



Employment Rights Act 1996

1996 CHAPTER 18

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—
 - (a) Parts I to III,
 - ^[F1](aa) Part IVA,]
 - (b) Part V, apart from section 45,
 - ^[F2](c) Parts 6 to 8A,]
 - (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)—

Status: Point in time view as at 31/01/2014.

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- (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, ^{F3} . . .
 - [^{F4}(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) [^{F5}any 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

- F1** S. 191(1)(aa) inserted (2.7.1999) by 1998 c. 23, s. 10; S.I. 1999/1547, art. 2
- F2** 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
- F3** 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)
- F4** 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)
- F5** 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)

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 ^{MI}Reserve Forces Act 1996.

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- (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,
 - [^{F6}(aa) in Part V, [^{F7}sections [^{F8}43M,] 45A, 47C and 47D,] and sections 48 and 49 so far as relating to [^{F9}those sections] ,]
 - [^{F10}(ab) section 47C,]
 - (b) in Part VI, sections [^{F11}55 to 57B],
 - (c) Parts VII and VIII,
 - (d) in Part IX, sections 92 and 93,
 - (e) Part X, apart from sections [^{F12}98B(2) and (3),] 100 to 103 [^{F13}, 104C] 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 [^{F14}employment tribunal] unless [^{F15}—
- (a) the person aggrieved has made [^{F16}a service complaint] ; and
 - (b) the Defence Council have made a determination with respect to the [^{F17}service complaint] .]
- [^{F18}(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 [^{F14}employment 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 [^{F14}employment tribunal] by virtue of provision such as is mentioned in paragraph (a), enabling the [^{F19}the service complaint procedures] to continue after the complaint or reference is made.]
- [^{F20}(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.

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- (8) In subsection (7) “the normal period for a complaint or reference”, in relation to any matter within the jurisdiction of an [^{F14}employment 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

- F6** S. 192(2)(aa) inserted (1.10.1998) by S.I. 1998/1833, **reg. 31(4)**
- F7** 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**
- F8** 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)
- F9** 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**
- F10** 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)
- F11** 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)
- F12** 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)
- F13** 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
- F14** 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**
- F15** 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**
- F16** 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**
- F17** 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**
- F18** S. 192(5) substituted (1.10.1997) by 1996 c. 46, s. 26(3); S.I. 1997/2164, **art. 2**
- F19** 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**
- F20** 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)

- C1** 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.
- C2** 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).
- C3** 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)**
- C4** 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)**

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Marginal Citations

M1 1996 c. 14.

[^{F21}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

F21 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)**

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,
- (b) Part III,
- (c) in Part V, [^{F22}sections [^{F23}43M,[]] 44, 45A [^{F24}, 47 [^{F25}, 47C [^{F26}, 47D and 47E]]]], and sections 48 and 49 so far as relating to those sections,
- (d) Part VI, apart from sections 58 to 60,
- [^{F27}(e) Parts [^{F28}6A,[]] 7, 8 and 8A,[]]
- (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.

[^{F29}(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 [^{F30}the 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 a county court—

- (a) a claim arising out of or relating to a contract of employment or any other contract connected with employment, or

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- (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),
- 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

- F22** Words in s. 194(2)(c) substituted (1.10.1998) by S.I. 1998/1833, **reg. 31(5)**
- F23** 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)
- F24** 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)
- F25** 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
- F26** 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)
- F27** 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
- F28** Words in s. 194(2)(e) inserted (6.4.2010 for certain purposes and otherwise prosp.) by virtue of Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), ss. 40, 269(4), **Sch. 1 para. 5**; S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)
- F29** 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)
- F30** 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)

Modifications etc. (not altering text)

- C5** S. 194(7) applied (1.12.2003) by The Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661), **reg. 38(2)**
- C6** S. 194(7) applied (2.12.2003) by The Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660), **reg. 38(2)**
- C7** 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)

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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,
 - (b) Part III,
 - (c) in Part V, [F31sections [F3243M,] 44, 45A [F33, 47 [F34, 47C [F35, 47D and 47E]]], and sections 48 and 49 so far as relating to those sections,
 - (d) Part VI, apart from sections 58 to 60,
 - [F36(e) Parts [F376A,] 7, 8 and 8A,]
 - (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.
- [F38(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 [F39(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 a 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),

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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.

- (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 [^{F40}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

- F31** Words in s. 195(2)(c) substituted (1.10.1998) by S.I. 1998/1833, **reg. 31(5)**
- F32** 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)
- F33** 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)
- F34** 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

- F35** 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)
- F36** 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
- F37** Words in s. 195(2)(e) inserted (6.4.2010 for certain purposes and otherwise prosp.) by virtue of Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), **ss. 40, 269(4)**, **Sch. 1 para. 6**; S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)
- F38** 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)
- F39** 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)
- F40** 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)

- C8** S. 195(6)-(8) applied (22.8.1996) by 1996 c. 17, **ss. 39(5)**, 46 (with s. 38)
- C9** 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)**
- C10** 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)**
- C11** 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

F41 196

Textual Amendments

- F41** 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))

197 Fixed-term contracts.

[^{F42}_{F43}(1)

^{F43}(2)

(3) An employee employed under a contract of employment for a fixed term of two years or more is not entitled to a redundancy payment in respect of the expiry of that term without its being renewed (whether by the employer or by an associated employer of his) if, before the term expires, the employee has agreed in writing to exclude any right to a redundancy payment in that event.

(4) An agreement such as is mentioned in subsection ^{F44} . . . (3) may be contained—

- (a) in the contract itself, or
- (b) in a separate agreement.

Status: Point in time view as at 31/01/2014.

Changes to legislation: Employment Rights Act 1996, Part XIII is up to date with all changes known to be in force on or before 02 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(5) Where—

- (a) an agreement such as is mentioned in subsection (3) is made during the currency of a fixed term, and
- (b) the term is renewed,

the agreement shall not be construed as applying to the term as renewed; but this subsection is without prejudice to the making of a further agreement in relation to the renewed term.]

Textual Amendments

- F42** 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)
- F43** S. 197(1)(2) repealed (25.10.1999) by 1999 c. 26, ss. 18(1), 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))
- F44** Words in s. 197(4) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(3)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I**

198 Short-term employment.

Sections 1 to 7 do not apply to an employee if his employment continues for less than one month.

199 Mariners.

(1) Sections 1 to 7, Part II 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.

(2) Sections 8 to 10, Part III, sections 44, 45, 47, [F45 47C, [F46[F47 47E] , [F48 47F,]] 50 to 57B] and 61 to 63, [F49 Parts [F50 6A,] 7, 8 and 8A] , sections 92 and 93 and F51 . . . Parts X to XII 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.

F52(3)

(4) Sections 8 to 10 and 50 to 54 and Part XII 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.

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(6) ^{F53}

[^{F54}(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.

^{F54}(8) The provisions are—

- (a) sections 8 to 10,
- (b) Parts II, III and V,
- (c) Part VI, apart from sections 58 to 60,
- [Parts [^{F56}6A,] 7, 8 and 8A,]

- ^{F55}(d)
- (e) sections 92 and 93, and
- (f) Part X.]

Textual Amendments

- F45** 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)
- F46** 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
- F47** 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)
- F48** 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)
- F49** 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
- F50** Words in s. 199(2) inserted (6.4.2010 for certain purposes and otherwise prosp.) by virtue of Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), ss. 40, 269(4), **Sch. 1 para. 7(b)**; S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)
- F51** 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)
- F52** 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)
- F53** 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)
- F54** 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))
- F55** 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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F56 Words in s. 199(8)(d) inserted (6.4.2010 for certain purposes and otherwise prosp.) by virtue of Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), ss. 40, 269(4), **Sch. 1 para. 7(c)**; S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)

200 Police officers.

- (1) Sections 8 to 10, Part III ^{F57} . . . , sections [^{F58}43M,]^{F59} . . . , 45, [^{F60}45A,] 47 ^{F57} . . . , [^{F61}47C,]50 [^{F62}to 57B] and 61 to 63, Parts VII and VIII, sections 92 and 93 [^{F63}and], Part X [^{F64}(except sections 100 [^{F65}, 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 [^{F66}or 103A])]. . .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 ^{M2}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

- F57** 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)**
- F58** 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)
- F59** Word in s. 200(1) repealed (1.7.1998) by 1997 c. 42, s. **6(2)(a)**; S.I. 1998/1542, **art. 2**
- F60** Word in s. 45A inserted (1.10.1998) by S.I. 1998/1833, **reg. 31(6)**
- F61** 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)
- F62** 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)
- F63** 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)
- F64** Words in s. 200(1) inserted (1.7.1998) by 1997 c. 42, s. **6(2)(b)**; S.I. 1998/1542, **art. 2**
- F65** 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)**
- F66** 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)**

Modifications etc. (not altering text)

- C12** 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)**
- C13** S. 200 modified (7.4.2010) by The UK Border Agency (Complaints and Misconduct) Regulations 2010 (S.I. 2010/782), **reg. 42(4)(b)**

Marginal Citations

- M2** 1994 c. 33.

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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 exploration 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 [^{F67}employment 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 ^{M3}Territorial 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 ^{F68}. . . 199 and 215(2) to (6) or of any corresponding Northern Ireland legislation.
- (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—

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“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 ^{M4}Continental Shelf Act 1964.

Textual Amendments

- F67** 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**
- F68** 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))

Marginal Citations

- M3** 1878 c. 73.
M4 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—
- (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, [^{F69}sections [^{F70}43M,] 44, 45A [^{F71}, 47 and 47C]], and sections 48 and 49 so far as relating to those sections,
 - (c) in Part VI, sections [^{F72}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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- [^{F73}(i) by section [^{F74}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 [^{F75}(2A),](3) or (6) of that section, [^{F76}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

- F69** Words in s. 202(2)(b) substituted (1.10.1998) by S.I. 1998/1833, **reg. 31(5)**
- F70** 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)
- F71** 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)
- F72** 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)
- F73** 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)
- F74** 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)
- F75** 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)
- F76** 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 [^{F77}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) ^{F78}
 - (e) does not apply to any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under section 18 of [^{F77}the ^{M5}Employment Tribunals Act 1996], and

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- (f) does not apply to any agreement to refrain from instituting or continuing^{F79} . . . any proceedings within

[^{F80}the following provisions of section 18(1) of the Employment Tribunals Act 1996 (cases where conciliation available)—

- (i) paragraph (d) (proceedings under this Act),
- (ii) paragraph (h) (proceedings arising out of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000),] if the conditions regulating [^{F81}settlement] agreements under this Act are satisfied in relation to the agreement
- (iii) [^{F82}paragraph (i)(proceedings arising out of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002),
- (iv) paragraph (j)(proceedings under those Regulations),]

(3) For the purposes of subsection (2)(f) the conditions regulating [^{F81}settlement] agreements under this Act are that—

- (a) the agreement must be in writing,
- (b) the agreement must relate to the particular [^{F83}proceedings],
- (c) the employee or worker must have received [^{F84}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 [^{F77}employment tribunal],
- (d) there must be in force, when the adviser gives the advice, a [^{F85}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 [^{F81}settlement] agreements under this Act are satisfied.

[^{F86}(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, [^{F87}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.]
- [^{F88}(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

- F77** 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**
- F78** 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)
- F79** 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**
- F80** 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**
- F81** 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)
- F82** 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)
- F83** 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**
- F84** 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**
- F85** 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**
- F86** 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**
- F87** 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)
- F88** 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)

- C14** S. 203 applied (1.7.2000) by S.I. 2000/1551, **reg. 9**
- C15** 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)

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- C16** 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**
- C17** S. 203 applied (1.10.2011) by [The Agency Workers Regulations 2010 \(S.I. 2010/93\)](#), **reg. 15**
- C18** 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

- M5** [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.

^{F89}(2)

Textual Amendments

- F89** 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 [^{F90}employment tribunal], by way of such a complaint or reference and not otherwise.

[^{F91}(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.]

[^{F92}(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

- F90** 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**
- F91** S. 205(1A) inserted (2.7.1999) by [1998 c. 23, s. 14](#); [S.I. 1999/1547](#), **art. 2**
- F92** S. 205(1ZA) inserted (1.10.1998) by [S.I. 1998/1833](#), **reg. 31(7)**

Modifications etc. (not altering text)

- C19** 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)**

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^{F93}Employee shareholder status

Textual Amendments

F93 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”.
- (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),

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- (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.
- (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

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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.
- (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 [F94 employment tribunal].
- (5) In subsection (4) “appropriate person” means a person who is—

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- (a) authorised by the employee before his death to act in connection with the proceedings, or
 - (b) the widow or widower, [^{F95}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 [^{F94}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

- F94** 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
- F95** 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 [^{F96}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.
- (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,

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it shall be treated as a liability of the deceased employer which had accrued immediately before his death.

Textual Amendments

F96 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

[^{F97}Mediation in certain cross-border dispute

Textual Amendments

F97 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).
- (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

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- (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.]

Modifications of Act

^{F98}208

Textual Amendments
F98 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—

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- (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, [F⁹⁹101A,] 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 F¹⁰⁰ . . . F¹⁰¹ . . . ,
 - (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), F¹⁰² . . . 159, 160(1), 196(2), (3) and (5) and 199(1), (2), (4) and (5).
- F¹⁰³(6)
- F¹⁰⁴(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

- F99** Words in s. 209(2)(e) inserted (1.10.1998) by S.I. 1998/1833, reg. 32(7)
- F100** 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
- F101** 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))

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- F102** 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)
- F103** 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)
- F104** 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**

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Changes to legislation:

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