



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART V

#### UNFAIR DISMISSAL

##### *Meaning of unfair dismissal*

#### **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, [F1 subject to sections 59 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

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*Status: Point in time view as at 16/10/1992. This version of this provision has been superseded.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Section 57. (See end of Document for details)*

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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>F2</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.

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**Textual Amendments**

- F1** 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](#).
- F2** 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)**

- C1** Ss. 57-61 modified (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), ss. 239(3)(a), 302.
- C2** S. 57(1)(b) modified by S.I. 1981/1794, [regs. 8\(2\)\(b\)](#), 13

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