



Employment Rights Act 1996

1996 CHAPTER 18

PART X **E+W+S**

UNFAIR DISMISSAL

CHAPTER I **E+W+S**

RIGHT NOT TO BE UNFAIRLY DISMISSED

Exclusion of right

108 **Qualifying period of employment.** **E+W+S**

- (1) Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than [^{F1}one year] ending with the effective date of termination.
- (2) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in section 64(2), subsection (1) has effect in relation to that dismissal as if for the words [^{F2}“one year”] there were substituted the words “one month”.
- (3) Subsection (1) does not apply if—
 - ^{F3}(a)
 - (b) subsection (1) of section 99 (read with subsection (2) of that section) or subsection (3) of that section applies,
 - (c) subsection (1) of section 100 (read with subsections (2) and (3) of that section) applies,
 - (d) subsection (1) of section 101 (read with subsection (2) of that section) or subsection (3) of that section applies,
 - [^{F4}(dd) section 101A applies,]
 - (e) section 102 applies,
 - (f) section 103 applies,

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- [^{F5}(ff) section 103A applies,]
- (g) subsection (1) of section 104 (read with subsections (2) and (3) of that section) applies, ^{F6} . . .
- [^{F7}(gg) subsection (1) of section 104A (read with subsection (2) of that section) applies, ^{F8} . . .]
- [^{F9}(gh) subsection (1) of section 104B (read with subsection (2) of that section) applies, ^{F10} . . .]
- (h) section 105 applies [^{F11}^{F12} . . .
- (hh) paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulation) applies. [^{F13} or
- (i) paragraph (1) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 applies.]

Textual Amendments

- F1** Words in s. 108(1) substituted (1.6.1999) by S.I. 1999/1436, **art. 3**
- F2** Words in s. 108(2) substituted (1.6.1999) by S.I. 1999/1436, **art. 4**
- F3** S. 108(3)(a) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 18, **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)
- F4** S. 108(3)(dd) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(4)**
- F5** S. 108(3)(ff) inserted (2.7.1999) by 1998 c. 23, s. 7(1); S.I. 1999/1547, **art. 2**
- F6** Word in s. 108(3)(g) repealed (1.11.1998) by 1998 c. 39, ss. 25(3), 53, **Sch. 3**; S.I. 1998/2574, **art. 2(1)**, **Sch. 1** (with **art. 3**)
- F7** S. 108(3)(gg) inserted (1.11.1998) by 1998 c. 39, s. 25(3); S.I. 1998/2574, **art. 2(1)**, **Sch. 1** (with **art. 3**)
- F8** Word in s. 108(3)(gg) repealed (5.10.1999) by 1999 c. 10, ss. 7, 19(4), 20(2), Sch. 3 para. 3(3), **Sch. 6**
- F9** S. 108(3)(gh) inserted (5.10.1999) by 1999 c. 10, ss. 7, 20(2), Sch. 3 para. 3(3) (which amending Act was repealed (in part on 27.8.2002 and 4.12.2002, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 60, **Sch. 6**; S.I. 2002/1727, **art. 2**) and insertion continued (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, **Sch. 1 para. 3(4)**; S.I. 2002/1727, **art. 2**
- F10** Word in s. 108(3)(gh) omitted (15.1.2000) by virtue of S.I. 1999/3323, **reg. 29(2)**
- F11** S. 108(hh) and preceding word inserted (15.1.2000) by S.I. 1999/3323, **reg. 29(2)**
- F12** Word at the end of s. 108(3)(h) omitted (1.7.2000) by virtue of S.I. 2000/1551, **reg. 10**, **Sch. para. 2(2)**
- F13** S. 108(3)(i) and word "or" preceding it inserted (1.7.2000) by S.I. 2000/1551, **reg. 10**, **Sch. para. 2(2)**

Modifications etc. (not altering text)

- C1** S. 108 excluded (4.9.2000) by 1999 c. 26, s. 12(4), (with ss. 14, 15); S.I. 2000/2242, **art. 2**
S. 108 excluded (6.6.2000) by 1992 c. 52, s. 70A, **Sch. A1 para. 164** (as inserted (6.6.2000) by 1999 c. 26, ss. 1, 45(1), **Sch. 1**; S.I. 2000/1338, **art. 2(a)**)

109 Upper age limit. **E+W+S**

- (1) Section 94 does not apply to the dismissal of an employee if on or before the effective date of termination he has attained—
 - (a) in a case where—
 - (i) in the undertaking in which the employee was employed there was a normal retiring age for an employee holding the position held by the employee, and
 - (ii) the age was the same whether the employee holding that position was a man or a woman,

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- that normal retiring age, and
- (b) in any other case, the age of sixty-five.
- (2) Subsection (1) does not apply if—
- ^{F14}(a)
- (b) subsection (1) of section 99 (read with subsection (2) of that section) or subsection (3) of that section applies,
- (c) subsection (1) of section 100 (read with subsections (2) and (3) of that section) applies,
- (d) subsection (1) of section 101 (read with subsection (2) of that section) or subsection (3) of that section applies,
- [^{F15}(dd) section 101A applies,]
- (e) section 102 applies,
- (f) section 103 applies,
- [^{F16}(ff) section 103A applies,]
- (g) subsection (1) of section 104 (read with subsections (2) and (3) of that section) applies, ^{F17} . . .
- [^{F18}(gg) subsection (1) of section 104A (read with subsection (2) of that section) applies, ^{F19} . . .]
- [^{F20}(gh) subsection (1) of section 104B (read with subsection (2) of that section) applies, ^{F21} . . .]
- (h) section 105 applies. [^{F22}^{F23} . . .
- (hh) paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (read with paragraphs (4) and (7) of that regulation) applies.][^{F24} or
- (i) paragraph (1) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 applies.]

Textual Amendments

- F14** S. 109(2)(a) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 19, **Sch. 9(2)**; S.I. 1999/2830, art. 2(1)-(3), Sch. 1 Pt. II, **Sch. 2 Pt. II** (with transitional provisions in Sch. 3 paras. 10, 11)
- F15** S. 109(2)(dd) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(4)**
- F16** S. 109(2)(ff) inserted (2.7.1999) by 1998 c. 23, s. 7(2); S.I. 1999/1547, **art. 2**
- F17** Word in s. 109(2)(g) repealed (1.11.1998) by 1998 c. 39, ss. 25(4), 53, **Sch. 3**; S.I. 1998/2574, art. 2(1), **Sch. 1** (with art. 3)
- F18** S. 109(2)(gg) inserted (1.11.1998) by 1998 c. 39, s. 25(4); S.I. 1998/2574, art. 2(1), **Sch. 1** (with art. 3)
- F19** Word in s. 109(2)(gg) repealed (5.10.1999) by 1999 c. 10, ss. 7, 19(4), 20(2), Sch. 3 para. 3(4), **Sch. 6**
- F20** S. 109(2)(gh) inserted (5.10.1999) by 1999 c. 10, ss. 7, 20(2), Sch. 3 para. 3(4) (which amending Act was repealed (in part on 27.8.2002 and 4.12.2002, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 60, **Sch. 6**; S.I. 2002/1727, **art. 2**) and insertion continued (1.9.2002 for certain purposes, otherwise prosp.) by Tax Credits Act 2002 (c. 21), s. 27, **Sch. 1 para. 3(4)**; S.I. 2002/1727, **art. 2**
- F21** Word in s. 109(2)(gh) omitted (15.1.2000) by virtue of S.I. 1999/3323, **reg. 29(3)**
- F22** S. 109(2)(hh) and preceding word inserted (15.1.2000) by S.I. 1999/3323, **reg. 29(3)**
- F23** Word at the end of s. 109(2)(h) omitted (1.7.2000) by virtue of S.I. 2000/1551, **reg. 10, Sch. para. 2(3)** (with regs. 12-17)
- F24** S. 109(2)(i) and the word "or" preceding it inserted (1.7.2000) by S.I. 2000/1551, **reg. 10, Sch. para. 2(3)** (with regs. 12-17)

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Modifications etc. (not altering text)

- C2** S. 109 excluded (4.9.2000) by 1999 c. 26, s. 12(4), (with ss. 14, 15); S.I. 2000/2242, art. 2
 S. 109 excluded (6.6.2000) by 1992 c. 52, s. 70A, Sch. A1 para. 164 (as inserted (6.6.2000) by 1999 c. 26, s. 1, Sch. 1; S.I. 2000/1338, art. 2(a))

110 Dismissal procedures agreements. E+W+S

- (1) Where a dismissal procedures agreement is designated by an order under subsection (3) which is for the time being in force—
- (a) the provisions of that agreement relating to dismissal shall have effect in substitution for any rights under section 94, and
 - (b) accordingly, section 94 does 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.

[^{F25}(2) But if the agreement includes provision that it does not apply to dismissals of particular descriptions, subsection (1) does not apply in relation to a dismissal of any such description.]

- (3) An order designating a dismissal procedures agreement may be made by the Secretary of State, on an application being made to him jointly by all the parties to the agreement, if he is satisfied that—
- (a) every trade union which is a party to the agreement is an independent trade union,
 - (b) 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) those procedures are available without discrimination to all employees falling within any description to which the agreement applies,
 - (d) 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,
- [^{F26}(e) the agreement includes provision either for arbitration in every case or for—
- (i) arbitration where (by reason of equality of votes or for any other reason) a decision under the agreement cannot otherwise be reached, and
 - (ii) a right to submit to arbitration any question of law arising out of such a decision, and]
 - (f) the provisions of the agreement are such that it can be determined with reasonable certainty whether or not a particular employee is one to whom the agreement applies.

- (4) If at any time when an order under subsection (3) is in force in relation to a dismissal procedures agreement the Secretary of State is satisfied, whether on an application made to him by any of the parties to the agreement or otherwise, either—
- (a) that it is the desire of all the parties to the agreement that the order should be revoked, or
 - (b) that the agreement no longer satisfies all the conditions specified in subsection (3),

the Secretary of State shall revoke the order by an order under this subsection.

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- (5) The transitional provisions which may be made in an order under subsection (4) include, in particular, provisions directing—
- (a) that an employee—
 - (i) shall not be excluded from his right under section 94 where the effective date of termination falls within a transitional period which ends with the date on which the order takes effect and which is specified in the order, and
 - (ii) shall have an extended time for presenting a complaint under section 111 in respect of a dismissal where the effective date of termination falls within that period, and
 - (b) that, where the effective date of termination falls within such a transitional period, an [F27 employment tribunal] shall, in determining any complaint of unfair dismissal presented by an employee to whom the dismissal procedures agreement applies, have regard to such considerations as are specified in the order (in addition to those specified in this Part and section 10(4) and (5) of [F27 the Employment Tribunals Act 1996]).
- [F28(6) Where an award is made under a designated dismissal procedures agreement—
- (a) in England and Wales it may be enforced, by leave of a county court, in the same manner as a judgment of the court to the same effect and, where leave is given, judgment may be entered in terms of the award, and
 - (b) in Scotland it may be recorded for execution in the Books of Council and Session and shall be enforceable accordingly.]

Textual Amendments

- F25** S. 110(2) substituted (1.8.1998) by 1998 c. 8, s. 12(1) (with s. 12(5)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F26** S. 110(3)(e) substituted (1.8.1998) by 1998 c. 8, s. 12(2) (with s. 12(5)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F27** Words in s. 110(5)(b) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a)(c) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F28** S. 110(6) inserted (1.8.1998) by 1998 c. 8, s. 12(3); S.I. 1998/1658, art. 2(1), **Sch. 1**

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