



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART XIII

#### MISCELLANEOUS

### 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—
  - (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, [<sup>F1</sup>sections [<sup>F2</sup>43M,] 44, 45A [<sup>F3</sup>, 47 and 47C]], and sections 48 and 49 so far as relating to those sections,
  - (c) in Part VI, sections [<sup>F4</sup>55 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,
  - (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—

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- [<sup>F5</sup>(i) by section [<sup>F6</sup>98B,] 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 [<sup>F7</sup>(2A),](3) or (6) of that section, [<sup>F8</sup>or 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

- F1** Words in s. 202(2)(b) substituted (1.10.1998) by S.I. 1998/1833, **reg. 31(5)**
- F2** 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)
- F3** 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)
- F4** 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)
- F5** 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)
- F6** 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)
- F7** 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)
- F8** Words in s. 202(2)(g)(ii) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(6)(b)**

#### *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 [<sup>F9</sup>employment 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) <sup>F10</sup> .....
  - (e) does not apply to any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under [<sup>F11</sup>any of sections 18A to 18C] of [<sup>F9</sup>the <sup>M1</sup>Employment Tribunals Act 1996], and

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- (f) does not apply to any agreement to refrain from instituting or continuing<sup>F12</sup> . . . any proceedings within

[<sup>F13</sup>the following provisions of section 18(1) of the Employment Tribunals Act 1996 (cases where conciliation available)—

- (i) [<sup>F14</sup>paragraph (b)] (proceedings under this Act),
- (ii) [<sup>F15</sup>paragraph (l)] (proceedings arising out of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000,)] if the conditions regulating [<sup>F16</sup>settlement] agreements under this Act are satisfied in relation to the agreement
- (iii) [<sup>F17</sup>[<sup>F18</sup>paragraph (m)] (proceedings arising out of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002),
- (iv) [<sup>F19</sup>...]

(3) For the purposes of subsection (2)(f) the conditions regulating [<sup>F16</sup>settlement] agreements under this Act are that—

- (a) the agreement must be in writing,
- (b) the agreement must relate to the particular [<sup>F20</sup>proceedings],
- (c) the employee or worker must have received [<sup>F21</sup>advice 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 [<sup>F9</sup>employment tribunal],
- (d) there must be in force, when the adviser gives the advice, a [<sup>F22</sup>contract 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 [<sup>F16</sup>settlement] agreements under this Act are satisfied.

[<sup>F23</sup>(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.

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- ( 4 ) In subsection (3A)(a) “ qualified lawyer ” means—
- (a) as respects England and Wales, [<sup>F24</sup>a 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.]
- [<sup>F25</sup>(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

- F9** 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**
- F10** 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)
- F11** 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))
- F12** 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**
- F13** 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**
- F14** 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)**
- F15** 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)**
- F16** 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)
- F17** 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)
- F18** 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)**
- F19** 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)**
- F20** 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**
- F21** 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**
- F22** 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**
- F23** 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**

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- F24** 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)
- F25** 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)**

- C1** S. 203 applied (1.7.2000) by [S.I. 2000/1551, reg. 9](#)
- C2** 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)
- C3** 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](#)
- C4** S. 203 applied (1.10.2011) by [The Agency Workers Regulations 2010 \(S.I. 2010/93\)](#), [reg. 15](#)
- C5** 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**

- M1** [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.

<sup>F26</sup>(2) .....

**Textual Amendments**

- F26** 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, section 92, Part X and Part XII is, where provision is made for a complaint or the reference of a question to an [<sup>F27</sup>employment tribunal], by way of such a complaint or reference and not otherwise.

[<sup>F28</sup>(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.]

[<sup>F29</sup>(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**

- F27** 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](#)
- F28** S. 205(1A) inserted (2.7.1999) by [1998 c. 23, s. 14](#); S.I. 1999/1547, [art. 2](#)
- F29** S. 205(1ZA) inserted (1.10.1998) by [S.I. 1998/1833, reg. 31\(7\)](#)

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#### **Modifications etc. (not altering text)**

- C6** 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)

### *f<sup>F30</sup>Employee shareholder status*

#### **Textual Amendments**

- F30** 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

## **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”.

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- (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.
- (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.

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- (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).]

*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,
- (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.



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- (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 [<sup>F31</sup>employment tribunal].
- (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, [<sup>F32</sup>surviving 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 [<sup>F31</sup>employment 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

**F31** 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

**F32** 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 [<sup>F33</sup>employment 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.

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(3) Where—

- (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**

**F33** 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

*[<sup>F34</sup>Mediation in certain cross-border dispute*

**Textual Amendments**

**F34** 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

**207A Extension of time limits because of mediation in certain cross-border disputes**

(1) In this section—

- (a) “ Mediation Directive ” means Directive 2008/52/ EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters,
- (b) “ mediation ” has the meaning given by article 3(a) of the Mediation Directive,
- (c) “ mediator ” has the meaning given by article 3(b) of the Mediation Directive, and
- (d) “ relevant dispute ” means a dispute to which article 8(1) of the Mediation Directive applies (certain cross-border disputes).

(2) Subsection (3) applies where—

- (a) this Act provides for that subsection to apply for the purposes of a provision of this Act,
- (b) a time limit is set by that provision in relation to the whole or part of a relevant dispute,
- (c) a mediation in relation to the relevant dispute starts before the time limit expires, and
- (d) if not extended by this section, the time limit would expire before the mediation ends or less than four weeks after it ends.

(3) The time limit expires instead at the end of four weeks after the mediation ends (subject to subsection (4)).

(4) If a time limit mentioned in subsection (2)(b) has been extended by this section, subsections (2) and (3) apply to the extended time limit as they apply to a time limit mentioned in subsection (2)(b).

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- (5) Subsection (6) applies where—
- (a) a time limit is set by section 164(1)(c) or (2) in relation to the whole or part of a relevant dispute,
  - (b) a mediation in relation to the relevant dispute starts before the time limit expires, and
  - (c) if not extended by this section, the time limit would expire before the mediation ends or less than eight weeks after it ends.
- (6) The time limit expires instead at the end of eight weeks after the mediation ends (subject to subsection (7)).
- (7) If a time limit mentioned in subsection (5)(a) has been extended by this section, subsections (5) and (6) apply to the extended time limit as they apply to a time limit mentioned in subsection (5)(a).
- (8) Where more than one time limit applies in relation to a relevant dispute, the extension by subsection (3) or (6) of one of those time limits does not affect the others.
- (9) For the purposes of this section, a mediation starts on the date of the agreement to mediate that is entered into by the parties and the mediator.
- (10) For the purposes of this section, a mediation ends on the date of the first of these to occur—
- (a) the parties reach an agreement in resolution of the relevant dispute,
  - (b) a party completes the notification of the other parties that it has withdrawn from the mediation,
  - (c) a party to whom a qualifying request is made fails to give a response reaching the other parties within 14 days of the request,
  - (d) the parties, after being notified that the mediator's appointment has ended (by death, resignation or otherwise), fail to agree within 14 days to seek to appoint a replacement mediator,
  - (e) the mediation otherwise comes to an end pursuant to the terms of the agreement to mediate.
- (11) For the purpose of subsection (10), a qualifying request is a request by a party that another (A) confirm to all parties that A is continuing with the mediation.
- (12) In the case of any relevant dispute, references in this section to a mediation are references to the mediation so far as it relates to that dispute, and references to a party are to be read accordingly.
- (13) Where an employment tribunal has power under this Act to extend a time limit to which subsection (3) applies, the power is exercisable in relation to the time limit as extended by this section.]

[<sup>F35</sup>**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”).

But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 207A.

- (2) In this section—

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- (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.
- (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**

**F35** 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)

*Modifications of Act*

<sup>F36</sup>**208** .....

**Textual Amendments**

**F36** 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,

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- (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, [F37 101A,] 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 F38 . . . F39 . . . ,
  - (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), F40 . . . 159, 160(1), 196(2), (3) and (5) and 199(1), (2), (4) and (5).
- F41 (6) . . . . .
- F42 (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

- F37** Words in s. 209(2)(e) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(7)**
- F38** 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**
- F39** 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))
- F40** 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)
- F41** 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)
- F42** 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**

**Status:**

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