



Equality Act 2010

2010 CHAPTER 15

PART 9

ENFORCEMENT

CHAPTER 1

INTRODUCTORY

113 Proceedings

- (1) Proceedings relating to a contravention of this Act must be brought in accordance with this Part.
- (2) Subsection (1) does not apply to proceedings under Part 1 of the [Equality Act 2006](#).
- (3) Subsection (1) does not prevent—
 - (a) a claim for judicial review;
 - (b) proceedings under the Immigration Acts;
 - (c) proceedings under the [Special Immigration Appeals Commission Act 1997](#);
 - (d) in Scotland, an application to the supervisory jurisdiction of the Court of Session.
- (4) This section is subject to any express provision of this Act conferring jurisdiction on a court or tribunal.
- (5) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
- (6) Chapters 2 and 3 do not apply to proceedings relating to an equality clause or rule except in so far as Chapter 4 provides for that.
- (7) This section does not apply to—
 - (a) proceedings for an offence under this Act;

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- (b) proceedings relating to a penalty under Part 12 (disabled persons: transport).

CHAPTER 2

CIVIL COURTS

114 Jurisdiction

- (1) A county court or, in Scotland, the sheriff has jurisdiction to determine a claim relating to—
 - (a) a contravention of Part 3 (services and public functions);
 - (b) a contravention of Part 4 (premises);
 - (c) a contravention of Part 6 (education);
 - (d) a contravention of Part 7 (associations);
 - (e) a contravention of section 108, 111 or 112 that relates to Part 3, 4, 6 or 7.
- (2) Subsection (1)(a) does not apply to a claim within section 115.
- (3) Subsection (1)(c) does not apply to a claim within section 116.
- (4) Subsection (1)(d) does not apply to a contravention of section 106.
- (5) For the purposes of proceedings on a claim within subsection (1)(a)—
 - (a) a decision in proceedings on a claim mentioned in section 115(1) that an act is a contravention of Part 3 is binding;
 - (b) it does not matter whether the act occurs outside the United Kingdom.
- (6) The county court or sheriff—
 - (a) must not grant an interim injunction or interdict unless satisfied that no criminal matter would be prejudiced by doing so;
 - (b) must grant an application to stay or sist proceedings under subsection (1) on grounds of prejudice to a criminal matter unless satisfied the matter will not be prejudiced.
- (7) In proceedings in England and Wales on a claim within subsection (1), the power under section 63(1) of the [County Courts Act 1984](#) (appointment of assessors) must be exercised unless the judge is satisfied that there are good reasons for not doing so.
- (8) In proceedings in Scotland on a claim within subsection (1), the power under rule 44.3 of Schedule 1 to the [Sheriff Court \(Scotland\) Act 1907](#) (appointment of assessors) must be exercised unless the sheriff is satisfied that there are good reasons for not doing so.
- (9) The remuneration of an assessor appointed by virtue of subsection (8) is to be at a rate determined by the Lord President of the Court of Session.

115 Immigration cases

- (1) A claim is within this section if it relates to the act of an immigration authority in taking a relevant decision and—
 - (a) the question whether the act is a contravention of Part 3 has been or could be raised on an appeal which is pending, or could be brought, under the immigration provisions, or

- (b) it has been decided on an appeal under those provisions that the act is not a contravention of Part 3.
- (2) The relevant decision is not—
 - (a) subject to challenge in proceedings on a claim within section 114(1)(a), or
 - (b) affected by the decision of a court in such proceedings.
- (3) For the purposes of subsection (1)(a) a power to grant permission to appeal out of time must be ignored.
- (4) Each of the following is an immigration authority—
 - (a) the Secretary of State;
 - (b) an immigration officer;
 - (c) a person responsible for the grant or refusal of entry clearance (within the meaning of section 33(1) of the [Immigration Act 1971](#)).
- (5) The immigration provisions are—
 - (a) the [Special Immigration Appeals Commission Act 1997](#), or
 - (b) Part 5 of the [Nationality, Immigration and Asylum Act 2002](#).
- (6) A relevant decision is—
 - (a) a decision under the Immigration Acts relating to the entitlement of a person to enter or remain in the United Kingdom;
 - (b) a decision on an appeal under the immigration provisions relating to a decision within paragraph (a).
- (7) An appeal is pending if it is pending for the purposes of section 104 of the [Nationality, Immigration and Asylum Act 2002](#) or (as the case may be) for the purposes of that section as it is applied by section 2(2)(j) of the [Special Immigration Appeals Commission Act 1997](#).

116 Education cases

- (1) A claim is within this section if it may be made to—
 - (a) the First-tier Tribunal in accordance with Part 2 of Schedule 17,
 - (b) the Special Educational Needs Tribunal for Wales in accordance with Part 2 of that Schedule, or
 - (c) an Additional Support Needs Tribunal for Scotland in accordance with Part 3 of that Schedule.
- (2) A claim is also within this section if it must be made in accordance with appeal arrangements within the meaning of Part 4 of that Schedule.
- (3) Schedule 17 (disabled pupils: enforcement) has effect.

117 National security

- (1) Rules of court may, in relation to proceedings on a claim within section 114, confer power as mentioned in subsections (2) to (4); but a power so conferred is exercisable only if the court thinks it expedient to do so in the interests of national security.
- (2) The rules may confer power to exclude from all or part of the proceedings—
 - (a) the claimant or pursuer;

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- (b) a representative of the claimant or pursuer;
 - (c) an assessor.
- (3) The rules may confer power to permit a claimant, pursuer or representative who has been excluded to make a statement to the court before the commencement of the proceedings, or part of the proceedings, to which the exclusion relates.
- (4) The rules may confer power to take steps to keep secret all or part of the reasons for the court’s decision.
- (5) The Attorney General or, in Scotland, the Advocate General for Scotland may appoint a person to represent the interests of a claimant or pursuer in, or in any part of, proceedings to which an exclusion by virtue of subsection (2)(a) or (b) relates.
- (6) A person (P) may be appointed under subsection (5) only if—
- (a) in relation to proceedings in England and Wales, P is a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation;
 - (b) in relation to proceedings in Scotland, P is an advocate or qualified to practice as a solicitor in Scotland.
- (7) P is not responsible to the person whose interests P is appointed to represent.

118 Time limits

- (1) Proceedings on a claim within section 114 may not be brought after the end of—
- (a) the period of 6 months starting with the date of the act to which the claim relates, or
 - (b) such other period as the county court or sheriff thinks just and equitable.
- (2) If subsection (3) or (4) applies, subsection (1)(a) has effect as if for “6 months” there were substituted “9 months”.
- (3) This subsection applies if—
- (a) the claim relates to the act of a qualifying institution, and
 - (b) a complaint relating to the act is referred under the student complaints scheme before the end of the period of 6 months starting with the date of the act.
- (4) This subsection applies if—
- (a) the claim relates to a dispute referred for conciliation in pursuance of arrangements under section 27 of the [Equality Act 2006](#), and
 - (b) subsection (3) does not apply.
- (5) If it has been decided under the immigration provisions that the act of an immigration authority in taking a relevant decision is a contravention of Part 3 (services and public functions), subsection (1) has effect as if for paragraph (a) there were substituted—
- “(a) the period of 6 months starting with the day after the expiry of the period during which, as a result of section 114(2), proceedings could not be brought in reliance on section 114(1)(a);”.
- (6) For the purposes of this section—
- (a) conduct extending over a period is to be treated as done at the end of the period;

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- (b) failure to do something is to be treated as occurring when the person in question decided on it.
- (7) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
 - (a) when P does an act inconsistent with doing it, or
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.
- (8) In this section—
 - “immigration authority”, “immigration provisions” and “relevant decision” each have the meaning given in section 115;
 - “qualifying institution” has the meaning given in section 11 of the [Higher Education Act 2004](#);
 - “the student complaints scheme” means a scheme for the review of qualifying complaints (within the meaning of section 12 of that Act) that is provided by the designated operator (within the meaning of section 13(5)(b) of that Act).

119 Remedies

- (1) This section applies if a county court or the sheriff finds that there has been a contravention of a provision referred to in section 114(1).
- (2) The county court has power to grant any remedy which could be granted by the High Court—
 - (a) in proceedings in tort;
 - (b) on a claim for judicial review.
- (3) The sheriff has power to make any order which could be made by the Court of Session—
 - (a) in proceedings for reparation;
 - (b) on a petition for judicial review.
- (4) An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis).
- (5) Subsection (6) applies if the county court or sheriff—
 - (a) finds that a contravention of a provision referred to in section 114(1) is established by virtue of section 19, but
 - (b) is satisfied that the provision, criterion or practice was not applied with the intention of discriminating against the claimant or pursuer.
- (6) The county court or sheriff must not make an award of damages unless it first considers whether to make any other disposal.
- (7) The county court or sheriff must not grant a remedy other than an award of damages or the making of a declaration unless satisfied that no criminal matter would be prejudiced by doing so.

CHAPTER 3

EMPLOYMENT TRIBUNALS

120 Jurisdiction

- (1) An employment tribunal has, subject to section 121, jurisdiction to determine a complaint relating to—
 - (a) a contravention of Part 5 (work);
 - (b) a contravention of section 108, 111 or 112 that relates to Part 5.
- (2) An employment tribunal has jurisdiction to determine an application by a responsible person (as defined by section 61) for a declaration as to the rights of that person and a worker in relation to a dispute about the effect of a non-discrimination rule.
- (3) An employment tribunal also has jurisdiction to determine an application by the trustees or managers of an occupational pension scheme for a declaration as to their rights and those of a member in relation to a dispute about the effect of a non-discrimination rule.
- (4) An employment tribunal also has jurisdiction to determine a question that—
 - (a) relates to a non-discrimination rule, and
 - (b) is referred to the tribunal by virtue of section 122.
- (5) In proceedings before an employment tribunal on a complaint relating to a breach of a non-discrimination rule, the employer—
 - (a) is to be treated as a party, and
 - (b) is accordingly entitled to appear and be heard.
- (6) Nothing in this section affects such jurisdiction as the High Court, a county court, the Court of Session or the sheriff has in relation to a non-discrimination rule.
- (7) Subsection (1)(a) does not apply to a contravention of section 53 in so far as the act complained of may, by virtue of an enactment, be subject to an appeal or proceedings in the nature of an appeal.
- (8) In subsection (1), the references to Part 5 do not include a reference to section 60(1).

121 Armed forces cases

- (1) Section 120(1) does not apply to a complaint relating to an act done when the complainant was serving as a member of the armed forces unless—
 - (a) the complainant has made a service complaint about the matter, and
 - (b) the complaint has not been withdrawn.
- (2) If the complaint is made under the service complaint procedures, it is to be treated for the purposes of subsection (1)(b) as withdrawn if—
 - (a) neither the officer to whom it is made nor a superior officer refers it to the Defence Council, and
 - (b) the complainant does not apply for it to be referred to the Defence Council.
- (3) If the complaint is made under the old service redress procedures, it is to be treated for the purposes of subsection (1)(b) as withdrawn if the complainant does not submit it to the Defence Council under those procedures.

- (4) The reference in subsection (3) to the old service redress procedures is a reference to the procedures (other than those relating to the making of a report on a complaint to Her Majesty) referred to in—
 - (a) section 180 of the Army Act 1955,
 - (b) section 180 of the Air Force Act 1955, or
 - (c) section 130 of the Naval Discipline Act 1957.
- (5) The making of a complaint to an employment tribunal in reliance on subsection (1) does not affect the continuation of the service complaint procedures or (as the case may be) the old service redress procedures.

122 References by court to tribunal, etc.

- (1) If it appears to a court in which proceedings are pending that a claim or counter-claim relating to a non-discrimination rule could more conveniently be determined by an employment tribunal, the court may strike out the claim or counter-claim.
- (2) If in proceedings before a court a question arises about a non-discrimination rule, the court may (whether or not on an application by a party to the proceedings)—
 - (a) refer the question, or direct that it be referred by a party to the proceedings, to an employment tribunal for determination, and
 - (b) stay or sist the proceedings in the meantime.

123 Time limits

- (1) Proceedings on a complaint within section 120 may not be brought after the end of—
 - (a) the period of 3 months starting with the date of the act to which the complaint relates, or
 - (b) such other period as the employment tribunal thinks just and equitable.
- (2) Proceedings may not be brought in reliance on section 121(1) after the end of—
 - (a) the period of 6 months starting with the date of the act to which the proceedings relate, or
 - (b) such other period as the employment tribunal thinks just and equitable.
- (3) For the purposes of this section—
 - (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
 - (a) when P does an act inconsistent with doing it, or
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

124 Remedies: general

- (1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).

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- (2) The tribunal may—
- (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;
 - (b) order the respondent to pay compensation to the complainant;
 - (c) make an appropriate recommendation.
- (3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect of any matter to which the proceedings relate—
- (a) on the complainant;
 - (b) on any other person.
- (4) Subsection (5) applies if the tribunal—
- (a) finds that a contravention is established by virtue of section 19, but
 - (b) is satisfied that the provision, criterion or practice was not applied with the intention of discriminating against the complainant.
- (5) It must not make an order under subsection (2)(b) unless it first considers whether to act under subsection (2)(a) or (c).
- (6) The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by a county court or the sheriff under section 119.
- (7) If a respondent fails, without reasonable excuse, to comply with an appropriate recommendation in so far as it relates to the complainant, the tribunal may—
- (a) if an order was made under subsection (2)(b), increase the amount of compensation to be paid;
 - (b) if no such order was made, make one.

125 Remedies: national security

- (1) In national security proceedings, an appropriate recommendation (as defined by section 124) must not be made in relation to a person other than the complainant if the recommendation would affect anything done by—
- (a) the Security Service,
 - (b) the Secret Intelligence Service,
 - (c) the Government Communications Headquarters, or
 - (d) a part of the armed forces which is, in accordance with a requirement of the Secretary of State, assisting the Government Communications Headquarters.
- (2) National security proceedings are—
- (a) proceedings to which a direction under section 10(3) of the [Employment Tribunals Act 1996](#) (national security) relates;
 - (b) proceedings to which an order under section 10(4) of that Act relates;
 - (c) proceedings (or the part of proceedings) to which a direction pursuant to regulations made under section 10(5) of that Act relates;
 - (d) proceedings (or the part of proceedings) in relation to which an employment tribunal acts pursuant to regulations made under section 10(6) of that Act.

126 Remedies: occupational pension schemes

- (1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1) in relation to—
 - (a) the terms on which persons become members of an occupational pension scheme, or
 - (b) the terms on which members of an occupational pension scheme are treated.
- (2) In addition to anything which may be done by the tribunal under section 124 the tribunal may also by order declare—
 - (a) if the complaint relates to the terms on which persons become members of a scheme, that the complainant has a right to be admitted to the scheme;
 - (b) if the complaint relates to the terms on which members of the scheme are treated, that the complainant has a right to membership of the scheme without discrimination.
- (3) The tribunal may not make an order under subsection (2)(b) of section 124 unless—
 - (a) the compensation is for injured feelings, or
 - (b) the order is made by virtue of subsection (7) of that section.
- (4) An order under subsection (2)—
 - (a) may make provision as to the terms on which or the capacity in which the claimant is to enjoy the admission or membership;
 - (b) may have effect in relation to a period before the order is made.

CHAPTER 4

EQUALITY OF TERMS

127 Jurisdiction

- (1) An employment tribunal has, subject to subsection (6), jurisdiction to determine a complaint relating to a breach of an equality clause or rule.
- (2) The jurisdiction conferred by subsection (1) includes jurisdiction to determine a complaint arising out of a breach of an equality clause or rule; and a reference in this Chapter to a complaint relating to such a breach is to be read accordingly.
- (3) An employment tribunal also has jurisdiction to determine an application by a responsible person for a declaration as to the rights of that person and a worker in relation to a dispute about the effect of an equality clause or rule.
- (4) An employment tribunal also has jurisdiction to determine an application by the trustees or managers of an occupational pension scheme for a declaration as to their rights and those of a member in relation to a dispute about the effect of an equality rule.
- (5) An employment tribunal also has jurisdiction to determine a question that—
 - (a) relates to an equality clause or rule, and
 - (b) is referred to the tribunal by virtue of section 128(2).
- (6) This section does not apply to a complaint relating to an act done when the complainant was serving as a member of the armed forces unless—
 - (a) the complainant has made a service complaint about the matter, and

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- (b) the complaint has not been withdrawn.
- (7) Subsections (2) to (5) of section 121 apply for the purposes of subsection (6) of this section as they apply for the purposes of subsection (1) of that section.
- (8) In proceedings before an employment tribunal on a complaint relating to a breach of an equality rule, the employer—
 - (a) is to be treated as a party, and
 - (b) is accordingly entitled to appear and be heard.
- (9) Nothing in this section affects such jurisdiction as the High Court, a county court, the Court of Session or the sheriff has in relation to an equality clause or rule.

128 References by court to tribunal, etc.

- (1) If it appears to a court in which proceedings are pending that a claim or counter-claim relating to an equality clause or rule could more conveniently be determined by an employment tribunal, the court may strike out the claim or counter-claim.
- (2) If in proceedings before a court a question arises about an equality clause or rule, the court may (whether or not on an application by a party to the proceedings)—
 - (a) refer the question, or direct that it be referred by a party to the proceedings, to an employment tribunal for determination, and
 - (b) stay or sist the proceedings in the meantime.

129 Time limits

- (1) This section applies to—
 - (a) a complaint relating to a breach of an equality clause or rule;
 - (b) an application for a declaration referred to in section 127(3) or (4).
- (2) Proceedings on the complaint or application may not be brought in an employment tribunal after the end of the qualifying period.
- (3) If the complaint or application relates to terms of work other than terms of service in the armed forces, the qualifying period is, in a case mentioned in the first column of the table, the period mentioned in the second column.

<i>Case</i>	<i>Qualifying period</i>
A standard case	The period of 6 months beginning with the last day of the employment or appointment.
A stable work case (but not if it is also a concealment or incapacity case (or both))	The period of 6 months beginning with the day on which the stable working relationship ended.
A concealment case (but not if it is also an incapacity case)	The period of 6 months beginning with the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact.
An incapacity case (but not if it is also a concealment case)	The period of 6 months beginning with the day on which the worker ceased to have the incapacity.

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<i>Case</i>	<i>Qualifying period</i>
A case which is a concealment case and an incapacity case.	The period of 6 months beginning with the later of the days on which the period would begin if the case were merely a concealment or incapacity case.

- (4) If the complaint or application relates to terms of service in the armed forces, the qualifying period is, in a case mentioned in the first column of the table, the period mentioned in the second column.

<i>Case</i>	<i>Qualifying period</i>
A standard case	The period of 9 months beginning with the last day of the period of service during which the complaint arose.
A concealment case (but not if it is also an incapacity case)	The period of 9 months beginning with the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact.
An incapacity case (but not if it is also a concealment case)	The period of 9 months beginning with the day on which the worker ceased to have the incapacity.
A case which is a concealment case and an incapacity case.	The period of 9 months beginning with the later of the days on which the period would begin if the case were merely a concealment or incapacity case.

130 Section 129: supplementary

- (1) This section applies for the purposes of section 129.
- (2) A standard case is a case which is not—
 - (a) a stable work case,
 - (b) a concealment case,
 - (c) an incapacity case, or
 - (d) a concealment case and an incapacity case.
- (3) A stable work case is a case where the proceedings relate to a period during which there was a stable working relationship between the worker and the responsible person (including any time after the terms of work had expired).
- (4) A concealment case in proceedings relating to an equality clause is a case where—
 - (a) the responsible person deliberately concealed a qualifying fact from the worker, and
 - (b) the worker did not discover (or could not with reasonable diligence have discovered) the qualifying fact until after the relevant day.
- (5) A concealment case in proceedings relating to an equality rule is a case where—
 - (a) the employer or the trustees or managers of the occupational pension scheme in question deliberately concealed a qualifying fact from the member, and

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- (b) the member did not discover (or could not with reasonable diligence have discovered) the qualifying fact until after the relevant day.
- (6) A qualifying fact for the purposes of subsection (4) or (5) is a fact—
 - (a) which is relevant to the complaint, and
 - (b) without knowledge of which the worker or member could not reasonably have been expected to bring the proceedings.
- (7) An incapacity case in proceedings relating to an equality clause with respect to terms of work other than terms of service in the armed forces is a case where the worker had an incapacity during the period of 6 months beginning with the later of—
 - (a) the relevant day, or
 - (b) the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact deliberately concealed from the worker by the responsible person.
- (8) An incapacity case in proceedings relating to an equality clause with respect to terms of service in the armed forces is a case where the worker had an incapacity during the period of 9 months beginning with the later of—
 - (a) the last day of the period of service during which the complaint arose, or
 - (b) the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact deliberately concealed from the worker by the responsible person.
- (9) An incapacity case in proceedings relating to an equality rule is a case where the member of the occupational pension scheme in question had an incapacity during the period of 6 months beginning with the later of—
 - (a) the relevant day, or
 - (b) the day on which the member discovered (or could with reasonable diligence have discovered) the qualifying fact deliberately concealed from the member by the employer or the trustees or managers of the scheme.
- (10) The relevant day for the purposes of this section is—
 - (a) the last day of the employment or appointment, or
 - (b) the day on which the stable working relationship between the worker and the responsible person ended.

131 Assessment of whether work is of equal value

- (1) This section applies to proceedings before an employment tribunal on—
 - (a) a complaint relating to a breach of an equality clause or rule, or
 - (b) a question referred to the tribunal by virtue of section 128(2).
- (2) Where a question arises in the proceedings as to whether one person's work is of equal value to another's, the tribunal may, before determining the question, require a member of the panel of independent experts to prepare a report on the question.
- (3) The tribunal may withdraw a requirement that it makes under subsection (2); and, if it does so, it may—
 - (a) request the panel member to provide it with specified documentation;
 - (b) make such other requests to that member as are connected with the withdrawal of the requirement.

- (4) If the tribunal requires the preparation of a report under subsection (2) (and does not withdraw the requirement), it must not determine the question unless it has received the report.
- (5) Subsection (6) applies where—
 - (a) a question arises in the proceedings as to whether the work of one person (A) is of equal value to the work of another (B), and
 - (b) A’s work and B’s work have been given different values by a job evaluation study.
- (6) The tribunal must determine that A’s work is not of equal value to B’s work unless it has reasonable grounds for suspecting that the evaluation contained in the study—
 - (a) was based on a system that discriminates because of sex, or
 - (b) is otherwise unreliable.
- (7) For the purposes of subsection (6)(a), a system discriminates because of sex if a difference (or coincidence) between values that the system sets on different demands is not justifiable regardless of the sex of the person on whom the demands are made.
- (8) A reference to a member of the panel of independent experts is a reference to a person—
 - (a) who is for the time being designated as such by the Advisory, Conciliation and Arbitration Service (ACAS) for the purposes of this section, and
 - (b) who is neither a member of the Council of ACAS nor one of its officers or members of staff.
- (9) “Job evaluation study” has the meaning given in section 80(5).

132 Remedies in non-pensions cases

- (1) This section applies to proceedings before a court or employment tribunal on a complaint relating to a breach of an equality clause, other than a breach with respect to membership of or rights under an occupational pension scheme.
- (2) If the court or tribunal finds that there has been a breach of the equality clause, it may—
 - (a) make a declaration as to the rights of the parties in relation to the matters to which the proceedings relate;
 - (b) order an award by way of arrears of pay or damages in relation to the complainant.
- (3) The court or tribunal may not order a payment under subsection (2)(b) in respect of a time before the arrears day.
- (4) In relation to proceedings in England and Wales, the arrears day is, in a case mentioned in the first column of the table, the day mentioned in the second column.

<i>Case</i>	<i>Arrears day</i>
A standard case	The day falling 6 years before the day on which the proceedings were instituted.
A concealment case or an incapacity case (or a case which is both).	The day on which the breach first occurred.

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- (5) In relation to proceedings in Scotland, the arrears day is the first day of—
- (a) the period of 5 years ending with the day on which the proceedings were commenced, or
 - (b) if the case involves a relevant incapacity, or a relevant fraud or error, the period of 20 years ending with that day.

133 Remedies in pensions cases

- (1) This section applies to proceedings before a court or employment tribunal on a complaint relating to—
- (a) a breach of an equality rule, or
 - (b) a breach of an equality clause with respect to membership of, or rights under, an occupational pension scheme.
- (2) If the court or tribunal finds that there has been a breach as referred to in subsection (1) —
- (a) it may make a declaration as to the rights of the parties in relation to the matters to which the proceedings relate;
 - (b) it must not order arrears of benefits or damages or any other amount to be paid to the complainant.
- (3) Subsection (2)(b) does not apply if the proceedings are proceedings to which section 134 applies.
- (4) If the breach relates to a term on which persons become members of the scheme, the court or tribunal may declare that the complainant is entitled to be admitted to the scheme with effect from a specified date.
- (5) A date specified for the purposes of subsection (4) must not be before 8 April 1976.
- (6) If the breach relates to a term on which members of the scheme are treated, the court or tribunal may declare that the complainant is, in respect of a specified period, entitled to secure the rights that would have accrued if the breach had not occurred.
- (7) A period specified for the purposes of subsection (6) must not begin before 17 May 1990.
- (8) If the court or tribunal makes a declaration under subsection (6), the employer must provide such resources to the scheme as are necessary to secure for the complainant (without contribution or further contribution by the complainant or other members) the rights referred to in that subsection.

134 Remedies in claims for arrears brought by pensioner members

- (1) This section applies to proceedings before a court or employment tribunal on a complaint by a pensioner member of an occupational pension scheme relating to a breach of an equality clause or rule with respect to a term on which the member is treated.
- (2) If the court or tribunal finds that there has been a breach referred to in subsection (1), it may—
- (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;

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- (b) order an award by way of arrears of benefits or damages or of any other amount in relation to the complainant.
- (3) The court or tribunal must not order an award under subsection (2)(b) in respect of a time before the arrears day.
- (4) If the court or tribunal orders an award under subsection (2)(b), the employer must provide such resources to the scheme as are necessary to secure for the complainant (without contribution or further contribution by the complainant or other members) the amount of the award.
- (5) In relation to proceedings in England and Wales, the arrears day is, in a case mentioned in the first column of the table, the day mentioned in the second column.

<i>Case</i>	<i>Arrears day</i>
A standard case	The day falling 6 years before the day on which the proceedings were commenced.
A concealment case or an incapacity case (or a case which is both).	The day on which the breach first occurred.

- (6) In relation to proceedings in Scotland, the arrears day is the first day of—
 - (a) the period of 5 years ending with the day on which the proceedings were commenced, or
 - (b) if the case involves a relevant incapacity, or a relevant fraud or error, the period of 20 years ending with that day.

135 Supplementary

- (1) This section applies for the purposes of sections 132 to 134.
- (2) A standard case is a case which is not—
 - (a) a concealment case,
 - (b) an incapacity case, or
 - (c) a concealment case and an incapacity case.
- (3) A concealment case in relation to an equality clause is a case where—
 - (a) the responsible person deliberately concealed a qualifying fact (as defined by section 130) from the worker, and
 - (b) the worker commenced the proceedings before the end of the period of 6 years beginning with the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact.
- (4) A concealment case in relation to an equality rule is a case where—
 - (a) the employer or the trustees or managers of the occupational pension scheme in question deliberately concealed a qualifying fact (as defined by section 130) from the member, and
 - (b) the member commenced the proceedings before the end of the period of 6 years beginning with the day on which the member discovered (or could with reasonable diligence have discovered) the qualifying fact.
- (5) An incapacity case is a case where the worker or member—

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- (a) had an incapacity when the breach first occurred, and
 - (b) commenced the proceedings before the end of the period of 6 years beginning with the day on which the worker or member ceased to have the incapacity.
- (6) A case involves a relevant incapacity or a relevant fraud or error if the period of 5 years referred to in section 132(5)(a) is, as a result of subsection (7) below, reckoned as a period of more than 20 years.
- (7) For the purposes of the reckoning referred to in subsection (6), no account is to be taken of time when the worker or member—
- (a) had an incapacity, or
 - (b) was induced by a relevant fraud or error to refrain from commencing proceedings (not being a time after the worker or member could with reasonable diligence have discovered the fraud or error).
- (8) For the purposes of subsection (7)—
- (a) a fraud is relevant in relation to an equality clause if it is a fraud on the part of the responsible person;
 - (b) an error is relevant in relation to an equality clause if it is induced by the words or conduct of the responsible person;
 - (c) a fraud is relevant in relation to an equality rule if it is a fraud on the part of the employer or the trustees or managers of the scheme;
 - (d) an error is relevant in relation to an equality rule if it is induced by the words or conduct of the employer or the trustees or managers of the scheme.
- (9) A reference in subsection (8) to the responsible person, the employer or the trustees or managers includes a reference to a person acting on behalf of the person or persons concerned.
- (10) In relation to terms of service, a reference in section 132(5) or subsection (3) or (5) (b) of this section to commencing proceedings is to be read as a reference to making a service complaint.
- (11) A reference to a pensioner member of a scheme includes a reference to a person who is entitled to the present payment of pension or other benefits derived through a member.
- (12) In relation to proceedings before a court—
- (a) a reference to a complaint is to be read as a reference to a claim, and
 - (b) a reference to a complainant is to be read as a reference to a claimant.

CHAPTER 5

MISCELLANEOUS

136 Burden of proof

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
- (5) This section does not apply to proceedings for an offence under this Act.
- (6) A reference to the court includes a reference to—
 - (a) an employment tribunal;
 - (b) the Asylum and Immigration Tribunal;
 - (c) the Special Immigration Appeals Commission;
 - (d) the First-tier Tribunal;
 - (e) the Special Educational Needs Tribunal for Wales;
 - (f) an Additional Support Needs Tribunal for Scotland.

137 Previous findings

- (1) A finding in relevant proceedings in respect of an act which has become final is to be treated as conclusive in proceedings under this Act.
- (2) Relevant proceedings are proceedings before a court or employment tribunal under any of the following—
 - (a) section 19 or 20 of the [Race Relations Act 1968](#);
 - (b) the [Equal Pay Act 1970](#);
 - (c) the [Sex Discrimination Act 1975](#);
 - (d) the [Race Relations Act 1976](#);
 - (e) section 6(4A) of the [Sex Discrimination Act 1986](#);
 - (f) the [Disability Discrimination Act 1995](#);
 - (g) Part 2 of the [Equality Act 2006](#);
 - (h) the Employment Equality (Religion and Belief) Regulations 2003 ([S.I. 2003/1660](#));
 - (i) the Employment Equality (Sexual Orientation) Regulations 2003 ([S.I. 2003/1661](#));
 - (j) the Employment Equality (Age) Regulations 2006 ([S.I. 2006/1031](#));
 - (k) the Equality Act (Sexual Orientation) Regulations 2007 ([S.I. 2007/1263](#)).
- (3) A finding becomes final—
 - (a) when an appeal against the finding is dismissed, withdrawn or abandoned, or
 - (b) when the time for appealing expires without an appeal having been brought.

138 Obtaining information, etc.

- (1) In this section—
 - (a) P is a person who thinks that a contravention of this Act has occurred in relation to P;
 - (b) R is a person who P thinks has contravened this Act.
- (2) A Minister of the Crown must by order prescribe—
 - (a) forms by which P may question R on any matter which is or may be relevant;
 - (b) forms by which R may answer questions by P.

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- (3) A question by P or an answer by R is admissible as evidence in proceedings under this Act (whether or not the question or answer is contained in a prescribed form).
- (4) A court or tribunal may draw an inference from—
 - (a) a failure by R to answer a question by P before the end of the period of 8 weeks beginning with the day on which the question is served;
 - (b) an evasive or equivocal answer.
- (5) Subsection (4) does not apply if—
 - (a) R reasonably asserts that to have answered differently or at all might have prejudiced a criminal matter;
 - (b) R reasonably asserts that to have answered differently or at all would have revealed the reason for not commencing or not continuing criminal proceedings;
 - (c) R's answer is of a kind specified for the purposes of this paragraph by order of a Minister of the Crown;
 - (d) R's answer is given in circumstances specified for the purposes of this paragraph by order of a Minister of the Crown;
 - (e) R's failure to answer occurs in circumstances specified for the purposes of this paragraph by order of a Minister of the Crown.
- (6) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
- (7) A Minister of the Crown may by order—
 - (a) prescribe the period within which a question must be served to be admissible under subsection (3);
 - (b) prescribe the manner in which a question by P, or an answer by R, may be served.
- (8) This section—
 - (a) does not affect any other enactment or rule of law relating to interim or preliminary matters in proceedings before a county court, the sheriff or an employment tribunal, and
 - (b) has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.

139 Interest

- (1) Regulations may make provision—
 - (a) for enabling an employment tribunal to include interest on an amount awarded by it in proceedings under this Act;
 - (b) specifying the manner in which, and the periods and rate by reference to which, the interest is to be determined.
- (2) Regulations may modify the operation of an order made under section 14 of the Employment Tribunals Act 1996 (power to make provision as to interest on awards) in so far as it relates to an award in proceedings under this Act.

140 Conduct giving rise to separate proceedings

- (1) This section applies in relation to conduct which has given rise to two or more separate proceedings under this Act, with at least one being for a contravention of section 111 (instructing, causing or inducing contraventions).
- (2) A court may transfer proceedings to an employment tribunal.
- (3) An employment tribunal may transfer proceedings to a court.
- (4) A court or employment tribunal is to be taken for the purposes of this Part to have jurisdiction to determine a claim or complaint transferred to it under this section; accordingly—
 - (a) a reference to a claim within section 114(1) includes a reference to a claim transferred to a court under this section, and
 - (b) a reference to a complaint within section 120(1) includes a reference to a complaint transferred to an employment tribunal under this section.
- (5) A court or employment tribunal may not make a decision that is inconsistent with an earlier decision in proceedings arising out of the conduct.
- (6) “Court” means—
 - (a) in relation to proceedings in England and Wales, a county court;
 - (b) in relation to proceedings in Scotland, the sheriff.

141 Interpretation, etc.

- (1) This section applies for the purposes of this Part.
- (2) A reference to the responsible person, in relation to an equality clause or rule, is to be construed in accordance with Chapter 3 of Part 5.
- (3) A reference to a worker is a reference to the person to the terms of whose work the proceedings in question relate; and, for the purposes of proceedings relating to an equality rule or a non-discrimination rule, a reference to a worker includes a reference to a member of the occupational pension scheme in question.
- (4) A reference to the terms of a person’s work is to be construed in accordance with Chapter 3 of Part 5.
- (5) A reference to a member of an occupational pension scheme includes a reference to a prospective member.
- (6) In relation to proceedings in England and Wales, a person has an incapacity if the person—
 - (a) has not attained the age of 18, or
 - (b) lacks capacity (within the meaning of the Mental Capacity Act 2005).
- (7) In relation to proceedings in Scotland, a person has an incapacity if the person—
 - (a) has not attained the age of 16, or
 - (b) is incapable (within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4)).
- (8) “Service complaint” means a complaint under section 334 of the [Armed Forces Act 2006](#); and “service complaint procedures” means the procedures prescribed

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by regulations under that section (except in so far as relating to references under section 337 of that Act).

- (9) “Criminal matter” means—
- (a) an investigation into the commission of an alleged offence;
 - (b) a decision whether to commence criminal proceedings;
 - (c) criminal proceedings.