



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART X

#### UNFAIR DISMISSAL

#### CHAPTER I

##### RIGHT NOT TO BE UNFAIRLY DISMISSED

##### *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 [<sup>F1</sup>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 [<sup>F1</sup>“two years”] there were substituted the words “ one month ”.
- (3) Subsection (1) does not apply if—
  - <sup>F2</sup>(a) .....
  - [<sup>F3</sup>(aa) subsection (1) of section 98B (read with subsection (2) of that section) applies,]
  - [<sup>F4</sup>(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,
  - (d) subsection (1) of section 101 (read with subsection (2) of that section) or subsection (3) of that section applies,

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- [<sup>F5</sup>(da) subsection (2) of section 101ZA applies (read with subsection (3) of that section) or subsection (4) of that section applies,]
- [<sup>F6</sup>(dd) section 101A applies,]
  - (e) section 102 applies,
  - (f) section 103 applies,
- [<sup>F7</sup>(ff) section 103A applies,]
  - (g) subsection (1) of section 104 (read with subsections (2) and (3) of that section) applies, <sup>F8</sup> . . .
- [<sup>F9</sup>(gg) subsection (1) of section 104A (read with subsection (2) of that section) applies, <sup>F10</sup> . . . ]
- [<sup>F11</sup>(gh) subsection (1) of section 104B (read with subsection (2) of that section) applies, <sup>F12</sup> . . . ]
- [<sup>F13</sup>(gi) section 104C applies,]
- [<sup>F14</sup>(gj) subsection (1) of section 104D (read with subsection (2) of that section) applies,]
- [<sup>F15</sup>(gk) section 104E applies,]
- [<sup>F16</sup>(gl) subsection (1) of section 104F (read with subsection (2) of that section) applies,]
- [<sup>F17</sup>(gm) section 104G applies,]
  - (h) section 105 applies, <sup>F18</sup>[<sup>F19</sup> . . .
  - (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, ]<sup>F20</sup>[<sup>F21</sup> . . .
  - (i) paragraph (1) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 applies,]
- <sup>F22</sup> . . . . .
- [<sup>F23</sup>(j) paragraph (1) of regulation 6 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 applies,]
  - <sup>F24</sup>[<sup>F25</sup> . . .
  - (k) paragraph (3) or (6) of regulation 42 of the European Public Limited-Liability Company Regulations 2004 applies,]
    - <sup>F26</sup>[<sup>F27</sup> . . .
    - (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,]<sup>F28</sup>[<sup>F29</sup> . . .
  - (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][<sup>F30</sup> ...][<sup>F31</sup>, or
  - (n) <sup>F32</sup> . . . . .
  - (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,
- <sup>F33</sup> . . . . .
- [<sup>F34</sup>(p) . . . . .

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- [ paragraph (1)(a) or (b) of regulation 29 of the European Public Limited-  
<sup>F35</sup>(q) Liability Company (Employee Involvement) (Great Britain) Regulations 2009( S.I. 2009/2401) applies, [<sup>F36</sup> or  
 (r) paragraph (1) of regulation 17 of the Agency Workers Regulations 2010 applies]]]

[<sup>F37</sup>(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.]

[<sup>F38</sup>(5) Subsection (1) does not apply if the reason (or, if more than one, the principal reason) for the dismissal is, or is connected with, the employee's membership of a reserve force (as defined in section 374 of the Armed Forces Act 2006).]

### Textual Amendments

- F1** 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)
- F2** 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)
- F3** 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)
- F4** 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)
- F5** S. 108(3)(da) inserted (4.5.2016 for specified purposes) by [Enterprise Act 2016 \(c. 12\)](#), s. 44(1)(d), **Sch. 5 para. 10**
- F6** S. 108(3)(dd) inserted (1.10.1998) by S.I. [1998/1833, reg. 32\(4\)](#)
- F7** S. 108(3)(ff) inserted (2.7.1999) by [1998 c. 23, s. 7\(1\)](#); S.I. [1999/1547, art. 2](#)
- F8** 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)
- F9** 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)
- F10** 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](#)
- F11** 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](#)
- F12** Word in s. 108(3)(gh) omitted (15.1.2000) by virtue of S.I. [1999/3323, reg. 29\(2\)](#)
- F13** 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)
- F14** 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](#)
- F15** 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](#))
- F16** S. 108(3)(gl) inserted (2.3.2010) by [The Employment Relations Act 1999 \(Blacklists\) Regulations 2010 \(S.I. 2010/493\)](#), **reg. 12(4)**
- F17** 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](#)
- F18** 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\(2\)](#)
- F19** S. 108(hh) and preceding word inserted (15.1.2000) by S.I. [1999/3323, reg. 29\(2\)](#)
- F20** 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](#))
- F21** S. 108(3)(i) and word "or" preceding it inserted (1.7.2000) by S.I. [2000/1551, reg. 10, Sch. para. 2\(2\)](#)

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- F22** 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)**
- F23** 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)
- F24** 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)
- F25** 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)**
- F26** 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)**
- F27** 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)
- F28** Word in s. 108(3)(l) 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)
- F29** 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)**
- F30** By virtue of The European Cooperative Society (Involvement of Employees) 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)
- F31** 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)
- F32** 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)
- F33** 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)
- F34** S. 108(3)(p) 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. 7**; 2020 c. 1, Sch. 5 para. 1(1)
- F35** 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)
- F36** 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))
- F37** S. 108(4) inserted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 13**, 103(2) (with s. 24(3))
- F38** S. 108(5) inserted (1.10.2014) by Defence Reform Act 2014 (c. 20), **ss. 48(2)**, 50(1) (with s. 48(4)); S.I. 2014/2370, art. 4(d)

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

- C1** 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)**)
- C2** S. 108 excluded (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **reg. 18(4)**
- C3** S. 108 excluded (11.1.2016) by The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015 (S.I. 2015/2021), regs. 1(2), **2(5)**
- C4** 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))

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