



# Employment Tribunals Act 1996

## 1996 CHAPTER 17

### <sup>F1</sup>PART I

#### [<sup>F2</sup>EMPLOYMENT TRIBUNALS]

#### Textual Amendments

- F1** S. 12A applied (with modifications) by 1992 c. 52, s. 138(2A) as inserted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 3 para. 1** (with s. 24(5)); S.I. 2014/253, art. 3(h)
- F2** Words in part heading substituted (1.8.1998) by 1998 c. 8, s. 1(2)(b) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

#### *Introductory*

### 1 [<sup>F3</sup>Employment tribunals]

- (1) The Secretary of State may by regulations make provision for the establishment of tribunals to be known as [<sup>F3</sup>employment tribunals].
- (2) Regulations made wholly or partly under section 128(1) of the <sup>M1</sup>Employment Protection (Consolidation) Act 1978 and in force immediately before this Act comes into force shall, so far as made under that provision, continue to have effect (until revoked) as if made under subsection (1) <sup>F4</sup>. . .

#### Textual Amendments

- F3** Words in s. 1(1) and sidenote substituted (1.8.1998) by 1998 c. 8, s. 1(2)(b) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F4** Words in s. 1(2) repealed (1.8.1998) by 1998 c. 8, s. 15, **Sch. 2**; S.I. 1998/1658, art. 2(1), **Sch. 1**

#### Marginal Citations

- M1** 1978 c. 44.

*Status: Point in time view as at 22/04/2014.*

*Changes to legislation: Employment Tribunals Act 1996, PART I is up to date with all changes known to be in force on or before 12 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## *Jurisdiction*

### 2 Enactments conferring jurisdiction on [<sup>F5</sup>employment tribunals].

[<sup>F5</sup>Employment tribunals] shall exercise the jurisdiction conferred on them by or by virtue of this Act or any other Act, whether passed before or after this Act.

#### Textual Amendments

**F5** Words in s. 2 and sidenote substituted (1.8.1998) by 1998 c. 8, s. 1(2)(b) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

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

**C1** S. 2 modified (E.) (1.7.2009) by Ecclesiastical Offices (Terms of Service) Measure 2009 (No. 1), ss. 2(4), 13(2) (with s. 9); 2009 No. 1, Instrument made by Archbishops

### 3 Power to confer further jurisdiction on [<sup>F6</sup>employment tribunals].

- (1) The appropriate Minister may by order provide that proceedings in respect of—
  - (a) any claim to which this section applies, or
  - (b) any claim to which this section applies and which is of a description specified in the order,
 may, subject to such exceptions (if any) as may be so specified, be brought before an [<sup>F6</sup>employment tribunal].
- (2) Subject to subsection (3), this section applies to—
  - (a) a claim for damages for breach of a contract of employment or other contract connected with employment,
  - (b) a claim for a sum due under such a contract, and
  - (c) a claim for the recovery of a sum in pursuance of any enactment relating to the terms or performance of such a contract,
 if the claim is such that a court in England and Wales or Scotland would under the law for the time being in force have jurisdiction to hear and determine an action in respect of the claim.
- (3) This section does not apply to a claim for damages, or for a sum due, in respect of personal injuries.
- (4) Any jurisdiction conferred on an [<sup>F6</sup>employment tribunal] by virtue of this section in respect of any claim is exercisable concurrently with any court in England and Wales or in Scotland which has jurisdiction to hear and determine an action in respect of the claim.
- (5) In this section—
 

“appropriate Minister”, as respects a claim in respect of which an action could be heard and determined by a court in England and Wales, means the Lord Chancellor and, as respects a claim in respect of which an action could be heard and determined by a court in Scotland, means the Lord Advocate, and

“personal injuries” includes any disease and any impairment of a person’s physical or mental condition.
- (6) In this section a reference to breach of a contract includes a reference to breach of—

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- (a) a term implied in a contract by or under any enactment or otherwise,
- (b) a term of a contract as modified by or under any enactment or otherwise, and
- (c) a term which, although not contained in a contract, is incorporated in the contract by another term of the contract.

#### Textual Amendments

**F6** Words in s.3(1)(4) and sidenote substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a)(b) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

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

**C2** S. 3: functions of the Lord Advocate transferred to the Secretary of State, and all property, rights and liabilities to which the Lord Advocate is entitled or subject in connection with any such function transferred to the Secretary of State for Scotland (19.5.1999) by S.I. 1999/678, arts. 2(1), 3, Sch. (with art. 7)  
S. 3: transfer of certain functions (1.7.1999) by S.I. 1999/1750, arts. 1(2), 2 Sch. 1; S.I. 1998/3178, art. 3

*Membership etc.*

### [<sup>F7</sup>3A Meaning of “Employment Judge”

A person who is a member of a panel of [<sup>F8</sup>Employment Judges] which is appointed in accordance with regulations under section 1(1) may be referred to as an Employment Judge.]

#### Textual Amendments

**F7** S. 3A inserted (1.12.2007) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 48(1), 148, Sch. 8 para. 36; S.I. 2007/2709, art. 4  
**F8** Words in s. 3A substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 14 para. 13(1); S.I. 2013/2200, art. 3(g)

## 4 Composition of a tribunal.

- (1) Subject to the following provisions of this section [<sup>F9</sup>and to section 7(3A)], proceedings before an [<sup>F10</sup>employment tribunal] shall be heard by—
  - (a) the person who, in accordance with regulations made under section 1(1), is the chairman, and
  - (b) two other members, or (with the consent of the parties) one other member, selected as the other members (or member) in accordance with regulations so made.
- (2) Subject to subsection (5), the proceedings specified in subsection (3) shall be heard by the person mentioned in subsection (1)(a) alone [<sup>F11</sup>or alone by any Employment Judge who, in accordance with regulations made under section 1(1), is a member of the tribunal] .
- (3) The proceedings referred to in subsection (2) are—

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- (a) proceedings [<sup>F12</sup>on a complaint under section 68A [<sup>F13</sup>, 87] or 192 of the Trade Union and Labour Relations (Consolidation) Act 1992 or] on an application under section 161, 165 or 166 of [<sup>F14</sup>that Act],
  - (b) proceedings on a complaint under section 126 of the <sup>M2</sup>Pension Schemes Act 1993,
  - (c) proceedings [<sup>F15</sup>on a reference under section 11, 163 or 170 of the Employment Rights Act 1996,] on a complaint under section 23 [<sup>F16</sup>, 34 [<sup>F17</sup>, 111]] or 188 of [<sup>F18</sup>that Act, on a complaint under section 70(1) of that Act relating to section 64 of that Act,] or on an application under section 128, 131 or 132 of that [<sup>F19</sup>Act or for an appointment under section 206(4) of that] Act,
  - <sup>F20</sup>(ca) proceedings on a complaint under [<sup>F21</sup>regulation 15(10) of the Transfer of Undertakings (Protection of Employment) Regulations 2006] ,]
  - <sup>F22</sup>(cc) proceedings on a complaint under section 11 of the National Minimum Wage Act 1998,
  - <sup>F22</sup>(cd) proceedings on a complaint under [<sup>F23</sup> section 19C ] of the National Minimum Wage Act 1998,]
  - <sup>F24</sup>(ce) proceedings on a complaint under regulation 30 of the Working Time Regulations 1998 relating to an amount due under regulation 14(2) or 16(1) of those Regulations,
  - (cf) proceedings on a complaint under regulation 18 of the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 relating to an amount due under regulation 11 of those Regulations,
  - (cg) proceedings on a complaint under regulation 18 of the Civil Aviation (Working Time) Regulations 2004 relating to an amount due under regulation 4 of those Regulations,
  - (ch) proceedings on a complaint under regulation 19 of the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 relating to an amount due under regulation 11 of those Regulations,]
  - (d) proceedings in respect of which an [<sup>F10</sup>employment tribunal] has jurisdiction by virtue of section 3 of this Act,
  - (e) proceedings in which the parties have given their written consent to the proceedings being heard in accordance with subsection (2) (whether or not they have subsequently withdrawn it),
  - <sup>F25</sup>(f) ..... and
  - (g) proceedings in which the person (or, where more than one, each of the persons) against whom the proceedings are brought does not, or has ceased to, contest the case.
- (4) The Secretary of State [<sup>F26</sup>and the Lord Chancellor, acting jointly,] may by order amend the provisions of subsection (3).
- (5) Proceedings specified in subsection (3) shall be heard in accordance with subsection (1) if a person who, in accordance with regulations made under section 1(1), may be the chairman of an [<sup>F27</sup>employment tribunal], having regard to—
- (a) whether there is a likelihood of a dispute arising on the facts which makes it desirable for the proceedings to be heard in accordance with subsection (1),
  - (b) whether there is a likelihood of an issue of law arising which would make it desirable for the proceedings to be heard in accordance with subsection (2),
  - (c) any views of any of the parties as to whether or not the proceedings ought to be heard in accordance with either of those subsections, and

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(d) whether there are other proceedings which might be heard concurrently but which are not proceedings specified in subsection (3),

decides at any stage of the proceedings that the proceedings are to be heard in accordance with subsection (1).

(6) Where (in accordance with the following provisions of this Part) the Secretary of State makes [<sup>F10</sup>employment tribunal] procedure regulations, the regulations may provide that [<sup>F28</sup>any act which is required or authorised by the regulations to be done by an employment tribunal and is of a description specified by the regulations for the purposes of this subsection may] be done by the person mentioned in subsection (1) (a) alone [<sup>F11</sup>or alone by any Employment Judge who, in accordance with regulations made under section 1(1), is a member of the tribunal] .

[<sup>F29</sup>(6A) Subsection (6) in particular enables employment tribunal procedure regulations to provide that—

- (a) the determination of proceedings in accordance with regulations under section 7(3A), (3B) or (3C)(a),
- (b) the carrying-out of pre-hearing reviews in accordance with regulations under subsection (1) of section 9 (including the exercise of powers in connection with such reviews in accordance with regulations under paragraph (b) of that subsection), or
- (c) the hearing and determination of a preliminary issue in accordance with regulations under section 9(4) (where it involves hearing witnesses other than the parties or their representatives as well as where, in accordance with regulations under section 7(3C)(b), it does not),

may be done by the person mentioned in subsection (1)(a) alone [<sup>F11</sup>or alone by any Employment Judge who, in accordance with regulations made under section 1(1), is a member of the tribunal] .]

[<sup>F30</sup>(6B) Employment tribunal procedure regulations may (subject to subsection (6C)) also provide that any act which—

- (a) by virtue of subsection (6) may be done by the person mentioned in subsection (1)(a) alone [<sup>F11</sup>or alone by any Employment Judge who, in accordance with regulations made under section 1(1), is a member of the tribunal] , and
- (b) is of a description specified by the regulations for the purposes of this subsection,

may be done by a person appointed as a legal officer in accordance with regulations under section 1(1); and any act so done shall be treated as done by an employment tribunal.

(6C) But regulations under subsection (6B) may not specify—

- (a) the determination of any proceedings, other than proceedings in which the parties have agreed the terms of the determination or in which the person bringing the proceedings has given notice of the withdrawal of the case, or
- (b) the carrying-out of pre-hearing reviews in accordance with regulations under section 9(1).]

[<sup>F31</sup>(6D) A person appointed as a legal officer in accordance with regulations under section 1(1) may determine proceedings in respect of which an employment tribunal has jurisdiction, or make a decision falling to be made in the course of such proceedings, if—

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- (a) the proceedings are of a description specified in an order under this subsection made by the Secretary of State and the Lord Chancellor acting jointly, and
- (b) all the parties to the proceedings consent in writing;
- and any determination or decision made under this subsection shall be treated as made by an employment tribunal.]

(7) .....

#### Textual Amendments

- F9** Words in s. 4(1) inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 12(1)(2)**; S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(1))
- F10** Words in s. 4(1)(3)(d)(5)(6) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F11** Words in s. 4(2)(6)(6A)(6B)(a) inserted (1.12.2007) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 48(1), 148, **Sch. 8 para. 37**; S.I. 2007/2709, art. 4
- F12** Words in s. 4(3)(a) inserted (1.8.1998) by 1998 c. 8, s. 3(1)(2)(a); S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(1))
- F13** Words in s. 4(3)(a) inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 12(1)(3)**; S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(1))
- F14** Words in s. 4(3)(a) substituted (1.8.1998) by 1998 c. 8, s. 3(1)(2)(b); S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(1))
- F15** Words in s. 4(3)(c) inserted (1.8.1998) by 1998 c. 8, s. 3(1)(3)(a); S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(1))
- F16** Words in s. 4(3)(c) inserted (1.8.1998) by 1998 c. 8, s. 3(1)(3)(b); S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(1))
- F17** Word in s. 4(3)(c) inserted (6.4.2012) by The Employment Tribunals Act 1996 (Tribunal Composition) Order 2012 (S.I. 2012/988), arts. 1, 2
- F18** Words in s. 4(3)(c) substituted (1.8.1998) by 1998 c. 8, s. 3(1)(3)(c); S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(1))
- F19** Words in s. 4(3)(c) inserted (1.8.1998) by 1998 c. 8, s. 3(1)(3)(d); S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(1))
- F20** S. 4(3)(ca) inserted (1.8.1998) by 1998 c. 8, s. 3(1)(4); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F21** Words in s. 4(3)(ca) substituted (6.4.2006 with application as mentioned in reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), reg. 20, **Sch. 2 para. 8**
- F22** S. 4(3)(ce)(cd) inserted after paragraph (ca) (1.4.1999) by 1998 c. 39, s. 27(1) (with s. 36); S.I. 1998/2574, art. 2(2), **Sch. 2**
- F23** Words in s. 4(3)(cd) substituted (6.4.2009) by Employment Act 2008 (c. 24), ss. 9(4), 22(1)(a) (with s. 9(7)); S.I. 2009/603, art. 2 (with art. 3Sch.)
- F24** S. 4(3)(ce)-(ch) inserted (6.4.2009) by The Employment Tribunals Act 1996 (Tribunal Composition) Order 2009 (S.I. 2009/789), arts. 1, 2
- F25** S. 4(3)(f) (apart from word “and”) repealed (1.8.1998) by 1998 c. 8, ss. 3(5), 15, **Sch. 2**; S.I. 1998/1658, art. 2(1), **Sch. 1**
- F26** Words in s. 4(4) inserted (1.12.2007) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 48(1), 148, **Sch. 8 para. 38**; S.I. 2007/2709, art. 4
- F27** Words in s. 4(1)(3)(d)(5)(6) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F28** Words in s. 4(6) substituted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 12(1)(4)**; S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(1))
- F29** S. 4(6A) inserted (1.8.1998) by 1998 c. 8, s. 3(1)(6); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F30** S. 4(6B)(6C) inserted (1.8.1998) by 1998 c. 8, s. 5; S.I. 1998/1658, art. 2(1), **Sch. 1**

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**F31** S. 4(6D) inserted (25.4.2013 for specified purposes) by [Enterprise and Regulatory Reform Act 2013](#) (c. 24), [ss. 11\(1\)](#), [103\(1\)\(i\)\(3\)](#)

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

- C3** S. 4(1) applied (1.10.2004) by [S.I. 2004/1861](#), [Sch. 6 rule 4\(2\)](#) (as added by [The Employment Tribunals \(Constitution and Rules of Procedure\) \(Amendment\) Regulations 2004](#) (S.I. 2004/2351), [reg. 2\(11\)](#))  
S. 4(1) applied (1.10.2004) by [S.I. 2004/1861](#), [Sch. 6 rule 7\(2\)](#) (as added by [The Employment Tribunals \(Constitution and Rules of Procedure\) \(Amendment\) Regulations 2004](#) (S.I. 2004/2351), [reg. 2\(11\)](#))
- C4** S. 4(1)(a) modified (18.4.2001) by [S.I. 2001/1170](#), [reg. 7\(2\)](#)  
S. 4(1)(a) modified (18.4.2001) by [S.I. 2001/1171](#), [reg. 7\(2\)](#)
- C5** S. 4(1)(b) modified (18.4.2001) by [S.I. 2001/1170](#), [reg. 7\(3\)](#)  
S. 4(1)(b) modified (18.4.2001) by [S.I. 2001/1171](#), [reg. 7\(3\)](#)
- C6** S. 4(5) modified (18.4.2001) by [S.I. 2001/1170](#), [reg. 7\(4\)](#)  
S. 4(5) modified (18.4.2001) by [S.I. 2001/1171](#), [reg. 7\(4\)](#)

#### Marginal Citations

**M2** [1993 c. 48](#).

## 5 Remuneration, fees and allowances.

- (1) The Secretary of State may pay to—
- the [<sup>F32</sup>President of the Employment Tribunals (England and Wales)],
  - the [<sup>F32</sup>President of the Employment Tribunals (Scotland)], <sup>F33</sup> . . .
  - <sup>F34</sup> any person who is an Employment Judge on a full-time basis, and
  - <sup>F35</sup> [(d) any person who is a legal officer appointed in accordance with such regulations,]
- such remuneration as he may with the consent of the Treasury determine.
- (2) The Secretary of State may pay to—
- members of [<sup>F32</sup>employment tribunals],
  - any assessors appointed for the purposes of proceedings before [<sup>F32</sup>employment tribunals], and
  - any persons required for the purposes of section [<sup>F36</sup>131(2) of the Equality Act 2010] to prepare reports,
- such fees and allowances as he may with the consent of the Treasury determine.
- (3) The Secretary of State may pay to any other persons such allowances as he may with the consent of the Treasury determine for the purposes of, or in connection with, their attendance at [<sup>F32</sup>employment tribunals].

#### Textual Amendments

- F32** Words in s. 5(1)(a)(b)(2)(a)(b)(3) substituted (1.8.1998) by [1998 c. 8, s. 1\(2\)\(b\)\(d\)\(e\)](#) (with s. 16(2)); [S.I. 1998/1658](#), [art. 2\(1\)](#), [Sch. 1](#)
- F33** Word in s. 5(1)(b) repealed (1.8.1998) by [1998 c. 8, s. 15, Sch. 2](#); [S.I. 1998/1658](#), [art. 2\(1\)](#), [Sch. 1](#)
- F34** S. 5(1)(c) substituted (1.12.2007) by [Tribunals, Courts and Enforcement Act 2007](#) (c. 15), [ss. 48\(1\), 148, Sch. 8 para. 39](#); [S.I. 2007/ 2709](#), {art. 4}
- F35** S. 5(1)(d) and word “and” immediately preceding inserted (1.8.1998) by [1998 c. 8, s. 15, Sch. 1 para. 13](#); [S.I. 1998/1658](#), [art. 2\(1\)](#), [Sch. 1](#)

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**F36** Words in s. 5(2)(c) substituted by Equality Act 2010 (c. 15), Sch. 26 Pt. 1 para. 28 (as inserted (1.10.2010) by S.I. 2010/2279, art. 1(2), **Sch. 1 para. 5** (see S.I. 2010/2317, art. 2))

## **[<sup>F37</sup>5A Training etc.**

The Senior President of Tribunals is responsible, within the resources made available by the Lord Chancellor, for the maintenance of appropriate arrangements for the training, guidance and welfare of members of panels of members of employment tribunals (in their capacities as members of such panels, whether or not panels of [<sup>F38</sup> Employment Judges ]).

### **Textual Amendments**

**F37** Ss. 5A-5D inserted (3.11.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 48(1), 148, **Sch. 8 para. 40**; S.I. 2008/2696, art. 5(c)(i) (with art. 3)

**F38** Words in s. 5A substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14 para. 13(1)**; S.I. 2013/2200, art. 3(g)

## **5B Members of employment tribunals: removal from office**

- (1) Any power by which the President of the Employment Tribunals (England and Wales) may be removed from that office may be exercised only with the concurrence of the Lord Chief Justice of England and Wales.
- (2) Any power by which the President of the Employment Tribunals (Scotland) may be removed from that office may be exercised only with the concurrence of the Lord President of the Court of Session.
- (3) Any power by which a member of a panel may be removed from membership of the panel—
  - (a) may, if the person exercises functions wholly or mainly in Scotland, be exercised only with the concurrence of the Lord President of the Court of Session;
  - (b) may, if paragraph (a) does not apply, be exercised only with the concurrence of the Lord Chief Justice of England and Wales.
- (4) In subsection (3) “panel” means—
  - (a) a panel of [<sup>F39</sup> Employment Judges ], or
  - (b) any other panel of members of employment tribunals,
 which is appointed in accordance with regulations made under section 1(1).
- (5) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.
- (6) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise his functions under this section.



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#### Textual Amendments

- F37** Ss. 5A-5D inserted (3.11.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 48(1), 148, [Sch. 8 para. 40](#); S.I. 2008/2696, art. 5(c)(i) (with art. 3)
- F39** Words in s. 5B(4) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 13\(1\)](#); S.I. 2013/2200, art. 3(g)

### 5C Oaths

- (1) Subsection (2) applies to a person (“the appointee”)—
  - (a) who is appointed—
    - (i) as President of the Employment Tribunals (England and Wales),
    - (ii) as President of the Employment Tribunals (Scotland), or
    - (iii) as a member of a panel (as defined in section 5B(4)), and
  - (b) who has not previously taken the required oaths after accepting another office.
- (2) The appointee must take the required oaths before—
  - (a) the Senior President of Tribunals, or
  - (b) an eligible person who is nominated by the Senior President of Tribunals for the purpose of taking the oaths from the appointee.
- (3) If the appointee is a President or panel member appointed before the coming into force of this section, the requirement in subsection (2) applies in relation to the appointee from the coming into force of this section.
- (4) A person is eligible for the purposes of subsection (2)(b) if one or more of the following paragraphs applies to him—
  - (a) he holds high judicial office (as defined in section 60(2) of the Constitutional Reform Act 2005);
  - (b) he holds judicial office (as defined in section 109(4) of that Act);
  - (c) he holds (in Scotland) the office of sheriff.
- (5) In this section “the required oaths” means—
  - (a) the oath of allegiance, and
  - (b) the judicial oath,as set out in the Promissory Oaths Act 1868.

#### Textual Amendments

- F37** Ss. 5A-5D inserted (3.11.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 48(1), 148, [Sch. 8 para. 40](#); S.I. 2008/2696, art. 5(c)(i) (with art. 3)

### 5D Judicial assistance

- (1) Subsection (2) applies where regulations under section 1(1) make provision for a relevant tribunal judge, or a relevant judge, to be able by virtue of his office to act as a member of a panel of members of employment tribunals.
- (2) The provision has effect only if—

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- (a) the persons in relation to whom the provision operates have to be persons nominated for the purposes of the provision by the Senior President of Tribunals,
  - (b) its operation in relation to a panel established for England and Wales in any particular case requires the consent of the President of Employment Tribunals (England and Wales),
  - (c) its operation in relation to a panel established for Scotland in any particular case requires the consent of the President of Employment Tribunals (Scotland),
  - (d) its operation as respects a particular relevant judge requires—
    - (i) the consent of the relevant judge, and
    - (ii) the appropriate consent (see subsection (3)) [<sup>F40</sup> except where the relevant judge is the Lord Chief Justice of England and Wales ], and
  - (e) it operates as respects a relevant tribunal judge or a relevant judge only for the purpose of enabling him to act as a member of a panel of [<sup>F41</sup> Employment Judges ] .
- (3) In subsection (2)(d)(ii) “the appropriate consent” means—
- (a) the consent of the Lord Chief Justice of England and Wales where the relevant judge is—
    - (i) [<sup>F42</sup> the Master of the Rolls or ] an ordinary judge of the Court of Appeal in England and Wales,  
[ within subsection (4)(b)(ia),]
    - <sup>F43</sup>(ia) (ii) a puisne judge of the High Court in England and Wales,
    - (iii) a circuit judge,
    - (iv) a district judge in England and Wales, <sup>F44</sup> ...
    - (v) a District Judge (Magistrates' Courts); [<sup>F45</sup>, or
    - (vi) within subsection (4)(b)(x) to (xvi);]
  - (b) the consent of the Lord President of the Court of Session where the relevant judge is—
    - (i) a judge of the Court of Session, or
    - (ii) a sheriff;
  - (c) the consent of the Lord Chief Justice of Northern Ireland where the relevant judge is—
    - (i) a Lord Justice of Appeal in Northern Ireland,
    - (ii) a puisne judge of the High Court in Northern Ireland,
    - (iii) a county court judge in Northern Ireland, or
    - (iv) a district judge in Northern Ireland.
- (4) In this section—
- (a) “relevant tribunal judge” means—
    - (i) a person who is a judge of the First-tier Tribunal by virtue of appointment under paragraph 1(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007,  
[ is the President of the Queen's Bench Division or Family Division, or
    - <sup>F46</sup>(ia) the Chancellor, of the High Court in England and Wales,]
    - (ii) a transferred-in judge of the First-tier Tribunal,

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- (iii) a person who is a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3 to that Act,
  - (iv) a transferred-in judge of the Upper Tribunal,
  - (v) a deputy judge of the Upper Tribunal, <sup>F47</sup>...
  - (vi) a person who is the Chamber President of a chamber of the First-tier Tribunal, or of a chamber of the Upper Tribunal, and does not fall within any of sub-paragraphs (i) to (v);<sup>F48</sup>, or
  - (vii) is the Senior President of Tribunals;]
- (b) “relevant judge” means a person who—
- (i) is [<sup>F49</sup> the Lord Chief Justice of England and Wales, the Master of the Rolls or ] an ordinary judge of the Court of Appeal in England and Wales (including the vice-president, if any, of either division of that Court),
  - (ii) is a Lord Justice of Appeal in Northern Ireland,
  - (iii) is a judge of the Court of Session,
  - (iv) is a puisne judge of the High Court in England and Wales or Northern Ireland,
  - (v) is a circuit judge,
  - (vi) is a sheriff in Scotland,
  - (vii) is a county court judge in Northern Ireland,
  - (viii) is a district judge in England and Wales or Northern Ireland, <sup>F50</sup>...
  - (ix) is a District Judge (Magistrates' Courts).
- [ is a deputy judge of the High Court in England and Wales,
- <sup>F51</sup>(x)
- (xi) is a Recorder,
  - (xii) is a Deputy District Judge (Magistrates' Courts),
  - (xiii) is a deputy district judge appointed under section 8 of the County Courts Act 1984 or section 102 of the Senior Courts Act 1981,
  - (xiv) holds an office listed in the first column of the table in section 89(3C) of the Senior Courts Act 1981 (senior High Court Masters etc),
  - (xv) holds an office listed in column 1 of Part 2 of Schedule 2 to that Act (High Court Masters etc), or
  - (xvi) is the Judge Advocate General or a person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951 (assistants to the Judge Advocate General).]
- (5) References in subsection (4)(b)(iii) to (ix) to office-holders do not include deputies or temporary office-holders.]

#### Textual Amendments

- F37** Ss. 5A-5D inserted (3.11.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 48(1), 148, [Sch. 8 para. 40](#); S.I. 2008/2696, art. 5(c)(i) (with art. 3)
- F40** Words in s. 5D(2)(d)(ii) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 12\(2\)](#); S.I. 2013/2200, art. 3(g)
- F41** Words in s. 5D(2)(e) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 13\(1\)](#); S.I. 2013/2200, art. 3(g)
- F42** Words in s. 5D(3)(a)(i) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 12\(3\)\(a\)](#); S.I. 2013/2200, art. 3(g)

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- F43** S. 5D(3)(a)(ia) inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14 para. 12(3)(b)**; S.I. 2013/2200, art. 3(g)
- F44** Word in s. 5D(3)(a) omitted (1.10.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14 para. 12(3)(c)**; S.I. 2013/2200, art. 3(g)
- F45** S. 5D(3)(a)(vi) and word inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14 para. 12(3)(c)**; S.I. 2013/2200, art. 3(g)
- F46** S. 5D(4)(b)(ia) inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14 para. 12(6)**; S.I. 2013/2200, art. 3(g)
- F47** Word in s. 5D(4)(a)(v) omitted (1.10.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14 para. 12(4)**; S.I. 2013/2200, art. 3(g)
- F48** S. 5D(4)(a)(vii) and word inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14 para. 12(4)**; S.I. 2013/2200, art. 3(g)
- F49** Words in s. 5D(4)(b)(i) inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14 para. 12(5)**; S.I. 2013/2200, art. 3(g)
- F50** Word in s. 5D(4)(b)(viii) omitted (1.10.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14 para. 12(7)**; S.I. 2013/2200, art. 3(g)
- F51** S. 5D(4)(b)(x)-(xvi) inserted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14 para. 12(7)**; S.I. 2013/2200, art. 3(g)

### Procedure

## 6 Conduct of hearings.

- (1) A person may appear before an <sup>F52</sup>employment tribunals] in person or be represented by—
- counsel or a solicitor,
  - a representative of a trade union or an employers' association, or
  - any other person whom he desires to represent him.
- (2) <sup>F53</sup>Nothing in any of sections 1 to 15 of and schedule 1 to the Arbitration (Scotland) Act 2010 or <sup>F54</sup>Part I of the Arbitration Act 1996] <sup>F55</sup>does not apply] <sup>F55</sup>applies] to any proceedings before an <sup>F52</sup>employment tribunals].

### Textual Amendments

- F52** Words in s. 6 substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a)(b) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F53** Words in s. 6(2) inserted (S.) (5.6.2010) by The Arbitration (Scotland) Act 2010 (Consequential Amendments) Order 2010 (S.S.I. 2010/220), art. 1, **sch. para. 7(a)**
- F54** Words in s. 6(2) substituted (31.1.1997) by 1996 c. 23, s. 107(1), **Sch. 3 para. 62** (with s. 81(2)); S.I. 1996/3146, **art. 3** (with Sch. 2)
- F55** Word in s. 6(2) substituted (S.) (5.6.2010) by The Arbitration (Scotland) Act 2010 (Consequential Amendments) Order 2010 (S.S.I. 2010/220), art. 1, **sch. para. 7(b)**

## 7 <sup>F56</sup>Employment tribunal] procedure regulations.

- (1) The Secretary of State may by regulations (“<sup>F56</sup>employment tribunal] procedure regulations”) make such provision as appears to him to be necessary or expedient with respect to proceedings before <sup>F56</sup>employment tribunals].

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- (2) Proceedings before [F56employment tribunals] shall be instituted in accordance with [F56employment tribunal] procedure regulations.
- (3) [F56Employment tribunal] procedure regulations may, in particular, include provision—
- (a) for determining by which tribunal any proceedings are to be determined,
  - (b) for enabling an [F56employment tribunal] to hear and determine proceedings brought by virtue of section 3 concurrently with proceedings brought before the tribunal otherwise than by virtue of that section,
  - (c) for treating the Secretary of State (either generally or in such circumstances as may be prescribed by the regulations) as a party to any proceedings before an [F56employment tribunal] (where he would not otherwise be a party to them) and entitling him to appear and to be heard accordingly,
  - (d) for requiring persons to attend to give evidence and produce documents and for authorising the administration of oaths to witnesses,
  - (e) for enabling an [F56employment tribunal], on the application of any party to the proceedings before it or of its own motion, to order—
    - (i) in England and Wales, such discovery or inspection of documents, or the furnishing of such further particulars, as might be ordered by [F57the county court] on application by a party to proceedings before it, or
    - (ii) in Scotland, such recovery or inspection of documents as might be ordered by a sheriff,
  - (f) for prescribing the procedure to be followed in any proceedings before an [F56employment tribunal], including provision—
    - <sup>F58</sup>(i) .....
    - [F59](ia) for postponing fixing a time and place for a hearing, or postponing a time fixed for a hearing, for such period as may be determined in accordance with the regulations for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn, and]
    - (ii) for enabling an [F56employment tribunal] to review its decisions, and revoke or vary its orders and awards, in such circumstances as may be determined in accordance with the regulations,
  - (g) for the appointment of one or more assessors for the purposes of any proceedings before an [F56employment tribunal], where the proceedings are brought under an enactment which provides for one or more assessors to be appointed,
  - (h) for authorising an [F56employment tribunal] to require persons to furnish information and produce documents to a person required for the purposes of section [F60131(2) of the Equality Act 2010] to prepare a report, and
  - (j) for the registration and proof of decisions, orders and awards of [F56employment tribunals].

[F61(3ZA) Employment tribunal procedure regulations may—

- (a) authorise the Secretary of State to prescribe, or prescribe requirements in relation to, any form which is required by such regulations to be used for the purpose of instituting, or entering an appearance to, proceedings before employment tribunals,

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- (b) authorise the Secretary of State to prescribe requirements in relation to documents to be supplied with any such form [<sup>F62</sup> (including certificates issued under section 18A(4))] , and
- (c) make provision about the publication of anything prescribed under authority conferred by virtue of this subsection.]

<sup>F63</sup> [ Employment tribunal procedure regulations may authorise the determination of  
<sup>F64</sup>(3A) proceedings without any hearing in such circumstances as the regulations may prescribe. ]]

<sup>F65</sup>(3AA) Employment tribunal procedure regulations under subsection (3A) may only authorise the determination of proceedings without any hearing in circumstances where—

- (a) all the parties to the proceedings consent in writing to the determination without a hearing, or
- (b) the person (or, where more than one, each of the persons) against whom the proceedings are brought—
  - (i) has presented no response in the proceedings, or
  - (ii) does not contest the case.

(3AB) For the purposes of subsection (3AA)(b), a person does not present a response in the proceedings if he presents a response but, in accordance with provision made by the regulations, it is not accepted.]

<sup>F63</sup>(3B) Employment tribunal procedure regulations may authorise the determination of proceedings without hearing anyone other than the person or persons by whom the proceedings are brought (or his or their representatives) where—

- (a) the person (or, where more than one, each of the persons) against whom the proceedings are brought has done nothing to contest the case, or
- (b) it appears from the application made by the person (or, where more than one, each of the persons) bringing the proceedings that he is not (or they are not) seeking any relief which an employment tribunal has power to give or that he is not (or they are not) entitled to any such relief.

<sup>F63</sup>(3C) Employment tribunal procedure regulations may authorise the determination of proceedings without hearing anyone other than the person or persons by whom, and the person or persons against whom, the proceedings are brought (or his or their representatives) where—

- (a) an employment tribunal is on undisputed facts bound by the decision of a court in another case to dismiss the case of the person or persons by whom, or of the person or persons against whom, the proceedings are brought, or
- (b) the proceedings relate only to a preliminary issue which may be heard and determined in accordance with regulations under section 9(4).

(4) A person who without reasonable excuse fails to comply with—

- (a) any requirement imposed by virtue of subsection (3)(d) or (h), or
- (b) any requirement with respect to the discovery, recovery or inspection of documents imposed by virtue of subsection (3)(e), [<sup>F66</sup>or

<sup>F66</sup>(c) any requirement imposed by virtue of employment tribunal procedure regulations to give written answers for the purpose of facilitating the determination of proceedings as mentioned in subsection (3A), (3B) or (3C),]

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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- (5) Subject to any regulations under section 11(1)(a), [<sup>F56</sup>employment tribunals] procedure regulations may include provision authorising or requiring an [<sup>F56</sup>employment tribunal], in circumstances specified in the regulations, to send notice or a copy of—
- (a) any document specified in the regulations which relates to any proceedings before the tribunal, or
  - (b) any decision, order or award of the tribunal,
- to any government department or other person or body so specified.
- (6) Where in accordance with [<sup>F56</sup>employment tribunal] procedure regulations an [<sup>F56</sup>employment tribunal] determines in the same proceedings—
- (a) a complaint presented under section 111 of the <sup>M3</sup>Employment Rights Act 1996, and
  - (b) a question referred under section 163 of that Act,
- subsection (2) of that section has no effect for the purposes of the proceedings in so far as they relate to the complaint under section 111.

#### Textual Amendments

- F56** Words in s. 7 and sidenote substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a)(b) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F57** Words in s. 7(3)(e)(i) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F58** S. 7(3)(f)(i) repealed (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 14(1)(2)**, **Sch. 2**; S.I. 1998/1658, art. 2(1), **Sch. 1**
- F59** S. 7(3)(f)(ia) inserted (9.7.2004) by 2002 c. 22, ss. 24(1), 55(2); S.I. 2004/1717, **art. 2(1)**
- F60** Words in s. 7(3)(h) substituted by Equality Act 2010 (c. 15), Sch. 26 Pt. 1 para. 29 (as inserted) (1.10.2010) by TS.I. 2010/2279, art. 1(2), **Sch. 1 para. 5** (see S.I. 2010/2317, art. 2)
- F61** S. 7(3ZA) inserted (9.7.2004) by 2002 c. 22, ss. 25, 55(2); S.I. 2004/1717, **art. 2(1)**
- F62** Words in s. 7(3ZA)(b) inserted (6.3.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 1 para. 3**; S.I. 2014/253, art. 2
- F63** S. 7(3A)-(3C) inserted (1.8.1998) by 1998 c. 8, s. 2; S.I. 1998/1658, art. 2(1), **Sch. 1**
- F64** S. 7(3A) substituted (9.7.2004) by 2002 c. 22, ss. 26, 55(2); S.I. 2004/1717, **art. 2(1)**
- F65** S. 7(3AA)(3AB) inserted (6.4.2009) by Employment Act 2008 (c. 24), **ss. 4, 22(1)(a)**; S.I. 2008/3232, art. 2 (with art. 3, **Sch.**)
- F66** S. 7(4)(c) and word “or” immediately preceding inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 14(1)(3)**; S.I. 1998/1658, art. 2(1), **Sch. 1**

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

- C7** S. 7 extended (24.4.2000) by 1992 c. 52, s. 239(4)(b) (as inserted (24.4.2000) by 1999 c. 26, s. 16, **Sch. 5 para. 4**; S.I. 2000/875, **art. 2** (subject to transitional provision in art. 3))

#### Marginal Citations

- M3** 1996 c. 18.

#### [<sup>F67</sup>7A Practice directions

[ The Senior President of Tribunals may make directions about the procedure of <sup>F68</sup>(A1) employment tribunals.]

- (1) Employment tribunal procedure regulations may include provision—

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- (a) enabling the [<sup>F69</sup>territorial] President to make directions about the procedure of employment tribunals, including directions about the exercise by tribunals of powers under such regulations,
  - (b) for securing compliance with [<sup>F70</sup>directions under subsection (A1) or paragraph (a) ], and
  - (c) about the publication of [<sup>F71</sup>directions under subsection (A1) or paragraph (a) ].
- (2) Employment tribunal procedure regulations may, instead of providing for any matter, refer to provision made or to be made about that matter by directions made [<sup>F72</sup>under subsection (A1) or (1)(a) ].
- [ The power under subsection (A1) includes—
- <sup>F73</sup>(2A) (a) power to vary or revoke directions made in exercise of the power, and
- (b) power to make different provision for different purposes (including different provision for different areas).
- (2B) Directions under subsection (A1) may not be made without the approval of the Lord Chancellor.
- (2C) Directions under subsection (1)(a) may not be made without the approval of—
- (a) the Senior President of Tribunals, and
  - (b) the Lord Chancellor.
- (2D) Subsections (2B) and (2C)(b) do not apply to directions to the extent that they consist of guidance about any of the following—
- (a) the application or interpretation of the law;
  - (b) the making of decisions by members of an employment tribunal.
- (2E) Subsections (2B) and (2C)(b) do not apply to directions to the extent that they consist of criteria for determining which members of employment tribunals may be selected to decide particular categories of matter; but the directions may, to that extent, be made only after consulting the Lord Chancellor.]
- (3) In this section, references to the [<sup>F74</sup>territorial] President are to a person appointed in accordance with regulations under section 1(1) as—
- (a) President of the Employment Tribunals (England and Wales), or
  - (b) President of the Employment Tribunals (Scotland).]

#### Textual Amendments

- F67** S. 7A inserted (9.7.2004) by 2002 c. 22, ss. 27, 55(2); S.I. 2004/1717, **art. 2(1)**
- F68** S. 7A(A1) inserted (3.11.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 8 para. 41(2)**; S.I. 2008/2696, art. 5(c)(i) (with art. 3)
- F69** Word in s. 7A(1)(a) inserted (3.11.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 8 para. 41(3)(a)**; S.I. 2008/2696, art. 5(c)(i) (with art. 3)
- F70** Words in s. 7A(1)(b) substituted (3.11.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 8 para. 41(3)(b)**; S.I. 2008/2696, art. 5(c)(i) (with art. 3)
- F71** Words in s. 7A(1)(c) substituted (3.11.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 8 para. 41(3)(b)**; S.I. 2008/2696, art. 5(c)(i) (with art. 3)
- F72** Words in s. 7A(2) substituted (3.11.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 8 para. 41(4)**; S.I. 2008/2696, art. 5(c)(i) (with art. 3)



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- F73** S. 7A(2A)-(2E) inserted (3.11.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, [Sch. 8 para. 41\(5\)](#); S.I. 2008/2696, art. 5(c)(i) (with art. 3)
- F74** Word in s. 7A(3) inserted (3.11.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, [Sch. 8 para. 41\(6\)](#); S.I. 2008/2696, art. 5(c)(i) (with art. 3)

## [<sup>F75</sup>7B Mediation

- (1) Employment tribunal procedure regulations may include provision enabling practice directions to provide for members to act as mediators in relation to disputed matters in a case that is the subject of proceedings.
- (2) The provision that may be included in employment tribunal procedure regulations by virtue of subsection (1) includes provision for enabling practice directions to provide for a member to act as mediator in relation to disputed matters in a case even though the member has been selected to decide matters in the case.
- (3) Once a member has begun to act as mediator in relation to a disputed matter in a case that is the subject of proceedings, the member may decide matters in the case only with the consent of the parties.
- (4) Staff appointed under section 40(1) of the [Tribunals, Courts and Enforcement Act 2007](#) (staff for employment and other tribunals) may, subject to their terms of appointment, act as mediators in relation to disputed matters in a case that is the subject of proceedings.
- (5) Before making a practice direction that makes provision in relation to mediation, the person making the direction must consult [<sup>F76</sup>ACAS] .
- (6) In this section—
  - “member” means a member of a panel of members of employment tribunals (whether or not a panel of [<sup>F77</sup>Employment Judges] );
  - “practice direction” means a direction under section 7A;
  - “proceedings” means proceedings before an employment tribunal.]

### Textual Amendments

- F75** S. 7B inserted (1.10.2013) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 48(1), 148, [Sch. 8 para. 42](#); S.I. 2013/2200, art. 3(g)
- F76** Words in s. 7B(5) substituted (6.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 1 para. 4](#); S.I. 2014/253, art. 3(f)
- F77** Words in s. 7B(6) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 13\(1\)](#); S.I. 2013/2200, art. 3(g)

## 8 Procedure in contract cases.

- (1) Where in proceedings brought by virtue of section 3 an [<sup>F78</sup>employment tribunal] finds that the whole or part of a sum claimed in the proceedings is due, the tribunal shall order the respondent to the proceedings to pay the amount which it finds due.
- (2) An order under section 3 may provide that an [<sup>F78</sup>employment tribunal] shall not in proceedings in respect of a claim, or a number of claims relating to the same contract, order the payment of an amount exceeding such sum as may be specified in the order

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as the maximum amount which an [<sup>F78</sup>employment tribunal] may order to be paid in relation to a claim or in relation to a contract.

- (3) An order under section 3 may include provisions—
  - (a) as to the manner in which and time within which proceedings are to be brought by virtue of that section, and
  - (b) modifying any other enactment.
- (4) An order under that section may make different provision in relation to proceedings in respect of different descriptions of claims.

#### Textual Amendments

**F78** Words in s. 8(1)(2) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

## 9 Pre-hearing reviews and preliminary matters.

- (1) [<sup>F79</sup>Employment tribunal] procedure regulations may include provision—
  - (a) for authorising the carrying-out by an [<sup>F79</sup>employment tribunal] of a preliminary consideration of any proceedings before it (a “pre-hearing review”), and
  - (b) for enabling such powers to be exercised in connection with a pre-hearing review as may be prescribed by the regulations.
- (2) Such regulations may in particular include provision—
  - (a) for authorising any tribunal carrying out a pre-hearing review under the regulations to make, in circumstances specified in the regulations, an order requiring a party to the proceedings in question<sup>F80</sup> ... to pay a deposit of an amount not exceeding [<sup>F81</sup>£1,000]<sup>F82</sup> as a condition of—
    - (i) continuing to participate in those proceedings, or
    - (ii) pursuing any specified allegations or arguments], and
  - (b) for prescribing—
    - (i) the manner in which the amount of any such deposit is to be determined in any particular case,
    - (ii) the consequences of non-payment of any such deposit, and
    - (iii) the circumstances in which any such deposit, or any part of it, may be refunded to the party who paid it or be paid over to another party to the proceedings.
- <sup>F83</sup>(2A) Regulations under subsection (1)(b), so far as relating to striking out, may not provide for striking out on a ground which does not apply outside a pre-hearing review.]
- (3) The Secretary of State may from time to time by order substitute for the sum specified in subsection (2)(a) such other sum as is specified in the order.
- (4) [<sup>F79</sup>Employment tribunal] procedure regulations may also include provision for authorising an [<sup>F79</sup>employment tribunal] to hear and determine [<sup>F84</sup>separately any preliminary issue of a description prescribed by the regulations which is raised by any case].

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#### Textual Amendments

- F79** Words in s. 9(1)(2)(4) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1
- F80** Words in s. 9(2)(a) omitted (25.6.2013) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 21(2)(a), 103(2)
- F81** Word in s. 9(2)(a) substituted (15.2.2012) by The Employment Tribunals (Increase of Maximum Deposit) Order 2012 (S.I. 2012/149), arts. 1(1), 2
- F82** Words in s. 9(2)(a) inserted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 21(2)(b), 103(2)
- F83** S. 9(2A) inserted (9.7.2004) by 2002 c. 22, ss. 28(3), 55(2); S.I. 2004/1717, art. 2(1)
- F84** Words in s. 9(4) substituted (1.8.1998) by 1998 c. 8, s. 15, Sch. 1 para. 15; S.I. 1998/1658, art. 2(1), Sch. 1

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

- C8** S. 9 extended (24.4.2000) by 1992 c. 52, s. 239(4)(c) (as inserted (24.4.2000) by 1999 c. 26, s. 16, Sch. 5 para. 4; S.I. 2000/875, art. 2 (subject to transitional provision in art. 3))

### [<sup>F85</sup>10 National security.

- (1) If on a complaint under—
- [<sup>F86</sup>(a) section 145A, 145B or 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 (inducements and detriments in respect of trade union membership etc.),]
  - (b) section 111 of the Employment Rights Act 1996 (unfair dismissal), [<sup>F87</sup>, or
  - (c) regulation 9 of the Employment Relations Act 1999 (Blacklists) Regulations 2010 (detriment connected with prohibited list).]
- it is shown that the action complained of was taken for the purpose of safeguarding national security, the employment tribunal shall dismiss the complaint.
- (2) Employment tribunal procedure regulations may make provision about the composition of the tribunal (including provision disapplying or modifying section 4) for the purposes of proceedings in relation to which—
- (a) a direction is given under subsection (3), or
  - (b) an order is made under subsection (4).
- (3) A direction may be given under this subsection by a Minister of the Crown if—
- (a) it relates to particular Crown employment proceedings, and
  - (b) the Minister considers it expedient in the interests of national security.
- (4) An order may be made under this subsection by the President or a Regional [<sup>F88</sup> Employment Judge ] in relation to particular proceedings if he considers it expedient in the interests of national security.
- (5) Employment tribunal procedure regulations may make provision enabling a Minister of the Crown, if he considers it expedient in the interests of national security—
- (a) to direct a tribunal to sit in private for all or part of particular Crown employment proceedings;
  - (b) to direct a tribunal to exclude the applicant from all or part of particular Crown employment proceedings;

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- (c) to direct a tribunal to exclude the applicant’s representatives from all or part of particular Crown employment proceedings;
  - (d) to direct a tribunal to take steps to conceal the identity of a particular witness in particular Crown employment proceedings;
  - (e) to direct a tribunal to take steps to keep secret all or part of the reasons for its decision in particular Crown employment proceedings.
- [<sup>F89</sup>(6) Employment tribunal procedure regulations may enable a tribunal, if it considers it expedient in the interests of national security, to do in relation to particular proceedings before it anything of a kind which, by virtue of subsection (5), employment tribunal procedure regulations may enable a Minister of the Crown to direct a tribunal to do in relation to particular Crown employment proceedings.]
- (7) In relation to cases where a person has been excluded by virtue of subsection (5)(b) or (c) or (6), employment tribunal procedure regulations may make provision—
- (a) for the appointment by the Attorney General, or by the Advocate General for Scotland, of a person to represent the interests of the applicant;
  - (b) about the publication and registration of reasons for the tribunal’s decision;
  - (c) permitting an excluded person to make a statement to the tribunal before the commencement of the proceedings, or the part of the proceedings, from which he is excluded.
- (8) Proceedings are Crown employment proceedings for the purposes of this section if the employment to which the complaint relates—
- (a) is Crown employment, or
  - (b) is connected with the performance of functions on behalf of the Crown.
- (9) The reference in subsection (4) to the President or a Regional Chairman is to a person appointed in accordance with regulations under section 1(1) as—
- (a) a Regional Chairman,
  - (b) President of the Employment Tribunals (England and Wales), or
  - (c) President of the Employment Tribunals (Scotland).]

#### Textual Amendments

- F85** Ss. 10, 10A, 10B substituted (16.7.2001) for s. 10 by 1999 c. 26, ss. 41, 45, **Sch. 8 para. 3**; S.I. 2001/1187, art. 3(b), **Sch.** (as amended by S.I. 2001/1461, art. 2(2))
- F86** S. 10(1)(a) substituted (1.10.2004) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59, **Sch. 1 para. 24**; S.I. 2004/2566, art. 3(b) (subject to arts. 4-8)
- F87** S. 10(1)(c) and word inserted (2.3.2010) by The Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493), regs. 1(b), **17(2)(b)**
- F88** Words in s. 10(4) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14 para. 13(3)**; S.I. 2013/2200, art. 3(g)
- F89** S. 10(6) substituted (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 36, 59; S.I. 2004/3342, art. 4(a) (subject to arts. 5-12)

#### <sup>F90</sup>10A Confidential information.

- (1) Employment tribunal procedure regulations may enable an employment tribunal to sit in private for the purpose of hearing evidence from any person which in the opinion of the tribunal is likely to consist of—

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- (a) information which he could not disclose without contravening a prohibition imposed by or by virtue of any enactment,
  - (b) information which has been communicated to him in confidence or which he has otherwise obtained in consequence of the confidence reposed in him by another person, or
  - (c) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992, cause substantial injury to any undertaking of his or in which he works.
- (2) The reference in subsection (1)(c) to any undertaking of a person or in which he works shall be construed—
- (a) in relation to a person in Crown employment, as a reference to the national interest,
  - (b) in relation to a person who is a relevant member of the House of Lords staff, as a reference to the national interest or (if the case so requires) the interests of the House of Lords, and
  - (c) in relation to a person who is a relevant member of the House of Commons staff, as a reference to the national interest or (if the case so requires) the interests of the House of Commons.

#### Textual Amendments

**F90** Ss. 10, 10A, 10B substituted (16.7.2001) for s. 10 by 1999 c. 26, ss. 41, 45, **Sch. 8 para. 3**; S.I. 2001/1187, **art. 3(b)**, **Sch.** (as amended by S.I. 2001/1461, **art. 2(2)**)

#### **<sup>F91</sup>10B Restriction of publicity in cases involving national security.**

- (1) This section applies where a tribunal has been directed under section 10(5) or has determined under section 10(6)—
  - (a) to take steps to conceal the identity of a particular witness, or
  - (b) to take steps to keep secret all or part of the reasons for its decision.
- (2) It is an offence to publish—
  - (a) anything likely to lead to the identification of the witness, or
  - (b) the reasons for the tribunal's decision or the part of its reasons which it is directed or has determined to keep secret.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Where a person is charged with an offence under this section it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication in question was of, or included, the matter in question.
- (5) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) a person purporting to act in any such capacity,

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he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

- (6) A reference in this section to publication includes a reference to inclusion in a programme which is included in a programme service, within the meaning of the <sup>M4</sup>Broadcasting Act 1990.

#### Textual Amendments

**F91** Ss. 10, 10A, 10B substituted (16.7.2001) for s. 10 by 1999 c. 26, ss. 41, 45, **Sch. 8 para. 3**; S.I. 2001/1187, art. 3(b), **Sch.** (as amended by S.I. 2001/1461, art. 2(2))

#### Marginal Citations

**M4** 1990 c. 42.

## 11 Restriction of publicity in cases involving sexual misconduct.

- (1) [<sup>F92</sup>Employment tribunal] procedure regulations may include provision—
- (a) for cases involving allegations of the commission of sexual offences, for securing that the registration or other making available of documents or decisions shall be so effected as to prevent the identification of any person affected by or making the allegation, and
  - (b) for cases involving allegations of sexual misconduct, enabling an [<sup>F92</sup>employment tribunal], on the application of any party to proceedings before it or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the tribunal.
- (2) If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order—
- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
  - (b) in the case of publication in any other form, the person publishing the matter, and
  - (c) in the case of matter included in a relevant programme—
    - (i) any body corporate engaged in providing the service in which the programme is included, and
    - (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,
 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) Where a person is charged with an offence under subsection (2) it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or included, the matter in question.
- (4) Where an offence under subsection (2) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate, or



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- (b) a person purporting to act in any such capacity,  
he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) In relation to a body corporate whose affairs are managed by its members “director”, in subsection (4), means a member of the body corporate.
- (6) In this section—
- “identifying matter”, in relation to a person, means any matter likely to lead members of the public to identify him as a person affected by, or as the person making, the allegation,
- “relevant programme” has the same meaning as in the <sup>M5</sup>Sexual Offences (Amendment) Act 1992,
- “restricted reporting order” means an order—
- (a) made in exercise of a power conferred by regulations made by virtue of this section, and
- (b) prohibiting the publication in Great Britain of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Great Britain,
- “sexual misconduct” means the commission of a sexual offence, sexual harassment or other adverse conduct (of whatever nature) related to sex, and conduct is related to sex whether the relationship with sex lies in the character of the conduct or in its having reference to the sex or sexual orientation of the person at whom the conduct is directed,
- “sexual offence” means any offence to which section 4 of the <sup>M6</sup>Sexual Offences (Amendment) Act 1976, the Sexual Offences (Amendment) Act 1992 or section 274(2) of the <sup>M7</sup>Criminal Procedure (Scotland) Act 1995 applies (offences under the <sup>M8</sup>Sexual Offences Act 1956, Part I of the <sup>M9</sup>Criminal Law (Consolidation) (Scotland) Act 1995 and certain other enactments), and
- “written publication” has the same meaning as in the Sexual Offences (Amendment) Act 1992.

#### Textual Amendments

**F92** Words in s. 11(1) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

#### Marginal Citations

**M5** 1992 c. 34.  
**M6** 1976 c. 82.  
**M7** 1995 c. 46.  
**M8** 1956 c. 69.  
**M9** 1995 c. 39.

## 12 Restriction of publicity in disability cases.

- (1) This section applies to proceedings on a complaint under [F93 section 120 of the Equality Act 2010, where the complaint relates to disability] in which evidence of a personal nature is likely to be heard by the [F94 employment tribunal] hearing the complaint.

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- (2) [<sup>F94</sup>Employment tribunal] procedure regulations may include provision in relation to proceedings to which this section applies for—
- (a) enabling an [<sup>F94</sup>employment tribunal], on the application of the complainant or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the tribunal, and
  - (b) where a restricted reporting order is made in relation to a complaint which is being dealt with by the tribunal together with any other proceedings, enabling the tribunal to direct that the order is to apply also in relation to those other proceedings or such part of them as the tribunal may direct.
- (3) If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order—
- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
  - (b) in the case of publication in any other form, the person publishing the matter, and
  - (c) in the case of matter included in a relevant programme—
    - (i) any body corporate engaged in providing the service in which the programme is included, and
    - (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,
 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Where a person is charged with an offence under subsection (3), it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or included, the matter in question.
- (5) Where an offence under subsection (3) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) a person purporting to act in any such capacity,
- he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) In relation to a body corporate whose affairs are managed by its members “director”, in subsection (5), means a member of the body corporate.
- (7) In this section—
- “evidence of a personal nature” means any evidence of a medical, or other intimate, nature which might reasonably be assumed to be likely to cause significant embarrassment to the complainant if reported,
- “identifying matter” means any matter likely to lead members of the public to identify the complainant or such other persons (if any) as may be named in the order,
- “promulgation” has such meaning as may be prescribed by regulations made by virtue of this section,
- “relevant programme” means a programme included in a programme service, within the meaning of the <sup>M10</sup>Broadcasting Act 1990,



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“restricted reporting order” means an order—

- (a) made in exercise of a power conferred by regulations made by virtue of this section, and
- (b) prohibiting the publication in Great Britain of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Great Britain, and

“written publication” includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

#### Textual Amendments

- F93** Words in s. 12(1) substituted by Equality Act 2010 (c. 15), Sch. 26 Pt. 1 para. 30 (as inserted) (1.10.2010) by [S.I. 2010/2279](#), [art. 1\(2\)](#), [Sch. 1 para. 5](#) (see [S.I. 2010/2317](#), [art. 2](#))
- F94** Words in s. 12(1)(2) substituted (1.8.1998) by [1998 c. 8](#), [s. 1\(2\)\(a\)](#) (with [s. 16\(2\)](#)); [S.I. 1998/1658](#), [art. 2\(1\)](#), [Sch. 1](#)

#### Commencement Information

- II** S. 12 wholly in force at 22.8.1996 with effect as mentioned in Sch. 2 Pt. II para. 7(1)(2) and [S.I. 1996/3150](#), [art. 2](#)

#### Marginal Citations

- M10** [1990 c. 42](#).

### *<sup>F95</sup>Financial penalties*

#### Textual Amendments

- F95** S. 12A and cross-heading inserted (25.4.2013 for specified purposes, 6.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 16\(1\)](#), [103\(1\)\(i\)](#), (3); [S.I. 2014/253](#), [art. 3\(e\)](#)

## 12A Financial penalties

- (1) Where an employment tribunal determining a claim involving an employer and a worker—
  - (a) concludes that the employer has breached any of the worker's rights to which the claim relates, and
  - (b) is of the opinion that the breach has one or more aggravating features, the tribunal may order the employer to pay a penalty to the Secretary of State (whether or not it also makes a financial award against the employer on the claim).
- (2) The tribunal shall have regard to an employer's ability to pay—
  - (a) in deciding whether to order the employer to pay a penalty under this section;
  - (b) (subject to subsections (3) to (7)) in deciding the amount of a penalty.
- (3) The amount of a penalty under this section shall be—
  - (a) at least £100;
  - (b) no more than £5,000.

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This subsection does not apply where subsection (5) or (7) applies.

- (4) Subsection (5) applies where an employment tribunal—
- (a) makes a financial award against an employer on a claim, and
  - (b) also orders the employer to pay a penalty under this section in respect of the claim.
- (5) In such a case, the amount of the penalty under this section shall be 50% of the amount of the award, except that—
- (a) if the amount of the financial award is less than £200, the amount of the penalty shall be £100;
  - (b) if the amount of the financial award is more than £10,000, the amount of the penalty shall be £5,000.
- (6) Subsection (7) applies, instead of subsection (5), where an employment tribunal—
- (a) considers together two or more claims involving different workers but the same employer, and
  - (b) orders the employer to pay a penalty under this section in respect of any of those claims.
- (7) In such a case—
- (a) the amount of the penalties in total shall be at least £100;
  - (b) the amount of a penalty in respect of a particular claim shall be—
    - (i) no more than £5,000, and
    - (ii) where the tribunal makes a financial award against the employer on the claim, no more than 50% of the amount of the award.
- But where the tribunal makes a financial award on any of the claims and the amount awarded is less than £200 in total, the amount of the penalties in total shall be £100 (and paragraphs (a) and (b) shall not apply).
- (8) Two or more claims in respect of the same act and the same worker shall be treated as a single claim for the purposes of this section.
- (9) Subsection (5) or (7) does not require or permit an order under subsection (1) (or a failure to make such an order) to be reviewed where the tribunal subsequently awards compensation under—
- (a) section 140(3) of the Trade Union and Labour Relations (Consolidation) Act 1992 (failure to comply with tribunal's recommendation),
  - (b) section 117 of the Employment Rights Act 1996 (failure to reinstate etc.),
  - (c) section 124(7) of the Equality Act 2010 (failure to comply with tribunal's recommendation), or
  - (d) any other provision empowering the tribunal to award compensation, or further compensation, for a failure to comply (or to comply fully) with an order or recommendation of the tribunal.
- (10) An employer's liability to pay a penalty under this section is discharged if 50% of the amount of the penalty is paid no later than 21 days after the day on which notice of the decision to impose the penalty is sent to the employer.
- (11) In this section—
- “claim”—

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- (a) means anything that is referred to in the relevant legislation as a claim, a complaint or a reference, other than a reference made by virtue of section 122(2) or 128(2) of the Equality Act 2010 (reference by court of question about a non-discrimination or equality rule etc), and
- (b) also includes an application, under regulations made under section 45 of the Employment Act 2002, for a declaration that a person is a permanent employee;

“employer” has the same meaning as in Part 4A of the Employment Rights Act 1996, and also—

- (a) in relation to an individual seeking to be employed by a person as a worker, includes that person;
- (b) in relation to a right conferred by section 47A or 63A of the Employment Rights Act 1996 (right to time off for young person for study or training), includes the principal within the meaning of section 63A(3) of that Act;
- (c) in relation to a right conferred by the Agency Workers Regulations 2010 (S.I. 2010/93), includes the hirer within the meaning of those Regulations and (where the worker is not actually employed by the temporary work agency) the temporary work agency within that meaning;

“financial award” means an award of a sum of money, but does not including anything payable by virtue of section 13;

“worker” has the same meaning as in Part 4A of the Employment Rights Act 1996, and also includes an individual seeking to be employed by a person as a worker.

(12) The Secretary of State may by order—

- (a) amend subsection (3), (5) or (7) by substituting a different amount;
- (b) amend subsection (5), (7) or (10) by substituting a different percentage;
- (c) amend this section so as to alter the meaning of “claim”.

(13) The Secretary of State shall pay sums received under this section into the Consolidated Fund.]

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

- C9** S. 12A applied (with modifications) by 1992 c. 52, s. 138(2A) as inserted (6.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 3 para. 1](#) (with s. 24(5)); S.I. 2014/253, art. 3(h)
- C10** S. 12A applied (with modifications) by 1996 c. 18, s. 201(3A) as inserted (6.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 3 para. 5](#) (with s. 24(5)); S.I. 2014/253, art. 3(h)

*[<sup>F96</sup> Costs etc, interest and enforcement]*

#### **Textual Amendments**

- F96** S. 13 cross-heading inserted (6.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 3 para. 3](#) (with s. 24(5)); S.I. 2014/253, art. 3(h)

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### 13 Costs and expenses.

- [<sup>F97</sup>(1) Employment tribunal procedure regulations may include provision—
- (a) for the award of costs or expenses;
  - (b) for the award of any allowances payable under section 5(2)(c) or (3).
- (1A) Regulations under subsection (1) may include provision authorising an employment tribunal to have regard to a person’s ability to pay when considering the making of an award against him under such regulations.
- (1B) Employment tribunal procedure regulations may include provision for authorising an employment tribunal—
- (a) to disallow all or part of the costs or expenses of a representative of a party to proceedings before it by reason of that representative’s conduct of the proceedings;
  - (b) to order a representative of a party to proceedings before it to meet all or part of the costs or expenses incurred by a party by reason of the representative’s conduct of the proceedings;
  - (c) to order a representative of a party to proceedings before it to meet all or part of any allowances payable by the Secretary of State under section 5(2)(c) or (3) by reason of the representative’s conduct of the proceedings.
- (1C) Employment tribunal procedure regulations may also include provision for taxing or otherwise settling the costs or expenses referred to in subsection (1)(a) or (1B)(b) (and, in particular in England and Wales, for enabling the amount of such costs to be assessed by way of detailed assessment in [<sup>F98</sup> the county court ] .)]
- (2) In relation to proceedings under section 111 of the <sup>M11</sup>Employment Rights Act 1996—
- (a) where the employee has expressed a wish to be reinstated or re-engaged which has been communicated to the employer at least seven days before the hearing of the complaint, <sup>F99</sup> . . .
  - <sup>F100</sup>(b) . . . . .
- [<sup>F101</sup>employment tribunal] procedure regulations shall include provision for requiring the employer to pay the costs or expenses of any postponement or adjournment of the hearing caused by his failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the complainant was dismissed <sup>F99</sup> . . . or of comparable or suitable employment.

#### Textual Amendments

- F97** S. 13(1)-(1C) substituted (9.7.2004) for s. 13(1) by 2002 c. 22, ss. 22(1), 55(2); S.I. 2004/1717, art. 2(1)
- F98** Words in s. 13(1C) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 52; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F99** Words in s. 13(2)(a)(c) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 4(a), Sch. 9(2); S.I. 1999/2830, art. 2, Sch. 1 Pt. II, Sch. 2 Pt. II
- F100** S. 13(2)(b) repealed (15.12.1999) by 1999 c. 26, ss. 9, 44, Sch. 4 Pt. III para. 4, Sch. 9(2); S.I. 1999/2830, art. 2, Sch. 1 Pt. II, Sch. 2 Pt. II
- F101** Words in s. 13 substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

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#### Marginal Citations

M11 1996 c. 18.

### [<sup>F102</sup>13A Payments in respect of preparation time

- (1) Employment tribunal procedure regulations may include provision for authorising an employment tribunal to order a party to proceedings before it to make a payment to any other party in respect of time spent in preparing that other party's case.
- (2) Regulations under subsection (1) may include provision authorising an employment tribunal to have regard to a person's ability to pay when considering the making of an order against him under such regulations.
- (3) If employment tribunal procedure regulations include—
  - (a) provision of the kind mentioned in subsection (1), and
  - (b) provision of the kind mentioned in section 13(1)(a),they shall also<sup>F103</sup>, subject to subsection (4),] include provision to prevent an employment tribunal exercising its powers under both kinds of provision in favour of the same person in the same proceedings.]
- [<sup>F104</sup>(4) Subsection (3) does not require the regulations to include provision to prevent an employment tribunal from making—
  - (a) an order of the kind mentioned in subsection (1), and
  - (b) an award of the kind mentioned in section 13(1)(a) that is limited to witnesses' expenses.]

#### Textual Amendments

**F102** S. 13A inserted (9.7.2004) by 2002 c. 22, ss. 22(2), 55(2); S.I. 2004/1717, art. 2(1)

**F103** Words in s. 13A(3) inserted (25.6.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 21(3)(a), 103(2)

**F104** S. 13A(4) inserted (25.4.2013 for specified purposes, 25.6.2016 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 21(3)(b), 103(1)(i)(2)

## 14 Interest.

- (1) The Secretary of State may by order made with the approval of the Treasury provide that sums payable in pursuance of decisions of [<sup>F105</sup>employment tribunals] shall carry interest at such rate and between such times as may be prescribed by the order.
- (2) Any interest due by virtue of such an order shall be recoverable as a sum payable in pursuance of the decision.
- (3) The power conferred by subsection (1) includes power—
  - (a) to specify cases or circumstances in which interest is not payable,
  - (b) to provide that interest is payable only on sums exceeding a specified amount or falling between specified amounts,
  - (c) to make provision for the manner in which and the periods by reference to which interest is to be calculated and paid,
  - (d) to provide that any enactment—

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- (i) does or does not apply in relation to interest payable by virtue of subsection (1), or
  - (ii) applies to it with such modifications as may be specified in the order,
  - (e) to make provision for cases where sums are payable in pursuance of decisions or awards made on appeal from [<sup>F105</sup>employment tribunals],
  - (f) to make such incidental or supplemental provision as the Secretary of State considers necessary.
- (4) In particular, an order under subsection (1) may provide that the rate of interest shall be the rate specified in section 17 of the <sup>M12</sup>Judgments Act 1838 as that enactment has effect from time to time.

#### Textual Amendments

**F105** Words in s. 14(1)(3)(e) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(b) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

#### Marginal Citations

**M12** 1838 c. 110.

## 15 Enforcement.

- (1) Any sum payable in pursuance of a decision of an [<sup>F106</sup>employment tribunal] in England and Wales which has been registered in accordance with [<sup>F106</sup>employment tribunal] procedure regulations [<sup>F107</sup> shall be recoverable [<sup>F108</sup> under section 85 of the County Courts Act 1984 ] or otherwise as if it were payable under an order of [<sup>F109</sup> the county court ] . ]
- (2) Any order for the payment of any sum made by an [<sup>F106</sup>employment tribunal] in Scotland (or any copy of such an order certified by the Secretary of the Tribunals) may be enforced as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (3) In this section a reference to a decision or order of an [<sup>F106</sup>employment tribunal]—
  - (a) does not include a decision or order which, on being reviewed, has been revoked by the tribunal, and
  - (b) in relation to a decision or order which on being reviewed, has been varied by the tribunal, shall be construed as a reference to the decision or order as so varied.

#### Textual Amendments

**F106** Words in s. 15 substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

**F107** Words in s. 15(1) substituted (1.4.2009) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 8 para. 43**; S.I. 2008/2696, art. 6(b)(ii)

**F108** Words in s. 15(1) substituted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 13 para. 125** (with s. 89); S.I. 2014/768, art. 2(1)(b)

**F109** Words in s. 15(1) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

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### *Recoupment of social security benefits*

## **16 Power to provide for recoupment of benefits.**

- (1) This section applies to payments which are the subject of proceedings before [F110employment tribunals] and which are—
- (a) payments of wages or compensation for loss of wages,
  - (b) payments by employers to employees under sections 146 to 151, sections 168 to 173 or section 192 of the M13Trade Union and Labour Relations (Consolidation) Act 1992,
  - (c) payments by employers to employees under—
    - (i) Part III, V, VI or VII,
    - (ii) section 93, or
    - (iii) Part X,of the M14Employment Rights Act 1996, F111 ...
  - (d) payments by employers to employees of a nature similar to, or for a purpose corresponding to the purpose of, payments within paragraph (b) or (c), [F112or
  - (e) payments by employers to employees under regulation 5, 6 or 9 of the Employment Relations Act 1999 (Blacklists) Regulations 2010,]
- and to payments of remuneration under a protective award under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (2) The Secretary of State may by regulations make with respect to payments to which this section applies provision for any or all of the purposes specified in subsection (3).
- (3) The purposes referred to in subsection (2) are—
- (a) enabling the Secretary of State to recover from an employer, by way of total or partial recoupment of [F113universal credit,] jobseeker's allowance [F114 , income support or income-related employment and support allowance ] —
    - (i) a sum not exceeding the amount of the prescribed element of the monetary award, or
    - (ii) in the case of a protective award, the amount of the remuneration,
  - (b) requiring or authorising an [F110employment tribunal] to order the payment of such a sum, by way of total or partial recoupment of [F115universal credit,][F116]jobseeker's allowance, income support or income-related employment and support allowance ] , to the Secretary of State instead of to an employee, and
  - (c) requiring an [F110employment tribunal] to order the payment to an employee of only the excess of the prescribed element of the monetary award over the amount of any [F117universal credit,] jobseeker's allowance [F118 , income support or income-related employment and support allowance ] shown to the tribunal to have been paid to the employee and enabling the Secretary of State to recover from the employer, by way of total or partial recoupment of the benefit, a sum not exceeding that amount.
- (4) Regulations under this section may be framed—
- (a) so as to apply to all payments to which this section applies or to one or more classes of those payments, and
  - [F119](b) so as to apply to all or any of the benefits mentioned in subsection (3).]
- (5) Regulations under this section may—



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- (a) confer powers and impose duties on [<sup>F110</sup>employment tribunals] or [<sup>F120</sup>adjudication officers or] other persons,
  - (b) impose on an employer to whom a monetary award or protective award relates a duty—
    - (i) to furnish particulars connected with the award, and
    - (ii) to suspend payments in pursuance of the award during any period prescribed by the regulations,
  - (c) provide for an employer who pays a sum to the Secretary of State in pursuance of this section to be relieved from any liability to pay the sum to another person,
  - <sup>F121</sup>(cc) provide for the determination by the Secretary of State of any issue arising as to the total or partial recoupment in pursuance of the regulations of [<sup>F122</sup>universal credit,] a jobseeker’s allowance, unemployment benefit [<sup>F123</sup>, income support or income-related employment and support allowance ],
  - <sup>F121</sup>(d) confer on an employee a right of appeal to [<sup>F124</sup>the First-tier Tribunal] against any decision of the Secretary of State on any such issue, and]
  - (e) provide for the proof in proceedings before [<sup>F110</sup>employment tribunals] (whether by certificate or in any other manner) of any amount of [<sup>F125</sup>universal credit,] jobseeker’s allowance [<sup>F126</sup>, income support or income-related employment and support allowance ] paid to an employee.
- (6) Regulations under this section may make different provision for different cases.

#### Textual Amendments

- F110** Words in s. 16(1)(3)(c)(5)(a)(e) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a)(b) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F111** Word in s. 16(1)(c) omitted (2.3.2010) by virtue of [The Employment Relations Act 1999 \(Blacklists\) Regulations 2010 \(S.I. 2010/493\)](#), regs. 1(b), **17(3)(a)**
- F112** S. 16(1)(e) and word inserted (2.3.2010) by [The Employment Relations Act 1999 \(Blacklists\) Regulations 2010 \(S.I. 2010/493\)](#), regs. 1(b), **17(3)(b)**
- F113** Words in s. 16(3)(a) inserted (29.4.2013) by [The Universal Credit \(Consequential, Supplementary, Incidental and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/630\)](#), regs. 1(2), **11(2)(a)**
- F114** Words in s. 16(3)(a) substituted (18.3.2008 for specified purposes, 27.10.2008 in so far as not already in force) by [Welfare Reform Act 2007 \(c. 5\)](#), s. 70(2), **Sch. 3 para. 15(2)(a)**; S.I. 2008/787, art. 2(1)(4)(f), Sch.
- F115** Words in s. 16(3)(b) inserted (29.4.2013) by [The Universal Credit \(Consequential, Supplementary, Incidental and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/630\)](#), regs. 1(2), **11(2)(a)**
- F116** Words in s. 16(3)(b) substituted (18.3.2008 for specified purposes, 27.10.2008 in so far as not already in force) by [Welfare Reform Act 2007 \(c. 5\)](#), s. 70(2), **Sch. 3 para. 15(2)(b)**; S.I. 2008/787, art. 2(1)(4)(f), Sch.
- F117** Words in s. 16(3)(c) inserted (29.4.2013) by [The Universal Credit \(Consequential, Supplementary, Incidental and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/630\)](#), regs. 1(2), **11(2)(a)**
- F118** Words in s. 16(3)(c) substituted (18.3.2008 for specified purposes, 27.10.2008 in so far as not already in force) by [Welfare Reform Act 2007 \(c. 5\)](#), s. 70(2), **Sch. 3 para. 15(2)(a)**; S.I. 2008/787, art. 2(1)(4)(f), Sch.
- F119** S. 16(4)(b) substituted (18.3.2008 for specified purposes, 27.10.2008 in so far as not already in force) by [Welfare Reform Act 2007 \(c. 5\)](#), s. 70(2), **Sch. 3 para. 15(2)(c)**; S.I. 2008/787, art. 2(1)(4)(f), Sch.
- F120** Words in s. 16(5)(a) repealed (18.10.1999 and 29.11.1999 for certain purposes and otherwise prosp.) by 1998 c. 14, s. 86(1)(2), Sch. 7 para. 147(a), **Sch. 8**; S.I. 1999/2860, art. 2 (subject to transitional provisions in Schs. 16-18); S.I. 1999/3178, art. 2(1), **Sch. 1** (subject to transitional provisions in Schs. 21-23)



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- F121** S. 16(5)(cc)(d) substituted for s. 16(5)(d) (18.10.1999 and 29.11.1999 for certain purposes and otherwise prosp.) by 1998 c. 14, s. 86(1), **Sch. 7 para. 147(b)**; S.I. 1999/2860, **art. 2** (subject to transitional provisions in Schs. 16-18); S.I. 1999/3178, art. 2(1), **Sch. 1** (subject to transitional provisions in Schs. 21-23)
- F122** Words in s. 16(5)(cc) inserted (29.4.2013) by The Universal Credit (Consequential, Supplementary, Incidental and Miscellaneous Provisions) Regulations 2013 (S.I. 2013/630), regs. 1(2), **11(3)**
- F123** Words in s. 16(5)(cc) substituted (18.3.2008 for specified purposes, 27.10.2008 in so far as not already in force) by Welfare Reform Act 2007 (c. 5), s. 70(2), **Sch. 3 para. 15(2)(a)**; S.I. 2008/787, art. 2(1)(4)(f), Sch.
- F124** Words in s. 16(5)(d) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 137**
- F125** Words in s. 16(5)(e) inserted (29.4.2013) by The Universal Credit (Consequential, Supplementary, Incidental and Miscellaneous Provisions) Regulations 2013 (S.I. 2013/630), regs. 1(2), **11(2)(b)**
- F126** Words in s. 16(5)(e) substituted (18.3.2008 for specified purposes, 27.10.2008 in so far as not already in force) by Welfare Reform Act 2007 (c. 5), s. 70(2), **Sch. 3 para. 15(2)(a)**; S.I. 2008/787, art. 2(1)(4)(f), Sch.

#### Marginal Citations

- M13** 1992 c. 52.  
**M14** 1996 c. 18.

## 17 Recoupment: further provisions.

- (1) Where in pursuance of any regulations under section 16 a sum has been recovered by or paid to the Secretary of State by way of total or partial recoupment of [<sup>F127</sup>universal credit,] jobseeker's allowance [<sup>F128</sup>, income support or income-related employment and support allowance] —
- (a) no sum shall be recoverable under Part III or V of the <sup>M15</sup>Social Security Administration Act 1992, and
- (b) no abatement, payment or reduction shall be made by reference to the [<sup>F129</sup>universal credit,] jobseeker's allowance [<sup>F128</sup>, income support or income-related employment and support allowance] recouped.
- (2) Any amount found to have been duly recovered by or paid to the Secretary of State in pursuance of regulations under section 16 by way of total or partial recoupment of jobseeker's allowance shall be paid into the National Insurance Fund.
- (3) In section 16—
- “monetary award” means the amount which is awarded, or ordered to be paid, to the employee by the tribunal or would be so awarded or ordered apart from any provision of regulations under that section, and
- “the prescribed element”, in relation to any monetary award, means so much of that award as is attributable to such matters as may be prescribed by regulations under that section.
- (4) In section 16 “income-based jobseeker's allowance” has the same meaning as in the <sup>M16</sup>Jobseekers Act 1995.
- [<sup>F130</sup>(5) In this section and section 16 “income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance).]

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#### Textual Amendments

- F127** Words in s. 17(1) inserted (29.4.2013) by [The Universal Credit \(Consequential, Supplementary, Incidental and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/630\)](#), regs. 1(2), **11(4)**
- F128** Words in s. 17(1) substituted (18.3.2008 for specified purposes, 27.10.2008 in so far as not already in force) by [Welfare Reform Act 2007 \(c. 5\)](#), s. 70(2), **Sch. 3 para. 15(3)**; S.I. 2008/787, art. 2(1)(4)(f), Sch.
- F129** Words in s. 17(1)(b) inserted (29.4.2013) by [The Universal Credit \(Consequential, Supplementary, Incidental and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/630\)](#), regs. 1(2), **11(4)**
- F130** S. 17(5) inserted (18.3.2008 for specified purposes, 27.10.2008 in so far as not already in force) by [Welfare Reform Act 2007 \(c. 5\)](#), s. 70(2), **Sch. 3 para. 15(4)**; S.I. 2008/787, art. 2(1)(4)(f), Sch.

#### Marginal Citations

- M15** 1992 c. 5.  
**M16** 1995 c. 18.

### Conciliation

## 18 Conciliation<sup>F131</sup>: relevant proceedings etc.].

[<sup>F132</sup>(1) In this section and sections 18A to 18C “relevant proceedings” means employment tribunal proceedings— ]

- [<sup>F133</sup>(a) under section 66, 68A, 70C, 87, 137, 138, 145A, 145B, 146, 168, 168A, 169, 170, 174, 189 or 192 of, or paragraph 156 of Schedule A1 to, the Trade Union and Labour Relations (Consolidation) Act 1992,
- (b) under section 11, 23, 34, 63I, 70, 70A, 80(1), 80H, 93, 111, 163 or 177 of the Employment Rights Act 1996, or under Part 5 or 6 of that Act,
- (c) under section 11, 19D(1)(a) or 24 of the National Minimum Wage Act 1998,
- (d) under section 56 of the Pensions Act 2008,
- (e) under section 120 or 127 of the Equality Act 2010,
- (f) under regulation 11 of the Safety Representatives and Safety Committees Regulations 1977,
- (g) under article 6 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994,
- (h) under article 6 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994,
- (i) under paragraph 2 of Schedule 2 to the Health and Safety (Consultation with Employees) Regulations 1996,
- (j) under regulation 30 of the Working Time Regulations 1998,
- (k) under regulation 27 or 32 of the Transnational Information and Consultation of Employees Regulation 1999,
- (l) under regulation 8 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000,
- (m) under regulation 7 or 9 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002,
- (n) under regulation 22 of the Merchant Shipping (Hours of Work) Regulations 2002,

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- (o) under regulation 15 of the Flexible Working (Procedural Requirements) Regulations 2002,
- (p) under regulation 18 of the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003,
- (q) under regulation 18 of the Civil Aviation (Working Time) Regulations 2004,
- (r) under regulation 19 of the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004,
- (s) under regulation 29 or 33 of the Information and Consultation of Employees Regulations 2004,
- (t) under paragraphs 4 or 8 of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006,
- (u) under regulation 30 or 34 of the European Cooperative Society (Involvement of Employees) Regulations 2006,
- (v) under regulation 45 or 51 of the Companies (Cross-Border Mergers) Regulations 2007,
- (w) under regulation 17 of the Cross-border Railway Services (Working Time) Regulations 2008,
- (x) under regulation 9 of Ecclesiastical Offices (Terms of Service) Regulations 2009,
- (y) under regulation 28 or 32 of the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009,
- (z) under regulation 18 of the Agency Workers Regulations 2010,
- (z1) under regulation 17 of the Employee Study and Training (Procedural Requirements) Regulations 2010, or
- (z2) under regulation 5, 6 or 9 of the Employment Relations Act 1999 (Blacklists) Regulations 2010.]

[<sup>F134</sup>(1A) Sections 18A and 18B apply in the case of matters which could be the subject of relevant proceedings, and section 18C applies in the case of relevant proceedings themselves.]

<sup>F135</sup>(2) .....

[<sup>F136</sup>(2A) <sup>F137</sup> .....

<sup>F135</sup>(3) .....

<sup>F135</sup>(4) .....

<sup>F135</sup>(5) .....

(6) In proceeding under [<sup>F138</sup>any of sections 18A to 18C] a conciliation officer shall, where appropriate, have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.

(7) Anything communicated to a conciliation officer in connection with the performance of his functions under [<sup>F138</sup>any of sections 18A to 18C] shall not be admissible in evidence in any proceedings before an [<sup>F139</sup>employment tribunal], except with the consent of the person who communicated it to that officer.

(8) The Secretary of State [<sup>F140</sup>and the Lord Chancellor, acting jointly,] may by order [<sup>F141</sup>amend the definition of “relevant proceedings” in subsection (1) by adding to

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or removing from the list in that subsection particular types of employment tribunal proceedings. ]

[<sup>F142</sup>(9) An order under subsection (8) that adds employment tribunal proceedings to the list in subsection (1) may amend an enactment so as to extend the time limit for instituting those proceedings in such a way as appears necessary or expedient in order to facilitate the conciliation process provided for by section 18A.

(10) An order under subsection (8) that removes employment tribunal proceedings from the list in subsection (1) may—

- (a) repeal or revoke any provision of an enactment that, for the purpose mentioned in subsection (9), extends the time limit for instituting those proceedings;
- (b) make further amendments which are consequential on that repeal or revocation.]

#### Textual Amendments

- F131** Words in s. 18 heading inserted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 1 para. 5(2)**; S.I. 2014/253, art. 3(f)
- F132** Words in s. 18(1) substituted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 1 para. 5(3)**; S.I. 2014/253, art. 3(f)
- F133** S. 18(1)(a)-(z2) substituted for s. 18(1)(a)-(y) (6.4.2014) by The Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2014 (S.I. 2014/431), arts. 1, 2
- F134** S. 18(1A) inserted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 1 para. 5(7)**; S.I. 2014/253, art. 3(f)
- F135** S. 18(2)-(5) omitted (6.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 1 para. 5(8)**; S.I. 2014/253, art. 3(f) (with art. 5(2))
- F136** S. 18(2A) inserted (9.7.2004) by 2002 c. 22, ss. 24(2), 55(2); S.I. 2004/1717, **art. 2(1)**
- F137** S. 18(2A) repealed (6.4.2009) by Employment Act 2008 (c. 24), ss. 6(1), 22(1)(a), **Sch. Pt. 1**; S.I. 2008/3232, art. 2 (with art. 3, Sch.)
- F138** Words in s. 18(6)(7) substituted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 1 para. 5(9)**; S.I. 2014/253, art. 3(f) (with art. 5(1))
- F139** Words in s. 18 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F140** Words in s. 18(8) inserted (1.12.2007) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 48(1), 148, **Sch. 8 para. 38**; S.I. 2007/2709, **art. 4**
- F141** Words in s 18(8) substituted for s. 18(8)(a)(b) (25.4.2013 for specified purposes, 6.4.2014 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 9(2)**, 103(1)(i)(3); S.I. 2014/253, art. 3(d)
- F142** S. 18(9)(10) inserted (25.4.2013 for specified purposes, 6.4.2014 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 9(3)**, 103(1)(i)(3); S.I. 2014/253, art. 3(d)

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

- C11** S. 18 applied (6.4.2006 with application as mentioned in reg. 21(1) of the applying S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), **reg. 16(1)** (with reg. 21(5))
- S. 18 applied (6.4.2006 with application as mentioned in reg. 21(1) of the applying S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), **reg. 12(7)**

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## **[<sup>F143</sup>18A Requirement to contact ACAS before instituting proceedings**

- (1) Before a person (“the prospective claimant”) presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter.

This is subject to subsection (7).

- (2) On receiving the prescribed information in the prescribed manner, ACAS shall send a copy of it to a conciliation officer.
- (3) The conciliation officer shall, during the prescribed period, endeavour to promote a settlement between the persons who would be parties to the proceedings.
- (4) If—
  - (a) during the prescribed period the conciliation officer concludes that a settlement is not possible, or
  - (b) the prescribed period expires without a settlement having been reached,the conciliation officer shall issue a certificate to that effect, in the prescribed manner, to the prospective claimant.
- (5) The conciliation officer may continue to endeavour to promote a settlement after the expiry of the prescribed period.
- (6) In subsections (3) to (5) “settlement” means a settlement that avoids proceedings being instituted.
- (7) A person may institute relevant proceedings without complying with the requirement in subsection (1) in prescribed cases.

The cases that may be prescribed include (in particular)—

cases where the requirement is complied with by another person instituting relevant proceedings relating to the same matter;  
cases where proceedings that are not relevant proceedings are instituted by means of the same form as proceedings that are;  
cases where section 18B applies because ACAS has been contacted by a person against whom relevant proceedings are being instituted.

- (8) A person who is subject to the requirement in subsection (1) may not present an application to institute relevant proceedings without a certificate under subsection (4).
- (9) Where a conciliation officer acts under this section in a case where the prospective claimant has ceased to be employed by the employer and the proposed proceedings are proceedings under section 111 of the Employment Rights Act 1996, the conciliation officer may in particular—
  - (a) seek to promote the reinstatement or re-engagement of the prospective claimant by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the conciliation officer to be equitable, or
  - (b) where the prospective claimant does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to the prospective claimant.

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- (10) In subsections (1) to (7) “prescribed” means prescribed in employment tribunal procedure regulations.
- (11) The Secretary of State may by employment tribunal procedure regulations make such further provision as appears to the Secretary of State to be necessary or expedient with respect to the conciliation process provided for by subsections (1) to (8).
- (12) Employment tribunal procedure regulations may (in particular) make provision—
- (a) authorising the Secretary of State to prescribe, or prescribe requirements in relation to, any form which is required by such regulations to be used for the purpose of providing information to ACAS under subsection (1) or issuing a certificate under subsection (4);
  - (b) requiring ACAS to give a person any necessary assistance to comply with the requirement in subsection (1);
  - (c) for the extension of the period prescribed for the purposes of subsection (3);
  - (d) treating the requirement in subsection (1) as complied with, for the purposes of any provision extending the time limit for instituting relevant proceedings, by a person who is relieved of that requirement by virtue of subsection (7)(a).

#### Textual Amendments

**F143** Ss. 18A, 18B inserted (25.4.2013 for specified purposes, 6.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 7\(1\), 103\(1\)\(i\)\(3\)](#); S.I. 2014/253, art. 3(a)(b) (with arts. 4, 5)

### 18B Conciliation before institution of proceedings: other ACAS duties

- (1) This section applies where—
- (a) a person contacts ACAS requesting the services of a conciliation officer in relation to a matter that (if not settled) is likely to give rise to relevant proceedings against that person, and
  - (b) ACAS has not received information from the prospective claimant under section 18A(1).
- (2) This section also applies where—
- (a) a person contacts ACAS requesting the services of a conciliation officer in relation to a matter that (if not settled) is likely to give rise to relevant proceedings by that person, and
  - (b) the requirement in section 18A(1) would apply to that person but for section 18A(7).
- (3) Where this section applies a conciliation officer shall endeavour to promote a settlement between the persons who would be parties to the proceedings.
- (4) If at any time—
- (a) the conciliation officer concludes that a settlement is not possible, or
  - (b) a conciliation officer comes under the duty in section 18A(3) to promote a settlement between the persons who would be parties to the proceedings,
- the duty in subsection (3) ceases to apply at that time.

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- (5) In subsections (3) and (4) “settlement” means a settlement that avoids proceedings being instituted.
- (6) Subsection (9) of section 18A applies for the purposes of this section as it applies for the purposes of that section.]

#### Textual Amendments

**F143** Ss. 18A, 18B inserted (25.4.2013 for specified purposes, 6.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 7(1), 103(1)(i)(3)**; S.I. 2014/253, art. 3(a)(b) (with arts. 4, 5)

### [<sup>F144</sup>18C Conciliation after institution of proceedings

- (1) Where an application instituting relevant proceedings has been presented to an employment tribunal, and a copy of it has been sent to a conciliation officer, the conciliation officer shall endeavour to promote a settlement—
  - (a) if requested to do so by the person by whom and the person against whom the proceedings are brought, or
  - (b) if, in the absence of any such request, the conciliation officer considers that the officer could act under this section with a reasonable prospect of success.
- (2) Where a person who has presented a complaint to an employment tribunal under section 111 of the Employment Rights Act 1996 has ceased to be employed by the employer against whom the complaint was made, the conciliation officer may in particular—
  - (a) seek to promote the reinstatement or re-engagement of the complainant by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the conciliation officer to be equitable, or
  - (b) where the complainant does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, and the parties desire the conciliation officer to act, seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to the complainant.
- (3) In subsection (1) “settlement” means a settlement that brings proceedings to an end without their being determined by an employment tribunal.]

#### Textual Amendments

**F144** S. 18C inserted (6.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 1 para. 6**; S.I. 2014/253, art. 3(f)

## 19 Conciliation procedure.

- [<sup>F145</sup>(1)] [<sup>F146</sup>Employment tribunal] procedure regulations shall include in relation to [<sup>F146</sup>employment tribunal] proceedings in the case of which any enactment makes provision for conciliation—
- (a) provisions requiring a copy of the application by which the proceedings are instituted, and a copy of any notice relating to it which is lodged by or on



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behalf of the person against whom the proceedings are brought, to be sent to a conciliation officer, <sup>F147</sup>and]

- (b) provisions securing that the applicant and the person against whom the proceedings are brought are notified that the services of a conciliation officer are available to them, <sup>F148</sup> . . .

<sup>F148</sup>(c) . . . . .

[<sup>F149</sup>(2) <sup>F150</sup> . . . . .]

#### Textual Amendments

- F145** S. 19 renumbered (9.7.2004) as s. 19(1) by 2002 c. 22, ss. 24(4), 55(2); S.I. 2004/1717, **art. 2(1)**
- F146** Words in s. 19 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F147** Word in s. 19(a) inserted (1.10.2004) by Employment Act 2002 (c. 22), ss. 53, 55(2), **Sch. 7 para. 23(3)**; S.I. 2004/2185, **art. 2**
- F148** S. 19(c) and word immediately before it repealed (6.4.2003) by 2002 c. 22, ss. 24(3), 54, **Sch. 8**; S.I. 2002/2866, art. 2(4)(5), **Sch. 2 Pt. 2**
- F149** S. 19(2) inserted (9.7.2004) by 2002 c. 22, ss. 24(4), 55(2); S.I. 2004/1717, **art. 2(1)**
- F150** S. 19(2) repealed (6.4.2009) by Employment Act 2008 (c. 24), ss. 6(2), 22(1)(a), **Sch. Pt. 1**; S.I. 2008/3232, art. 2 (with art. 3, Sch.)

#### [<sup>F151</sup>19A Conciliation: recovery of sums payable under [<sup>F152</sup> settlements ]

- (1) Subsections (3) to (6) apply if—
- (a) a conciliation officer—
- (i) has taken action under [<sup>F153</sup> any of sections 18A to 18C ] in a case, and
- (ii) issues a certificate in writing stating that a [<sup>F154</sup> settlement ] has been reached in the case, and
- (b) all of the terms of the [<sup>F154</sup> settlement ] are set out—
- (i) in a single relevant document, or
- (ii) in a combination of two or more relevant documents.
- (2) A document is a “relevant document” for the purposes of subsection (1) if—
- (a) it is the certificate, or
- (b) it is a document that is referred to in the certificate or that is referred to in a document that is within this paragraph.
- (3) Any sum payable by a person under the terms of the [<sup>F155</sup> settlement ] (a “ [<sup>F155</sup> settlement ] sum”) shall, subject to subsections (4) to (7), be recoverable—
- (a) in England and Wales, by execution issued from [<sup>F156</sup> the county court ] or otherwise as if the sum were payable under an order of that court;
- (b) in Scotland, by diligence as if the certificate were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (4) A [<sup>F157</sup> settlement ] sum is not recoverable under subsection (3) if—
- (a) the person by whom it is payable applies for a declaration that the sum would not be recoverable from him under the general law of contract, and
- (b) that declaration is made.



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- (5) If rules of court so provide, a [<sup>F158</sup> settlement ] sum is not recoverable under subsection (3) during the period—
- beginning with the issue of the certificate, and
  - ending at such time as may be specified in, or determined under, rules of court.
- (6) If the terms of the [<sup>F159</sup> settlement ] provide for the person to whom a [<sup>F159</sup> settlement ] sum is payable to do anything in addition to discontinuing or not starting proceedings, that sum is recoverable by him under subsection (3)—
- in England and Wales, only if [<sup>F156</sup> the county court ] so orders;
  - in Scotland, only if the sheriff so orders.
- (7) Once an application has been made for a declaration under subsection (4) in relation to a sum, no further reliance may be placed on subsection (3) for the recovery of the sum while the application is pending.
- (8) An application for a declaration under subsection (4) may be made to an employment tribunal, [<sup>F156</sup> the county court ] or the sheriff.
- (9) Employment tribunal procedure regulations may (in particular) make provision as to the time within which an application to an employment tribunal for a declaration under subsection (4) is to be made.
- (10) Rules of court may make provision as to—
- the time within which an application to [<sup>F156</sup> the county court ] for a declaration under subsection (4) is to be made;
  - the time within which an application to the sheriff for a declaration under subsection (4) is to be made;
  - when an application (whether made to [<sup>F156</sup> the county court ] , the sheriff or an employment tribunal) for a declaration under subsection (4) is pending for the purposes of subsection (7).
- <sup>F160</sup> [ A term of any document which is a relevant document for the purposes of subsection (1) is void to the extent that it purports to prevent the disclosure of any provision of any such document to a person appointed or authorised to act under section 37M.]
- (11) Nothing in this section shall be taken to prejudice any rights or remedies that a person has apart from this section.
- (12) In this section “ [<sup>F161</sup> settlement ] ” (except in the phrase “ [<sup>F161</sup> settlement ] sum”) means a settlement<sup>F162</sup>... to avoid proceedings or bring proceedings to an end.]

#### Textual Amendments

- F151** S. 19A inserted (1.4.2009) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), **ss. 142**, 148; S.I. 2008/2696, **art. 6(a)**
- F152** Word in s. 19A heading substituted (29.7.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 23(2)(c)**, 103(3); S.I. 2013/1648, **art. 2(c)**
- F153** Words in s. 19A(1)(a)(i) substituted (6.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 1 para. 7**; S.I. 2014/253, **art. 3(f)** (with **art. 5(1)**)
- F154** Word in s. 19A(1) substituted (29.7.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 23(2)(a)**, 103(3); S.I. 2013/1648, **art. 2(c)**

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- F155** Word in s. 19A(3) substituted (29.7.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 23(2)(a)**, 103(3); S.I. 2013/1648, art. 2(c)
- F156** Words in s. 19A substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F157** Word in s. 19A(4) substituted (29.7.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 23(2)(a)**, 103(3); S.I. 2013/1648, art. 2(c)
- F158** Word in s. 19A(5) substituted (29.7.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 23(2)(a)**, 103(3); S.I. 2013/1648, art. 2(c)
- F159** Word in s. 19A(6) substituted (29.7.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 23(2)(a)**, 103(3); S.I. 2013/1648, art. 2(c)
- F160** S. 19A(10A) inserted (6.4.2016) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 150(4)**, 164(1) (with s. 150(8)); S.I. 2016/321, reg. 3(d)
- F161** Word in s. 19A(12) substituted (29.7.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 23(2)(b)(i)**, 103(3); S.I. 2013/1648, art. 2(c)
- F162** Words in s. 19A(12) omitted (29.7.2013) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 23(2)(b)(ii)**, 103(3); S.I. 2013/1648, art. 2(c)

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