



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART X

#### UNFAIR DISMISSAL

#### CHAPTER I

##### RIGHT NOT TO BE UNFAIRLY DISMISSED

##### *Fairness*

#### 98 General.

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
  - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if it—
- (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
  - (b) relates to the conduct of the employee,
  - [<sup>F1</sup>(ba) <sup>F2</sup>.....]
  - (c) is that the employee was redundant, or
  - (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

[<sup>F3</sup>(2A) <sup>F2</sup>.....]

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**Changes to legislation:** *Employment Rights Act 1996, Section 98 is up to date with all changes known to be in force on or before 31 July 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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(3) In subsection (2)(a)—

- (a) “capability”, in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
- (b) “qualifications”, in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

[<sup>F4</sup>(3A) <sup>F2</sup>.....]

(4) [<sup>F5</sup>Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

- (a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
- (b) shall be determined in accordance with equity and the substantial merits of the case.

<sup>F6</sup>(5) .....

(6) [<sup>F7</sup>Subsection (4)] [<sup>F8</sup>is] subject to—

- (a) sections [<sup>F9</sup>98A] to 107 of this Act, and
- (b) sections 152, 153 [<sup>F10</sup>, 238 and 238A] of the <sup>M1</sup>Trade Union and Labour Relations (Consolidation) Act 1992 (dismissal on ground of trade union membership or activities or in connection with industrial action).

#### Textual Amendments

- F1** S. 98(2)(ba) inserted (1.10.2006) by *The Employment Equality (Age) Regulations 2006* (S.I. 2006/1031), regs. 1(1), 49(1), **Sch. 8 para. 22(2)** (with regs. 44-46)
- F2** S. 98(2)(ba)(2A)(3A) omitted (6.4.2011) by virtue of *The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011* (S.I. 2011/1069), **reg. 3(2)(a)** (with regs. 5, 6, 9)
- F3** S. 98(2A) inserted (1.10.2006) by *The Employment Equality (Age) Regulations 2006* (S.I. 2006/1031), regs. 1(1), 49(1), **Sch. 8 para. 22(3)** (with regs. 44-46)
- F4** S. 98(3A) inserted (1.10.2006) by *The Employment Equality (Age) Regulations 2006* (S.I. 2006/1031), regs. 1(1), 49(1), **Sch. 8 para. 22(4)** (with regs. 44-46)
- F5** Word in s. 98(4) substituted (6.4.2011) by *The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011* (S.I. 2011/1069), **reg. 3(2)(b)** (with regs. 5, 6, 9)
- F6** S. 98(5) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 15(a), **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)
- F7** Words in s. 98(6) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 15(b)**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)
- F8** Word in s. 98(6) substituted (1.10.2004) by *Employment Act 2002* (c. 22), ss. 53, 55(2), **Sch. 7 para. 32(a)**; S.I. 2004/2185, **art. 2**
- F9** Word in s. 98(6)(a) substituted (1.10.2004) by *Employment Act 2002* (c. 22), ss. 53, 55(2), **Sch. 7 para. 32(b)**; S.I. 2004/2185, **art. 2**
- F10** Words in s. 98(6)(b) substituted (6.4.2005) by *Employment Relations Act 2004* (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 30**; S.I. 2005/872, **arts. 4, 5**, Sch. (subject to arts. 6-12)

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

- C1** S. 98(1) modified (1.1.1999) by 1998 Measure No. 1, s. 6(1), **Sch. 3 para. 3(2)(b)**; Instrument dated 14.10.1998 made by the Archbishops of Canterbury and York
- C2** S. 98(1) modified by SI 2006/246 reg. 7(3)(b) (as substituted (31.1.2014) by The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (S.I. 2014/16), regs. 1(2), **8(1)** (with reg. 8(2)))

**Marginal Citations**

- M1** 1992 c. 52.

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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):

- Pt. 8 Ch. 5 inserted by [2023 c. 20 Sch. para. 2](#)
- Pt. 8A Ch. 1 heading inserted by [2023 c. 46 s. 1\(3\)](#)
- Pt. 8A Ch. 2 inserted by [2023 c. 46 s. 1\(4\)](#)
- Pt. 8A Ch. 3 inserted by [2023 c. 46 s. 2](#)
- Pt. 8A Ch. 4 inserted by [2023 c. 46 s. 3\(2\)](#)
- s. 43K(1)(ca) and word omitted by [2013 c. 24 s. 20\(5\)](#) (This amendment not applied to legislation.gov.uk. The insertion of s. 43K(1)(ba) by S.I. 2006/1056, Sch. para. 7 is to come into force on the day on which 2005 asp 13, s. 20 comes into force and that provision has never been brought into force)
- s. 43K(2)(ba) omitted by [2013 c. 24 s. 20\(6\)](#) (This amendment not applied to legislation.gov.uk. The insertion of s. 43K(1)(ba) by S.I. 2006/1056, Sch. para. 7 is to come into force on the day on which 2005 asp 13, s. 20 comes into force and that provision has never been brought into force)
- s. 47C(2)(cc) inserted by [2023 c. 20 Sch. para. 22](#)
- s. 47H inserted by [2020 c. 7 Sch. 7 para. 9](#)
- s. 47AA inserted by [2008 c. 25 s. 37](#)
- s. 47EA inserted by [2023 c. 46 Sch. para. 4](#)
- s. 47EB inserted by [2023 c. 46 Sch. para. 5](#)
- s. 48(1C) inserted by [2020 c. 7 Sch. 7 para. 10\(a\)](#)
- s. 48(1C) inserted by [2023 c. 46 Sch. para. 6\(2\)](#)
- s. 48(1D) inserted by [2023 c. 46 Sch. para. 6\(3\)](#)
- s. 49(8) inserted by [2020 c. 7 Sch. 7 para. 11\(b\)](#)
- s. 49(8) inserted by [2023 c. 46 Sch. para. 7\(4\)](#)
- s. 49C inserted by [2017 c. 16 s. 32\(4\)](#)
- s. 75I(3)(g) and word inserted by [2023 c. 20 Sch. para. 23\(b\)](#)
- s. 80A(6A) inserted by [2024 c. 17 s. 1\(2\)](#)
- s. 80B(6C) inserted by [2024 c. 17 s. 1\(3\)](#)
- s. 80C(2)(bc) inserted by [2023 c. 20 Sch. para. 24\(2\)](#)
- s. 80C(4)(bc) inserted by [2023 c. 20 Sch. para. 24\(3\)](#)
- s. 80D(1A) inserted by [2024 c. 17 s. 1\(4\)\(a\)](#)
- s. 80D(3) inserted by [2024 c. 17 s. 1\(4\)\(c\)](#)
- s. 80EB(2)(f) and word inserted by [2023 c. 20 Sch. para. 25\(b\)](#)
- s. 99(3)(cc) inserted by [2023 c. 20 Sch. para. 28](#)
- s. 101B inserted by [2008 c. 25 s. 38](#)
- s. 104H inserted by [2020 c. 7 Sch. 7 para. 14](#)
- s. 104CA inserted by [2023 c. 46 Sch. para. 9](#)
- s. 105(4B) inserted by [2008 c. 25 s. 39\(3\)](#)
- s. 105(7BC) inserted by [2020 c. 7 Sch. 7 para. 15](#)
- s. 105(7BAA) inserted by [2023 c. 46 Sch. para. 10](#)
- s. 108(3)(gia) inserted by [2023 c. 46 Sch. para. 11](#)
- s. 108(3)(de) inserted by [2008 c. 25 s. 39\(4\)](#)
- s. 108(3)(gn) inserted by [2020 c. 7 Sch. 7 para. 16](#)
- s. 110(3A) inserted by [2002 c. 22 s. 44](#)
- s. 205A(2)(ba) inserted by [2023 c. 46 Sch. para. 16\(2\)](#)
- s. 205A(8A) inserted by [2023 c. 46 Sch. para. 16\(3\)](#)
- s. 225(7)(8) inserted by [2023 c. 46 Sch. para. 17](#)

– s. 227(1)(zb)(zc) inserted by [2023 c. 46 Sch. para. 18](#)