



# Employment Relations Act 1999

## 1999 CHAPTER 26

### *Other rights of individuals*

#### **16 Unfair dismissal of striking workers. E+W+S**

Schedule 5 shall have effect.

PROSPECTIVE

<sup>F1</sup>17 **E+W+S**

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#### **Textual Amendments**

**F1** S. 17 repealed (1.10.2004) by [Employment Relations Act 2004 \(c. 24\)](#), ss. 31(8), 59(3), [Sch. 2](#); S.I. 2004/2566, art. 3(a)(c)

#### **18 Agreement to exclude dismissal rights. E+W+S**

- (1) In section 197 of the <sup>M1</sup>Employment Rights Act 1996 (fixed-term contracts) subsections (1) and (2) (agreement to exclude unfair dismissal provisions) shall be omitted; and subsections (2) to (5) below shall have effect in consequence.
- (2) In sections 44(4), 46(2), 47(2), 47A(2) and 47B(2) of that Act—
  - (a) the words from the beginning to “the dismissal,” shall be omitted, and
  - (b) for “that Part” there shall be substituted “ Part X ”.
- (3) In section 45A(4) of that Act the words from “, unless” to the end shall be omitted.
- (4) In section 23 of the <sup>M2</sup>National Minimum Wage Act 1998, for subsection (4) there shall be substituted—

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- “(4) This section does not apply where the detriment in question amounts to dismissal within the meaning of—
- (a) Part X of the Employment Rights Act 1996 (unfair dismissal), or
  - (b) Part XI of the Employment Rights (Northern Ireland) Order 1996 (corresponding provision for Northern Ireland),
- except where in relation to Northern Ireland the person in question is dismissed in circumstances in which, by virtue of Article 240 of that Order (fixed term contracts), Part XI does not apply to the dismissal.”
- (5) In paragraph 1 of Schedule 3 to the <sup>M3</sup>Tax Credits Act 1999, for sub-paragraph (3) there shall be substituted—
- “(3) This paragraph does not apply where the detriment in question amounts to dismissal within the meaning of—
- (a) Part X of the Employment Rights Act 1996 (unfair dismissal), or
  - (b) Part XI of the Employment Rights (Northern Ireland) Order 1996 (corresponding provision for Northern Ireland),
- except where in relation to Northern Ireland the employee is dismissed in circumstances in which, by virtue of Article 240 of that Order (fixed term contracts), Part XI does not apply to the dismissal.”
- (6) Section 197(1) of the <sup>M4</sup>Employment Rights Act 1996 does not prevent Part X of that Act from applying to a dismissal which is regarded as unfair by virtue of section 99 or 104 of that Act (pregnancy and childbirth, and assertion of statutory right).

#### Commencement Information

**II** S. 18 partly in force; s. 18 not in force at Royal Assent see s. 45: S. 18(6) in force (30.9.1999) by S.I. 1999/2509, art. 3 (with art. 4)

#### Marginal Citations

**M1** 1996 c. 18.  
**M2** 1998 c. 39.  
**M3** 1999 c. 10.  
**M4** 1996 c. 18.

## 19 Part-time work: discrimination. **E+W+S**

- (1) The Secretary of State shall make regulations for the purpose of securing that persons in part-time employment are treated, for such purposes and to such extent as the regulations may specify, no less favourably than persons in full-time employment.
- (2) The regulations may—
  - (a) specify classes of person who are to be taken to be, or not to be, in part-time employment;
  - (b) specify classes of person who are to be taken to be, or not to be, in full-time employment;
  - (c) specify circumstances in which persons in part-time employment are to be taken to be, or not to be, treated less favourably than persons in full-time employment;

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- (d) make provision which has effect in relation to persons in part-time employment generally or provision which has effect only in relation to specified classes of persons in part-time employment.
- (3) The regulations may—
- (a) confer jurisdiction (including exclusive jurisdiction) on employment tribunals and on the Employment Appeal Tribunal;
  - (b) create criminal offences in relation to specified acts or omissions by an employer, by an organisation of employers, by an organisation of workers or by an organisation existing for the purposes of a profession or trade carried on by the organisation's members;
  - (c) in specified cases or circumstances, extend liability for a criminal offence created under paragraph (b) to a person who aids the commission of the offence or to a person who is an agent, principal, employee, employer or officer of a person who commits the offence;
  - (d) provide for specified obligations or offences not to apply in specified circumstances;
  - (e) make provision about notices or information to be given, evidence to be produced and other procedures to be followed;
  - (f) amend, apply with or without modifications, or make provision similar to any provision of the Employment Rights Act 1996 (including, in particular, Parts V, X and XIII) or the Trade Union and Labour Relations (Consolidation) Act 1992;
  - (g) provide for the provisions of specified agreements to have effect in place of provisions of the regulations to such extent and in such circumstances as may be specified;
  - (h) include supplemental, incidental, consequential and transitional provision, including provision amending an enactment;
  - (i) make different provision for different cases or circumstances.
- (4) Without prejudice to the generality of this section the regulations may make any provision which appears to the Secretary of State to be necessary or expedient—
- (a) for the purpose of implementing Council Directive [97/81/EC](#) on the framework agreement on part-time work in its application to terms and conditions of employment;
  - (b) for the purpose of dealing with any matter arising out of or related to the United Kingdom's obligations under that Directive;
  - (c) for the purpose of any matter dealt with by the framework agreement or for the purpose of applying the provisions of the framework agreement to any matter relating to part-time workers.
- (5) Regulations under this section which create an offence—
- (a) shall provide for it to be triable summarily only, and
  - (b) may not provide for it to be punishable by imprisonment or by a fine in excess of level 5 on the standard scale.

## 20 Part-time work: code of practice. **E+W+S**

- (1) The Secretary of State may issue codes of practice containing guidance for the purpose of—

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- (a) eliminating discrimination in the field of employment against part-time workers;
  - (b) facilitating the development of opportunities for part-time work;
  - (c) facilitating the flexible organisation of working time taking into account the needs of workers and employers;
  - (d) any matter dealt with in the framework agreement on part-time work annexed to Council Directive 97/81/EC.
- (2) The Secretary of State may revise a code and issue the whole or part of the revised code.
- (3) A person's failure to observe a provision of a code does not make him liable to any proceedings.
- (4) A code—
- (a) is admissible in evidence in proceedings before an employment tribunal, and
  - (b) shall be taken into account by an employment tribunal in any case in which it appears to the tribunal to be relevant.

## **21 Code of practice: supplemental.** E+W+S

- (1) Before issuing or revising a code of practice under section 20 the Secretary of State shall consult such persons as he considers appropriate.
- (2) Before issuing a code the Secretary of State shall—
- (a) publish a draft code,
  - (b) consider any representations made to him about the draft,
  - (c) if he thinks it appropriate, modify the draft in the light of any representations made to him.
- (3) If, having followed the procedure under subsection (2), the Secretary of State decides to issue a code, he shall lay a draft code before each House of Parliament.
- (4) If the draft code is approved by resolution of each House of Parliament, the Secretary of State shall issue the code in the form of the draft.
- (5) In this section and section 20(3) and (4)—
- (a) a reference to a code includes a reference to a revised code,
  - (b) a reference to a draft code includes a reference to a draft revision, and
  - (c) a reference to issuing a code includes a reference to issuing part of a revised code.

## **22 National minimum wage: communities.** E+W+S

The following shall be inserted after section 44 of the National Minimum Wage Act 1998 (exclusions: voluntary workers)—

### **“44A Religious and other communities: resident workers.**

- (1) A residential member of a community to which this section applies does not qualify for the national minimum wage in respect of employment by the community.

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- (2) Subject to subsection (3), this section applies to a community if—
  - (a) it is a charity or is established by a charity,
  - (b) a purpose of the community is to practise or advance a belief of a religious or similar nature, and
  - (c) all or some of its members live together for that purpose.
- (3) This section does not apply to a community which—
  - (a) is an independent school, or
  - (b) provides a course of further or higher education.
- (4) The residential members of a community are those who live together as mentioned in subsection (2)(c).
- (5) In this section—
  - (a) “charity” has the same meaning as in section 44, and
  - (b) “independent school” has the same meaning as in section 463 of the Education Act 1996 (in England and Wales), section 135 of the Education (Scotland) Act 1980 (in Scotland) and Article 2 of the Education and Libraries (Northern Ireland) Order 1986 (in Northern Ireland).
- (6) In this section “course of further or higher education” means—
  - (a) in England and Wales, a course of a description referred to in Schedule 6 to the Education Reform Act 1988 or Schedule 2 to the Further and Higher Education Act 1992;
  - (b) in Scotland, a course or programme of a description mentioned in or falling within section 6(1) or 38 of the Further and Higher Education (Scotland) Act 1992;
  - (c) in Northern Ireland, a course of a description referred to in Schedule 1 to the Further Education (Northern Ireland) Order 1997 or a course providing further education within the meaning of Article 3 of that Order.”

## 23 Power to confer rights on individuals. **E+W+S**

- (1) This section applies to any right conferred on an individual against an employer (however defined) under or by virtue of any of the following—
  - (a) the Trade Union and Labour Relations (Consolidation) Act 1992;
  - (b) the Employment Rights Act 1996;
  - (c) this Act;
  - (d) any instrument made under section 2(2) of the European Communities Act 1972.
- (2) The Secretary of State may by order make provision which has the effect of conferring any such right on individuals who are of a specified description.
- (3) The reference in subsection (2) to individuals includes a reference to individuals expressly excluded from exercising the right.
- (4) An order under this section may—
  - (a) provide that individuals are to be treated as parties to workers’ contracts or contracts of employment;

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- (b) make provision as to who are to be regarded as the employers of individuals;
  - (c) make provision which has the effect of modifying the operation of any right as conferred on individuals by the order;
  - (d) include such consequential, incidental or supplementary provisions as the Secretary of State thinks fit.
- (5) An order under this section may make provision in such way as the Secretary of State thinks fit, whether by amending Acts or instruments or otherwise.
- (6) Section 209(7) of the Employment Rights Act 1996 (which is superseded by this section) shall be omitted.
- (7) Any order made or having effect as if made under section 209(7), so far as effective immediately before the commencement of this section, shall have effect as if made under this section.

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