Employment Rights Act 1996

1996 CHAPTER 18

PART X

UNFAIR DISMISSAL

Modifications etc. (not altering text)

C1 Ss. 66-68, 70-71, 92-93, Pt. 10 (ss. 94-134) modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.**
Pt. 10 (ss. 94-134) applied (with modifications) (E.W.) by S.I. 1998/218, **art. 4(b)**
Pt. 10 (ss. 94-134) modified (1.1.1999) by 1998 Measure No. 1, s. 6(1), **Sch. 3 para. 3(1)(2)**; Instrument dated 14.10.1998 made by the Archbishops of Canterbury and York
Pt. 10 (ss. 94-134) modified (6.6.2000) by 1992 c. 52, s. 70A, Sch. A1 para. 161(1), **162** (as inserted (6.6.2000) by 1999 c. 26, s. 1, **Sch. 1**; S.I. 2000/1338, **art. 2(a)**)
Pt. 10 (ss. 94-134) modified (4.9.2000) by 1999 c. 26, **ss. 12(3)(6)**, (with ss. 14, 15); S.I. 2000/2242, **art. 2(1)**
Pt. 10 (ss. 94-134) modified (24.4.2000) by 1992 c. 52, **s. 238A(2)** (as inserted (24.4.2000) by 1999 c. 26, ss. 16, **Sch. 5 para. 3**; S.I. 2000/875, **art. 2** (with transitional provision in art. 3))
Pt. 10 (ss. 94-134) modified (E.W.) (1.9.1999) by S.I. 1999/2256, arts. 3, 4(b), **Sch.**

C2 Pt. 10 (ss. 94-134) applied for certain purposes (14.8.2000) by S.I. 2000/1828, **art. 2**
Pt. 10 (ss. 94-134) applied (E.W.) (21.5.2001) by S.I. 2001/1185, arts. 2, 3, **Sch. para. 95**

C3 Pt. 10 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

C4 Pt. 10 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), **art. 4(b)**

C5 Pt. 10 modified (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), **7**

C6 Pt. 10 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), arts. 1(1), 3, **Sch.**

C7 Pt. 10 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), **arts. 1(1)**, 4(b)

C8 Pt. 10 modified (18.8.2006) by The European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), regs.1(2), **31(1)**

C9 Pt. 10 modfied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, **Sch. 6 para. 13(5)** (with regs. 44-46, Sch. 7)

Status: *Point in time view as at 17/03/2014.*
Changes to legislation: *Employment Rights Act 1996, Part X is up to date with all changes known to be in force on or before 07 August 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)*

C10 Pt. 10 modified (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 46**

C11 Pt. 10 modified (1.10.2009) by The European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 (S.I. 2009/2401), **reg. 29** (with reg. 41)

C12 Pt. 10 applied (with modifications) (1.1.2010) by The Ecclesiastical Offices (Terms of Service) Regulations 2009 (S.I. 2009/2108), regs. 2(2), **33**

C13 Pt. 10 modified (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(3)**

C14 Pt. 10 modified (1.10.2011) by The Agency Workers Regulations 2010 (S.I. 2010/93), **reg. 17(1)**

CHAPTER I

RIGHT NOT TO BE UNFAIRLY DISMISSED

The right

94 The right.

(1) An employee has the right not to be unfairly dismissed by his employer.

(2) Subsection (1) has effect subject to the following provisions of this Part (in particular sections 108 to 110) and to the provisions of the [M1]Trade Union and Labour Relations (Consolidation) Act 1992 (in particular sections 237 to 239).

Marginal Citations

M1 1992 c. 52.

Dismissal

95 Circumstances in which an employee is dismissed.

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) [F1]. . . , only if)—

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

[[F2](b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or**]**

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

(2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—

(a) the employer gives notice to the employee to terminate his contract of employment, and

(b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;

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and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

Textual Amendments

F1 Words in s. 95(1) repealed (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1)(2), 59(2)-(4), Sch. 1 para. 29, **Sch. 2**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F2 S. 95(1)(b) substituted (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(7)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

Modifications etc. (not altering text)

C15 S. 95(1)(c) restricted (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), **10(3)(b)**

[F3]96 . . . . . .

Textual Amendments

F3 S. 96 repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 13, **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)

97 Effective date of termination.

(1) Subject to the following provisions of this section, in this Part "the effective date of termination"—

(a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,

(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and

[[F4](c) in relation to an employee who is employed under a limited-term contract which terminates by virtue of the limiting event without being renewed under the same contract, means the date on which the termination takes effect.**]**

(2) Where—

(a) the contract of employment is terminated by the employer, and

(b) the notice required by section 86 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by subsection (1)),

for the purposes of sections 108(1), 119(1) and 227(3) the later date is the effective date of termination.

(3) In subsection (2)(b) "the material date" means—

(a) the date when notice of termination was given by the employer, or

(b) where no notice was given, the date when the contract of employment was terminated by the employer.

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(4) Where—

(a) the contract of employment is terminated by the employee,

(b) the material date does not fall during a period of notice given by the employer to terminate that contract, and

(c) had the contract been terminated not by the employee but by notice given on the material date by the employer, that notice would have been required by section 86 to expire on a date later than the effective date of termination (as defined by subsection (1)),

for the purposes of sections 108(1), 119(1) and 227(3) the later date is the effective date of termination.

(5) In subsection (4) "the material date" means—

(a) the date when notice of termination was given by the employee, or

(b) where no notice was given, the date when the contract of employment was terminated by the employee.

[F5](6) . . . . . .

Textual Amendments

F4 S. 97(1)(c) substituted (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(8)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

F5 S. 97(6) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 14, **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)

Fairness

98 General.

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

[[F6](ba) [F7]. . . . . .**]**

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

[[F8](2A) [F7]. . . . . .**]**

(3) In subsection (2)(a)—

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(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

[[F9](3A) [F7]. . . . . .**]**

(4) **[**[F10]Where**]** the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

[F11](5) . . . . . .

(6) **[**[F12]Subsection (4)**][**[F13]is**]** subject to—

(a) sections **[**[F14]98A**]** to 107 of this Act, and

(b) sections 152, 153 **[**[F15], 238 and 238A**]** of the [M2]Trade Union and Labour Relations (Consolidation) Act 1992 (dismissal on ground of trade union membership or activities or in connection with industrial action).

Textual Amendments

F6 S. 98(2)(ba) inserted (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 49(1), **Sch. 8 para. 22(2)** (with regs. 44-46)

F7 S. 98(2)(ba)(2A)(3A) omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(2)(a)** (with regs. 5, 6, 9)

F8 S. 98(2A) inserted (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 49(1), **Sch. 8 para. 22(3)** (with regs. 44-46)

F9 S. 98(3A) inserted (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 49(1), **Sch. 8 para. 22(4)** (with regs. 44-46)

F10 Word in s. 98(4) substituted (6.4.2011) by The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(2)(b)** (with regs. 5, 6, 9)

F11 S. 98(5) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 15(a), **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)

F12 Words in s. 98(6) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 15(b)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

F13 Word in s. 98(6) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 32(a)**; S.I. 2004/2185, **art. 2**

F14 Word in s. 98(6)(a) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 32(b)**; S.I. 2004/2185, **art. 2**

F15 Words in s. 98(6)(b) substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 30**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

Modifications etc. (not altering text)

C16 S. 98(1) modified (1.1.1999) by 1998 Measure No. 1, s. 6(1), **Sch. 3 para. 3(2)(b)**; Instrument dated 14.10.1998 made by the Archbishops of Canterbury and York

C17 S. 98(1) modified by SI 2006/246 reg. 7(3)(b) (as substituted (31.1.2014) by The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (S.I. 2014/16), regs. 1(2), **8(1)** (with reg. 8(2)))

Marginal Citations

M2 1992 c. 52.

[F16 Retirement

Textual Amendments

F16 Ss. 98ZA-98ZH and cross-headings inserted (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), reg. 49(1), **Sch. 8 para. 23** (with regs. 44-46)

98ZA No normal retirement age: dismissal before 65

F17 . . . . . .

Textual Amendments

F17 Ss. 98ZA-98ZH omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(3)** (with regs. 5, 6, 9)

98ZB No normal retirement age: dismissal at or after 65

F18 . . . . . .

Textual Amendments

F18 Ss. 98ZA-98ZH omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(3)** (with regs. 5, 6, 9)

98ZC Normal retirement age: dismissal before retirement age

F19 . . . . . .

Textual Amendments

F19 Ss. 98ZA-98ZH omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(3)** (with regs. 5, 6, 9)

98ZD Normal retirement age 65 or higher: dismissal at or after retirement age

F20 . . . . . .

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Textual Amendments

F20 Ss. 98ZA-98ZH omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(3)** (with regs. 5, 6, 9)

98ZE Normal retirement age below 65: dismissal at or after retirement age

F21 . . . . . .

Textual Amendments

F21 Ss. 98ZA-98ZH omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(3)** (with regs. 5, 6, 9)

98ZF Reason for dismissal: particular matters

F22 . . . . . .

Textual Amendments

F22 Ss. 98ZA-98ZH omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(3)** (with regs. 5, 6, 9)

98ZG Retirement dismissals: fairness

F23 . . . . . .

Textual Amendments

F23 Ss. 98ZA-98ZH omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(3)** (with regs. 5, 6, 9)

98ZH Interpretation

F24 . . . . . .]

Textual Amendments

F24 Ss. 98ZA-98ZH omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(3)** (with regs. 5, 6, 9)

Other dismissals

[F25 98A Procedural fairness

F26 . . . . . .]

Textual Amendments

F25 S. 98A inserted (1.10.2004) by Employment Act 2002 (c. 22), **ss. 34(2)**, 55(2); S.I. 2004/1717, **art. 2(2)** (subject to art. 3)

F26 S. 98A repealed (6.4.2009) by Employment Act 2008 (c. 24), ss. 2, 20, 22(1)(a), **Sch. Pt. 1**; S.I. 2008/3232, **art. 2** (with Sch. paras. 1, 5)

[F27 98B Jury service

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) has been summoned under the Juries Act 1974, **[**F28 Part 1 of the Coroners and Justice Act 2009**]**, the Court of Session Act 1988 or the Criminal Procedure (Scotland) Act 1995 to attend for service as a juror, or

(b) has been absent from work because he attended at any place in pursuance of being so summoned.

(2) Subsection (1) does not apply in relation to an employee who is dismissed if the employer shows—

(a) that the circumstances were such that the employee's absence in pursuance of being so summoned was likely to cause substantial injury to the employer's undertaking,

(b) that the employer brought those circumstances to the attention of the employee,

(c) that the employee refused or failed to apply to the appropriate officer for excusal from or a deferral of the obligation to attend in pursuance of being so summoned, and

(d) that the refusal or failure was not reasonable.

(3) In paragraph (c) of subsection (2) " the appropriate officer " means—

(a) in the case of a person who has been summoned under the Juries Act 1974, the officer designated for the purposes of section 8, 9 or, as the case may be, 9A of that Act;

(b) in the case of a person who has been summoned under the Coroners Act 1988, a person who is the appropriate officer for the purposes of any rules made under subsection (1) of section 32 of that Act by virtue of subsection (2) of that section;

(c) in the case of a person who has been summoned under the Court of Session Act 1988, either—

(i) the clerk of court issuing the citation to attend for jury service; or

(ii) the clerk of the court before which the person is cited to attend for jury service;

(d) in the case of a person who has been summoned under the Criminal Procedure (Scotland) Act 1995, either—

(i) the clerk of court issuing the citation to attend for jury service; or

(ii) the clerk of the court before which the person has been cited to attend for jury service;

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and references in that paragraph to a refusal or failure to apply include references to a refusal or failure to give a notice under section 1(2)(b) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980.**]**

Textual Amendments

F27 S. 98B inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 40(3)**, 59(2)-(4); S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F28 Words in s. 98B(1)(a) substituted (25.7.2013) by Coroners and Justice Act 2009 (c. 25), s. 182(4)(e), **Sch. 21 para. 36(3)** (with s. 180); S.I. 2013/1869, art. 2(o)(xv)

[F29 99 Leave for family reasons.

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

(a) the reason or principal reason for the dismissal is of a prescribed kind, or

(b) the dismissal takes place in prescribed circumstances.

(2) In this section " prescribed " means prescribed by regulations made by the Secretary of State.

(3) A reason or set of circumstances prescribed under this section must relate to—

(a) pregnancy, childbirth or maternity,

(b) ordinary, compulsory or additional maternity leave,

F30 **[** (ba) ordinary or additional adoption leave,**]**

(c) parental leave,

F31 **[**F32 **[** (ca) ordinary or additional paternity leave, or**]]**

(d) time off under section 57A;

and it may also relate to redundancy or other factors.

(4) A reason or set of circumstances prescribed under subsection (1) satisfies subsection (3)(c) or (d) if it relates to action which an employee—

(a) takes,

(b) agrees to take, or

(c) refuses to take,

under or in respect of a collective or workforce agreement which deals with parental leave.

(5) Regulations under this section may—

(a) make different provision for different cases or circumstances;

(b) apply any enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to persons regarded as unfairly dismissed by reason of this section.**]**

Textual Amendments

F29 S. 99 substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 16**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

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F30 S. 99(3)(ba) inserted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 33(2)**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2

F31 S. 99(3)(ca) substituted (8.12.2002) for the word "or" by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 33(3)**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2

F32 S. 99(3)(ca) substituted (3.3.2010) by Work and Families Act 2006 (c. 18), ss. 11, 19, **Sch. 1 para. 41**; S.I. 2010/495, **art. 3(c)**

100 Health and safety cases.

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,

(b) being a representative of workers on matters of health and safety at work or member of a safety committee—

(i) in accordance with arrangements established under or by virtue of any enactment, or

(ii) by reason of being acknowledged as such by the employer,

the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,

(c) being an employee at a place where—

(i) there was no such representative or safety committee, or

(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or

(e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of subsection (1)(e) whether steps which an employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee is that specified in subsection (1)(e), he shall not be regarded as unfairly dismissed if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he took (or proposed to take) that a reasonable employer might have dismissed him for taking (or proposing to take) them.

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101 Shop workers and betting workers who refuse Sunday work.

(1) Where an employee who is—

(a) a protected shop worker or an opted-out shop worker, or

(b) a protected betting worker or an opted-out betting worker,

is dismissed, he shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that he refused (or proposed to refuse) to do shop work, or betting work, on Sunday or on a particular Sunday.

(2) Subsection (1) does not apply in relation to an opted-out shop worker or an opted-out betting worker where the reason (or principal reason) for the dismissal is that he refused (or proposed to refuse) to do shop work, or betting work, on any Sunday or Sundays falling before the end of the notice period.

(3) A shop worker or betting worker who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the shop worker or betting worker gave (or proposed to give) an opting-out notice to the employer.

(4) For the purposes of section 36(2)(b) or 41(1)(b), the appropriate date in relation to this section is the effective date of termination.

Extent Information

E1 S. 101, which previously extended to England and Wales only, extends to England and Wales and Scotland from 6.4.2004 by virtue of the amendment to s. 244(2) by Sunday Working (Scotland) Act 2003 (c. 18), **ss. 1(5)**, 3; S.I. 2004/958, **art. 2**

[F33 101A Working time cases.

F34 [(1)] An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the M3 Working Time Regulations 1998,

(b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,

(c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations, or

(d) being—

(i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or

(ii) a candidate in an election in which any person elected will, on being elected, be such a representative,

performed (or proposed to perform) any functions or activities as such a representative or candidate.

F35 [(2) A reference in this section to the Working Time Regulations 1998 includes a reference to

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[F36(a)] the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.

[F37(b)] the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.]

[F38(c)] the Cross-border Railway Services (Working Time) Regulations 2008]

[F39(d)] the Merchant Shipping (Hours of Work) Regulations 2002.]]]

Textual Amendments

F33 S. 101A inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(1)**

F34 S. 101A renumbered as s. 101A(1) (24.12.2003) by The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (S.I. 2003/3049), reg. 20, **Sch. 2 para. 3(3)**

F35 S. 101A(2) inserted (24.12.2003) by The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (S.I. 2003/3049), reg. 20, **Sch. 2 para. 3(3)**

F36 Words in s. 101A(2) renumbered as s. 101A(2)(a) (16.8.2004) by The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (S.I. 2004/1713), regs. 1, 22, **Sch. 2 para. 2(3)(a)**

F37 S. 101A(2)(b) inserted (16.8.2004) by The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (S.I. 2004/1713), regs. 1, 22, **Sch. 2 para. 2(3)(b)**

F38 S. 101A(2)(c) inserted (27.7.2008) by The Cross-border Railway Services (Working Time) Regulations 2008 (S.I. 2008/1660), reg. 19, **Sch. 3 para. 2(3)**

F39 S. 101A(2)(d) inserted (17.3.2014) by The Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2014 (S.I. 2014/308), reg. 1(2), **Sch. para. 2(3)**

Marginal Citations

M3 S.I. 1998/1833

102 Trustees of occupational pension schemes.

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that, being a trustee of a relevant occupational pension scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

[F40(1A) This section applies to an employee who is a director of a company which is a trustee of a relevant occupational pension scheme as it applies to an employee who is a trustee of such a scheme (references to such a trustee being read for this purpose as references to such a director).]

(2) In this section "relevant occupational pension scheme" means an occupational pension scheme (as defined in section 1 of the M4Pension Schemes Act 1993) established under a trust.

Textual Amendments

F40 S. 102(1A) inserted (11.11.1999 for specified purposes and otherwise 25.4.2000) by 1999 c. 30, ss. 18, 89(1)(5)(a), **Sch. 2 para. 19(4)**; S.I. 2000/1047, art. 2(2), **Sch. Pt. II**

Status: *Point in time view as at 17/03/2014.*
Changes to legislation: *Employment Rights Act 1996, Part X is up to date with all changes known to be in force on or before 07 August 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)*

Modifications etc. (not altering text)

C18 S. 102 applied (11.11.1999 for specified purposes and otherwise 8.10.2001) by 1999 c. 30, **s. 6(1)**, (with s. 8(6)); S.I. 2000/1047, art. 2(2), **Sch. Pt. V**

Commencement Information

I1 S. 102 wholly in force at 6.10.1996, see Sch. 2 para. 15(1) and S.I. 1996/2514, **art. 2**

Marginal Citations

M4 1993 c. 48.

103 Employee representatives.

[[F41](1)**]** An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee, being—

(a) an employee representative for the purposes of Chapter II of Part IV of the [M5]Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or **[**[F42]regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006**]**, or

(b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

performed (or proposed to perform) any functions or activities as such an employee representative or candidate.

[[F43](2) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee took part in an election of employee representatives for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or **[**[F44] regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 **]** . **]**

Textual Amendments

F41 S. 103 renumbered as s. 103(1) (28.7.1999) by S.I. 1999/1925, **reg. 13**

F42 Words in s. 103(1)(a) substituted (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), 20, **Sch. 2 para. 10(c)** (with application as mentioned in reg. 21(1))

F43 S. 103(2) inserted (28.7.1999) by S.I. 1999/1925, **reg. 13**

F44 Words in s. 103(2) substituted (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), 20, **Sch. 2 para. 10(c)** (with application as mentioned in reg. 21(1))

Marginal Citations

M5 1992 c. 52.

[[F45]**103A Protected disclosure.**

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.**]**

Status: *Point in time view as at 17/03/2014.*
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Textual Amendments

F45 S. 103A inserted (2.7.1999) by 1998 c. 23, **s. 5**; S.I. 1999/1547, **art. 2**

104 Assertion of statutory right.

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or

(b) alleged that the employer had infringed a right of his which is a relevant statutory right.

(2) It is immaterial for the purposes of subsection (1)—

(a) whether or not the employee has the right, or

(b) whether or not the right has been infringed;

but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It is sufficient for subsection (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.

(4) The following are relevant statutory rights for the purposes of this section—

(a) any right conferred by this Act for which the remedy for its infringement is by way of a complaint or reference to an **[**[F46]employment tribunal**]**,

(b) the right conferred by section 86 of this Act, [F47]. . .

(c) the rights conferred by sections 68, 86, **[**[F48]145A, 145B,**]** 146, 168, **[**[F49]168A,**]** 169 and 170 of the Trade Union and Labour Relations (Consolidation) Act 1992 (deductions from pay, union activities and time off) [F50]**[**[F51]. . .

[F52]**[**[F53](d) the rights conferred by the Working Time Regulations 1998, **[**[F54]the Merchant Shipping (Hours of Work) Regulations 2002,**]** the Merchant Shipping (Working Time: Inland Waterway) Regulations 2003 **[**[F55], the Fishing Vessels (Working Time: Sea-fisherman) Regulations 2004 or the Cross-border Railway Services (Working Time) Regulations 2008**]**.**]]**[[F56], and

(e) the rights conferred by the Transfer of Undertakings (Protection of Employment) Regulations 2006.**]**

[[F57](5) In this section any reference to an employer includes, where the right in question is conferred by section 63A, the principal (within the meaning of section 63A(3)).**]**

Textual Amendments

F46 Words in s. 104(4)(a) 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**

F47 Word in s. 104(4)(b) omitted (1.10.1998) by virtue of S.I. 1998/1833, **reg. 32(2)(a)**

F48 Words in s. 104(4)(c) inserted (1.10.2004) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 31**; S.I. 2004/2566, **art. 3(b)** (subject to arts. 5-8)

F49 Word in s. 104(4)(c) inserted (27.4.2003) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 34**; S.I. 2003/1190, **art. 2(2)(c)**

Status: *Point in time view as at 17/03/2014.*
Changes to legislation: *Employment Rights Act 1996, Part X is up to date with all changes known to be in force on or before 07 August 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)*

F50 Word in s. 104(4)(c) omitted (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by virtue of The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **19(a)**

F51 S. 104(4)(d) and preceding word inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(2)(b)**

F52 S. 104(4)(d) and preceding word inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(2)(b)**

F53 S. 104(4)(d) substituted (16.8.2004) by The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (S.I. 2004/1713), regs. 1, 22, **Sch. 2 para. 2(4)**

F54 Words in s. 104(4)(d) inserted (17.3.2014) by The Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2014 (S.I. 2014/308), reg. 1(2), **Sch. para. 2(4)**

F55 Words in s. 104(4)(d) substituted (27.7.2008) by The Cross-border Railway Services (Working Time) Regulations 2008 (S.I. 2008/1660), reg. 19, **Sch. 3 para. 2(4)**

F56 S. 104(4)(e) and word inserted (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), **19(b)**

F57 S. 104(5) inserted (1.9.1999) by 1998 c. 30, s. 44(1), **Sch. 3 para. 13** (with s. 42(8)); S.I. 1999/987, **art. 2**

[F58 104A The national minimum wage.

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right of the employee's to which this section applies; or

(b) the employer was prosecuted for an offence under section 31 of the National Minimum Wage Act 1998 as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, a right of the employee's to which this section applies; or

(c) the employee qualifies, or will or might qualify, for the national minimum wage or for a particular rate of national minimum wage.

(2) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above—

(a) whether or not the employee has the right, or

(b) whether or not the right has been infringed,

but, for that subsection to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

(3) The following are the rights to which this section applies—

(a) any right conferred by, or by virtue of, any provision of the National Minimum Wage Act 1998 for which the remedy for its infringement is by way of a complaint to an employment tribunal; and

(b) any right conferred by section 17 of the National Minimum Wage Act 1998 (worker receiving less than national minimum wage entitled to additional remuneration).**]**

Textual Amendments

F58 S. 104A inserted (1.11.1998) by 1998 c. 39, **s. 25(1)**; S.I. 1998/2574, art. 2(1), **Sch. 1** (with art. 3)

Modifications etc. (not altering text)

C19 S. 104A modified (1.4.1999) by 1948 c. 47, **s. 3A(5)** (as inserted (1.4.1999) by 1998 c. 39, s. 47, **Sch. 2 Pt. I para. 3**; S.I. 1999/685, **art. 2 Sch.**)
S. 104A extended (1.4.1999) by 1949 c. 30, **s. 3A(4)** (as inserted (1.4.1999) by 1998 c. 39, s. 47, **Sch. 2 Pt. II para. 13**; S.I. 1999/685, art.2, **Sch.**)

[F59 104B Tax credits

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right conferred on the employee by regulations under section 25 of the Tax Credits Act 2002,

(b) a penalty was imposed on the employer, or proceedings for a penalty were brought against him, under that Act, as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, such a right, or

(c) the employee is entitled, or will or may be entitled, to working tax credit.

(2) It is immaterial for the purposes of subsection (1)(a) or (b)—

(a) whether or not the employee has the right, or

(b) whether or not the right has been infringed,

but, for those provisions to apply, the claim to the right and (if applicable) the claim that it has been infringed must be made in good faith.**]**

Textual Amendments

F59 S. 104B substituted (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, **Sch. 1 para. 3(2)**; S.I. 2002/1727, **art. 2**

[F60 104C Flexible working

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) made (or proposed to make) an application under section 80F,

(b) exercised (or proposed to exercise) a right conferred on him under section 80G,

(c) brought proceedings against the employer under section 80H, or

(d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.**]**

Textual Amendments

F60 S. 104C inserted (6.4.2003) by Employment Act 2002 (c. 22), **s. 47(4)**; S.I. 2002/2866, **art. 2(3)**, Sch. 1 Pt. 3

Status: *Point in time view as at 17/03/2014.*
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[F61 104D Pension enrolment

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a) any action was taken, or was proposed to be taken, with a view to enforcing in favour of the employee a requirement to which this section applies;

(b) the employer was prosecuted for an offence under section 45 of the Pensions Act 2008 as a result of action taken for the purpose of enforcing in favour of the employee a requirement to which this section applies; or

(c) any provision of Chapter 1 of that Part of that Act applies to the employee, or will or might apply.

(2) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above—

(a) whether or not the requirement applies in favour of the employee, or

(b) whether or not the requirement has been contravened,

but, for that subsection to apply, the claim that the requirement applies and, if applicable, the claim that it has been contravened must be made in good faith.

(3) This section applies to any requirement imposed on the employer by or under any provision of Chapter 1 of Part 1 of the Pensions Act 2008.

(4) In this section references to enforcing a requirement include references to securing its benefit in any way.]

Textual Amendments

F61 S. 105(7JA) inserted (30.6.2012) by Pensions Act 2008 (c. 30), **ss. 57(4)**, 149(1); S.I. 2012/1682, art. 2, Sch. 2

[F62 104E Study and training

An employee who is dismissed is to be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) made (or proposed to make) a section 63D application,

(b) exercised (or proposed to exercise) a right conferred on the employee under section 63F,

(c) brought proceedings against the employer under section 63I, or

(d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.]

Textual Amendments

F62 S. 104E inserted (6.4.2010 for certain purposes and otherwise prosp.) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), **ss. 40(4)**, 269(4); S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)

Status: *Point in time view as at 17/03/2014.*
Changes to legislation: *Employment Rights Act 1996, Part X is up to date with all changes known to be in force on or before 07 August 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)*

[[F63]104F Blacklists

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal relates to a prohibited list, and either—

(a) the employer contravenes regulation 3 of the 2010 Regulations in relation to that prohibited list, or

(b) the employer—

(i) relies on information supplied by a person who contravenes that regulation in relation to that list, and

(ii) knows or ought reasonably to know that the information relied on is supplied in contravention of that regulation.

(2) If there are facts from which the tribunal could conclude, in the absence of any other explanation, that the employer—

(a) contravened regulation 3 of the 2010 Regulations, or

(b) relied on information supplied in contravention of that regulation,

the tribunal must find that such a contravention or reliance on information occurred, unless the employer shows that it did not.

(3) In this section—

" the 2010 Regulations " means the Employment Relations Act 1999 (Blacklists) Regulations 2010, and

" prohibited list " has the meaning given in those Regulations (see regulation 3(2)). **]**

Textual Amendments

F63 S. 104F inserted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(2)**

[[F64]104GEmployee shareholder status

An employee who is dismissed is to be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee refused to accept an offer by the employer for the employee to become an employee shareholder (within the meaning of section 205A).**]**

Textual Amendments

F64 S. 104G inserted (1.9.2013) by Growth and Infrastructure Act 2013 (c. 27), **ss. 31(4)**, 35(1); S.I. 2013/1766, art. 2

105 Redundancy.

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

(a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,

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(b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and

F65[F66(c) it is shown that any of subsections [F67(2A) to [F68(7N)]] applies.]

F69(2) . . . . . .

[F70(2A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 98B (unless the case is one to which subsection (2) of that section applies).]

(3) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 100 (read with subsections (2) and (3) of that section).

(4) This subsection applies if either—

(a) the employee was a protected shop worker or an opted-out shop worker, or a protected betting worker or an opted-out betting worker, and the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in subsection (1) of section 101 (read with subsection (2) of that section), or

(b) the employee was a shop worker or a betting worker and the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in subsection (3) of that section.

[F71(4A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 101A.]

(5) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 102(1).

(6) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 103.

[F72(6A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 103A.]

(7) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 104 (read with subsections (2) and (3) of that section).

[F73(7A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 104A (read with subsection (2) of that section).]

[F74(7B) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 104B (read with subsection (2) of that section).]

[F75(7BA) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 104C.]

Status: *Point in time view as at 17/03/2014.*
Changes to legislation: *Employment Rights Act 1996, Part X is up to date with all changes known to be in force on or before 07 August 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)*

[[F76](7BB) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 104E.**]**

[[F77](7C) This subsection applies if—

(a) the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the reason mentioned in section 238A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (participation in official industrial action), and

(b) subsection (3), (4) or (5) of that section applies to the dismissal.**]**

[[F78](7D) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulation).**]**

[[F79](7E) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (unless the case is one to which paragraph (4) of that regulation applies).**]**

[[F80](7F) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 6 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (unless the case is one to which paragraph (4) of that regulation applies).**]**

[[F81](7G) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 42 of the European Public Limited-Liability Company Regulations 2004 (read with paragraphs (4) and (7) of that regulation).**]**

[[F82](7H) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 30 of the Information and Consultation of Employees Regulations 2004 (read with paragraphs (4) and (7) of that regulation).**]**

[[F83](7I) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (read with paragraph 5(6) of that Schedule).**]**

[[F84](7IA) [F85] . . . . . **]**

[[F86](7J) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 31 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (read with paragraphs (4) and (7) of that regulation).**]**

[[F87](7JA) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 104D (read with subsection (2) of that section).**]**

Status: *Point in time view as at 17/03/2014.*
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[[F88](7K) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in—

(a) paragraph (2) of regulation 46 of the Companies (Cross-Border Mergers) Regulations 2007 (read with paragraphs (3) and (4) of that regulation); or

(b) paragraph (2) of regulation 47 of the Companies (Cross-Border Mergers) Regulations 2007 (read with paragraph (3) of that regulation).**]**

[[F89](7L) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 29 of the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009(S.I. 2009/2401) (read with paragraphs (4) and (7) of that regulation). **]**

[[F90](7M) This subsection applies if—

(a) the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1), and

(b) the condition in paragraph (a) or (b) of that subsection was met.**]**

[[F91](7N) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 17 of the Agency Workers Regulations 2010 (unless the case is one to which paragraph (4) of that regulation applies).**]**

(8) For the purposes of section 36(2)(b) or 41(1)(b), the appropriate date in relation to this section is the effective date of termination.

(9) In this Part "redundancy case" means a case where paragraphs (a) and (b) of subsection (1) of this section are satisfied.

Textual Amendments

F65 By Pensions Act 2008 (c. 30), **ss. 57(3)**, 149(1), it is provided (prosp.) that in s. 105(1)(c) for "(7J)" there be substituted "(7K)"

F66 S. 105(1)(c) substituted (18.8.2006) by The European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), **reg. 32(1)(a)**

F67 Words in s. 105(1)(c) substituted (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 48(1)(a)**

F68 Words in s. 105(1)(c) substituted (1.10.2011) by The Agency Workers Regulations 2010 (S.I. 2010/93), reg. 25, **Sch. 2 para. 15**

F69 S. 105(2) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 17, **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)

F70 S. 105(2A) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 40(5)**, 59(2)-(4); S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F71 S. 105(4A) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(3)**

F72 S. 105(6A) inserted (2.7.1999) by 1998 c. 23, **s. 6**; S.I. 1999/1547, **art. 2**

F73 S. 105(7A) inserted (1.11.1998) by 1998 c. 39, **s. 25(2)**; S.I. 1998/2574, art. 2(1), **Sch. 1** (with art. 3)

F74 S. 105(7B) inserted (5.10.1999) by 1999 c. 10, ss. 7, 20(2), Sch. 3 para. 3(2) (which amending Act was repealed (in part on 27.8.2002 and 4.12.2002, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 60, **Sch. 6**; S.I. 2002/1727, **art. 2**) and insertion continued (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, **Sch. 1 para. 3(3)**; S.I. 2002/1727, **art. 2**

F75 S. 105(7BA) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 41(4)**, 59(2)-(4); S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F76 S. 105(7BB) 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. 3**; S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)

F77 S. 105(7C) inserted (24.4.2000) by 1999 c. 26, s. 16, **Sch. 5 para. 5(3)**; S.I. 2000/875, **art. 2** (with transitional provision in art. 3)

F78 S. 105(7D) inserted after subsection (7C) (15.1.2000) by virtue of S.I. 1999/3323, **reg. 29(1)**

F79 S. 105(7E) inserted (1.7.2000) by S.I. 2000/1551, reg. 10, **Sch. para. 2(1)**

F80 S. 105(7F) 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(10)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

F81 S. 105(7G) inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 1(2), **43(1)(b)**

F82 S. 105(7H) inserted (6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), regs. 1(1), **31(1)(b)** (with reg. 3)

F83 S. 105(7I) inserted (6.4.2006) by The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349), regs. 1(3), 17, **Sch. para. 6(b)**

F84 S. 105(7IA) inserted (6.4.2007) by The Employment Equality (Age) (Consequential Amendments) Regulations 2007 (S.I. 2007/825), **reg. 3(2)**

F85 S. 105(7IA) omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(4)** (with regs. 5, 6, 9)

F86 S. 105(7J) inserted (18.8.2006) by The European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), **reg. 32(1)(b)**

F87 S. 105(7JA) inserted (30.6.2012) by Pensions Act 2008 (c. 30), **ss. 57(4)**, 149(1); S.I. 2012/1682, art. 2, **Sch. 2**

F88 S. 105(7K) inserted (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 48(1)(b)**

F89 S. 105(7L) inserted (1.10.2009) by The European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 (S.I. 2009/2401), **reg. 30(2)** (with reg. 41)

F90 S. 105(7M) inserted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(3)(b)**

F91 S. 105(7N) inserted (1.10.2011) by The Agency Workers Regulations 2010 (S.I. 2010/93), reg. 25, **Sch. 2 para. 15**

106 Replacements.

(1) Where this section applies to an employee he shall be regarded for the purposes of section 98(1)(b) as having been dismissed for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) This section applies to an employee where—

(a) on engaging him the employer informs him in writing that his employment will be terminated on the resumption of work by another employee who is, or will be, absent wholly or partly because of pregnancy or childbirth, **[**[F92]or on adoption leave**][**[F93]or leave under section 80AA or 80BB (additional paternity leave)**]** and

(b) the employer dismisses him in order to make it possible to give work to the other employee.

(3) This section also applies to an employee where—

(a) on engaging him the employer informs him in writing that his employment will be terminated on the end of a suspension of another employee from work

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on medical grounds or maternity grounds (within the meaning of Part VII), and

(b) the employer dismisses him in order to make it possible to allow the resumption of work by the other employee.

(4) Subsection (1) does not affect the operation of section 98(4) in a case to which this section applies.

Textual Amendments

F92 Words in s. 106(2)(a) inserted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 35**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2

F93 Words in s. 106(2)(a) inserted (6.4.2010) by Work and Families Act 2006 (c. 18), ss. 11, 19, **Sch. 1 para. 42**; S.I. 2010/495, **art. 4(d)**

107 Pressure on employer to dismiss unfairly.

(1) This section applies where there falls to be determined for the purposes of this Part a question—

(a) as to the reason, or principal reason, for which an employee was dismissed,

(b) whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirement of section 98(1)(b), or

(c) whether an employer acted reasonably in treating the reason or principal reason for which an employee was dismissed as a sufficient reason for dismissing him.

(2) In determining the question no account shall be taken of any pressure which by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee; and the question shall be determined as if no such pressure had been exercised.

Exclusion of right

108 Qualifying period of employment.

(1) Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than **[**[F94]two years**]** ending with the effective date of termination.

(2) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in section 64(2), subsection (1) has effect in relation to that dismissal as if for the words **[**[F94]"two years"**]** there were substituted the words " one month ".

(3) Subsection (1) does not apply if—

[F95](a) . . . . . .

[[F96](aa) subsection (1) of section 98B (read with subsection (2) of that section) applies,**]**

[[F97](b) subsection (1) of section 99 (read with any regulations made under that section) applies,**]**

(c) subsection (1) of section 100 (read with subsections (2) and (3) of that section) applies,

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(d) subsection (1) of section 101 (read with subsection (2) of that section) or subsection (3) of that section applies,

[[F98](dd) section 101A applies,**]**

(e) section 102 applies,

(f) section 103 applies,

[[F99](ff) section 103A applies,**]**

(g) subsection (1) of section 104 (read with subsections (2) and (3) of that section) applies, [F100]. . .

[[F101](gg) subsection (1) of section 104A (read with subsection (2) of that section) applies, [F102] . . . **]**

[[F103](gh) subsection (1) of section 104B (read with subsection (2) of that section) applies, [F104] . . . **]**

[[F105](gi) section 104C applies,**]**

[[F106](gj) subsection (1) of section 104D (read with subsection (2) of that section) applies,**]**

[[F107](gk) section 104E applies,**]**

[[F108](gl) subsection (1) of section 104F (read with subsection (2) of that section) applies,**]**

[[F109](gm) section 104G applies,**]**

(h) section 105 applies,[F110]**[**[F111]. . .

(hh) paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulation) applies, **]**[F112]**[**[F113] . . .

(i) paragraph (1) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 applies,**]**

[F114] . . . . . .

[[F115](j) paragraph (1) of regulation 6 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 applies,**]**

[F116]**[**[F117] . . .

(k) paragraph (3) or (6) of regulation 42 of the European Public Limited-Liability Company Regulations 2004 applies,**]**

[F118]**[**[F119] . . .

(l) paragraph (3) or (6) of regulation 30 of the Information and Consultation of Employees Regulations 2004 (read with paragraphs (4) and (7) of that regulation) applies,**]**[F120]**[**[F121] . . .

(m) paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (read with paragraph 5(6) of that Schedule) applies**]**[F122]...**]**[F123], or

(n) [F124] . . . . . .

(o) paragraph (3) or (6) of regulation 31 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (read with paragraphs (4) and (7) of that regulation) applies,

[F125]**[**[F126] . . .

(p) regulation 46 or 47 of the Companies (Cross-Border Mergers) Regulations 2007 applies [F127] . . . **]**

Status: *Point in time view as at 17/03/2014.*
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[F128(q) paragraph (1)(a) or (b) of regulation 29 of the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009(S.I. 2009/2401) applies, **[**F129 or

(r) paragraph (1) of regulation 17 of the Agency Workers Regulations 2010 applies**]]]**

[F130(4) Subsection (1) does not apply if the reason (or, if more than one, the principal reason) for the dismissal is, or relates to, the employee's political opinions or affiliation.**]**

Textual Amendments

F94 Words in s. 108(1)(2) substituted (6.4.2012) by The Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 2012 (S.I. 2012/989), arts. 1, **3** (with art. 4)

F95 S. 108(3)(a) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 18, **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)

F96 S. 108(3)(aa) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 40(6)**, 59(2)-(4); S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F97 S. 108(3)(b) substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 32**; S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F98 S. 108(3)(dd) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(4)**

F99 S. 108(3)(ff) inserted (2.7.1999) by 1998 c. 23, **s. 7(1)**; S.I. 1999/1547, **art. 2**

F100 Word in s. 108(3)(g) repealed (1.11.1998) by 1998 c. 39, ss. 25(3), 53, **Sch. 3**; S.I. 1998/2574, art. 2(1), **Sch. 1** (with art. 3)

F101 S. 108(3)(gg) inserted (1.11.1998) by 1998 c. 39, **s. 25(3)**; S.I. 1998/2574, art. 2(1), **Sch. 1** (with art. 3)

F102 Word in s. 108(3)(gg) repealed (5.10.1999) by 1999 c. 10, ss. 7, 19(4), 20(2), Sch. 3 para. 3(3), **Sch. 6**

F103 S. 108(3)(gh) inserted (5.10.1999) by 1999 c. 10, ss. 7, 20(2), Sch. 3 para. 3(3) (which amending Act was repealed (in part on 27.8.2002 and 4.12.2002, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 60, **Sch. 6**; S.I. 2002/1727, **art. 2**) and insertion continued (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, **Sch. 1 para. 3(4)**; S.I. 2002/1727, **art. 2**

F104 Word in s. 108(3)(gh) omitted (15.1.2000) by virtue of S.I. 1999/3323, **reg. 29(2)**

F105 S. 108(3)(gi) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 41(5)**, 59(2)-(4); S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12)

F106 S. 108(3)(gj) inserted (30.6.2012) by Pensions Act 2008 (c. 30), **ss. 57(5)**, 149(1); S.I. 2012/1682, art. 2, Sch. 2

F107 S. 108(3)(gk) inserted "after paragraph (gj)" (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. 4**; S.I. 2010/303, **art. 4**, Sch. 3 (with arts. 8-14) (as amended by S.I. 2010/1151, art. 22)

F108 S. 108(3)(gl) inserted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(4)**

F109 S. 108(3)(gm) inserted (1.9.2013) by Growth and Infrastructure Act 2013 (c. 27), **ss. 31(5)**, 35(1); S.I. 2013/1766, art. 2

F110 Word at the end of s. 108(3)(h) omitted (1.7.2000) by virtue of S.I. 2000/1551, reg. 10, **Sch. para. 2(2)**

F111 S. 108(hh) and preceding word inserted (15.1.2000) by S.I. 1999/3323, **reg. 29(2)**

F112 Word in s. 108(3)(hh) 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(11)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

F113 S. 108(3)(i) and word "or" preceding it inserted (1.7.2000) by S.I. 2000/1551, reg. 10, **Sch. para. 2(2)**

F114 Word in s. 108(3)(i) repealed (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 1(2), **43(2)(a)**

F115 S. 108(3)(j) and preceding word 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(11)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)

F116 Word in s. 108(3)(j) repealed (6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), regs. 1(1), **31(2)(a)** (with reg. 3)

F117 S. 108(3)(k) and the preceding word "or" inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 1(2), **43(2)(b)**

F118 Word in s. 108(3)(k) omitted (6.4.2006) by virtue of The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349), regs. 1(3), 17, **Sch. para. 6(2)(a)**

F119 S. 108(3)(l) and the preceding word "or" inserted (6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), regs. 1(1), **31(2)(b)** (with reg. 3)

F120 Word in s. 108(3)(I) omitted (1.10.2006) by virtue of The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), reg. 49(1), **Sch. 8 para. 24(a)** (with regs. 44-46)

F121 S. 108(3)(m) and word inserted (6.4.2006) by The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349), regs. 1(3), 17, **Sch. para. 6(2)(b)**

F122 By virtue of The European Cooperative Society (Involvement of Emplees) Regulation Regulations 2006 (S.I. 2006/2059), **reg. 32(2)(a)** it is provided that the word "or" at the end of s. 108(3)(m) is omitted (18.8.2006)

F123 S. 108(3)(n) and word inserted (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), reg. 49(1), **Sch. 8 para. 24(b)** (with regs. 44-46)

F124 S. 108(3)(n) omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011(S.I. 2011/1069), {reg. 3(5)} (with regs. 5, 6, 9)

F125 S. 108: word immediately preceding para. 3(p) omitted (1.10.2009) by virtue of The European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 (S.I. 2009/2401), **reg. 30(3)** (with reg. 41)

F126 S. 108(3)(p) and word inserted (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 48(2)(b)**

F127 Word at the end of s. 108(3)(p) omitted (1.10.2011) by virtue of The Agency Workers Regulations 2010 (S.I. 2010/93), reg. 25, **Sch. 2 para. 16** (as amended by S.I. 2011/1941, reg. 2(5)(a))

F128 S. 108(3)(q) and preceding word inserted (1.10.2009) by The European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 (S.I. 2009/2401), **reg. 30(3)** (with reg. 41)

F129 S. 108(3)(r) and preceding word inserted (1.10.2011) by The Agency Workers Regulations 2010 (S.I. 2010/93), reg. 25, **Sch. 2 para. 16** (as amended by S.I. 2011/1941, reg. 2(5)(b)(c))

F130 S. 108(4) inserted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 13**, 103(2) (with s. 24(3))

Modifications etc. (not altering text)

C20 S. 108 excluded (4.9.2000) by 1999 c. 26, **s. 12(4)**, (with ss. 14, 15); S.I. 2000/2242, **art. 2**
S. 108 excluded (6.6.2000) by 1992 c. 52, s. 70A, **Sch. A1 para. 164** (as inserted (6.6.2000) by 1999 c. 26, ss. 1, 45(1), **Sch. 1**; S.I. 2000/1338, **art. 2(a)**)

C21 S. 108 excluded (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(4)**

C22 S. 108(1) excluded by 1992 c. 52, s. 154 (as substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 35**, 59(2)-(4); S.I. 2005/872, **arts. 4**, 5, Sch. (subject to arts. 6-12))

109 Upper age limit.

F131 . . . . . .

Status: *Point in time view as at 17/03/2014.*
Changes to legislation: *Employment Rights Act 1996, Part X is up to date with all changes known to be in force on or before 07 August 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)*

Textual Amendments

F131 S. 109 omitted (1.10.2006) by virtue of The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), reg. 49(1), **Sch. 8 para. 25** (with regs. 44-46)

Modifications etc. (not altering text)

C23 S. 109 excluded (4.9.2000) by 1999 c. 26, **s. 12(4)**, (with ss. 14, 15); S.I. 2000/2242, **art. 2**
S. 109 excluded (6.6.2000) by 1992 c. 52, s. 70A, **Sch. A1 para. 164** (as inserted (6.6.2000) by 1999 c. 26, s. 1, **Sch. 1**; S.I. 2000/1338, **art. 2(a)**)

110 Dismissal procedures agreements.

(1) Where a dismissal procedures agreement is designated by an order under subsection (3) which is for the time being in force—

(a) the provisions of that agreement relating to dismissal shall have effect in substitution for any rights under section 94, and

(b) accordingly, section 94 does not apply to the dismissal of an employee from any employment if it is employment to which, and he is an employee to whom, those provisions of the agreement apply.

[[F132](2) But if the agreement includes provision that it does not apply to dismissals of particular descriptions, subsection (1) does not apply in relation to a dismissal of any such description.**]**

(3) An order designating a dismissal procedures agreement may be made by the Secretary of State, on an application being made to him jointly by all the parties to the agreement, if he is satisfied that—

(a) every trade union which is a party to the agreement is an independent trade union,

(b) the agreement provides for procedures to be followed in cases where an employee claims that he has been, or is in the course of being, unfairly dismissed,

(c) those procedures are available without discrimination to all employees falling within any description to which the agreement applies,

(d) the remedies provided by the agreement in respect of unfair dismissal are on the whole as beneficial as (but not necessarily identical with) those provided in respect of unfair dismissal by this Part,

[[F133](e) the agreement includes provision either for arbitration in every case or for—

(i) arbitration where (by reason of equality of votes or for any other reason) a decision under the agreement cannot otherwise be reached, and

(ii) a right to submit to arbitration any question of law arising out of such a decision, and**]**

(f) the provisions of the agreement are such that it can be determined with reasonable certainty whether or not a particular employee is one to whom the agreement applies.

(4) If at any time when an order under subsection (3) is in force in relation to a dismissal procedures agreement the Secretary of State is satisfied, whether on an application made to him by any of the parties to the agreement or otherwise, either—

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(a) that it is the desire of all the parties to the agreement that the order should be revoked, or

(b) that the agreement no longer satisfies all the conditions specified in subsection (3),

the Secretary of State shall revoke the order by an order under this subsection.

(5) The transitional provisions which may be made in an order under subsection (4) include, in particular, provisions directing—

(a) that an employee—

(i) shall not be excluded from his right under section 94 where the effective date of termination falls within a transitional period which ends with the date on which the order takes effect and which is specified in the order, and

(ii) shall have an extended time for presenting a complaint under section 111 in respect of a dismissal where the effective date of termination falls within that period, and

(b) that, where the effective date of termination falls within such a transitional period, an **[**[F134]employment tribunal**]** shall, in determining any complaint of unfair dismissal presented by an employee to whom the dismissal procedures agreement applies, have regard to such considerations as are specified in the order (in addition to those specified in this Part and section 10(4) and (5) of **[**[F134]the Employment Tribunals Act 1996**]**).

[[F135](6) Where an award is made under a designated dismissal procedures agreement—

(a) in England and Wales it may be enforced, by leave of a county court, in the same manner as a judgment of the court to the same effect and, where leave is given, judgment may be entered in terms of the award, and

(b) in Scotland it may be recorded for execution in the Books of Council and Session and shall be enforceable accordingly.**]**

Textual Amendments

F132 S. 110(2) substituted (1.8.1998) by 1998 c. 8, **s. 12(1)** (with s. 12(5)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F133 S. 110(3)(e) substituted (1.8.1998) by 1998 c. 8, **s. 12(2)** (with s. 12(5)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F134 Words in s. 110(5)(b) 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**

F135 S. 110(6) inserted (1.8.1998) by 1998 c. 8, **s. 12(3)**; S.I. 1998/1658, art. 2(1), **Sch. 1**

CHAPTER II

REMEDIES FOR UNFAIR DISMISSAL

Modifications etc. (not altering text)

C24 Pt. 10 Ch. 2 modified (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(6)**

Status: *Point in time view as at 17/03/2014.*
Changes to legislation: *Employment Rights Act 1996, Part X is up to date with all changes known to be in force on or before 07 August 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)*

Introductory

111 Complaints to [F136employment tribunal].

(1) A complaint may be presented to an **[**F136employment tribunal**]** against an employer by any person that he was unfairly dismissed by the employer.

(2) **[**F137Subject to the following provisions of this section**]**, an **[**F136employment tribunal**]** shall not consider a complaint under this section unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the effective date of termination, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[F138(2A) Section 207A(3) (extension because of mediation in certain European cross-border disputes) applies for the purposes of subsection (2)(a).**]**

(3) Where a dismissal is with notice, an **[**F136employment tribunal**]** shall consider a complaint under this section if it is presented after the notice is given but before the effective date of termination.

(4) In relation to a complaint which is presented as mentioned in subsection (3), the provisions of this Act, so far as they relate to unfair dismissal, have effect as if—

(a) references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such circumstances that he will be unfairly dismissed when the notice expires,

(b) references to reinstatement included references to the withdrawal of the notice by the employer,

(c) references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice, and

(d) references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

[F139(5) Where the dismissal is alleged to be unfair by virtue of section 104F (blacklists),

(a) subsection (2)(b) does not apply, and

(b) an employment tribunal may consider a complaint that is otherwise out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.**]**

Textual Amendments

F136 Words in s. 111(1)-(3) and sidenote to s. 111 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**

F137 Words in s. 111(2) substituted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(5)(a)**

F138 S. 111(2A) 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**, 46

F139 S. 111(5) inserted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(5)(b)**

Status: *Point in time view as at 17/03/2014.*
Changes to legislation: *Employment Rights Act 1996, Part X is up to date with all changes known to be in force on or before 07 August 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)*

[F140 111A Confidentiality of negotiations before termination of employment

(1) Evidence of pre-termination negotiations is inadmissible in any proceedings on a complaint under section 111.

This is subject to subsections (3) to (5).

(2) In subsection (1) "pre-termination negotiations" means any offer made or discussions held, before the termination of the employment in question, with a view to it being terminated on terms agreed between the employer and the employee.

(3) Subsection (1) does not apply where, according to the complainant's case, the circumstances are such that a provision (whenever made) contained in, or made under, this or any other Act requires the complainant to be regarded for the purposes of this Part as unfairly dismissed.

(4) In relation to anything said or done which in the tribunal's opinion was improper, or was connected with improper behaviour, subsection (1) applies only to the extent that the tribunal considers just.

(5) Subsection (1) does not affect the admissibility, on any question as to costs or expenses, of evidence relating to an offer made on the basis that the right to refer to it on any such question is reserved.**]**

Textual Amendments

F140 S. 111A inserted (29.7.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 14**, 103(3) (with s. 24(4)); S.I. 2013/1648, art. 2(a)

112 The remedies: orders and compensation.

(1) This section applies where, on a complaint under section 111, an **[**F141 employment tribunal**]** finds that the grounds of the complaint are well-founded.

(2) The tribunal shall—

(a) explain to the complainant what orders may be made under section 113 and in what circumstances they may be made, and

(b) ask him whether he wishes the tribunal to make such an order.

(3) If the complainant expresses such a wish, the tribunal may make an order under section 113.

(4) If no order is made under section 113, the tribunal shall make an award of compensation for unfair dismissal (calculated in accordance with sections 118 to **[**F142 126**]**F143 . . .) to be paid by the employer to the employee.

[F144 (5) F145 . . . . . .

(6) F145 . . . . . **]**

Textual Amendments

F141 Words in s. 112(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**

F142 Word in s. 112(4) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 36**; S.I. 2004/2185, **art. 2**

F143 Words in s. 112(4) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(11)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I**

F144 S. 112(5)(6) inserted (1.10.2004) by Employment Act 2002 (c. 22), **ss. 34(3)**, 55(2); S.I. 2004/1717, **art. 2(2)** (subject to art. 3)

F145 S. 112(5)(6) omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(6)** (with regs. 5-7, 9)

Orders for reinstatement or re-engagement

113 The orders.

An order under this section may be—

(a) an order for reinstatement (in accordance with section 114), or

(b) an order for re-engagement (in accordance with section 115),

as the tribunal may decide.

Modifications etc. (not altering text)

C25 S. 113 restricted (24.4.2000) by 1992 c. 52, **s. 239(4)(a)** (as added (24.4.2000) by 1999 c. 26, s. 16, **Sch. 5 para. 4(5)**; S.I. 2000/875, **art. 2** (with transitional provision in art. 3))

114 Order for reinstatement.

(1) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed.

(2) On making an order for reinstatement the tribunal shall specify—

(a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,

(b) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and

(c) the date by which the order must be complied with.

(3) If the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.

(4) In calculating for the purposes of subsection (2)(a) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement by way of—

(a) wages in lieu of notice or ex gratia payments paid by the employer, or

(b) remuneration paid in respect of employment with another employer,

and such other benefits as the tribunal thinks appropriate in the circumstances.

Status: *Point in time view as at 17/03/2014.*
Changes to legislation: *Employment Rights Act 1996, Part X is up to date with all changes known to be in force on or before 07 August 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)*

F146(5) . . . . . .

Textual Amendments

F146 S. 114(5) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 20, **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)

115 Order for re-engagement.

(1) An order for re-engagement is an order, on such terms as the tribunal may decide, that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment.

(2) On making an order for re-engagement the tribunal shall specify the terms on which re-engagement is to take place, including—

(a) the identity of the employer,

(b) the nature of the employment,

(c) the remuneration for the employment,

(d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of re-engagement,

(e) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and

(f) the date by which the order must be complied with.

(3) In calculating for the purposes of subsection (2)(d) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of re-engagement by way of—

(a) wages in lieu of notice or ex gratia payments paid by the employer, or

(b) remuneration paid in respect of employment with another employer,

and such other benefits as the tribunal thinks appropriate in the circumstances.

F147(4) . . . . . .

Textual Amendments

F147 S. 115(4) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 21, **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)

116 Choice of order and its terms.

(1) In exercising its discretion under section 113 the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account—

(a) whether the complainant wishes to be reinstated,

(b) whether it is practicable for the employer to comply with an order for reinstatement, and

(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.

(2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.

(3) In so doing the tribunal shall take into account—

(a) any wish expressed by the complainant as to the nature of the order to be made,

(b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and

(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.

(4) Except in a case where the tribunal takes into account contributory fault under subsection (3)(c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.

(5) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining, for the purposes of subsection (1)(b) or (3)(b), whether it is practicable to comply with an order for reinstatement or re-engagement.

(6) Subsection (5) does not apply where the employer shows—

(a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement, or

(b) that—

(i) he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he wished to be reinstated or re-engaged, and

(ii) when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

117 Enforcement of order and compensation.

(1) An **[**[F148]employment tribunal**]** shall make an award of compensation, to be paid by the employer to the employee, if—

(a) an order under section 113 is made and the complainant is reinstated or re-engaged, but

(b) the terms of the order are not fully complied with.

(2) Subject to section 124 [F149]. . ., the amount of the compensation shall be such as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.

[[F150](2A) There shall be deducted from any award under subsection (1) the amount of any award made under section 112(5) at the time of the order under section 113.**]**

(3) Subject to subsections (1) and (2) [F149]. . ., if an order under section 113 is made but the complainant is not reinstated or re-engaged in accordance with the order, the tribunal shall make—

(a) an award of compensation for unfair dismissal (calculated in accordance with sections 118 to **[**[F151]126**]**), and

(b) except where this paragraph does not apply, an additional award of compensation of **[**[F152]an amount not less than twenty-six nor more than fifty-two weeks' pay**]**,

to be paid by the employer to the employee.

(4) Subsection (3)(b) does not apply where—

(a) the employer satisfies the tribunal that it was not practicable to comply with the order, [F153]. . .

[F153](b) . . . . . .

[F154](5) . . . . . .

[F154](6) . . . . . .

(7) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining for the purposes of subsection (4)(a) whether it was practicable to comply with the order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement.

(8) Where in any case an **[**[F155]employment tribunal**]** finds that the complainant has unreasonably prevented an order under section 113 from being complied with, in making an award of compensation for unfair dismissal [F156]. . . it shall take that conduct into account as a failure on the part of the complainant to mitigate his loss.

Textual Amendments

F148 Words in s. 117(1)(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**

F149 Words in s. 117(2)(3) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(11)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I**

F150 S. 117(2A) inserted (1.10.2004) by Employment Act 2002 (c. 22), **ss. 34(4)**, 55(2); S.I. 2004/1717, **art. 2(2)** (subject to art. 3)

F151 Word in s. 117(3)(a) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 37**; S.I. 2004/2185, **art. 2**

F152 Words in s. 117(3)(b) substituted (25.10.1999) by 1999 c. 26, **s. 33(2)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 8)

F153 S. 117(4)(b) and the preceding word "or" repealed (25.10.1999) by 1999 c. 26, ss. 33(1)(a), 44, **Sch. 9(10)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 8)

F154 S. 117(5)(6) repealed (25.10.1999) by 1999 c. 26, ss. 33(2), 44, **Sch. 9(10)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 8)

F155 S. 117(6)(c) and preceding word "and" inserted (1.8.1998) by 1998 c. 8, **s. 14(1)**; S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(7))

F156 Words in s. 117(8) repealed (1.8.1998) by 1998 c. 8, s. 15, **Sch. 2**; S.I. 1998/1658, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C26 S. 117: power to modify conferred (1.8.1998) by 1992 c. 52, **s. 212A(8)(a)** (as inserted (1.8.1998) by 1998 c. 8, **s. 7**; S.I. 1998/1658, art. 2(1), **Sch. 1**)
S. 117 applied (21.5.2001) by S.I. 2001/1185, arts. 2, 3, **Sch. para. 160**
S. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**
S. 117 modified (21.5.2001) by S.I. 2001/1185, **art. 5**

C27 S. 117 applied (6.4.2004) by The ACAS Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/753), arts. 1(1), 2, 3, **Sch. para. 185**
S. 117 applied (with modifications) (6.4.2004) by The ACAS Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/753), arts. 1(1), **6**

Compensation

118 General.

(1) [F157]. . .Where a tribunal makes an award of compensation for unfair dismissal under section 112(4) or 117(3)(a) the award shall consist of—

(a) a basic award (calculated in accordance with sections 119 to 122 and 126), and

(b) a compensatory award (calculated in accordance with sections 123, 124, **[**[F158]124A and 126**]**).

[F159](2) . . . . . .

[F159](3) . . . . . .

(4) [F160]. . . . . .

Textual Amendments

F157 Words in s. 118(1) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(11)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I**

F158 Words in s. 118(1)(b) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 38**; S.I. 2004/2185, **art. 2**

F159 S. 118(2)(3) repealed (25.10.1999) by 1999 c. 26, ss. 33(1)(a), 44, **Sch. 9(10)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 8)

F160 S. 118(4) repealed (1.11.2004) by Employment Act 2002 (c. 22), ss. 54, 55(2), **Sch. 8**; S.I. 2004/2822, **art. 2(b)**

Modifications etc. (not altering text)

C28 S. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**

119 Basic award.

(1) Subject to the provisions of this section, sections 120 to 122 and section 126, the amount of the basic award shall be calculated by—

(a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,

(b) reckoning backwards from the end of that period the number of years of employment falling within that period, and

(c) allowing the appropriate amount for each of those years of employment.

(2) In subsection (1)(c) "the appropriate amount" means—

(a) one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,

(b) one week's pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and

(c) half a week's pay for a year of employment not within paragraph (a) or (b).

Status: *Point in time view as at 17/03/2014.*
Changes to legislation: *Employment Rights Act 1996, Part X is up to date with all changes known to be in force on or before 07 August 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)*

(3) Where twenty years of employment have been reckoned under subsection (1), no account shall be taken under that subsection of any year of employment earlier than those twenty years.

(4) [F161] . . . . . .

(5) [F161] . . . . . .

[F162](6) . . . . . .

Textual Amendments

F161 S. 119(4)(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. 27(2)** (with regs. 44-46)

F162 S. 119(6) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 23, **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)

Modifications etc. (not altering text)

C29 S. 119 applied (1.11.1998) by 1998 c. 39, **s. 24(4)(a)**; S.I. 1998/2574, art. 2(1), **Sch. 1**
S. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**
S. 119 applied (6.6.2000) by 1992 c. 52, s. 70A, **Sch. A1 para. 160(2)** (as inserted (6.6.2000) by 1999 c. 26, s. 1, **Sch. 1**; S.I. 2000/1338, **art. 2** with transitional provisions in art. 3)

120 Basic award: minimum in certain cases.

(1) The amount of the basic award (before any reduction under section 122) shall not be less than **[**[F163]£5,500**]** where the reason (or, if more than one, the principal reason)—

(a) in a redundancy case, for selecting the employee for dismissal, or

(b) otherwise, for the dismissal,

is one of those specified in section 100(1)(a) and (b), **[**[F164]101A(d),**]** 102(1) or 103.

[[F165](1A) [F166] . . . . . .

(1B) [F166] . . . . . **]**

[[F167](1C) Where an employee is regarded as unfairly dismissed by virtue of section 104F (blacklists) (whether or not the dismissal is unfair or regarded as unfair for any other reason), the amount of the basic award of compensation (before any reduction is made under section 122) shall not be less than £5,000.**]**

[F168](2) . . . . . .

Textual Amendments

F163 S. 120(1) sum substituted (1.2.2013) by The Employment Rights (Increase of Limits) Order 2012 (S.I. 2012/3007), arts. 1(1), 3, **Sch.** (with art. 4)

F164 Words in s. 120(1) substituted (1.10.1998) by S.I. 1998/1833, **reg. 32(5)**

F165 S. 120(1A)-(1B) inserted (1.10.2004) by Employment Act 2002 (c. 22), **ss. 34(6)**, 55(2); S.I. 2004/1717, art. {2(2)} (subject to art. 3)

F166 S. 120(1A)(1B) omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(7)** (with regs. 5-7, 9)

F167 S. 120(1C) inserted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(6)**

F168 S. 120(2) repealed (17.12.1999) by 1999 c. 26, ss. 36(1)(a)(3), 44, **Sch. 9(10)**; S.I. 1999/3374, art. 2(b)(c), **Sch.**

Modifications etc. (not altering text)

C30 S. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**

C31 S. 120(1): power to amend conferred (17.12.1999) by 1999 c. 26, **s. 34(1)(b)**; S.I. 1999/3374, **art. 2(b)**

121 Basic award of two weeks' pay in certain cases.

The amount of the basic award shall be two weeks' pay where the tribunal finds that the reason (or, where there is more than one, the principal reason) for the dismissal of the employee is that he was redundant and the employee—

(a) by virtue of section 138 is not regarded as dismissed for the purposes of Part XI, or

(b) by virtue of section 141 is not, or (if he were otherwise entitled) would not be, entitled to a redundancy payment.

Modifications etc. (not altering text)

C32 Ss. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**

122 Basic award: reductions.

(1) Where the tribunal finds that the complainant has unreasonably refused an offer by the employer which (if accepted) would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that finding.

(2) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

(3) Subsection (2) does not apply in a redundancy case unless the reason for selecting the employee for dismissal was one of those specified in section 100(1)(a) and (b), **[**[F169]101A(d),**]** 102(1) or 103; and in such a case subsection (2) applies only to so much of the basic award as is payable because of section 120.

[[F170](3A) Where the complainant has been awarded any amount in respect of the dismissal under a designated dismissal procedures agreement, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that award.**]**

(4) The amount of the basic award shall be reduced or further reduced by the amount of—

(a) any redundancy payment awarded by the tribunal under Part XI in respect of the same dismissal, or

(b) any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI or otherwise).

[[F171](5) Where a dismissal is regarded as unfair by virtue of section 104F (blacklists), the amount of the basic award shall be reduced or further reduced by the amount of any basic award in respect of the same dismissal under section 156 of the Trade Union and Labour Relations (Consolidation) Act 1992 (minimum basic award in case of dismissal on grounds related to trade union membership or activities).**]**

Textual Amendments

F169 Words in s. 122(3) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(5)**

F170 S. 122(3A) inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch.1 para. 22**; S.I. 1998/1658, art. 2(1), **Sch. 1**

F171 S. 122(5) inserted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(7)**

Modifications etc. (not altering text)

C33 Ss. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**

123 Compensatory award.

(1) Subject to the provisions of this section and sections 124 **[**[F172], 124A and 126**]** , the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

(2) The loss referred to in subsection (1) shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and

(b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.

(3) The loss referred to in subsection (1) shall be taken to include in respect of any loss of—

(a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or otherwise), or

(b) any expectation of such a payment,

only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 122) in respect of the same dismissal.

(4) In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland.

(5) In determining, for the purposes of subsection (1), how far any loss sustained by the complainant was attributable to action taken by the employer, no account shall be taken of any pressure which by—

(a) calling, organising, procuring or financing a strike or other industrial action, or

(b) threatening to do so,

was exercised on the employer to dismiss the employee; and that question shall be determined as if no such pressure had been exercised.

Status: *Point in time view as at 17/03/2014.*
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(6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

[[F173](6A) Where—

(a) the reason (or principal reason) for the dismissal is that the complainant made a protected disclosure, and

(b) it appears to the tribunal that the disclosure was not made in good faith,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the complainant by no more than 25%.**]**

(7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI or otherwise) exceeds the amount of the basic award which would be payable but for section 122(4), that excess goes to reduce the amount of the compensatory award.

[[F174](8) Where the amount of the compensatory award falls to be calculated for the purposes of an award under section 117(3)(a), there shall be deducted from the compensatory award any award made under section 112(5) at the time of the order under section 113.**]**

Textual Amendments

F172 Words in s. 123(1) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 39**; S.I. 2004/2185, **art. 2**

F173 S. 123(6A) inserted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 18(5)**, 103(2) (with s. 24(6))

F174 S. 123(8) inserted (1.10.2004) by Employment Act 2002 (c. 22), **ss. 34(5)**, 55(2); S.I. 2004/1717, **art. 2(2)** (subject to art. 3)

Modifications etc. (not altering text)

C34 S. 123 applied (1.11.1998) by 1998 c. 39, **s. 24(4)(b)**
Ss. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**
S. 123 applied (6.6.2000) by 1992 c. 52, s. 70A, **Sch. A1 para. 160(2)(b)** (as inserted (6.6.2000) by 1999 c. 26, s. 1, **Sch. 1**; S.I. 2000/1338, **art. 2** (with transitional provisions in art. 3)

124 Limit of compensatory award etc.

(1) The amount of—

(a) any compensation awarded to a person under section 117(1) and (2), or

(b) a compensatory award to a person calculated in accordance with section 123,

shall not exceed **[**[F175]the amount specified in subsection (1ZA)**]**.

[[F176](1ZA) The amount specified in this subsection is the lower of—

(a) £74,200, and

(b) 52 multiplied by a week's pay of the person concerned.**]**

[[F177](1A) Subsection (1) shall not apply to compensation awarded, or a compensatory award made, to a person in a case where he is regarded as unfairly dismissed by virtue of section 100, 103A, 105(3) or 105(6A).**]**

[F178](2) . . . . . .

(3) In the case of compensation awarded to a person under section 117(1) and (2), the limit imposed by this section may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under section 114(2)(a) or section 115(2)(d).

(4) Where—

(a) a compensatory award is an award under paragraph (a) of subsection (3) of section 117, and

(b) an additional award falls to be made under paragraph (b) of that subsection,

the limit imposed by this section on the compensatory award may be exceeded to the extent necessary to enable the aggregate of the compensatory and additional awards fully to reflect the amount specified as payable under section 114(2)(a) or section 115(2)(d).

(5) The limit imposed by this section applies to the amount which the **[**[F179]employment tribunal**]** would, apart from this section, award in respect of the subject matter of the complaint after taking into account—

(a) any payment made by the respondent to the complainant in respect of that matter, and

(b) any reduction in the amount of the award required by any enactment or rule of law.

Textual Amendments

F175 Words in s. 124(1) substituted (29.7.2013) by The Unfair Dismissal (Variation of the Limit of Compensatory Award) Order 2013 (S.I. 2013/1949), arts. 1, **2(2)** (with art. 4)

F176 S. 124(1ZA) inserted (29.7.2013) by The Unfair Dismissal (Variation of the Limit of Compensatory Award) Order 2013 (S.I. 2013/1949), arts. 1, **2(3)** (with art. 4)

F177 S. 124(1A) inserted (25.10.1999) by 1999 c. 26, **s. 37(1)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I**

F178 S. 124(2) repealed (17.12.1999) by 1999 c. 26, ss. 36(1)(3), 44, **Sch. 9(10)**; S.I. 1999/3374, art. 2(b)(c), **Sch.**

F179 Words in s. 124(5) 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)

C35 Ss. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**

C36 S. 124 power to amend conferred (25.4.2013 for specified purposes, 25.6.2013 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 15(1)-(9)**, 103(1)(i), 103(2) (with s. 24(4))

C37 S. 124(1) applied (1.11.1998) by 1998 c. 39, **s. 24(4)(b)**; S.I. 1998/2574, art. 2(1), **Sch. 1**
S. 124(1): power to amend conferred (17.12.1999) by 1999 c. 26, **s. 34(1)(c)**; S.I. 1999/3374, **art. 2(a)**
S. 124(1) applied (6.6.2000) by 1992 c. 52, s. 70A, **Sch. A1 para. 160(2)(b)** (as inserted (6.6.2000) by 1999 c. 26, s. 1, **Sch. 1**; S.I. 2000/1338, **art. 2** (with transitional provisions in art. 3)

[[F180]**124AAdjustments under the Employment Act 2002**

Where an award of compensation for unfair dismissal falls to be—

(a) reduced or increased under **[**[F181]section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 (effect of failure to comply with Code: adjustment of awards)**]**, or

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(b) increased under section 38 of that Act (failure to give statement of employment particulars),

the adjustment shall be in the amount awarded under section 118(1)(b) and shall be applied immediately before any reduction under section 123(6) or (7).**]**

Textual Amendments

F180 S. 124A inserted (1.10.2004) by Employment Act 2002 (c. 22), **ss. 39**, 55(2); S.I. 2004/1717, **art. 2(2)** (subject to art. 3)

F181 Words in s. 124A substituted (6.4.2009) by Employment Act 2008 (c. 24), **ss. 3(4)**, 22(1)(a); S.I. 2008/3232, **art. 2** (with Sch. paras. 1, 5)

[F182]125 . . . . . .

Textual Amendments

F182 S. 125 repealed (25.10.1999) by 1999 c. 26, ss. 33(1)(a), 44, **Sch. 9(10)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 8)

126 Acts which are both unfair dismissal and discrimination.

(1) This section applies where compensation falls to be awarded in respect of any act both under—

(a) the provisions of this Act relating to unfair dismissal, and

[[F183](b) the Equality Act 2010.**]**

(2) An **[**[F184]employment tribunal**]** shall not award compensation under **[**[F185]either of those Acts**]** in respect of any loss or other matter which is or has been taken into account under **[**[F186]the other**]** by the tribunal (or another **[**[F184]employment tribunal**]**) in awarding compensation on the same or another complaint in respect of that act.

Textual Amendments

F183 S. 126(1)(b) substituted (1.10.2010) by Equality Act 2010 (c. 15), ss. 211, 216, **Sch. 26 para. 33(2)** (with ss. 6(4), 205) (as inserted by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), art. 1, **Sch. 1 para. 5**); S.I. 2010/2317, art. 2(15)(e)(ii) (with art. 15)

F184 Words in s. 126(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**

F185 Words in s. 126(2) substituted (1.10.2010) by Equality Act 2010 (c. 15), ss. 211, 216, **Sch. 26 para. 33(3)(a)** (with ss. 6(4), 205) (as inserted by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), art. 1, **Sch. 1 para. 5**); S.I. 2010/2317, art. 2(15)(e)(ii) (with art. 15)

F186 Words in s. 126(2) substituted (1.10.2010) by Equality Act 2010 (c. 15), ss. 211, 216, **Sch. 26 para. 33(3)(b)** (with ss. 6(4), 205) (as inserted by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), art. 1, **Sch. 1 para. 5**); S.I. 2010/2317, art. 2(15)(e)(ii) (with art. 15)

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Modifications etc. (not altering text)

C38 Ss. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**

[F187]127 . . . . . .

Textual Amendments

F187 S. 127 repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 24, **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)

127A Internal appeal procedures.

No commentary item could be found for this reference c20323811. . . . . .

[F188]127B . . . . . .

Textual Amendments

F188 S. 127B repealed (25.10.1999) by 1999 c. 26, ss. 37(2), 44, **Sch. 9(11)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I**

Interim relief

128 Interim relief pending determination of complaint.

[[F189](1) An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and—

(a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—

(i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or

(ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or

(b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met,

may apply to the tribunal for interim relief.**]**

(2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

(3) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application.

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(4) The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application together with notice of the date, time and place of the hearing.

(5) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

Textual Amendments

F189 S. 128(1) substituted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(8)**

Modifications etc. (not altering text)

C39 Ss. 128-132 extended (4.9.2000) by 1999 c. 26, **s. 12(5)** (with ss. 14, 15); S.I. 2000/2242, **art. 2**

C40 Ss. 128-132 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, **Sch. 6 para. 13(6)** (with regs. 44-46, Sch. 7)

C41 Ss. 128-132 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(5)**

129 Procedure on hearing of application and making of order.

[[F190](1) This section applies where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find—

(a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—

(i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or

(ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or

(b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met.**]**

(2) The tribunal shall announce its findings and explain to both parties (if present)—

(a) what powers the tribunal may exercise on the application, and

(b) in what circumstances it will exercise them.

(3) The tribunal shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—

(a) to reinstate the employee (that is, to treat him in all respects as if he had not been dismissed), or

(b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.

(4) For the purposes of subsection (3)(b) "terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed" means, as regards seniority, pension rights and other similar rights, that the period prior to

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the dismissal should be regarded as continuous with his employment following the dismissal.

(5) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.

(6) If the employer—
  (a) states that he is willing to re-engage the employee in another job, and
  (b) specifies the terms and conditions on which he is willing to do so,

the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions.

(7) If the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect.

(8) If the employee is not willing to accept the job on those terms and conditions—
  (a) where the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, and
  (b) otherwise, the tribunal shall make no order.

(9) If on the hearing of an application for interim relief the employer—
  (a) fails to attend before the tribunal, or
  (b) states that he is unwilling either to reinstate or re-engage the employee as mentioned in subsection (3),

the tribunal shall make an order for the continuation of the employee's contract of employment.

Textual Amendments

F190 S. 129(1) substituted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(9)**

Modifications etc. (not altering text)

C42 Ss. 128-132 extended (4.9.2000) by 1999 c. 26, **s. 12(5)** (with ss. 14, 15); S.I. 2000/2242, **art. 2**

C43 Ss. 128-132 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, **Sch. 6 para. 13(6)** (with regs. 44-46, Sch. 7)

C44 Ss. 128-132 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(5)**

130 Order for continuation of contract of employment.

(1) An order under section 129 for the continuation of a contract of employment is an order that the contract of employment continue in force—
  (a) for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters, and
  (b) for the purposes of determining for any purpose the period for which the employee has been continuously employed,

from the date of its termination (whether before or after the making of the order) until the determination or settlement of the complaint.

(2) Where the tribunal makes such an order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal

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pay period, or part of any such period, falling between the date of dismissal and the determination or settlement of the complaint.

(3) Subject to the following provisions, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period, or part, and shall be paid—

(a) in the case of a payment for any such period falling wholly or partly after the making of the order, on the normal pay day for that period, and

(b) in the case of a payment for any past period, within such time as may be specified in the order.

(4) If an amount is payable in respect only of part of a normal pay period, the amount shall be calculated by reference to the whole period and reduced proportionately.

(5) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of a normal pay period, or part of any such period, goes towards discharging the employer's liability in respect of that period under subsection (2); and, conversely, any payment under that subsection in respect of a period goes towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.

(6) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.

(7) For the purposes of this section, the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

Modifications etc. (not altering text)

C45 Ss. 128-132 extended (4.9.2000) by 1999 c. 26, **s. 12(5)** (with ss. 14, 15); S.I. 2000/2242, **art. 2**

C46 Ss. 128-132 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, **Sch. 6 para. 13(6)** (with regs. 44-46, Sch. 7)

C47 Ss. 128-132 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(5)**

131 Application for variation or revocation of order.

(1) At any time between—

(a) the making of an order under section 129, and

(b) the determination or settlement of the complaint,

the employer or the employee may apply to an **[**[F191]employment tribunal**]** for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order.

(2) Sections 128 and 129 apply in relation to such an application as in relation to an original application for interim relief except that, in the case of an application by the employer, section 128(4) has effect with the substitution of a reference to the employee for the reference to the employer.

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Textual Amendments

F191 Words in s. 131(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**

Modifications etc. (not altering text)

C48 Ss. 128-132 extended (4.9.2000) by 1999 c. 26, **s. 12(5)** (with ss. 14, 15); S.I. 2000/2242, **art. 2**

C49 Ss. 128-132 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, **Sch. 6 para. 13(6)** (with regs. 44-46, Sch. 7)

C50 Ss. 128-132 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(5)**

132 Consequence of failure to comply with order.

(1) If, on the application of an employee, an **[**[F192]employment tribunal**]** is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under section 129(5) or (7), the tribunal shall—

(a) make an order for the continuation of the employee's contract of employment, and

(b) order the employer to pay compensation to the employee.

(2) Compensation under subsection (1)(b) shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard—

(a) to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order, and

(b) to any loss suffered by the employee in consequence of the non-compliance.

(3) Section 130 applies to an order under subsection (1)(a) as in relation to an order under section 129.

(4) If on the application of an employee an **[**[F192]employment tribunal**]** is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment subsection (5) or (6) applies.

(5) Where the non-compliance consists of a failure to pay an amount by way of pay specified in the order—

(a) the tribunal shall determine the amount owed by the employer on the date of the determination, and

(b) if on that date the tribunal also determines the employee's complaint that he has been unfairly dismissed, it shall specify that amount separately from any other sum awarded to the employee.

(6) In any other case, the tribunal shall order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.

Textual Amendments

F192 Words in s. 132(1)(4) 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**

Status: *Point in time view as at 17/03/2014.*
Changes to legislation: *Employment Rights Act 1996, Part X is up to date with all changes known to be in force on or before 07 August 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)*

Modifications etc. (not altering text)

C51 Ss. 128-132 extended (4.12.2000) by 1999 c. 26, **s. 12(5)** (with ss. 14, 15); S.I. 2000/2242, **art. 2**

C52 Ss. 128-132 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, **Sch. 6 para. 13(6)** (with regs. 44-46, Sch. 7)

C53 Ss. 128-132 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(5)**

CHAPTER III

SUPPLEMENTARY

133 Death of employer or employee.

(1) Where—

(a) an employer has given notice to an employee to terminate his contract of employment, and

(b) before that termination the employee or the employer dies,

this Part applies as if the contract had been duly terminated by the employer by notice expiring on the date of the death.

(2) Where—

(a) an employee's contract of employment has been terminated,

(b) by virtue of subsection (2) or (4) of section 97 a date later than the effective date of termination as defined in subsection (1) of that section is to be treated for certain purposes as the effective date of termination, and

(c) the employer or the employee dies before that date,

subsection (2) or (4) of section 97 applies as if the notice referred to in that subsection as required by section 86 expired on the date of the death.

(3) Where an employee has died, sections 113 to 116 do not apply; and, accordingly, if the **[**[F193]employment tribunal**]** finds that the grounds of the complaint are well-founded, the case shall be treated as falling within section 112(4) as a case in which no order is made under section 113.

(4) Subsection (3) does not prejudice an order for reinstatement or re-engagement made before the employee's death.

(5) Where an order for reinstatement or re-engagement has been made and the employee dies before the order is complied with—

(a) if the employer has before the death refused to reinstate or re-engage the employee in accordance with the order, subsections (3) to (6) of section 117 apply, and an award shall be made under subsection (3)(b) of that section, unless the employer satisfies the tribunal that it was not practicable at the time of the refusal to comply with the order, and

(b) if there has been no such refusal, subsections (1) and (2) of that section apply if the employer fails to comply with any ancillary terms of the order which remain capable of fulfilment after the employee's death as they would apply to such a failure to comply fully with the terms of an order where the employee had been reinstated or re-engaged.

Textual Amendments

F193 Words in s. 133(3) 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**

134 Teachers in aided schools.

(1) Where a teacher in **[**[F194]a foundation, voluntary aided or foundation special school is dismissed by the governing body of the school in pursuance of a requirement of the **[**[F195]local authority**]** under **[**[F196]paragraph 7 of Schedule 2 to the Education Act 2002**]]**, this Part has effect in relation to the dismissal as if—

(a) the **[**[F195]local authority**]** had at all material times been the teacher's employer,

(b) the **[**[F195]local authority**]** had dismissed him, and

(c) the reason or principal reason for which they did so had been the reason or principal reason for which they required his dismissal.

(2) For the purposes of a complaint under section 111 as it has effect by virtue of subsection (1)—

(a) section 117(4)(a) applies as if for the words "not practicable to comply" there were substituted the words " not practicable for the local education authority to permit compliance ", and

(b) section 123(5) applies as if the references in it to the employer were to the **[**[F195]local authority**]**.

[[F197](3) In this section " local authority " has the meaning given by section 579(1) of the Education Act 1996. **]**

Textual Amendments

F194 Words in s. 134(1) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 55** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

F195 Words in s. 134 substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 41(3)(a)**

F196 Words in s. 134(1) substituted (1.9.2003 for E.S. and 1.4.2006 for W.) by Education Act 2002 (c. 32), ss. 215(1), 216, **Sch. 21 para. 30** (with ss. 210(8), 214(4)); S.I. 2003/1667, **art. 4** (with Sch. 1 (as amended (1.4.2004) by S.I. 2004/571, reg. 3 and S.I. 2005/2570, (art. 2))); S.I. 2006/879, **art. 4**, Sch.

F197 S. 134(3) inserted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), art. 1, **Sch. 2 para. 41(3)(b)**

[[F198]134A Application to police.

(1) For the purposes of section 100, and of the other provisions of this 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, the holding, otherwise than under a contract of employment, of the office of constable or an appointment as police cadet shall be treated as employment by the relevant officer under a contract of employment.

[[F199](2) In this section " the relevant officer ", in relation to—

(a) a person holding the office of constable, or

(b) a person holding an appointment as a police cadet,

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means the person who under section 51A of the Health and Safety at Work etc. Act 1974 is to be treated as his employer for the purposes of Part 1 of that Act. **]**

[Subsection (1) does not apply to the holding of the office of constable by a member [F200](3) of a police force on secondment to the **[**[F201]National Crime Agency**].]]**

Textual Amendments

F198 S. 134A inserted (1.7.1998) by 1997 c. 42, **s. 4**; S.I. 1998/1542, **art. 2**

F199 S. 134A(2) substituted (7.4.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 158(2)(b)(3)**, 178

F200 S. 134A(3) added (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 87**; S.I. 2006/378, art. 4(1), **Sch.** (subject to art. 4(2)-(7))

F201 Words in s. 134A(3) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 51**; S.I. 2013/1682, art. 3(v)

Status:
Point in time view as at 17/03/2014.

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