



# Employment Tribunals Act 1996

## 1996 CHAPTER 17

### PART II

#### THE EMPLOYMENT APPEAL TRIBUNAL

##### *Introductory*

#### **20 The Appeal Tribunal.**

- (1) The Employment Appeal Tribunal ("the Appeal Tribunal") shall continue in existence.
- (2) The Appeal Tribunal shall have a central office in London but may sit at any time and in any place in Great Britain.
- (3) The Appeal Tribunal shall be a superior court of record and shall have an official seal which shall be judicially noticed.
- [<sup>F1</sup>(4) Subsection (2) is subject to regulation 34 of the Transnational Information and Consultation of Employees Regulations [<sup>F2</sup>1999,][<sup>F3</sup> regulation 46(1) of the European Public Limited-Liability Company Regulations 2004][<sup>F4</sup>and regulation 36(1) of the Information and Consultation of Employees Regulations 2004] .]

#### **Textual Amendments**

- F1** S. 20(4) inserted (15.1.2000) by [S.I. 1999/3323](#), [reg. 35\(2\)](#)
- F2** Words in s. 20(4) substituted (6. 4 2005) by [The Information and Consultation of Employees Regulations 2004 \(S.I. 2004/3426\)](#), [reg. 36\(2\)\(a\)](#) (with [reg. 3](#))
- F3** Words in s. 20(4) inserted (8.10.2004) by [The European Public Limited-Liability Company Regulations 2004 \(S.I. 2004/2326\)](#), [reg. 48\(2\)](#)
- F4** Words in s. 20(4) inserted (6. 4 2005) by [The Information and Consultation of Employees Regulations 2004 \(S.I. 2004/3426\)](#), [reg. 36\(2\)\(b\)](#) (with [reg. 3](#))

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## *Jurisdiction*

### **21 Jurisdiction of Appeal Tribunal.**

(1) An appeal lies to the Appeal Tribunal on any question of law arising from any decision of, or arising in any proceedings before, an [<sup>F5</sup>employment tribunal] under or by virtue of—

- (a) <sup>M1</sup> the Equal Pay Act 1970,
- (b) <sup>M2</sup> the Sex Discrimination Act 1975,
- (c) <sup>M3</sup> the Race Relations Act 1976,
- (d) <sup>M4</sup> the Trade Union and Labour Relations (Consolidation) Act 1992,
- (e) <sup>M5</sup> the Disability Discrimination Act 1995, <sup>F6</sup> . . .
- (f) <sup>M6</sup> the Employment Rights Act 1996 [<sup>F7F8</sup> . . .

[<sup>F9</sup> . . . . . ]

(g) this Act,

- (ga) the National Minimum Wage Act 1998,
- (gb) the Employment Relations Act 1999,]

[ the Working Time Regulations 1998, <sup>F13</sup> . . .

(h) the Transnational Information and Consultation of Employees Regulations 1999.]

[<sup>F14F15</sup> . . .

- (j) the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000.]

[<sup>F16F17</sup> . . .

(k) the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002.][<sup>F18F19</sup> . . .

(l) the Employment Equality (Sexual Orientation) Regulations 2003][<sup>F20F21</sup> . . .

(m) the Employment Equality (Religion or Belief) Regulations 2003]

(n) [<sup>F22</sup>the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.][<sup>F23F24</sup> . . .

(o) the European Public Limited-Liability Company Regulations 2004.]

(p) [<sup>F25F26</sup>the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.][<sup>F27</sup> or

(q) the Information and Consultation of Employees Regulations 2004.]

(2) No appeal shall lie except to the Appeal Tribunal from any decision of an [<sup>F5</sup>employment tribunal] under or by virtue of the Acts listed [<sup>F28</sup>or the Regulations referred to] in subsection (1).

(3) Subsection (1) does not affect any provision contained in, or made under, any Act which provides for an appeal to lie to the Appeal Tribunal (whether from an [<sup>F5</sup>employment tribunal], the Certification Officer or any other person or body) otherwise than on a question to which that subsection applies.

[ The Appeal Tribunal also has any jurisdiction in respect of matters other than appeals <sup>F29</sup>(4) which is conferred on it by or under—

- (a) the Trade Union and Labour Relations (Consolidation) Act 1992,

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- (b) this Act, or
- (c) any other Act.]]

### Textual Amendments

- F5** Words in s. 21 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**
- F6** Word in s. 21(1)(e) repealed (1.8.1998) by 1998 c. 8, s. 15, **Sch. 2**; S.I. 1998/1658, art. 2(1), **Sch. 1**
- F7** S. 21(1)(g) and word “or” immediately preceding inserted (*retrospectively*) by 1998 c. 8, ss. 15, 17(3), **Sch. 1 para. 17(1)(2)**
- F8** Word at the end of s. 21(1)(f) repealed (1.11.1998) by 1998 c. 39, s. 53, **Sch. 3** (with s. 36); S.I. 1998/2574, art. 2(1), **Sch. 1**
- F9** S. 21(1)(ff) inserted (1.11.1998) by 1998 c. 39, s. 29 (with s. 36); S.I. 1998/2574, art. 2(1), **Sch. 1**
- F10** S. 21(1)(fg) inserted (5.10.1999) by 1999 c. 10, ss. 7, 19(4), 20(2), Sch. 3 para. 5, Sch. 6 and repealed (6.4.2003) by 2002 c. 21, ss. 60, 61, Sch. 6; S.I. 2003/962, art. 2(3)(e), Sch. 1 (subject to arts. 3, 4)
- F11** S. 21(1)(g)(ga)(gb) substituted (1.10.2004) for s. 21(1)(ff)(g) by Employment Relations Act 2004 (c. 24), ss. 38, 59; S.I. 2004/2566, art. 3(a)
- F12** S. 21(1)(h)(i) substituted (15.1.2000) for words at the end of subsection (1) by S.I. 1999/3323, **reg. 35(3)**
- F13** Word at the end of s. 21(1)(h) omitted (1.7.2000) by virtue of S.I. 2000/1551, **reg. 10, Sch. para. 1(b)(i)**
- F14** S. 21(1)(j) and word “or” immediately preceding it inserted (1.7.2000) by S.I. 2000/1551, **reg. 10, Sch. para. 1(b)(ii)**
- F15** Word at the end of s. 21(1)(i) omitted (1.10.2002) by virtue of S.I. 2002/2034, **reg. 11 Sch. 2 para. 2(b)(i)**
- F16** S. 21(1)(k) inserted (1.10.2002) by S.I. 2002/2034, **reg. 11 Sch. 2 para. 2(b)(ii)**
- F17** Word at the end of s. 21(1)(j) omitted (1.12.2003) by virtue of The Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661), **reg. 39, Sch. 5 para. 1(b)(i)**
- F18** S. 21(1)(l) and preceding word inserted (1.12.2003) by The Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661), **reg. 39, Sch. 5 para. 1(b)(ii)**
- F19** Word at the end of s. 21(1)(k) omitted (2.12.2003) by virtue of The Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660), **reg. 39(2), Sch. 5 para. 1(b)(i)**
- F20** S. 21(1)(m) and preceding word inserted (2.12.2003) by The Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660), **reg. 39(2), Sch. 5 para. 1(b)(ii)**
- F21** Word at the end of s. 21(1)(l) omitted (24.12.2003) by virtue of The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (S.I. 2003/3049), **reg. 20, Sch. 2 para. 2(3)**
- F22** S. 21(1)(n) inserted (24.12.2003) by The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (S.I. 2003/3049), **reg. 20, Sch. 2 para. 2(3)**
- F23** S. 21(1)(o) and preceding word inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), **reg. 49**
- F24** Word at the end of s. 21(1)(n) repealed (6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), **reg. 37(a)** (with reg. 3)
- F25** S. 21(1)(o) inserted (16.8.2004) by The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (S.I. 2004/1713), **reg. 22, Sch. 2 para.1(3)**
- F26** S. 21(1)(o) renumbered (6.4.2005) as s. 21(1)(p) by virtue of The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), **reg. 37(b)** (with reg. 3)
- F27** S. 21(1)(q) and preceding word inserted (6.4.2004) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), **reg. 37(c)** (with reg. 3)
- F28** Words in s. 21(2) inserted (1.10.1998) by S.I. 1998/1833, **reg. 34(b)**
- F29** S. 21(4) inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 17(3)**; S.I. 1998/1658, art. 2(1), **Sch. 1**

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#### **Marginal Citations**

- M1** 1970 c.41
- M2** 1975 c.65
- M3** 1976 c.74
- M4** 1992 c.52
- M5** 1995 c.50
- M6** 1996 c.18

### *Membership etc.*

## **22 Membership of Appeal Tribunal.**

- (1) The Appeal Tribunal shall consist of—
  - (a) such number of judges as may be nominated from time to time by the Lord Chancellor from the judges (other than the Lord Chancellor) of the High Court and the Court of Appeal,
  - (b) at least one judge of the Court of Session nominated from time to time by the Lord President of the Court of Session, and
  - (c) such number of other members as may be appointed from time to time by Her Majesty on the joint recommendation of the Lord Chancellor and the Secretary of State (“appointed members”).
- (2) The appointed members shall be persons who appear to the Lord Chancellor and the Secretary of State to have special knowledge or experience of industrial relations either—
  - (a) as representatives of employers, or
  - (b) as representatives of workers (within the meaning of the <sup>M7</sup>Trade Union and Labour Relations (Consolidation) Act 1992).
- (3) The Lord Chancellor shall, after consultation with the Lord President of the Court of Session, appoint one of the judges nominated under subsection (1) to be the President of the Appeal Tribunal.
- (4) No judge shall be nominated a member of the Appeal Tribunal except with his consent.

#### **Marginal Citations**

- M7** 1992 c. 52.

## **23 Temporary membership.**

- (1) At any time when—
  - (a) the office of President of the Appeal Tribunal is vacant, or
  - (b) the person holding that office is temporarily absent or otherwise unable to act as the President of the Appeal Tribunal,
 the Lord Chancellor may nominate another judge nominated under section 22(1)(a) to act temporarily in his place.

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- (2) At any time when a judge of the Appeal Tribunal nominated under paragraph (a) or (b) of subsection (1) of section 22 is temporarily absent or otherwise unable to act as a member of the Appeal Tribunal—
  - (a) in the case of a judge nominated under paragraph (a) of that subsection, the Lord Chancellor may nominate another judge who is qualified to be nominated under that paragraph to act temporarily in his place, and
  - (b) in the case of a judge nominated under paragraph (b) of that subsection, the Lord President of the Court of Session may nominate another judge who is qualified to be nominated under that paragraph to act temporarily in his place.
- (3) At any time when an appointed member of the Appeal Tribunal is temporarily absent or otherwise unable to act as a member of the Appeal Tribunal, the Lord Chancellor and the Secretary of State may jointly appoint a person appearing to them to have the qualifications for appointment as an appointed member to act temporarily in his place.
- (4) A person nominated or appointed to act temporarily in place of the President or any other member of the Appeal Tribunal, when so acting, has all the functions of the person in whose place he acts.
- (5) No judge shall be nominated to act temporarily as a member of the Appeal Tribunal except with his consent.

## 24 Temporary additional judicial membership.

- (1) At any time when it appears to the Lord Chancellor that it is expedient to do so in order to facilitate in England and Wales the disposal of business in the Appeal Tribunal, he may appoint a qualified person to be a temporary additional judge of the Appeal Tribunal during such period or on such occasions as the Lord Chancellor thinks fit.
- (2) In subsection (1) “qualified person” means a person who—
  - (a) is qualified for appointment as a judge of the High Court under section 10 of the <sup>M8</sup>Supreme Court Act 1981, or
  - (b) has held office as a judge of the High Court or the Court of Appeal.
- (3) A person appointed to be a temporary additional judge of the Appeal Tribunal has all the functions of a judge nominated under section 22(1)(a).

### Marginal Citations

M8 1981 c. 54.

VALID FROM 03/11/2008

### <sup>F30</sup>24A Training etc. of members of Appeal Tribunal

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 judges, and other members, of the Appeal Tribunal (in their capacities as members of the Appeal Tribunal).

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### Textual Amendments

**F30** Ss. 24A, 24B inserted (3.11.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, [Sch. 8 para. 44](#); [S.I. 2008/2696](#), [art. 5\(c\)\(i\)](#) (with [art. 3](#))

VALID FROM 03/11/2008

### 24B Oaths

- (1) Subsection (2) applies to a person (“the appointee”)—
  - (a) who is appointed under section 22(1)(c) or 23(3), or
  - (b) who is appointed under section 24(1A) and—
    - (i) falls when appointed within paragraph (a), but not paragraph (b), of section 24(2), and
    - (ii) 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 member of the Appeal Tribunal 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

**F30** Ss. 24A, 24B inserted (3.11.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, [Sch. 8 para. 44](#); [S.I. 2008/2696](#), [art. 5\(c\)\(i\)](#) (with [art. 3](#))

### 25 Tenure of appointed members.

- (1) Subject to subsections (2) to (4), an appointed member shall hold and vacate office in accordance with the terms of his appointment.

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- (2) An appointed member—
- (a) may at any time resign his membership by notice in writing addressed to the Lord Chancellor and the Secretary of State, and
  - (b) shall vacate his office on the day on which he attains the age of seventy.
- (3) Subsection (2)(b) is subject to section 26(4) to (6) of the <sup>M9</sup>Judicial Pensions and Retirement Act 1993 (Lord Chancellor’s power to authorise continuance of office up to the age of seventy-five).
- (4) If the Lord Chancellor, after consultation with the Secretary of State, is satisfied that an appointed member—
- (a) has been absent from sittings of the Appeal Tribunal for a period longer than six consecutive months without the permission of the President of the Appeal Tribunal,
  - (b) has become bankrupt or made an arrangement with his creditors, or has had his estate sequestrated or made a trust deed for behoof of his creditors or a composition contract,
  - (c) is incapacitated by physical or mental illness, or
  - (d) is otherwise unable or unfit to discharge the functions of a member,
- the Lord Chancellor may declare his office as a member to be vacant and shall notify the declaration in such manner as the Lord Chancellor thinks fit; and when the Lord Chancellor does so, the office becomes vacant.

#### Marginal Citations

M9 1993 c. 8.

## 26 Staff.

The Secretary of State may appoint such officers and servants of the Appeal Tribunal as he may determine, subject to the approval of the Minister for the Civil Service as to numbers and terms and conditions of service.

## 27 Remuneration, pensions and allowances.

- (1) The Secretary of State shall pay—
- (a) the appointed members,
  - (b) any person appointed to act temporarily in the place of an appointed member, and
  - (c) the officers and servants of the Appeal Tribunal,
- such remuneration and such travelling and other allowances as he may, with the relevant approval, determine; and for this purpose the relevant approval is that of the Treasury in the case of persons within paragraph (a) or (b) and the Minister for the Civil Service in the case of persons within paragraph (c).
- (2) A person appointed to be a temporary additional judge of the Appeal Tribunal shall be paid such remuneration and allowances as the Lord Chancellor may, with the approval of the Treasury, determine.



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- (3) If the Secretary of State determines, with the approval of the Treasury, that this subsection applies in the case of an appointed member, the Secretary of State shall—
- (a) pay such pension, allowance or gratuity to or in respect of that person on his retirement or death, or
  - (b) make to the member such payments towards the provision of a pension, allowance or gratuity for his retirement or death,
- as the Secretary of State may, with the approval of the Treasury, determine.
- (4) Where—
- (a) a person ceases to be an appointed member otherwise than on his retirement or death, and
  - (b) it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation,
- the Secretary of State may make to him a payment of such amount as the Secretary of State may, with the approval of the Treasury, determine.

## 28 Composition of Appeal Tribunal.

- (1) The Appeal Tribunal may sit, in accordance with directions given by the President of the Appeal Tribunal, either as a single tribunal or in two or more divisions concurrently.
- (2) Subject to subsections (3) to (5), proceedings before the Appeal Tribunal shall be heard by a judge and either two or four appointed members, so that in either case there is an equal number—
- (a) of persons whose knowledge or experience of industrial relations is as representatives of employers, and
  - (b) of persons whose knowledge or experience of industrial relations is as representatives of workers.
- (3) With the consent of the parties, proceedings before the Appeal Tribunal may be heard by a judge and one appointed member or by a judge and three appointed members.
- (4) Proceedings on an appeal on a question arising from any decision of, or arising in any proceedings before, an [<sup>F31</sup>employment tribunal] consisting of the person mentioned in section 4(1)(a) alone shall be heard by a judge alone unless a judge directs that the proceedings shall be heard in accordance with subsections (2) and (3).

<sup>F32</sup>(5) . . . . .

### Textual Amendments

**F31** Words in s. 28(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

**F32** S. 28(5) repealed (16.7.2001) by 1999 c. 26, ss. 41, 44, Sch. 8 para. 4, Sch. 9(12); S.I. 2001/1187, art. 3(b), Sch. (as amended by S.I. 2001/1461, art. 2(2))



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## Procedure

### 29 Conduct of hearings.

- (1) A person may appear before the Appeal Tribunal in person or be represented by—
  - (a) counsel or a solicitor,
  - (b) a representative of a trade union or an employers' association, or
  - (c) any other person whom he desires to represent him.
- (2) The Appeal Tribunal has in relation to—
  - (a) the attendance and examination of witnesses,
  - (b) the production and inspection of documents, and
  - (c) all other matters incidental to its jurisdiction,the same powers, rights, privileges and authority (in England and Wales) as the High Court and (in Scotland) as the Court of Session.

VALID FROM 03/11/2008

#### <sup>F33</sup>29A Practice directions

- (1) Directions about the procedure of the Appeal Tribunal may be given—
  - (a) by the Senior President of Tribunals, or
  - (b) by the President of the Appeal Tribunal.
- (2) A power under subsection (1) includes—
  - (a) power to vary or revoke directions given in exercise of the power, and
  - (b) power to make different provision for different purposes.
- (3) Directions under subsection (1)(a) may not be given without the approval of the Lord Chancellor.
- (4) Directions under subsection (1)(b) may not be given without the approval of—
  - (a) the Senior President of Tribunals, and
  - (b) the Lord Chancellor.
- (5) Subsection (1) does not prejudice any power apart from that subsection to give directions about the procedure of the Appeal Tribunal.
- (6) Directions may not be given in exercise of any such power as is mentioned in subsection (5) without the approval of—
  - (a) the Senior President of Tribunals, and
  - (b) the Lord Chancellor.
- (7) Subsections (3), (4)(b) and (6)(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 the Appeal Tribunal.
- (8) Subsections (3), (4)(b) and (6)(b) do not apply to directions to the extent that they consist of criteria for determining which members of the Appeal Tribunal may be

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chosen to decide particular categories of matter; but the directions may, to that extent, be given only after consulting the Lord Chancellor.

- (9) Subsections (4) and (6) do not apply to directions given in a particular case for the purposes of that case only.
- (10) Subsection (6) does not apply to directions under section 28(1).]

#### Textual Amendments

**F33** S. 29A inserted (3.11.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 8 para. 47; S.I. 2008/2696, art. 5(c)(i) (with art. 3)

### 30 Appeal Tribunal procedure rules.

- (1) The Lord Chancellor, after consultation with the Lord President of the Court of Session, shall make rules (“Appeal Tribunal procedure rules”) with respect to proceedings before the Appeal Tribunal.
- (2) Appeal Tribunal procedure rules may, in particular, include provision—
- (a) with respect to the manner in which, and the time within which, an appeal may be brought,
  - (b) with respect to the manner in which [<sup>F34</sup>or complaint] to the Appeal Tribunal may be made,
  - (c) for requiring persons to attend to give evidence and produce documents and for authorising the administration of oaths to witnesses,
  - (d) for requiring or enabling the Appeal Tribunal to sit in private in circumstances in which an [<sup>F35</sup>employment tribunal] is required or empowered to sit in private by virtue of [<sup>F36</sup>section 10A] of this Act,
  - (e) <sup>F37</sup> .....
  - (f) for interlocutory matters arising on any appeal or application to the Appeal Tribunal to be dealt with otherwise than in accordance with section 28(2) to (5) of this Act.
- [<sup>F38</sup>(2A) Appeal Tribunal procedure rules may make provision of a kind which may be made by employment tribunal procedure regulations under section 10(2), (5), (6) or (7).
- (2B) For the purposes of subsection (2A)—
- (a) the reference in section 10(2) to section 4 shall be treated as a reference to section 28, and
  - (b) the reference in section 10(4) to the President or a Regional Chairman shall be treated as a reference to a judge of the Appeal Tribunal.
- (2C) Section 10B shall have effect in relation to a direction to or determination of the Appeal Tribunal as it has effect in relation to a direction to or determination of an employment tribunal.]
- (3) Subject to Appeal Tribunal procedure rules, the Appeal Tribunal has power to regulate its own procedure.

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### Textual Amendments

- F34** Words in s. 30(2)(b) substituted (15.1.2000) by S.I. 1999/3323, **reg. 35(4)**
- F35** Words in s. 30 (2)(d) 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**
- F36** Words in s. 30(2)(d) substituted (16.7.2001) by 1999 c. 26, ss. 41, 45(1), **Sch. 8 para. 5**; S.I. 2001/1187, **art. 3(b), Sch.** (as amended by S.I. 2001/1461, **art. 2(2)**)
- F37** S. 30(2)(e) omitted (31.12.2004) by virtue of Employment Relations Act 2004 (c. 24), ss. 57, 59(2)-(4), **Sch. 1 para. 26**; and the said s. 30(2)(e) repealed (6.4.2005) by {Sch. 2} of the said Employment Relations Act 2004 (c. 24); S.I. 2004/3342, **art. 4(b)** (with arts. 5-12); S.I. 2005/872, **art. 4**, Sch (with arts. 5-21)
- F38** S. 30(2A)-(2C) inserted (16.7.2001) by 1999 c. 26, ss. 41, 45(1), **Sch. 8 para. 5**; S.I. 2001/1187, **art. 3(b), Sch.** (as amended by S.I. 2001/1461, **art. 2(2)**)

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

- (1) Appeal Tribunal procedure rules may, as respects proceedings to which this section applies, include provision—
- 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
  - for cases involving allegations of sexual misconduct, enabling the Appeal Tribunal, on the application of any party to the 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 Appeal Tribunal.
- (2) This section applies to—
- proceedings on an appeal against a decision of an [<sup>F39</sup>employment tribunal] to make, or not to make, a restricted reporting order, and
  - proceedings on an appeal against any interlocutory decision of an [<sup>F39</sup>employment tribunal] in proceedings in which the [<sup>F39</sup>employment tribunal] has made a restricted reporting order which it has not revoked.
- (3) If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order—
- in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
  - in the case of publication in any other form, the person publishing the matter, and
  - in the case of matter included in a relevant programme—
    - any body corporate engaged in providing the service in which the programme is included, and
    - 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

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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) “Restricted reporting order” means—

- (a) in subsections (1) and (3), an order—
  - (i) made in exercise of a power conferred by rules made by virtue of this section, and
  - (ii) 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
- (b) in subsection (2), an order which is a restricted reporting order for the purposes of section 11.

(8) 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>M10</sup>Sexual Offences (Amendment) Act 1992,

“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>M11</sup>Sexual Offences (Amendment) Act 1976, the Sexual Offences (Amendment) Act 1992 or section 274(2) of the <sup>M12</sup>Criminal Procedure (Scotland) Act 1995 applies (offences under the <sup>M13</sup>Sexual Offences Act 1956, Part I of the <sup>M14</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

**F39** Words in s. 31(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

#### Marginal Citations

**M10** 1992 c. 34.

**M11** 1976 c. 82.

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**M12** 1995 c. 46.

**M13** 1956 c. 69.

**M14** 1995 c. 39.

## 32 Restriction of publicity in disability cases.

- (1) This section applies to proceedings—
  - (a) on an appeal against a decision of an [F40 employment tribunal] to make, or not to make, a restricted reporting order, or
  - (b) on an appeal against any interlocutory decision of an [F40 employment tribunal] in proceedings in which the [F40 employment tribunal] has made a restricted reporting order which it has not revoked.
- (2) Appeal Tribunal procedure rules may, as respects proceedings to which this section applies, include provision for—
  - (a) enabling the Appeal 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 Appeal Tribunal, and
  - (b) where a restricted reporting order is made in relation to an appeal which is being dealt with by the Appeal Tribunal together with any other proceedings, enabling the Appeal Tribunal to direct that the order is to apply also in relation to those other proceedings or such part of them as the Appeal 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.

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- (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) “Restricted reporting order” means—
- (a) in subsection (1), an order which is a restricted reporting order for the purposes of section 12, and
  - (b) in subsections (2) and (3), an order—
    - (i) made in exercise of a power conferred by rules made by virtue of this section, and
    - (ii) 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.
- (8) In this section—
- “complainant” means the person who made the complaint to which the proceedings before the Appeal Tribunal relate,
- “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 rules made by virtue of this section,
- “relevant programme” means a programme included in a programme service, within the meaning of the<sup>M15</sup>Broadcasting Act 1990, 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

**F40** Words in s. 32(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

#### Commencement Information

**II** S. 32 wholly in force at 22.8.1996 with effect as mentioned in Sch. 2 Pt. II para. 7(7)(8) and S.I. 1996/3150, art. 2

#### Marginal Citations

**M15** 1990 c. 42.

### 33 Restriction of vexatious proceedings.

- (1) If, on an application made by the Attorney General or the Lord Advocate under this section, the Appeal Tribunal is satisfied that a person has habitually and persistently and without any reasonable ground—
- (a) instituted vexatious proceedings, whether [<sup>F41</sup>before the Certification Officer,] in an [<sup>F42</sup>employment tribunal] or before the Appeal Tribunal, and whether against the same person or against different persons, or
  - (b) made vexatious applications in any proceedings, whether [<sup>F43</sup>before the Certification Officer,] in an [<sup>F42</sup>employment tribunal] or before the Appeal Tribunal,



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the Appeal Tribunal may, after hearing the person or giving him an opportunity of being heard, make a restriction of proceedings order.

- (2) A “restriction of proceedings order” is an order that—
- (a) no proceedings shall without the leave of the Appeal Tribunal be instituted [F44]before the Certification Officer,] in any [F42]employment tribunal] or before the Appeal Tribunal by the person against whom the order is made,
  - (b) any proceedings instituted by him [F45]before the Certification Officer,] in any [F42]employment tribunal] or before the Appeal Tribunal before the making of the order shall not be continued by him without the leave of the Appeal Tribunal, and
  - (c) no application (other than one for leave under this section) is to be made by him in any proceedings [F46]before the Certification Officer,] in any [F42]employment tribunal] or before the Appeal Tribunal without the leave of the Appeal Tribunal.
- (3) A restriction of proceedings order may provide that it is to cease to have effect at the end of a specified period, but otherwise it remains in force indefinitely.
- (4) Leave for the institution or continuance of, or for the making of an application in, any proceedings [F47]before the Certification Officer,] in an [F42]employment tribunal] or before the Appeal Tribunal by a person who is the subject of a restriction of proceedings order shall not be given unless the Appeal Tribunal is satisfied—
- (a) that the proceedings or application are not an abuse of the [F48]process] , and
  - (b) that there are reasonable grounds for the proceedings or application.
- (5) A copy of a restriction of proceedings order shall be published in the London Gazette and the Edinburgh Gazette.

#### Textual Amendments

- F41** Words in s. 33(1)(a) inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 49(2)**, 59; S. I. 2005/872, **art. 4**, Sch. (with arts. 5-21)
- F42** Words in s. 33(1)(2)(b)(c)(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**
- F43** Words in s. 33(1)(b) inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 49(3)**, 59; S. I. 2005/872, **art. 4**, Sch. (with arts. 5-21)
- F44** Words in s. 33(2)(a) inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 49(4)**, 59; S. I. 2005/872, **art. 4**, Sch. (with arts. 5-21)
- F45** Words in s. 33(2)(b) inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 49(5)**, 59; S. I. 2005/872, **art. 4**, Sch. (with arts. 5-21)
- F46** Words in s. 33(2)(c) inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 49(6)**, 59; S. I. 2005/872, **art. 4**, Sch. (with arts. 5-21)
- F47** Words in s. 33(4) inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 49(7)(a)**, 59; S. I. 2005/872, **art. 4**, Sch. (with arts. 5-21)
- F48** Words in s. 33(4) substituted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 49(7)(b)**, 59; S. I. 2005/872, **art. 4**, Sch. (with arts. 5-21)

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

- C1** [S. 33](#): transfer of functions (6.5.1999) by [S.I. 1999/901](#), **arts. 4-8**, **Sch.**



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**[<sup>F49</sup>34 Costs and expenses**

- (1) Appeal Tribunal procedure rules may include provision for the award of costs or expenses.
- (2) Rules under subsection (1) may include provision authorising the Appeal Tribunal to have regard to a person’s ability to pay when considering the making of an award against him under such rules.
- (3) Appeal Tribunal procedure rules may include provision for authorising the Appeal 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.
- (4) Appeal Tribunal procedure rules may also include provision for taxing or otherwise settling the costs or expenses referred to in subsection (1) or (3)(b) (and, in particular in England and Wales, for enabling the amount of such costs to be assessed by way of detailed assessment in the High Court).]

**Textual Amendments**  
**F49** S. 34 substituted (9.7.2004) by 2002 c. 22, ss. 23, 55(2); S.I. 2004/1717, art. 2(1)

*Decisions and further appeals*

**35 Powers of Appeal Tribunal.**

- (1) For the purpose of disposing of an appeal, the Appeal Tribunal may—
  - (a) exercise any of the powers of the body or officer from whom the appeal was brought, or
  - (b) remit the case to that body or officer.
- (2) Any decision or award of the Appeal Tribunal on an appeal has the same effect, and may be enforced in the same manner, as a decision or award of the body or officer from whom the appeal was brought.

**36 Enforcement of decisions etc.**

- (1) <sup>F50</sup> .....
- (2) <sup>F50</sup> .....
- (3) <sup>F50</sup> .....
- (4) No person shall be punished for contempt of the Appeal Tribunal except by, or with the consent of, a judge.
- (5) A magistrates’ court shall not remit the whole or part of a fine imposed by the Appeal Tribunal unless it has the consent of a judge who is a member of the Appeal Tribunal.

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### Textual Amendments

**F50** S. 36(1)-(3) omitted (31.12.2004) by virtue of [Employment Relations Act 2004 \(c. 24\)](#), ss. 57, 59(2)-(4), [Sch. 1 para. 27](#); and the said s. 36(1)-(3) repealed (6.4.2005) by {Sch. 2} of the said [Employment Relations Act 2004 \(c. 24\)](#); S.I. 2004/3342, [art. 4\(b\)](#) (with arts. 5-12); S.I. 2005/872, [art. 4](#), Sch (with arts. 5-21)

## 37 Appeals from Appeal Tribunal.

- (1) Subject to subsection (3), an appeal on any question of law lies from any decision or order of the Appeal Tribunal to the relevant appeal court with the leave of the Appeal Tribunal or of the relevant appeal court.
- (2) In subsection (1) the “relevant appeal court” means—
  - (a) in the case of proceedings in England and Wales, the Court of Appeal, and
  - (b) in the case of proceedings in Scotland, the Court of Session.
- (3) No appeal lies from a decision of the Appeal Tribunal refusing leave for the institution or continuance of, or for the making of an application in, proceedings by a person who is the subject of a restriction of proceedings order made under section 33.
- (4) This section is without prejudice to section 13 of the <sup>M16</sup>Administration of Justice Act 1960 (appeal in case of contempt of court).

### Marginal Citations

**M16** 1960 c. 65.

**Status:**

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