



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART X

#### UNFAIR DISMISSAL

#### CHAPTER II

##### REMEDIES FOR UNFAIR DISMISSAL

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

- C1** Pt. 10 Ch. 2 modified (6.4.2010) by [The Employee Study and Training \(Procedural Requirements\) Regulations 2010 \(S.I. 2010/155\)](#), [reg. 18\(6\)](#)

###### *Introductory*

### **111** Complaints to [<sup>F1</sup>employment tribunal].

- (1) A complaint may be presented to an [<sup>F1</sup>employment tribunal] against an employer by any person that he was unfairly dismissed by the employer.
- (2) [<sup>F2</sup>Subject to the following provisions of this section], an [<sup>F1</sup>employment tribunal] shall not consider a complaint under this section unless it is presented to the tribunal—
  - (a) before the end of the period of three months beginning with the effective date of termination, or
  - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[<sup>F3</sup>(2A) Section 207A(3) (extension because of mediation in certain European cross-border disputes) applies for the purposes of subsection (2)(a).]

*Status: Point in time view as at 01/10/2011.*

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- (3) Where a dismissal is with notice, an [<sup>F1</sup>employment tribunal] shall consider a complaint under this section if it is presented after the notice is given but before the effective date of termination.
- (4) In relation to a complaint which is presented as mentioned in subsection (3), the provisions of this Act, so far as they relate to unfair dismissal, have effect as if—
- (a) references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such circumstances that he will be unfairly dismissed when the notice expires,
  - (b) references to reinstatement included references to the withdrawal of the notice by the employer,
  - (c) references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice, and
  - (d) references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.
- [<sup>F4</sup>(5) Where the dismissal is alleged to be unfair by virtue of section 104F (blacklists),
- (a) subsection (2)(b) does not apply, and
  - (b) an employment tribunal may consider a complaint that is otherwise out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.]

#### Textual Amendments

- F1** Words in s. 111(1)-(3) and sidenote to s. 111 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
- F2** Words in s. 111(2) substituted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), reg. 12(5)(a)
- F3** S. 111(2A) inserted (20.5.2011 with application as mentioned in regs. 3 and 4 of the amending S.I.) by The Cross-Border Mediation (EU Directive) Regulations 2011 (S.I. 2011/1133), regs. 2, 46
- F4** S. 111(5) inserted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), reg. 12(5)(b)

## 112 The remedies: orders and compensation.

- (1) This section applies where, on a complaint under section 111, an [<sup>F5</sup>employment tribunal] finds that the grounds of the complaint are well-founded.
- (2) The tribunal shall—
- (a) explain to the complainant what orders may be made under section 113 and in what circumstances they may be made, and
  - (b) ask him whether he wishes the tribunal to make such an order.
- (3) If the complainant expresses such a wish, the tribunal may make an order under section 113.
- (4) If no order is made under section 113, the tribunal shall make an award of compensation for unfair dismissal (calculated in accordance with sections 118 to [<sup>F6</sup>126]<sup>F7</sup>. . .) to be paid by the employer to the employee.

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[<sup>F8</sup>(5) <sup>F9</sup> .....  
(6) <sup>F9</sup> .....]

#### Textual Amendments

- F5** Words in s. 112(1) 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**
- F6** Word in s. 112(4) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 36**; S.I. 2004/2185, **art. 2**
- F7** Words in s. 112(4) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(11)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I**
- F8** S. 112(5)(6) inserted (1.10.2004) by Employment Act 2002 (c. 22), ss. 34(3), 55(2); S.I. 2004/1717, **art. 2(2)** (subject to art. 3)
- F9** S. 112(5)(6) omitted (6.4.2011) by virtue of The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 (S.I. 2011/1069), **reg. 3(6)** (with regs. 5-7, 9)

#### *Orders for reinstatement or re-engagement*

### 113 The orders.

An order under this section may be—

- (a) an order for reinstatement (in accordance with section 114), or
  - (b) an order for re-engagement (in accordance with section 115),
- as the tribunal may decide.

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

- C2** S. 113 restricted (24.4.2000) by 1992 c. 52, s. 239(4)(a) (as added (24.4.2000) by 1999 c. 26, s. 16, **Sch. 5 para. 4(5)**; S.I. 2000/875, **art. 2** (with transitional provision in art. 3))

### 114 Order for reinstatement.

- (1) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed.
- (2) On making an order for reinstatement the tribunal shall specify—
  - (a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,
  - (b) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and
  - (c) the date by which the order must be complied with.
- (3) If the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.

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- (4) In calculating for the purposes of subsection (2)(a) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer’s liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement by way of—
  - (a) wages in lieu of notice or ex gratia payments paid by the employer, or
  - (b) remuneration paid in respect of employment with another employer, and such other benefits as the tribunal thinks appropriate in the circumstances.

<sup>F10</sup>(5) .....

**Textual Amendments**

**F10** S. 114(5) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 20, **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)

**115 Order for re-engagement.**

- (1) An order for re-engagement is an order, on such terms as the tribunal may decide, that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment.
- (2) On making an order for re-engagement the tribunal shall specify the terms on which re-engagement is to take place, including—
  - (a) the identity of the employer,
  - (b) the nature of the employment,
  - (c) the remuneration for the employment,
  - (d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of re-engagement,
  - (e) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and
  - (f) the date by which the order must be complied with.
- (3) In calculating for the purposes of subsection (2)(d) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer’s liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of re-engagement by way of—
  - (a) wages in lieu of notice or ex gratia payments paid by the employer, or
  - (b) remuneration paid in respect of employment with another employer, and such other benefits as the tribunal thinks appropriate in the circumstances.

<sup>F11</sup>(4) .....

**Textual Amendments**

**F11** S. 115(4) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 21, **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)

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## **116 Choice of order and its terms.**

- (1) In exercising its discretion under section 113 the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account—
  - (a) whether the complainant wishes to be reinstated,
  - (b) whether it is practicable for the employer to comply with an order for reinstatement, and
  - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.
- (2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.
- (3) In so doing the tribunal shall take into account—
  - (a) any wish expressed by the complainant as to the nature of the order to be made,
  - (b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and
  - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.
- (4) Except in a case where the tribunal takes into account contributory fault under subsection (3)(c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.
- (5) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining, for the purposes of subsection (1)(b) or (3)(b), whether it is practicable to comply with an order for reinstatement or re-engagement.
- (6) Subsection (5) does not apply where the employer shows—
  - (a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement, or
  - (b) that—
    - (i) he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he wished to be reinstated or re-engaged, and
    - (ii) when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

## **117 Enforcement of order and compensation.**

- (1) An [<sup>F12</sup>employment tribunal] shall make an award of compensation, to be paid by the employer to the employee, if—
  - (a) an order under section 113 is made and the complainant is reinstated or re-engaged, but
  - (b) the terms of the order are not fully complied with.
- (2) Subject to section 124 <sup>F13</sup> . . ., the amount of the compensation shall be such as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.

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- [<sup>F14</sup>(2A) There shall be deducted from any award under subsection (1) the amount of any award made under section 112(5) at the time of the order under section 113.]
- (3) Subject to subsections (1) and (2) <sup>F13</sup> . . . , if an order under section 113 is made but the complainant is not reinstated or re-engaged in accordance with the order, the tribunal shall make—
- (a) an award of compensation for unfair dismissal (calculated in accordance with sections 118 to [<sup>F15</sup>126]), and
  - (b) except where this paragraph does not apply, an additional award of compensation of [<sup>F16</sup>an amount not less than twenty-six nor more than fifty-two weeks' pay],
- to be paid by the employer to the employee.
- (4) Subsection (3)(b) does not apply where—
- (a) the employer satisfies the tribunal that it was not practicable to comply with the order, <sup>F17</sup> . . .
  - <sup>F17</sup>(b) . . . . .
- <sup>F18</sup>(5) . . . . .
- <sup>F18</sup>(6) . . . . .
- (7) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining for the purposes of subsection (4)(a) whether it was practicable to comply with the order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement.
- (8) Where in any case an [<sup>F19</sup>employment tribunal] finds that the complainant has unreasonably prevented an order under section 113 from being complied with, in making an award of compensation for unfair dismissal <sup>F20</sup> . . . it shall take that conduct into account as a failure on the part of the complainant to mitigate his loss.

#### Textual Amendments

- F12** Words in s. 117(1)(8) 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**
- F13** Words in s. 117(2)(3) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(11)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I**
- F14** S. 117(2A) inserted (1.10.2004) by Employment Act 2002 (c. 22), ss. 34(4), 55(2); S.I. 2004/1717, art. 2(2) (subject to art. 3)
- F15** Word in s. 117(3)(a) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 37**; S.I. 2004/2185, art. 2
- F16** Words in s. 117(3)(b) substituted (25.10.1999) by 1999 c. 26, s. 33(2); S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 8)
- F17** S. 117(4)(b) and the preceding word “or” repealed (25.10.1999) by 1999 c. 26, ss. 33(1)(a), 44, **Sch. 9(10)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 8)
- F18** S. 117(5)(6) repealed (25.10.1999) by 1999 c. 26, ss. 33(2), 44, **Sch. 9(10)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 8)
- F19** S. 117(6)(c) and preceding word “and” inserted (1.8.1998) by 1998 c. 8, s. 14(1); S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(7))
- F20** Words in s. 117(8) repealed (1.8.1998) by 1998 c. 8, s. 15, **Sch. 2**; S.I. 1998/1658, art. 2(1), **Sch. 1**

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

- C3** S. 117: power to modify conferred (1.8.1998) by 1992 c. 52, s. 212A(8)(a) (as inserted (1.8.1998) by 1998 c. 8, s. 7; S.I. 1998/1658, art. 2(1), **Sch. 1**)  
S. 117 applied (21.5.2001) by S.I. 2001/1185, arts. 2, 3, **Sch. para. 160**  
S. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**  
S. 117 modified (21.5.2001) by S.I. 2001/1185, **art. 5**
- C4** S. 117 applied (6.4.2004) by The ACAS Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/753), arts. 1(1), 2, 3, **Sch. para. 185**  
S. 117 applied (with modifications) (6.4.2004) by The ACAS Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/753), arts. 1(1), 6

*Compensation*

**118 General.**

- (1) <sup>F21</sup> . . . Where a tribunal makes an award of compensation for unfair dismissal under section 112(4) or 117(3)(a) the award shall consist of—
- (a) a basic award (calculated in accordance with sections 119 to 122 and 126), and
  - (b) a compensatory award (calculated in accordance with sections 123, 124, [<sup>F22</sup>124A and 126]).

<sup>F23</sup>(2) . . . . .

<sup>F23</sup>(3) . . . . .

(4) <sup>F24</sup> . . . . .

**Textual Amendments**

- F21** Words in s. 118(1) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(11)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I**
- F22** Words in s. 118(1)(b) substituted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 38**; S.I. 2004/2185, **art. 2**
- F23** S. 118(2)(3) repealed (25.10.1999) by 1999 c. 26, ss. 33(1)(a), 44, **Sch. 9(10)**; S.I. 1999/2830, art. 2(1)(3), **Sch. 1 Pt. I, Sch. 2 Pt. I** (with Sch. 3 para. 8)
- F24** S. 118(4) repealed (1.11.2004) by Employment Act 2002 (c. 22), ss. 54, 55(2), **Sch. 8**; S.I. 2004/2822, **art. 2(b)**

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

- C5** S. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**

**119 Basic award.**

- (1) Subject to the provisions of this section, sections 120 to 122 and section 126, the amount of the basic award shall be calculated by—
- (a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,
  - (b) reckoning backwards from the end of that period the number of years of employment falling within that period, and
  - (c) allowing the appropriate amount for each of those years of employment.



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- (2) In subsection (1)(c) “the appropriate amount” means—
  - (a) one and a half weeks’ pay for a year of employment in which the employee was not below the age of forty-one,
  - (b) one week’s pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and
  - (c) half a week’s pay for a year of employment not within paragraph (a) or (b).
- (3) Where twenty years of employment have been reckoned under subsection (1), no account shall be taken under that subsection of any year of employment earlier than those twenty years.
- (4) <sup>F25</sup> .....
- (5) <sup>F25</sup> .....
- <sup>F26</sup>(6) .....

**Textual Amendments**

**F25** S. 119(4)(5) omitted (1.10.2006) by virtue of [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), regs. 1(1), 49(1), **Sch. 8 para. 27(2)** (with regs. 44-46)

**F26** S. 119(6) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 23, **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)

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

**C6** S. 119 applied (1.11.1998) by 1998 c. 39, s. 24(4)(a); S.I. 1998/2574, art. 2(1), **Sch. 1**  
 S. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**  
 S. 119 applied (6.6.2000) by 1992 c. 52, s. 70A, **Sch. A1 para. 160(2)** (as inserted (6.6.2000) by 1999 c. 26, s. 1, **Sch. 1**; S.I. 2000/1338, **art. 2** with transitional provisions in art. 3)

**120 Basic award: minimum in certain cases.**

- (1) The amount of the basic award (before any reduction under section 122) shall not be less than [<sup>F27</sup>£5,000] where the reason (or, if more than one, the principal reason)—
  - (a) in a redundancy case, for selecting the employee for dismissal, or
  - (b) otherwise, for the dismissal,
 is one of those specified in section 100(1)(a) and (b), [<sup>F28</sup>101A(d),] 102(1) or 103.

[<sup>F29</sup>(1A) <sup>F30</sup> .....

(1B) <sup>F30</sup> .....]

[<sup>F31</sup>(1C) Where an employee is regarded as unfairly dismissed by virtue of section 104F (blacklists) (whether or not the dismissal is unfair or regarded as unfair for any other reason), the amount of the basic award of compensation (before any reduction is made under section 122) shall not be less than £5,000.]

<sup>F32</sup>(2) .....



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#### Textual Amendments

- F27** Words in s. 120(1) substituted (1.2.2011) by [The Employment Rights \(Increase of Limits\) Order 2010 \(S.I. 2010/2926\)](#), [art. 3](#), [Sch.](#) (with [art. 4](#))
- F28** Words in s. 120(1) substituted (1.10.1998) by [S.I. 1998/1833](#), [reg. 32\(5\)](#)
- F29** S. 120(1A)-(1B) inserted (1.10.2004) by [Employment Act 2002 \(c. 22\)](#), [ss. 34\(6\)](#), [55\(2\)](#); [S.I. 2004/1717](#), [art. {2\(2\)}](#) (subject to [art. 3](#))
- F30** S. 120(1A)(1B) omitted (6.4.2011) by virtue of [The Employment Equality \(Repeal of Retirement Age Provisions\) Regulations 2011 \(S.I. 2011/1069\)](#), [reg. 3\(7\)](#) (with [regs. 5-7](#), [9](#))
- F31** S. 120(1C) inserted (2.3.2010) by [The Employment Relations Act 1999 \(Blacklists\) Regulations 2010 \(S.I. 2010/493\)](#), [reg. 12\(6\)](#)
- F32** S. 120(2) repealed (17.12.1999) by [1999 c. 26](#), [ss. 36\(1\)\(a\)\(3\)](#), [44](#), [Sch. 9\(10\)](#); [S.I. 1999/3374](#), [art. 2\(b\)\(c\)](#), [Sch.](#)

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

- C7** S. 117-127A applied (with modifications) (2.7.1999) by [S.I. 1999/1548](#), [reg. 3](#)
- C8** S. 120(1): power to amend conferred (17.12.1999) by [1999 c. 26](#), [s. 34\(1\)\(b\)](#); [S.I. 1999/3374](#), [art. 2\(b\)](#)

### 121 Basic award of two weeks' pay in certain cases.

The amount of the basic award shall be two weeks' pay where the tribunal finds that the reason (or, where there is more than one, the principal reason) for the dismissal of the employee is that he was redundant and the employee—

- (a) by virtue of section 138 is not regarded as dismissed for the purposes of Part XI, or
- (b) by virtue of section 141 is not, or (if he were otherwise entitled) would not be, entitled to a redundancy payment.

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

- C9** Ss. 117-127A applied (with modifications) (2.7.1999) by [S.I. 1999/1548](#), [reg. 3](#)

### 122 Basic award: reductions.

- (1) Where the tribunal finds that the complainant has unreasonably refused an offer by the employer which (if accepted) would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that finding.
- (2) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.
- (3) Subsection (2) does not apply in a redundancy case unless the reason for selecting the employee for dismissal was one of those specified in section 100(1)(a) and (b), <sup>[F33]</sup>101A(d),] 102(1) or 103; and in such a case subsection (2) applies only to so much of the basic award as is payable because of section 120.

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- [<sup>F34</sup>(3A) Where the complainant has been awarded any amount in respect of the dismissal under a designated dismissal procedures agreement, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that award.]
- (4) The amount of the basic award shall be reduced or further reduced by the amount of—
- (a) any redundancy payment awarded by the tribunal under Part XI in respect of the same dismissal, or
  - (b) any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI or otherwise).
- [<sup>F35</sup>(5) Where a dismissal is regarded as unfair by virtue of section 104F (blacklists), the amount of the basic award shall be reduced or further reduced by the amount of any basic award in respect of the same dismissal under section 156 of the Trade Union and Labour Relations (Consolidation) Act 1992 (minimum basic award in case of dismissal on grounds related to trade union membership or activities).]

#### Textual Amendments

- F33** Words in s. 122(3) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(5)**
- F34** S. 122(3A) inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch.1 para. 22**; S.I. 1998/1658, art. 2(1), **Sch. 1**
- F35** S. 122(5) inserted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), **reg. 12(7)**

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

- C10** Ss. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, **reg. 3**

## 123 Compensatory award.

- (1) Subject to the provisions of this section and sections 124 [<sup>F36</sup>, 124A and 126], the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.
- (2) The loss referred to in subsection (1) shall be taken to include—
- (a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and
  - (b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.
- (3) The loss referred to in subsection (1) shall be taken to include in respect of any loss of—
- (a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or otherwise), or
  - (b) any expectation of such a payment,
- only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 122) in respect of the same dismissal.

*Status: Point in time view as at 01/10/2011.*

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- (4) In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland.
- (5) In determining, for the purposes of subsection (1), how far any loss sustained by the complainant was attributable to action taken by the employer, no account shall be taken of any pressure which by—
- (a) calling, organising, procuring or financing a strike or other industrial action, or
  - (b) threatening to do so,
- was exercised on the employer to dismiss the employee; and that question shall be determined as if no such pressure had been exercised.
- (6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.
- (7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI or otherwise) exceeds the amount of the basic award which would be payable but for section 122(4), that excess goes to reduce the amount of the compensatory award.
- [<sup>F37</sup>(8) Where the amount of the compensatory award falls to be calculated for the purposes of an award under section 117(3)(a), there shall be deducted from the compensatory award any award made under section 112(5) at the time of the order under section 113.]

#### Textual Amendments

**F36** Words in s. 123(1) substituted (1.10.2004) by [Employment Act 2002 \(c. 22\), ss. 53, 55\(2\), Sch. 7 para. 39](#); S.I. 2004/2185, [art. 2](#)

**F37** S. 123(8) inserted (1.10.2004) by [Employment Act 2002 \(c. 22\), ss. 34\(5\), 55\(2\)](#); S.I. 2004/1717, [art. 2\(2\)](#) (subject to [art. 3](#))

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

**C11** S. 123 applied (1.11.1998) by [1998 c. 39, s. 24\(4\)\(b\)](#)

Ss. 117-127A applied (with modifications) (2.7.1999) by [S.I. 1999/1548, reg. 3](#)

S. 123 applied (6.6.2000) by [1992 c. 52, s. 70A, Sch. A1 para. 160\(2\)\(b\)](#) (as inserted (6.6.2000) by [1999 c. 26, s. 1, Sch. 1](#); [S.I. 2000/1338, art. 2](#) (with transitional provisions in [art. 3](#)))

## 124 Limit of compensatory award etc.

- (1) The amount of—
- (a) any compensation awarded to a person under section 117(1) and (2), or
  - (b) a compensatory award to a person calculated in accordance with section 123,
- shall not exceed [<sup>F38</sup>£68,400].

[<sup>F39</sup>(1A) Subsection (1) shall not apply to compensation awarded, or a compensatory award made, to a person in a case where he is regarded as unfairly dismissed by virtue of section 100, 103A, 105(3) or 105(6A).]

<sup>F40</sup>(2) .....

*Status: Point in time view as at 01/10/2011.*

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- (3) In the case of compensation awarded to a person under section 117(1) and (2), the limit imposed by this section may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under section 114(2)(a) or section 115(2)(d).
- (4) Where—
- (a) a compensatory award is an award under paragraph (a) of subsection (3) of section 117, and
  - (b) an additional award falls to be made under paragraph (b) of that subsection, the limit imposed by this section on the compensatory award may be exceeded to the extent necessary to enable the aggregate of the compensatory and additional awards fully to reflect the amount specified as payable under section 114(2)(a) or section 115(2)(d).
- (5) The limit imposed by this section applies to the amount which the [<sup>F41</sup>employment tribunal] would, apart from this section, award in respect of the subject matter of the complaint after taking into account—
- (a) any payment made by the respondent to the complainant in respect of that matter, and
  - (b) any reduction in the amount of the award required by any enactment or rule of law.

#### Textual Amendments

- F38** Words in s. 124(1) substituted (1.2.2011) by [The Employment Rights \(Increase of Limits\) Order 2010 \(S.I. 2010/2926\)](#), art. 3, [Sch.](#) (with art. 4)
- F39** S. 124(1A) inserted (25.10.1999) by 1999 c. 26, s. 37(1); S.I. 1999/2830, art. 2(1), [Sch. 1 Pt. I](#)
- F40** S. 124(2) repealed (17.12.1999) by 1999 c. 26, ss. 36(1)(3), 44, [Sch. 9\(10\)](#); S.I. 1999/3374, art. 2(b) (c), [Sch.](#)
- F41** Words in s. 124(5) 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](#)

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

- C12** Ss. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, [reg. 3](#)
- C13** S. 124(1) applied (1.11.1998) by 1998 c. 39, s. 24(4)(b); S.I. 1998/2574, art. 2(1), [Sch. 1](#)  
 S. 124(1): power to amend conferred (17.12.1999) by 1999 c. 26, s. 34(1)(c); S.I. 1999/3374, [art. 2\(a\)](#)  
 S. 124(1) applied (6.6.2000) by 1992 c. 52, s. 70A, [Sch. A1 para. 160\(2\)\(b\)](#) (as inserted (6.6.2000) by 1999 c. 26, s. 1, [Sch. 1](#); S.I. 2000/1338, [art. 2](#) (with transitional provisions in art. 3)

#### [<sup>F42</sup>124A] Adjustments under the Employment Act 2002

Where an award of compensation for unfair dismissal falls to be—

- (a) reduced or increased under [<sup>F43</sup>section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 (effect of failure to comply with Code: adjustment of awards)], or
- (b) increased under section 38 of that Act (failure to give statement of employment particulars),

the adjustment shall be in the amount awarded under section 118(1)(b) and shall be applied immediately before any reduction under section 123(6) or (7).]

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**Textual Amendments**

- F42** S. 124A inserted (1.10.2004) by Employment Act 2002 (c. 22), ss. 39, 55(2); S.I. 2004/1717, art. 2(2) (subject to art. 3)
- F43** Words in s. 124A substituted (6.4.2009) by Employment Act 2008 (c. 24), ss. 3(4), 22(1)(a); S.I. 2008/3232, art. 2 (with Sch. paras. 1, 5)

<sup>F44</sup> 125 .....

**Textual Amendments**

- F44** S. 125 repealed (25.10.1999) by 1999 c. 26, ss. 33(1)(a), 44, Sch. 9(10); S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, Sch. 2 Pt. I (with Sch. 3 para. 8)

**126 Acts which are both unfair dismissal and discrimination.**

- (1) This section applies where compensation falls to be awarded in respect of any act both under—
  - (a) the provisions of this Act relating to unfair dismissal, and
  - <sup>F45</sup>(b) the Equality Act 2010.]
- (2) An <sup>F46</sup>employment tribunal] shall not award compensation under <sup>F47</sup>either of those Acts] in respect of any loss or other matter which is or has been taken into account under <sup>F48</sup>the other] by the tribunal (or another <sup>F46</sup>employment tribunal]) in awarding compensation on the same or another complaint in respect of that act.

**Textual Amendments**

- F45** S. 126(1)(b) substituted (1.10.2010) by Equality Act 2010 (c. 15), ss. 211, 216, Sch. 26 para. 33(2) (with ss. 6(4), 205) (as inserted by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), art. 1, Sch. 1 para. 5); S.I. 2010/2317, art. 2(15)(e)(ii) (with art. 15)
- F46** Words in s. 126(2) 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
- F47** Words in s. 126(2) substituted (1.10.2010) by Equality Act 2010 (c. 15), ss. 211, 216, Sch. 26 para. 33(3)(a) (with ss. 6(4), 205) (as inserted by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), art. 1, Sch. 1 para. 5); S.I. 2010/2317, art. 2(15)(e)(ii) (with art. 15)
- F48** Words in s. 126(2) substituted (1.10.2010) by Equality Act 2010 (c. 15), ss. 211, 216, Sch. 26 para. 33(3)(b) (with ss. 6(4), 205) (as inserted by The Equality Act 2010 (Consequential Amendments, Saving and Supplementary Provisions) Order 2010 (S.I. 2010/2279), art. 1, Sch. 1 para. 5); S.I. 2010/2317, art. 2(15)(e)(ii) (with art. 15)

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

- C14** Ss. 117-127A applied (with modifications) (2.7.1999) by S.I. 1999/1548, reg. 3

<sup>F49</sup> 127 .....

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#### Textual Amendments

- F49** S. 127 repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 24, **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)

### 127A Internal appeal procedures.

**No commentary item could be found for this reference c20323811.** .....

<sup>F50</sup>127B.....

#### Textual Amendments

- F50** S. 127B repealed (25.10.1999) by 1999 c. 26, ss. 37(2), 44, **Sch. 9(11)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I**

### *Interim relief*

### 128 Interim relief pending determination of complaint.

- [<sup>F51</sup>(1) An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and—
- (a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—
    - (i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or
    - (ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or
  - (b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met,
- may apply to the tribunal for interim relief.]
- (2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).
  - (3) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application.
  - (4) The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application together with notice of the date, time and place of the hearing.
  - (5) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.



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### Textual Amendments

**F51** S. 128(1) substituted (2.3.2010) by [The Employment Relations Act 1999 \(Blacklists\) Regulations 2010 \(S.I. 2010/493\)](#), **reg. 12(8)**

### Modifications etc. (not altering text)

**C15** Ss. 128-132 extended (4.9.2000) by [1999 c. 26, s. 12\(5\)](#) (with ss. 14, 15); [S.I. 2000/2242, art. 2](#)

**C16** Ss. 128-132 applied (1.10.2006) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), [regs. 1\(1\), 47](#), **Sch. 6 para. 13(6)** (with [regs. 44-46](#), [Sch. 7](#))

**C17** Ss. 128-132 applied (6.4.2010) by [The Employee Study and Training \(Procedural Requirements\) Regulations 2010 \(S.I. 2010/155\)](#), **reg. 18(5)**

## 129 Procedure on hearing of application and making of order.

[<sup>F52</sup>(1) This section applies where, 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—

- (a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—
  - (i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or
  - (ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or
- (b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met.]

(2) The tribunal shall announce its findings and explain to both parties (if present)—

- (a) what powers the tribunal may exercise on the application, and
- (b) in what circumstances it will exercise them.

(3) The tribunal 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 treat him in all respects as if he had not been dismissed), or
- (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.

(4) For the purposes of subsection (3)(b) “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.

(5) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.

(6) If the employer—

- (a) states that he is willing to re-engage the employee in another job, and
- (b) specifies the terms and conditions on which he is willing to do so,



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the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions.

- (7) If the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect.
- (8) If the employee is not willing to accept the job on those terms and conditions—
- (a) where 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, and
  - (b) otherwise, the tribunal shall make no order.
- (9) If on the hearing of an application for interim relief the employer—
- (a) fails to attend before the tribunal, or
  - (b) states that he is unwilling either to reinstate or re-engage the employee as mentioned in subsection (3),

the tribunal shall make an order for the continuation of the employee's contract of employment.

#### **Textual Amendments**

**F52** S. 129(1) substituted (2.3.2010) by [The Employment Relations Act 1999 \(Blacklists\) Regulations 2010 \(S.I. 2010/493\)](#), [reg. 12\(9\)](#)

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

**C18** Ss. 128-132 extended (4.9.2000) by [1999 c. 26, s. 12\(5\)](#) (with ss. 14, 15); [S.I. 2000/2242, art. 2](#)

**C19** Ss. 128-132 applied (1.10.2006) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), [regs. 1\(1\), 47, Sch. 6 para. 13\(6\)](#) (with [regs. 44-46, Sch. 7](#))

**C20** Ss. 128-132 applied (6.4.2010) by [The Employee Study and Training \(Procedural Requirements\) Regulations 2010 \(S.I. 2010/155\)](#), [reg. 18\(5\)](#)

### **130 Order for continuation of contract of employment.**

- (1) An order under section 129 for the continuation of a contract of employment is an order that the contract of employment continue in force—
- (a) for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters, and
  - (b) for the purposes of determining for any purpose the period for which the employee has been continuously employed,
- from the date of its termination (whether before or after the making of the order) until the determination or settlement of the complaint.
- (2) Where the tribunal makes such an order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period, or part of any such period, falling between the date of dismissal and the determination or settlement of the complaint.
- (3) Subject to the following provisions, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period, or part, and shall be paid—
- (a) in the case of a payment for any such period falling wholly or partly after the making of the order, on the normal pay day for that period, and

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- (b) in the case of a payment for any past period, within such time as may be specified in the order.
- (4) If an amount is payable in respect only of part of a normal pay period, the amount shall be calculated by reference to the whole period and reduced proportionately.
- (5) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of a normal pay period, or part of any such period, goes towards discharging the employer's liability in respect of that period under subsection (2); and, conversely, any payment under that subsection in respect of a period goes towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.
- (6) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.
- (7) For the purposes of this section, the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

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

- C21** Ss. 128-132 extended (4.9.2000) by 1999 c. 26, s. 12(5) (with ss. 14, 15); S.I. 2000/2242, art. 2
- C22** Ss. 128-132 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), regs. 1(1), 47, Sch. 6 para. 13(6) (with regs. 44-46, Sch. 7)
- C23** Ss. 128-132 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), reg. 18(5)

**131 Application for variation or revocation of order.**

- (1) At any time between—
- (a) the making of an order under section 129, and
- (b) the determination or settlement of the complaint,
- the employer or the employee may apply to an [<sup>F53</sup>employment 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 128 and 129 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 128(4) has effect with the substitution of a reference to the employee for the reference to the employer.

**Textual Amendments**

- F53** Words in s. 131(1) 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

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

- C24** Ss. 128-132 extended (4.9.2000) by 1999 c. 26, s. 12(5) (with ss. 14, 15); S.I. 2000/2242, art. 2

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- C25** Ss. 128-132 applied (1.10.2006) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), regs. 1(1), 47, **Sch. 6 para. 13(6)** (with regs. 44-46, Sch. 7)
- C26** Ss. 128-132 applied (6.4.2010) by [The Employee Study and Training \(Procedural Requirements\) Regulations 2010 \(S.I. 2010/155\)](#), **reg. 18(5)**

### 132 Consequence of failure to comply with order.

- (1) If, on the application of an employee, an [<sup>F54</sup>employment tribunal] is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under section 129(5) or (7), the tribunal shall—
- (a) make an order for the continuation of the employee's contract of employment, and
  - (b) order the employer to pay compensation to the employee.
- (2) Compensation under subsection (1)(b) shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard—
- (a) to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order, and
  - (b) to any loss suffered by the employee in consequence of the non-compliance.
- (3) Section 130 applies to an order under subsection (1)(a) as in relation to an order under section 129.
- (4) If on the application of an employee an [<sup>F54</sup>employment tribunal] is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment subsection (5) or (6) applies.
- (5) Where the non-compliance consists of a failure to pay an amount by way of pay specified in the order—
- (a) the tribunal shall determine the amount owed by the employer on the date of the determination, and
  - (b) if on that date the tribunal also determines the employee's complaint that he has been unfairly dismissed, it shall specify that amount separately from any other sum awarded to the employee.
- (6) In any other case, the tribunal shall order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.

#### Textual Amendments

- F54** Words in s. 132(1)(4) 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**

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

- C27** Ss. 128-132 extended (4.12.2000) by [1999 c. 26, s. 12\(5\)](#) (with ss. 14, 15); S.I. 2000/2242, **art. 2**
- C28** Ss. 128-132 applied (1.10.2006) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), regs. 1(1), 47, **Sch. 6 para. 13(6)** (with regs. 44-46, Sch. 7)
- C29** Ss. 128-132 applied (6.4.2010) by [The Employee Study and Training \(Procedural Requirements\) Regulations 2010 \(S.I. 2010/155\)](#), **reg. 18(5)**

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