



# National Minimum Wage Act 1998

## 1998 CHAPTER 39

### *Rights not to suffer unfair dismissal or other detriment*

#### **23 The right not to suffer detriment.**

- (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer, done on the ground that—
  - (a) any action was taken, or was proposed to be taken, by or on behalf of the worker with a view to enforcing, or otherwise securing the benefit of, a right of the worker's to which this section applies; or
  - (b) the employer was prosecuted for an offence under section 31 below as a result of action taken by or on behalf of the worker for the purpose of enforcing, or otherwise securing the benefit of, a right of the worker's to which this section applies; or
  - (c) the worker 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 worker 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 this Act 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 above.
- (4) Except where a person is dismissed in circumstances in which—
  - (a) by virtue of section 197 of the <sup>M1</sup>Employment Rights Act 1996 (fixed term contracts), Part X of that Act (unfair dismissal) does not apply to the dismissal, or

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- (b) in relation to Northern Ireland, by virtue of Article 240 of the <sup>M2</sup>Employment Rights (Northern Ireland) Order 1996, Part XI of that Order does not apply to the dismissal,

this section does not apply where the detriment in question amounts to dismissal within the meaning of that Part.

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

- C1** S. 23 modified (*prosp.*) by 1948 c.47, s. 3A(1)-(4) (as inserted by 1998 c. 39, ss. 47(1)(a), 56(2), **Sch. 2 Pt. I**, para. 3 (with s. 36))  
S. 23 modified (*prosp.*) by 1949 c. 30, s. 3A(1)-(3) (as inserted by 1998 c. 39, ss. 47(1)(b), 56(2), **Sch. 2 Pt. II**, para. 13 (with s. 36))
- C2** S. 23 extended (with modifications) (*prosp.*) by S.I. 1997/2151 (N.I. 22), **art. 8A** (as inserted by 1998 c. 39, ss. 47(1)(c), 56(2), **Sch. 2 Pt. III**, para. 26 (with s. 36))

#### Marginal Citations

- M1** 1996 c. 18.  
**M2** S.I. 1996/1919 (N.I.16).

## 24 Enforcement of the right.

- (1) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 23 above.
- (2) Subject to the following provisions of this section, the provisions of—
- sections 48(2) to (4) and 49 of the <sup>M3</sup>Employment Rights Act 1996 (complaints to employment tribunals and remedies), or
  - in relation to Northern Ireland, Articles 71(2) to (4) and 72 of the <sup>M4</sup>Employment Rights (Northern Ireland) Order 1996 (complaints to industrial tribunals and remedies),
- shall apply in relation to a complaint under this section as they apply in relation to a complaint under section 48 of that Act or Article 71 of that Order (as the case may be), but taking references in those provisions to the employer as references to the employer within the meaning of section 23(1) above.
- (3) Where—
- the detriment to which the worker is subjected is the termination of his worker's contract, but
  - that contract is not a contract of employment,
- any compensation awarded under section 49 of the <sup>M5</sup>Employment Rights Act 1996 or Article 72 of the <sup>M6</sup>Employment Rights (Northern Ireland) Order 1996 by virtue of subsection (2) above must not exceed the limit specified in subsection (4) below.
- (4) The limit mentioned in subsection (3) above is the total of—
- the sum which would be the basic award for unfair dismissal, calculated in accordance with section 119 of the <sup>M7</sup>Employment Rights Act 1996 or Article 153 of the <sup>M8</sup>Employment Rights (Northern Ireland) Order 1996 (as the case may be), if the worker had been an employee and the contract terminated had been a contract of employment; and
  - the sum for the time being specified in section 124(1) of that Act or Article 158(1) of that Order (as the case may be) which is the limit for a compensatory

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award to a person calculated in accordance with section 123 of that Act or Article 157 of that Order (as the case may be).

- (5) Where the worker has been working under arrangements which do not fall to be regarded as a worker's contract for the purposes of—
- (a) the <sup>M9</sup>Employment Rights Act 1996, or
  - (b) in relation to Northern Ireland, the <sup>M10</sup>Employment Rights (Northern Ireland) Order 1996,

he shall be treated for the purposes of subsections (3) and (4) above as if any arrangements under which he has been working constituted a worker's contract falling within section 230(3)(b) of that Act or Article 3(3)(b) of that Order (as the case may be).

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

- C3** S. 24 modified (*prosp.*) by 1948 c.47, s. 3A(1)-(4) (as inserted by 1998 c. 39, ss. 47(1)(a), 56(2), **Sch. 2 Pt. I**, para. 3 (with s. 36))  
S. 24 modified (*prosp.*) by 1949 c. 30, s. 3A(1)-(3) (as inserted by 1998 c. 39, ss. 47(1)(b), 56(2), **Sch. 2 Pt. II**, para. 13 (with s. 36))
- C4** S. 24 extended (with modifications) (*prosp.*) by S.I. 1997/2151 (N.I. 22), **art. 8A** (as inserted by 1998 c. 39, ss. 47(1)(c), 56(2), **Sch. 2 Pt. III**, para. 26 (with s. 36))

**Marginal Citations**

- M3** 1996 c. 18.  
**M4** S.I. 1996/1919 (N.I.16).  
**M5** 1996 c. 18.  
**M6** S.I. 1996/1919 (N.I.16).  
**M7** 1996 c. 18.  
**M8** S.I. 1996/1919 (N.I.16).  
**M9** 1996 c. 18.  
**M10** S.I. 1996/1919 (N.I.16).

**25 Right of employee not to be unfairly dismissed: Great Britain.**

- (1) After section 104 of the <sup>M11</sup>Employment Rights Act 1996 (assertion of statutory right) there shall be inserted—

**“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

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- (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).”
- (2) In section 105 of that Act (redundancy as unfair dismissal) in subsection (1)(c) (which refers to any of subsections (2) to (7) of that section applying) for “(7)” there shall be substituted “(7A)” and after subsection (7) there shall be inserted—
- “(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).”
- (3) In section 108 of that Act (exclusion of right: qualifying period of employment) in subsection (3) (cases where no qualifying period is required) the word “or” at the end of paragraph (g) shall be omitted and after that paragraph there shall be inserted—
- “(gg) subsection (1) of section 104A (read with subsection (2) of that section) applies, or”.
- (4) In section 109 of that Act (exclusion of right: upper age limit) in subsection (2) (cases where upper age limit does not apply) the word “or” at the end of paragraph (g) shall be omitted and after that paragraph there shall be inserted—
- “(gg) subsection (1) of section 104A (read with subsection (2) of that section) applies, or”.

#### **Marginal Citations**

**M11** 1996 c. 18.

## **26 Right of employee not to be unfairly dismissed: Northern Ireland.**

- (1) After Article 135 of the <sup>M12</sup>Employment Rights (Northern Ireland) Order 1996 (assertion of statutory right) there shall be inserted—

### **“135A 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—

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- (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 Article 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 Article 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 sub-paragraph (a) or (b) of paragraph (1)—
- (a) whether or not the employee has the right, or
  - (b) whether or not the right has been infringed;
- but, for that paragraph 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 Article 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 industrial 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)."

(2) In Article 137 of that Order (redundancy as unfair dismissal) after paragraph (6) there shall be inserted—

“(6A) This paragraph 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 paragraph (1) of Article 135A (read with paragraph (2) of that Article).”

(3) In Article 140 of that Order (exclusion of right: qualifying period of employment) in paragraph (3) (cases where no qualifying period is required) after sub-paragraph (f) there shall be inserted—

“(ff) paragraph (1) of Article 135A (read with paragraph (2) of that Article) applies.”.

(4) In Article 141 of that Order (exclusion of right: upper age limit) in paragraph (2) (cases where upper age limit does not apply) after sub-paragraph (f) there shall be inserted—

“(ff) paragraph (1) of Article 135A (read with paragraph (2) of that Article) applies.”.

<sup>F1</sup>(5) .....

<sup>F1</sup>(6) .....

**Textual Amendments**

**F1** S. 26(5)(6) repealed (29.11.1998) by S.R. 1998/372, art. 2

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#### **Commencement Information**

- I1** S. 26 partly in force; s. 26(6) in force for certain purposes at Royal Assent see s. 56(2); s. 26(1)-(4) in force at 1.11.1998 by S.I. 1998/2574, art. 2(1), **Sch. 1** (with art. 3(2))

#### **Marginal Citations**

- M12** S.I. 1996/1919 (N.I.16).

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