



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,
 - (b) Part V, apart from section 45,
 - (c) Parts VI to VIII,
 - (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)—

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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, and
 - (e) references 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.

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.
- (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,
 - (b) in Part VI, sections 55 to 57,
 - (c) Parts VII and VIII,
 - (d) in Part IX, sections 92 and 93,
 - (e) Part X, apart from sections 100 to 103 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

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- (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 industrial tribunal unless the person aggrieved has availed himself of the service redress procedures applicable to him.
- (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 designed to secure that the service redress procedures result in a determination, or what is to be treated under the Order in Council as a determination, in sufficient time to enable a complaint or reference to be made to an industrial tribunal.
- (6) In subsections (4) and (5) “the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in—
- sections 180 and 181 of the ^{M2}Army Act 1955,
 - sections 180 and 181 of the ^{M3}Air Force Act 1955, and
 - section 130 of the ^{M4}Naval Discipline Act 1957.
- (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.
- (8) In subsection (7) “the normal period for a complaint or reference”, in relation to any matter within the jurisdiction of an industrial 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).

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).

Marginal Citations

- M1** 1996 c. 14.
M2 1955 c. 18.
M3 1955 c. 19.
M4 1957 c. 53.

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193 National security.

- (1) The provisions of this Act to which this section applies do not have effect in relation to any Crown employment in respect of which there is in force a certificate issued by or on behalf of a Minister of the Crown certifying that employment of a description specified in the certificate, or the employment of a particular person so specified, is (or, at a time specified in the certificate, was) required to be excepted from those provisions for the purpose of safeguarding national security.
- (2) This section applies to—
 - (a) Part I, so far as it relates to itemised pay statements,
 - (b) Part III,
 - (c) in Part VI, sections 50 to 54,
 - (d) in Part VII, sections 64 and 65, and sections 69 and 70 so far as relating to those sections,
 - (e) in Part IX, sections 92 and 93, except where they apply by virtue of section 92(4),
 - (f) Part X, except so far as relating to a dismissal which is treated as unfair—
 - (i) by section 99(1) to (3), 100 or 103, or
 - (ii) by subsection (1) of section 105 by reason of the application of subsection (2), (3) or (6) of that section, and
 - (g) this Part and Parts XIV and XV (so far as relating to any of the provisions specified in paragraphs (a) to (f)).
- (3) Any document purporting to be a certificate issued as mentioned in subsection (1)—
 - (a) shall be received in evidence, and
 - (b) unless the contrary is proved, shall be deemed to be such a certificate.

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, sections 44 and 47, and sections 48 and 49 so far as relating to those sections,
 - (d) Part VI, apart from sections 58 to 60,
 - (e) Parts VII and VIII,
 - (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.
- (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 Lords staff references to an undertaking shall be construed as references to the House of Lords.

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- (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
 - (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.

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, sections 44 and 47, and sections 48 and 49 so far as relating to those sections,
 - (d) Part VI, apart from sections 58 to 60,
 - (e) Parts VII and VIII,
 - (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.
- (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,

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- (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 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),
- 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 industrial 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)—

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- (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.

Modifications etc. (not altering text)

C3 S. 195(6)-(8) applied (22.8.1996) by 1996 c. 17, ss. 39(5), 46 (with s. 38)

Excluded classes of employment

196 Employment outside Great Britain.

- (1) Sections 1 to 7 and sections 86 to 91 do not apply in relation to employment during any period when the employee is engaged in work wholly or mainly outside Great Britain unless—
- (a) the employee ordinarily works in Great Britain and the work outside Great Britain is for the same employer, or
 - (b) the law which governs his contract of employment is the law of England and Wales or the law of Scotland.
- (2) The provisions to which this subsection applies do not apply to employment where under the employee’s contract of employment he ordinarily works outside Great Britain.
- (3) Subsection (2) applies to—
- (a) in Part I, sections 8 to 10,
 - (b) Parts II, III and V,
 - (c) Part VI, apart from sections 58 to 60,
 - (d) Parts VII and VIII,
 - (e) in Part IX, sections 92 and 93, and
 - (f) (subject to subsection (4)) Part X.
- (4) Part X applies to employment where under her contract of employment the employee ordinarily works outside Great Britain if—
- (a) section 84 applies to her dismissal, or
 - (b) she is treated as dismissed by section 96.

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- (5) For the purposes of subsections (2) and (4), a person employed to work on board a ship registered in the United Kingdom shall be regarded as a person who under his contract ordinarily works in Great Britain unless—
- (a) the ship is registered at a port outside Great Britain,
 - (b) the employment is wholly outside Great Britain, or
 - (c) the person is not ordinarily resident in Great Britain.
- (6) An employee—
- (a) is not entitled to a redundancy payment if he is outside Great Britain on the relevant date unless under his contract of employment he ordinarily worked in Great Britain, and
 - (b) is not entitled to a redundancy payment if under his contract of employment he ordinarily works outside Great Britain unless on the relevant date he is in Great Britain in accordance with instructions given to him by his employer.
- (7) Part XII does not apply to employment where, under the employee's contract of employment, he ordinarily works outside the territory of the member States of the European Communities and of Norway and Iceland.

197 Fixed-term contracts.

- (1) Part X does not apply to dismissal from employment under a contract for a fixed term of one year or more if—
- (a) the dismissal consists only of the expiry of that term without its being renewed, and
 - (b) before the term expires the employee has agreed in writing to exclude any claim in respect of rights under that Part in relation to the contract.
- (2) Subsection (1) does not prevent Part X from applying if the dismissal is regarded as unfair by virtue of section 101.
- (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 (1) or (3) may be contained—
- (a) in the contract itself, or
 - (b) in a separate agreement.
- (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.

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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, 50 to 57 and 61 to 63, Parts VII and VIII, sections 92 and 93 and (subject to subsection (3)) 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.
- (3) Part X applies to employment such as is mentioned in subsection (2) if—
 - (a) section 84 applies to the employee's dismissal, or
 - (b) she is treated as dismissed by section 96,and Part XI applies to employment such as is so mentioned if the employee is treated as dismissed by section 137.
- (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.
- (6) Section 196(6) does not apply to an employee, and section 197(3) does not apply to a contract of employment, if the employee is—
 - (a) employed as a master or seaman in a British ship, and
 - (b) ordinarily resident in Great Britain.

200 Police officers.

- (1) Sections 8 to 10, Part III, sections 44, 45, 47, 50 to 57 and 61 to 63, Parts VII and VIII, sections 92 and 93, Part X and section 137 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 ^{M5}Criminal Justice and Public Order Act 1994 (prison staff not to be regarded as in police service), service in any other

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capacity by virtue of which a person has the powers or privileges of a constable.

Marginal Citations

M5 1994 c. 33.

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 industrial 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 ^{M6}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,

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- (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 196, 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—
- “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 ^{M7}Continental Shelf Act 1964.

Marginal Citations

M6 1878 c. 73.

M7 1964 c. 29.

Status:

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