



# Employment Tribunals Act 1996

## 1996 CHAPTER 17

### PART II

#### THE EMPLOYMENT APPEAL TRIBUNAL

##### *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.

#### **[<sup>F1</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.

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- (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 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**

**F1** 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>F2</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>F3</sup>employment tribunal] is required or empowered to sit in private by virtue of [<sup>F4</sup>section 10A] of this Act,
  - (e) <sup>F5</sup> .....

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- (f) for interlocutory matters arising on any appeal or application to the Appeal Tribunal to be dealt with [F6 by an officer of the Appeal Tribunal ] .
- [F7(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 [F8 Employment Judge ] 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 [F9 and directions under section 28(1) or 29A(1) ] , the Appeal Tribunal has power to regulate its own procedure.

#### Textual Amendments

- F2 Words in s. 30(2)(b) substituted (15.1.2000) by S.I. 1999/3323, **reg. 35(4)**
- F3 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**
- F4 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)**)
- F5 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)
- F6 Words in s. 30(2)(f) substituted (25.6.2013) by **Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 12(3), 103(2)** (with s. 24(2))
- F7 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)**)
- F8 Words in s. 30(2B)(b) 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)**
- F9 Words in s. 30(3) inserted (3.11.2008) by **Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 8 para. 48**; S.I. 2008/2696, **art. 5(c)(i)** (with art. 3)

### 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—
- (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 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—

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- (a) proceedings on an appeal against a decision of an [F10employment tribunal] to make, or not to make, a restricted reporting order, and
  - (b) proceedings on an appeal against any interlocutory decision of an [F10employment tribunal] in proceedings in which the [F10employment 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—
- (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) “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>M1</sup>Sexual Offences (Amendment) Act 1992,

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“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>M2</sup>Sexual Offences (Amendment) Act 1976, the Sexual Offences (Amendment) Act 1992 or section 274(2) of the <sup>M3</sup>Criminal Procedure (Scotland) Act 1995 applies (offences under the <sup>M4</sup>Sexual Offences Act 1956, Part I of the <sup>M5</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

**F10** 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

**M1** 1992 c. 34.

**M2** 1976 c. 82.

**M3** 1995 c. 46.

**M4** 1956 c. 69.

**M5** 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 [<sup>F11</sup>employment tribunal] to make, or not to make, a restricted reporting order, or
  - (b) on an appeal against any interlocutory decision of an [<sup>F11</sup>employment tribunal] in proceedings in which the [<sup>F11</sup>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,

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- (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) “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>M6</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.

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#### Textual Amendments

**F11** 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

**M6** 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—
- instituted vexatious proceedings, whether [<sup>F12</sup>before the Certification Officer,] in an [<sup>F13</sup>employment tribunal] or before the Appeal Tribunal, and whether against the same person or against different persons, or
  - made vexatious applications in any proceedings, whether [<sup>F14</sup>before the Certification Officer,] in an [<sup>F13</sup>employment tribunal] or before the Appeal Tribunal,
- 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—
- no proceedings shall without the leave of the Appeal Tribunal be instituted [<sup>F15</sup>before the Certification Officer,] in any [<sup>F13</sup>employment tribunal] or before the Appeal Tribunal by the person against whom the order is made,
  - any proceedings instituted by him [<sup>F16</sup>before the Certification Officer,] in any [<sup>F13</sup>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
  - no application (other than one for leave under this section) is to be made by him in any proceedings [<sup>F17</sup>before the Certification Officer,] in any [<sup>F13</sup>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 [<sup>F18</sup>before the Certification Officer,] in an [<sup>F13</sup>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—
- that the proceedings or application are not an abuse of the [<sup>F19</sup>process] , and
  - 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.

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### Textual Amendments

- F12** 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**)
- F13** 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**
- F14** 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**)
- F15** 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**)
- F16** 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**)
- F17** 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**)
- F18** 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**)
- F19** 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.**

## [<sup>F20</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

- F20** S. 34 substituted (9.7.2004) by 2002 c. 22, **ss. 23, 55(2)**; S.I. 2004/1717, **art. 2(1)**



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