



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART V

#### UNFAIR DISMISSAL

##### *Exclusion of section 54*

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

- (1) Subject to subsection (3), 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 twenty-six weeks ending with the effective date of termination, or
  - (b) on or before the effective date of termination attained the age which, in the undertaking in which he was employed, was the normal retiring age for an employee holding the position which he held, or, if a man, attained the age of sixty-five, or, if a woman, attained the age of sixty.
- (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 dismissal as if for the words " twenty-six weeks " there were substituted the words " four weeks ".
- (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 was an inadmissible reason.

**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.
- (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 right not to be unfairly dismissed for any reason mentioned in subsection (1) or (2) of section 60.

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

- (1) At any time when an order under section 65 is in force, any of the parties to the dismissal procedures agreement to which the order relates may apply to the Secretary of State for the order to be revoked.
- (2) If on any such application the Secretary of State is satisfied 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),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 termination 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.