



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART XIV

#### INTERPRETATION

#### 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”—

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- (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.

[<sup>F1</sup>(6) This section has effect subject to sections 43K and 47B(3); 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.]

#### Textual Amendments

**F1** S. 230(6) inserted (2.7.1999) by 1998 c. 23, s. 15(1); S.I. 1999/1547, art. 2

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

**C1** S. 230(3)(b) applied (1.11.1998) by 1998 c. 39, s. 24(5); S.I. 1998/2574, art. 2(1), Sch. 1

### 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)

**C2** 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 <sup>F2</sup>. . . 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.

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- (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 [<sup>F3</sup>alcohol][<sup>F4</sup> [<sup>F5</sup>(in Scotland, alcoholic liquor)] 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; [<sup>F6</sup> except that in Scotland “alcohol” has the meaning given in section 2 of the Licensing (Scotland) Act 2005]
- and in paragraph (a) [<sup>F7</sup>“alcohol” has the same meaning as in the Licensing Act 2003].
- (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

- E1** 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

- F2** 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**
- F3** 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)**
- F4** 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)**
- F5** Words in s. 232(7)(a) inserted (6.4.2004) by [Sunday Working \(Scotland\) Act 2003 \(c. 18\)](#), **s. 1(3)(b)(i)**; S.I. 2004/958, **art. 2**
- F6** 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)**
- F7** 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)**

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## [<sup>F8</sup>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—
  - “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

- E2** 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

- F8** 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—

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- (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)**

**C3** 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)**)

**235 Other definitions.**

(1) In this Act, except in so far as the context otherwise requires—

“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),

“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 <sup>M1</sup>Trade 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,

[<sup>F9</sup>]<sup>F10</sup> “ordinary or additional paternity leave” means leave under any of sections 80A to 80BB,]]

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F11 . . .  
 F11 . . .

“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,
- [<sup>F12</sup> “protected disclosure” has the meaning given by section 43A, ]  
 “redundancy payment” has the meaning given by Part XI,  
 “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,  
 [<sup>F13</sup> “section 63D application” has the meaning given by section 63D(2);]  
 “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 <sup>M2</sup> 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 [<sup>F14</sup>sections 80A, 80B 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.

[<sup>F15</sup>(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,

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- (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.
- (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

- F9** Definition in s. 235(1) inserted (8.12.2002) by [Employment Act 2002 \(c. 22\)](#), s. 53, **Sch. 7 para. 48(2)**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2
- F10** Words in s. 235 substituted (3.3.2010) by [Work and Families Act 2006 \(c. 18\)](#), ss. 11, 19, **Sch. 1 para. 43**; S.I. 2010/495, **art. 3(c)**
- F11** 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)
- F12** Definition of "protected disclosure" in s. 235 inserted (2.7.1999) by 1998 c. 23, s. 15(2); S.I. 1999/1547, **art. 2**
- F13** S. 235(1): definition 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. 10**; S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)
- F14** 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**
- F15** 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)

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**Marginal Citations**

**M1** 1992 c. 52.

**M2** 1992 c. 52.



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