



Employment Protection (Consolidation) Act 1978

1978 CHAPTER 44

PART V

UNFAIR DISMISSAL

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.
- (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.

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 the 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.
- (5) Where the notice required to be given by an employer by section 49 would, if duly given when notice of termination was given by the employer, or (where no notice was given) when the contract of employment was terminated by the employer, expire on a date later than the effective date of termination as defined by subsection (4), that later date shall be treated as the effective date of termination in relation to the dismissal for the purposes of sections 53(2), 64(1)(a) and 73(3) and paragraph 8(3) of Schedule 14.

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

Where an employee is entitled to return to work and has exercised her right to return in accordance with section 47 but is not permitted to return to work, then 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.

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.
- (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, subject to sections 58 to 62, 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 the employer can satisfy the tribunal that in the circumstances (having regard to equity and the substantial merits of the case) he acted reasonably in treating it as a sufficient reason for dismissing the employee.
- (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.

58 Dismissal relating to trade union membership

- (1) For the purposes of this Part, the dismissal of an employee by an employer shall be regarded as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—
- (a) was, or proposed to become, a member of an independent trade union;
 - (b) had taken, or proposed to take, part at any appropriate time in the activities of an independent trade union; or
 - (c) had refused, or proposed to refuse, to become or remain a member of a trade union which was not an independent trade union.
- (2) In subsection (1), " appropriate time " in relation to an employee taking part in the activities of a trade union means time which either—
- (a) is outside his working hours, or
 - (b) is a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in those activities ;
- and in this subsection "working hours", in relation to an employee means any time when, in accordance with his contract of employment, he is required to be at work
- (3) Dismissal of an employee by an employer shall be regarded as fair for the purposes of this Part if—
- (a) it is the practice, in accordance with a union membership agreement, for employees for the time being of the same class as the dismissed employee to belong to a specified independent trade union, or to one of a number of specified independent trade unions; and
 - (b) the reason for the dismissal was that the employee was not a member of the specified union or one of the specified unions, or had refused or proposed to refuse to become or remain a member of that union or one of those unions;
- unless the employee genuinely objects on grounds of religious belief to being a member of any trade union whatsoever, in which case the dismissal shall be regarded as unfair.

- (4) For the purposes of subsection (3), a union shall be treated as specified for the purposes of or in relation to a union membership agreement (in a case where it would not otherwise be so treated) if—
- (a) the Advisory, Conciliation and Arbitration Service has made a recommendation for recognition covering the employee in question which is operative within the meaning of section 15 of the Employment Protection Act 1975; or
 - (b) the union has referred a recognition issue (within the meaning of that Act) covering that employee to the Advisory, Conciliation and Arbitration Service under section 11 of that Act and the Service has not declined to proceed on the reference under section 12 of that Act, the union has not withdrawn the reference, or from the reference, and the issue has not been settled or reported on under that section.
- (5) Any reason by virtue of which a dismissal is to be regarded as unfair in consequence of subsection (1) or (3) is in this Part referred to as an inadmissible reason.
- (6) In this section, unless the context otherwise requires, references to a trade union include references to a branch or section of a trade union.

59 Dismissal on ground of redundancy

Where the reason or principal reason for the dismissal of an employee was that he 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 him and who have not been dismissed by the employer, and either—

- (a) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was an inadmissible reason; or
- (b) that he 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 in his case,

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

60 Dismissal on ground of pregnancy

- (1) An employee shall be treated for the purposes of this Part as unfairly dismissed if the reason or principal reason for her dismissal is that she is pregnant or is any other reason connected with her pregnancy, except one of the following reasons—
- (a) that at the effective date of termination she is or will have become, because of her pregnancy, incapable of adequately doing the work which she is employed to do;
 - (b) that, because of her pregnancy, she cannot or will not be able to continue after that date to do that work without contravention (either by her or her employer) of a duty or restriction imposed by or under any enactment.
- (2) An employee shall be treated for the purposes of this Part as unfairly dismissed if her employer dismisses her for a reason mentioned in subsection (1)(a) or (b), but neither he nor any successor of his, where there is a suitable available vacancy, makes her an offer before or on the effective date of termination to engage her under a new contract of employment complying with subsection (3).

- (3) The new contract of employment must—
- (a) take effect immediately on the ending of employment under the previous contract, or, where that employment ends on a Friday, Saturday or Sunday, on or before the next Monday after that Friday, Saturday or Sunday;
 - (b) be such 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
 - (c) be such that the provisions of the new 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 the corresponding provisions of the previous contract.
- (4) On a complaint of unfair dismissal on the ground of failure to offer to engage an employee as mentioned in subsection (2), it shall be for the employer to show that he or a successor made an offer to engage her in compliance with subsections (2) and (3) or, as the case may be, that there was no suitable available vacancy for her.
- (5) Section 55(3) shall not apply in a case where an employer gives notice to an employee to terminate her contract of employment for a reason mentioned in subsection (1)(a) or (b).

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 return to work of another employee who is, or will be, absent wholly or partly because of pregnancy or confinement; 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 of another employee; and
 - (b) dismisses the first-mentioned employee in order to make it possible to allow the other employee to resume his original work;

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.

62 Dismissal in connection with a lock-out, strike or other industrial action

- (1) The provisions of this section shall have effect in relation to an employee who claims that he has been unfairly dismissed by his employer where at the date of dismissal—
- (a) the employer was conducting or instituting a lock-out, or

- (b) the employee was taking part in a strike or other industrial action.
- (2) In such a case an industrial tribunal shall not determine whether the dismissal was fair or unfair unless it is shown—
 - (a) that one or more relevant employees of the same employer have not been dismissed, or
 - (b) that one or more such employees have been offered re-engagement, and that the employee concerned has not been offered re-engagement.
- (3) Where it is shown that the condition referred to in paragraph (b) of subsection (2) is fulfilled, the provisions of sections 57 to 60 shall have effect as if in those sections for any reference to the reason or principal reason for which the employee was dismissed there were substituted a reference to the reason or principal reason for which he has not been offered re-engagement.
- (4) In this section—
 - (a) " date of dismissal " means—
 - (i) where the employee's contract of employment was terminated by notice, the date on which the employer's notice was given, and
 - (ii) in any other case, the effective date of termination ;
 - (b) " relevant employees " means—
 - (i) in relation to a lock-out, employees who were directly interested in the trade dispute in contemplation or furtherance of which the lock-out occurred and
 - (ii) in relation to a strike or other industrial action, employees who took part in it; and
 - (c) any reference to an offer of re-engagement is a reference to an offer (made either by the original employer or by a successor of that employer or an associated employer) to re-engage an employee, either in the job which he held immediately before the date of dismissal or in a different job which would be reasonably suitable in his case.

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) 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.

*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.
- (3) Subsection (2) shall apply in relation to a complaint to which section 62(3) applies as if for the reference to the effective date of termination there were substituted a reference to the first date on which any relevant employee was offered re-engagement (within the meaning of section 62(4)).
- (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;
- (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.

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 sections 72 to 74, to be paid by the employer to the employee.

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.
- (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—
- (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)(c) 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 section 75, 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.
- (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 sections 72 to 74, to be paid by the employer to the employee; and
 - (b) unless 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.
- (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) a dismissal which is unfair by virtue of section 58(1) or (3);
 - (b) a dismissal which is an act of discrimination within the meaning of the 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 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 sections 72 to 74, 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.

Amount of compensation

72 Compensation for unfair dismissal

Where a tribunal makes an award of compensation for unfair dismissal under section 68(2) or 71(2)(a) the award shall consist of a basic award (calculated in accordance with section 73) and a compensatory award (calculated in accordance with section 74).

73 Calculation of basic award

- (1) The amount of the basic award shall be the amount calculated in accordance with subsections (3) to (6), subject to—
 - (a) subsection (2) of this section (which provides for an award of two weeks' pay in certain redundancy cases);
 - (b) subsection (7) (which provides for the amount of the award to be reduced where the employee contributed to the dismissal);
 - (c) subsection (8) (which provides for a minimum award of two weeks' pay in certain cases);
 - (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 Sex Discrimination Act 1975 or the 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 which consists wholly of weeks in which the employee was not below the age of forty-one;
 - (b) one week's pay for each such year of employment which consists wholly of weeks in which the employee was below the age of forty-one and was not below the age of twenty-two; and
 - (c) half a week's pay for each such year of employment which consists wholly of weeks in which the employee was below the age of twenty-two and was not below the age of eighteen.
- (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.

- (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) " the specified anniversary " in relation to a man means the sixty-fourth anniversary of the day of his birth, and in relation to a woman means the fifty-ninth anniversary of the day of her 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.
- (7) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall, except in a case where the dismissal was by reason of redundancy, reduce the amount of the basic award by such proportion as it considers just and equitable having regard to that finding.
- (8) Where the amount calculated in accordance with subsections (3) to (7) is less than the amount of two weeks' pay, the amount of the basic award shall be two weeks' pay.
- (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.

74 Calculation of compensatory award

- (1) Subject to sections 75 and 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 section 73(7) or (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

Status: This is the original version (as it was originally enacted).

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.

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 not exceed £5,200.
- (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.

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 Sex Discrimination Act 1975 and the 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.
- (2) Without prejudice to section 75 (whether as enacted or as applied by section 65 of the Sex Discrimination Act 1975 or section 56 of the Race Relations Act 1976) in a case to which subsection (1) applies, the aggregate of the following amounts of compensation awarded by an industrial tribunal, that is to say—
 - (a) any compensation awarded under the said Act of 1975 ; and
 - (b) any compensation awarded under the said Act of 1976 ; and
 - (c) any compensation awarded under section 71(1) or, as the case may be, which is calculated in accordance with section 74,shall not exceed the limit for the time being imposed by section 75.

Interim relief

77 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 for the dismissal (or, if more than one, the principal reason) was that the employee—
 - (a) was, or proposed to become, a member of a particular independent trade union ; or
 - (b) had taken, or proposed to take, part at any appropriate time in the activities of a particular independent trade union of which he was or proposed to become a member;may, subject to the following provisions of this section, apply to the tribunal for an order under the following provisions of this section.
- (2) An industrial tribunal shall not entertain an application under this section unless—
 - (a) 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); and
 - (b) before the end of that period there is also so presented a certificate in writing signed by an authorised official of the independent trade union of which the employee was or had proposed to become a member stating that on the date of the dismissal the employee was or had proposed to become a member of the union and that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.
- (3) An industrial tribunal shall determine an application under this section as soon as practicable after receiving the application and the relevant certificate, but shall, at least seven days before the date of the hearing, give the employer a copy of the application and certificate, together with notice of the date, time and place of the hearing.
- (4) An industrial tribunal shall not exercise any power it has of postponing the hearing in the case of an application under this section except where the tribunal is satisfied that special circumstances exist which justify it in doing so.
- (5) If on hearing an application under this section it appears to an industrial tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find that the complainant was unfairly dismissed and that the reason for the dismissal (or if more than one, the principal reason) was a reason mentioned in subsection (1), the tribunal shall announce its findings and explain to both parties (if present) what powers the tribunal may exercise on an application under this section and in what circumstances it may 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 the employee 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.
- (6) In subsection (5) " 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 shall be regarded as continuous with his employment following the dismissal.

- (7) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.
- (8) 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 the employee is unwilling to accept the job on those terms and conditions, 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 under this section.
- (9) If, on the hearing of an application under this section, the employer fails to attend before the tribunal or he states that he is unwilling either to reinstate the employee or re-engage him as mentioned in subsection (5), the tribunal shall make an order for the continuation of the employee's contract of employment.
- (10) In this section—
- " appropriate time " has the same meaning as in section 23;
 - " authorised official ", in relation to a trade union, means an official of the union authorised by the union to act for the purposes of this section ;
- and any reference to the date of dismissal is a reference—
- (a) where the employee's contract of employment was terminated by notice (whether given by his employer or by him), to the date on which the employer's notice was given; and
 - (b) in any other case, to the effective date of termination.
- (11) A document purporting to be an authorisation of an official by a trade union to act for the purposes of this section and to be signed on behalf of the union shall be taken to be such an authorisation unless the contrary is proved, and a document purporting to be a certificate signed by such an official shall be taken to be signed by him unless the contrary is proved.

78 Orders for continuation of contract of employment

- (1) An order for the continuation of a contract of employment under section 77 shall be an order that the contract of employment, if it has been terminated, shall continue in force as if it had not been terminated and if not, shall on its termination, continue in force, in either case until the determination or settlement of the complaint and only for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters and for the purpose of determining for any purpose the period for which the employee has been continuously employed.
- (2) Where the tribunal makes any such 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 the dismissal and the determination or settlement of the complaint and, subject to subsection (5), 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, in the case of a payment for any such period falling wholly or partly after the order, on the normal pay day for that period and, in the case of a payment for any past period, within a time so specified.

- (3) If an amount is payable by way of pay in pursuance of any such order in respect only of part of a normal pay period the amount shall be calculated by reference to the whole period and be reduced proportionately.
- (4) 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 any 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 subsection (2) in respect of any 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.
- (5) 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.
- (6) 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.

79 Supplementary provisions relating to interim relief

- (1) At any time between the making of an order by an industrial tribunal under section 77 and the determination or settlement of the complaint to which it relates, the employer or the employee may apply to the tribunal for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order, and that section shall apply to the application as it applies to an application for an order under that section except that—
 - (a) no certificate need be presented to the tribunal under subsection (2)(b), and no copy of the certificate need be given to the employer under subsection (3), of that section; and
 - (b) in the case of an application by an employer, for the reference in the said subsection (3) to the employer there shall be substituted a reference to the employee.
- (2) 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 77(7) or (8).—
 - (a) the tribunal shall make an order for the continuation of the employee's contract of employment and section 78 shall apply to an order under this subsection as it applies to an order for the continuation of a contract of employment under section 77 ; and
 - (b) the tribunal shall also order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order under section 77(7) or (8) and to any loss suffered by the employee in consequence of the non-compliance.

- (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, then—
- (a) 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 of pay owed by the employer to the employee on the date of the determination, and, if on that date the tribunal also determines the employee's complaint that he has been unfairly dismissed by his employer, the tribunal shall specify that amount separately from any other sum awarded to the employee; and
 - (b) 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.

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 or managers 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 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.