



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART V

#### UNFAIR DISMISSAL

##### *Exclusion of section 54*

#### 64 **Qualifying period and upper age limit.**

- (1) <sup>F1</sup> . . . section 54 does not apply to the dismissal of an employee from any employment if the employee—
- (a) was not continuously employed for a period of not less than [<sup>F2</sup>two years] ending with the effective date of termination, or
  - [<sup>F3</sup>(b) attained the following age on or before the effective date of termination, that is to say—
    - (i) if in the undertaking in which he was employed there was a normal retiring age for an employee holding the position which he held and the age was the same whether the employee holding that position was a man or a woman, that normal retiring age; and
    - (ii) in any other case, the age of sixty-five.]
- (2) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in section 19(1), subsection (1)(a) shall have effect in relation to that dismissal as if for the words [<sup>F4</sup>two years] there were substituted the words [<sup>F5</sup>one month].
- (3) <sup>F6</sup> .....
- [<sup>F7</sup>(3) Subsection (1) shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason.

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- (4) For the purposes of subsection (3) “inadmissible”, in relation to a reason, means that it is one of those specified in section [F857A(1) (read with (2) and (3)), [F957AA,]] 60(a) to (e) [F10or 60A(1) (read with (2) and (3))].
- (5) Subsection (1) shall not apply to a case falling within section 60(f).]

#### Textual Amendments

- F1** Words in s. 64(1) repealed (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(1), 302, **Sch. 1** (with savings in Sch. 3 para. 2).
- F2** Words substituted (with saving) by virtue of S.I. 1985/782, **arts. 3(1), 5**
- F3** S. 64(1)(b) substituted by Sex Discrimination Act 1986 (c. 59, SIF 106:1), **s. 3(1)**
- F4** Words substituted (with saving) by virtue of S.I. 1985/782, **arts. 4, 5**
- F5** Words substituted with saving by Employment Act 1982 (c. 46, SIF 43:5), s. 20, **Sch. 2 para. 5(1)**
- F6** S. 64(3) repealed (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(1), 302, **Sch. 1** (with savings in Sch. 3 para. 2)
- F7** S. 64(3)-(5) inserted (30.8.1993 except for the purpose of giving effect to s. 60(a)-(f) of this Act) by 1993 c. 19, **ss. 24(3), 52**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F8** Words in s. 64(4) inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para. 5**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F9** Words in s. 64(4) inserted (26.10.1995) by S.I. 1995/2587, **reg. 14(2)**
- F10** Words in s. 64(4) inserted (30.8.1993) by 1993 c. 19, **s. 29(3)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

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

- C1** S. 64 excluded (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), **ss. 154, 302**.
- C2** S. 64(1) excluded (E.W.) (26.8.1994) by 1994 c. 20, s. 4, **Sch. 4 para. 9**; S.I. 1994/1841, **art. 2**  
S. 64(1) excluded (E.W.) (3.1.1995) by 1994 c. 40, ss. 20, 82(2), **Sch. 8 para. 9**  
S. 64(1) modified (1.4.1996) by S.I. 1996/1023, **arts. 3, 4**  
S. 64(1) excluded (*prosp.*) by 1995 c. 26, **ss. 46(7), 180(1)**
- C3** S. 64(2) modified (1.4.1996) by S.I. 1996/1023, **arts. 3, 4**

<sup>F11</sup>64A .....

#### Textual Amendments

- F11** S. 64A (which was inserted with saving by Employment Act 1980 (c. 42, SIF 43:5), **s. 8(1)**; S.I. 1980/1170) repealed (30.8.1993) by 1993 c. 19, ss. 49(1), 51, Sch. 7 para. 2, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch.1** (and expressed to be repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202))

### 65 Exclusion in respect of dismissal procedures agreement.

- (1) An application may be made jointly to the Secretary of State by all the parties to a dismissal procedures agreement to make an order designating that agreement for the purposes of this section.
- (2) On any such application the Secretary of State may make such an order if he is satisfied—

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- (a) that every trade union which is a party to the dismissal procedures agreement is an independent trade union;
  - (b) that the agreement provides for procedures to be followed in cases where an employee claims that he has been, or is in the course of being, unfairly dismissed;
  - (c) that those procedures are available without discrimination to all employees falling within any description to which the agreement applies;
  - (d) that the remedies provided by the agreement in respect of unfair dismissal are on the whole as beneficial as (but not necessarily identical with) those provided in respect of unfair dismissal by this Part;
  - (e) that the procedures provided by the agreement include a right to arbitration or adjudication by an independent referee, or by a tribunal or other independent body, in cases where (by reason of an equality of votes or for any other reason) a decision cannot otherwise be reached; and
  - (f) that the provisions of the agreement are such that it can be determined with reasonable certainty whether a particular employee is one to whom the agreement applies or not.
- (3) Where a dismissal procedures agreement is designated by an order under this section which is for the time being in force, the provisions of that agreement relating to dismissal shall have effect in substitution for any rights under section 54; and accordingly that section shall not apply to the dismissal of an employee from any employment if it is employment to which, and he is an employee to whom, those provisions of the agreement apply.
- (4) Subsection (3) shall not apply to the [F12]right conferred by section 60 or 60A(1)[F13] or the right conferred by paragraph 7 or 8 of Schedule 5A to the Betting, Gaming and Lotteries Act 1963[F14] or the right conferred by paragraph 7 or 8 of Schedule 4 to the Sunday Trading Act 1994].

#### Textual Amendments

**F12** Words in s. 65(4) substituted (30.8.1993 so far as relating to s. 60A(1) of this Act and otherwise 10.6.1994) by 1993 c. 19, ss. 49(1), 51, 52, **Sch. 8 para. 16**; S.I. 1993/1908, art. 2(1), **Sch.**; S.I. 1994/1365, art. 2, **Sch.**

**F13** Words in s. 65(4) inserted (E.W.) (3.1.1995) by 1995 c. 40, ss. 20, 82(2), **Sch. 8 para. 20**

**F14** Words in s. 65(4) added (E.W.) (26.8.1994) by 1994 c. 20, s. 4, **Sch. 4 para. 20**; S.I. 1994/1841, **art. 2**

## 66 Revocation of exclusion order under s. 65.

(1)

<sup>F15</sup>(2) If [F16]at any time when an order under section 65 is in force, in respect of a dismissal procedures agreement the Secretary of State is satisfied, whether on an application by any of the parties to the agreement or otherwise,] either—

- (a) that it is the desire of all the parties to the dismissal procedures agreement that the order should be revoked, or
- (b) that the agreement has ceased to fulfil all the conditions specified in section 65(2),

the Secretary of State shall revoke the order by a further order made under this section.

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- (3) Any order made under this section may contain such transitional provisions as appear to the Secretary of State to be appropriate in the circumstances, and, in particular, may direct—
- (a) that, notwithstanding section 65(3), an employee shall not be excluded from his rights under section 54 where the effective date of termination falls within a transitional period which is specified in the order and is a period ending with the date on which the order under this section takes effect and shall have an extended time for presenting a complaint under section 67 in respect of a dismissal where the effective date of termination falls within that period, and
  - (b) that in determining any complaint of unfair dismissal presented by an employee to whom the dismissal procedures agreement applies, where the effective date of terminations falls within that transitional period, an industrial tribunal shall have regard to such considerations (in addition to those specified in this Part and paragraph 2 of Schedule 9) as may be specified in the order.

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**Textual Amendments**

**F15** S. 66(1) repealed by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 2](#)

**F16** Words substituted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 13\(b\)](#)

**Status:**

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