

## SCHEDULE 8

### Amendments to legislation and related transitional provisions

#### Part 1

#### Primary legislation

#### **The Employment Rights Act 1996**

**23.** After section 98 insert—

*“Retirement*

**No normal retirement age: dismissal before 65**

**98ZA.**—(1) This section applies to the dismissal of an employee if—

- (a) the employee has no normal retirement age, and
- (b) the operative date of termination falls before the date when the employee reaches the age of 65.

(2) Retirement of the employee shall not be taken to be the reason (or a reason) for the dismissal.

**No normal retirement age: dismissal at or after 65**

**98ZB.**—(1) This section applies to the dismissal of an employee if—

- (a) the employee has no normal retirement age, and
- (b) the operative date of termination falls on or after the date when the employee reaches the age of 65.

(2) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) the contract of employment terminates on the intended date of retirement,

retirement of the employee shall be taken to be the only reason for the dismissal by the employer and any other reason shall be disregarded.

(3) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, but
- (b) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(4) In a case where—

- (a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) there is an intended date of retirement in relation to the dismissal, but

- (c) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

*Status: This is the original version (as it was originally made).*

(5) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, particular regard shall be had to the matters in section 98ZF when determining the reason (or principal reason) for dismissal.

**Normal retirement age: dismissal before retirement age**

**98ZC.**—(1) This section applies to the dismissal of an employee if—

- (a) the employee has a normal retirement age, and
- (b) the operative date of termination falls before the date when the employee reaches the normal retirement age.

(2) Retirement of the employee shall not be taken to be the reason (or a reason) for the dismissal.

**Normal retirement age 65 or higher: dismissal at or after retirement age**

**98ZD.**—(1) This section applies to the dismissal of an employee if—

- (a) the employee has a normal retirement age,
- (b) the normal retirement age is 65 or higher, and
- (c) the operative date of termination falls on or after the date when the employee reaches the normal retirement age.

(2) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) the contract of employment terminates on the intended date of retirement,

retirement of the employee shall be taken to be the only reason for the dismissal by the employer and any other reason shall be disregarded.

(3) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, but
- (b) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(4) In a case where—

- (a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) there is an intended date of retirement in relation to the dismissal, but
- (c) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(5) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, particular regard shall be had to the matters in section 98ZF when determining the reason (or principal reason) for dismissal.

**Normal retirement age below 65: dismissal at or after retirement age**

**98ZE.**—(1) This section applies to the dismissal of an employee if—

- (a) the employee has a normal retirement age,
- (b) the normal retirement age is below 65, and

- (c) the operative date of termination falls on or after the date when the employee reaches the normal retirement age.
- (2) If it is unlawful discrimination under the 2006 Regulations for the employee to have that normal retirement age, retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.
- (3) Subsections (4) to (7) apply if it is not unlawful discrimination under the 2006 Regulations for the employee to have that normal retirement age.
- (4) In a case where—
  - (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
  - (b) the contract of employment terminates on the intended date of retirement,retirement of the employee shall be taken to be the only reason for dismissal by the employer and any other reason shall be disregarded.
- (5) In a case where—
  - (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, but
  - (b) the contract of employment terminates before the intended date of retirement,retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.
- (6) In a case where—
  - (a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
  - (b) there is an intended date of retirement in relation to the dismissal, but
  - (c) the contract of employment terminates before the intended date of retirement,retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.
- (7) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, particular regard shall be had to the matters in section 98ZF when determining the reason (or principal reason) for dismissal

**Reason for dismissal: particular matters**

**98ZF.**—(1) These are the matters to which particular regard is to be had in accordance with section 98ZB(5), 98ZD(5) or 98ZE(7)—

- (a) whether or not the employer has notified the employee in accordance with paragraph 4 of Schedule 6 to the 2006 Regulations;
- (b) if the employer has notified the employee in accordance with that paragraph, how long before the notified retirement date the notification was given;
- (c) whether or not the employer has followed, or sought to follow, the procedures in paragraph 7 of Schedule 6 to the 2006 Regulations.

(2) In subsection (1)(b) “notified retirement date” means the date notified to the employee in accordance with paragraph 4 of Schedule 6 to the 2006 Regulations as the date on which the employer intends to retire the employee.

**Retirement dismissals: fairness**

**98ZG.**—(1) This section applies if the reason (or principal reason) for a dismissal is retirement of the employee.

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

(2) The employee shall be regarded as unfairly dismissed if, and only if, there has been a failure on the part of the employer to comply with an obligation imposed on him by any of the following provisions of Schedule 6 to the 2006 Regulations—

- (a) paragraph 4 (notification of retirement, if not already given under paragraph 2),
- (b) paragraphs 6 and 7 (duty to consider employee’s request not to be retired),
- (c) paragraph 8 (duty to consider appeal against decision to refuse request not to be retired).

**Interpretation**

**98ZH.** In sections 98ZA to 98ZG—

“2006 Regulations” means the Employment Equality (Age) Regulations 2006;

“intended date of retirement” means the date which, by virtue of paragraph 1(2) of Schedule 6 to the 2006 Regulations, is the intended date of retirement in relation to a particular dismissal;

“normal retirement age”, in relation to an employee, means the age at which employees in the employer’s undertaking who hold, or have held, the same kind of position as the employee are normally required to retire;

“operative date of termination” means—

- (a) where the employer terminates the employee’s contract of employment by notice, the date on which the notice expires, or
- (b) where the employer terminates the contract of employment without notice, the date on which the termination takes effect.

*Other dismissals”.*