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STATUTORY INSTRUMENTS

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**1998 No. 1833**

**The Working Time Regulations 1998**

**PART IV**

**MISCELLANEOUS**

**Unfair dismissal**

**32.**—(1) After section 101 of the 1996 Act there shall be inserted the following section—

**“Working time cases.**

**101A.** An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

- (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the Working Time Regulations 1998,
- (b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,
- (c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations, or
- (d) being—
  - (i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or
  - (ii) a candidate in an election in which any person elected will, on being elected, be such a representative,performed (or proposed to perform) any functions or activities as such a representative or candidate.”

(2) In section 104 of the 1996 Act (right of employees not to be unfairly dismissed for asserting particular rights) in subsection (4)—

- (a) at the end of paragraph (b), the word “and” shall be omitted, and
- (b) after paragraph (c), there shall be inserted the words—  
“and

(d) the rights conferred by the Working Time Regulations 1998.”

(3) In section 105 of the 1996 Act (redundancy as unfair dismissal), after subsection (4) there shall be inserted the following subsection—

“(4A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 101A.”

- (4) In sections 108(3) and 109(2) of the 1996 Act, after paragraph (d) there shall be inserted—  
“*(dd)* section 101A applies,”.
- (5) In sections 117(4)(b), 118(3), 120(1), 122(3), 128(1)(b) and 129(1) of the 1996 Act, after “100(1)(a) and (b),” there shall be inserted “101A(d),”.
- (6) In section 202(2) (cases where disclosure of information is restricted on ground of national security)—  
(a) in paragraph (g)(i), after “100” there shall be inserted “, 101A(d)”, and  
(b) in paragraph (g)(ii), after “of that section,” there shall be inserted “or by reason of the application of subsection (4A) in so far as it applies where the reason (or, if more than one, the principal reason) for which an employee was selected for dismissal was that specified in section 101A(d)”.
- (7) In section 209(2) of the 1996 Act (which lists provisions excluded from the scope of the power to amend the Act by order), after “101,” in paragraph (e) there shall be inserted “101A,”.
- (8) In sections 237(1A) and 238(2A) of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(1)</sup> (cases where employee can complain of unfair dismissal notwithstanding industrial action at time of dismissal), after “100” there shall be inserted “, 101A(d)”.
- (9) In section 10(5)(a) of the Employment Tribunals Act 1996<sup>(2)</sup> (cases where Minister’s certificate is not conclusive evidence that action was taken to safeguard national security), after “100” there shall be inserted “, 101A(d)”.

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(1) 1992 c. 52: subsection (1A) of section 237 and subsection (2A) of section 238 were inserted by the Trade Union Reform and Employment Rights Act 1993 (c. 19), Schedule 8, paragraphs 76 and 77.

(2) 1996 c. 17; section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) provides for the Industrial Tribunals Act 1996 to be cited as the Employment Tribunals Act 1996.