



# Pensions Act 2008

## 2008 CHAPTER 30

### PART 1

#### PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

### CHAPTER 3

#### SAFEGUARDS: EMPLOYMENT AND PRE-EMPLOYMENT

##### *Protection of employment rights*

#### **57 Right of employee not to be unfairly dismissed**

- (1) The Employment Rights Act 1996 (c. 18) is amended as follows.
- (2) After section 104C (flexible working) insert—

##### **“104D Pension enrolment**

- (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, with a view to enforcing in favour of the employee a requirement to which this section applies;
  - (b) the employer was prosecuted for an offence under section 45 of the Pensions Act 2008 as a result of action taken for the purpose of enforcing in favour of the employee a requirement to which this section applies; or
  - (c) any provision of Chapter 1 of that Part of that Act applies to the employee, or will or might apply.

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**Changes to legislation:** *Pensions Act 2008, Section 57 is up to date with all changes known to be in force on or before 28 February 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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- (2) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above—
- (a) whether or not the requirement applies in favour of the employee, or
  - (b) whether or not the requirement has been contravened,
- but, for that subsection to apply, the claim that the requirement applies and, if applicable, the claim that it has been contravened must be made in good faith.
- (3) This section applies to any requirement imposed on the employer by or under any provision of Chapter 1 of Part 1 of the Pensions Act 2008.
- (4) In this section references to enforcing a requirement include references to securing its benefit in any way.”
- (3) In section 105 (redundancy as unfair dismissal), in subsection (1)(c) (which refers to any of subsections (2A) to (7J) of that section applying) for “(7J)” substitute “ (7JA) ”.
- (4) After subsection (7J) of that section insert—
- “(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).”
- (5) In section 108 (exclusion of right: qualifying period of employment) in subsection (3) (cases where no qualifying period is required) after paragraph (gi) insert—
- “(gj) subsection (1) of section 104D (read with subsection (2) of that section) applies,”.
- (6) In section 237(1A) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (cases where employee may complain of unfair dismissal despite participation in unofficial industrial action), in paragraph (a)—
- (a) for “, 103A or 104C” substitute “ , 103A, 104C or 104D ”;
  - (b) for “protected disclosure and flexible working” substitute “ protected disclosure, flexible working and pension scheme membership ”.
- (7) In section 238(2A)(a) of that Act (cases where employment tribunal to determine whether dismissal of an employee is unfair despite limitation in subsection (2) of that section)—
- (a) for “, 103 or 104C” substitute “ , 103, 104C or 104D ”;
  - (b) for “, employee representative and flexible working” substitute “ , employee representative, flexible working and pension scheme membership ”.

#### **Commencement Information**

**II** S. 57 partly in force; s. 57 not in force at Royal Assent see s. 149(1); s. 57(1)(2)(4)-(7) in force at 30.6.2012 by [S.I. 2012/1682](#), [art. 2\(2\)\(b\)](#), [Sch. 2](#)

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**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. 3(1A) inserted by [2023 c. 44 s. 1\(2\)](#)
- s. 5(1C) inserted by [2023 c. 44 s. 1\(3\)](#)
- s. 13(3)(ec) inserted by [2023 c. 20 Sch. para. 56](#)
- s. 13A inserted by [2023 c. 44 s. 1\(4\)](#)
- s. 24(1)(c) inserted by [2015 c. 8 Sch. 2 para. 43\(2\)\(d\)](#)
- s. 143(6)(7) inserted by [2023 c. 44 s. 1\(5\)\(b\)](#)