



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART V

#### UNFAIR DISMISSAL

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

- C1** Pt. V modified by S.I. 1981/1794, **regs. 8(1)(4)**, 13  
Pt. V (ss. 54-80) modified (3.4.1995) by 1994 c. 19, **s. 44(1)(a)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/852, art. 7, **Sch. 3**  
Pt. V modified (E.W.) (ss. 54-80) (26.8.1994) by 1994 c. 20, s. 4, **Sch. 4 para. 7(1)(3)**; S.I. 1994/1841, **art. 2**  
Pt. V modified (ss. 54-80) (*prosp.*) by 1995 c. 26, **ss. 46(5)(6)**, 180(1) (which c. 46 was repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202))
- C2** Pt. V (ss. 54-80) modified by S.I. 1989/901, arts. 3, 4(b), **Sch.**
- C3** Pt. V (ss. 54-80) modified (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), **ss. 152(1)**, 153, 302.  
Pt. V (ss. 54-80) excluded (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), **ss. 167(1)**, 302.  
Pt. V: by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), **ss. 167(1)(2)(3)**, 302 it is provided (16.10.1992) that Pt. V of this Act shall have effect subject to the provisions of ss. 152-166 of that 1992 Act and that those sections shall be construed as one with this Part.

#### *Right not to be unfairly dismissed*

#### **54 Right of employee not to be unfairly dismissed.**

- (1) In every employment to which this section applies every employee shall have the right not to be unfairly dismissed by his employer.

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*Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Part V. (See end of Document for details)*

- (2) This section applies to every employment except in so far as its application is excluded by or under any provision of this Part or by section 141 to 149.

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

- C4** S. 54 modified (E.W.) (26.8.1994) by 1994 c. 20, s. 4, **Sch. 4 para. 9**; S.I. 1994/1841, **art. 2**  
 S. 54 modified (E.W.) (3.1.1995) by 1994 c. 40, ss. 20, 82(2), **Sch. 8 para. 9**  
 S. 54 modified (*prosp.*) by 1995 c. 26, **ss. 46(7)**, 180(1)

*Meaning of unfair dismissal*

**55 Meaning of “dismissal”.**

- (1) In this Part, except as respects a case to which section 56 applies, “dismissal” and “dismiss” shall be construed in accordance with the following provisions of this section.
- (2) Subject to subsection (3), an employee shall be treated as dismissed by his employer if, but only if,—
- (a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice, or
  - (b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract, or
  - (c) the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer’s conduct.
- (3) Where an employer gives notice to an employee to terminate his contract of employment and, at a time within the period of that notice, the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer’s notice is due to expire, the employee shall for the purposes of this Part be taken to be dismissed by his employer, and the reasons for this dismissal shall be taken to be the reasons for which the employer’s notice is given.
- (4) In this Part “the effective date of termination”—
- (a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which that notice expires;
  - (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect; and
  - (c) in relation to an employee who is employed under a contract for a fixed term, where that term expires without being renewed under the same contract, means the date on which that term expires.
- [<sup>F1</sup>(5) Where the contract of employment is terminated by the employer and the notice required by section 49 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by subsection (4)) then, for the purposes of sections 53(2), 64(1)(a), <sup>F2</sup>. . . and 73(3) and paragraph 8(3) of Schedule 14, the later date shall be treated as the effective date of termination in relation to the dismissal.

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- (6) Where the contract of employment is terminated by the employee and—
- (a) the material date does not fall during a period of notice given by the employer to terminate that contract; and
  - (b) had the contract been terminated not by the employee but by notice given on the material date by the employer, that notice would have been required by section 49 to expire on a date later than the effective date of termination (as defined by subsection (4)),
- then, for the purposes of sections 64(1)(a), <sup>F2</sup> . . . and 73(3) and paragraph 8(3) of Schedule 14, the later date shall be treated as the effective date of termination in relation to the dismissal.
- (7) “Material date” means—
- (a) in subsection (5), the date when notice of termination was given by the employer or (where no notice was given) the date when the contract of employment was terminated by the employer; and
  - (b) in subsection (6), the date when notice of termination was given by the employee or (where no notice was given) the date when the contract of employment was terminated by the employee.]

#### Textual Amendments

- F1** S. 55(5)–(7) substituted for s. 55(5) by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 1](#) with saving in [S.I. 1982/1656, Sch. 2](#)
- F2** Words in s. 55(5)(6) repealed (30.8.1993) by 1993 c. 19, s. 51, [Sch. 10](#); [S.I. 1993/1908, art. 2\(1\)](#), [Sch. 1](#)

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

- C5** S. 55(2)–(7) applied (1.7.1992) by [Social Security Contributions and Benefits Act 1992 \(c. 4\)](#), [ss. 171\(1\), 177\(4\)](#).

## 56 Failure to permit woman to return to work after confinement treated as dismissal.

Where an employee [<sup>F3</sup>has the right to return to work under section 39 and has exercised it in accordance with section 42] but is not permitted to return to work, then [<sup>F4</sup>subject to section 56A] she shall be treated for the purposes of this Part as if she had been employed until the notified day of return, and, if she would not otherwise be so treated, as having been continuously employed until that day, and as if she had been dismissed with effect from that day for the reason for which she was not permitted to return.

#### Textual Amendments

- F3** Words in s. 56 substituted (10.6.1994) by 1993 c. 19, s. 49(2), [Sch. 8 para.12](#); [S.I. 1994/1365, art. 2, Sch.](#)
- F4** Words inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 11](#)

## [<sup>F5</sup>56A Exclusion of s. 56 in certain cases.

- (1) Section 56 shall not apply in relation to an employee if—

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- (a) immediately before [<sup>F6</sup>the end of her maternity leave period (or, if it ends by reason of dismissal, immediately before the dismissal)] the number of employees employed by her employer, added to the number employed by any associated employer of his, did not exceed five, and
  - (b) it is not reasonably practicable for the employer (who may be the same employer or a successor of his) to permit her to return to work in accordance with [<sup>F6</sup>section 39] or for him or an associated employer to offer her employment under a contract of employment satisfying the conditions specified in subsection (3).
- (2) Section 56 shall not apply in relation to an employee if—
- (a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit her to return to work in accordance with [<sup>F6</sup>section 39], and
  - (b) he or an associated employer offers her employment under a contract of employment satisfying the conditions specified in subsection (3), and
  - (c) she accepts or unreasonably refuses that offer.
- (3) the conditions referred to in subsections (1) and (2) are—
- (a) that the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
  - (b) that the provisions of the contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work in accordance with [<sup>F6</sup>section 39].
- (4) Where on complaint of unfair dismissal any question arises as to whether the operation of section 56 is excluded by subsection (1) or (2), it shall be for the employer to show that the provisions of that subsection were satisfied in relation to the complainant.]

#### Textual Amendments

**F5** S. 56A inserted with saving by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), s. 12 and S.I. 1980/1170, art. 4, [Sch. 3](#)

**F6** Words in s. 56A(1)(a)(b)(2)(a)(3)(b) substituted (10.6.1994) by 1993 c. 19, s. 49(2), [Sch. 8 para. 13](#) (a)(b); S.I. 1994/1365, art. 2, [Sch.](#)

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

**C6** S. 56A(1) excluded by S.I. 1981/847, [art. 2\(1\)](#)

## 57 General provisions relating to fairness of dismissal.

- (1) In determining for the purposes of this Part whether the dismissal of an employee was fair or unfair, it shall be for the employer to show—
- (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal, and
  - (b) that it was 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 that employee held.

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- (2) In subsection (1)(b) the reference to a reason falling within this subsection is a reference to a reason which—
- (a) related to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do, or
  - (b) related to the conduct of the employee, or
  - (c) was that the employee was redundant, or
  - (d) was 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) Where the employer has fulfilled the requirements of subsection (1), then, [<sup>F7</sup>subject to [<sup>F8</sup>sections 57A to 61], and to sections 152, 153 and 238 of the Trade Union and Labour Relations (Consolidation) Act 1992 (provisions as to dismissal on ground of trade union membership or activities or in connection with industrial action),], the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether [<sup>F9</sup>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 that question shall be determined in accordance with equity and the substantial merits of the case].
- (4) In this section, in relation to an employee,—
- (a) “capability” means capability assessed by reference to skill, aptitude, health or any other physical or mental quality;
  - (b) “qualifications” means any degree, diploma or other academic, technical or professional qualification relevant to the position which the employee held.

#### Textual Amendments

- F7** Words in s. 57 substituted (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), ss. 300(2), 302, [Sch. 2 para. 14](#).
- F8** Words in s. 57(3) substituted (30.8.1993) by 1993 c. 19, s. 28, [Sch. 5 para.2](#); S.I. 1993/1908, art. 2(1), [Sch. 1](#)
- F9** Words substituted with saving by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), s. 6 and S.I. 1980/1170, art. 4, [Sch. 3](#)

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

- C7** Ss. 57-61 modified (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), ss. [239\(3\)\(a\)](#), 302.
- C8** S. 57(1)(b) modified by S.I. 1981/1794, [regs. 8\(2\)\(b\)](#), 13

#### [<sup>F10</sup>57A Dismissal in health and safety cases.

- (1) The dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—
- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, carried out, or proposed to carry out, any such activities,

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- (b) being a representative of workers on matters of health and safety at work, or a 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,
 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,
 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 he reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, 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 he reasonably believed to be serious and imminent, took, or proposed to take, appropriate steps to protect himself or other persons from the danger.
- (2) For the purposes of subsection (1)(e) whether steps which an employee took, or proposed to take, were appropriate shall 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 was that specified in subsection (1)(e), the dismissal shall not be regarded as having been unfair 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.]

#### Textual Amendments

**F10** S. 57A inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.3**; S.I. 1993/1908, art. 2(1), **Sch. 1**

VALID FROM 26/10/1995

#### [<sup>F11</sup>57A] Dismissal of employee representatives.

The dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee, being—

- (a) an employee representative for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981, or

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(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.]

**Textual Amendments**

F11 S. 57AA inserted (26.10.1995) by S.I. 1995/2587, reg. 14(1)

F12 58 .....

**Textual Amendments**

F12 S. 58 repealed (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(1), 302, Sch.1 (with savings in Sch. 3 para. 2).

F13 58A .....

**Textual Amendments**

F13 S. 58A repealed by Employment Act 1988 (c. 19, SIF 43:5), s. 33(2), Sch. 4

**59 Dismissal on ground of redundancy.**

[<sup>F14</sup>(1)] Where the reason or principal reason for the dismissal of an employee was that [<sup>F15</sup>the employee] was redundant, but 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 [<sup>F15</sup>the employee] and who have not been dismissed by the [<sup>F16</sup>employer, and [<sup>F17</sup>either]

(a) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was an inadmissible reason; [<sup>F18</sup>or]]. . .

<sup>F19</sup>(b) that [<sup>F20</sup>the employee] was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure [<sup>F21</sup>in the case of the employee],

then, for the purposes of this Part, the dismissal shall be regarded as unfair.

[<sup>F14</sup>(2) For the purposes of this section “inadmissible”, in relation to a reason, means that it is one of those specified in section [<sup>F22</sup>57A(1) (read with (2) and (3))] 60(a) to (e) [<sup>F23</sup>or 60A(1) (read with (2) and (3))]]

[<sup>F24</sup>(3) For the purposes of this Part “a redundancy case” means a case where the reason or principal reason for the dismissal was that the employee was redundant but the equal application of the circumstances to non-dismissed employees is also shown.]

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### Textual Amendments

- F14** S. 59 renumbered as s. 59(1) and s. 59(2) inserted (30.8.1993 except for the purpose of giving effect to s. 60(a)-(f) of this Act) by 1993 c. 19, s. 24(2); S.I. 1993/1908, art. 2(1), **Sch. 1**
- F15** Words in s. 59(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 14(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F16** Words in s. 59 substituted (30.8.1993 except for the purpose of giving effect to s. 60(a)-(f) of this Act) by 1993 c. 19, s. 24(2); S.I. 1993/1908, art. 2(1), **Sch. 1**
- F17** Word in s. 59(1) repealed (E.W.) (3.1.1995) by 1994 c. 40, s. 81(1), **Sch. 17**; S.I. 1994/3188, arts. 2, 3(n)(s)(vi)
- F18** Word in s. 59(1)(a) repealed (E.W.) (3.1.1995) by 1994 c. 40, s. 81(1), **Sch. 17**; S.I. 1994/3188, arts. 2, 3(n)(s)(vi)
- F19** S. 59(1)(b) repealed (E.W.) (3.1.1995) by 1994 c. 40, ss. 36(1), 81(1), **Sch. 17**; S.I. 1994/3188, arts. 2, 3(e)(n)(s)(vi)
- F20** Words in s. 59(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 14(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F21** Words in s. 59(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 14(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F22** Words in s. 59(2) substituted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para. 4**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F23** Words in s. 59(2) inserted (30.8.1993) by 1993 c. 19, s. 29(2); S.I. 1993/1908, art. 2(1), **Sch. 1**
- F24** S. 59(3) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 14(c)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

### Modifications etc. (not altering text)

- C9** Ss. 57-61 modified (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 239(3)(a), 302.

## [<sup>F25</sup>60] Dismissal on ground of pregnancy or childbirth.

An employee shall be treated for the purposes of this Part as unfairly dismissed if—

- (a) the reason (or, if there is more than one, the principal reason) for her dismissal is that she is pregnant or any other reason connected with her pregnancy,
- (b) her maternity leave period is ended by the dismissal and the reason (or, if there is more than one, the principal reason) for her dismissal is that she has given birth to a child or any other reason connected with her having given birth to a child,
- (c) the reason (or, if there is more than one, the principal reason) for her dismissal, where her contract of employment was terminated after the end of her maternity leave period, is that she took, or availed herself of the benefits of, maternity leave,
- (d) the reason (or, if there is more than one, the principal reason) for her dismissal, where—
  - (i) before the end of her maternity leave period, she gave to her employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she would be incapable of work after the end of that period, and
  - (ii) her contract of employment was terminated within the four week period following the end of her maternity leave period in



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- circumstances where she continued to be incapable of work and the certificate relating to her incapacity remained current,
- is that she has given birth to a child or any other reason connected with her having given birth to a child,
- (e) the reason (or, if there is more than one, the principal reason) for her dismissal is a requirement or recommendation such as is referred to in section 45(1), or
  - (f) her maternity leave period is ended by the dismissal, and the reason (or, if there is more than one, the principal reason) for her dismissal is that she is redundant and section 38 has not been complied with.

For the purposes of paragraph (c) above a woman “takes maternity leave” if she is absent from work during her maternity leave period and a woman “avails herself of the benefits of maternity leave” if, during her maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by section 33 during that period.]

#### Textual Amendments

**F25** S. 60 substituted (10.6.1994) by 1993 c. 19, s. 24(1); S.I. 1994/1365, art. 2, Sch.

#### [<sup>F26</sup>60A Dismissal on grounds of assertion of statutory right.

- (1) The dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been unfair if the reason for it (or, if more than one, the principal reason) was 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) whether the employee has the right or not and whether it has been infringed or not, 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 shall be 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 statutory rights are relevant for the purposes of this section, namely—
  - (a) any right conferred by—
    - (i) this Act, or
    - [ Schedule 5A to the Betting, Gaming and Lotteries Act 1963, or]
    - <sup>F27</sup>(ia) the <sup>M1</sup>Wages Act 1986, [<sup>F28</sup>or
    - <sup>F28</sup>(iii) Schedule 4 to the Sunday Trading Act 1994]for which the remedy for its infringement is by way of a complaint or reference to an industrial tribunal;
  - (b) the right conferred by section 49 (minimum notice);
  - (c) the rights conferred by the following provisions of the <sup>M2</sup>Trade Union and Labour Relations (Consolidation) Act 1992, namely, sections 68, 86, 146, 168, 169 and 170 (deductions from pay, union activities and time off).]

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#### Textual Amendments

- F26** S. 60A added (30.8.1993) by 1993 c. 19, s. 29(1); S. I. 1993/1908, art. 2(1), **Sch. 1**  
**F27** S. 60A(4)(a)(ia) inserted (E.W.) (3.1.1995) by 1994 c. 40, ss. 20, 82(2), **Sch. 8 para. 19**  
**F28** S. 60A(4)(a)(iii) and the preceding “or” inserted (E.W.) (26.8.1994) by 1994 c. 20, s. 4, **Sch. 4 para. 19**; S.I. 1994/1841, **art. 2**

#### Marginal Citations

- M1** 1986 c. 48.  
**M2** 1992 c. 52.

### [61] Dismissal of replacement.

(1) Where an employer—

- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the [<sup>F29</sup>resumption of work by] another employee who is, or will be, absent wholly or partly because of pregnancy or [<sup>F29</sup>childbirth]; and  
 (b) dismisses the first-mentioned employee in order to make it possible to give work to the other employee;

then, for the purposes of section 57(1)(b), but without prejudice to the application of section 57(3), the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(2) Where an employer—

- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the end of a suspension such as is referred to in section 19 [<sup>F30</sup>or 45] of another employee; and  
 (b) dismisses the first-mentioned employee in order to make it possible to allow the [<sup>F31</sup>resumption of work by the other employee];

then, for the purposes of section 57(1)(b), but without prejudice to the application of section 57(3), the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.]

#### Textual Amendments

- F29** Words in s. 61(1)(a) substituted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 15(a)**; S.I. 1994/1365, art. 2, **Sch.**  
**F30** Words in s. 61(2) inserted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 15(b)(i)**; S.I. 1994/1365, art. 2, **Sch.**  
**F31** Words in s. 61(2) substituted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 15(b)(ii)**; S.I. 1994/1365, art. 2, **Sch.**

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

- C10** Ss. 57-61 modified (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), **ss. 239(3)(a)**, 302.

*Status: Point in time view as at 03/01/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Part V. (See end of Document for details)*

F32 **62** .....

**Textual Amendments**

**F32** S. 62 repealed (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(1), 302, **Sch.1** (with savings in Sch. 3 para. 2) and subject to an amendment (1.8.1998) by 1998 c. 8, s. 1(2) (with s. 16(2)); S.I. 1998/1658, art. 2, **Sch. 1**

F33 **62A** .....

**Textual Amendments**

**F33** S. 62A inserted by Employment Act 1990 (c. 38), s. 9(1) and repealed (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(1), 302, **Sch.1** (with savings in Sch. 3 para. 2).

**63 Pressure on employer to dismiss unfairly.**

In determining, for the purposes of this Part any question as to the reason, or principal reason, for which an employee was dismissed or any question whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirements of section 57(1)(b) or whether the employer acted reasonably in treating it as a sufficient reason for dismissing him,—

- (a) 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
- (b) any such question shall be determined as if no such pressure had been exercised.

*Exclusion of section 54*

**64 Qualifying period and upper age limit.**

(1) <sup>F34</sup> . . . section 54 does not apply to the dismissal of an employee from any employment if the employee—

(a) was not continuously employed for a period of not less than [<sup>F35</sup>two years] ending with the effective date of termination, or

[<sup>F36</sup>(b) attained the following age on or before the effective date of termination, that is to say—

- (i) if in the undertaking in which he was employed there was a normal retiring age for an employee holding the position which he held and the age was the same whether the employee holding that position was a man or a woman, that normal retiring age; and
- (ii) in any other case, the age of sixty-five.]

(2) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in section 19(1), subsection (1)(a) shall have effect in relation to that

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dismissal as if for the words [<sup>F37</sup>two years] there were substituted the words [<sup>F38</sup>one month].

(3) <sup>F39</sup> .....

[<sup>F40</sup>(3) Subsection (1) shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason.

(4) For the purposes of subsection (3) “inadmissible”, in relation to a reason, means that it is one of those specified in section [<sup>F41</sup>57A(1) (read with (2) and (3))] 60(a) to (e) [<sup>F42</sup>or 60A(1) (read with (2) and (3))].

(5) Subsection (1) shall not apply to a case falling within section 60(f).]

#### Textual Amendments

- F34** Words in s. 64(1) repealed (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(1), 302, **Sch. 1** (with savings in Sch. 3 para. 2).
- F35** Words substituted (with saving) by virtue of S.I. 1985/782, **arts. 3(1), 5**
- F36** S. 64(1)(b) substituted by Sex Discrimination Act 1986 (c. 59, SIF 106:1), **s. 3(1)**
- F37** Words substituted (with saving) by virtue of S.I. 1985/782, **arts. 4, 5**
- F38** Words substituted with saving by Employment Act 1982 (c. 46, SIF 43:5), s. 20, **Sch. 2 para. 5(1)**
- F39** S. 64(3) repealed (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(1), 302, **Sch. 1** (with savings in Sch. 3 para. 2)
- F40** S. 64(3)-(5) inserted (30.8.1993 except for the purpose of giving effect to s. 60(a)-(f) of this Act) by 1993 c. 19, **ss. 24(3), 52**; S.I. 1993/1908, art. 2(1), **Sch.1**
- F41** Words in s. 64(4) inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para. 5**; S.I. 1993/1908, art. 2(1), **Sch.1**
- F42** Words in s. 64(4) inserted (30.8.1993) by 1993 c. 19, **s. 29(3)**; S.I. 1993/1908, art. 2(1), **Sch.1**

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

- C11** S. 64 excluded (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), **ss. 154, 302**.
- C12** S. 64(1) excluded (E.W.) (26.8.1994) by 1994 c. 20, s. 4, **Sch. 4 para. 9**; S.I. 1994/1841, **art. 2**  
S. 64(1) excluded (E.W.) (3.1.1995) by 1994 c. 40, ss. 20, 82(2), **Sch. 8 para. 9**

<sup>F43</sup>**64A** .....

#### Textual Amendments

- F43** S. 64A (which was inserted with saving by Employment Act 1980 (c. 42, SIF 43:5), **s. 8(1)**; S.I. 1980/1170) repealed (30.8.1993) by 1993 c. 19, ss. 49(1), 51, Sch. 7 para. 2, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch.1** (and expressed to be repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. 1** (with ss. 191-195, 202))

## 65 Exclusion in respect of dismissal procedures agreement.

(1) An application may be made jointly to the Secretary of State by all the parties to a dismissal procedures agreement to make an order designating that agreement for the purposes of this section.

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- (2) On any such application the Secretary of State may make such an order if he is satisfied—
- (a) that every trade union which is a party to the dismissal procedures agreement is an independent trade union;
  - (b) that the agreement provides for procedures to be followed in cases where an employee claims that he has been, or is in the course of being, unfairly dismissed;
  - (c) that those procedures are available without discrimination to all employees falling within any description to which the agreement applies;
  - (d) that the remedies provided by the agreement in respect of unfair dismissal are on the whole as beneficial as (but not necessarily identical with) those provided in respect of unfair dismissal by this Part;
  - (e) that the procedures provided by the agreement include a right to arbitration or adjudication by an independent referee, or by a tribunal or other independent body, in cases where (by reason of an equality of votes or for any other reason) a decision cannot otherwise be reached; and
  - (f) that the provisions of the agreement are such that it can be determined with reasonable certainty whether a particular employee is one to whom the agreement applies or not.
- (3) Where a dismissal procedures agreement is designated by an order under this section which is for the time being in force, the provisions of that agreement relating to dismissal shall have effect in substitution for any rights under section 54; and accordingly that section shall not apply to the dismissal of an employee from any employment if it is employment to which, and he is an employee to whom, those provisions of the agreement apply.
- (4) Subsection (3) shall not apply to the [F44:right conferred by section 60 or 60A(1)] [F45:or the right conferred by paragraph 7 or 8 of Schedule 5A to the Betting, Gaming and Lotteries Act 1963] [F46:or the right conferred by paragraph 7 or 8 of Schedule 4 to the Sunday Trading Act 1994].

#### Textual Amendments

**F44** Words in s. 65(4) substituted (30.8.1993 so far as relating to s. 60A(1) of this Act and otherwise 10.6.1994) by 1993 c. 19, ss. 49(1), 51, 52, **Sch. 8 para. 16**; S.I. 1993/1908, art. 2(1), **Sch.**; S.I. 1994/1365, art. 2, **Sch.**

**F45** Words in s. 65(4) inserted (E.W.) (3.1.1995) by 1995 c. 40, ss. 20, 82(2), **Sch. 8 para. 20**

**F46** Words in s. 65(4) added (E.W.) (26.8.1994) by 1994 c. 20, s. 4, **Sch. 4 para. 20**; S.I. 1994/1841, **art. 2**

## 66 Revocation of exclusion order under s. 65.

(1)

[F47](2) If [F48:at any time when an order under section 65 is in force, in respect of a dismissal procedures agreement the Secretary of State is satisfied, whether on an application by any of the parties to the agreement or otherwise,] either—

- (a) that it is the desire of all the parties to the dismissal procedures agreement that the order should be revoked, or
- (b) that the agreement has ceased to fulfil all the conditions specified in section 65(2),

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the Secretary of State shall revoke the order by a further order made under this section.

- (3) Any order made under this section may contain such transitional provisions as appear to the Secretary of State to be appropriate in the circumstances, and, in particular, may direct—
  - (a) that, notwithstanding section 65(3), an employee shall not be excluded from his rights under section 54 where the effective date of termination falls within a transitional period which is specified in the order and is a period ending with the date on which the order under this section takes effect and shall have an extended time for presenting a complaint under section 67 in respect of a dismissal where the effective date of termination falls within that period, and
  - (b) that in determining any complaint of unfair dismissal presented by an employee to whom the dismissal procedures agreement applies, where the effective date of terminations falls within that transitional period, an industrial tribunal shall have regard to such considerations (in addition to those specified in this Part and paragraph 2 of Schedule 9) as may be specified in the order.

**Textual Amendments**

**F47** S. 66(1) repealed by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 2](#)

**F48** Words substituted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 13\(b\)](#)

*Remedies for unfair dismissal*

**67 Complaint to industrial tribunal.**

- (1) A complaint may be presented to an industrial tribunal against an employer by any person (in this Part referred to as the complainant) that he was unfairly dismissed by the employer.
- (2) Subject to subsection (4), an industrial tribunal shall not consider a complaint under this section unless it is presented to the tribunal before the end of the period of three months beginning with the effective date of termination or 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 the period of three months.
- <sup>F49</sup>(3) .....
- (4) An industrial tribunal shall consider a complaint under this section if, where the dismissal is with notice, the complaint is presented after the notice is given notwithstanding that it is presented before the effective date of termination and in relation to such a complaint the provisions of this Act, so far as they relate to unfair dismissal, shall have effect—
  - (a) as if 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) as if references to reinstatement included references to the withdrawal of the notice by the employer;

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- (c) as if 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) as if references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

#### Textual Amendments

**F49** S. 67(3) repealed (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(1), 302, Sch.1 (with savings in Sch. 3 para. 2).

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

**C13** S. 67(2) excluded (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) ss. 239(2), 302.

## 68 Remedies for unfair dismissal.

- (1) Where on a complaint under section 67 an industrial tribunal finds that the grounds of the complaint are well-founded, it shall explain to the complainant what orders for reinstatement or re-engagement may be made under section 69 and in what circumstances they may be made, and shall ask him whether he wishes the tribunal to make such an order, and if he does express such a wish the tribunal may make an order under section 69.
- (2) If on a complaint under section 67 the tribunal finds that the grounds of the complaint are well-founded and no order is made under section 69, the tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with [F50 sections 72 to 76], to be paid by the employer to the employee.

#### Textual Amendments

**F50** Words substituted by Employment Act 1982 (c. 46, SIF 43:5), Sch. 3 para. 21 with saving in S.I. 1982/1656, Sch. 2

## 69 Order for reinstatement or re-engagement.

- (1) An order under this section may be an order for reinstatement (in accordance with subsections (2) and (3)) or an order for re-engagement (in accordance with subsection (4)), as the industrial tribunal may decide, and in the latter case may be on such terms as the tribunal may decide.
- (2) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed, and on making such an order 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.

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- (3) Without prejudice to the generality of subsection (2), 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.
- (4) An order for re-engagement is an order 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, and on making such an order 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.
- (5) In exercising its discretion under this section the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account the following considerations, that is to say—
- (a) whether the complainant wishes to be reinstated;
  - (b) whether it is practicable for the employer to comply with an order for reinstatement;
  - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.
- (6) 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; and in so doing the tribunal shall take into account the following considerations, that is to say—
- (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, as the case may be, a successor or associated employer to comply with an order for re-engagement;
  - (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;
- and except in a case where the tribunal takes into account contributory fault under paragraph (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.

## **70 Supplementary provisions relating to s. 69.**

- (1) 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 (5)(b) or (6)(b) of section 69, whether it is practicable to comply with an order for reinstatement or re-engagement unless the employer shows—



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- (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 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 that 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.
- (2) In calculating for the purpose of subsection (2)(a) or (4)(d) of section 69 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 or re-engagement by way of—
- (a) wages in lieu of notice or ex gratia payments paid by the employer;
  - (b) remuneration paid in respect of employment with another employer;
- and such other benefits as the tribunal thinks appropriate in the circumstances.

## **71 Enforcement of s. 69 order and compensation.**

- (1) If an order under section 69 is made and the complainant is reinstated or, as the case may be, re-engaged but the terms of the order are not fully complied with, then, subject to <sup>F51</sup>subsection (1A)], an industrial tribunal shall make an award of compensation, to be paid by the employer to the employee, of such amount 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.
- <sup>F52</sup>(1A) Subsection (1) is subject to section 75 except that the limit imposed by that section may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under section 69(2)(a) or (4)(d), as the case may be.]
- (2) Subject to subsection (1), if an order under section 69 is made but the complainant is not reinstated or, as the case may be, re-engaged in accordance with the order—
- (a) the tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with <sup>F53</sup>sections 72 to 76], to be paid by the employer to the employee; and
  - (b) <sup>F54</sup>unless] <sup>F55</sup>the case is one where this paragraph is excluded or] the employer satisfies the tribunal that it was not practicable to comply with the order, the tribunal shall make an additional award of compensation to be paid by the employer to the employee of an amount—
    - (i) where the dismissal is of a description referred to in subsection (3), not less than twenty-six nor more than fifty-two weeks' pay, or
    - (ii) in any other case, not less than thirteen nor more than twenty-six weeks' pay.
- <sup>F56</sup>(2A) Subsection (2)(b) is excluded where the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason.
- (2B) For the purposes of subsection (2A) a reason is “inadmissible” if it is one of those specified in section 57A(1)(a) and (b).]

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- (3) The descriptions of dismissal in respect of which an employer may incur a higher additional award in accordance with subsection (2)(b)(i) are the following, that is to say,—
- (a)
  - <sup>F57</sup>(b) a dismissal which is an act of discrimination within the meaning of the <sup>M3</sup>Sex Discrimination Act 1975 which is unlawful by virtue of that Act;
  - (c) a dismissal which is an act of discrimination within the meaning of the <sup>M4</sup>Race Relations Act 1976 which is unlawful by virtue of that Act.
- (4) 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 (2)(b) 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.
- (5) Where in any case an industrial tribunal makes an award of compensation for unfair dismissal, calculated in accordance with [<sup>F58</sup>sections 72 to 76], and the tribunal finds that the complainant has unreasonably prevented an order under section 69 from being complied with, it shall, without prejudice to the generality of section 74(4), take that conduct into account as a failure on the part of the complainant to mitigate his loss.

#### Textual Amendments

- F51** Words in s. 71(1) substituted (30.8.1993) by 1993 c. 19, s. 30(2)(a); S.I. 1993/1908, art. 2(1), **Sch.1**
- F52** S. 71(1A) inserted (30.8.1993) by 1993 c. 19, s. 30(2)(b); S.I. 1993/1908, art. 2(1), **Sch.1**
- F53** Words substituted by **Employment Act 1982** (c. 46, SIF 43:5), **Sch. 3 para. 22** with saving in S.I. 1982/1656, **Sch. 2**
- F54** Words in s. 71(2)(b) substituted (16.10.1992) by **Trade Union and Labour Relations (Consolidation) Act 1992** (c.52), ss. 300(2), 302, **Sch. 2 para. 15**.
- F55** Words in s. 71(2)(b) inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para. 6(a)**; S.I. 1993/1908, art. 2(1), **Sch.1**
- F56** S. 71(2A)(2B) inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para. 6(b)**; S.I. 1993/1908, art.2(1), **Sch.1**
- F57** S. 71(3)(a) repealed by **Employment Act 1982** (c. 46, SIF 43:5), **Sch. 4** with saving in S.I. 1982/1656, **Sch. 2**
- F58** Words substituted by **Employment Act 1982** (c. 46, SIF 43:5), **Sch. 3 para. 22** with saving in S.I. 1982/1656, **Sch. 2**

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

- C14** S. 71(2)(b) excluded (16.10.1992) by **Trade Union and Labour Relations (Consolidation) Act 1992** (c. 52), ss. 157(2), 302.

#### Marginal Citations

- M3** 1975 c. 65.  
**M4** 1976 c. 74.

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### *Amount of compensation*

#### [<sup>F59</sup>72 Compensation for unfair dismissal.

[ Where a tribunal makes an award of compensation for unfair dismissal under <sup>F60</sup>(1)] section 68(2) or 71(2)(a) the award shall consist of—

- (a) a basic award calculated in accordance with section 73, and
- (b) a compensatory award calculated in accordance with section 74.

[ Where the reason (or, if more than one, the principal reason) for the dismissal or, in a <sup>F60</sup>(2) redundancy case, for selecting the employee for dismissal, was an inadmissible reason, then, unless—

- (a) the complainant does not request the tribunal to make an order under section 69, or
- (b) the case falls within section 73(2),

the award shall include a special award calculated in accordance with section 75A.

(3) For the purposes of subsection (2) a reason is “inadmissible” if it is one of those specified in section 57A(1)(a) and (b).]]

#### **Textual Amendments**

**F59** S. 72 substituted (16.10.1992) by virtue of [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c.52\)](#), ss. 300(2), 302, [Sch. 2 para. 16](#).

**F60** S. 72(2)(3) inserted and preceding words renumbered as s. 72(1) by 1993 c. 19, s. 28, [Sch. 5 para.7](#); S.I. 1993/1908, art. 2(1), [Sch.1](#)

#### <sup>F61</sup>72A .....

#### **Textual Amendments**

**F61** S. 72A (which was inserted by [Employment Act 1982 \(c. 46\)](#), s. 6 (with savings in S.I. 1982/1656, [Sch. 2](#))) repealed (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), ss. 300(1), 302, [Sch.1](#) (with savings in Sch. 3 para. 2) and expressed to be repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, [Sch. 3 Pt. I](#) (with ss. 191-195, 202)

#### **73 Calculation of basic award.**

(1) The amount of the basic award shall be the amount calculated in accordance with subsections (3) to [<sup>F62</sup>(6A)], subject to—

- (a) subsection (2) of this section (which provides for an award of two weeks’ pay in certain redundancy cases);
- (b) [<sup>F63F64</sup>(ba) subsection (7A) (which provides for the amount of the award to be reduced where the employee has unreasonably refused an offer of reinstatement);
- (bb) subsection (7B) (which provides for the amount of the award to be reduced because of the employee’s conduct);]
- (c)

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- <sup>F65</sup>(d) subsection (9) (which provides for the amount of the award to be reduced where the employee received a payment in respect of redundancy); and
- (e) section 76 (which prohibits compensation being awarded under this Part and under the <sup>M5</sup>Sex Discrimination Act 1975 or the <sup>M6</sup>Race Relations Act 1976 in respect of the same matter).
- (2) The amount of the basic award shall be two weeks' pay where the tribunal finds that the reason or principal reason for the dismissal of the employee was that he was redundant and the employee—
- (a) by virtue of section 82(5) or (6) is not, or if he were otherwise entitled would not be, entitled to a redundancy payment; or
- (b) by virtue of the operation of section 84(1) is not treated as dismissed for the purposes of Part VI.
- (3) The amount of the basic award shall be calculated by reference to the period, ending with the effective date of termination, during which the employee has been continuously employed, by starting at the end of that period and reckoning backwards the numbers of years of employment falling within that period, and allowing—
- (a) one and a half weeks' pay for each such year of employment <sup>F66</sup>in which the employee was not below the age of forty-one;
- <sup>F67</sup>(b) one week's pay for each year of employment not falling within paragraph (a) <sup>F66</sup>in which the employee was not below the age of twenty-two; and
- (c) half a week's pay for each such year of employment not falling within either of paragraphs (a) and (b).]
- (4) Where, in reckoning the number of years of employment in accordance with subsection (3), twenty years of employment have been reckoned no account shall be taken of any year of employment earlier than those twenty years.
- (4A) <sup>F68</sup> .....
- (4B) <sup>F68</sup> .....
- (5) Where in the case of an employee the effective date of termination is after the specified anniversary the amount of the basic award calculated in accordance with subsections (3) and (4) shall be reduced by the appropriate fraction.
- (6) In subsection (5) [<sup>F69</sup>“the specified anniversary” in relation to an employee means the sixty-fourth anniversary of the day of his birth], and “the appropriate fraction” means the fraction of which—
- (a) the numerator is the number of whole months reckoned from the specified anniversary in the period beginning with that anniversary and ending with the effective date of termination; and
- (b) the denominator is twelve.
- <sup>F70</sup>(6A) Where the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason the amount of the basic award (before any reduction under the following provisions of this section) shall not be less than £2,700.
- (6B) For the purposes of this section a reason is “inadmissible” if it is one of those specified in section 57A(1)(a) and (b).
- (6C) The Secretary of State may by order increase the sum specified in subsection (6A).

*Status: Point in time view as at 03/01/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Part V. (See end of Document for details)*

(6D) No order shall be made under subsection (6C) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.]

(7)

[<sup>F71F72</sup>(7A) 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 an extent as it considers just and equitable having regard to that finding.

(7B) 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), <sup>F73</sup>, was such that it would be just and equitable to reduce or further reduce that amount of the basic award to any extent, the tribunal shall reduce or further reduce the amount accordingly.]

[<sup>F74</sup>(7C) Subsection (7B) does not apply [<sup>F75</sup>in a redundancy case unless the reason for selecting the employee for dismissal was an inadmissible reason; and, in that event, subsection (7B) shall apply only to so much of the basic award as is payable because of subsection (6A)].]

(8)

<sup>F76</sup>(9) The amount of the basic award shall be reduced or, as the case may be, be further reduced, by the amount of any redundancy payment awarded by the tribunal under Part VI in respect of the same dismissal or 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 VI or otherwise.

#### Textual Amendments

- F62** Words in s. 73(1) substituted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para. 8(a)**; S.I. 1993/1908, art. 2(1), **Sch.1**
- F63** S. 73(1)(ba)(bb) inserted with saving by Employment Act 1980 (c. 42, SIF 43:5), s. 9(1)(2) and S.I. 1980/1170, art. 4, **Sch. 3**
- F64** S. 73(1)(b) repealed by Employment Act 1982 (c. 46, SIF 43:5), **Sch. 4** with saving in S.I. 1982/1656, **Sch. 2**
- F65** S. 73(1)(c) repealed with saving by Employment Act 1980 (c. 42, SIF 43:5), **Sch. 2** and S.I. 1980/1170, art. 4, **Sch. 3**
- F66** Words repealed with saving by Employment Act 1982 (c. 46, SIF 43:5), s. 20, Sch. 2 para. 5(2), **Sch. 4**
- F67** S. 73(3)(b)(c) substituted with saving by Employment Act 1980 (c. 42, SIF 43:5), s. 9(1)(3) and S.I. 1980/1170, art. 4, **Sch. 3**
- F68** S. 73(4A)(4B) (which were inserted with saving by Employment Act 1980 (c. 42), s. 9(1)(4) and S.I. 1980/1170, art. 4, **Sch. 3**) repealed (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(1), 302, **Sch. 1** (with savings in Sch. 3 para. 2).
- F69** Words substituted by Sex Discrimination Act 1986 (c. 59, SIF 106:1), s. 3(2)(3)
- F70** S. 73(6A)-(6D) inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para. 8(b)**; S.I. 1993/1908, art. 2(1), **Sch.1**
- F71** S. 73(7A)(7B) inserted with saving by Employment Act 1980 (c. 42, SIF 43:5), s. 9(1)(4) and S.I. 1980/1170, art. 4, **Sch. 3**
- F72** S. 73(7) repealed by Employment Act 1982 (c. 46, SIF 43:5), s. 4(2)(a), **Sch. 4** with saving in S.I. 1982/1656, **Sch. 2**

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*Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Part V. (See end of Document for details)*

- F73** Words repealed by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 4(2)(b), [Sch. 4](#) with saving in S.I. 1982/1656, [Sch. 2](#)
- F74** S. 73(7C) (which was added by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 4(2) (with saving in S.I. 1982/1656, [Sch. 2](#))) substituted (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c.52\)](#), ss. 300(2), 302, [Sch. 2 para. 17](#).
- F75** Words in s. 73(7C) substituted (30.8.1993) by 1993 c. 19, s. 28, [Sch. 5 para. 8\(c\)](#); S.I. 1993/1908, art. 2(1), [Sch.1](#)
- F76** S. 73(8) repealed with saving by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 2](#) and S.I. 1980/1170, art. 4, [Sch. 3](#)

#### Marginal Citations

- M5** 1975 c. 65.  
**M6** 1976 c. 74.

## 74 Calculation of compensatory award.

- (1) Subject to [<sup>F77</sup>subsection (8) and section 76], 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 said loss 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 said loss, in respect of any loss of any entitlement or potential entitlement to, or expectation of, a payment on account of dismissal by reason of redundancy, whether in pursuance of Part VI or otherwise, shall include 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 [<sup>F78</sup>section 73(7A) to (9)]) in respect of the same dismissal.
- (4) In ascertaining the said loss 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 of Scotland, as the case may be.
- (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 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 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 VI or otherwise, exceeds the amount of the basic award which would be payable but for section 73(9) that excess shall go to reduce the amount of the compensatory award.

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*Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Part V. (See end of Document for details)*

[<sup>F79</sup>(8) Subsection (1) is subject also to section 75 except that, in the case of an award of compensation under section 71(2)(a) where an additional award falls to be made, the limit imposed by section 75 may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under section 69(2)(a) or (4)(d), as the case may be, if that limit would otherwise reduce the amount of the compensatory award when added to the additional award.]

#### Textual Amendments

- F77** Words in s. 74(1) substituted (30.8.1993) by 1993 c. 19, s. 30(3)(a); S.I. 1993/1908, art. 2(1), Sch.1
- F78** Words substituted by Employment Act 1982 (c. 46, SIF 43:5), Sch. 3 para. 23 with saving in S.I. 1982/1656, Sch. 2
- F79** S. 74(8) inserted (30.8.1993) by 1993 c. 19, s. 30(3)(b); S.I. 1993/1908, art. 2(1), Sch. 1

## 75 Limit on compensation.

- (1) The amount of compensation awarded to a person under section 71(1) or of a compensatory award to a person calculated in accordance with section 74 shall [<sup>F80</sup>(save where the exception in section 71(1A) or 74(8) applies)] not exceed [<sup>F81</sup>£11,000].
- (2) The Secretary of State may by order increase the said limit of £5,200 or that limit as from time to time increased under this subsection, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.
- (3) It is hereby declared for the avoidance of doubt that the limit imposed by this section applies to the amount which the industrial tribunal would, apart from this section, otherwise award in respect of the subject matter of the complaint after taking into account any payment made by the respondent to the complainant in respect of that matter and any reduction in the amount of the award required by any enactment or rule of law.

#### Textual Amendments

- F80** Words in s. 75(1) inserted (30.8.1993) by 1993 c. 19, s. 30(4); S.I. 1993/1908, art. 2(1), Sch.1
- F81** Limit in s. 75(1) increased (1.6.1993) by S.I. 1993/1348, art. 2 (with art. 3)

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

- C15** S. 75 applied (30.11.1993) by 1992 c. 52, s. 176 (as substituted (30.11.1993) by 1993 c. 19, s. 14; S.I. 1993/1908, art. 2(2), Sch.2)

## [<sup>F82</sup>75A Calculation of special award.

- (1) Subject to the following provisions of this section, the amount of the special award shall be—
  - (a) one week's pay multiplied by 104, or
  - (b) £13,400,whichever is the greater, but shall not exceed £26,800.

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- (2) Where the award of compensation is made under section 71(2)(a) then, unless the employer satisfies the tribunal that it was not practicable to comply with the preceding order under section 69, the amount of the special award shall be increased to—
  - (a) one week’s pay multiplied by 156, or
  - (b) £20,100,
 whichever is the greater, but subject to the following provisions of this section.
- (3) In a case where the amount of the basic award is reduced under section 73(5), the amount of the special award shall be reduced by the same fraction.
- (4) 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 special award to any extent, the tribunal shall reduce or further reduce that amount accordingly.
- (5) Where the tribunal finds that the complainant has unreasonably—
  - (a) prevented an order under section 69 from being complied with, or
  - (b) refused an offer by the employer (made otherwise than in compliance with such an order) 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 special award to such extent as it considers just and equitable having regard to that finding.
- (6) Where the employer has engaged a permanent replacement for the complainant, the tribunal shall not take that fact into account in determining for the purposes of subsection (2) whether it was practicable to comply with an order under section 69 unless the employer shows that it was not practicable for him to arrange for the complainant’s work to be done without engaging a permanent replacement.
- (7) The Secretary of State may by order increase any of the sums specified in subsections (1) and (2).
- (8) No order shall be made under subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.]

#### Textual Amendments

**F82** S. 75A inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.9**; S.I. 1993/1908, art. 2(1), **Sch.1** (a previous version of s. 75A, inserted by 1982 c. 46, s. 5(3), having been repealed (16.10.1992) by 1992 c. 52, **Sch. 1**).

## 76 Compensation for act which is both sex or racial discrimination (or both) and unfair dismissal.

- (1) Where compensation falls to be awarded in respect of any act both under the provisions of this Act relating to unfair dismissal and under one or both of the following Acts, namely the <sup>M7</sup>Sex Discrimination Act 1975 and the <sup>M8</sup>Race Relations Act 1976, an industrial tribunal shall not award compensation under any one of those two or, as the case may be, three Acts in respect of any loss or other matter which is or has been taken into account under the other or any other of them by the tribunal or another industrial tribunal in awarding compensation on the same or another complaint in respect of that act.



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**Changes to legislation:** There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Part V. (See end of Document for details)

<sup>F83</sup>(2) .....

**Textual Amendments**

**F83** S. 76(2) repealed (3.7.1994) by 1994 c. 10, ss. 1(2), 3(2)(3), **Sch.**

**Marginal Citations**

**M7** 1975 c. 65.

**M8** 1976 c. 74.

<sup>F84</sup>76A .....

**Textual Amendments**

**F84** Ss. 76A-79 repealed (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(1), 302, **Sch.1** (with savings in Sch. 3 para. 2) and expressed to be repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202) and subject to an amendment (1.8.1998) by 1998 c. 8, s. **1(2)** (with s. 16(2)); S.I. 1998/1658, art. 2, **Sch. 1**

<sup>F85</sup>76B, .....

76C

**Textual Amendments**

**F85** Ss. 76B, 76C repealed by Employment Act 1982 (c. 46, SIF 43:5), **Sch. 4** with saving in S.I. 1982/1656, **Sch. 2** and expressed to be repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

*[<sup>F86</sup>Interim relief]*

**Textual Amendments**

**F86** Ss. 77-79 and cross heading inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.10**; S.I. 1993/1908, art. 2(1), **Sch.1** (previous versions of ss. 77-79 having been repealed (16.10.1992) by 1992 c. 52, **Sch. 1**).

77 <sup>F87</sup>**Interim relief pending determination of complaint of unfair dismissal.**

- (1) An employee who presents a complaint to an industrial tribunal that he has been unfairly dismissed by his employer and that the reason (or, if more than one, the principal reason) for the dismissal was one of those specified in section 57A(1)(a) and (b) 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).

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- (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.

#### Textual Amendments

**F87** Ss. 77-79 inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.10**; S.I. 1993/1908, art. 2(1), **Sch.1** (previous versions of ss. 77-79 having been repealed (16.10.1992) by 1992 c. 52, **Sch. 1**)

#### **77A** <sup>F88</sup> **Procedure on hearing of application and making of order.**

- (1) If 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 that the reason (or, if more than one, the principal reason) for his dismissal was one of those specified in section 57A(1)(a) and (b) the following provisions shall apply.
- (2) The tribunal shall announce its findings and explain to both parties (if present) what powers the tribunal may exercise on the application and in what circumstances it will exercise them, and 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 say, 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.
- (3) For this purpose “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.
- (4) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.
- (5) If the employer states that he is willing to re-engage the employee in another job and specifies the terms and conditions on which he is willing to do so, the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions; and—
  - (a) if the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect, and
  - (b) if he is not, then, if 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, but otherwise the tribunal shall make no order.

*Status: Point in time view as at 03/01/1995. This version of this part contains provisions that are not valid for this point in time.*

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- (6) If on the hearing of an application for interim relief the employer fails to attend before the tribunal, or states that he is unwilling either to reinstate the employee or re-engage him as mentioned in subsection (2), the tribunal shall make an order for the continuation of the employee's contract of employment.

#### Textual Amendments

**F88** Ss. 77-79 inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.10**; S.I. 1993/1908, art. 2(1), **Sch.1** (previous versions of ss. 77-79 having been repealed (16.10.1992) by 1992 c. 52, **Sch. 1**)

### 78 <sup>F89</sup>Orders for continuation of contract of employment.

- (1) An order under section 77A 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 of 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 as follows, 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 payment for any such period falling wholly or partly after the making of the order, on the normal pay day for that period, and
  - (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, shall go 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 shall go 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.

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#### Textual Amendments

**F89** Ss. 77-79 inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.10**; S.I. 1993/1908, art. 2(1), **Sch.1** (previous versions of ss. 77-79 having been repealed (16.10.1992) by 1992 c. 52, **Sch. 1**)

#### **78A** <sup>F90</sup> **Application for variation or revocation of order.**

- (1) At any time between the making of an order under section 77A and the determination or settlement of the complaint, the employer or the employee may apply to an industrial 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 77 and 77A 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 77(4) has effect with the substitution of a reference to the employee for the reference to the employer.

#### Textual Amendments

**F90** Ss. 77-79 inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.10**; S.I. 1993/1908, art. 2(1), **Sch.1** (previous versions of ss. 77-79 having been repealed (16.10.1992) by 1992 c. 52, **Sch. 1**)

#### **79** <sup>F91</sup> **Consequence of failure to comply with order.**

- (1) If on the application of an employee an industrial 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 77A(4) or (5), the tribunal shall—
  - (a) make an order for the continuation of the employee’s contract of employment, and
  - (b) order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard—
    - (i) to the infringement of the employee’s right to be reinstated or re-engaged in pursuance of the order, and
    - (ii) to any loss suffered by the employee in consequence of the non-compliance.
- (2) Section 78 applies to an order under subsection (1)(a) as in relation to an order under section 77A.
- (3) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment, the following provisions apply.
- (4) If the non-compliance consists of a failure to pay an amount by way of pay specified in the order, the tribunal shall determine the amount owed by the employer on the date of the determination.
- (5) 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.

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- (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

**F91** Ss. 77-79 inserted (30.8.1993) by 1993 c. 19, s. 28, **Sch. 5 para.10**; S.I. 1993/1908, art. 2(1), **Sch.1** (previous versions of ss. 77-79 having been repealed (16.10.1992) by 1992 c. 52, **Sch. 1**)

### *Teachers in aided schools*

#### **80 Teacher in aided school dismissed on requirement of local education authority.**

- (1) Where a teacher in an aided school is dismissed by the governors <sup>F92</sup>of the school in pursuance of a requirement of the local education authority under paragraph (a) of the proviso to section 24(2) of the <sup>M9</sup>Education Act 1944, this Part shall have effect in relation to the dismissal as if—
- (a) the local education authority had at all material times been the teacher's employer, and
  - (b) the local education authority had dismissed him, and the reason or principal reason for which they did so had been the reason or principal reason for which they required his dismissal.
- (2) For the purposes of a complaint under section 67 as applied by this section—
- (a) section 71(2)(b) shall have effect as if for the words “not practicable to comply” there were substituted the words “not practicable for the local education authority to permit compliance”; and
  - (b) section 74(5) shall have effect as if any reference to the employer were a reference to the local education authority.

#### Textual Amendments

**F92** Words repealed by Education Act 1980 (c. 20, SIF 41:1), **Sch. 1 para. 30**

#### Marginal Citations

**M9** 1944 c. 31.

**Status:**

Point in time view as at 03/01/1995. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Part V.