



Employment Tribunals Act 1996

1996 CHAPTER 17

^{F1}PART I

[^{F1}EMPLOYMENT TRIBUNALS]

Procedure

6 Conduct of hearings.

- (1) A person may appear before an [^{F1}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) [^{F2}Nothing in any of sections 1 to 15 of and schedule 1 to the Arbitration (Scotland) Act 2010 or][^{F3}Part I of the Arbitration Act 1996][^{F4}does not apply][^{F4}applies] to any proceedings before an [^{F1}employment tribunals].

Textual Amendments

- F1** 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
- F2** 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)
- F3** 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)
- F4** 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)

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7 [F5Employment tribunal] procedure regulations.

- (1) The Secretary of State may by regulations (“ [F5employment tribunal] procedure regulations”) make such provision as appears to him to be necessary or expedient with respect to proceedings before [F5employment tribunals].
- (2) Proceedings before [F5employment tribunals] shall be instituted in accordance with [F5employment tribunal] procedure regulations.
- (3) [F5Employment tribunal] procedure regulations may, in particular, include provision—
 - (a) for determining by which tribunal any proceedings are to be determined,
 - (b) for enabling an [F5employment 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 [F5employment 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 [F5employment 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 [F6the 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 [F5employment tribunal], including provision—
 - ^{F7}(i)
 - [F8(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 [F5employment 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 [F5employment tribunal], where the proceedings are brought under an enactment which provides for one or more assessors to be appointed,
 - (h) for authorising an [F5employment tribunal] to require persons to furnish information and produce documents to a person required for the purposes of section [F9131(2) of the Equality Act 2010] to prepare a report, and
 - (j) for the registration and proof of decisions, orders and awards of [F5employment tribunals].

[F10(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

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the purpose of instituting, or entering an appearance to, proceedings before employment tribunals,

- (b) authorise the Secretary of State to prescribe requirements in relation to documents to be supplied with any such form [^{F11} (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.]

[^{F12}(3ZB) Provision in employment tribunal procedure regulations about postponement of hearings may include provision for limiting the number of relevant postponements available to a party to proceedings.

(3ZC) For the purposes of subsection (3ZB)—

- (a) “relevant postponement”, in relation to a party to proceedings, means the postponement of a hearing granted on the application of that party in—
 - (i) the proceedings, or
 - (ii) any other proceedings identified in accordance with the regulations, except in circumstances determined in accordance with the regulations, and
- (b) “postponement” includes adjournment.]

[^{F13} Employment tribunal procedure regulations may authorise the determination of [^{F14}(3A) proceedings without any hearing in such circumstances as the regulations may prescribe.]]

[^{F15}(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.]

[^{F13}(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.

[^{F13}(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—

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- (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), ^{F16}or
 - ^{F16}(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.
- (5) Subject to any regulations under section 11(1)(a), [^{F5}employment tribunals] procedure regulations may include provision authorising or requiring an [^{F5}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 [^{F5}employment tribunal] procedure regulations an [^{F5}employment tribunal] determines in the same proceedings—
- (a) a complaint presented under section 111 of the ^{M1}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

- F5** 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
- F6** 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)
- F7** 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
- F8** 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)
- F9** 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)
- F10** S. 7(3ZA) inserted (9.7.2004) by 2002 c. 22, ss. 25, 55(2); S.I. 2004/1717, art. 2(1)
- F11** 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
- F12** S. 7(3ZB)(3ZC) inserted (26.3.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 151(2), 164(2)(d)
- F13** S. 7(3A)-(3C) inserted (1.8.1998) by 1998 c. 8, s. 2; S.I. 1998/1658, art. 2(1), Sch. 1
- F14** S. 7(3A) substituted (9.7.2004) by 2002 c. 22, ss. 26, 55(2); S.I. 2004/1717, art. 2(1)

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F15 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.](#))

F16 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)

C1 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

M1 [1996 c. 18](#).

[^{F17}7A Practice directions

[The Senior President of Tribunals may make directions about the procedure of ^{F18}(A1) employment tribunals.]

- (1) Employment tribunal procedure regulations may include provision—
 - (a) enabling the [^{F19}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 [^{F20}directions under subsection (A1) or paragraph (a)], and
 - (c) about the publication of [^{F21}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 [^{F22}under subsection (A1) or (1)(a)].

[The power under subsection (A1) includes—
^{F23}(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.]

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- (3) In this section, references to the [^{F24}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

- F17** S. 7A inserted (9.7.2004) by 2002 c. 22, ss. 27, 55(2); S.I. 2004/1717, art. 2(1)
- F18** 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)
- F19** 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)
- F20** 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)
- F21** 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)
- F22** 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)
- F23** 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)
- F24** 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)

[^{F25}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 [^{F26}ACAS] .
- (6) In this section—
 - “member” means a member of a panel of members of employment tribunals (whether or not a panel of [^{F27}Employment Judges]);
 - “practice direction” means a direction under section 7A;
 - “proceedings” means proceedings before an employment tribunal.]

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Textual Amendments

- F25** 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)
- F26** 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)
- F27** 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 ^{F28}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 ^{F28}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 as the maximum amount which an ^{F28}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

- F28** 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) ^{F29}Employment tribunal] procedure regulations may include provision—
 - (a) for authorising the carrying-out by an ^{F29}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^{F30}... to pay a deposit of an amount not exceeding ^{F31}£1,000^{F32} as a condition of—
 - (i) continuing to participate in those proceedings, or
 - (ii) pursuing any specified allegations or arguments], and

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- (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.

[^{F33}(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) [^{F29}Employment tribunal] procedure regulations may also include provision for authorising an [^{F29}employment tribunal] to hear and determine [^{F34}separately any preliminary issue of a description prescribed by the regulations which is raised by any case].

Textual Amendments

- F29** 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
- F30** 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)
- F31** 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
- F32** 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)
- F33** S. 9(2A) inserted (9.7.2004) by 2002 c. 22, ss. 28(3), 55(2); S.I. 2004/1717, art. 2(1)
- F34** 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)

- C2** 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))

[^{F35}10 National security.

- (1) If on a complaint under—
 - [^{F36}(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), [^{F37}, ^{F38} ...
 - (c) regulation 9 of the Employment Relations Act 1999 (Blacklists) Regulations 2010 (detriment connected with prohibited list)] [^{F39}or
 - (d) regulation 4 of the Employment Rights Act 1996 (NHS Recruitment – Protected Disclosure) Regulations 2018 (complaint to employment tribunal),]

it is shown that the action complained of was taken for the purpose of safeguarding national security, the employment tribunal shall dismiss the complaint.

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- (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 ^[F40] 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;
 - (c) to direct a tribunal to exclude the applicant’s representatives from all or part of particular Crown employment proceedings; or
 - (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.
- ^[F41](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).]

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Textual Amendments

- F35** 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)**)
- F36** 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)
- F37** 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)**
- F38** Word in s. 10(1)(b) omitted (23.5.2018) by virtue of The Employment Rights Act 1996 (NHS Recruitment Protected Disclosure) Regulations 2018 (S.I. 2018/579), regs. 1(2), **10(2)(a)**
- F39** S. 10(1)(d) and word inserted (23.5.2018) by The Employment Rights Act 1996 (NHS Recruitment Protected Disclosure) Regulations 2018 (S.I. 2018/579), regs. 1(2), **10(2)(b)**
- F40** 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)**
- F41** 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)

^{F42} 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—
- (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

- F42** 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)**)

Status: Point in time view as at 23/05/2018.

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^{F43}**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,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 ^{M2}Broadcasting Act 1990.

Textual Amendments

F43 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

M2 1990 c. 42.

11 Restriction of publicity in cases involving sexual misconduct.

- (1) [^{F44}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 [^{F44}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.

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- (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
 - (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 ^{M3}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 ^{M4}Sexual Offences (Amendment) Act 1976, the Sexual Offences (Amendment) Act 1992 or section 274(2) of the ^{M5}Criminal Procedure (Scotland) Act 1995 applies (offences under the ^{M6}Sexual Offences Act 1956, Part I of the

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^{M7}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

F44 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

M3 1992 c. 34.
M4 1976 c. 82.
M5 1995 c. 46.
M6 1956 c. 69.
M7 1995 c. 39.

12 Restriction of publicity in disability cases.

- (1) This section applies to proceedings on a complaint under [^{F45}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 [^{F46}employment tribunal] hearing the complaint.
- (2) [^{F46}Employment tribunal] procedure regulations may include provision in relation to proceedings to which this section applies for—
 - (a) enabling an [^{F46}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

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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 ^{M8}Broadcasting Act 1990,

“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

F45 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](#))

F46 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

M8 [1990 c. 42.](#)

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