



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,
 - (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.
- (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

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- (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.
- (4) 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.
- ^{F1}(5)
- (6) [^{F2}Subsection (4)] [^{F3}is] subject to—
- (a) sections [^{F4}98A] to 107 of this Act, and
- (b) sections 152, 153 [^{F5}, 238 and 238A] of the ^{M1}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- F1** S. 98(5) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt.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)
- F2** 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)
- F3** 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**
- F4** 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**
- F5** 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)

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

Marginal Citations

- M1** 1992 c. 52.

98A ^{XI} Procedural fairness

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—
- (a) one of the procedures set out in Part 1 of Schedule 2 to the Employment Act 2002 (dismissal and disciplinary procedures) applies in relation to the dismissal,
- (b) the procedure has not been completed, and

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- (c) the non-completion of the procedure is wholly or mainly attributable to failure by the employer to comply with its requirements.
- (2) Subject to subsection (1), failure by an employer to follow a procedure in relation to the dismissal of an employee shall not be regarded for the purposes of section 98(4)
 - (a) as by itself making the employer’s action unreasonable if he shows that he would have decided to dismiss the employee if he had followed the procedure.
- (3) For the purposes of this section, any question as to the application of a procedure set out in Part 1 of Schedule 2 to the Employment Act 2002, completion of such a procedure or failure to comply with the requirements of such a procedure shall be determined by reference to regulations under section 31 of that Act.

Editorial Information

- X1** The insertion of the new heading "Other dismissals" in Pt. X Ch. I on 1.10.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

98B ^{x2}**Jury service**

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—
 - (a) has been summoned under the Juries Act 1974, the Coroners Act 1988, the Court of Session Act 1988 or the Criminal Procedure (Scotland) Act 1995 to attend for service as a juror, or
 - (b) has been absent from work because he attended at any place in pursuance of being so summoned.
- (2) Subsection (1) does not apply in relation to an employee who is dismissed if the employer shows—
 - (a) that the circumstances were such that the employee’s absence in pursuance of being so summoned was likely to cause substantial injury to the employer’s undertaking,
 - (b) that the employer brought those circumstances to the attention of the employee,
 - (c) that the employee refused or failed to apply to the appropriate officer for excusal from or a deferral of the obligation to attend in pursuance of being so summoned, and
 - (d) that the refusal or failure was not reasonable.
- (3) In paragraph (c) of subsection (2) “the appropriate officer” means—
 - (a) in the case of a person who has been summoned under the Juries Act 1974, the officer designated for the purposes of section 8, 9 or, as the case may be, 9A of that Act;
 - (b) in the case of a person who has been summoned under the Coroners Act 1988, a person who is the appropriate officer for the purposes of any rules made under subsection (1) of section 32 of that Act by virtue of subsection (2) of that section;

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- (c) in the case of a person who has been summoned under the Court of Session Act 1988, either—
 - (i) the clerk of court issuing the citation to attend for jury service; or
 - (ii) the clerk of the court before which the person is cited to attend for jury service;
- (d) in the case of a person who has been summoned under the Criminal Procedure (Scotland) Act 1995, either—
 - (i) the clerk of court issuing the citation to attend for jury service; or
 - (ii) the clerk of the court before which the person has been cited to attend for jury service;
 and references in that paragraph to a refusal or failure to apply include references to a refusal or failure to give a notice under section 1(2)(b) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980.

Editorial Information

- X2** The insertion of the new heading "Other dismissals" in Pt. X Ch. I on 1.10.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

[^{F6}99] ^{X3} Leave for family reasons.

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—
 - (a) the reason or principal reason for the dismissal is of a prescribed kind, or
 - (b) the dismissal takes place in prescribed circumstances.
- (2) In this section “prescribed” means prescribed by regulations made by the Secretary of State.
- (3) A reason or set of circumstances prescribed under this section must relate to—
 - (a) pregnancy, childbirth or maternity,
 - (b) ordinary, compulsory or additional maternity leave,
 - ^{F7}(ba) [ordinary or additional adoption leave,]
 - (c) parental leave,
 - ^{F8}(ca) [paternity leave, or]
 - (d) time off under section 57A;
 and it may also relate to redundancy or other factors.
- (4) A reason or set of circumstances prescribed under subsection (1) satisfies subsection (3)(c) or (d) if it relates to action which an employee—
 - (a) takes,
 - (b) agrees to take, or
 - (c) refuses to take,
 under or in respect of a collective or workforce agreement which deals with parental leave.
- (5) Regulations under this section may—

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- (a) make different provision for different cases or circumstances;
- (b) apply any enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to persons regarded as unfairly dismissed by reason of this section.]

Editorial Information

- X3** The insertion of the new heading "Other dismissals" in Pt. X Ch. I on 1.10.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

- F6** S. 99 substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 16**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)
- F7** S. 99(3)(ba) inserted (8.12.2002) by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 33(2)**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2
- F8** S. 99(3)(ca) substituted (8.12.2002) for the word "or" by Employment Act 2002 (c. 22), s. 53, **Sch. 7 para. 33(3)**; S.I. 2002/2866, **art. 2(2)**, Sch. 1 Pt. 2

100 ^{X4} Health and safety cases.

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—
- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee 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 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,
 the employee 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,
 he 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 the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he 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 the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

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- (2) For the purposes of subsection (1)(e) whether steps which an employee took (or proposed to take) were appropriate is to 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 is that specified in subsection (1)(e), he shall not be regarded as unfairly dismissed 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.

Editorial Information

- X4** The insertion of the new heading "Other dismissals" in Pt. X Ch. I on 1.10.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

101 ^{X5} Shop workers and betting workers who refuse Sunday work.

- (1) Where an employee who is—
 - (a) a protected shop worker or an opted-out shop worker, or
 - (b) a protected betting worker or an opted-out betting worker,
 is dismissed, he shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that he refused (or proposed to refuse) to do shop work, or betting work, on Sunday or on a particular Sunday.
- (2) Subsection (1) does not apply in relation to an opted-out shop worker or an opted-out betting worker where the reason (or principal reason) for the dismissal is that he refused (or proposed to refuse) to do shop work, or betting work, on any Sunday or Sundays falling before the end of the notice period.
- (3) A shop worker or betting worker who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the shop worker or betting worker gave (or proposed to give) an opting-out notice to the employer.
- (4) For the purposes of section 36(2)(b) or 41(1)(b), the appropriate date in relation to this section is the effective date of termination.

Editorial Information

- X5** The insertion of the new heading "Other dismissals" in Pt. X Ch. I on 1.10.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Extent Information

- E1** [S. 101](#), which previously extended to England and Wales only, extends to England and Wales and Scotland from 6.4.2004 by virtue of the amendment to s. 244(2) by [Sunday Working \(Scotland\) Act 2003 \(c. 18\)](#), [ss. 1\(5\), 3](#); [S.I. 2004/958](#), [art. 2](#)

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[^{F9X6}101A] Working time cases.

[An employee who is dismissed shall be regarded for the purposes of this Part as ^{F10}(1) unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

- (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the ^{M2}Working Time Regulations 1998,
- (b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,
- (c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations, or
- (d) being—
 - (i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or
 - (ii) a candidate in an election in which any person elected will, on being elected, be such a representative,
 performed (or proposed to perform) any functions or activities as such a representative or candidate.

[A reference in this section to the Working Time Regulations 1998 includes a reference ^{F11}(2) to

- [^{F12}(a) the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.
- [^{F13}(b) the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.]]

Editorial Information

X6 The insertion of the new heading "Other dismissals" in Pt. X Ch. I on 1.10.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

- F9** S. 101A inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(1)**
- F10** S. 101A renumbered as s. 101A(1) (24.12.2003) by [The Merchant Shipping \(Working Time: Inland Waterways\) Regulations 2003 \(S.I. 2003/3049\)](#), reg. 20, **Sch. 2 para. 3(3)**
- F11** S. 101A(2) inserted (24.12.2003) by [The Merchant Shipping \(Working Time: Inland Waterways\) Regulations 2003 \(S.I. 2003/3049\)](#), reg. 20, **Sch. 2 para. 3(3)**
- F12** S. 101A(2): words renumbered as s. 101A(2)(a) (16.8.2004) by [The Fishing Vessels \(Working Time: Sea-fishermen\) Regulations 2004 \(S.I. 2004/1713\)](#), regs. 1, 22, **Sch. 2 para. 2(3)(a)**
- F13** S. 101A(2)(b) inserted (16.8.2004) by [The Fishing Vessels \(Working Time: Sea-fishermen\) Regulations 2004 \(S.I. 2004/1713\)](#), regs. 1, 22, **Sch. 2 para. 2(3)(b)**

Marginal Citations

M2 S.I. 1998/1833

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^{x7}102 Trustees of occupational pension schemes.

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that, being a trustee of a relevant occupational pension scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

[^{F14}(1A) This section applies to an employee who is a director of a company which is a trustee of a relevant occupational pension scheme as it applies to an employee who is a trustee of such a scheme (references to such a trustee being read for this purpose as references to such a director).]

(2) In this section “relevant occupational pension scheme” means an occupational pension scheme (as defined in section 1 of the ^{M3}Pension Schemes Act 1993) established under a trust.

Editorial Information

X7 The insertion of the new heading "Other dismissals" in Pt. X Ch. I on 1.10.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

F14 [S. 102\(1A\)](#) inserted (11.11.1999 for specified purposes and otherwise 25.4.2000) by [1999 c. 30, ss. 18, 89\(1\)\(5\)\(a\)](#), [Sch. 2 para. 19\(4\)](#); [S.I. 2000/1047, art. 2\(2\)](#), [Sch. Pt. II](#)

Modifications etc. (not altering text)

C2 [S. 102](#) applied (11.11.1999 for specified purposes and otherwise 8.10.2001) by [1999 c. 30, s. 6\(1\)](#), (with [s. 8\(6\)](#)); [S.I. 2000/1047, art. 2\(2\)](#), [Sch. Pt. V](#)

Commencement Information

I1 [S. 102](#) wholly in force at 6.10.1996, see [Sch. 2 para. 15\(1\)](#) and [S.I. 1996/2514, art. 2](#)

Marginal Citations

M3 [1993 c. 48](#).

^{x8}103 Employee representatives.

[^{F15}(1)] An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee, being—

- (a) an employee representative for the purposes of Chapter II of Part IV of the ^{M4}Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or Regulations 10 and 11 of the ^{M5}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.

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[^{F16}(2) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee took part in an election of employee representatives for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981.]

Editorial Information

X8 The insertion of the new heading "Other dismissals" in Pt. X Ch. I on 1.10.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

F15 S. 103 renumbered as s. 103(1) (28.7.1999) by S.I. 1999/1925, reg. 13

F16 S. 103(2) inserted (28.7.1999) by S.I. 1999/1925, reg. 13

Marginal Citations

M4 1992 c. 52.

M5 S.I. 1981/1794.

[^{F17}103A^{X9} Protected disclosure.

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.]

Editorial Information

X9 The insertion of the new heading "Other dismissals" in Pt. X Ch. I on 1.10.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

F17 S. 103A inserted (2.7.1999) by 1998 c. 23, s. 5; S.I. 1999/1547, art. 2

^{X10}104 Assertion of statutory right.

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is 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)—
 - (a) whether or not the employee has the right, or
 - (b) whether or not the right has been infringed;

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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 is 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.
- (4) The following are relevant statutory rights for the purposes of this section—
- (a) any right conferred by this Act for which the remedy for its infringement is by way of a complaint or reference to an ^{F18}employment tribunal],
 - (b) the right conferred by section 86 of this Act, ^{F19} . . .
 - (c) the rights conferred by sections 68, 86, ^{F20}145A, 145B,] 146, 168, ^{F21}168A,] 169 and 170 of the Trade Union and Labour Relations (Consolidation) Act 1992 (deductions from pay, union activities and time off) ^{F22}and
 - ^{F23F22}(d) the rights conferred by the Working Time Regulations 1998, the Merchant Shipping (Working Time: Inland Waterway) Regulations 2003 or the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.]]

^{F24}(5) In this section any reference to an ^{F24}employer includes, where the right in question is conferred by section 63A, the principal (within the meaning of section 63A(3)).]

Editorial Information

X10 The insertion of the new heading "Other dismissals" in Pt. X Ch. I on 1.10.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

- F18** Words in s. 104(4)(a) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F19** Word in s. 104(4)(b) omitted (1.10.1998) by virtue of S.I. 1998/1833, **reg. 32(2)(a)**
- F20** Words in s. 104(4)(c) inserted (1.10.2004) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 31**; S.I. 2004/2566, **art. 3(b)** (subject to arts. 5-8)
- F21** Word in s. 104(4)(c) inserted (27.4.2003) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 34**; S.I. 2003/1190, **art. 2(2)(c)**
- F22** S. 104(4)(d) and preceding word "and" inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(2)(b)**
- F23** S. 104(4)(d) substituted (16.18.2004) by The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (S.I. 2004/1713), regs. 1, 22, **Sch. 2 para. 2(4)**
- F24** S. 104(5) inserted (1.9.1999) by 1998 c. 30, s. 44(1), **Sch. 3 para. 13** (with s. 42(8)); S.I. 1999/987, **art. 2**

^{F25}104A^{X11} The national minimum wage.

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—
- (a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right of the employee's to which this section applies; or
 - (b) the employer was prosecuted for an offence under section 31 of the National Minimum Wage Act 1998 as a result of action taken by or on behalf of the

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- employee for the purpose of enforcing, or otherwise securing the benefit of, a right of the employee's to which this section applies; or
- (c) the employee qualifies, or will or might qualify, for the national minimum wage or for a particular rate of national minimum wage.
- (2) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above—
- (a) whether or not the employee has the right, or
- (b) whether or not the right has been infringed,
- but, for that subsection to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.
- (3) The following are the rights to which this section applies—
- (a) any right conferred by, or by virtue of, any provision of the National Minimum Wage Act 1998 for which the remedy for its infringement is by way of a complaint to an employment tribunal; and
- (b) any right conferred by section 17 of the National Minimum Wage Act 1998 (worker receiving less than national minimum wage entitled to additional remuneration).]

Editorial Information

- X11** The insertion of the new heading "Other dismissals" in Pt. X Ch. I on 1.10.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

- F25** S. 104A inserted (1.11.1998) by 1998 c. 39, s. 25(1); S.I. 1998/2574, art. 2(1), Sch. 1 (with art. 3)

Modifications etc. (not altering text)

- C3** S. 104A modified (1.4.1999) by 1948 c. 47, s. 3A(5) (as inserted (1.4.1999) by 1998 c. 39, s. 47, Sch. 2 Pt. I para. 3; S.I. 1999/685, art. 2 Sch.)
- S. 104A extended (1.4.1999) by 1949 c. 30, s. 3A(4) (as inserted (1.4.1999) by 1998 c. 39, s. 47, Sch. 2 Pt. II para. 13; S.I. 1999/685, art.2, Sch.)

104C ^{X12} Flexible working

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

- (a) made (or proposed to make) an application under section 80F,
- (b) exercised (or proposed to exercise) a right conferred on him under section 80G,
- (c) brought proceedings against the employer under section 80H, or
- (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.

Status: Point in time view as at 01/02/2006.

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Editorial Information

X12 The insertion of the new heading "Other dismissals" in Pt. X Ch. I on 1.10.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

^{X13}**105 Redundancy.**

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—
- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,
 - (b) 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 the employee and who have not been dismissed by the employer, and
 - ^{F26F27}(c) it is shown that any of subsections (2A) to (7F) applies.]
- ^{F28}(2)
- ^{F29}(2A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 98B (unless the case is one to which subsection (2) of that section applies).]
- (3) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 100 (read with subsections (2) and (3) of that section).
- (4) This subsection applies if either—
- (a) the employee was a protected shop worker or an opted-out shop worker, or a protected betting worker or an opted-out betting worker, and the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in subsection (1) of section 101 (read with subsection (2) of that section), or
 - (b) the employee was a shop worker or a betting worker and the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in subsection (3) of that section.
- ^{F30}(4A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 101A.]
- (5) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 102(1).
- (6) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 103.
- ^{F31}(6A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 103A.]

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- (7) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 104 (read with subsections (2) and (3) of that section).
- [^{F32}(7A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 104A (read with subsection (2) of that section).]
- [^{F33}(7B) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 104B (read with subsection (2) of that section).]
- [^{F34}(7BA) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 104C.]
- [^{F35}(7C) This subsection applies if—
- (a) the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the reason mentioned in section 238A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (participation in official industrial action), and
 - (b) subsection (3), (4) or (5) of that section applies to the dismissal.]

[^{F36}(7D) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in 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).]

[^{F37}(7E) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (unless the case is one to which paragraph (4) of that regulation applies).]

[^{F38}(7F) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 6 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (unless the case is one to which paragraph (4) of that regulation applies).]

[^{F39}(7G) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 42 of the European Public Limited-Liability Company Regulations 2004 (read with paragraphs (4) and (7) of that regulation).]

[^{F40}(7H) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 30 of the Information and Consultation of Employees Regulations 2004 (read with paragraphs (4) and (7) of that regulation).]

(8) For the purposes of section 36(2)(b) or 41(1)(b), the appropriate date in relation to this section is the effective date of termination.

(9) In this Part “redundancy case” means a case where paragraphs (a) and (b) of subsection (1) of this section are satisfied.

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Editorial Information

- X13** The insertion of the new heading "Other dismissals" in Pt. X Ch. I on 1.10.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

- F26** S. 105(1)(c) substituted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 40(4)**, 59(2)-(4); S.I. 2005/872, **arts. 4, 5**, **Sch.** (subject to arts. 6-12)
- F27** By [The Information and Consultation of Employees Regulations 2004 \(S.I. 2004/3426\)](#), **regs. 1(1), 31(1)(a)** (with **reg. 3**), it is provided (6.4.2005) that in s. 105(1)(c) for the words "(7F) or (7G)" there be substituted the words "(7F), (7G) or (7H)"
- F28** S. 105(2) repealed (15.12.1999) by 1999 c. 26, **ss. 9, 44**, **Sch. 4 Pt. III para. 17**, **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**)
- F29** S. 105(2A) inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 40(5)**, 59(2)-(4); S.I. 2005/872, **arts. 4, 5**, **Sch.** (subject to arts. 6-12)
- F30** S. 105(4A) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(3)**
- F31** S. 105(6A) inserted (2.7.1999) by 1998 c. 23, **s. 6**; S.I. 1999/1547, **art. 2**
- F32** S. 105(7A) inserted (1.11.1998) by 1998 c. 39, **s. 25(2)**; S.I. 1998/2574, **art. 2(1)**, **Sch. 1** (with **art. 3**)
- F33** S. 105(7B) inserted (5.10.1999) by 1999 c. 10, **ss. 7, 20(2)**, **Sch. 3 para. 3(2)** (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(3)**; S.I. 2002/1727, **art. 2**
- F34** S. 105(7BA) inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 41(4)**, 59(2)-(4); S.I. 2005/872, **arts. 4, 5**, **Sch.** (subject to arts. 6-12)
- F35** S. 105(7C) inserted (24.4.2000) by 1999 c. 26, **s. 16**, **Sch. 5 para. 5(3)**; S.I. 2000/875, **art. 2** (with transitional provision in **art. 3**)
- F36** S. 105(7D) inserted after subsection (7C) (15.1.2000) by virtue of S.I. 1999/3323, **reg. 29(1)**
- F37** S. 105(7E) inserted (1.7.2000) by S.I. 2000/1551, **reg. 10**, **Sch. para. 2(1)**
- F38** S. 105(7F) inserted (1.10.2002) by [The Fixed-term Employees \(Prevention of Less Favourable Treatment\) Regulations 2002 \(S.I. 2002/2034\)](#), **reg. 11**, **Sch. 2 Pt. 1 para. 3(10)** (with **regs. 13-20** and subject to transitional provisions in **Sch. 2 Pt. 2**)
- F39** S. 105(7G) inserted (8.10.2004) by [The European Public Limited-Liability Company Regulations 2004 \(S.I. 2004/2326\)](#), **regs. 1(2)**, **43(1)(b)**
- F40** S. 105(7H) inserted (6.4.2005) by [The Information and Consultation of Employees Regulations 2004 \(S.I. 2004/3426\)](#), **regs. 1(1)**, **31(1)(b)** (with **reg. 3**)

^{X14}106 Replacements.

- (1) Where this section applies to an employee he shall be regarded for the purposes of section 98(1)(b) as having been dismissed for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) This section applies to an employee where—
 - (a) on engaging him the employer informs him in writing that his employment will be terminated on the resumption of work by another employee who is, or will be, absent wholly or partly because of pregnancy or childbirth, [^{F41}or on adoption leave] and
 - (b) the employer dismisses him in order to make it possible to give work to the other employee.
- (3) This section also applies to an employee where—

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- (a) on engaging him the employer informs him in writing that his employment will be terminated on the end of a suspension of another employee from work on medical grounds or maternity grounds (within the meaning of Part VII), and
 - (b) the employer dismisses him in order to make it possible to allow the resumption of work by the other employee.
- (4) Subsection (1) does not affect the operation of section 98(4) in a case to which this section applies.

Editorial Information

X14 The insertion of the new heading "Other dismissals" in Pt. X Ch. I on 1.10.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

F41 Words in s. 106(2)(a) inserted (8.12.2002) by [Employment Act 2002 \(c. 22\)](#), s. 53, [Sch. 7 para. 35](#); [S.I. 2002/2866](#), [art. 2\(2\)](#), Sch. 1 Pt. 2

107 ^{X15} **Pressure on employer to dismiss unfairly.**

- (1) This section applies where there falls to be determined for the purposes of this Part a question—
- (a) as to the reason, or principal reason, for which an employee was dismissed,
 - (b) whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirement of section 98(1)(b), or
 - (c) whether an employer acted reasonably in treating the reason or principal reason for which an employee was dismissed as a sufficient reason for dismissing him.
- (2) In determining the question 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 the question shall be determined as if no such pressure had been exercised.

Editorial Information

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