



Employment Rights Act 1996

1996 CHAPTER 18

PART X

UNFAIR DISMISSAL

CHAPTER I

RIGHT NOT TO BE UNFAIRLY DISMISSED

Fairness

^{X1}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
 - [^{F1}(c) it is shown that any of subsections (2A) to (7I) apply.]

^{F2}(2)

[^{F3}(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).

Status: Point in time view as at 06/04/2006. This version of this provision has been superseded.

Changes to legislation: Employment Rights Act 1996, Section 105 is up to date with all changes known to be in force on or before 03 June 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)

- (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.
- [^{F4}(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.
- [^{F5}(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).
- [^{F6}(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).]
- [^{F7}(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).]
- [^{F8}(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.]
- [^{F9}(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.]
- [^{F10}(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).]
- [^{F11}(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)

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Regulations 2000 (unless the case is one to which paragraph (4) of that regulation applies).]

[^{F12}(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).]

[^{F13}(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).]

[^{F14}(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).]

[^{F15}(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).]

(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.

Editorial Information

- X1** The insertion of the new heading "Other dismissals" in Pt. X Ch. I on 1.10.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

- F1** S. 105(1)(c) substituted (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(1)(a)**
- F2** 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)
- F3** 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)
- F4** S. 105(4A) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(3)**
- F5** S. 105(6A) inserted (2.7.1999) by 1998 c. 23, s. 6; S.I. 1999/1547, **art. 2**
- F6** 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)
- F7** 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**
- F8** 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)

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- F9** 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)
- F10** S. 105(7D) inserted after subsection (7C) (15.1.2000) by virtue of S.I. 1999/3323, **reg. 29(1)**
- F11** S. 105(7E) inserted (1.7.2000) by S.I. 2000/1551, reg. 10, **Sch. para. 2(1)**
- F12** 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)
- F13** 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)**
- F14** 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)
- F15** 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(1)(b)**

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