



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART XIV

#### INTERPRETATION

#### CHAPTER I

##### CONTINUOUS EMPLOYMENT

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

- C1** Pt. XIV Ch. I (ss. 210-219) applied (with modifications) (1.4.1998) by S.I. 1998/366, **reg. 31(7)**  
Pt. XIV Ch. I (ss. 210-219) applied (prosp.) by 1999 c. 29, ss. 411(10), 425(2), **Sch. 32 para. 3(8)**  
(with Sch. 12 para. 9(1))  
Pt. XIV Ch. I (ss. 210-219) applied (29.1.2001) by S.I. 2000/3386, **art. 1(5)**  
Pt. XIV Ch. I (ss. 210-219) applied (E.W.) (21.5.2001) by S.I. 2001/1185, arts. 3, 4, **Sch. para. 120**
- C2** Pt. 14 Ch. 1 applied (1.10.2002) by The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), **reg. 8(4)** (with regs. 13-20)  
Pt. 14 Ch. 1 applied (6.4.2002) by The Flexible working (Eligibility, Complaints and Remedies) Regulations 2002 (S.I. 2002/3236), {reg. 3}
- C3** Pt. 14 Ch. 1 applied (20.11.2003) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 1, 199(1)(4), **Sch. 1 para. 3(3)**
- C4** Pt. 14 Ch. 1 applied (E.W.) (1.3.2007) by National Health Service Act 2006 (c. 41), ss. 30, 227, **Sch. 7 para. 3(4)**

## 210 Introductory.

- (1) References in any provision of this Act to a period of continuous employment are (unless provision is expressly made to the contrary) to a period computed in accordance with this Chapter.

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- (2) In any provision of this Act which refers to a period of continuous employment expressed in months or years—
  - (a) a month means a calendar month, and
  - (b) a year means a year of twelve calendar months.
- (3) In computing an employee's period of continuous employment for the purposes of any provision of this Act, any question—
  - (a) whether the employee's employment is of a kind counting towards a period of continuous employment, or
  - (b) whether periods (consecutive or otherwise) are to be treated as forming a single period of continuous employment,
 shall be determined week by week; but where it is necessary to compute the length of an employee's period of employment it shall be computed in months and years of twelve months in accordance with section 211.
- (4) Subject to sections 215 to 217, a week which does not count in computing the length of a period of continuous employment breaks continuity of employment.
- (5) A person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.

## **211 Period of continuous employment.**

- (1) An employee's period of continuous employment for the purposes of any provision of this Act—
  - (a) (subject to subsections (2) and (3)) begins with the day on which the employee starts work, and
  - (b) ends with the day by reference to which the length of the employee's period of continuous employment is to be ascertained for the purposes of the provision.
- (2) For the purposes of sections 155 and 162(1), an employee's period of continuous employment shall be treated as beginning on the employee's eighteenth birthday if that is later than the day on which the employee starts work.
- (3) If an employee's period of continuous employment includes one or more periods which (by virtue of section 215, 216 or 217) while not counting in computing the length of the period do not break continuity of employment, the beginning of the period shall be treated as postponed by the number of days falling within that intervening period, or the aggregate number of days falling within those periods, calculated in accordance with the section in question.

## **212 Weeks counting in computing period.**

- (1) Any week during the whole or part of which an employee's relations with his employer are governed by a contract of employment counts in computing the employee's period of employment.
- (2) Any week (not within subsection (1)) during an employee's period of absence from work occasioned wholly or partly by pregnancy or childbirth after which the employee returns to work in accordance with section 79, or in pursuance of an offer described in section 96(3), counts in computing the employee's period of employment.

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- (3) Subject to subsection (4), any week (not within subsection (1)) during the whole or part of which an employee is—
- (a) incapable of work in consequence of sickness or injury,
  - (b) absent from work on account of a temporary cessation of work,
  - (c) absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for any purpose, or
  - (d) absent from work wholly or partly because of pregnancy or childbirth,
- counts in computing the employee's period of employment.
- (4) Not more than twenty-six weeks count under subsection (3)(a) or (subject to subsection (2)) subsection (3)(d) between any periods falling under subsection (1).

### **213 Intervals in employment.**

- (1) Where in the case of an employee a date later than the date which would be the effective date of termination by virtue of subsection (1) of section 97 is treated for certain purposes as the effective date of termination by virtue of subsection (2) or (4) of that section, the period of the interval between the two dates counts as a period of employment in ascertaining for the purposes of section 108(1) or 119(1) the period for which the employee has been continuously employed.
- (2) Where an employee is by virtue of section 138(1) regarded for the purposes of Part XI as not having been dismissed by reason of a renewal or re-engagement taking effect after an interval, the period of the interval counts as a period of employment in ascertaining for the purposes of section 155 or 162(1) the period for which the employee has been continuously employed (except so far as it is to be disregarded under section 214 or 215).
- (3) Where in the case of an employee a date later than the date which would be the relevant date by virtue of subsections (2) to (4) of section 145 is treated for certain purposes as the relevant date by virtue of subsection (5) of that section, the period of the interval between the two dates counts as a period of employment in ascertaining for the purposes of section 155 or 162(1) the period for which the employee has been continuously employed (except so far as it is to be disregarded under section 214 or 215).

### **214 Special provisions for redundancy payments.**

- (1) This section applies where a period of continuous employment has to be determined in relation to an employee for the purposes of the application of section 155 or 162(1).
- (2) The continuity of a period of employment is broken where—
- (a) a redundancy payment has previously been paid to the employee (whether in respect of dismissal or in respect of lay-off or short-time), and
  - (b) the contract of employment under which the employee was employed was renewed (whether by the same or another employer) or the employee was re-engaged under a new contract of employment (whether by the same or another employer).
- (3) The continuity of a period of employment is also broken where—
- (a) a payment has been made to the employee (whether in respect of the termination of his employment or lay-off or short-time) in accordance with

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- a scheme under section 1 of the <sup>M1</sup>Superannuation Act 1972 or arrangements falling within section 177(3), and
- (b) he commenced new, or renewed, employment.
- (4) The date on which the person’s continuity of employment is broken by virtue of this section—
- (a) if the employment was under a contract of employment, is the date which was the relevant date in relation to the payment mentioned in subsection (2)(a) or (3)(a), and
- (b) if the employment was otherwise than under a contract of employment, is the date which would have been the relevant date in relation to the payment mentioned in subsection (2)(a) or (3)(a) had the employment been under a contract of employment.
- (5) For the purposes of this section a redundancy payment shall be treated as having been paid if—
- (a) the whole of the payment has been paid to the employee by the employer,
- (b) a tribunal has determined liability and found that the employer must pay part (but not all) of the redundancy payment and the employer has paid that part, or
- (c) the Secretary of State has paid a sum to the employee in respect of the redundancy payment under section 167.

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

**C5** S. 214 excluded (13.1.1997) by [S.I. 1996/3147](#), [reg. 4](#)

**Marginal Citations**

**M1** 1972 c. 11.

**215 Employment abroad etc.**

- (1) This Chapter applies to a period of employment—
- (a) (subject to the following provisions of this section) even where during the period the employee was engaged in work wholly or mainly outside Great Britain, and
- (b) even where the employee was excluded by or under this Act from any right conferred by this Act.
- (2) For the purposes of sections 155 and 162(1) a week of employment does not count in computing a period of employment if the employee—
- (a) was employed outside Great Britain during the whole or part of the week, and
- (b) was not during that week an employed earner for the purposes of the <sup>M2</sup>Social Security Contributions and Benefits Act 1992 in respect of whom a secondary Class 1 contribution was payable under that Act (whether or not the contribution was in fact paid).
- (3) Where by virtue of subsection (2) a week of employment does not count in computing a period of employment, the continuity of the period is not broken by reason only that the week does not count in computing the period; and the number of days which, for the purposes of section 211(3), fall within the intervening period is seven for each week within this subsection.

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- (4) Any question arising under subsection (2) whether—
- (a) a person was an employed earner for the purposes of the Social Security Contributions and Benefits Act 1992, or
  - (b) if so, whether a secondary Class 1 contribution was payable in respect of him under that Act,
- shall be determined by the Secretary of State.
- (5) Any legislation (including regulations) as to the determination of questions which under the <sup>M3</sup>Social Security Administration Act 1992 the Secretary of State is empowered to determine (including provisions as to the reference of questions for decision, or as to appeals, to the High Court or the Court of Session) apply to the determination of any question by the Secretary of State under subsection (4).
- (6) Subsection (2) does not apply in relation to a person who is—
- (a) employed as a master or seaman in a British ship, and
  - (b) ordinarily resident in Great Britain.

#### Marginal Citations

M2 1992 c. 4.

M3 1992 c. 5.

## 216 Industrial disputes.

- (1) A week does not count under section 212 if during the week, or any part of the week, the employee takes part in a strike.
- (2) The continuity of an employee's period of employment is not broken by a week which does not count under this Chapter (whether or not by virtue only of subsection (1)) if during the week, or any part of the week, the employee takes part in a strike; and the number of days which, for the purposes of section 211(3), fall within the intervening period is the number of days between the last working day before the strike and the day on which work was resumed.
- (3) The continuity of an employee's period of employment is not broken by a week if during the week, or any part of the week, the employee is absent from work because of a lock-out by the employer; and the number of days which, for the purposes of section 211(3), fall within the intervening period is the number of days between the last working day before the lock-out and the day on which work was resumed.

## 217 Reinstatement after military service.

- (1) If a person who is entitled to apply to his former employer under the <sup>M4</sup>Reserve Forces (Safeguard of Employment) Act 1985 enters the employment of the employer not later than the end of the six month period mentioned in section 1(4)(b) of that Act, his period of service in the armed forces of the Crown in the circumstances specified in section 1(1) of that Act does not break his continuity of employment.
- (2) In the case of such a person the number of days which, for the purposes of section 211(3), fall within the intervening period is the number of days between the last day of his previous period of employment with the employer (or, if there was more

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than one such period, the last of them) and the first day of the period of employment beginning in the six month period.

#### Marginal Citations

M4 1985 c. 17.

### 218 Change of employer.

- (1) Subject to the provisions of this section, this Chapter relates only to employment by the one employer.
- (2) If a trade or business, or an undertaking (whether or not established by or under an Act), is transferred from one person to another—
  - (a) the period of employment of an employee in the trade or business or undertaking at the time of the transfer counts as a period of employment with the transferee, and
  - (b) the transfer does not break the continuity of the period of employment.
- (3) If by or under an Act (whether public or local and whether passed before or after this Act) a contract of employment between any body corporate and an employee is modified and some other body corporate is substituted as the employer—
  - (a) the employee's period of employment at the time when the modification takes effect counts as a period of employment with the second body corporate, and
  - (b) the change of employer does not break the continuity of the period of employment.
- (4) If on the death of an employer the employee is taken into the employment of the personal representatives or trustees of the deceased—
  - (a) the employee's period of employment at the time of the death counts as a period of employment with the employer's personal representatives or trustees, and
  - (b) the death does not break the continuity of the period of employment.
- (5) If there is a change in the partners, personal representatives or trustees who employ any person—
  - (a) the employee's period of employment at the time of the change counts as a period of employment with the partners, personal representatives or trustees after the change, and
  - (b) the change does not break the continuity of the period of employment.
- (6) If an employee of an employer is taken into the employment of another employer who, at the time when the employee enters the second employer's employment, is an associated employer of the first employer—
  - (a) the employee's period of employment at that time counts as a period of employment with the second employer, and
  - (b) the change of employer does not break the continuity of the period of employment.

<sup>F1</sup>(7) If an employee of the governors of a school maintained by a local education authority is taken into the employment of the authority or an employee of a local education

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authority is taken into the employment of the governors of a school maintained by the authority—

- (a) his period of employment at the time of the change of employer counts as a period of employment with the second employer, and
  - (b) the change does not break the continuity of the period of employment.
- (8) If a person employed in relevant employment by a health service employer is taken into relevant employment by another such employer, his period of employment at the time of the change of employer counts as a period of employment with the second employer and the change does not break the continuity of the period of employment.
- (9) For the purposes of subsection (8) employment is relevant employment if it is employment of a description—
- (a) in which persons are engaged while undergoing professional training which involves their being employed successively by a number of different health service employers, and
  - (b) which is specified in an order made by the Secretary of State.
- (10) The following are health service employers for the purposes of subsections (8) and (9)—
- (a) Health Authorities established under section 8 of the <sup>M5</sup>National Health Service Act 1977,
  - (b) Special Health Authorities established under section 11 of that Act,
  - (c) National Health Service trusts established under Part I of the <sup>M6</sup>National Health Service and Community Care Act 1990,
  - (d) the Dental Practice Board, and
  - (e) the Public Health Laboratory Service Board.

**Textual Amendments**

**F1** S. 218(7) extended (*temp.* from 1.4.1999 to 1.9.1999) by S.I. 1999/638, **reg. 4**

**Marginal Citations**

**M5** 1977 c. 49.

**M6** 1990 c. 19.

**219 Reinstatement or re-engagement of dismissed employee.**

- (1) Regulations made by the Secretary of State may make provision—
- (a) for preserving the continuity of a person’s period of employment for the purposes of this Chapter or for the purposes of this Chapter as applied by or under any other enactment specified in the regulations, or
  - (b) for modifying or excluding the operation of section 214 subject to the recovery of any such payment as is mentioned in that section,
- in cases where <sup>F2</sup> . . . a dismissed employee is reinstated [<sup>F3</sup>, re-engaged or otherwise re-employed] by his employer or by a successor or associated employer of that employer [<sup>F4</sup> in any circumstances prescribed by the regulations.]

<sup>F5</sup>(2) . . . . .

<sup>F5</sup>(3) . . . . .

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<sup>F5</sup>(4) .....

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**Textual Amendments**

- F2** Words in s. 219(1) repealed (1.8.1998) by 1998 c. 8, s. 15, Sch. 1 para. 25(2)(a), **Sch. 2**; S.I. 1998/1658, art. 2(1), **Sch. 1**
- F3** Words in s. 219(1) substituted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 25(2)(b)**; S.I. 1998/1658, art. 2(1), **Sch. 1**
- F4** Words in s. 219(1) inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 25(2)(c)**; S.I. 1998/1658, art. 2(1), **Sch. 1**
- F5** S. 219(2)-(4) repealed (1.8.1998) by 1998 c. 8, s. 15, Sch. 1 para. 25(3), **Sch. 2**; S.I. 1998/1658, art. 2(1), **Sch. 1**
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**Modifications etc. (not altering text)**

- C6** S. 219 restricted (W.) (12.5.2006) by [The Education \(Modification of Enactments Relating to Employment\) \(Wales\) Order 2006](#) (S.I. 2006/1073), arts. 1(1), **5(2)**



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