



Employment Rights Act 1996

1996 CHAPTER 18

PART X

UNFAIR DISMISSAL

CHAPTER I

RIGHT NOT TO BE UNFAIRLY DISMISSED

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;

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

Changes to legislation: *Employment Rights Act 1996, Cross Heading: Dismissal is up to date with all changes known to be in force on or before 15 May 2018. 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)*

Annotations:

Amendments (Textual)

- F1** Words in s. 95(1) repealed (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), ss. 57(1)(2), 59(2)-(4), Sch. 1 para. 29, **Sch. 2**; S.I. 2005/872, **arts. 4, 5**, Sch.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

- C1** 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)**

F396

Annotations:

Amendments (Textual)

- 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.

(4) Where—

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- (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)

Annotations:

Amendments (Textual)

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)

Changes to legislation:

Employment Rights Act 1996, Cross Heading: Dismissal is up to date with all changes known to be in force on or before 15 May 2018. 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.

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 8(2)(e) and word inserted by [S.I. 2018/147 art. 2\(b\)](#)
- s. 43K(1)(ca) and word omitted by [2013 c. 24 s. 20\(5\)](#) (This amendment not applied to [legislation.gov.uk](#). The insertion of s. 43K(1)(ba) by S.I. 2006/1056, Sch. para. 7 is to come into force on the day on which 2005 asp 13, s. 20 comes into force and that provision has never been brought into force)
- s. 43K(2)(ba) omitted by [2013 c. 24 s. 20\(6\)](#) (This amendment not applied to [legislation.gov.uk](#). The insertion of s. 43K(1)(ba) by S.I. 2006/1056, Sch. para. 7 is to come into force on the day on which 2005 asp 13, s. 20 comes into force and that provision has never been brought into force)
- s. 47AA inserted by [2008 c. 25 s. 37](#)
- s. 49C inserted by [2017 c. 16 s. 32\(4\)](#)
- s. 101B inserted by [2008 c. 25 s. 38](#)
- s. 105(4B) inserted by [2008 c. 25 s. 39\(3\)](#)
- s. 108(3)(de) inserted by [2008 c. 25 s. 39\(4\)](#)
- s. 110(3A) inserted by [2002 c. 22 s. 44](#)