



Growth and Infrastructure Act 2013

2013 CHAPTER 27

Economic measures

31 Employee shareholders

(1) After section 205 of the Employment Rights Act 1996 insert—

“Employee shareholder status

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

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- (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 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.

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- (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
 - (b) a European Public Limited-Liability Company (or Societas Europaea) 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).”

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(2) After section 47F of that Act insert—

“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.”
- (3) In section 48(1) of that Act (presentation of complaint to employment tribunal), for “or 47F” substitute “ , 47F or 47G ”.
- (4) After section 104F of that Act insert—

“104G Employee 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).”

- (5) In section 108(3) of that Act (exceptions to provision on qualifying period of employment), after paragraph (gl) insert—
“(gm) section 104G applies.”.
- (6) In section 236(3) of that Act (orders and regulations subject to affirmative resolution procedure), for “or 125(7)” substitute “ , 125(7) or 205A(11) or (12) ”.

Commencement Information

II S. 31 in force at 1.9.2013 by S.I. 2013/1766, art. 2

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