of employment) on which a person is employed in employment of any description mentioned in section 171(3) include provision—

(a) for the making of a payment to which this section applies, and

(b) for referring to an **[**F767employment tribunal**]** any question as to the right of any person to such a payment in respect of that employment or as to the amount of such a payment,

the question shall be referred to and determined by an **[**F767employment tribunal**]**.

(2) This section applies to any payment by way of compensation for loss of employment of any description mentioned in section 171(3) which is payable in accordance with arrangements falling within subsection (3).

(3) The arrangements which fall within this subsection are arrangements made with the approval of the Treasury (or, in the case of persons whose service is for the purposes of pensions and other superannuation benefits treated as service in the civil service of the State, of the Minister for the Civil Service) for securing that a payment will be made—

(a) in circumstances which in the opinion of the Treasury (or Minister) correspond (subject to the appropriate modifications) to those in which a right to a redundancy payment would have accrued if the provisions of this Part (apart from section 159 and this section) applied, and

(b) on a scale which in the opinion of the Treasury (or Minister), taking into account any sums payable in accordance with—

(i) a scheme made under section 1 of the M40Superannuation Act 1972, or

(ii) the M41Superannuation Act 1965 as it continues to have effect by virtue of section 23(1) of the M42Superannuation Act 1972,

to or in respect of the person losing the employment in question, corresponds (subject to the appropriate modifications) to that on which a redundancy payment would have been payable if those provisions applied.

Textual Amendments

F767 Words in s. 177(1) and sidenote to s. 177 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)(b)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Marginal Citations

M40 1972 c. 11.

M41 1965 c. 74.

M42 1972 c. 11.

Other supplementary provisions

178 Old statutory compensation schemes.

(1) The Secretary of State may make provision by regulations for securing that where—

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(a) (apart from this section) a person is entitled to compensation under a statutory provision to which this section applies, and

(b) the circumstances are such that he is also entitled to a redundancy payment,

the amount of the redundancy payment shall be set off against the compensation to which he would be entitled apart from this section; and any statutory provision to which any such regulations apply shall have effect subject to the regulations.

(2) This section applies to any statutory provision—

(a) which was in force immediately before 6th December 1965, and

(b) under which the holders of such situations, places or employments as are specified in that provision are, or may become, entitled to compensation for loss of employment, or for loss or diminution of emoluments or of pension rights, in consequence of the operation of any other statutory provision referred to in that provision.

179 Notices.

(1) Any notice which under this Part 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.

(2) Any notice which under this Part 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)—

(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 have been made by the employer, may be given by being delivered to a person designated by the employer in pursuance of the arrangements, 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 this section any reference to the delivery of a notice includes, in relation to a notice which is not required by this Part to be in writing, 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 (2) affects the capacity of an employer to act by a servant or agent for the purposes of any provision of this Part (including either of those subsections).

(6) In relation to an employee to whom section 173 applies, this section has effect as if—

(a) any reference in subsection (1) or (2) to a notice required or authorised to be given by or to an employer included a reference to a notice which, by virtue of that section, is required or authorised to be given by or to the person by whom the remuneration is payable,

(b) in relation to a notice required or authorised to be given to that person, any reference to the employer in paragraph (a) or (b) of subsection (2) were a reference to that person, and

(c) the reference to an employer in subsection (5) included a reference to that person.

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180 Offences.

(1) Where an offence under this Part committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of, or

(b) to be attributable to any neglect on the part of,

any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In this section "director", in relation to a body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

181 Interpretation.

(1) In this Part—

"counter-notice" shall be construed in accordance with section 149(a),

"dismissal" and "dismissed" shall be construed in accordance with sections 136 to 138,

"employer's payment" has the meaning given by section 166,

"notice of intention to claim" shall be construed in accordance with section 148(1),

"obligatory period of notice" has the meaning given by section 136(4), and

"trial period" shall be construed in accordance with section 138(3).

(2) In this Part—

(a) references to an employee being laid off or being eligible for a redundancy payment by reason of being laid off, and

(b) references to an employee being kept on short-time or being eligible for a redundancy payment by reason of being kept on short-time,

shall be construed in accordance with sections 147 and 148.

PART XII

INSOLVENCY OF EMPLOYERS

Modifications etc. (not altering text)

C166 Pt. 12 modified (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **8**

182 Employee's rights on insolvency of employer.

If, on an application made to him in writing by an employee, the Secretary of State is satisfied that—

(a) the employee's employer has become insolvent,

(b) the employee's employment has been terminated, and

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(c) on the appropriate date the employee was entitled to be paid the whole or part of any debt to which this Part applies,

the Secretary of State shall, subject to section 186, pay the employee out of the National Insurance Fund the amount to which, in the opinion of the Secretary of State, the employee is entitled in respect of the debt.

183 Insolvency.

(1) An employer has become insolvent for the purposes of this Part—

(a) where the employer is an individual, if (but only if) subsection **[**F768(2), (4ZA) or (4A)**]** is satisfied, F769. . .

(b) where the employer is a company, if (but only if) subsection **[**F770(3), (4ZA) or (4A)**]** is satisfied **[**F771, F772...

F771(c) where the employer is a limited liability partnership, if (but only if) subsection **[**F773(4), (4ZA) or (4A)**]** is satisfied.**][**F774; and

(d) where the employer is not any of the above, if (but only if) subsection **[**F775(4ZA) or (4A)**]** is satisfied.**]**

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

(a) in England and Wales if—

[F776(ai) a moratorium period under a debt relief order applies in relation to him,**]**

(i) he has been **[**F777made**]** 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 M43Insolvency 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 M44Judicial Factors (Scotland) Act 1889 is required by that section to divide his insolvent estate among his creditors.

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

(a) if a winding up order F778. . . has been made, or a resolution for voluntary winding up has been passed, with respect to the company,

[F779(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 M45Insolvency Act 1986 has been approved under that Part of that Act.

[F780(4) This subsection is satisfied in the case of an employer which is a limited liability partnership—

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(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 purposes of Part I of the Insolvency Act 1986 has been approved under that Part of that Act.**]**

[F781(4ZA) This subsection is satisfied in the case of an employer if—

(a) the employer is a legal person,

(b) a request has been made for the first opening of collective proceedings—

(i) based on the insolvency of the employer, as provided for under the law of any part of the United Kingdom, and

(ii) involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and

(c) any of the following has decided to open the proceedings—

(i) a court,

(ii) a meeting of creditors, or

(iii) the creditors by a decision procedure.**]**

[F782(4A) This subsection is satisfied in the case of an employer if—

(a) a request has been made for the first opening of collective proceedings—

(i) based on the insolvency of the employer, as provided for under the laws, regulations and administrative provisions of a member State, and

(ii) involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and

(b) the competent authority has—

(i) decided to open the proceedings, or

(ii) established that the employer's undertaking or business has been definitively closed down and the available assets of the employer are insufficient to warrant the opening of the proceedings.

(4B) For the purposes of **[**F783this section**]**—

(a) "liquidator or person performing a similar task" includes the official receiver or an administrator, trustee in bankruptcy, judicial factor, supervisor of a voluntary arrangement, or person performing a similar task,

(b) "competent authority" includes—

(i) a court,

(ii) a meeting of creditors,

(iii) a creditors' committee,

(iv) the creditors by a decision procedure, and

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(v) an authority of a member State empowered to open insolvency proceedings, to confirm the opening of such proceedings or to take decisions in the course of such proceedings.

(4C) An employee may apply under section 182 (employee's rights on insolvency of employer) only if he or she worked or habitually worked in England, Wales or Scotland in that employment to which the application relates.**]**

[[F784](5) In this section—

(a) references to a company are to be read as including references to a charitable incorporated organisation, and

(b) any reference to the Insolvency Act 1986 in relation to a company is to be read as including a reference to that Act as it applies to charitable incorporated organisations.**]**

Textual Amendments

F768 Words in s. 183(1)(a) substituted (31.12.2020) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 253(3)(a)(i)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F769 Word in s. 183(1) omitted (6.4.2001) by virtue of S.I. 2001/1090, **reg. 5 Sch. 5 para. 19(2)**

F770 Words in s. 183(1)(b) substituted (31.12.2020) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 253(3)(a)(ii)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F771 S. 183(1)(c) and word "and" immediately preceding it inserted (6.4.2001) by S.I. 2001/1090, reg. 5, **Sch. 5 para. 19(1)(2)**

F772 Word in s. 183(1)(b) omitted (26.12.2017) by virtue of The Employment Rights Act 1996 and Pension Schemes Act 1993 (Amendment) Regulations 2017 (S.I. 2017/1205), regs. 1, **2(3)(a)(ii)**

F773 Words in s. 183(1)(c) substituted (31.12.2020) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 253(3)(a)(iii)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F774 S. 183(1)(d) and word inserted (26.12.2017) by The Employment Rights Act 1996 and Pension Schemes Act 1993 (Amendment) Regulations 2017 (S.I. 2017/1205), regs. 1, **2(3)(a)(iv)**

F775 Words in s. 183(1)(d) substituted (31.12.2020) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 253(3)(a)(iv)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F776 S. 183(2)(ai) inserted (24.2.2009 for certain purposes otherwise 6.4.2009) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 108(3), 148(5), **Sch. 20 para. 17**; S.I. 2009/382, **art. 2(a)(b)**

F777 Word in s. 183(2)(a)(i) substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 18**

F778 Words in s. 183(3)(a) repealed (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248, 278, 279, Sch. 17 para. 49(3)(a), **Sch. 26** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)** (subject to arts. 5-8) (as amended by S.I. 2003/3340, art. 2)

F779 S. 183(3)(aa) inserted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248, 278, **Sch. 17 para. 49(3)(b)** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)** (subject to arts. 5-8) (as amended by S.I. 2003/3340, art. 2)

F780 S. 183(4) inserted (6.4.2001) by S.I. 2001/1090, reg. 5, **Sch. 5 para. 19(1)(3)**

F781 S. 183(4ZA) inserted (31.12.2020) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 253(3)(b)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F782 S. 183(4A)-(4C) inserted (26.12.2017) by The Employment Rights Act 1996 and Pension Schemes Act 1993 (Amendment) Regulations 2017 (S.I. 2017/1205), regs. 1, **2(3)(b)**

F783 Words in s. 183(4B) substituted (31.12.2020) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 253(3)(c)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F784 S. 183(5) inserted (E.W.) (2.1.2013) by The Charitable Incorporated Organisations (Consequential Amendments) Order 2012 (S.I. 2012/3014), arts. 1, **4**

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Marginal Citations

M43 1986 c. 45.
M44 1889 c. 39.
M45 1986 c. 45.

184 Debts to which Part applies.

(1) This Part applies to the following debts—

(a) any arrears of pay in respect of one or more (but not more than eight) weeks,

(b) any amount which the employer is liable to pay the employee for the period of notice required by section 86(1) or (2) or for any failure of the employer to give the period of notice required by section 86(1),

(c) any holiday pay—

(i) in respect of a period or periods of holiday not exceeding six weeks in all, and

(ii) to which the employee became entitled during the twelve months ending with the appropriate date,

(d) any basic award of compensation for unfair dismissal **[**F785or so much of an award under a designated dismissal procedures agreement as does not exceed any basic award of compensation for unfair dismissal to which the employee would be entitled but for the agreement**]**, and

(e) any reasonable sum by way of reimbursement of the whole or part of any fee or premium paid by an apprentice or articled clerk.

(2) For the purposes of subsection (1)(a) the following amounts shall be treated as arrears of pay—

(a) a guarantee payment,

(b) any payment for time off under Part VI of this Act or section 169 of the M46Trade Union and Labour Relations (Consolidation) Act 1992 (payment for time off for carrying out trade union duties etc.),

(c) remuneration on suspension on medical grounds under section 64 of this Act and remuneration on suspension on maternity grounds under section 68 of this Act, and

(d) remuneration under a protective award under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992.

(3) In subsection (1)(c) "holiday pay", in relation to an employee, means—

(a) pay in respect of a holiday actually taken by the employee, or

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

(4) A sum shall be taken to be reasonable for the purposes of subsection (1)(e) in a case where a trustee in bankruptcy, or (in Scotland) a **[**F786trustee or interim trustee in the sequestration of an estate under the Bankruptcy (Scotland) Act 2016**]**, or liquidator has been or is required to be appointed—

(a) as respects England and Wales, if it is admitted to be reasonable by the trustee in bankruptcy or liquidator under section 348 of the M47Insolvency Act 1986 (effect of bankruptcy on apprenticeships etc.), whether as originally enacted

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or as applied to the winding up of a company by rules under section 411 of that Act, and

(b) as respects Scotland, if it is accepted by the **[**[F787]trustee**]** or interim trustee or liquidator for the purposes of the sequestration or winding up.

Textual Amendments

F785 Words in s. 184(1)(d) inserted (1.8.1998) by 1998 c. 8, **s. 12(4)**; S.I. 1998/1658, art. 2(1), **Sch. 1**

F786 Words in s. 184(4) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 16(2)(a)**

F787 Word in s. 184(4)(b) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 16(2)(b)**

Modifications etc. (not altering text)

C167 S. 184(1)(d): power to modify conferred (1.8.1998) by 1992 c. 52, **s. 212A(9)** (as inserted (1.8.1998) by 1998 c. 8, **s. 7**; S.I. 1998/1658, art. 2(1), **Sch. 1**)
S. 184(1)(d) extended (21.5.2001) by S.I. 2001/1185, **art. 6**

C168 S. 184(1)(d) modified (6.4.2004) by The ACAS Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/753), arts. 1(1), **7**

Marginal Citations

M46 1992 c. 52.

M47 1986 c. 45.

185 The appropriate date.

In this Part "the appropriate date"—

(a) in relation to arrears of pay (not being remuneration under a protective award made under section 189 of the [M48]Trade Union and Labour Relations (Consolidation) Act 1992) and to holiday pay, means the date on which the employer became insolvent,

(b) in relation to a basic award of compensation for unfair dismissal and to remuneration under a protective award so made, means whichever is the latest of—

(i) the date on which the employer became insolvent,

(ii) the date of the termination of the employee's employment, and

(iii) the date on which the award was made, and

(c) in relation to any other debt to which this Part applies, means whichever is the later of—

(i) the date on which the employer became insolvent, and

(ii) the date of the termination of the employee's employment.

Marginal Citations

M48 1992 c. 52.

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186 Limit on amount payable under section 182.

(1) The total amount payable to an employee in respect of any debt to which this Part applies, where the amount of the debt is referable to a period of time, shall not exceed—

(a) **[**F788£700**]** in respect of any one week, or

(b) in respect of a shorter period, an amount bearing the same proportion to **[**F788£700**]** as that shorter period bears to a week.

F789(2) . . . . . .

Textual Amendments

F788 Sum in s. 186(1)(a)(b) substituted (6.4.2024) by The Employment Rights (Increase of Limits) Order 2024 (S.I. 2024/213), art. 1(2), **Sch.** (with art. 4)

F789 S. 186(2) repealed (17.12.1999) by 1999 c. 26, ss. 36(1)(3), 44, **Sch. 9(10)**; S.I. 1999/3374, art. 2(b)(c), **Sch.**

Modifications etc. (not altering text)

C169 S. 186(1)(a)(b): power to amend conferred (17.12.1999) by 1999 c. 26, **s. 34(1)(d)**; S.I. 1999/3374, **art. 2(a)**

187 Role of relevant officer.

(1) Where a relevant officer has been, or is required to be, appointed in connection with an employer's insolvency, the Secretary of State shall not make a payment under section 182 in respect of a debt until he has received a statement from the relevant officer of the amount of that debt which appears to have been owed to the employee on the appropriate date and to remain unpaid.

(2) If the Secretary of State is satisfied that he does not require a statement under subsection (1) in order to determine the amount of a debt which was owed to the employee on the appropriate date and remains unpaid, he may make a payment under section 182 in respect of the debt without having received such a statement.

(3) A relevant officer shall, on request by the Secretary of State, provide him with a statement for the purposes of subsection (1) as soon as is reasonably practicable.

(4) The following are relevant officers for the purposes of this section—

(a) a trustee in bankruptcy or a **[**F790trustee**]** or interim trustee (within the meaning of the Bankruptcy (Scotland) Act **[**F7912016**]**),

(b) a liquidator,

(c) an administrator,

(d) a receiver or manager,

(e) a trustee under a composition or arrangement between the employer and his creditors, and

(f) a trustee under a trust deed for his creditors executed by the employer.

(5) In subsection (4)(e) "trustee" includes the supervisor of a voluntary arrangement proposed for the purposes of, and approved under, Part I or VIII of the M49Insolvency Act 1986.

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Textual Amendments

F790 Word in s. 187(4)(a) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 16(3)(a)**

F791 Word in s. 187(4)(a) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 16(3)(b)**

Marginal Citations

M49 1986 c. 45.

188 Complaints to [F792employment tribunals].

(1) A person who has applied for a payment under section 182 may present a complaint to an **[**F792employment tribunal**]**—

(a) that the Secretary of State has failed to make any such payment, or

(b) that any such payment made by him is less than the amount which should have been paid.

(2) An **[**F792employment tribunal**]** shall not consider a complaint under subsection (1) unless it is presented—

(a) before the end of the period of three months beginning with the date on which the decision of the Secretary of State on the application was communicated to the applicant, or

(b) within such further period as the tribunal considers reasonable in a case where it is not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an **[**F792employment tribunal**]** finds that the Secretary of State ought to make a payment under section 182, the tribunal shall—

(a) make a declaration to that effect, and

(b) declare the amount of any such payment which it finds the Secretary of State ought to make.

Textual Amendments

F792 Words in s. 188(1)-(3) and sidenote to s. 1888 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)(b)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

189 Transfer to Secretary of State of rights and remedies.

(1) Where, in pursuance of section 182, the Secretary of State makes a payment to an employee in respect of a debt to which this Part applies—

(a) on the making of the payment any rights and remedies of the employee in respect of the debt (or, if the Secretary of State has paid only part of it, in respect of that part) become rights and remedies of the Secretary of State, and

(b) any decision of an **[**F793employment tribunal**]** requiring an employer to pay that debt to the employee has the effect that the debt (or the part of it which the Secretary of State has paid) is to be paid to the Secretary of State.

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(2) Where a debt (or any part of a debt) in respect of which the Secretary of State has made a payment in pursuance of section 182 constitutes—

(a) a preferential debt within the meaning of the [M50]Insolvency Act 1986 for the purposes of any provision of that Act (including any such provision as applied by any order made under that Act) or any provision of the **[**[F794]the Companies Act 2006**]**, or

(b) a preferred debt within the meaning of the Bankruptcy (Scotland) Act **[**[F795]2016**]** for the purposes of any provision of that Act (including any such provision as applied by section 11A of the [M51]Judicial Factors (Scotland) Act 1889),

the rights which become rights of the Secretary of State in accordance with subsection (1) include any right arising under any such provision by reason of the status of the debt (or that part of it) as a preferential or preferred debt.

(3) In computing for the purposes of any provision mentioned in subsection (2)(a) or (b) the aggregate amount payable in priority to other creditors of the employer in respect of—

(a) any claim of the Secretary of State to be paid in priority to other creditors of the employer by virtue of subsection (2), and

(b) any claim by the employee to be so paid made in his own right,

any claim of the Secretary of State to be so paid by virtue of subsection (2) shall be treated as if it were a claim of the employee.

(4) [F796]. . . . . .

(5) Any sum recovered by the Secretary of State in exercising any right, or pursuing any remedy, which is his by virtue of this section shall be paid into the National Insurance Fund.

Textual Amendments

F793 Words in s. 189(1)(b) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F794 Words in s. 189(2)(a) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948, arts. 2(2), 3(1), **Sch. 1 para. 201** (with arts. 6, 11, 12)

F795 Word in s. 189(2)(b) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 16(4)**

F796 S. 189(4) repealed (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248, 278, 279, Sch. 17 para. 49(4), **Sch. 26** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)** (subject to arts. 5-8) (as amended by S.I. 2003/3340, art. 2)

Marginal Citations

M50 1986 c. 45.

M51 1889 c. 39.

190 Power to obtain information.

(1) Where an application is made to the Secretary of State under section 182 in respect of a debt owed by an employer, the Secretary of State may require—

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(a) the employer to provide him with such information as he may reasonably require for the purpose of determining whether the application is well-founded, and

(b) any person having the custody or control of any relevant records or other documents to produce for examination on behalf of the Secretary of State any such document in that person's custody or under his control which is of such a description as the Secretary of State may require.

(2) Any such requirement—

(a) shall be made by notice in writing given to the person on whom the requirement is imposed, and

(b) may be varied or revoked by a subsequent notice so given.

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

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

(5) Where an offence under this section committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of, or

(b) to be attributable to any neglect on the part of,

any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) Where the affairs of a body corporate are managed by its members, subsection (5) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

PART XIII

MISCELLANEOUS

CHAPTER I

PARTICULAR TYPES OF EMPLOYMENT

Crown employment etc.

191 Crown employment.

(1) Subject to sections 192 and 193, the provisions of this Act to which this section applies have effect in relation to Crown employment and persons in Crown employment as they have effect in relation to other employment and other employees or workers.

(2) This section applies to—

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(a) Parts I to III,

[F797(aa) Part IVA,**]**

(b) Part V, apart from section 45,

[F798(ba) Part 5B,**]**

[F799(c) Parts 6 to **[**F800 8B,**]]**

(d) in Part IX, sections 92 and 93,

(e) Part X, apart from section 101, and

(f) this Part and Parts XIV and XV.

(3) In this Act "Crown employment" means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision.

(4) For the purposes of the application of provisions of this Act in relation to Crown employment in accordance with subsection (1)—

(a) references to an employee or a worker shall be construed as references to a person in Crown employment,

(b) references to a contract of employment, or a worker's contract, shall be construed as references to the terms of employment of a person in Crown employment,

(c) references to dismissal, or to the termination of a worker's contract, shall be construed as references to the termination of Crown employment,

(d) references to redundancy shall be construed as references to the existence of such circumstances as are treated, in accordance with any arrangements falling within section 177(3) for the time being in force, as equivalent to redundancy in relation to Crown employment, F801 . . .

[F802(da) the reference in section 98B(2)(a) to the employer's undertaking shall be construed as a reference to the national interest, and**]**

(e) **[**F803any other reference**]** to an undertaking shall be construed—

(i) in relation to a Minister of the Crown, as references to his functions or (as the context may require) to the department of which he is in charge, and

(ii) in relation to a government department, officer or body, as references to the functions of the department, officer or body or (as the context may require) to the department, officer or body.

(5) Where the terms of employment of a person in Crown employment restrict his right to take part in—

(a) certain political activities, or

(b) activities which may conflict with his official functions,

nothing in section 50 requires him to be allowed time off work for public duties connected with any such activities.

(6) Sections 159 and 160 are without prejudice to any exemption or immunity of the Crown.

Textual Amendments

F797 S. 191(1)(aa) inserted (2.7.1999) by 1998 c. 23, **s. 10**; S.I. 1999/1547, **art. 2**

F798 S. 191(2)(ba) inserted (24.7.2023) by Protection from Redundancy (Pregnancy and Family Leave) Act 2023 (c. 17), **ss. 1(3)**, 3(2)

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F799 S. 191(2)(c) substituted (6.4.2003) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 41**; S.I. 2002/2866, **art. 2(3)**, Sch. 1 Pt. 3

F800 Word in s. 191(2)(c) substituted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 9**; S.I. 2023/1283, reg. 2

F801 Word in s. 191(4)(d) repealed (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1)(2), 59(2)-(4), Sch. 1 para. 34(2), **Sch. 2**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F802 S. 191(4)(da) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 34(2)**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F803 Words in s. 191(4)(e) substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 34(3)**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

Modifications etc. (not altering text)

C170 S. 191(4) applied (31.3.2017) by The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (S.I. 2017/353), regs. 1(1), **2(2)** (with reg. 2(4)(5))

192 Armed forces.

(1) Section 191—

(a) applies to service as a member of the naval, military or air forces of the Crown but subject to the following provisions of this section, and

(b) applies to employment by an association established for the purposes of Part XI of the [M52]Reserve Forces Act 1996.

(2) The provisions of this Act which have effect by virtue of section 191 in relation to service as a member of the naval, military or air forces of the Crown are—

(a) Part I,

[[F804](aa) in Part V, **[**[F805]sections **[**[F806]43M,**]** 45A, 47C and 47D,**]** and sections 48 and 49 so far as relating to **[**[F807]those sections**]**,**]**

[[F808](ab) section 47C,**]**

[[F809](ac) Part 5B,**]**

(b) in Part VI, sections **[**[F810]55 to 57B**]**,

(c) Parts VII and VIII,

[[F811](ca) Part 8B,**]**

(d) in Part IX, sections 92 and 93,

(e) Part X, apart from sections **[**[F812]98B(2) and (3),**]** 100 to 103 **[**[F813], 104C]**[**[F814], 108(5)**]** and 134, and

(f) this Part and Parts XIV and XV.

(3) Her Majesty may by Order in Council—

(a) amend subsection (2) by making additions to, or omissions from, the provisions for the time being specified in that subsection, and

(b) make any provision for the time being so specified apply to service as a member of the naval, military or air forces of the Crown subject to such exceptions and modifications as may be specified in the Order in Council,

but no provision contained in Part II may be added to the provisions for the time being specified in subsection (2).

(4) Modifications made by an Order in Council under subsection (3) may include provision precluding the making of a complaint or reference to any **[**[F815]employment tribunal**]** unless **[**[F816]—

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(a) the person aggrieved has made **[**F817a service complaint**]** ; and

(b) the Defence Council have made a determination with respect to the **[**F818service complaint**].]**

[F819(5) Where modifications made by an Order in Council under subsection (3) include provision such as is mentioned in subsection (4), the Order in Council shall also include provision—

(a) enabling a complaint or reference to be made to an **[**F815employment tribunal**]** in such circumstances as may be specified in the Order, notwithstanding that provision such as is mentioned in subsection (4) would otherwise preclude the making of the complaint or reference; and

(b) where a complaint or reference is made to an **[**F815employment tribunal**]** by virtue of provision such as is mentioned in paragraph (a), enabling the **[**F820the service complaint procedures**]** to continue after the complaint or reference is made.**]**

[F821(6A) In subsections (4) and (5)—

"service complaint" means a complaint under section 334 of the Armed Forces Act 2006;

"the service complaint procedures" means the procedures prescribed by regulations under that section. **]**

(7) No provision shall be made by virtue of subsection (4) which has the effect of substituting a period longer than six months for any period specified as the normal period for a complaint or reference.

(8) In subsection (7) "the normal period for a complaint or reference", in relation to any matter within the jurisdiction of an **[**F815employment tribunal**]**, means the period specified in the relevant enactment as the period within which the complaint or reference must be made (disregarding any provision permitting an extension of that period at the discretion of the tribunal).

Textual Amendments

F804 S. 192(2)(aa) inserted (1.10.1998) by S.I. 1998/1833, **reg. 31(4)**

F805 Words in s. 192(2)(aa) substituted (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, **Sch. 1 para. 1(5)(a)**; S.I. 2002/1727, **art. 2**

F806 Words in s. 192(2)(aa) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 35(a)**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F807 Words in s. 192(2)(aa) substituted (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, **Sch. 1 para. 1(5)(b)**; S.I. 2002/1727, **art. 2**

F808 S. 192(2)(ab) inserted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 31(a)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F809 S. 192(2)(ac) inserted (24.7.2023) by Protection from Redundancy (Pregnancy and Family Leave) Act 2023 (c. 17), **ss. 1(4)**, 3(2)

F810 Words in s. 192(2)(b) substituted (15.12.1999) by 1999 c. 26, **s. 9 Sch. 4 Pt. III para. 31(b)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F811 S. 192(2)(ca) inserted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 10**; S.I. 2023/1283, reg. 2

F812 Words in s. 192(2)(e) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 35(b)**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F813 Words in s. 192(2)(e) inserted (6.4.2003) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 42**; S.I. 2002/2866, **art. 2(3)**, Sch. 1 Pt. 3

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F814 Word in s. 192(2)(e) inserted (1.10.2014) by Defence Reform Act 2014 (c. 20), **ss. 48(3)**, 50(1); S.I. 2014/2370, art. 4(d)

F815 Words in s. 192(4)(5)(a)(b)(8) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F816 Paras. (a)(b) substituted for words in s. 192(4) (1.10.1997) by 1996 c. 46, **s. 26(2)**; S.I. 1997/2164, **art. 2**

F817 Words in s. 192(4)(a) substituted (1.1.2008) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 136(a)(i)**; S.I. 2007/2913, **art. 3**

F818 Words in s. 192(4)(b) substituted (1.1.2008) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 136(a)(ii)**;; S.I. 2007/2913, **art. 3**

F819 S. 192(5) substituted (1.10.1997) by 1996 c. 46, **s. 26(3)**; S.I. 1997/2164, **art. 2**

F820 Words in s. 192(5)(b) substituted (1.1.2008) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 136(b)**; S.I. 2007/2913, **art. 3**

F821 S. 192(6A) substituted (1.1.2008) for s. 192(6) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 136(c)**; S.I. 2007/2913, **art. 3**

Modifications etc. (not altering text)

C171 As s. 31 of the Trade Union Reform and Employment Rights Act 1993 has not come into force before the commencement of this Act (22.8.1996), this Act shall have effect until the relevant commencement date as if for section 192 there were substituted the words expressed in Sch. 2 Part II para. 16(1) of this Act. The relevant commencement date is defined by Sch. 2 Part II para 16(2) of this Act.

C172 As Part XI of the Reserve Forces Act 1996 has not come into force before the commencement of this Act (22.8.1996), section 192 of this Act shall have effect until the relevant commencement date as if for "Part XI of the Reserve Forces Act 1996" there were substituted "Part VI of the Reserve Forces Act 1980". The relevant commencement date is defined by Sch. 2 Part II para 17(2).

C173 S. 192(4) modified (24.4.2009) by The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059), **art. 196(1)(f)**

C174 S. 192(5) modified (24.4.2009) by The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059), **art. 196(2)(f)**

Marginal Citations

M52 1996 c. 14.

[F822 193 National security.

Part IVA and section 47B of this Act do not apply in relation to employment for the purposes of—

(a) the Security Service,

(b) the Secret Intelligence Service, or

(c) the Government Communications Headquarters.]

Textual Amendments

F822 S. 193 substituted (16.7.2001) by 1999 c. 26, s. 41, **Sch. 8 para. 1**; S.I. 2001/1187, **art. 3(a)** as amended by S.I. 2001/1461, **art. 2(2)**

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Parliamentary staff

194 House of Lords staff.

(1) The provisions of this Act to which this section applies have effect in relation to employment as a relevant member of the House of Lords staff as they have effect in relation to other employment.

(2) This section applies to—

(a) Part I,

[F823(aa) Part 2B,**]**

(b) Part III,

(c) in Part V, **[**F824sections **[**F82543M,**]** 44, 45A **[**F826, 47 **[**F827, 47C **[**F828, 47D and 47E**]]]**, and sections 48 and 49 so far as relating to those sections,

[F829(ca) Part 5B,**]**

(d) Part VI, apart from sections 58 to 60,

[F830(e) Parts **[**F8316A to 8B**]**,**]**

(f) in Part IX, sections 92 and 93,

(g) Part X, apart from sections 101 and 102, and

(h) this Part and Parts XIV and XV.

[F832(2A) For the purposes of the application of section 98B(2) in relation to a relevant member of the House of Lords staff, the reference to the employer's undertaking shall be construed as a reference to the national interest or, if the case so requires, the interests of the House of Lords.**]**

(3) For the purposes of the application of **[**F833the other provisions**]** of this Act to which this section applies in relation to a relevant member of the House of Lords staff references to an undertaking shall be construed as references to the House of Lords.

(4) Nothing in any rule of law or the law or practice of Parliament prevents a relevant member of the House of Lords staff from bringing before the High Court or **[**F834the county court**]**—

(a) a claim arising out of or relating to a contract of employment or any other contract connected with employment, or

(b) a claim in tort arising in connection with employment.

(5) Where the terms of the contract of employment of a relevant member of the House of Lords staff restrict his right to take part in—

(a) certain political activities, or

(b) activities which may conflict with his official functions,

nothing in section 50 requires him to be allowed time off work for public duties connected with any such activities.

(6) In this section "relevant member of the House of Lords staff" means any person who is employed under a contract of employment with the Corporate Officer of the House of Lords.

(7) For the purposes of the application of—

(a) the provisions of this Act to which this section applies, or

(b) a claim within subsection (4),

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in relation to a person continuously employed in or for the purposes of the House of Lords up to the time when he became so employed under a contract of employment with the Corporate Officer of the House of Lords, his employment shall not be treated as having been terminated by reason only of a change in his employer before or at that time.

Textual Amendments

F823 S. 194(2)(aa) inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 12(2)(a)**, 14(2); S.I. 2023/876, reg. 3(c)

F824 Words in s. 194(2)(c) substituted (1.10.1998) by S.I. 1998/1833, **reg. 31(5)**

F825 Words in s. 194(2)(c) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 36(2)**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F826 Words in s. 194(2)(c) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 32**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F827 Words in s. 194(2)(c) substituted (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, **Sch. 1 para. 1(6)(a)**; S.I. 2002/1727, **art. 2**; and those same words substituted (6.4.2003) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 43(a)**; S.I. 2002/2866, **art. 2(3)**, Sch. 1 Pt. 3

F828 Words in s. 194(2)(c) substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 41(7)**, 59(2)-(4); S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F829 S. 194(2)(ca) inserted (24.7.2023) by Protection from Redundancy (Pregnancy and Family Leave) Act 2023 (c. 17), **ss. 1(5)**, 3(2)

F830 S. 194(2)(e) substituted (6.4.2003) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 43(b)**; S.I. 2002/2866, **art. 2(3)**, Sch. 1 Pt. 3

F831 Words in s. 194(2)(e) substituted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 11**; S.I. 2023/1283, reg. 2

F832 S. 194(2A) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 36(3)**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F833 Words in s. 194(3) substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 36(4)**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F834 Words in s. 194(4) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Modifications etc. (not altering text)

C175 S. 194(7) applied (1.12.2003) by The Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661), **reg. 38(2)**

C176 S. 194(7) applied (2.12.2003) by The Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660), **reg. 38(2)**

C177 S. 194(7) applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), **46(2)** (with regs. 44-46)

195 House of Commons staff.

(1) The provisions of this Act to which this section applies have effect in relation to employment as a relevant member of the House of Commons staff as they have effect in relation to other employment.

(2) This section applies to—

(a) Part I,

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[F835(aa) Part 2B,**]**

(b) Part III,

(c) in Part V, **[**F836sections **[**F83743M,**]** 44, 45A **[**F838, 47 **[**F839, 47C **[**F840, 47D and 47E**]]]**, and sections 48 and 49 so far as relating to those sections,

[F841(ca) Part 5B,**]**

(d) Part VI, apart from sections 58 to 60,

[F842(e) Parts **[**F8436A to 8B**],]**

(f) in Part IX, sections 92 and 93,

(g) Part X, apart from sections 101 and 102, and

(h) this Part and Parts XIV and XV.

[F844(2A) For the purposes of the application of section 98B(2) in relation to a relevant member of the House of Commons staff, the reference to the employer's undertaking shall be construed as a reference to the national interest or, if the case so requires, the interests of the House of Commons.**]**

(3) For the purposes of the application of the provisions of this Act to which this section applies in relation to a relevant member of the House of Commons staff—

(a) references to an employee shall be construed as references to a relevant member of the House of Commons staff,

(b) references to a contract of employment shall be construed as including references to the terms of employment of a relevant member of the House of Commons staff,

(c) references to dismissal shall be construed as including references to the termination of the employment of a relevant member of the House of Commons staff, and

(d) references to an undertaking **[**F845(other than in section 98B)**]** shall be construed as references to the House of Commons.

(4) Nothing in any rule of law or the law or practice of Parliament prevents a relevant member of the House of Commons staff from bringing before the High Court or **[**F846the county court**]**—

(a) a claim arising out of or relating to a contract of employment or any other contract connected with employment, or

(b) a claim in tort arising in connection with employment.

(5) In this section "relevant member of the House of Commons staff" means any person—

(a) who was appointed by the House of Commons Commission or is employed in the refreshment department, or

(b) who is a member of the Speaker's personal staff.

(6) Subject to subsection (7), for the purposes of—

(a) the provisions of this Act to which this section applies,

(b) Part XI (where applicable to relevant members of the House of Commons staff), and

(c) a claim within subsection (4),

the House of Commons Commission is the employer of staff appointed by the Commission and the Speaker is the employer of his personal staff and of any person employed in the refreshment department and not appointed by the Commission.

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(7) Where the House of Commons Commission or the Speaker designates a person to be treated for all or any of the purposes mentioned in subsection (6) as the employer of any description of staff (other than the Speaker's personal staff), the person so designated shall be treated for those purposes as their employer.

(8) Where any proceedings are brought by virtue of this section against—

(a) the House of Commons Commission,

(b) the Speaker, or

(c) any person designated under subsection (7),

the person against whom the proceedings are brought may apply to the court or **[**[F847]employment tribunal**]** concerned to have some other person against whom the proceedings could at the time of the application be properly brought substituted for him as a party to the proceedings.

(9) For the purposes mentioned in subsection (6)—

(a) a person's employment in or for the purposes of the House of Commons shall not (provided he continues to be employed in such employment) be treated as terminated by reason only of a change in his employer, and

(b) (provided he so continues) his first appointment to such employment shall be deemed after the change to have been made by his employer for the time being.

(10) In accordance with subsection (9)—

(a) an employee shall be treated for the purposes mentioned in subsection (6) as being continuously employed by his employer for the time being from the commencement of his employment until its termination, and

(b) anything done by or in relation to his employer for the time being in respect of his employment before the change shall be so treated as having been done by or in relation to the person who is his employer for the time being after the change.

(11) In subsections (9) and (10) "employer for the time being", in relation to a person who has ceased to be employed in or for the purposes of the House of Commons, means the person who was his employer immediately before he ceased to be so employed, except that where some other person would have been his employer for the time being if he had not ceased to be so employed it means that other person.

(12) If the House of Commons resolves at any time that any provision of subsections (5) to (8) should be amended in its application to any member of the staff of that House, Her Majesty may by Order in Council amend that provision accordingly.

Textual Amendments

F835 S. 195(2)(aa) inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 12(2)(b)**, 14(2); S.I. 2023/876, reg. 3(c)

F836 Words in s. 195(2)(c) substituted (1.10.1998) by S.I. 1998/1833, **reg. 31(5)**

F837 Words in s. 195(2)(c) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 37(2)**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F838 Words in s. 195(2)(c) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 33**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F839 Words in s. 195(2)(c) substituted (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, **Sch. 1 para. 1(6)(b)**; S.I. 2002/1727, **art. 2**; and those same words substituted

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(6.4.2003) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 43(a)**; S.I. 2002/2866, **art. 2(3)**, Sch. 1 Pt. 3

F840 Words in s. 195(2)(c) substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 41(7)**, 59(2)-(4); S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F841 S. 195(2)(ca) inserted (24.7.2023) by Protection from Redundancy (Pregnancy and Family Leave) Act 2023 (c. 17), **ss. 1(6)**, 3(2)

F842 S. 195(2)(e) substituted (6.4.2003) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 43(b)**; S.I. 2002/2866, **art. 2(3)**, Sch. 1 Pt. 3

F843 Words in s. 195(2)(e) substituted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 12**; S.I. 2023/1283, reg. 2

F844 S. 195(2A) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 37(3)**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F845 Words in s. 195(3)(d) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 37(4)**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F846 Words in s. 195(4) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

F847 Words in s. 195(8) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C178 S. 195(6)-(8) applied (22.8.1996) by 1996 c. 17, **ss. 39(5)**, 46 (with s. 38)

C179 S. 195(6)-(12) applied (with modifications) (1.12.2003) by The Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661), **reg. 37(2)**

C180 S. 195(6)-(12) applied (with modifications) (2.12.2003) by The Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660), **reg. 37(2)**

C181 S. 195(6)-(12) applied (with modifications) (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), **45(3)** (with regs. 44-46)

Excluded classes of employment

F848 196 . . . . . .

Textual Amendments

F848 S. 196 repealed (25.10.1999) by 1999 c. 26, ss. 32(3), 44, **Sch. 9(9)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 7(2))

F849 197 Fixed-term contracts.

. . . . . .

Textual Amendments

F849 S. 197 ceased to have effect (1.10.2002) by virtue of The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(15)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

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[F850]198 Short-term employment.

. . . . . .

Textual Amendments

F850 S. 198 repealed (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **7**

199 Mariners.

(1) Sections 1 to 7, **[**[F851]Parts 2 and 2B**]** and sections 86 to 91 do not apply to a person employed as a seaman in a ship registered in the United Kingdom under a crew agreement the provisions and form of which are of a kind approved by the Secretary of State **[**[F852]or an agreement specified in regulations under section 32(a) of the Merchant Shipping Act 1995**]**.

(2) Sections 8 to 10, Part III, sections 44, 45, 47, **[**[F853]47C, **[**[F854]**[**[F855]47E**]**, **[**[F856]47F,**]]****[**[F857]Part 5B, sections**]** 50 to 57B**]** and 61 to 63, **[**[F858]Parts **[**[F859]6A to 8B**]]**, sections 92 and 93 and [F860]. . . **[**[F861]Part X**]** do not apply to employment as master, or as a member of the crew, of a fishing vessel where the employee is remunerated only by a share in the profits or gross earnings of the vessel.

[F862](3) . . . . . .

(4) Sections 8 to 10 and 50 to 54 [F863]... do not apply to employment as a merchant seaman.

(5) In subsection (4) "employment as a merchant seaman"—

(a) does not include employment in the fishing industry or employment on board a ship otherwise than by the owner, manager or charterer of that ship except employment as a radio officer, but

(b) subject to that, includes—

(i) employment as a master or a member of the crew of any ship,

(ii) employment as a trainee undergoing training for the sea service, and

(iii) employment in or about a ship in port by the owner, manager or charterer of the ship to do work of the kind ordinarily done by a merchant seaman on a ship while it is in port.

(6) [F864]. . . . . .

[[F865](7) The provisions mentioned in subsection (8) apply to employment on board a ship registered in the register maintained under section 8 of the Merchant Shipping Act 1995 if and only if—

(a) the ship's entry in the register specifies a port in Great Britain as the port to which the vessel is to be treated as belonging,

(b) under his contract of employment the person employed does not work wholly outside Great Britain, and

(c) the person employed is ordinarily resident in Great Britain.

[F865](8) The provisions are—

(a) sections 8 to 10,

(b) Parts II, **[**[F866]2B,**]**III and V,

[Part 5B,**]**

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F867(ba)

(c) Part VI, apart from sections 58 to 60,

[Parts **[**F869 6A to 8B**]**,**]**

F868(d)

(e) sections 92 and 93, and

(f) Part X.**]**

Textual Amendments

F851 Words in s. 199(1) substituted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 12(2)(c)(i)**, 14(2); S.I. 2023/876, reg. 3(c)

F852 Words in s. 199(1) inserted (7.8.2014) by The Merchant Shipping (Maritime Labour Convention) (Consequential and Minor Amendments) Regulations 2014 (S.I. 2014/1614), regs. 1, **3**

F853 Words in s. 199(2) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 34(a)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 8, 10, 11)

F854 Word in s. 199(2) inserted (6.4.2003) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 44(2)(a)**; S.I. 2002/2866, **art. 2(3)**, Sch. 1 Pt. 3

F855 Word in s. 199(2) substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 41(8)**, 59(2)-(4); S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F856 Words in s. 199(2) inserted (6.4.2010 for certain purposes and otherwise prosp.) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), ss. 40, 269(4), **Sch. 1 para. 7(a)**; S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)

F857 Words in s. 199(2) inserted (24.7.2023) by Protection from Redundancy (Pregnancy and Family Leave) Act 2023 (c. 17), **ss. 1(7)(a)**, 3(2)

F858 Words in s. 199(2) substituted (6.4.2003) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 44(2)(b)**; S.I. 2002/2866, **art. 2(3)**, Sch. 1 Pt. 3

F859 Words in s. 199(2) substituted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 13(a)**; S.I. 2023/1283, reg. 2

F860 Words in s. 199(2) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 34(b), **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 8, 10, 11)

F861 Words in s. 199(2) substituted (13.4.2018) by The Seafarers (Insolvency, Collective Redundancies and Information and Consultation Miscellaneous Amendments) Regulations 2018 (S.I. 2018/407), regs. 1(1), **2(2)** (with reg. 2(4)(5))

F862 S. 199(3) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 34(c), **Sch. 9(2)**; S.I. 1999/2830, art. 2(1)-(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with transitional provisions in Sch. 3 paras. 8, 10, 11)

F863 Words in s. 199(4) omitted (13.4.2018) by virtue of The Seafarers (Insolvency, Collective Redundancies and Information and Consultation Miscellaneous Amendments) Regulations 2018 (S.I. 2018/407), regs. 1(1), **2(3)**

F864 S. 199(6) omitted (1.10.2002) by virtue of The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(16)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

F865 S. 199(7)(8) inserted (25.10.1999) by 1999 c. 26, **s. 32(4)**; S.I. 1999/2830, art. 2(1)(2), **Sch. 1 Pt. I** (with transitional provisions in Sch. 3 para. 7(2))

F866 Word in s. 199(8)(b) inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 12(2)(c)(ii)**, 14(2); S.I. 2023/876, reg. 3(c)

F867 S. 199(8)(ba) inserted (24.7.2023) by Protection from Redundancy (Pregnancy and Family Leave) Act 2023 (c. 17), **ss. 1(7)(b)**, 3(2)

F868 S. 199(8)(d) substituted (6.4.2003) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 44(3)**; S.I. 2002/2866, **art. 2(3)**, Sch. 1 Pt. 3

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F869 Words in s. 199(8)(d) substituted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 13(b)**; S.I. 2023/1283, reg. 2

200 Police officers.

(1) Sections 8 to 10, Part III [F870]. . . , sections [[F871]43M,][F872]. . ., 45, [[F873]45A,] 47 [F870]. . . , [[F874]47C,] 50 [[F875]to 57B] and 61 to 63, Parts VII and VIII, sections 92 and 93 [[F876]and], Part X [[F877](except sections 100 [[F878], 103A] and 134A and the other provisions of that Part so far as relating to the right not to be unfairly dismissed in a case where the dismissal is unfair by virtue of section 100 [[F879]or 103A])][F880]. . . do not apply to employment under a contract of employment in police service or to persons engaged in such employment.

(2) In subsection (1) "police service" means—

(a) service as a member of a constabulary maintained by virtue of an enactment, or

(b) subject to section 126 of the [M53]Criminal Justice and Public Order Act 1994 (prison staff not to be regarded as in police service), service in any other capacity by virtue of which a person has the powers or privileges of a constable.

Textual Amendments

F870 Words in s. 200(1) repealed (1.4.2004) by Police Reform Act 2002 (c. 30), ss. 37(2)(a), 107, 108(2)-(5), **Sch. 8**; S.I. 2004/913, **art. 2(b)(f)(v)**

F871 Words in s. 200(1) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 38**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F872 Word in s. 200(1) repealed (1.7.1998) by 1997 c. 42, **s. 6(2)(a)**; S.I. 1998/1542, **art. 2**

F873 Word in s. 45A inserted (1.10.1998) by S.I. 1998/1833, **reg. 31(6)**

F874 Words in s. 200(1) inserted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 35(a)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F875 Words in s. 200(1) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 35(b)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F876 Word in s. 200(1) inserted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 35(c)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F877 Words in s. 200(1) inserted (1.7.1998) by 1997 c. 42, **s. 6(2)(b)**; S.I. 1998/1542, **art. 2**

F878 Words in s. 200(1) inserted (1.4.2004) by Police Reform Act 2002 (c. 30), **ss. 37(2)(b)**, 108(2)-(5); S.I. 2004/913, **art. 2(b)**

F879 Words in s. 200(1) inserted (1.4.2004) by Police Reform Act 2002 (c. 30), **ss. 37(2)(c)**, 108(2)-(5); S.I. 2004/913, **art. 2(b)**

F880 Words in s. 200(1) repealed (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 35(d)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

Modifications etc. (not altering text)

C182 S. 200 modified (1.10.2002 for certain purposes, otherwise 1.4.2004) by Police Reform Act 2002 (c. 30), s. 13, **Sch. 3 Pt. 3 para. 19(5)(b)** (with s. 14(1)); S.I. 2002/2306, **art. 4(e)**; S.I. 2004/913, **art. 2(d)**

C183 S. 200 modified (7.4.2010) by The UK Border Agency (Complaints and Misconduct) Regulations 2010 (S.I. 2010/782), **reg. 42(4)(b)**

C184 S. 200 restricted (1.12.2023) by Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (c. 41), s. 63(4), Sch. 1 paras. 15, **21** (with s. 61); S.I. 2023/1293, reg. 2(a)

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Marginal Citations
M53 1994 c. 33.

Offshore employment

201 Power to extend employment legislation to offshore employment.

(1) In this section "offshore employment" means employment for the purposes of activities—

(a) in the territorial waters of the United Kingdom

(b) connected with the exploration of the sea-bed or subsoil, or the exploitation of their natural resources, in the United Kingdom sector of the continental shelf, or

(c) connected with the explorarion or exploitation, in a foreign sector of the continental shelf, of a cross-boundary petroleum field.

(2) Her Majesty may by Order in Council provide that—

(a) the provisions of this Act, and

(b) any Northern Ireland legislation making provision for purposes corresponding to any of the purposes of this Act,

apply, to such extent and for such purposes as may be specified in the Order (with or without modification), to or in relation to a person in offshore employment.

(3) An Order in Council under this section—

(a) may make different provision for different cases,

(b) may provide that all or any of the provisions referred to in subsection (2), as applied by such an Order in Council, apply—

(i) to individuals whether or not they are British subjects, and

(ii) to bodies corporate whether or not they are incorporated under the law of a part of the United Kingdom,

and apply even where the application may affect their activities outside the United Kingdom,

(c) may make provision for conferring jurisdiction on any court or class of court specified in the Order in Council, or on **[**F881employment tribunals**]**, in respect of offences, causes of action or other matters arising in connection with offshore employment,

(d) may (without prejudice to subsection (2) and paragraph (a)) provide that the provisions referred to in subsection (2), as applied by the Order in Council, apply in relation to any person in employment in a part of the areas referred to in subsection (1)(a) and (b),

(e) may exclude from the operation of section 3 of the M54Territorial Waters Jurisdiction Act 1878 (consents required for prosecutions) proceedings for offences under the provisions referred to in subsection (2) in connection with offshore employment,

(f) may provide that such proceedings shall not be brought without such consent as may be required by the Order in Council,

(g) may (without prejudice to subsection (2)) modify or exclude the operation of any or all of sections F882. . . 199 and 215(2) to (6) or of any corresponding Northern Ireland legislation.

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[[F883](3A) Where an Order in Council under this section confers jurisdiction on an employment tribunal, the jurisdiction conferred includes power to make an order under section 12A of the Employment Tribunals Act 1996 (financial penalties), and that section applies accordingly.**]**

(4) Any jurisdiction conferred on a court or tribunal under this section is without prejudice to jurisdiction exercisable apart from this section by that or any other court or tribunal.

(5) In this section—

"cross-boundary petroleum field" means a petroleum field that extends across the boundary between the United Kingdom sector of the continental shelf and a foreign sector of the continental shelf,

"foreign sector of the continental shelf" means an area outside the territorial waters of any state, within which rights with respect to the sea-bed and subsoil and their natural resources are exercisable by a state other than the United Kingdom,

"petroleum field" means a geological structure identified as an oil or gas field by the Order in Council concerned, and

"United Kingdom sector of the continental shelf" means the area designated under section 1(7) of the [M55]Continental Shelf Act 1964.

Textual Amendments

F881 Words in s. 201(3)(c) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(b)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F882 Word in s. 201(3)(g) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(9)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with Sch. 3 para. 7(2))

F883 S. 201(3A) inserted (E.W.S.) (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 3 para. 5** (with s. 24(5)); S.I. 2014/253, art. 3(h)

Modifications etc. (not altering text)

C185 S. 201 applied by 1993 c. 48, s. 165(7) (as substituted (E.W.S.) (6.2.2018) by The Seafarers (Transnational Information and Consultation, Collective Redundancies and Insolvency Miscellaneous Amendments) Regulations 2018 (S.I. 2018/26), regs. 1(1), **4(2)** (with reg. 4(4)))

Marginal Citations

M54 1878 c. 73.

M55 1964 c. 29.

CHAPTER II

OTHER MISCELLANEOUS MATTERS

Restrictions on disclosure of information

202 National security.

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

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(a) nothing in any of the provisions to which this section applies requires any person to disclose the information, and

(b) no person shall disclose the information in any proceedings in any court or tribunal relating to any of those provisions.

(2) This section applies to—

(a) Part I, so far as it relates to employment particulars,

(b) in Part V, **[**F884sections **[**F88543M,**]** 44, 45A **[**F886, 47 and 47C**]]**, and sections 48 and 49 so far as relating to those sections,

(c) in Part VI, sections **[**F88755 to 57B**]** and 61 to 63,

(d) in Part VII, sections 66 to 68, and sections 69 and 70 so far as relating to those sections,

(e) Part VIII,

[F888(ea) Part 8B,**]**

(f) in Part IX, sections 92 and 93 where they apply by virtue of section 92(4),

(g) Part X so far as relating to a dismissal which is treated as unfair—

[F889(i) by section **[**F89098B,**]** 99, 100, 101A(d) or 103, or by section 104 in its application in relation to time off under section 57A,**]**

(ii) by subsection (1) of section 105 by reason of the application of subsection **[**F891(2A),**]** (3) or (6) of that section, **[**F892or by reason of the application of subsection (4A) in so far as it applies where the reason (or, if more than one, the principal reason) for which an employee was selected for dismissal was that specified in section 101A(d)**]** and

(h) this Part and Parts XIV and XV (so far as relating to any of the provisions in paragraphs (a) to (g)).

Textual Amendments

F884 Words in s. 202(2)(b) substituted (1.10.1998) by S.I. 1998/1833, **reg. 31(5)**

F885 Word in s. 202(2)(b) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 39(2)**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F886 Words in s. 202(2)(b) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 36(a)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F887 Words in s. 202(2)(c) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 36(b)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F888 S. 202(2)(ea) inserted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 14**; S.I. 2023/1283, reg. 2

F889 S. 202(2)(g)(i) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 36(c)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F890 Words in s. 202(2)(g)(i) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 39(3)(a)**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F891 Words in s. 202(2)(g)(ii) substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 39(3)(b)**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F892 Words in s. 202(2)(g)(ii) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(6)(b)**

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Contracting out etc. and remedies

203 Restrictions on contracting out.

(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

(a) to exclude or limit the operation of any provision of this Act, or

(b) to preclude a person from bringing any proceedings under this Act before an **[**F893employment tribunal**]**.

(2) Subsection (1)—

(a) does not apply to any provision in a collective agreement excluding rights under section 28 if an order under section 35 is for the time being in force in respect of it,

(b) does not apply to any provision in a dismissal procedures agreement excluding the right under section 94 if that provision is not to have effect unless an order under section 110 is for the time being in force in respect of it,

(c) does not apply to any provision in an agreement if an order under section 157 is for the time being in force in respect of it,

(d) F894. . . . . .

(e) does not apply to any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under **[**F895any of sections 18A to 18C**]** of **[**F893the M56Employment Tribunals Act 1996**]**, and

(f) does not apply to any agreement to refrain from instituting or continuing F896. . . any proceedings within

[F897the following provisions of section 18(1) of the Employment Tribunals Act 1996 (cases where conciliation available)—

(i) **[**F898paragraph (b)**]** (proceedings under this Act),

(ii) **[**F899paragraph (l)**]** (proceedings arising out of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000),**]** if the conditions regulating **[**F900settlement**]** agreements under this Act are satisfied in relation to the agreement

(iii) **[**F901**[**F902paragraph (m)**]** (proceedings arising out of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002),

(iv) F903...**]**

(3) For the purposes of subsection (2)(f) the conditions regulating **[**F900settlement**]** agreements under this Act are that—

(a) the agreement must be in writing,

(b) the agreement must relate to the particular **[**F904proceedings**]**,

(c) the employee or worker must have received **[**F905advice from a relevant independent adviser**]** as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an **[**F893employment tribunal**]**,

(d) there must be in force, when the adviser gives the advice, a **[**F906contract of insurance, or an indemnity provided for members of a profession or professional body,**]** covering the risk of a claim by the employee or worker in respect of loss arising in consequence of the advice,

(e) the agreement must identify the adviser, and

(f) the agreement must state that the conditions regulating **[**F900settlement**]** agreements under this Act are satisfied.

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[F907(3A) A person is a relevant independent adviser for the purposes of subsection (3)(c)—

(a) if he is a qualified lawyer,

(b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,

(c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or

(d) if he is a person of a description specified in an order made by the Secretary of State.

(3B) But a person is not a relevant independent adviser for the purposes of subsection (3)(c) in relation to the employee or worker—

(a) if he is, is employed by or is acting in the matter for the employer or an associated employer,

(b) in the case of a person within subsection (3A)(b) or (c), if the trade union or advice centre is the employer or an associated employer,

(c) in the case of a person within subsection (3A)(c), if the employee or worker makes a payment for the advice received from him, or

(d) in the case of a person of a description specified in an order under subsection (3A)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(4) In subsection (3A)(a) " qualified lawyer " means—

(a) as respects England and Wales, **[**F908a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act), and**]**

(b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.**]**

[F909(5) An agreement under which the parties agree to submit a dispute to arbitration—

(a) shall be regarded for the purposes of subsection (2)(e) and (f) as being an agreement to refrain from instituting or continuing proceedings if—

(i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and

(ii) the agreement is to submit it to arbitration in accordance with the scheme, but

(b) shall be regarded as neither being nor including such an agreement in any other case.**]**

Textual Amendments

F893 Words in s. 203(1)(b)(2)(e)(f)(3)(c) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)(c)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F894 S. 203(2)(d) omitted (1.10.2002) by virtue of The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(17)(a)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

F895 Words in s. 203(2)(e) substituted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 1 para. 10**; S.I. 2014/253, art. 3(f) (with art. 5(1))

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F896 Words in s. 203(2)(f) repealed (1.8.1998) by 1998 c. 8, s. 15, **Sch. 2**; S.I. 1998/1658, art. 2(1), **Sch. 1**
F897 Words in s. 203(2)(f) and s. 203(2)(f)(i)(ii) substituted for words in s. 203(2)(f) (1.5.2001) by S.I. 2001/1107, **reg. 3**
F898 Words in s. 203(2)(f)(i) substituted (6.4.2014) by The Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2014 (S.I. 2014/431), art. 1, **Sch. para. 4(a)**
F899 Words in s. 203(2)(f)(ii) substituted (6.4.2014) by The Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2014 (S.I. 2014/431), art. 1, **Sch. para. 4(b)**
F900 Word in s. 203(2)(f)(3) substituted (29.7.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 23(1)(b)**, 103(3); S.I. 2013/1648, art. 2(c); S.I. 2013/1648, art. 2(c)
F901 S. 203(2)(f)(iii)(iv) inserted (1.10.2002) by The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(17)(b)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)
F902 Words in s. 203(2)(f)(iii) substituted (6.4.2014) by The Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2014 (S.I. 2014/431), art. 1, **Sch. para. 4(c)**
F903 S. 203(2)(f)(iv) omitted (6.4.2014) by virtue of The Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2014 (S.I. 2014/431), art. 1, **Sch. para. 4(d)**
F904 Word in s. 203(3)(b) substituted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 24(2)**; S.I. 1998/1658, art. 2(1), **Sch. 1**
F905 Words in s. 203(3)(c) substituted (1.8.1998) by 1998 c. 8, **s. 9(1)(2)(e)**; S.I. 1998/1658, art. 2(1), **Sch. 1**
F906 Words in s. 203(3)(d) substituted (1.8.1998) by 1998 c. 8, **s. 10(1)(2)(e)**; S.I. 1998/1658, art. 2(1), **Sch. 1**
F907 S. 203(3A)(3B)(4) substituted for s. 203(4) (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 24(3)**; S.I. 1998/1658, art. 2(1), **Sch. 1**
F908 Words in s. 203(4)(a) substituted (1.1.2010) by Legal Services Act 2007 (c. 29), ss. 208(1), 211(2), **Sch. 21 para. 120** (with ss. 29, 192, 193); S.I. 2009/3250, **art. 2(h)** (with art. 9)
F909 S. 203(5) inserted (1.8.1998) by 1998 c. 8, **s. 8(5)**; S.I. 1998/1658, art. 2(2), **Sch. 1**

Modifications etc. (not altering text)
C186 S. 203 applied (1.7.2000) by S.I. 2000/1551, **reg. 9**
C187 S. 203 applied (with modifications) (1.10.2002) by The fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), **reg. 10** (with regs. 13-20)
C188 S. 203 applied (with modifications) (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **18**
C189 S. 203 applied (1.10.2011) by The Agency Workers Regulations 2010 (S.I. 2010/93), **reg. 15**
C190 S. 203(1)(2)(e)(f)(3)(4) amended (4.9.2000) by 1999 c. 26, **s. 14(a)**; S.I. 2000/2242, **art. 2**

Marginal Citations
M56 1996 c. 17.

204 Law governing employment.

(1) For the purposes of this Act it is immaterial whether the law which (apart from this Act) governs any person's employment is the law of the United Kingdom, or of a part of the United Kingdom, or not.

F910(2) . . . . . .

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Textual Amendments

F910 S. 204(2) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(9)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with transitional provisions in Sch. 3 para. 7(2))

205 Remedy for infringement of certain rights.

(1) The remedy of an employee for infringement of any of the rights conferred by section 8, Part III, Parts V to VIII, **[**F911Part 8B,**]** section 92, Part X and Part XII is, where provision is made for a complaint or the reference of a question to an **[**F912employment tribunal**]**, by way of such a complaint or reference and not otherwise.

[F913(1YA) In relation to the right conferred by section 44(1A), the reference in subsection (1) to an employee has effect as a reference to a worker.**]**

[F914(1A) In relation to the right conferred by section 47B, the reference in subsection (1) to an employee has effect as a reference to a worker.**]**

[F915(1ZA) In relation to the right conferred by section 45A, the reference in subsection (1) to an employee has effect as a reference to a worker.**]**

(2) The remedy of a worker in respect of any contravention of section 13, 15, 18(1) or 21(1) is by way of a complaint under section 23 and not otherwise.

Textual Amendments

F911 Words in s. 205(1) inserted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 15**; S.I. 2023/1283, reg. 2

F912 Words in s. 205(1) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F913 S. 205(1YA) inserted (31.5.2021) by The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021 (S.I. 2021/618), arts. 1, **6**

F914 S. 205(1A) inserted (2.7.1999) by 1998 c. 23, **s. 14**; S.I. 1999/1547, **art. 2**

F915 S. 205(1ZA) inserted (1.10.1998) by S.I. 1998/1833, **reg. 31(7)**

Modifications etc. (not altering text)

C191 S. 205(1) applied (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **16(1)**

[F916Employee shareholder status

Textual Amendments

F916 S. 205A and cross-heading inserted (1.9.2013) by Growth and Infrastructure Act 2013 (c. 27), **ss. 31(1)**, 35(1); S.I. 2013/1766, art. 2

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205A Employee shareholders

(1) An individual who is or becomes an employee of a company is an " employee shareholder " if—

(a) the company and the individual agree that the individual is to be an employee shareholder,

(b) in consideration of that agreement, the company issues or allots to the individual fully paid up shares in the company, or procures the issue or allotment to the individual of fully paid up shares in its parent undertaking, which have a value, on the day of issue or allotment, of no less than £2,000,

(c) the company gives the individual a written statement of the particulars of the status of employee shareholder and of the rights which attach to the shares referred to in paragraph (b) ("the employee shares") (see subsection (5)), and

(d) the individual gives no consideration other than by entering into the agreement.

(2) An employee who is an employee shareholder does not have—

(a) the right to make an application under section 63D (request to undertake study or training),

(b) the right to make an application under section 80F (request for flexible working),

(c) the right under section 94 not to be unfairly dismissed, or

(d) the right under section 135 to a redundancy payment.

(3) The following provisions are to be read in the case of an employee who is an employee shareholder as if for "8 weeks' notice", in each place it appears, there were substituted "16 weeks' notice"—

(a) regulation 11 of the Maternity and Parental Leave etc. Regulations 1999 (S.I. 1999/3312) (requirement for employee to notify employer of intention to return to work during maternity leave period), and

(b) regulation 25 of the Paternity and Adoption Leave Regulations 2002 (S.I. 2002/2788) (corresponding provision for adoption leave).

(4) Regulation 30 of the Additional Paternity Leave Regulations 2010 (S.I. 2010/1055) (requirement for employee to notify employer of intention to return to work during additional paternity leave period) is to be read in the case of an employee who is an employee shareholder as if for "six weeks' notice", in each place it appears, there were substituted "16 weeks' notice".

(5) The statement referred to in subsection (1)(c) must—

(a) state that, as an employee shareholder, the individual would not have the rights specified in subsection (2),

(b) specify the notice periods that would apply in the individual's case as a result of subsections (3) and (4),

(c) state whether any voting rights attach to the employee shares,

(d) state whether the employee shares carry any rights to dividends,

(e) state whether the employee shares would, if the company were wound up, confer any rights to participate in the distribution of any surplus assets,

(f) if the company has more than one class of shares and any of the rights referred to in paragraphs (c) to (e) attach to the employee shares, explain how those rights differ from the equivalent rights that attach to the shares in the largest

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class (or next largest class if the class which includes the employee shares is the largest),

(g) state whether the employee shares are redeemable and, if they are, at whose option,

(h) state whether there are any restrictions on the transferability of the employee shares and, if there are, what those restrictions are,

(i) state whether any of the requirements of sections 561 and 562 of the Companies Act 2006 are excluded in the case of the employee shares (existing shareholders' right of pre-emption), and

(j) state whether the employee shares are subject to drag-along rights or tag-along rights and, if they are, explain the effect of the shares being so subject.

(6) Agreement between a company and an individual that the individual is to become an employee shareholder is of no effect unless, before the agreement is made—

(a) the individual, having been given the statement referred to in subsection (1)(c), receives advice from a relevant independent adviser as to the terms and effect of the proposed agreement, and

(b) seven days have passed since the day on which the individual receives the advice.

(7) Any reasonable costs incurred by the individual in obtaining the advice (whether or not the individual becomes an employee shareholder) which would, but for this subsection, have to be met by the individual are instead to be met by the company.

(8) The reference in subsection (2)(b) to making an application under section 80F does not include a reference to making an application within the period of 14 days beginning with the day on which the employee shareholder returns to work from a period of parental leave under regulations under section 76.

(9) The reference in subsection (2)(c) to unfair dismissal does not include a reference to a dismissal—

(a) which is required to be regarded as unfair for the purposes of Part 10 by a provision (whenever made) contained in or made under this or any other Act, or

(b) which amounts to a contravention of the Equality Act 2010.

(10) The reference in subsection (2)(c) to the right not to be unfairly dismissed does not include a reference to that right in a case where section 108(2) (health and safety cases) applies.

(11) The Secretary of State may by order amend subsection (1) so as to increase the sum for the time being specified there.

(12) The Secretary of State may by regulations provide that any agreement for a company to buy back from an individual the shares referred to in subsection (1)(b) in the event that the individual ceases to be an employee shareholder or ceases to be an employee must be on terms which meet the specified requirements.

(13) In this section—

" company " means—

(a) a company or overseas company (within the meaning, in each case, of the Companies Act 2006) which has a share capital, or

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(b) **[**[F917]a United Kingdom Societas (or UK Societas) within the meaning of Council Regulation 2157/2001/EC of 8 October 2001 on the Statute for a European company;**]**

" drag-along rights ", in relation to shares in a company, means the right of the holders of a majority of the shares, where they are selling their shares, to require the holders of the minority to sell theirs;

" parent undertaking " has the same meaning as in the Companies Act 2006;

" relevant independent adviser " has the meaning that it has for the purposes of section 203(3)(c);

" tag-along rights ", in relation to shares in a company, means the right of the holders of a minority of the shares to sell their shares, where the holders of the majority are selling theirs, on the same terms as those on which the holders of the majority are doing so.

(14) The reference in this section to the value of shares in a company is a reference to their market value within the meaning of the Taxation of Chargeable Gains Act 1992 (see sections 272 and 273 of that Act).**]**

Textual Amendments

F917 Words in s. 205A(13) substituted (31.12.2020) by The International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/685), reg. 1(2), **Sch. 3 para. 18**; 2020 c. 1, Sch. 5 para. 1(1)

General provisions about death of employer or employee

206 Institution or continuance of tribunal proceedings.

(1) Where an employer has died, any tribunal proceedings arising under any of the provisions of this Act to which this section applies may be defended by a personal representative of the deceased employer.

(2) This section and section 207 apply to—

(a) Part I, so far as it relates to itemised pay statements,
(b) Part III,
(c) Part V,
(d) Part VI, apart from sections 58 to 60,
(e) Parts VII and VIII,
[[F918](ea) Part 8B,**]**
(f) in Part IX, sections 92 and 93, and
(g) Parts X to XII.

(3) Where an employee has died, any tribunal proceedings arising under any of the provisions of this Act to which this section applies may be instituted or continued by a personal representative of the deceased employee.

(4) If there is no personal representative of a deceased employee, any tribunal proceedings arising under any of the provisions of this Act to which this section applies may be instituted or continued on behalf of the estate of the deceased employee by any appropriate person appointed by the **[**[F919]employment tribunal**]**.

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(5) In subsection (4) "appropriate person" means a person who is—

(a) authorised by the employee before his death to act in connection with the proceedings, or

(b) the widow or widower, **[**F920surviving civil partner,**]** child, parent or brother or sister of the deceased employee;

and in Part XI and the following provisions of this section and section 207 references to a personal representative include a person appointed under subsection (4).

(6) In a case where proceedings are instituted or continued by virtue of subsection (4), any award made by the **[**F919employment tribunal**]** shall be—

(a) made in such terms, and

(b) enforceable in such manner,

as the Secretary of State may by regulations provide.

(7) Any reference in the provisions of this Act to which this section applies to the doing of anything by or in relation to an employer or employee includes a reference to the doing of the thing by or in relation to a personal representative of the deceased employer or employee.

(8) Any reference in the provisions of this Act to which this section applies to a thing required or authorised to be done by or in relation to an employer or employee includes a reference to a thing required or authorised to be done by or in relation to a personal representative of the deceased employer or employee.

(9) Subsections (7) and (8) do not prevent a reference to a successor of an employer including a personal representative of a deceased employer.

Textual Amendments

F918 S. 206(2)(ea) inserted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 16**; S.I. 2023/1283, reg. 2

F919 Words in s. 206(4)(6) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F920 Words in s. 206(5)(b) inserted (5.12.2005) by The Civil Partnership Act 2004 (Overseas Relationships and Consequential, etc. Amendments) Order 2005 (S.I. 2005/3129), arts. 1, 4(4), **Sch. 4 para. 11**

207 Rights and liabilities accruing after death.

(1) Any right arising under any of the provisions of this Act to which this section applies which accrues after the death of an employee devolves as if it had accrued before his death.

(2) Where an **[**F921employment tribunal**]** determines under any provision of Part XI that an employer is liable to pay to a personal representative of a deceased employee—

(a) the whole of a redundancy payment to which he would have been entitled but for some provision of Part XI or section 206, or

(b) such part of such a redundancy payment as the tribunal thinks fit,

the reference in subsection (1) to a right includes any right to receive it.

(3) Where—

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(a) by virtue of any of the provisions to which this section applies a personal representative is liable to pay any amount, and

(b) the liability has not accrued before the death of the employer,

it shall be treated as a liability of the deceased employer which had accrued immediately before his death.

Textual Amendments

F921 Words in s. 207(2) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

[F922 Mediation in certain cross-border dispute]

Textual Amendments

F922 S. 207A and cross-heading inserted (20.5.2011 with application as mentioned in regs. 3 and 4 of the amending S.I.) by The Cross-Border Mediation (EU Directive) Regulations 2011 (S.I. 2011/1133), **regs. 2**, 48

F923 207A Extension of time limits because of mediation in certain cross-border disputes

. . . . . .

Textual Amendments

F923 S. 207A omitted (31.12.2020) by virtue of The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(25)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

[F924 207B Extension of time limits to facilitate conciliation before institution of proceedings

(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a "relevant provision").

F925 ...

(2) In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

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(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.**]**

Textual Amendments

F924 S. 207B inserted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 2 para. 35**; S.I. 2014/253, art. 3(g)

F925 Words in s. 207B(1) omitted (31.12.2020) by virtue of The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (S.I. 2019/469), reg. 1(1), **Sch. 1 para. 12(26)** (with reg. 5) (as amended by S.I. 2020/1493, regs. 1(1), 4(5)(6)); 2020 c. 1, Sch. 5 para. 1(1)

Modifications of Act

[F926208 . . . . . .

Textual Amendments

F926 S. 208 repealed (17.12.1999) by 1999 c. 26, ss. 36(2)(3), 44, **Sch. 9(10)**; S.I. 1999/3374, art. 2(b)(c), **Sch.**

209 Powers to amend Act.

(1) The Secretary of State may by order—

(a) provide that any provision of this Act, other than any to which this paragraph does not apply, which is specified in the order shall not apply to persons, or to employments, of such classes as may be prescribed in the order,

(b) provide that any provision of this Act, other than any to which this paragraph does not apply, shall apply to persons or employments of such classes as may be prescribed in the order subject to such exceptions and modifications as may be so prescribed, or

(c) vary, or exclude the operation of, any of the provisions to which this paragraph applies.

(2) Subsection (1)(a) does not apply to—

(a) Parts II and IV,

(b) in Part V, sections 45 and 46, and sections 48 and 49 so far as relating to those sections,

(c) in Part VI, sections 58 to 60,

(d) in Part IX, sections 87(3), 88 to 90, 91(1) to (4) and (6) and 92(6) to (8),

(e) in Part X, sections 95, 97(1) to (5), 98(1) to (4) and (6), 100, 101, **[**F927101A,**]** 102, 103, 105, 107, 110, 111, 120(2), 124(1), (2) and (5), 125(7) and 134,

(f) in Part XI, sections 143, 144, 160(2) and (3), 166 to 173 and 177 to 180,

(g) in Part XIII, sections F928. . . F929. . .,

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(h) Chapter I of Part XIV, or

(j) in Part XV, section 236(3) so far as relating to sections 120(2), 124(2) and 125(7).

(3) Subsection (1)(b) does not apply to—

(a) any of the provisions to which subsection (1)(a) does not apply,

(b) sections 1 to 7, or

(c) the provisions of sections 86 to 91 not specified in subsection (2).

(4) The provision which may be made by virtue of paragraph (b) of subsection (1) in relation to section 94 does not include provision for application subject to exceptions or modifications; but this subsection does not prejudice paragraph (a) of that subsection.

(5) Subsection (1)(c) applies to sections 29(2), 65(2), 86(5), 92(3), 108(1), [F930]. . . 159, 160(1), 196(2), (3) and (5) and 199(1), (2), (4) and (5).

[F931](6) . . . . . .

[F932](7) . . . . . .

(8) The provisions of this section are without prejudice to any other power of the Secretary of State to amend, vary or repeal any provision of this Act or to extend or restrict its operation in relation to any person or employment.

Textual Amendments

F927 Words in s. 209(2)(e) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(7)**

F928 Words in s. 209(2)(g) repealed (25.10.1999) by virtue of 1999 c. 26, s. 44, **Sch. 9(9)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I**

F929 Words in s. 209(2)(g) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(3)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with Sch. 3 para. 2(2))

F930 Words in s. 209(5) omitted (1.10.2006) by virtue of The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 49(1), **Sch. 8 para. 34(2)** (with regs. 44-46)

F931 S. 209(6) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 37, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

F932 S. 209(7) repealed and superseded (25.10.1999) by 1999 c. 26, ss. 23(6), 44, **Sch. 9(4)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I**

PART XIV

INTERPRETATION

CHAPTER I

CONTINUOUS EMPLOYMENT

Modifications etc. (not altering text)

C192 Pt. XIV Ch. I (ss. 210-219) applied (with modifications) (1.4.1998) by S.I. 1998/366, **reg. 31(7)**

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Pt. XIV Ch. I (ss. 210-219) applied (prosp.) by 1999 c. 29, ss. 411(10), 425(2), **Sch. 32 para. 3(8)** (with Sch. 12 para. 9(1))
Pt. XIV Ch. I (ss. 210-219) applied (29.1.2001) by S.I. 2000/3386, **art. 1(5)**
Pt. XIV Ch. I (ss. 210-219) applied (E.W.) (21.5.2001) by S.I. 2001/1185, arts. 3, 4, **Sch. para. 120**

C193 Pt. 14 Ch. 1 applied (1.10.2002) by The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), **reg. 8(4)** (with regs. 13-20)
Pt. 14 Ch. 1 applied (6.4.2002) by The Flexible working (Eligibility, Complaints and Remedies) Regulations 2002 (S.I. 2002/3236), {reg. 3}

C194 Pt. 14 Ch. 1 applied (20.11.2003) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 1, 199(1)(4), **Sch. 1 para. 3(3)**

C195 Pt. 14 Ch. 1 applied (E.W.) (1.3.2007) by National Health Service Act 2006 (c. 41), ss. 30, 227, **Sch. 7 para. 3(4)**

210 Introductory.

(1) References in any provision of this Act to a period of continuous employment are (unless provision is expressly made to the contrary) to a period computed in accordance with this Chapter.

(2) In any provision of this Act which refers to a period of continuous employment expressed in months or years—

(a) a month means a calendar month, and

(b) a year means a year of twelve calendar months.

(3) In computing an employee's period of continuous employment for the purposes of any provision of this Act, any question—

(a) whether the employee's employment is of a kind counting towards a period of continuous employment, or

(b) whether periods (consecutive or otherwise) are to be treated as forming a single period of continuous employment,

shall be determined week by week; but where it is necessary to compute the length of an employee's period of employment it shall be computed in months and years of twelve months in accordance with section 211.

(4) Subject to sections 215 to 217, a week which does not count in computing the length of a period of continuous employment breaks continuity of employment.

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

Modifications etc. (not altering text)

C196 Ss. 210-219 applied (E.W.) (1.4.2020) by The Agricultural Wages (Wales) Order 2020 (S.I. 2020/347), arts. 1, **2(3)**

C197 Ss. 210-219 applied (22.4.2022) by The Agricultural Wages (Wales) Order 2022 (S.I. 2022/417), arts. 1(2), **2(3)**

C198 Ss. 210-219 applied (E.W.) (6.8.2022 with effect from 1.4.2022) by The Agricultural Wages (No. 2) (Wales) Order 2022 (S.I. 2022/794), arts. 1, **2(3)**

C199 Ss. 210-219 applied (1.4.2023) by The Agricultural Wages (Wales) Order 2023 (S.I. 2023/260), arts. 1, **2(3)**

C200 Ss. 210-219 applied (W.) (1.4.2024) by The Agricultural Wages (Wales) Order 2024 (S.I. 2024/390), arts. 1, **2(3)**

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211 Period of continuous employment.

(1) An employee's period of continuous employment for the purposes of any provision of this Act—

(a) (subject to **[**F933subsection**]** (3)) begins with the day on which the employee starts work, and

(b) ends with the day by reference to which the length of the employee's period of continuous employment is to be ascertained for the purposes of the provision.

F934(2) . . . . . .

(3) If an employee's period of continuous employment includes one or more periods which (by virtue of section 215, 216 or 217) while not counting in computing the length of the period do not break continuity of employment, the beginning of the period shall be treated as postponed by the number of days falling within that intervening period, or the aggregate number of days falling within those periods, calculated in accordance with the section in question.

Textual Amendments

F933 Word in s. 211(1)(a) substituted (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 49(1), **Sch. 8 para. 35(2)** (with regs. 44-46)

F934 S. 211(2) repealed (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 49(1), **Sch. 8 para. 35(3)** (with regs. 44-46)

Modifications etc. (not altering text)

C196 Ss. 210-219 applied (E.W.) (1.4.2020) by The Agricultural Wages (Wales) Order 2020 (S.I. 2020/347), arts. 1, **2(3)**

C197 Ss. 210-219 applied (22.4.2022) by The Agricultural Wages (Wales) Order 2022 (S.I. 2022/417), arts. 1(2), **2(3)**

C198 Ss. 210-219 applied (E.W.) (6.8.2022 with effect from 1.4.2022) by The Agricultural Wages (No. 2) (Wales) Order 2022 (S.I. 2022/794), arts. 1, **2(3)**

C199 Ss. 210-219 applied (1.4.2023) by The Agricultural Wages (Wales) Order 2023 (S.I. 2023/260), arts. 1, **2(3)**

C200 Ss. 210-219 applied (W.) (1.4.2024) by The Agricultural Wages (Wales) Order 2024 (S.I. 2024/390), arts. 1, **2(3)**

212 Weeks counting in computing period.

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

F935(2) . . . . . .

(3) Subject to subsection (4), any week (not within subsection (1)) during the whole or part of which an employee is—

(a) incapable of work in consequence of sickness or injury,

(b) absent from work on account of a temporary cessation of work, **[**F936or**]**

(c) absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for any purpose,

F937 . . .

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F935(d) . . . . . .

counts in computing the employee's period of employment.

(4) Not more than twenty-six weeks count under subsection (3)(a) F937. . . between any periods falling under subsection (1).

Textual Amendments

F935 S. 212(2)(3)(d) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 38(2)(3)(c), **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

F936 Word in s. 212(3)(b) inserted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 38(3)(a)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F937 Words in s. 212(3)(c)(4) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 38(3)(b)(4), **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

Modifications etc. (not altering text)

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C197 Ss. 210-219 applied (22.4.2022) by The Agricultural Wages (Wales) Order 2022 (S.I. 2022/417), arts. 1(2), **2(3)**

C198 Ss. 210-219 applied (E.W.) (6.8.2022 with effect from 1.4.2022) by The Agricultural Wages (No. 2) (Wales) Order 2022 (S.I. 2022/794), arts. 1, **2(3)**

C199 Ss. 210-219 applied (1.4.2023) by The Agricultural Wages (Wales) Order 2023 (S.I. 2023/260), arts. 1, **2(3)**

C200 Ss. 210-219 applied (W.) (1.4.2024) by The Agricultural Wages (Wales) Order 2024 (S.I. 2024/390), arts. 1, **2(3)**

213 Intervals in employment.

(1) Where in the case of an employee a date later than the date which would be the effective date of termination by virtue of subsection (1) of section 97 is treated for certain purposes as the effective date of termination by virtue of subsection (2) or (4) of that section, the period of the interval between the two dates counts as a period of employment in ascertaining for the purposes of section 108(1) or 119(1) the period for which the employee has been continuously employed.

(2) Where an employee is by virtue of section 138(1) regarded for the purposes of Part XI as not having been dismissed by reason of a renewal or re-engagement taking effect after an interval, the period of the interval counts as a period of employment in ascertaining for the purposes of section 155 or 162(1) the period for which the employee has been continuously employed (except so far as it is to be disregarded under section 214 or 215).

(3) Where in the case of an employee a date later than the date which would be the relevant date by virtue of subsections (2) to (4) of section 145 is treated for certain purposes as the relevant date by virtue of subsection (5) of that section, the period of the interval between the two dates counts as a period of employment in ascertaining for the purposes of section 155 or 162(1) the period for which the employee has been continuously employed (except so far as it is to be disregarded under section 214 or 215).

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C197 Ss. 210-219 applied (22.4.2022) by The Agricultural Wages (Wales) Order 2022 (S.I. 2022/417), arts. 1(2), **2(3)**

C198 Ss. 210-219 applied (E.W.) (6.8.2022 with effect from 1.4.2022) by The Agricultural Wages (No. 2) (Wales) Order 2022 (S.I. 2022/794), arts. 1, **2(3)**

C199 Ss. 210-219 applied (1.4.2023) by The Agricultural Wages (Wales) Order 2023 (S.I. 2023/260), arts. 1, **2(3)**

C200 Ss. 210-219 applied (W.) (1.4.2024) by The Agricultural Wages (Wales) Order 2024 (S.I. 2024/390), arts. 1, **2(3)**

214 Special provisions for redundancy payments.

(1) This section applies where a period of continuous employment has to be determined in relation to an employee for the purposes of the application of section 155 or 162(1).

(2) The continuity of a period of employment is broken where—

(a) a redundancy payment has previously been paid to the employee (whether in respect of dismissal or in respect of lay-off or short-time), and

(b) the contract of employment under which the employee was employed was renewed (whether by the same or another employer) or the employee was re-engaged under a new contract of employment (whether by the same or another employer).

(3) The continuity of a period of employment is also broken where—

(a) a payment has been made to the employee (whether in respect of the termination of his employment or lay-off or short-time) in accordance with a scheme under section 1 of the [M57]Superannuation Act 1972 or arrangements falling within section 177(3), and

(b) he commenced new, or renewed, employment.

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

(a) if the employment was under a contract of employment, is the date which was the relevant date in relation to the payment mentioned in subsection (2)(a) or (3)(a), and

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

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

(a) the whole of the payment has been paid to the employee by the employer,

(b) a tribunal has determined liability and found that the employer must pay part (but not all) of the redundancy payment and the employer has paid that part, or

(c) the Secretary of State has paid a sum to the employee in respect of the redundancy payment under section 167.

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Modifications etc. (not altering text)

C196 Ss. 210-219 applied (E.W.) (1.4.2020) by The Agricultural Wages (Wales) Order 2020 (S.I. 2020/347), arts. 1, **2(3)**

C197 Ss. 210-219 applied (22.4.2022) by The Agricultural Wages (Wales) Order 2022 (S.I. 2022/417), arts. 1(2), **2(3)**

C198 Ss. 210-219 applied (E.W.) (6.8.2022 with effect from 1.4.2022) by The Agricultural Wages (No. 2) (Wales) Order 2022 (S.I. 2022/794), arts. 1, **2(3)**

C199 Ss. 210-219 applied (1.4.2023) by The Agricultural Wages (Wales) Order 2023 (S.I. 2023/260), arts. 1, **2(3)**

C200 Ss. 210-219 applied (W.) (1.4.2024) by The Agricultural Wages (Wales) Order 2024 (S.I. 2024/390), arts. 1, **2(3)**

C201 S. 214 excluded (13.1.1997) by S.I. 1996/3147, **reg. 4**

Marginal Citations

M57 1972 c. 11.

215 Employment abroad etc.

(1) This Chapter applies to a period of employment—

(a) (subject to the following provisions of this section) even where during the period the employee was engaged in work wholly or mainly outside Great Britain, and

(b) even where the employee was excluded by or under this Act from any right conferred by this Act.

(2) For the purposes of sections 155 and 162(1) a week of employment does not count in computing a period of employment if the employee—

(a) was employed outside Great Britain during the whole or part of the week, and

(b) was not during that week an employed earner for the purposes of the [M58]Social Security Contributions and Benefits Act 1992 in respect of whom a secondary Class 1 contribution was payable under that Act (whether or not the contribution was in fact paid).

(3) Where by virtue of subsection (2) a week of employment does not count in computing a period of employment, the continuity of the period is not broken by reason only that the week does not count in computing the period; and the number of days which, for the purposes of section 211(3), fall within the intervening period is seven for each week within this subsection.

(4) Any question arising under subsection (2) whether—

(a) a person was an employed earner for the purposes of the Social Security Contributions and Benefits Act 1992, or

(b) if so, whether a secondary Class 1 contribution was payable in respect of him under that Act,

shall be determined by **[**[F938]an officer of the Commissioners of Inland Revenue**]**.

[[F939](5) Part II of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (decisions and appeals) shall apply in relation to the determination of any issue by the Inland Revenue under subsection (4) as if it were a decision falling within section 8(1) of that Act.**]**

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(6) Subsection (2) does not apply in relation to a person who is—

(a) employed as a master or seaman in a British ship, and

(b) ordinarily resident in Great Britain.

Textual Amendments

F938 Words in s. 215(4) substituted (1.4.1999) by 1999 c. 2, s. 18, **Sch. 7 para. 21(2)**; S.I. 1999/527, art. 2(b), **Sch. 2**

F939 S. 215(5) substituted (1.4.1999) by 1999 c. 2, s. 18, **Sch. 7 para. 21(3)**; S.I. 1999/527, art. 2(b), **Sch. 2**

Modifications etc. (not altering text)

C196 Ss. 210-219 applied (E.W.) (1.4.2020) by The Agricultural Wages (Wales) Order 2020 (S.I. 2020/347), arts. 1, **2(3)**

C197 Ss. 210-219 applied (22.4.2022) by The Agricultural Wages (Wales) Order 2022 (S.I. 2022/417), arts. 1(2), **2(3)**

C198 Ss. 210-219 applied (E.W.) (6.8.2022 with effect from 1.4.2022) by The Agricultural Wages (No. 2) (Wales) Order 2022 (S.I. 2022/794), arts. 1, **2(3)**

C199 Ss. 210-219 applied (1.4.2023) by The Agricultural Wages (Wales) Order 2023 (S.I. 2023/260), arts. 1, **2(3)**

C200 Ss. 210-219 applied (W.) (1.4.2024) by The Agricultural Wages (Wales) Order 2024 (S.I. 2024/390), arts. 1, **2(3)**

Marginal Citations

M58 1992 c. 4.

216 Industrial disputes.

(1) A week does not count under section 212 if during the week, or any part of the 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 Chapter (whether or not by virtue only of subsection (1)) if during the week, or any part of the week, the employee takes part in a strike; and the number of days which, for the purposes of section 211(3), fall within the intervening period is the number of days between the last working day before the strike and the day on which work was resumed.

(3) The continuity of an employee's period of employment is not broken by a week if during the week, or any part of the week, the employee is absent from work because of a lock-out by the employer; and the number of days which, for the purposes of section 211(3), fall within the intervening period is the number of days between the last working day before the lock-out and the day on which work was resumed.

Modifications etc. (not altering text)

C196 Ss. 210-219 applied (E.W.) (1.4.2020) by The Agricultural Wages (Wales) Order 2020 (S.I. 2020/347), arts. 1, **2(3)**

C197 Ss. 210-219 applied (22.4.2022) by The Agricultural Wages (Wales) Order 2022 (S.I. 2022/417), arts. 1(2), **2(3)**

C198 Ss. 210-219 applied (E.W.) (6.8.2022 with effect from 1.4.2022) by The Agricultural Wages (No. 2) (Wales) Order 2022 (S.I. 2022/794), arts. 1, **2(3)**

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C199 Ss. 210-219 applied (1.4.2023) by The Agricultural Wages (Wales) Order 2023 (S.I. 2023/260), arts. 1, **2(3)**
C200 Ss. 210-219 applied (W.) (1.4.2024) by The Agricultural Wages (Wales) Order 2024 (S.I. 2024/390), arts. 1, **2(3)**

217 Reinstatement after military service.

(1) If a person who is entitled to apply to his former employer under the [M59]Reserve Forces (Safeguard of Employment) Act 1985 enters the employment of the employer not later than the end of the six month period mentioned in section 1(4)(b) of that Act, his period of service in the armed forces of the Crown in the circumstances specified in section 1(1) of that Act does not break his continuity of employment.

(2) In the case of such a person the number of days which, for the purposes of section 211(3), fall within the intervening period is the number of days between the last day of his previous period of employment with the employer (or, if there was more than one such period, the last of them) and the first day of the period of employment beginning in the six month period.

Modifications etc. (not altering text)
C196 Ss. 210-219 applied (E.W.) (1.4.2020) by The Agricultural Wages (Wales) Order 2020 (S.I. 2020/347), arts. 1, **2(3)**
C197 Ss. 210-219 applied (22.4.2022) by The Agricultural Wages (Wales) Order 2022 (S.I. 2022/417), arts. 1(2), **2(3)**
C198 Ss. 210-219 applied (E.W.) (6.8.2022 with effect from 1.4.2022) by The Agricultural Wages (No. 2) (Wales) Order 2022 (S.I. 2022/794), arts. 1, **2(3)**
C199 Ss. 210-219 applied (1.4.2023) by The Agricultural Wages (Wales) Order 2023 (S.I. 2023/260), arts. 1, **2(3)**
C200 Ss. 210-219 applied (W.) (1.4.2024) by The Agricultural Wages (Wales) Order 2024 (S.I. 2024/390), arts. 1, **2(3)**

Marginal Citations
M59 1985 c. 17.

218 Change of employer.

(1) Subject to the provisions of this section, this Chapter relates only to employment by the one employer.

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

(3) If by or under an Act (whether public or local and whether passed before or after this Act) a contract of employment between any body corporate and an employee is modified and some other body corporate is substituted as the employer—
(a) the employee's period of employment at the time when the modification takes effect counts as a period of employment with the second body corporate, and

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(b) the change of employer does not break the continuity of the period of employment.

(4) If on the death of an employer the employee is taken into the employment of the personal representatives or trustees of the deceased—

(a) the employee's period of employment at the time of the death counts as a period of employment with the employer's personal representatives or trustees, and

(b) the death does not break the continuity of the period of employment.

(5) If there is a change in the partners, personal representatives or trustees who employ any person—

(a) the employee's period of employment at the time of the change counts as a period of employment with the partners, personal representatives or trustees after the change, and

(b) the change does not break the continuity of the period of employment.

(6) If an employee of an employer is taken into the employment of another employer who, at the time when the employee enters the second employer's employment, is an associated employer of the first employer—

(a) the employee's period of employment at that time counts as a period of employment with the second employer, and

(b) the change of employer does not break the continuity of the period of employment.

(7) If an employee of the **[**F940governing body**]** of a school maintained by a **[**F941local authority**]** is taken into the employment of the authority or an employee of a **[**F941local authority**]** is taken into the employment of the **[**F942governing body**]** of a school maintained by the authority—

(a) his period of employment at the time of the change of employer counts as a period of employment with the second employer, and

(b) the change does not break the continuity of the period of employment.

(8) If a person employed in relevant employment by a health service employer is taken into relevant employment by another such employer, his period of employment at the time of the change of employer counts as a period of employment with the second employer and the change does not break the continuity of the period of employment.

(9) For the purposes of subsection (8) employment is relevant employment if it is employment of a description—

(a) in which persons are engaged while undergoing professional training which involves their being employed successively by a number of different health service employers, and

(b) which is specified in an order made by the Secretary of State.

(10) The following are health service employers for the purposes of subsections (8) and (9)—

[F943(za) **[**F944NHS England**]**,

[F945(zb) an integrated care board established under section 14Z25 of the National Health Service Act 2006,**]]**

F946(a) . . . . . .

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(b) Special Health Authorities established under **[**F947section 28 of **[**F948the National Health Service Act 2006**]** or section 22 of the National Health Service (Wales) Act 2006**]** ,

F949(bb) . . . . . .

(c) National Health Service trusts established under **[**F950**[**F951the National Health Service Act 2006**]** or the National Health Service (Wales) Act 2006**]** ,

[F952(ca) NHS foundation trusts, **]**

[F953(cb) Local Health Boards established under section 11 of the National Health Service (Wales) Act 2006,**]**

[F954(cc) the National Institute for Health and Care Excellence,**]**

F955(cd) . . . . . .

[F956(ce) the Health Services Safety Investigations Body.**]**

(d) F957 . . . . . .

(dd) F958... F959...

F959(e) . . . . . .

[F960(11) In subsection (7) " local authority " has the meaning given by section 579(1) of the Education Act 1996. **]**

Textual Amendments

F940 Words in s. 218(7) substituted (1.10.2002 except in relation to W. and otherwise 19.12.2002) by Education Act 2002 (c. 32), s. 215(1), **Sch. 21 para. 32** (with ss. 210(8), 214(4)); S.I. 2002/2439, **art. 3**; S.I. 2002/3185, **art. 4**, Sch. Pt. 1

F941 Words in s. 218(7) substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 41(5)(a)**

F942 Words in s. 218(7) substituted (1.10.2002 except in relation to W. and otherwise 19.12.2002) by Education Act 2002 (c. 32), s. 215(1), **Sch. 21 para. 32** (with ss. 210(8), 214(4)); S.I. 2002/2439, **art. 3**; S.I. 2002/3185, **art. 4**, Sch. Pt. 1

F943 S. 218(10)(za)(zb) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 75(a)**; S.I. 2012/1831, art. 2(2)

F944 Words in s. 218 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 1 para. 1(1)**(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F945 S. 218(10)(zb) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 4 para. 49**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F946 S. 218(10)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 75(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F947 Words in s. 218(10)(b) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 180(b)** (with Sch. 3 Pt. 1)

F948 Words in s. 218(10)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 75(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F949 S. 218(10)(bb) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 75(d)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F950 Words in s. 218(10)(c) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 180(d)** (with Sch. 3 Pt. 1)

F951 Words in s. 218(10)(c) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 75(e)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F952 S. 218(10)(ca) inserted (1.4.2004 for E.W.) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199(1)(4), **Sch. 4 para. 101**; S.I. 2004/759, **art. 2** (as amended by S.I. 2006/836 and S.I. 2007/1102)

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F953 S. 218(10)(cb) inserted (1.4.2007) by The References to Health Authorities Order 2007 (S.I. 2007/961), art. 3, **Sch. para. 27(4)**

F954 S. 218(10)(cc) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 17 para. 6(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F955 S. 218(10)(cd) omitted (1.2.2023) by virtue of The Health and Social Care Information Centre (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/98), reg. 1(2), **Sch. para. 8(4)** (with reg. 3)

F956 S. 218(10)(ce) inserted (1.10.2023) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 15 para. 6(4)**; S.I. 2023/1035, reg. 2(c)

F957 S. 218(10)(d) repealed (1.4.2006) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 196, 199(1)(4), **Sch. 14 Pt. 4**; S.I. 2005/2925, **art. 11(2)(n)**

F958 S. 218(10)(dd) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 7 para. 9**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F959 S. 218(10)(e) and the preceding word "and" repealed (1.4.2005 for E.W.) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 190. 196, 199(1)(4), Sch. 13 para. 8, {Sch. 14 Pt. 7}; S.I. 2005/457, **art. 2(1)(b)**

F960 S. 218(11) inserted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 41(5)(b)**

Modifications etc. (not altering text)

C196 Ss. 210-219 applied (E.W.) (1.4.2020) by The Agricultural Wages (Wales) Order 2020 (S.I. 2020/347), arts. 1, **2(3)**

C197 Ss. 210-219 applied (22.4.2022) by The Agricultural Wages (Wales) Order 2022 (S.I. 2022/417), arts. 1(2), **2(3)**

C198 Ss. 210-219 applied (E.W.) (6.8.2022 with effect from 1.4.2022) by The Agricultural Wages (No. 2) (Wales) Order 2022 (S.I. 2022/794), arts. 1, **2(3)**

C199 Ss. 210-219 applied (1.4.2023) by The Agricultural Wages (Wales) Order 2023 (S.I. 2023/260), arts. 1, **2(3)**

C200 Ss. 210-219 applied (W.) (1.4.2024) by The Agricultural Wages (Wales) Order 2024 (S.I. 2024/390), arts. 1, **2(3)**

C202 S. 218(7) extended (temp. from 1.4.1999 to 1.9.1999) by S.I. 1999/638, **reg. 4**

219 Reinstatement or re-engagement of dismissed employee.

(1) Regulations made by the Secretary of State may make provision—

(a) for preserving the continuity of a person's period of employment for the purposes of this Chapter or for the purposes of this Chapter as applied by or under any other enactment specified in the regulations, or

(b) for modifying or excluding the operation of section 214 subject to the recovery of any such payment as is mentioned in that section,

in cases where [F961]. . . a dismissed employee is reinstated **[**[F962], re-engaged or otherwise re-employed**]** by his employer or by a successor or associated employer of that employer **[**[F963]in any circumstances prescribed by the regulations.**]**

[F964](2) . . . . . .

[F964](3) . . . . . .

[F964](4) . . . . . .

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Textual Amendments

F961 Words in s. 219(1) repealed (1.8.1998) by 1998 c. 8, s. 15, Sch. 1 para. 25(2)(a), **Sch. 2**; S.I. 1998/1658, art. 2(1), **Sch. 1**

F962 Words in s. 219(1) substituted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 25(2)(b)**; S.I. 1998/1658, art. 2(1), **Sch. 1**

F963 Words in s. 219(1) inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 25(2)(c)**; S.I. 1998/1658, art. 2(1), **Sch. 1**

F964 S. 219(2)-(4) repealed (1.8.1998) by 1998 c. 8, s. 15, Sch. 1 para. 25(3), **Sch. 2**; S.I. 1998/1658, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C196 Ss. 210-219 applied (E.W.) (1.4.2020) by The Agricultural Wages (Wales) Order 2020 (S.I. 2020/347), arts. 1, **2(3)**

C197 Ss. 210-219 applied (22.4.2022) by The Agricultural Wages (Wales) Order 2022 (S.I. 2022/417), arts. 1(2), **2(3)**

C198 Ss. 210-219 applied (E.W.) (6.8.2022 with effect from 1.4.2022) by The Agricultural Wages (No. 2) (Wales) Order 2022 (S.I. 2022/794), arts. 1, **2(3)**

C199 Ss. 210-219 applied (1.4.2023) by The Agricultural Wages (Wales) Order 2023 (S.I. 2023/260), arts. 1, **2(3)**

C200 Ss. 210-219 applied (W.) (1.4.2024) by The Agricultural Wages (Wales) Order 2024 (S.I. 2024/390), arts. 1, **2(3)**

C203 S. 219 restricted (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), arts. 1(1), **5(2)**

CHAPTER II

A WEEK'S PAY

Modifications etc. (not altering text)

C204 Pt. XIV Ch. II (ss. 220-229) applied (with modifications) (1.8.1998) by 1992 c. 52, **s. 87(8)** (as substituted (1.8.1998) by 1998 c. 8, **s. 6**; S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(2))
Pt. XIV Ch. II (ss. 220-229) applied (with modifications) (4.9.2000) by 1999 c. 26, **s. 11(4)** (with ss. 14, 15); S.I. 2000/2242, **art. 2(1)**
Pt. XIV Ch. II (ss. 220-229) applied (15.12.1999) by S.I. 1999/3312, **reg. 2(2)**
Pt. XIV Ch. II (ss. 220-229) applied (with modifications) (21.6.2000) by S.I. 2000/1410, **Pt. III reg. 6(4)** (as amended (retrospectively) by S.I. 2002/769, **regs. 1(1)**, 3(b) (with reg. 12))
Pt. XIV Ch. II (ss. 220-229) applied (E.W.) (21.5.2001) by S.I. 2001/1185, arts. 2, 3, **Sch. para. 122**

C205 Pt. XIV Ch. II (ss. 220-229) modified (15.12.1999) by S.I. 1999/3312, **reg. 22**

C206 Pt. XIV Ch. II (ss. 220-229) extended (15.1.2000) by S.I. 1999/3323, **reg. 26(2)**

C207 Pt. 14 Ch. 2 applied (with modifications) (1.10.2004) by Employment Act 2002 (c. 22), **ss. 38(6)(7)**, 55(2); S.I. 2004/1717, **art. 2(2)** (subject to art. 3)

C208 Pt. 14 Ch. 2 applied (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 1(2), **40(2)**

C209 Pt. 14 Ch. 2 applied (6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), regs. 1(2), **28(2)** (with reg. 3)

C210 Pt. 14 Ch. 2 applied (18.8.2006) by The European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), regs.1(2), **29(2)**

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C211 Pt. 14 Ch. 2 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, **Sch. 6 para. 11(4)** (with regs. 44-46, Sch. 7)
C212 Pt. 14 Ch. 2 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, **Sch. 6 para. 12(4)** (with regs. 44-46, Sch. 7)
C213 Pt. 14 Ch. 2 applied (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 44(2)**
C214 Pt. 14 Ch. 2 applied (1.10.2009) by The European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 (S.I. 2009/2401), **reg. 27(2)** (with reg. 41)
C215 Pt. 14 Ch. 2 modified (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 17(4)**

Introductory

220 Introductory.

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

Modifications etc. (not altering text)
C216 Ss. 220-224 applied (with modifications) (4.3.1998) by S.I. 1998/192, **reg. 37(1)**
C217 Ss. 220-228 applied (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **16(4)** (with reg. 21(5))

Employments with normal working hours

221 General.

(1) This section and sections 222 and 223 apply where there are normal working hours for the employee when employed under the contract of employment in force on the calculation date.

(2) Subject to section 222, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does not vary with the amount of work done in the period, the amount of a week's pay is the amount which is payable by the employer under the contract of employment in force on the calculation date if the employee works throughout his normal working hours in a week.

(3) Subject to section 222, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does vary with the amount of work done in the period, the amount of a week's pay is the amount of remuneration for the number of normal working hours in a week calculated at the average hourly rate of remuneration payable by the employer to the employee in respect of the period of twelve weeks ending—

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

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

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

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(5) This section is subject to sections 227 and 228.

Modifications etc. (not altering text)

C218 Ss. 220-224 applied (with modifications) (4.3.1998) by S.I. 1998/192, **reg. 37(1)**

C219 Ss. 221-224 applied (with modifications) (24.12.2003) by The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (S.I. 2003/3049), **reg. 11(4)**

C220 Ss. 221-224 applied (with modifications) (16.8.2004) by The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (S.I. 2004/1713), regs. 1, 4, **11(4)**

C221 Ss. 220-228 applied (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **16(4)** (with reg. 21(5))

C222 Ss. 221-224 applied (with modifications) by S.I. 1998/1833, reg. 16 (as amended) (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **10**

222 Remuneration varying according to time of work.

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

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

(3) For the purposes of subsection (2)—

(a) the average number of weekly hours is calculated by dividing by twelve the total number of the employee's normal working hours during the relevant period of twelve weeks, and

(b) the average hourly rate of remuneration is the average hourly rate of remuneration payable by the employer to the employee in respect of the relevant period of twelve weeks.

(4) In subsection (3) "the relevant period of twelve weeks" means the period of twelve weeks ending—

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

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

(5) This section is subject to sections 227 and 228.

Modifications etc. (not altering text)

C222 Ss. 221-224 applied (with modifications) by S.I. 1998/1833, reg. 16 (as amended) (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **10**

C223 Ss. 220-224 applied (with modifications) (4.3.1998) by S.I. 1998/192, **reg. 37(1)**

C224 Ss. 221-224 applied (with modifications) (24.12.2003) by The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (S.I. 2003/3049), **reg. 11(4)**

C225 Ss. 221-224 applied (with modifications) (16.8.2004) by The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (S.I. 2004/1713), regs. 1, 4, **11(4)**

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C226 Ss. 220-228 applied (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **16(4)** (with reg. 21(5))

223 Supplementary.

(1) For the purposes of sections 221 and 222, in arriving at the average hourly rate of remuneration, only—

(a) the hours when the employee was working, and

(b) the remuneration payable for, or apportionable to, those hours,

shall be brought in.

(2) If for any of the twelve weeks mentioned in sections 221 and 222 no remuneration within subsection (1)(b) was payable by the employer to the employee, account shall be taken of remuneration in earlier weeks so as to bring up to twelve the number of weeks of which account is taken.

(3) Where—

(a) in arriving at the average hourly rate of remuneration, account has to be taken of remuneration payable for, or apportionable to, work done in hours other than normal working hours, and

(b) the amount of that remuneration was greater than it would have been if the work had been done in normal working hours (or, in a case within section 234(3), in normal working hours falling within the number of hours without overtime),

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

Modifications etc. (not altering text)

C222 Ss. 221-224 applied (with modifications) by S.I. 1998/1833, reg. 16 (as amended) (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **10**

C227 Ss. 220-224 applied (with modifications) (4.3.1998) by S.I. 1998/192, **reg. 37(1)**

C228 Ss. 221-224 applied (with modifications) (24.12.2003) by The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (S.I. 2003/3049), **reg. 11(4)**

C229 Ss. 221-224 applied (with modifications) (16.8.2004) by The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (S.I. 2004/1713), regs. 1, 4, **11(4)**

C230 Ss. 220-228 applied (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **16(4)** (with reg. 21(5))

Employments with no normal working hours

224 Employments with no normal working hours.

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

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

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

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

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

(4) This section is subject to sections 227 and 228.

Modifications etc. (not altering text)

C222 Ss. 221-224 applied (with modifications) by S.I. 1998/1833, reg. 16 (as amended) (6.4.2020) by The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 (S.I. 2018/1378), regs. 1, **10**

C231 Ss. 220-224 applied (with modifications) (4.3.1998) by S.I. 1998/192, **reg. 37(1)**

C232 Ss. 221-224 applied (with modifications) (24.12.2003) by The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (S.I. 2003/3049), **reg. 11(4)**

C233 Ss. 221-224 applied (with modifications) (16.8.2004) by The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (S.I. 2004/1713), regs. 1, 4, **11(4)**

C234 Ss. 220-228 applied (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **16(4)** (with reg. 21(5))

The calculation date

225 Rights during employment.

(1) Where the calculation is for the purposes of section 30, the calculation date is—

(a) where the employee's contract has been varied, or a new contract entered into, in connection with a period of short-time working, the last day on which the original contract was in force, and

(b) otherwise, the day in respect of which the guarantee payment is payable.

(2) Where the calculation is for the purposes of section 53 or 54, the calculation date is the day on which the employer's notice was given.

(3) Where the calculation is for the purposes of section 56, the calculation date is the day of the appointment.

[[F965](3A) Where the calculation is for the purposes of section 57ZF, the calculation date is the day of the appointment.**]**

[[F966](3B) Where the calculation is for the purposes of section 57ZK or 57ZM, the calculation date is the day of the appointment.**]**

(4) Where the calculation is for the purposes of section 62, the calculation date is the day on which the time off was taken or on which it is alleged the time off should have been permitted.

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[F967(4A) Where the calculation is for the purposes of section 63B, the calculation date is the day on which the time off was taken or on which it is alleged the time off should have been permitted.**]**

[F968(4B) Where the calculation is for the purposes of section 63J, the calculation date is the day on which the section 63D application was made.**]**

(5) Where the calculation is for the purposes of section 69—

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

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

[F969(i) where the day before that on which the suspension begins falls during a period of ordinary or additional maternity leave, the day before the beginning of that period,**]**

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

[F970(6) Where the calculation is for the purposes of section 80I, the calculation date is the day on which the application under section 80F was made.**]**

Textual Amendments

F965 S. 225(3A) inserted (1.10.2014) by Children and Families Act 2014 (c. 6), **ss. 127(2)(c)**, 139(6); S.I. 2014/1640, art. 4(a)

F966 S. 225(3B) inserted (5.4.2015) by Children and Families Act 2014 (c. 6), **ss. 128(2)(d)**, 139(6); S.I. 2014/1640, art. 6(d)

F967 S. 225(4A) inserted (1.9.1999) by 1998 c. 30, s. 44(1), **Sch. 3 para. 14** (with s. 42(8)); S.I. 1999/987, **art. 2**

F968 S. 225(4B) inserted (6.4.2010 for certain purposes and otherwise prosp.) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), ss. 40, 269(4), **Sch. 1 para. 8**; S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)

F969 S. 225(5)(b)(i) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 39**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F970 S. 225(6) inserted (6.4.2003) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 45**; S.I. 2002/2866, **art. 2(3)**, Sch. 1 Pt. 3

Modifications etc. (not altering text)

C235 Ss. 220-228 applied (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **16(4)** (with reg. 21(5))

226 Rights on termination.

(1) Where the calculation is for the purposes of section 88 or 89, the calculation date is the day immediately preceding the first day of the period of notice required by section 86(1) or (2).

(2) Where the calculation is for the purposes of section 93, 117 or 125, the calculation date is—

(a) if the dismissal was with notice, the date on which the employer's notice was given, and

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(b) otherwise, the effective date of termination.

(3) Where the calculation is for the purposes of section **[**F971112, 119, 120 **[**F972, 121 or 124**]]** , the calculation date is—

F973(a) . . . . . .

(b) if by virtue of subsection (2) or (4) of section 97 a date later than the effective date of termination as defined in subsection (1) of that section is to be treated for certain purposes as the effective date of termination, the effective date of termination as so defined, and

(c) otherwise, the date specified in subsection (6).

(4) Where the calculation is for the purposes of section 147(2), the calculation date is the day immediately preceding the first of the four, or six, weeks referred to in section 148(2).

(5) Where the calculation is for the purposes of section 162, the calculation date is—

F973(a) . . . . . .

(b) if by virtue of subsection (5) of section 145 a date is to be treated for certain purposes as the relevant date which is later than the relevant date as defined by the previous provisions of that section, the relevant date as so defined, and

(c) otherwise, the date specified in subsection (6).

(6) The date referred to in subsections (3)(c) and (5)(c) is the date on which notice would have been given had—

(a) the contract been terminable by notice and been terminated by the employer giving such notice as is required by section 86 to terminate the contract, and

(b) the notice expired on the effective date of termination, or the relevant date,

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

Textual Amendments

F971 Words in s. 226(3) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 46**; S.I. 2004/2185, **art. 2**

F972 Words in s. 226(3) substituted (29.7.2013) by The Unfair Dismissal (Variation of the Limit of Compensatory Award) Order 2013 (S.I. 2013/1949), arts. 1, **3** (with art. 4)

F973 S. 226(3)(a)(5)(a) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 40, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

Modifications etc. (not altering text)

C236 Ss. 226-229 applied (with modifications) (4.3.1998) by S.I. 1998/192, **reg. 37(1)**

C237 Ss. 220-228 applied (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **16(4)** (with reg. 21(5))

Maximum amount of week's pay

227 Maximum amount.

(1) For the purpose of calculating—

[F974(zza) an award of compensation under section 63J(1)(b),**]**

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[F975(za) an award of compensation under section 80I(1)(b),**]**

(a) a basic award of compensation for unfair dismissal,

(b) an additional award of compensation for unfair dismissal,

[F976(ba) an award under section 112(5), or**]**

(c) a redundancy payment,

the amount of a week's pay shall not exceed **[**F977£700**]**.

F978(2) . . . . . .

F978(3) . . . . . .

F978(4) . . . . . .

Textual Amendments

F974 S. 227(1)(zza) inserted (6.4.2010 for certain purposes and otherwise prosp.) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), ss. 40, 269(4), **Sch. 1 para. 9**; S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)

F975 S. 227(1)(za) inserted (6.4.2003) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 47(2)**; S.I. 2002/2866, **art. 2(3)**, Sch. 1 Pt. 3

F976 S. 227(1)(ba) substituted (1.11.2004) for word by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 47(3)**; S.I. 2004/2822, **art. 2(a)**

F977 Sum in s. 227(1) substituted (6.4.2024) by The Employment Rights (Increase of Limits) Order 2024 (S.I. 2024/213), art. 1(2), **Sch.** (with art. 4)

F978 S. 227(2)-(4) repealed (17.12.1999) by 1999 c. 26, ss. 36(1)(3), 44, **Sch. 9(10)**; S.I. 1999/3374, art. 2(b)(c), **Sch.**

Modifications etc. (not altering text)

C238 Ss. 226-229 applied (with modifications) (4.3.1998) by S.I. 1998/192, **reg. 37(1)**

C239 Ss. 220-228 applied (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **16(4)** (with reg. 21(5))

C240 S. 227(1): power to amend conferred (17.12.1999) by 1999 c. 26, **s. 34(1)(e)**; S.I. 1999/3374, **art. 2(a)**
S. 227(1) applied (4.9.2000) by 1999 c. 26, **s. 11(5)** (with ss. 14, 15); S.I. 2000/2242, **art. 2(1)**

C241 S. 227(1) applied in part (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, **Sch. 6 para. 11(5)** (with regs. 44-46, Sch. 7)

C242 S. 227(1) applied in part (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, **Sch. 6 para. 12(5)** (with regs. 44-46, Sch. 7)

C243 S. 227(1) applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 17(5)**

C244 S. 227(1)(c) excluded (4.3.1998) by S.I. 1998/192, **reg. 37(1)**

Miscellaneous

228 New employments and other special cases.

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

(2) In determining that amount the **[**F979employment tribunal**]**—

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(a) shall apply as nearly as may be such of the preceding provisions of this Chapter as it considers appropriate, and

(b) may have regard to such of the considerations specified in subsection (3) as it thinks fit.

(3) The considerations referred to in subsection (2)(b) are—

(a) any remuneration received by the employee in respect of the employment in question,

(b) the amount offered to the employee as remuneration in respect of the employment in question,

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

(d) the remuneration received by other persons engaged in relevant comparable employment with other employers.

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

Textual Amendments

F979 Words in s. 228(2) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C245 Ss. 226-229 applied (with modifications) (4.3.1998) by S.I. 1998/192, **reg. 37(1)**

C246 Ss. 220-228 applied (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **16(4)** (with reg. 21(5))

229 Supplementary.

(1) In arriving at—

(a) an average hourly rate of remuneration, or

(b) average weekly remuneration,

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

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

Modifications etc. (not altering text)

C247 Ss. 226-229 applied (with modifications) (4.3.1998) by S.I. 1998/192, **reg. 37(1)**

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CHAPTER III

OTHER INTERPRETATION PROVISIONS

230 Employees, workers etc.

(1) In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

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

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

(4) In this Act "employer", in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

(5) In this Act "employment"—

(a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and

(b) in relation to a worker, means employment under his contract;

and "employed" shall be construed accordingly.

[[F980](6) This section has effect subject to sections 43K **[**[F981], 47B(3) and 49B(10)**]**; and for the purposes of Part XIII so far as relating to Part IVA or section 47B, " worker ", " worker's contract " and, in relation to a worker, " employer ", " employment " and " employed " have the extended meaning given by section 43K. **]**

[[F982](7) This section has effect subject to section 75K(3) and (5).**]**

Textual Amendments

F980 S. 230(6) inserted (2.7.1999) by 1998 c. 23, **s. 15(1)**; S.I. 1999/1547, **art. 2**

F981 Words in s. 230(6) substituted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 149(3)**, 164(1); S.I. 2015/1329, reg. 2(e)

F982 S. 230(7) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 41**; S.I. 2014/1640, art. 3(2)(j)

Modifications etc. (not altering text)

C248 S. 230(3)(b) applied (1.11.1998) by 1998 c. 39, **s. 24(5)**; S.I. 1998/2574, art. 2(1), **Sch. 1**

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231 Associated employers.

For the purposes of this Act any two employers shall be treated as associated if—

(a) one is a company of which the other (directly or indirectly) has control, or

(b) both are companies of which a third person (directly or indirectly) has control;

and "associated employer" shall be construed accordingly.

Modifications etc. (not altering text)

C249 S. 231 applied (8.12.2002) by The Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 (S.I. 2002/2822), **reg. 36(e)**

232 Shop workers.

(1) In this Act "shop worker" means an employee who, under his contract of employment, is or may be required to do shop work.

(2) In this Act "shop work" means work in or about a shop [F983]. . . on a day on which the shop is open for the serving of customers.

(3) Subject to subsection (4), in this Act "shop" includes any premises where any retail trade or business is carried on.

(4) Where premises are used mainly for purposes other than those of retail trade or business and would not (apart from subsection (3)) be regarded as a shop, only such part of the premises as—

(a) is used wholly or mainly for the purposes of retail trade or business, or

(b) is used both for the purposes of retail trade or business and for the purposes of wholesale trade and is used wholly or mainly for those two purposes considered together,

is to be regarded as a shop for the purposes of this Act.

(5) In subsection (4)(b) "wholesale trade" means the sale of goods for use or resale in the course of a business or the hire of goods for use in the course of a business.

(6) In this section "retail trade or business" includes—

(a) the business of a barber or hairdresser,

(b) the business of hiring goods otherwise than for use in the course of a trade or business, and

(c) retail sales by auction,

but does not include catering business or the sale at theatres and places of amusement of programmes, catalogues and similar items.

(7) In subsection (6) "catering business" means—

(a) the sale of meals, refreshments or **[**[F984]alcohol**]**[F985]... for consumption on the premises on which they are sold, or

(b) the sale of meals or refreshments prepared to order for immediate consumption off the premises;**[**[F986] except that in Scotland "alcohol" has the meaning given in section 2 of the Licensing (Scotland) Act 2005**]**

and in paragraph (a) **[**[F987]"alcohol" has the same meaning as in the Licensing Act 2003**]**

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(8) In this Act—

"notice period", in relation to an opted-out shop worker, has the meaning given by section 41(3),

"opted-out", in relation to a shop worker, shall be construed in accordance with section 41(1) and (2),

"opting-in notice", in relation to a shop worker, has the meaning given by section 36(6),

"opting-out notice", in relation to a shop worker, has the meaning given by section 40(2), and

"protected", in relation to a shop worker, shall be construed in accordance with section 36(1) to (5).

Extent Information

E9 S. 232, which previously extended to England and Wales only, extends to England and Wales and Scotland from 6.4.2004 by virtue of the amendment to s. 244(2) by Sunday Working (Scotland) Act 2003 (c. 18), **ss. 1(5)**, 3; S.I. 2004/958, **art. 2**

Textual Amendments

F983 Words in s. 232(2) repealed (6.4.2004) by Sunday Working (Scotland) Act 2003 (c. 18), **s. 1(3)(a)**; S.I. 2004/958, **art. 2**

F984 Words in s. 232(7)(a) substituted (24.11.2005) by Licensing Act 2003 (c. 17), ss. 198, 201, **Sch. 6 para. 114(a)** (with ss. 2(3), 15(2), 195); S.I. 2005/3056, **art. 2(2)**

F985 Words in s. 232(7)(a) omitted (S.) (5:00 a.m. on 1.9.2009) by virtue of The Licensing (Scotland) Act 2005 (Consequential Provisions) Order 2009 (S.S. I. 2009/248), art. 2(1), **Sch. 1 para. 7(a)**

F986 Words in s. 232(7) substituted (S.) (5:00 a.m. on 1.9.2009) by The Licensing (Scotland) Act 2005 (Consequential Provisions) Order 2009 (S.S.I. 2009/248), art. 2(1), **Sch. 1 para. 7(b)**

F987 Words in s. 232(7)(b) substituted (24.11.2005) by Licensing Act 2003 (c. 17), ss. 198, 201, **Sch. 6 para. 114(b)** (with ss. 2(3), 15(2), 195); S.I. 2005/3056, **art. 2(2)**

[F988 233 Betting workers

(1) In this Act " betting worker " means an employee who under his contract of employment is or may be required to do betting work.

(2) In this Act " betting work " means—

(a) work which consists of or includes dealing with betting transactions at a track in England or Wales and which is carried out for a person who holds a general betting operating licence, a pool betting operating licence or a horse-race pool betting operating licence, and

(b) work on premises in respect of which a betting premises licence has effect at a time when the premises are used for betting transactions.

(3) In subsection (2) " betting transactions " includes the collection or payment of winnings.

(4) Expressions used in this section and in the Gambling Act 2005 have the same meaning in this section as in that Act.

(5) In this Act—

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" notice period ", in relation to an opted-out betting worker, has the meaning given by section 41(3),

" opted-out ", in relation to a betting worker, shall be construed in accordance with section 41(1) and (2),

" opting-in notice ", in relation to a betting worker, has the meaning given by section 36(6),

" opting-out notice ", in relation to a betting worker, has the meaning given by section 40(2), and

" protected ", in relation to a betting worker, shall be construed in accordance with section 36(1) to (5). **]**

Extent Information

E10 S. 233, which previously extended to England and Wales only, extends to England and Wales and Scotland from 6.4.2004 by virtue of the amendment to s. 244(2) by Sunday Working (Scotland) Act 2003 (c. 18), **ss. 1(5)**, 3; S.I. 2004/958, **art. 2**

Textual Amendments

F988 S. 233 substituted (1.9.2007) by Gambling Act 2005 (c. 19), ss. 356, 358, **Sch. 16 para. 11** (with ss. 352, 354 and Sch. 16 para. 21); S.I. 2006/3272, **art. 2(4)** (with transitional provisions in Sch. 4) (as amended by S.I. 2007/1157, art. 3)

234 Normal working hours.

(1) Where an employee is entitled to overtime pay when employed for more than a fixed number of hours in a week or other period, there are for the purposes of this Act normal working hours in his case.

(2) Subject to subsection (3), the normal working hours in such a case are the fixed number of hours.

(3) Where in such a case—

(a) the contract of employment fixes the number, or minimum number, of hours of employment in a week or other period (whether or not it also provides for the reduction of that number or minimum in certain circumstances), and

(b) that number or minimum number of hours exceeds the number of hours without overtime,

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

Modifications etc. (not altering text)

C250 S. 234 applied (prosp.) by Education and Skills Act 2008 (c. 25), **ss. 5(5)**, 173(4) (with ss. 62(1)(5)(6), 64(1)(5)(6))

C251 S. 234 applied (28.6.2013) by Education and Skills Act 2008 (c. 25), **ss. 5(5)**, 173(4) (with ss. 62(1)(5)(6), 64(1)(5)(6)); S.I. 2013/1204, art. 2(e)

235 Other definitions.

(1) In this Act, except in so far as the context otherwise requires—

Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Employment Rights Act 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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

"basic award of compensation for unfair dismissal" shall be construed in accordance with section 118,

"business" includes a trade or profession and includes any activity carried on by a body of persons (whether corporate or unincorporated),

[F989"carer's leave" means leave under section 80J,**]**

"childbirth" means the birth of a living child or the birth of a child whether living or dead after twenty-four weeks of pregnancy,

"collective agreement" has the meaning given by section 178(1) and (2) of the M60Trade Union and Labour Relations (Consolidation) Act 1992,

"conciliation officer" means an officer designated by the Advisory, Conciliation and Arbitration Service under section 211 of that Act,

"dismissal procedures agreement" means an agreement in writing with respect to procedures relating to dismissal made by or on behalf of one or more independent trade unions and one or more employers or employers' associations,

"employers' association" has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992,

"expected week of childbirth" means the week, beginning with midnight between Saturday and Sunday, in which it is expected that childbirth will occur,

"guarantee payment" has the meaning given by section 28,

"independent trade union" means a trade union which—

(a) is not under the domination or control of an employer or a group of employers or of one or more employers' associations, and

(b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatever) tending towards such control,

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

[F990 " local authority ", in relation to the placement of children under section 22C of the Children Act 1989, has the same meaning as in that Act (see section 105(1) of that Act);

" local authority foster parent " has the same meaning as in the Children Act 1989 (see **[**F991section 22C(12) **[**F991section 105(1)**]]** of that Act);**]**

[F992"parental bereavement leave" means leave under section 80EA;**]**

[F993 " paternity leave " means leave under section 80A or 80B,**]**

F994 . . .

F994 . . .

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

(a) his status as an employee,

(b) the nature of his work, and

(c) his terms and conditions of employment,

[F995 "protected disclosure" has the meaning given by section 43A,**]**

"redundancy payment" has the meaning given by Part XI,

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"relevant date" has the meaning given by sections 145 and 153,

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

[F996 "section 63D application" has the meaning given by section 63D(2);**]**

[F997"shared parental leave" means leave under section 75E or 75G,**]**

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

"successor", in relation to the employer of an employee, means (subject to subsection (2)) a person who in consequence of a change occurring (whether by virtue of a sale or other disposition or by operation of law) in the ownership of the undertaking, or of the part of the undertaking, for the purposes of which the employee was employed, has become the owner of the undertaking or part,

"trade union" has the meaning given by section 1 of the M61 Trade Union and Labour Relations (Consolidation) Act 1992,

"week"—

(a) in Chapter I of this Part means a week ending with Saturday, and

(b) otherwise, except in **[**F998sections **[**F999 27C,**][**F1000 75F, 75H,**]** 80A, 80B **[**F1001, 80EA**][**F1002, 80J**]** and 86**]**, means, in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day and, in relation to any other employee, a week ending with Saturday.

(2) The definition of "successor" in subsection (1) has effect (subject to the necessary modifications) in relation to a case where—

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

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

as it has effect where the previous owner and the new owner are wholly different persons.

[F1003(2A) For the purposes of this Act a contract of employment is a "limited-term contract" if—

(a) the employment under the contract is not intended to be permanent, and

(b) provision is accordingly made in the contract for it to terminate by virtue of a limiting event.

(2B) In this Act, "limiting event", in relation to a contract of employment means—

(a) in the case of a contract for a fixed-term, the expiry of the term,

(b) in the case of a contract made in contemplation of the performance of a specific task, the performance of the task, and

(c) in the case of a contract which provides for its termination on the occurrence of an event (or the failure of an event to occur), the occurrence of the event (or the failure of the event to occur).**]**

(3) References in this Act to redundancy, dismissal by reason of redundancy and similar expressions shall be construed in accordance with section 139.

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(4) In sections 136(2), 154 and 216(3) and paragraph 14 of Schedule 2 "lock-out" means —

(a) the closing of a place of employment,

(b) the suspension of work, or

(c) 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 persons employed by the employer, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment.

(5) In sections 91(2), 140(2) and (3), 143(1), 144(2) and (3), 154 and 216(1) and (2) and paragraph 14 of Schedule 2 "strike" means—

(a) the cessation of work by a body of employed persons acting in combination, or

(b) a concerted refusal, or a refusal under a common understanding, of any number of employed persons to continue to work for an employer in consequence of a dispute,

done as a means of compelling their employer or any employed person or body of employed persons, or to aid other employees in compelling their employer or any employed person or body of employed persons, to accept or not to accept terms or conditions of or affecting employment.

Textual Amendments

F989 Words in s. 235(1) inserted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 17(a)**; S.I. 2023/1283, reg. 2

F990 Definitions in s. 235(1) inserted (5.4.2015) by Children and Families Act 2014 (c. 6), **ss. 128(2)(e)**, 139(6); S.I. 2014/1640, art. 6(d)

F991 Words in s. 235(1) substituted (E.W.) (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **148**

F992 Words in s. 235(1) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 28(a)**; S.I. 2020/45, reg. 2

F993 Definition in s. 235(1) substituted (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 42(a)**; S.I. 2014/1640, art. 7(u) (with art. 16)

F994 S. 235(1): definitions of "maternity leave" and "notified day of return" repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 41, **Sch. 9(2)**; S.I. 1999/2830, art. 2(2)(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with Sch. 3 paras. 10, 11)

F995 Definition of "protected disclosure" in s. 235 inserted (2.7.1999) by 1998 c. 23, **s. 15(2)**; S.I. 1999/1547, **art. 2**

F996 S. 235(1): definition inserted (6.4.2010 for certain purposes and otherwsie prosp.) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), ss. 40, 269(4), **Sch. 1 para. 10**; S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)

F997 Definition in s. 235(1) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 42(c)**; S.I. 2014/1640, art. 3(2)(k)

F998 Words in s. 235(1) substituted (8.12.2002) by Employment Act 2002 (c. 22), s. 55(2), 53, Sch. 7 para. 48(3); The Employment Act 2002 (Commencement No. 3 and Transitional and Saving Provisions) Order 2002 (S.I. 2002/2866), art. 2(2), **Sch. 1 Pt. 2**

F999 Word in s. 235(1) inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 12(2)(d)**, 14(2); S.I. 2023/876, reg. 3(c)

F1000 Words in s. 235(1) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 42(b)**; S.I. 2014/1640, art. 3(2)(k)

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F1001 Word in s. 235(1) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 28(b)**; S.I. 2020/45, reg. 2

F1002 Word in s. 235(1) inserted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 17(b)**; S.I. 2023/1283, reg. 2

F1003 S. 235(2A)(2B) inserted (1.10.2002) by The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(18)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

Marginal Citations

M60 1992 c. 52.

M61 1992 c. 52.

PART XV

GENERAL AND SUPPLEMENTARY

General

236 Orders and regulations. E+W+S

(1) Any power conferred by any provision of this Act to make any order (other than an Order in Council) or regulations is exercisable by statutory instrument.

(2) A statutory instrument made under any power conferred by this Act to make an Order in Council or other order or regulations, except—

(a) an Order in Council or other order **[**F1004or regulations**]** to which subsection (3) applies,

[F1005(aa) regulations under section 27R,**]**

(b) an order under section 35 or Part II of Schedule 2, or

[F1006(c) an order made in accordance with section 208,**]**

is subject to annulment in pursuance of a resolution of either House of Parliament.

(3) No recommendation shall be made to Her Majesty to make an Order in Council under section 192(3), and no order **[**F1004or regulations**]** shall be made under section **[**F100727B,**][**F100827F, 27S,**][**F100941A that include provision under subsection (4)(c) of that section,**][**F1010 43FA (but see subsection (3A)),**][**F1011 43K(4),**][**F1012 47C, **[**F1013 49B,**][**F1014 49D,**][**F1015 63D, 63F(7),**]** 71, 72, 73, **[**F1016 75A, 75B,**][**F1017 75E, 75F(16), 75G, 75H(16), (17) or (18)**]** 76, **[**F1018**[**F1019 80A, F1020... 80B **[**F1021, 80EA**]**, F1022... 80G**]][**F1023 80J,**]** 99,**][**F1024 120(2), 124(2)**][**F1025, 125(7) or 205A(11) or (12)**]** or (subject to subsection (4)) section 209, unless a draft of the Order in Council **[**F1026, order or regulations**]** has been laid before Parliament and approved by a resolution of each House of Parliament.

[F1027(3A) Subsection (3) does not apply to regulations under section 43FA that contain only the provision mentioned in section 43FA(2), (3) or (4).**]**

(4) Subsection (3) does not apply to an order under section 209(1)(b) which specifies only provisions contained in Part XI.

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(5) Any power conferred by this Act which is exercisable by statutory instrument includes power to make such incidental, supplementary or transitional provisions as appear to the authority exercising the power to be necessary or expedient.

Extent Information

E11 This version of this provision extends to England and Wales and Scotland only; a separate version has been created for Northern Ireland only

Textual Amendments

F1004 Words in s. 236(2)(a)(3) inserted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 42(2)(3)(a)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F1005 S. 236(2)(aa) inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 12(2)(e)(i)**, 14(2); S.I. 2023/876, reg. 3(c)

F1006 S. 236(2)(c) repealed (prosp.) by 1999 c. 26, ss. 44, 45(1), **Sch. 9(10)**

F1007 Word in s. 236(3) inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 153(3)**, 164(1) (with s. 153(2)); S.I. 2015/1329, reg. 2(g)

F1008 Words in s. 236(3) inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 12(2)(e)(ii)**, 14(2); S.I. 2023/876, reg. 3(c)

F1009 Words in s. 236(3) inserted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 11**

F1010 Words in s. 236(3) inserted (1.1.2016) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 148(3)(a)**, 164(1); S.I. 2015/2029, reg. 2(a)

F1011 Words in s. 236(3) inserted (E.W.S.) (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 20(8)**, 103(2) (with s. 24(6))

F1012 Words in s. 236(3) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 42(3)(b)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F1013 Word in s. 236(3) inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 149(4)**, 164(1); S.I. 2015/1329, reg. 2(e)

F1014 Word in s. 236(3) inserted (E.W.S.) (24.7.2023) by Protection from Redundancy (Pregnancy and Family Leave) Act 2023 (c. 17), **ss. 1(8)**, 3(2)

F1015 Words in s. 236(3) inserted (6.4.2010 for certain purposes and otherwise prosp.) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), ss. 40, 269(4), **Sch. 1 para. 11**; S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)

F1016 Words in s. 236(3) inserted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 49(2)**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2

F1017 Words in s. 236(3) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 117(2)**, 139(6); S.I. 2014/1640, art. 3(1)(a)

F1018 Words in s. 236(3) inserted (E.W.S.) (8.12.2002 for certain purposes and 6.4.2003 otherwise) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 49(3)**; S.I. 2002/2866, **art. 2(2)(3)**, Sch. 1 Pts. 2, 3

F1019 Words in s. 236(3) substituted (E.W.S.) (3.3.2010) by Work and Families Act 2006 (c. 18), ss. 11, 19, **Sch. 1 para. 44**; S.I. 2010/495, **art. 3(c)**

F1020 Word in s. 236(3) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 43(a)**; S.I. 2014/1640, art. 7(v) (with art. 16)

F1021 Word in s. 236(3) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 3**; S.I. 2020/45, reg. 2

F1022 Word in s. 236(3) repealed (5.4.2015) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 7 para. 43(b)**; S.I. 2014/1640, art. 7(v) (with art. 16)

F1023 Word in s. 236(3) inserted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 3**; S.I. 2023/1283, reg. 2

F1024 Words in s. 236(3) repealed (prosp.) by 1999 c. 26, ss. 44, 45(1), **Sch. 9(10)**

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F1025 Words in s. 236(3) substituted (E.W.S.) (1.9.2013) by Growth and Infrastructure Act 2013 (c. 27), **ss. 31(6)**, 35(1); S.I. 2013/1766, art. 2

F1026 Words in s. 236(3) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 42(3)(c)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F1027 S. 236(3A) inserted (1.1.2016) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 148(3)(b)**, 164(1); S.I. 2015/2029, reg. 2(a)

236 Orders and regulations. N.I.

(1) Any power conferred by any provision of this Act to make any order (other than an Order in Council) or regulations is exercisable by statutory instrument.

(2) A statutory instrument made under any power conferred by this Act to make an Order in Council or other order or regulations, except—

(a) an Order in Council or other order **[**F1004or regulations**]** to which subsection (3) applies,

[F1005(aa) regulations under section 27R,**]**

(b) an order under section 35 or Part II of Schedule 2, or

[F1006(c) an order made in accordance with section 208,**]**

is subject to annulment in pursuance of a resolution of either House of Parliament.

(3) No recommendation shall be made to Her Majesty to make an Order in Council under section 192(3), and no order **[**F1004or regulations**]** shall be made under section **[**F1007**]**27B,**][**F1008**]**27F, 27S,**][**F1009**]**41A that include provision under subsection (4)(c) of that section,**][**F1012**]**47C, **[**F1013**]**49B,**][**F1015**]**63D, 63F(7),**]** 71, 72, 73, **[**F1016**]**75A, 75B,**][**F1017**]**75E, 75F(16), 75G, 75H(16), (17) or (18)**]** 76, **[**F1018**]**80A, 80B **[**F1021**]**, 80EA**]**, 80G,**][**F1023**]**80J,**]** 99,**][**F1024**]**120(2), 124(2)**]** or 125(7) or (subject to subsection (4)) section 209, unless a draft of the Order in Council **[**F1026**]**, order or regulations**]** has been laid before Parliament and approved by a resolution of each House of Parliament.

[F1027(3A) Subsection (3) does not apply to regulations under section 43FA that contain only the provision mentioned in section 43FA(2), (3) or (4).**]**

(4) Subsection (3) does not apply to an order under section 209(1)(b) which specifies only provisions contained in Part XI.

(5) Any power conferred by this Act which is exercisable by statutory instrument includes power to make such incidental, supplementary or transitional provisions as appear to the authority exercising the power to be necessary or expedient.

Extent Information

E12 This version of this provision extends to Northern Ireland only; a separate version has been created for England and Wales and Scotland only

Textual Amendments

F1004 Words in s. 236(2)(a)(3) inserted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 42(2)(3)(a)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F1005 S. 236(2)(aa) inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 12(2)(e)(i)**, 14(2); S.I. 2023/876, reg. 3(c)

F1006 S. 236(2)(c) repealed (prosp.) by 1999 c. 26, ss. 44, 45(1), **Sch. 9(10)**

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F1007 Word in s. 236(3) inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 153(3)**, 164(1) (with s. 153(2)); S.I. 2015/1329, reg. 2(g)
F1008 Words in s. 236(3) inserted (31.7.2023 for specified purposes) by Employment (Allocation of Tips) Act 2023 (c. 13), **ss. 12(2)(e)(ii)**, 14(2); S.I. 2023/876, reg. 3(c)
F1009 Words in s. 236(3) inserted (4.5.2016 for specified purposes) by Enterprise Act 2016 (c. 12), s. 44(1)(d), **Sch. 5 para. 11**
F1012 Words in s. 236(3) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 42(3)(b)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)
F1013 Word in s. 236(3) inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 149(4)**, 164(1); S.I. 2015/1329, reg. 2(e)
F1015 Words in s. 236(3) inserted (6.4.2010 for certain purposes and otherwise prosp.) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), ss. 40, 269(4), **Sch. 1 para. 11**; S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)
F1016 Words in s. 236(3) inserted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 49(2)**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2
F1017 Words in s. 236(3) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 117(2)**, 139(6); S.I. 2014/1640, art. 3(1)(a)
F1018 Words in s. 236(3) inserted (E.W.S.) (8.12.2002 for certain purposes and 6.4.2003 otherwise) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 49(3)**; S.I. 2002/2866, **art. 2(2)(3)**, Sch. 1 Pts. 2, 3
F1021 Word in s. 236(3) inserted (18.1.2020) by Parental Bereavement (Leave and Pay) Act 2018 (c. 24), s. 2(2), **Sch. para. 3**; S.I. 2020/45, reg. 2
F1023 Word in s. 236(3) inserted (4.12.2023) by Carer's Leave Act 2023 (c. 18), s. 3(3), **Sch. para. 3**; S.I. 2023/1283, reg. 2
F1024 Words in s. 236(3) repealed (prosp.) by 1999 c. 26, ss. 44, 45(1), **Sch. 9(10)**
F1026 Words in s. 236(3) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 42(3)(c)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)
F1027 S. 236(3A) inserted (1.1.2016) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 148(3)(b)**, 164(1); S.I. 2015/2029, reg. 2(a)

237 Financial provisions.

There shall be paid out of the National Insurance Fund into the Consolidated Fund sums equal to the amount of—

(a) any expenses incurred by the Secretary of State in consequence of Part XI, and

(b) any expenses incurred by the Secretary of State (or by persons acting on his behalf) in exercising his functions under Part XII.

Reciprocal arrangements

238 Reciprocal arrangements with Northern Ireland.

(1) If provision is made by Northern Ireland legislation for purposes corresponding to any of the purposes of this Act, other than an excepted provision, the Secretary of State may, with the consent of the Treasury, make reciprocal arrangements with the appropriate Northern Ireland authority for co-ordinating the relevant provisions of this Act with the corresponding provisions of the Northern Ireland legislation so as to secure that they operate, to such extent as may be provided by the arrangements, as a single system.

(2) The following provisions of this Act are excepted provisions for the purposes of subsection (1)—

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(a) in Part I, sections 1 to 7,
(b) Parts II and IV,
(c) in Part V, sections 45 and 46,
(d) in Part VI, sections 58 to 60,
(e) in Part IX, sections 86 to 91, and
(f) in Part X, sections 101 and 102.

(3) The Secretary of State may make regulations for giving effect to any arrangements made under subsection (1).

(4) Regulations under subsection (3) may make different provision for different cases.

(5) Such regulations may provide that the relevant provisions of this Act have effect in relation to persons affected by the arrangements subject to such modifications and adaptations as may be specified in the regulations, including provision—
(a) for securing that acts, omissions and events having any effect for the purposes of the Northern Ireland legislation have a corresponding effect for the purposes of this Act (but not so as to confer a right to double payment in respect of the same act, omission or event), and
(b) for determining, in cases where rights accrue both under this Act and under the Northern Ireland legislation, which of those rights is available to the person concerned.

(6) In this section "the appropriate Northern Ireland authority" means such authority as may be specified in the Northern Ireland legislation.

239 Reciprocal arrangements with Isle of Man.

(1) If an Act of Tynwald is passed for purposes similar to the purposes of Part XI, the Secretary of State may, with the consent of the Treasury, make reciprocal arrangements with the appropriate Isle of Man authority for co-ordinating the provisions of Part XI with the corresponding provisions of the Act of Tynwald so as to secure that they operate, to such extent as may be provided by the arrangements, as a single system.

(2) For the purposes of giving effect to any arrangements made under subsection (1) the Secretary of State may, in conjunction with the appropriate Isle of Man authority, make any necessary financial adjustments between the National Insurance Fund and any fund established under the Act of Tynwald.

(3) The Secretary of State may make regulations for giving effect to any arrangements made under subsection (1).

(4) Regulations under subsection (3) may provide that Part XI has effect in relation to persons affected by the arrangements subject to such modifications and adaptations as may be specified in the regulations, including provision—
(a) for securing that acts, omissions and events having any effect for the purposes of the Act of Tynwald have a corresponding effect for the purposes of Part XI (but not so as to confer a right to double payment in respect of the same act, omission or event), and
(b) for determining, in cases where rights accrue both under this Act and under the Act of Tynwald, which of those rights is available to the person concerned.

(5) In this section "the appropriate Isle of Man authority" means such authority as may be specified in an Act of Tynwald.

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Final provisions

240 Consequential amendments.

Schedule 1 (consequential amendments) shall have effect.

241 Transitionals, savings and transitory provisions.

Schedule 2 (transitional provisions, savings and transitory provisions) shall have effect.

242 Repeals and revocations.

The enactments specified in Part I of Schedule 3 are repealed, and the instruments specified in Part II of that Schedule are revoked, to the extent specified in the third column of that Schedule.

243 Commencement.

This Act shall come into force at the end of the period of three months beginning with the day on which it is passed.

244 Extent.

(1) Subject to the following provisions, this Act extends to England and Wales and Scotland but not to Northern Ireland.

(2) **[**F1028Sections 36(2) and (4), 37(1) and (5), 38 and 39**]** extend to England and Wales only.

(3) Sections 201 and 238 (and sections 236 and 243, this section and section 245) extend to Northern Ireland (as well as to England and Wales and Scotland).

(4) Sections 240 and 242 and Schedules 1 and 3 have the same extent as the provisions amended or repealed by this Act.

Textual Amendments

F1028 Words in s. 244(2) substituted (6.4.2004) by Sunday Working (Scotland) Act 2003 (c. 18), **s. 1(5)**; S.I. 2004/958, **art. 2**

245 Short title.

This Act may be cited as the Employment Rights Act 1996.

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Changes and effects yet to be applied to :

- Pt. 5A heading words omitted by 2017 c. 16 s. 32(2)
- Pt. 8A heading substituted by 2023 c. 46 s. 1(2)
- s. 27(1)(ce) inserted by 2023 c. 20 Sch. para. 21
- s. 43K(1)(ba) words omitted by 2013 c. 24 s. 20(2)(c) (This amendment not applied to legislation.gov.uk. The insertion of s. 43K(1)(ca) and word by S.I. 2006/1056, Sch. para. 7 is to come into force on the day on which 2005 asp 13, s. 20 comes into force and that provision has never been brought into force)
- s. 48(2) words substituted by 2020 c. 7 Sch. 7 para. 10(b)
- s. 48(2) words substituted by 2023 c. 46 Sch. para. 6(4)
- s. 48(2A) words inserted by 2023 c. 46 Sch. para. 6(5)
- s. 49(1) words substituted by 2020 c. 7 Sch. 7 para. 11(a)
- s. 49(1) words substituted by 2023 c. 46 Sch. para. 7(2)
- s. 49(1A) words inserted by 2023 c. 46 Sch. para. 7(3)
- s. 49B heading words inserted by 2017 c. 16 s. 32(3)
- s. 50(8)(a) words omitted by 2012 c. 7 Sch. 14 para. 69
- s. 58(3)(b) words repealed by 2004 c. 35 Sch. 13
- s. 75I(3)(e) word omitted by 2023 c. 20 Sch. para. 23(a)
- s. 80F(2)(a) word inserted by 2023 c. 46 Sch. para. 8(2)(a)
- s. 80F(2)(c) and word omitted by 2023 c. 46 Sch. para. 8(2)(b)
- s. 80F(4) substituted by 2023 c. 46 Sch. para. 8(3)
- s. 80F(4) substituted for s. 80F(4)-(4B) by 2023 c. 46 Sch. para. 22(3)
- s. 80EB(2)(d) word omitted by 2023 c. 20 Sch. para. 25(a)
- s. 88(1)(c) words inserted by 2020 c. 7 Sch. 7 para. 12
- s. 88(1)(c) words inserted by 2023 c. 20 Sch. para. 26(2)
- s. 88(2) words inserted by 2023 c. 20 Sch. para. 26(3)
- s. 89(3)(b) words inserted by 2020 c. 7 Sch. 7 para. 13
- s. 89(3)(b) words inserted by 2023 c. 20 Sch. para. 27(2)
- s. 89(4) words inserted by 2023 c. 20 Sch. para. 27(3)
- s. 105(1)(c) word substituted by 2008 c. 30 s. 57(3)
- s. 124(1A) word inserted by 2020 c. 7 Sch. 7 para. 17
- s. 192(2)(e) word inserted by 2023 c. 46 Sch. para. 12
- s. 192(2)(ab) repealed by 2002 c. 21 Sch. 6
- s. 194(2)(c) word inserted by 2008 c. 25 s. 39(5)
- s. 194(2)(c) words substituted by 2023 c. 46 Sch. para. 13
- s. 195(2)(c) word inserted by 2008 c. 25 s. 39(6)
- s. 195(2)(c) words substituted by 2023 c. 46 Sch. para. 14
- s. 199(2) word inserted by 2023 c. 46 Sch. para. 15
- s. 201(1) substituted (prosp.) by 1998 c. 17 s. 50Sch. 4 para. 40(2)
- s. 201(5) repealed (prosp.) by 1998 c. 17 s. 5051Sch. 4 para. 40(3)Sch. 5 Pt. 1
- s. 203(1)(a) words inserted by 2020 c. 7 Sch. 7 para. 18
- s. 215(5) amended by 1998 c. 14 Sch. 7 para. 148 (This amendment not applied to legislation.gov.uk. Sch. 7 para. 148 repealed (1.4.1999) without ever being in force by 1999 c. 2, s. 28(3), Sch. 10 Pt. 1 (with Sch. 8); S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6))
- s. 218(10)(c) words omitted by 2012 c. 7 Sch. 14 para. 70
- s. 230(6) words substituted by 2017 c. 16 s. 32(5)
- s. 235(1) word inserted by 2023 c. 20 Sch. para. 29(b)
- s. 235(1) words inserted by 2023 c. 20 Sch. para. 29(a)
- s. 235(1) words inserted by 2023 c. 46 Sch. para. 19
- s. 236(3) word inserted by 2017 c. 16 s. 32(6)

- s. 236(3) word inserted by 2023 c. 20 Sch. para. 3
- s. 236(3) words inserted by 2023 c. 46 Sch. para. 20
- Sch. 1 para. 60(2) by 2000 c. 38 s. 274Sch. 31 Pt. 4
- Sch. 1 para. 56(10)(11) repealed by 1999 c. 26 Sch. 9(10)
- Sch. 1 para. 67(2)(b) and word repealed by 2009 c. 24 Sch. 7 Pt. 3

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 8 Ch. 5 inserted by 2023 c. 20 Sch. para. 2
- Pt. 8A Ch. 1 heading inserted by 2023 c. 46 s. 1(3)
- Pt. 8A Ch. 2 inserted by 2023 c. 46 s. 1(4)
- Pt. 8A Ch. 3 inserted by 2023 c. 46 s. 2
- Pt. 8A Ch. 4 inserted by 2023 c. 46 s. 3(2)
- s. 43K(1)(ca) and word omitted by 2013 c. 24 s. 20(5) (This amendment not applied to legislation.gov.uk. The insertion of s. 43K(1)(ba) by S.I. 2006/1056, Sch. para. 7 is to come into force on the day on which 2005 asp 13, s. 20 comes into force and that provision has never been brought into force)
- s. 43K(2)(ba) omitted by 2013 c. 24 s. 20(6) (This amendment not applied to legislation.gov.uk. The insertion of s. 43K(1)(ba) by S.I. 2006/1056, Sch. para. 7 is to come into force on the day on which 2005 asp 13, s. 20 comes into force and that provision has never been brought into force)
- s. 47C(2)(cc) inserted by 2023 c. 20 Sch. para. 22
- s. 47H inserted by 2020 c. 7 Sch. 7 para. 9
- s. 47AA inserted by 2008 c. 25 s. 37
- s. 47EA inserted by 2023 c. 46 Sch. para. 4
- s. 47EB inserted by 2023 c. 46 Sch. para. 5
- s. 48(1C) inserted by 2020 c. 7 Sch. 7 para. 10(a)
- s. 48(1C) inserted by 2023 c. 46 Sch. para. 6(2)
- s. 48(1D) inserted by 2023 c. 46 Sch. para. 6(3)
- s. 49(8) inserted by 2020 c. 7 Sch. 7 para. 11(b)
- s. 49(8) inserted by 2023 c. 46 Sch. para. 7(4)
- s. 49C inserted by 2017 c. 16 s. 32(4)
- s. 75I(3)(g) and word inserted by 2023 c. 20 Sch. para. 23(b)
- s. 80C(2)(bc) inserted by 2023 c. 20 Sch. para. 24(2)
- s. 80C(4)(bc) inserted by 2023 c. 20 Sch. para. 24(3)
- s. 80EB(2)(f) and word inserted by 2023 c. 20 Sch. para. 25(b)
- s. 99(3)(cc) inserted by 2023 c. 20 Sch. para. 28
- s. 101B inserted by 2008 c. 25 s. 38
- s. 104H inserted by 2020 c. 7 Sch. 7 para. 14
- s. 104CA inserted by 2023 c. 46 Sch. para. 9
- s. 105(4B) inserted by 2008 c. 25 s. 39(3)
- s. 105(7BC) inserted by 2020 c. 7 Sch. 7 para. 15
- s. 105(7BAA) inserted by 2023 c. 46 Sch. para. 10
- s. 108(3)(gia) inserted by 2023 c. 46 Sch. para. 11
- s. 108(3)(de) inserted by 2008 c. 25 s. 39(4)
- s. 108(3)(gn) inserted by 2020 c. 7 Sch. 7 para. 16
- s. 110(3A) inserted by 2002 c. 22 s. 44
- s. 163(6) inserted by 2022 c. 35 Sch. 5 para. 27
- s. 205A(2)(ba) inserted by 2023 c. 46 Sch. para. 16(2)
- s. 205A(8A) inserted by 2023 c. 46 Sch. para. 16(3)
- s. 225(7)(8) inserted by 2023 c. 46 Sch. para. 17
- s. 227(1)(zb)(zc) inserted by 2023 c. 46 Sch. para. 18