

*These notes refer to the Employment Act 2008 (c.24)
which received Royal Assent on 13 November 2008*

EMPLOYMENT ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Dispute resolution

Section 2: Procedural fairness

17. Prior to 2004, the handling of breaches of procedure in unfair dismissal cases was based on case law, and in particular the House of Lords judgment in *Polkey v A E Dayton Services Ltd* [1988] AC 344, which provided that a dismissal could be unfair purely on procedural grounds, but that in those circumstances the tribunal should reduce or eliminate the compensation payable (other than the basic award) to reflect the likelihood (if any) that the dismissal would have gone ahead anyway if the correct procedures had been followed. At the same time as the Statutory procedures were introduced in 2004, a new section 98A was inserted into ERA 1996. This section provides that a dismissal where an employer does not complete the Statutory procedures is automatically unfair. It also provides that a tribunal may disregard any failure by the employer to comply with other (e.g. workplace based) procedures in respect of the dismissal, if following such other procedures would have had no effect on the decision to dismiss.
18. Following the public consultation, the Government has decided to repeal section 98A of ERA 1996 in its entirety, so as to revert to the situation which applied previously based on the *Polkey* line of cases.