



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART V

#### UNFAIR DISMISSAL

##### *Meaning of unfair dismissal*

#### **55**    **Meaning of “dismissal”.**

- (1) In this Part, except as respects a case to which section 56 applies, “dismissal” and “dismiss” shall be construed in accordance with the following provisions of this section.
- (2) Subject to subsection (3), an employee shall be treated as dismissed by his employer if, but only if,—
  - (a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice, or
  - (b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract, or
  - (c) the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer’s conduct.
- (3) Where an employer gives notice to an employee to terminate his contract of employment and, at a time within the period of that notice, the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer’s notice is due to expire, the employee shall for the purposes of this Part be taken to be dismissed by his employer, and the reasons for this dismissal shall be taken to be the reasons for which the employer’s notice is given.
- (4) In this Part “the effective date of termination”—

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- (a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which that notice expires;
- (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect; and
- (c) in relation to an employee who is employed under a contract for a fixed term, where that term expires without being renewed under the same contract, means the date on which that term expires.

[<sup>F1</sup>(5) Where the contract of employment is terminated by the employer and the notice required by section 49 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by subsection (4)) then, for the purposes of sections 53(2), 64(1)(a), <sup>F2</sup>. . . and 73(3) and paragraph 8(3) of Schedule 14, the later date shall be treated as the effective date of termination in relation to the dismissal.

- (6) Where the contract of employment is terminated by the employee and—
  - (a) the material date does not fall during a period of notice given by the employer to terminate that contract; and
  - (b) had the contract been terminated not by the employee but by notice given on the material date by the employer, that notice would have been required by section 49 to expire on a date later than the effective date of termination (as defined by subsection (4)),

then, for the purposes of sections 64(1)(a), <sup>F2</sup>. . . and 73(3) and paragraph 8(3) of Schedule 14, the later date shall be treated as the effective date of termination in relation to the dismissal.

- (7) “Material date” means—
  - (a) in subsection (5), the date when notice of termination was given by the employer or (where no notice was given) the date when the contract of employment was terminated by the employer; and
  - (b) in subsection (6), the date when notice of termination was given by the employee or (where no notice was given) the date when the contract of employment was terminated by the employee.]

#### Textual Amendments

**F1** S. 55(5)–(7) substituted for s. 55(5) by Employment Act 1982 (c. 46, SIF 43:5), **Sch. 3 para. 1** with saving in S.I. 1982/1656, **Sch. 2**

**F2** Words in s. 55(5)(6) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch.1**

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

**C1** S. 55(2)–(7) applied (1.7.1992) by Social Security Contributions and Benefits Act 1992 (c. 4), **ss. 171(1), 177(4)**.

## 56 Failure to permit woman to return to work after confinement treated as dismissal.

Where an employee [<sup>F3</sup>has the right to return to work under section 39 and has exercised it in accordance with section 42] but is not permitted to return to work, then [<sup>F4</sup>subject to section 56A] she shall be treated for the purposes of this Part as if she had

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been employed until the notified day of return, and, if she would not otherwise be so treated, as having been continuously employed until that day, and as if she had been dismissed with effect from that day for the reason for which she was not permitted to return.

#### Textual Amendments

- F3** Words in s. 56 substituted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para.12**; S.I. 1994/1365, art. 2, **Sch.**
- F4** Words inserted by **Employment Act 1980 (c. 42, SIF 43:5)**, **Sch. 1 para. 11**

#### [<sup>F5</sup>56A Exclusion of s. 56 in certain cases.

- (1) Section 56 shall not apply in relation to an employee if—
- immediately before [<sup>F6</sup>the end of her maternity leave period (or, if it ends by reason of dismissal, immediately before the dismissal)] the number of employees employed by her employer, added to the number employed by any associated employer of his, did not exceed five, and
  - it is not reasonably practicable for the employer (who may be the same employer or a successor of his) to permit her to return to work in accordance with [<sup>F6</sup>section 39] or for him or an associated employer to offer her employment under a contract of employment satisfying the conditions specified in subsection (3).
- (2) Section 56 shall not apply in relation to an employee if—
- it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit her to return to work in accordance with [<sup>F6</sup>section 39], and
  - he or an associated employer offers her employment under a contract of employment satisfying the conditions specified in subsection (3), and
  - she accepts or unreasonably refuses that offer.
- (3) the conditions referred to in subsections (1) and (2) are—
- that the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
  - that the provisions of the contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work in accordance with [<sup>F6</sup>section 39].
- (4) Where on complaint of unfair dismissal any question arises as to whether the operation of section 56 is excluded by subsection (1) or (2), it shall be for the employer to show that the provisions of that subsection were satisfied in relation to the complainant.]

#### Textual Amendments

- F5** S. 56A inserted with saving by **Employment Act 1980 (c. 42, SIF 43:5)**, s. 12 and S.I. 1980/1170, art. 4, **Sch. 3**
- F6** Words in s. 56A(1)(a)(b)(2)(a)(3)(b) substituted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 13** (a)(b); S.I. 1994/1365, art. 2, **Sch.**

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

C2 S. 56A(1) excluded by S.I. 1981/847, art. 2(1)

### 57 General provisions relating to fairness of dismissal.

- (1) In determining for the purposes of this Part whether the dismissal of an employee was fair or unfair, it shall be for the employer to show—
- (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal, and
  - (b) that it was 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 that employee held.
- (2) In subsection (1)(b) the reference to a reason falling within this subsection is a reference to a reason which—
- (a) related to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do, or
  - (b) related to the conduct of the employee, or
  - (c) was that the employee was redundant, or
  - (d) was 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.
- (3) Where the employer has fulfilled the requirements of subsection (1), then, [<sup>F7</sup>subject to [<sup>F8</sup>sections 57A to 61], and to sections 152, 153 and 238 of the Trade Union and Labour Relations (Consolidation) Act 1992 (provisions as to dismissal on ground of trade union membership or activities or in connection with industrial action),], the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether [<sup>F9</sup>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 that question shall be determined in accordance with equity and the substantial merits of the case].
- (4) In this section, in relation to an employee,—
- (a) “capability” means capability assessed by reference to skill, aptitude, health or any other physical or mental quality;
  - (b) “qualifications” means any degree, diploma or other academic, technical or professional qualification relevant to the position which the employee held.

#### Textual Amendments

- F7** Words in s. 57 substituted (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(2), 302, Sch. 2 para. 14.
- F8** Words in s. 57(3) substituted (30.8.1993) by 1993 c. 19, s. 28, Sch. 5 para.2; S.I. 1993/1908, art. 2(1), Sch. 1
- F9** Words substituted with saving by Employment Act 1980 (c. 42, SIF 43:5), s. 6 and S.I. 1980/1170, art. 4, Sch. 3

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

- C3** Ss. 57-61 modified (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), [ss. 239\(3\)\(a\)](#), 302.
- C4** S. 57(1)(b) modified by [S.I. 1981/1794](#), [regs. 8\(2\)\(b\)](#), 13

[<sup>F10</sup>**57A Dismissal in health and safety cases.**

- (1) The dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—
- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, carried out, or proposed to carry out, any such activities,
  - (b) being a representative of workers on matters of health and safety at work, or a member of a safety committee—
    - (i) in accordance with arrangements established under or by virtue of any enactment, or
    - (ii) by reason of being acknowledged as such by the employer, performed, or proposed to perform, any functions as such a representative or a member of such a committee,
  - (c) being an employee at a place where—
    - (i) there was no such representative or safety committee, or
    - (ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,  
brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,
  - (d) in circumstances of danger which he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, left, or proposed to leave, or (while the danger persisted) refused to return to, his place of work or any dangerous part of his place of work, or
  - (e) in circumstances of danger which he reasonably believed to be serious and imminent, took, or proposed to take, appropriate steps to protect himself or other persons from the danger.
- (2) For the purposes of subsection (1)(e) whether steps which an employee took, or proposed to take, were appropriate shall be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.
- (3) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee was that specified in subsection (1)(e), the dismissal shall not be regarded as having been unfair if the employer shows that it was, or would have been, so negligent for the employee to take the steps which he took, or proposed to take, that a reasonable employer might have dismissed him for taking, or proposing to take, them.]

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**Textual Amendments**

**F10** S. 57A inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.3**; S.I. 1993/1908, art. 2(1), **Sch. 1**

VALID FROM 26/10/1995

**[<sup>F11</sup>57A Dismissal of employee representatives.**

The dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee, being—

- (a) an employee representative for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981, or
- (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

performed, or proposed to perform, any functions or activities as such an employee representative or candidate.]

**Textual Amendments**

**F11** S. 57AA inserted (26.10.1995) by S.I. 1995/2587, **reg. 14(1)**

**<sup>F12</sup>58** .....

**Textual Amendments**

**F12** S. 58 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).

**<sup>F13</sup>58A** .....

**Textual Amendments**

**F13** S. 58A repealed by Employment Act 1988 (c. 19, SIF 43:5), s. 33(2), **Sch. 4**

**59 Dismissal on ground of redundancy.**

[<sup>F14</sup>(1)] Where the reason or principal reason for the dismissal of an employee was that [<sup>F15</sup>the employee] was redundant, but 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 [<sup>F15</sup>the employee] and who have not been dismissed by the [<sup>F16</sup>employer, and [<sup>F17</sup>either]

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- (a) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was an inadmissible reason; <sup>F18</sup>or]. . .
- <sup>F19</sup>(b) that <sup>F20</sup>the employee] was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure <sup>F21</sup>in the case of the employee],
- then, for the purposes of this Part, the dismissal shall be regarded as unfair.

<sup>F14</sup>(2) For the purposes of this section “inadmissible”, in relation to a reason, means that it is one of those specified in section <sup>F22</sup>57A(1) (read with (2) and (3))] 60(a) to (e) <sup>F23</sup>or 60A(1) (read with (2) and (3))]]

<sup>F24</sup>(3) For the purposes of this Part “a redundancy case” means a case where the reason or principal reason for the dismissal was that the employee was redundant but the equal application of the circumstances to non-dismissed employees is also shown.]

#### Textual Amendments

- F14** S. 59 renumbered as s. 59(1) and s. 59(2) inserted (30.8.1993 except for the purpose of giving effect to s. 60(a)-(f) of this Act) by 1993 c. 19, s. 24(2); S.I. 1993/1908, art. 2(1), Sch. 1
- F15** Words in s. 59(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), Sch. 8 para. 14(a); S.I. 1993/1908, art. 2(1), Sch. 1
- F16** Words in s. 59 substituted (30.8.1993 except for the purpose of giving effect to s. 60(a)-(f) of this Act) by 1993 c. 19, s. 24(2); S.I. 1993/1908, art. 2(1), Sch. 1
- F17** Word in s. 59(1) repealed (E.W.) (3.1.1995) by 1994 c. 40, s. 81(1), Sch. 17; S.I. 1994/3188, arts. 2, 3(n)(s)(vi)
- F18** Word in s. 59(1)(a) repealed (E.W.) (3.1.1995) by 1994 c. 40, s. 81(1), Sch. 17; S.I. 1994/3188, arts. 2, 3(n)(s)(vi)
- F19** S. 59(1)(b) repealed (E.W.) (3.1.1995) by 1994 c. 40, ss. 36(1), 81(1), Sch. 17; S.I. 1994/3188, arts. 2, 3(e)(n)(s)(vi)
- F20** Words in s. 59(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), Sch. 8 para. 14(a); S.I. 1993/1908, art. 2(1), Sch. 1
- F21** Words in s. 59(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), Sch. 8 para. 14(b); S.I. 1993/1908, art. 2(1), Sch. 1
- F22** Words in s. 59(2) substituted (30.8.1993) by 1993 c. 19, s. 28, Sch. 5 para. 4; S.I. 1993/1908, art. 2(1), Sch. 1
- F23** Words in s. 59(2) inserted (30.8.1993) by 1993 c. 19, s. 29(2); S.I. 1993/1908, art. 2(1), Sch. 1
- F24** S. 59(3) inserted (30.8.1993) by 1993 c. 19, s. 49(2), Sch. 8 para. 14(c); S.I. 1993/1908, art. 2(1), Sch. 1

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

- C5** Ss. 57-61 modified (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 239(3)(a), 302.

#### <sup>F25</sup>60 Dismissal on ground of pregnancy or childbirth.

An employee shall be treated for the purposes of this Part as unfairly dismissed if—

- (a) the reason (or, if there is more than one, the principal reason) for her dismissal is that she is pregnant or any other reason connected with her pregnancy,
- (b) her maternity leave period is ended by the dismissal and the reason (or, if there is more than one, the principal reason) for her dismissal is that she has given

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birth to a child or any other reason connected with her having given birth to a child,

- (c) the reason (or, if there is more than one, the principal reason) for her dismissal, where her contract of employment was terminated after the end of her maternity leave period, is that she took, or availed herself of the benefits of, maternity leave,
- (d) the reason (or, if there is more than one, the principal reason) for her dismissal, where—
  - (i) before the end of her maternity leave period, she gave to her employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she would be incapable of work after the end of that period, and
  - (ii) her contract of employment was terminated within the four week period following the end of her maternity leave period in circumstances where she continued to be incapable of work and the certificate relating to her incapacity remained current,

is that she has given birth to a child or any other reason connected with her having given birth to a child,

- (e) the reason (or, if there is more than one, the principal reason) for her dismissal is a requirement or recommendation such as is referred to in section 45(1), or
- (f) her maternity leave period is ended by the dismissal, and the reason (or, if there is more than one, the principal reason) for her dismissal is that she is redundant and section 38 has not been complied with.

For the purposes of paragraph (c) above a woman “takes maternity leave” if she is absent from work during her maternity leave period and a woman “avails herself of the benefits of maternity leave” if, during her maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by section 33 during that period.]

#### Textual Amendments

**F25** S. 60 substituted (10.6.1994) by 1993 c. 19, s. 24(1); S.I. 1994/1365, art. 2, Sch.

#### [<sup>F26</sup>60A Dismissal on grounds of assertion of statutory right.

- (1) The dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—
  - (a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right; or
  - (b) alleged that the employer had infringed a right of his which is a relevant statutory right.
- (2) It is immaterial for the purposes of subsection (1) whether the employee has the right or not and whether it has been infringed or not, but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.
- (3) It shall be sufficient for subsection (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.



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- (4) The following statutory rights are relevant for the purposes of this section, namely—
- (a) any right conferred by—
    - (i) this Act, or
    - [ Schedule 5A to the Betting, Gaming and Lotteries Act 1963, or]
    - <sup>F27</sup>(ia)
    - (ii) the <sup>M1</sup>Wages Act 1986, [<sup>F28</sup>or
    - <sup>F28</sup>(iii) Schedule 4 to the Sunday Trading Act 1994]for which the remedy for its infringement is by way of a complaint or reference to an industrial tribunal;
  - (b) the right conferred by section 49 (minimum notice);
  - (c) the rights conferred by the following provisions of the <sup>M2</sup>Trade Union and Labour Relations (Consolidation) Act 1992, namely, sections 68, 86, 146, 168, 169 and 170 (deductions from pay, union activities and time off).]

#### Textual Amendments

**F26** S. 60A added (30.8.1993) by 1993 c. 19, s. 29(1); S. I. 1993/1908, art. 2(1), Sch. 1

**F27** S. 60A(4)(a)(ia) inserted (E.W.) (3.1.1995) by 1994 c. 40, ss. 20, 82(2), Sch. 8 para. 19

**F28** S. 60A(4)(a)(iii) and the preceding “or” inserted (E.W.) (26.8.1994) by 1994 c. 20, s. 4, Sch. 4 para. 19; S.I. 1994/1841, art. 2

#### Marginal Citations

**M1** 1986 c. 48.

**M2** 1992 c. 52.

## [61] Dismissal of replacement.

- (1) Where an employer—
- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the [<sup>F29</sup>resumption of work by] another employee who is, or will be, absent wholly or partly because of pregnancy or [<sup>F29</sup>childbirth]; and
  - (b) dismisses the first-mentioned employee in order to make it possible to give work to the other employee;
- then, for the purposes of section 57(1)(b), but without prejudice to the application of section 57(3), the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.
- (2) Where an employer—
- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the end of a suspension such as is referred to in section 19 [<sup>F30</sup>or 45] of another employee; and
  - (b) dismisses the first-mentioned employee in order to make it possible to allow the [<sup>F31</sup>resumption of work by the other employee];
- then, for the purposes of section 57(1)(b), but without prejudice to the application of section 57(3), the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.]

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**Textual Amendments**

- F29** Words in s. 61(1)(a) substituted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 15(a)**; S.I. 1994/1365, art. 2, **Sch.**
- F30** Words in s. 61(2) inserted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 15(b)(i)**; S.I. 1994/1365, art. 2, **Sch.**
- F31** Words in s. 61(2) substituted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 15(b)(ii)**; S.I. 1994/1365, art. 2, **Sch.**

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

- C6** Ss. 57-61 modified (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), **ss. 239(3)(a)**, 302.

<sup>F32</sup> **62** .....

**Textual Amendments**

- F32** S. 62 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) 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**

<sup>F33</sup> **62A** .....

**Textual Amendments**

- F33** S. 62A inserted by Employment Act 1990 (c. 38), s. 9(1) and 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).

**63 Pressure on employer to dismiss unfairly.**

In determining, for the purposes of this Part any question as to the reason, or principal reason, for which an employee was dismissed or any question whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirements of section 57(1)(b) or whether the employer acted reasonably in treating it as a sufficient reason for dismissing him,—

- (a) no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee, and
- (b) any such question shall be determined as if no such pressure had been exercised.

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