

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Act 1982 (repealed), SCHEDULE 2. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 2

Section 20.

#### CHANGE OF BASIS OF COMPUTATION OF PERIOD OF CONTINUOUS EMPLOYMENT

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

- C1** The text of Sch. 2 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

##### *Right to guarantee payment*

- 1 In section 13 of the 1978 Act (general exclusions from the right to a guarantee payment), subsections (1) and (2) shall be renumbered (3) and (4) and the following subsections shall be inserted as subsections (1) and (2)—

“(1) An employee shall not be entitled to a guarantee payment unless he has been continuously employed for a period of not less than one month ending with the day before that in respect of which the guarantee payment is claimed.

(2) An employee who is employed—

- (a) under a contract for a fixed term of three months or less, or
- (b) under a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months, shall not be entitled to a guarantee payment unless he has been continuously employed for a period of more than three months ending with the day before that in respect of which the guarantee payment is claimed.”.

##### *Right to remuneration on suspension on medical grounds*

- 2 In section 20 of the 1978 Act (general exclusions from the right to remuneration on suspension on medical grounds), subsections (1) and (2) shall be renumbered (3) and (4) and the following subsections shall be inserted as subsections (1) and (2)—

“(1) An employee shall not be entitled to remuneration under section 19 unless he has been continuously employed for a period of not less than one month ending with the day before that on which the suspension begins.

(2) An employee who is employed—

- (a) under a contract for a fixed term of three months or less, or
- (b) under a contract made in contemplation of the performance of a specific task which is not expected to last for more than three

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months, shall not be entitled to remuneration under section 19 unless he has been continuously employed for a period of more than three months ending with the day before that on which the suspension begins.”.

*Right to minimum period of notice*

- 3 (1) In sections 49 and 50 of the 1978 Act (rights of employer and employee to a minimum period of notice) for the words “four weeks” in section 49(1), (2) and (3) and section 50(1) and (2) (which relate to the period of continuous employment necessary before either right arises) there shall be substituted “one month”.
- (2) In section 49(4) of that Act (which converts into a contract for an indefinite period a contract for a term certain of four weeks or less where the employee has been continuously employed for twelve weeks or more) for the words “twelve weeks there shall be substituted” three months “and for the words four weeks” there shall be substituted “one month”.
- (3) After that subsection there shall be inserted—
- “(4A) Subsections (1) and (2) do not apply to a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months unless the employee has been continuously employed for a period of more than three months.”.

*Right to written statement of reasons for dismissal*

- 4 In section 53(2) of the 1978 Act (period of continuous employment after which an employee has a right to a written statement of the reasons for his dismissal) for the words from “twenty-six weeks” onwards there shall be substituted “six months ending with that date”.

*Right not to be unfairly dismissed*

- 5 (1) In section 64 of the 1978 Act (qualifying period for the right not to be unfairly dismissed)—
- (a) in subsection (1)(a) for “fifty-two weeks” there shall be substituted “one year”; and
- (b) in subsection (2) for “fifty-two weeks” and “four weeks” there shall be substituted, respectively, “one year” and “one month”.
- (2) In section 73(3) of that Act (calculation of basic award for unfair dismissal), in paragraphs (a) and (b) the words “which consists wholly of weeks” shall be omitted.

*Rights in connection with redundancy*

- 6 (1) In section 119(7) of the 1975 Act (exclusion of employees on short-term contracts from protection of provisions requiring consultation and notification in case of

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certain redundancies) for the words “12 weeks”, in each place where they occur, there shall be substituted ” three months and at the end of that subsection there shall be inserted—

“Section 151 of and Schedule 13 to the Employment Protection (Consolidation) Act 1978 (computation of period of continuous employment), and any provision modifying or supplementing that section or Schedule for the purposes of that Act, shall apply for the purposes of this subsection as if this subsection were contained in that Act.”.

- (2) In section 81(4) of the 1978 Act (requisite period qualifying for right to redundancy payment), the words from “excluding any week” onwards (which relate to weeks before the employee attained the age of eighteen) shall be omitted.
- (3) ..... F1
- (4) In section 106(2) of that Act (conditions to be satisfied before an employee can claim his unpaid redundancy payment from the Secretary of State), in paragraph (c) (exclusion where right under collective agreement arises by virtue of a period of employment which is less than one hundred and four weeks)—
  - (a) for “period of employment” there shall be substituted “period of continuous employment”; and
  - (b) for “one hundred and four weeks” there shall be substituted “two years”.
- (5) In Schedule 4 to that Act (calculation of redundancy payment),
  - (a) in paragraph 2(a) and (b) the words “which consists wholly of weeks (within the meaning of Schedule 13)” shall be omitted ; and
  - (b) paragraph 7 shall be omitted.

**Textual Amendments**

**F1** Sch. 2 para. 6(3) repealed by Employment Act 1989 (c. 38, SIF 43:1), s. 29(4), Sch. 7 Pt. I

*Computation of period of continuous employment*

- 7 (1) For section 151 of the 1978 Act (continuous employment) there shall be substituted—

**“151 Computation of period of continuous employment.**

- (1) References in any provision of this Act to a period of continuous employment are, except where provision is expressly made to the contrary, to a period computed in accordance with the provisions of this section and Schedule 13 ; and in any such provision which refers to a period of continuous employment expressed in months or years a month means a calendar month and a year means a year of twelve calendar months.
- (2) In computing an employee’s period of continuous employment any question arising as to—
  - (a) whether the employee’s employment is of a kind counting towards a period of continuous employment, or

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- (b) whether periods (consecutive or otherwise) are to be treated as forming a single period of continuous employment, shall be determined in accordance with Schedule 13 (that is to say, week by week), but the length of an employee's period of employment shall be computed in months and years of twelve months in accordance with the following rules.
- (3) Subject to the following provisions of this section, an employee's period of continuous employment for the purposes of any provision of this Act begins with the day on which he starts work and ends with the day by reference to which the length of his period of continuous employment falls to be ascertained for the purposes of the provision in question.
- (4) For the purposes of section 81 and Schedule 4 an employee's period of continuous employment shall be treated as beginning on his eighteenth birthday if that date is later than the starting date referred to in subsection (3).
- (5) If an employee's period of continuous employment includes one or more periods which, by virtue of any provision of Schedule 13, do not count in computing the length of the period but do not break continuity, the beginning of the period shall be treated as postponed by the number of days falling within that intervening period or, as the case may be, by the aggregate number of days falling within those periods.
- (6) The number of days falling within such an intervening period is—
- (a) in the case of a period to which paragraph 14(3) of Schedule 13 applies, seven days for each week within that sub-paragraph ;
  - (b) in the case of a period to which paragraph 15(2) or (4) of that Schedule applies, the number of days between the last working day before the strike or lock-out and the day on which work was resumed ;
  - (c) in the case of a period to which paragraph 16(1) of that Schedule applies, the number of days between the employee's last day of employment before service under Part I of the National Service Act 1948 and the day on which he resumed employment in accordance with Part II of that Act.”.
- (2) In Schedule 13 to that Act (computation of period of employment), for paragraphs 1 and 2 (preliminary provisions) there shall be substituted—

### **Preliminary**

- “1
- (1) Except so far as otherwise provided by the following provisions of this Schedule, a week which does not count under paragraphs 3 to 12 breaks the continuity of the period of employment.
  - (2) The provisions of this Schedule apply, subject to paragraph 14, to a period of employment notwithstanding that during that period the employee was engaged in work wholly or mainly outside Great Britain, or was excluded by or under this Act from any right conferred by this Act.
  - (3) A person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.”.

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(3) For paragraph 8 of that Schedule there shall be substituted—

**Power to amend paragraphs 3 to 7 by order**

- “8 (1) The Secretary of State may by order—
- (a) amend paragraphs 3 to 7 so as to substitute for each of the references to sixteen hours a reference to such other number of hours less than sixteen as may be specified in the order ; and
  - (b) amend paragraphs 6 and 7 so as to substitute for each of the references to eight hours a reference to such other number of hours less than eight as may be specified in the order.
- (2) No order under this paragraph shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.
- (3) The provisions of any order under this paragraph shall apply to periods before the order takes effect as they apply to later periods.”.

*Minor and consequential amendments relating to sections 1 to 4 of the 1978 Act*

- 8 (1) In section 1 of the 1978 Act (obligation to give written particulars of terms of employment)—
- (a) in subsection (1) (the basic obligation) for the words “the beginning of an employee’s period of employment” there shall be substituted “the beginning of an employee’s employment” ; and
  - (b) in subsection (2) (matters to be included in the statement), for paragraph (c) there shall be substituted—
    - “(c) specify the date on which the employee’s period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).”.
- (2) For section 2(4) of that Act (exclusion of obligation to give written statement where terms the same as those of previous employment) there shall be substituted—
- “(4) No statement need be given under section 1 where—
- (a) the employee’s terms of employment are the same as those of earlier employment with the same employer in respect of which a statement under that section and any information subsequently required under section 4 was duly given, and
  - (b) that earlier employment ended not more than six months before the beginning of the employment in question ;
- but without prejudice to the operation of subsection (1) of section 4 if there is subsequently a change in the terms of employment.”.
- (3) In section 4 of that Act (duty to inform of changes in terms of employment)—
- (a) in subsection (4)(b) (change of employer to be treated as change of terms where continuity of employment is not broken) the words from “in accordance with” to “Schedule 13” shall be omitted; and

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- (b) in subsection (5) (duty in such a case to specify date from which employment is continuous) for the words “continuous period of employment” there shall be substituted “period of continuous employment”.

(4) After section 5 of that Act there shall be inserted—

**“5A Employees becoming or ceasing to be excluded from ss. 1 to 4.**

(1) Sections 1 to 4 shall apply to an employee who at any time comes or ceases to come within the exceptions from those sections provided for by section 5, 141, 144, 145 or 146(4) to (7), or under section 149, as if his employment with his employer terminated or began at that time.

(2) Subsection (1) of section 1 shall apply to an employee who ceases to come within the exception provided by section 5 with the substitution for the words “thirteen weeks” of the words “one month”.

(3) The fact that section 1 is directed to apply to an employee as if his employment began on his ceasing to come within one of the exceptions referred to in subsection (1) shall not affect the obligation under subsection (2)(b) of that section to specify the date on which his employment actually began.”.

(5) In section 146 of that Act (miscellaneous excluded classes of employment—

(a) in subsection (4) (exclusion of part-time employees from rights which do not depend on a qualifying period of continuous employment), after “sections” there shall be inserted “1, 4,” ; and

(b) after subsection (7) there shall be added—

“(8) References in subsections (4) to (7) to weeks are to weeks within the meaning of Schedule 13.”.

*Other consequential amendments*

9 (1) In section 149 of the 1978 Act (which confers a general power to amend the Act by order)—

(a) in subsection (1)(c) (which lists provisions whose operation may be varied or excluded), after “sections” there shall be inserted “13(2), 20(2), 49(4A),” ; and

(b) in subsection (2) (provisions to which the power does not extend), for “and 142(1)” there shall be substituted “, 142(1) and 151”.

(2) In section 157(1) of that Act (reciprocal arrangements with Northern Ireland) for “sections 1 to 7” there shall be substituted “sections 1 to 6”.

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