



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART X

#### UNFAIR DISMISSAL

#### CHAPTER I

#### RIGHT NOT TO BE UNFAIRLY DISMISSED

#### *Other dismissals*

#### **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,
- (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

<sup>F1</sup>[<sup>F2</sup>(c) it is shown that any of subsections [<sup>F3</sup>(2A) to [<sup>F4</sup>(7N)]] applies.]

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

[<sup>F6</sup>(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).

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*Changes to legislation: Employment Rights Act 1996, Section 105 is up to date with all changes known to be in force on or before 17 April 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) View outstanding changes*

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- (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.
- [<sup>F7</sup>(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.
- [<sup>F8</sup>(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).
- [<sup>F9</sup>(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).]
- [<sup>F10</sup>(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).]
- [<sup>F11</sup>(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.]
- [<sup>F12</sup>(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.]
- [<sup>F13</sup>(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.]
- [<sup>F14</sup>(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).]

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[<sup>F15</sup>(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).]

[<sup>F16</sup>(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).]

[<sup>F17</sup>(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).]

[<sup>F18</sup>(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).]

[<sup>F19</sup>(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).]

[<sup>F20</sup>(7IA) <sup>F21</sup> ..... ]

[<sup>F22</sup>(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).]

[<sup>F23</sup>(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).]

[<sup>F24</sup>(7K) ..... ]

[<sup>F25</sup>(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). ]

[<sup>F26</sup>(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.]

[<sup>F27</sup>(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—

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- (a) paragraph (3) of regulation 17 of the Agency Workers Regulations 2010 (unless the case is one to which paragraph (4) of that regulation applies); or
  - (b) paragraph (3) of regulation 5 of the Agency Workers (Amendment) Regulations 2019 (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

- F1** 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)"
- F2** 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)**
- F3** 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)**
- F4** 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**
- F5** 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)
- F6** 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)
- F7** S. 105(4A) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(3)**
- F8** S. 105(6A) inserted (2.7.1999) by 1998 c. 23, **s. 6**; S.I. 1999/1547, **art. 2**
- F9** 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**)
- F10** 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**
- F11** 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)
- F12** 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**)
- F13** 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**)
- F14** S. 105(7D) inserted after subsection (7C) (15.1.2000) by virtue of S.I. 1999/3323, **reg. 29(1)**
- F15** S. 105(7E) inserted (1.7.2000) by S.I. 2000/1551, **reg. 10, Sch. para. 2(1)**
- F16** 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**)
- F17** 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)**
- F18** 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**)
- F19** 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)**

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- F20** S. 105(7IA) inserted (6.4.2007) by The Employment Equality (Age) (Consequential Amendments) Regulations 2007 (S.I. 2007/825), **reg. 3(2)**
- F21** 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)
- F22** 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)**
- F23** 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**
- F24** S. 105(7K) omitted (31.12.2020) by virtue of The Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/348), reg. 2, **Sch. 3 para. 6**; 2020 c. 1, Sch. 5 para. 1(1)
- F25** 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)
- F26** S. 105(7M) inserted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(3)(b)**
- F27** S. 105(7N) substituted (6.4.2020) by The Agency Workers (Amendment) Regulations 2019 (S.I. 2019/794), regs. 1(1), 8(2) (with reg. 7)

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**Changes and effects yet to be applied to :**

- s. 105(1)(c) word substituted by 2008 c. 30 s. 57(3)

**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):

- Pt. 8 Ch. 5 inserted by 2023 c. 20 Sch. para. 2
- Pt. 8A Ch. 1 heading inserted by 2023 c. 46 s. 1(3)
- Pt. 8A Ch. 2 inserted by 2023 c. 46 s. 1(4)
- Pt. 8A Ch. 3 inserted by 2023 c. 46 s. 2
- Pt. 8A Ch. 4 inserted by 2023 c. 46 s. 3(2)
- 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. 47C(2)(cc) inserted by 2023 c. 20 Sch. para. 22
- s. 47H inserted by 2020 c. 7 Sch. 7 para. 9
- s. 47AA inserted by 2008 c. 25 s. 37
- s. 47EA inserted by 2023 c. 46 Sch. para. 4
- s. 47EB inserted by 2023 c. 46 Sch. para. 5
- s. 48(1C) inserted by 2020 c. 7 Sch. 7 para. 10(a)
- s. 48(1C) inserted by 2023 c. 46 Sch. para. 6(2)
- s. 48(1D) inserted by 2023 c. 46 Sch. para. 6(3)
- s. 49(8) inserted by 2020 c. 7 Sch. 7 para. 11(b)
- s. 49(8) inserted by 2023 c. 46 Sch. para. 7(4)
- s. 49C inserted by 2017 c. 16 s. 32(4)
- s. 75I(3)(g) and word inserted by 2023 c. 20 Sch. para. 23(b)
- s. 80C(2)(bc) inserted by 2023 c. 20 Sch. para. 24(2)
- s. 80C(4)(bc) inserted by 2023 c. 20 Sch. para. 24(3)
- s. 80EB(2)(f) and word inserted by 2023 c. 20 Sch. para. 25(b)
- s. 99(3)(cc) inserted by 2023 c. 20 Sch. para. 28
- s. 101B inserted by 2008 c. 25 s. 38
- s. 104H inserted by 2020 c. 7 Sch. 7 para. 14
- s. 104CA inserted by 2023 c. 46 Sch. para. 9
- s. 105(4B) inserted by 2008 c. 25 s. 39(3)
- s. 105(7BC) inserted by 2020 c. 7 Sch. 7 para. 15
- s. 105(7BAA) inserted by 2023 c. 46 Sch. para. 10
- s. 108(3)(gia) inserted by 2023 c. 46 Sch. para. 11
- s. 108(3)(de) inserted by 2008 c. 25 s. 39(4)
- s. 108(3)(gn) inserted by 2020 c. 7 Sch. 7 para. 16
- s. 110(3A) inserted by 2002 c. 22 s. 44
- s. 163(6) inserted by 2022 c. 35 Sch. 5 para. 27
- s. 205A(2)(ba) inserted by 2023 c. 46 Sch. para. 16(2)
- s. 205A(8A) inserted by 2023 c. 46 Sch. para. 16(3)
- s. 225(7)(8) inserted by 2023 c. 46 Sch. para. 17

– s. 227(1)(zb)(zc) inserted by [2023 c. 46 Sch. para. 18](#)