



# Employment Rights Act 1996

## 1996 CHAPTER 18

### 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 [<sup>F1</sup>or regulations] to which subsection (3) applies,
  - (b) an order under section 35 or Part II of Schedule 2, or
  - [<sup>F2</sup>(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 [<sup>F1</sup>or regulations] shall be made under section [<sup>F3</sup>27B,]<sup>F4</sup>41A that include provision under subsection (4)(c) of that section, [<sup>F5</sup>43FA (but see subsection (3A)),]<sup>F6</sup>43K(4), [<sup>F7</sup>47C, [<sup>F8</sup>49B,]<sup>F9</sup>63D, 63F(7),] 71, 72, 73, [<sup>F10</sup>75A, 75B,]<sup>F11</sup>75E, 75F(16), 75G, 75H(16), (17) or (18)] 76, [<sup>F12</sup>]<sup>F13</sup>80A, <sup>F14</sup>... 80B [<sup>F15</sup>, 80EA, <sup>F16</sup>... 80G]] 99, [<sup>F17</sup>120(2), 124(2)] [<sup>F18</sup>, 125(7) or 205A(11) or (12)] or (subject to subsection (4)) section 209, unless a draft of the Order in Council [<sup>F19</sup>, order or regulations] has been laid before Parliament and approved by a resolution of each House of Parliament.

[<sup>F20</sup>(3A) Subsection (3) does not apply to regulations under section 43FA that contain only the provision mentioned in section 43FA(2), (3) or (4).]

*Status: Point in time view as at 01/04/2023.*

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- (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

- E1** 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

- F1** 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)
- F2** S. 236(2)(c) repealed (prosp.) by 1999 c. 26, ss. 44, 45(1), **Sch. 9(10)**
- F3** 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)
- F4** 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**
- F5** 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)
- F6** 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))
- F7** 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)
- F8** 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)
- F9** 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)
- F10** 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**
- F11** 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)
- F12** 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**
- F13** 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)**
- F14** 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)
- F15** 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
- F16** 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)
- F17** Words in s. 236(3) repealed (prosp.) by 1999 c. 26, ss. 44, 45(1), **Sch. 9(10)**
- F18** 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
- F19** 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)
- F20** 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)

*Status: Point in time view as at 01/04/2023.*

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## 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 [<sup>F1</sup>or regulations] to which subsection (3) applies,
  - (b) an order under section 35 or Part II of Schedule 2, or
  - [<sup>F2</sup>(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 [<sup>F1</sup>or regulations] shall be made under section [<sup>F3</sup>27B,][<sup>F4</sup>41A that include provision under subsection (4)(c) of that section,][<sup>F7</sup>47C, [<sup>F8</sup>49B,][<sup>F9</sup>63D, 63F(7),] 71, 72, 73, [<sup>F10</sup>75A, 75B,][<sup>F11</sup>75E, 75F(16), 75G, 75H(16), (17) or (18)] 76, [<sup>F12</sup>80A, 80B[<sup>F15</sup>, 80EA], 80G,] 99,][<sup>F17</sup>120(2), 124(2)] or 125(7) or (subject to subsection (4)) section 209, unless a draft of the Order in Council [<sup>F19</sup>, order or regulations] has been laid before Parliament and approved by a resolution of each House of Parliament.
- [<sup>F20</sup>(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

- E2** 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

- F1** 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)
- F2** S. 236(2)(c) repealed (prosp.) by 1999 c. 26, ss. 44, 45(1), **Sch. 9(10)**
- F3** 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)
- F4** 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**
- F7** 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)
- F8** 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)
- F9** 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)
- F10** 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**

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- F11** 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)
- F12** 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
- F15** 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
- F17** Words in s. 236(3) repealed (prosp.) by 1999 c. 26, ss. 44, 45(1), **Sch. 9(10)**
- F19** 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)
- F20** 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)—
  - (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

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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.

### *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.

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## **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) [<sup>F21</sup>Sections 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.

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### **Textual Amendments**

- F21** 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.

**Status:**

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**Changes to legislation:**

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