



# Equality Act 2010

## 2010 CHAPTER 15

### PART 9

#### ENFORCEMENT

### 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.

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- (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  - (b) the complaint has not been withdrawn.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complaint is made under the service complaint procedures, it is to be treated for the purposes of subsection (1)(b) as withdrawn if—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—

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- (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).
- (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—

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- (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.