



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART V

#### UNFAIR DISMISSAL

##### *Interim relief*

<sup>F1</sup>77 .....

#### Textual Amendments

<sup>F1</sup> Ss. 76A-79 repealed (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992](#) (c. 52), ss. 300(1), 302, [Sch.1](#) (with savings in [Sch. 3 para. 2](#))

#### 77A <sup>F2</sup>Procedure on hearing of application and making of order.

- (1) If on hearing an employee's application for interim relief it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find that the reason (or, if more than one, the principal reason) for his dismissal was one of those specified in section 57A(1)(a) and (b) [<sup>F3</sup>or section 57AA]<sup>F4</sup> of this Act or section 46 of the Pensions Act 1995] the following provisions shall apply.
- (2) The tribunal shall announce its findings and explain to both parties (if present) what powers the tribunal may exercise on the application and in what circumstances it will exercise them, and shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—
  - (a) to reinstate the employee, that is to say, to treat him in all respects as if he had not been dismissed, or

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- (b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.
- (3) For this purpose “terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed” means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal should be regarded as continuous with his employment following the dismissal.
- (4) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.
- (5) If the employer states that he is willing to re-engage the employee in another job and specifies the terms and conditions on which he is willing to do so, the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions; and—
  - (a) if the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect, and
  - (b) if he is not, then, if the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, but otherwise the tribunal shall make no order.
- (6) If on the hearing of an application for interim relief the employer fails to attend before the tribunal, or states that he is unwilling either to reinstate the employee or re-engage him as mentioned in subsection (2), the tribunal shall make an order for the continuation of the employee’s contract of employment.

**Textual Amendments**

**F2** Ss. 77-79 inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1** (previous versions of ss. 77-79 having been repealed (16.10.1992) by 1992 c. 52, **Sch. 1**)

**F3** Words in s. 77A(1) inserted (26.10.1995) by S.I. 1995/2587, **reg. 14(3)**

**F4** Words in s. 77A(1) inserted (*prosp.*) by 1995 c. 26, ss. 122, 180(1), **Sch. 3 para. 7**

<sup>F5</sup>78 .....

**Textual Amendments**

**F5** Ss. 76A-79 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).

VALID FROM 22/08/1996

[<sup>F6F7</sup>78A] .....

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**Textual Amendments**

- F6** Ss. 77-79 and cross heading inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.10**; S.I. 1993/1908, art. 2(1), **Sch.1** (previous versions of ss. 77-79 having been repealed (16.10.1992) by 1992 c. 52, **Sch. 1**).
- F7** S. 78A repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202) and subject to an amendment (1.8.1998) by 1998 c. 8, **s. 1(2)** (with s. 16(2)); S.I. 1998/1658, art. 2, **Sch. 1**

**78A** <sup>F9</sup> **Application for variation or revocation of order.** **E+W+S**

- (1) At any time between the making of an order under section 77A and the determination or settlement of the complaint, the employer or the employee may apply to an industrial tribunal for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order.
- (2) Sections 77 and 77A apply in relation to such an application as in relation to an original application for interim relief except that, in the case of an application by the employer, section 77(4) has effect with the substitution of a reference to the employee for the reference to the employer.

**Textual Amendments**

- F9** Ss. 77-79 inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.10**; S.I. 1993/1908, art. 2(1), **Sch.1** (previous versions of ss. 77-79 having been repealed (16.10.1992) by 1992 c. 52, **Sch. 1**)

**~~F8~~79** .....

**Textual Amendments**

- F8** Ss. 76A-79 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).

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**Changes to legislation:**

There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Cross Heading: Interim relief.