



# 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 [<sup>F1</sup>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 [<sup>F2</sup>“one year”] there were substituted the words “one month”.
- (3) Subsection (1) does not apply if—
  - <sup>F3</sup>(a) .....
  - [<sup>F4</sup>(aa) subsection (1) of section 98B (read with subsection (2) of that section) applies,]
  - [<sup>F5</sup>(b) subsection (1) of section 99 (read with any regulations made under 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,
  - [<sup>F6</sup>(dd) section 101A applies,]

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- (e) section 102 applies,
  - (f) section 103 applies,
  - [<sup>F7</sup>(ff) section 103A applies,]
  - (g) subsection (1) of section 104 (read with subsections (2) and (3) of that section) applies, <sup>F8</sup> . . .
  - [<sup>F9</sup>(gg) subsection (1) of section 104A (read with subsection (2) of that section) applies, <sup>F10</sup> . . .]
  - [<sup>F11</sup>(gh) subsection (1) of section 104B (read with subsection (2) of that section) applies, <sup>F12</sup> . . .]
  - [<sup>F13</sup>(gi) section 104C applies,]
  - (h) section 105 applies <sup>F14</sup>[<sup>F15</sup> . . .
  - (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.]<sup>F16</sup>[<sup>F17</sup> . . .
  - (i) paragraph (1) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 applies.]
- <sup>F18</sup> . . . . .
- [<sup>F19</sup>(j) paragraph (1) of regulation 6 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 applies.]
- <sup>F20</sup>[<sup>F21</sup> . . .
- (k) paragraph (3) or (6) of regulation 42 of the European Public Limited-Liability Company Regulations 2004 applies.]
- <sup>F22</sup>[<sup>F23</sup> . . .
- (l) 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) applies.]
- [<sup>F24</sup>, <sup>F25</sup> . . .
- (m) paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (read with paragraph 5(6) of that Schedule) applies.][<sup>F26</sup> or
  - (n) paragraph (a) or (b) of paragraph 13(5) of Schedule 6 to the Employment Equality (Age) Regulations 2006 applies.][<sup>F27</sup>, <sup>F28</sup> . . .
  - (o) paragraph (3) or (6) of regulation 31 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (read with paragraphs (4) and (7) of that regulation) applies.]
- [<sup>F29</sup>or
- (p) regulation 46 or 47 of the Companies (Cross-Border Mergers) Regulations 2007 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)(aa) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 40(6), 59(2)-(4); S.I. 2005/872, arts. 4, 5, Sch. (subject to arts. 6-12)

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- F5** S. 108(3)(b) substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), **Sch. 1 para. 32**; S.I. 2005/872, **arts. 4, 5**, Sch. (subject to arts. 6-12)
- F6** S. 108(3)(dd) inserted (1.10.1998) by S.I. 1998/1833, **reg. 32(4)**
- F7** S. 108(3)(ff) inserted (2.7.1999) by 1998 c. 23, **s. 7(1)**; S.I. 1999/1547, **art. 2**
- F8** 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**)
- F9** 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**)
- F10** 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**
- F11** 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**
- F12** Word in s. 108(3)(gh) omitted (15.1.2000) by virtue of S.I. 1999/3323, **reg. 29(2)**
- F13** S. 108(3)(gi) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 41(5)**, 59(2)-(4); S.I. 2005/872, **arts. 4, 5**, Sch. (subject to arts. 6-12)
- F14** 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)**
- F15** S. 108(hh) and preceding word inserted (15.1.2000) by S.I. 1999/3323, **reg. 29(2)**
- F16** Word in s. 108(3)(hh) omitted (1.10.2002) by virtue of The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), **reg. 11**, **Sch. 2 Pt. 1 para. 3(11)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)
- F17** S. 108(3)(i) and word "or" preceding it inserted (1.7.2000) by S.I. 2000/1551, **reg. 10**, **Sch. para. 2(2)**
- F18** Word in s. 108(3)(i) repealed (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), **regs. 1(2)**, **43(2)(a)**
- F19** S. 108(3)(j) and preceding word 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(11)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)
- F20** Word in s. 108(3)(j) repealed (6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), **regs. 1(1)**, **31(2)(a)** (with **reg. 3**)
- F21** S. 108(3)(k) and the preceding word "or" inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), **regs. 1(2)**, **43(2)(b)**
- F22** Word in s. 108(3)(k) omitted (6.4.2006) by virtue of The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349), **regs. 1(3)**, 17, **Sch. para. 6(2)(a)**
- F23** S. 108(3)(l) and the preceding word "or" inserted (6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), **regs. 1(1)**, **31(2)(b)** (with **reg. 3**)
- F24** S. 108(3)(m) and word inserted (6.4.2006) by The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349), **regs. 1(3)**, 17, **Sch. para. 6(2)(b)**
- F25** Word in s. 108(3)(l) omitted (1.10.2006) by virtue of The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), **reg. 49(1)**, **Sch. 8 para. 24(a)** (with **regs. 44-46**)
- F26** S. 108(3)(n) and word inserted (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), **reg. 49(1)**, **Sch. 8 para. 24(b)** (with **regs. 44-46**)
- F27** S. 108(3)(o) and word inserted (18.8.2006) by The European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), **reg. 32(2)(b)**
- F28** Word in s. 108(3)(n) repealed (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 48(2)(a)**
- F29** S. 108(3)(p) and word inserted (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 48(2)(b)**

#### 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)**)

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**C2** S. 108(1) excluded by 1992 c. 52, s. 154 (as substituted (6.4.2005) by [Employment Relations Act 2004](#) (c. 24), [ss. 35, 59\(2\)-\(4\)](#); S.I. 2005/872, [arts. 4, 5](#), Sch. (subject to [arts. 6-12](#)))

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