



# Enterprise and Regulatory Reform Act 2013

## 2013 CHAPTER 24

### PART 2

#### EMPLOYMENT

##### *Conciliation*

#### **7 Conciliation before institution of proceedings**

(1) After section 18 of the Employment Tribunals Act 1996 (conciliation) insert—

**“18A Requirement to contact ACAS before instituting proceedings**

(1) Before a person (“the prospective claimant”) presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter.

This is subject to subsection (7).

(2) On receiving the prescribed information in the prescribed manner, ACAS shall send a copy of it to a conciliation officer.

(3) The conciliation officer shall, during the prescribed period, endeavour to promote a settlement between the persons who would be parties to the proceedings.

(4) If—

- (a) during the prescribed period the conciliation officer concludes that a settlement is not possible, or
- (b) the prescribed period expires without a settlement having been reached,

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the conciliation officer shall issue a certificate to that effect, in the prescribed manner, to the prospective claimant.

- (5) The conciliation officer may continue to endeavour to promote a settlement after the expiry of the prescribed period.
- (6) In subsections (3) to (5) “settlement” means a settlement that avoids proceedings being instituted.
- (7) A person may institute relevant proceedings without complying with the requirement in subsection (1) in prescribed cases.

The cases that may be prescribed include (in particular)—

- cases where the requirement is complied with by another person instituting relevant proceedings relating to the same matter;
- cases where proceedings that are not relevant proceedings are instituted by means of the same form as proceedings that are;
- cases where section 18B applies because ACAS has been contacted by a person against whom relevant proceedings are being instituted.

- (8) A person who is subject to the requirement in subsection (1) may not present an application to institute relevant proceedings without a certificate under subsection (4).
- (9) Where a conciliation officer acts under this section in a case where the prospective claimant has ceased to be employed by the employer and the proposed proceedings are proceedings under section 111 of the Employment Rights Act 1996, the conciliation officer may in particular—
  - (a) seek to promote the reinstatement or re-engagement of the prospective claimant by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the conciliation officer to be equitable, or
  - (b) where the prospective claimant does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to the prospective claimant.
- (10) In subsections (1) to (7) “prescribed” means prescribed in employment tribunal procedure regulations.
- (11) The Secretary of State may by employment tribunal procedure regulations make such further provision as appears to the Secretary of State to be necessary or expedient with respect to the conciliation process provided for by subsections (1) to (8).
- (12) Employment tribunal procedure regulations may (in particular) make provision—
  - (a) authorising the Secretary of State to prescribe, or prescribe requirements in relation to, any form which is required by such regulations to be used for the purpose of providing information to ACAS under subsection (1) or issuing a certificate under subsection (4);
  - (b) requiring ACAS to give a person any necessary assistance to comply with the requirement in subsection (1);

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- (c) for the extension of the period prescribed for the purposes of subsection (3);
- (d) treating the requirement in subsection (1) as complied with, for the purposes of any provision extending the time limit for instituting relevant proceedings, by a person who is relieved of that requirement by virtue of subsection (7)(a).

### **18B Conciliation before institution of proceedings: other ACAS duties**

- (1) This section applies where—
    - (a) a person contacts ACAS requesting the services of a conciliation officer in relation to a matter that (if not settled) is likely to give rise to relevant proceedings against that person, and
    - (b) ACAS has not received information from the prospective claimant under section 18A(1).
  - (2) This section also applies where—
    - (a) a person contacts ACAS requesting the services of a conciliation officer in relation to a matter that (if not settled) is likely to give rise to relevant proceedings by that person, and
    - (b) the requirement in section 18A(1) would apply to that person but for section 18A(7).
  - (3) Where this section applies a conciliation officer shall endeavour to promote a settlement between the persons who would be parties to the proceedings.
  - (4) If at any time—
    - (a) the conciliation officer concludes that a settlement is not possible, or
    - (b) a conciliation officer comes under the duty in section 18A(3) to promote a settlement between the persons who would be parties to the proceedings,the duty in subsection (3) ceases to apply at that time.
  - (5) In subsections (3) and (4) “settlement” means a settlement that avoids proceedings being instituted.
  - (6) Subsection (9) of section 18A applies for the purposes of this section as it applies for the purposes of that section.”
- (2) Schedule 1 (conciliation: minor and consequential amendments) has effect.

#### **Commencement Information**

- I1** S. 7 partly in force; s. 7 in force for specified purposes at Royal Assent, see s. 103(1)(i)
- I2** S. 7(1)(2) in force at 6.4.2014 in so far as not already in force by S.I. 2014/253, art. 3(a)(b) (with art. 4)
- I3** S. 7(2) in force at 6.3.2014 for specified purposes by S.I. 2014/253, art. 2

## **8 Extension of limitation periods to allow for conciliation**

Schedule 2 (extension of limitation periods to allow for conciliation) has effect.

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#### Commencement Information

**I4** S. 8 in force at 6.4.2014 by S.I. 2014/253, art. 3(c)

### 9 Extended power to define “relevant proceedings” for conciliation purposes

- (1) Section 18 of the Employment Tribunals Act 1996 (conciliation) is amended as follows.
- (2) In subsection (8) (power of Secretary of State and Lord Chancellor to amend list in subsection (1) of section 18), for paragraphs (a) and (b) substitute “ amend the definition of “relevant proceedings” in subsection (1) by adding to or removing from the list in that subsection particular types of employment tribunal proceedings. ”
- (3) After subsection (8) insert—
  - “(9) An order under subsection (8) that adds employment tribunal proceedings to the list in subsection (1) may amend an enactment so as to extend the time limit for instituting those proceedings in such a way as appears necessary or expedient in order to facilitate the conciliation process provided for by section 18A.
  - (10) An order under subsection (8) that removes employment tribunal proceedings from the list in subsection (1) may—
    - (a) repeal or revoke any provision of an enactment that, for the purpose mentioned in subsection (9), extends the time limit for instituting those proceedings;
    - (b) make further amendments which are consequential on that repeal or revocation.”

#### Commencement Information

**I5** S. 9 partly in force; s. 9 in force for specified purposes at Royal Assent, see s. 103(1)(i)

**I6** S. 9 in force at 6.4.2014 in so far as not already in force by S.I. 2014/253, art. 3(d)

### ACAS

### 10 ACAS: prohibition on disclosure of information

In Part 6 of the Trade Union and Labour Relations (Consolidation) Act 1992 (ACAS etc), after section 251A insert—

#### “251B Prohibition on disclosure of information

- (1) Information held by ACAS shall not be disclosed if the information—
  - (a) relates to a worker, an employer of a worker or a trade union (a “relevant person”), and
  - (b) is held by ACAS in connection with the provision of a service by ACAS or its officers.

This is subject to subsection (2).

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- (2) Subsection (1) does not prohibit the disclosure of information if—
- (a) the disclosure is made for the purpose of enabling or assisting ACAS to carry out any of its functions under this Act,
  - (b) the disclosure is made for the purpose of enabling or assisting an officer of ACAS to carry out the functions of a conciliation officer under any enactment,
  - (c) the disclosure is made for the purpose of enabling or assisting—
    - (i) a person appointed by ACAS under section 210(2), or
    - (ii) an arbitrator or arbiter appointed by ACAS under any enactment,
 to carry out functions specified in the appointment,
  - (d) the disclosure is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom),
  - (e) the disclosure is made in order to comply with a court order,
  - (f) the disclosure is made in a manner that ensures that no relevant person to whom the information relates can be identified, or
  - (g) the disclosure is made with the consent of each relevant person to whom the information relates.
- (3) Subsection (2) does not authorise the making of a disclosure which contravenes the Data Protection Act 1998.
- (4) A person who discloses information in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) Proceedings in England and Wales for an offence under this section may be instituted only with the consent of the Director of Public Prosecutions.
- (6) For the purposes of this section information held by—
- (a) a person appointed by ACAS under section 210(2) in connection with functions specified in the appointment, or
  - (b) an arbitrator or arbiter appointed by ACAS under any enactment in connection with functions specified in the appointment,
- is information that is held by ACAS in connection with the provision of a service by ACAS.”

### *Procedure for deciding tribunal cases*

## **11 Decisions by legal officers**

- (1) In section 4 of the Employment Tribunals Act 1996 (composition of a tribunal), after subsection (6C) insert—

“(6D) A person appointed as a legal officer in accordance with regulations under section 1(1) may determine proceedings in respect of which an employment tribunal has jurisdiction, or make a decision falling to be made in the course of such proceedings, if—

- (a) the proceedings are of a description specified in an order under this subsection made by the Secretary of State and the Lord Chancellor acting jointly, and

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(b) all the parties to the proceedings consent in writing;  
and any determination or decision made under this subsection shall be treated as made by an employment tribunal.”

(2) In section 41(2) of that Act (orders etc subject to affirmative resolution procedure), after “section 4(4)” insert “ or (6D) ”.

#### Commencement Information

**I7** S. 11 partly in force; s. 11 in force for specified purposes at Royal Assent, see s. 103(1)(i)

## 12 Composition of Employment Appeal Tribunal

(1) The Employment Tribunals Act 1996 is amended as set out in subsections (2) to (4).

(2) In section 28 (composition of Appeal Tribunal), for subsections (2) to (4A) substitute—

“(2) Proceedings before the Appeal Tribunal are to be heard by a judge alone.

This is subject to subsections (3) to (6) and to any provision made by virtue of section 30(2)(f) or (2A).

(3) A judge may direct that proceedings are to be heard by a judge and either two or four appointed members.

(4) A judge may, with the consent of the parties, direct that proceedings are to be heard by a judge and either one or three appointed members.

(5) The Lord Chancellor may by order provide for proceedings of a description specified in the order to be heard by a judge and either two or four appointed members.

(6) In proceedings heard by a judge and two or four appointed members, there shall be an equal number of—

- (a) employer-representative members, and
- (b) worker-representative members.

(7) In this section—

“employer-representative members” means appointed members whose knowledge or experience of industrial relations is as representatives of employers;

“worker-representative members” means appointed members whose knowledge or experience of industrial relations is as representatives of workers.”

(3) In section 30 (Appeal Tribunal procedure rules), in subsection (2)(f) (provision for dealing with interlocutory matters), for the words from “otherwise” to the end substitute “ by an officer of the Appeal Tribunal ”.

(4) In section 41(2) (orders etc subject to affirmative resolution procedure), before “or 40” insert “ , 28(5) ”.

(5) In consequence of the amendment made by subsection (2), omit paragraph 46 of Schedule 8 to the Tribunals, Courts and Enforcement Act 2007.

#### Commencement Information

- 18** [S. 12](#) wholly in force at 25.6.2013; [s. 12](#) in force for specified purposes at Royal Assent and otherwise in force at 25.6.2013, see [s. 103\(1\)\(i\)\(2\)\(b\)](#)

### *Unfair dismissal*

#### **13 Dismissal for political opinions: no qualifying period of employment**

In section 108 of the Employment Rights Act 1996 (qualifying period of employment), after subsection (3) insert—

“(4) Subsection (1) does not apply if the reason (or, if more than one, the principal reason) for the dismissal is, or relates to, the employee's political opinions or affiliation.”

#### **14 Confidentiality of negotiations before termination of employment**

After section 111 of the Employment Rights Act 1996 insert—

##### **“111A Confidentiality of negotiations before termination of employment**

- (1) Evidence of pre-termination negotiations is inadmissible in any proceedings on a complaint under section 111.

This is subject to subsections (3) to (5).

- (2) In subsection (1) “pre-termination negotiations” means any offer made or discussions held, before the termination of the employment in question, with a view to it being terminated on terms agreed between the employer and the employee.
- (3) Subsection (1) does not apply where, according to the complainant's case, the circumstances are such that a provision (whenever made) contained in, or made under, this or any other Act requires the complainant to be regarded for the purposes of this Part as unfairly dismissed.
- (4) In relation to anything said or done which in the tribunal's opinion was improper, or was connected with improper behaviour, subsection (1) applies only to the extent that the tribunal considers just.
- (5) Subsection (1) does not affect the admissibility, on any question as to costs or expenses, of evidence relating to an offer made on the basis that the right to refer to it on any such question is reserved.”

#### Commencement Information

- 19** [S. 14](#) in force at 29.7.2013 by [S.I. 2013/1648](#), [art. 2\(a\)](#)

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## **15 Power by order to increase or decrease limit of compensatory award**

- (1) The Secretary of State may by order made by statutory instrument amend section 124 of the Employment Rights Act 1996 (limit of compensatory award etc) so as to vary the limit imposed for the time being by subsection (1) of that section.
- (2) The limit as so varied may be—
  - (a) a specified amount, or
  - (b) the lower of—
    - (i) a specified amount, and
    - (ii) a specified number multiplied by a week's pay of the individual concerned.
- (3) Different amounts may be specified by virtue of subsection (2)(a) or (b)(i) in relation to employers of different descriptions.
- (4) An amount specified by virtue of subsection (2)(a) or (b)(i)—
  - (a) may not be less than median annual earnings;
  - (b) may not be more than three times median annual earnings.
- (5) A number specified by virtue of subsection (2)(b)(ii) may not be less than 52.
- (6) An order under this section may make consequential, supplemental, transitional, transitory or saving provision.
- (7) The consequential provision that may be made under subsection (6) includes provision inserting a reference to section 124 of the Employment Rights Act 1996 in section 226(3) of that Act (week's pay: calculation date in unfair dismissal cases).
- (8) A statutory instrument containing an order under this section is not to be made unless a draft of the instrument has been laid before each House of Parliament and approved by a resolution of each House.
- (9) In this section “median annual earnings” means—
  - (a) the latest figure for median gross annual earnings of full-time employees in the United Kingdom published by the Statistics Board (disregarding any provisional figures), or
  - (b) if that figure was published by the Statistics Board more than two years before the laying of the draft of the statutory instrument in question, an estimate of the current amount of such earnings worked out in whatever way the Secretary of State thinks fit.
- (10) In section 34 of the Employment Relations Act 1999 (indexation of amounts etc), after subsection (4) insert—
  - “(4A) A reference in this section to a sum specified in section 124(1) of the Employment Rights Act 1996 does not include anything specified by virtue of section 15(2)(b)(ii) of the Enterprise and Regulatory Reform Act 2013 (specified number multiplied by a week's pay of the individual concerned).
  - (4B) As regards a sum specified in section 124(1) of the Employment Rights Act 1996, the duty under subsection (2) to make an order with effect from 6 April in a particular year does not arise where an order varying such a sum with effect from a day within 12 months before that date has been made under section 15(1) of the Enterprise and Regulatory Reform Act 2013.”



### Commencement Information

- I10** s. 15 in force for specified purposes at Royal Assent and otherwise in force at 25.6.2013, see s. 103(1)(i)(2)(b)

## *Financial penalties*

### **16 Power of employment tribunal to impose financial penalty on employers etc**

- (1) After section 12 of the Employment Tribunals Act 1996 insert—

#### *“Financial penalties*

#### **12A Financial penalties**

- (1) Where an employment tribunal determining a claim involving an employer and a worker—
  - (a) concludes that the employer has breached any of the worker's rights to which the claim relates, and
  - (b) is of the opinion that the breach has one or more aggravating features, the tribunal may order the employer to pay a penalty to the Secretary of State (whether or not it also makes a financial award against the employer on the claim).
- (2) The tribunal shall have regard to an employer's ability to pay—
  - (a) in deciding whether to order the employer to pay a penalty under this section;
  - (b) (subject to subsections (3) to (7)) in deciding the amount of a penalty.
- (3) The amount of a penalty under this section shall be—
  - (a) at least £100;
  - (b) no more than £5,000.

This subsection does not apply where subsection (5) or (7) applies.
- (4) Subsection (5) applies where an employment tribunal—
  - (a) makes a financial award against an employer on a claim, and
  - (b) also orders the employer to pay a penalty under this section in respect of the claim.
- (5) In such a case, the amount of the penalty under this section shall be 50% of the amount of the award, except that—
  - (a) if the amount of the financial award is less than £200, the amount of the penalty shall be £100;
  - (b) if the amount of the financial award is more than £10,000, the amount of the penalty shall be £5,000.
- (6) Subsection (7) applies, instead of subsection (5), where an employment tribunal—

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- (a) considers together two or more claims involving different workers but the same employer, and
- (b) orders the employer to pay a penalty under this section in respect of any of those claims.

(7) In such a case—

- (a) the amount of the penalties in total shall be at least £100;
- (b) the amount of a penalty in respect of a particular claim shall be—
  - (i) no more than £5,000, and
  - (ii) where the tribunal makes a financial award against the employer on the claim, no more than 50% of the amount of the award.

But where the tribunal makes a financial award on any of the claims and the amount awarded is less than £200 in total, the amount of the penalties in total shall be £100 (and paragraphs (a) and (b) shall not apply).

- (8) Two or more claims in respect of the same act and the same worker shall be treated as a single claim for the purposes of this section.
- (9) Subsection (5) or (7) does not require or permit an order under subsection (1) (or a failure to make such an order) to be reviewed where the tribunal subsequently awards compensation under—
  - (a) section 140(3) of the Trade Union and Labour Relations (Consolidation) Act 1992 (failure to comply with tribunal's recommendation),
  - (b) section 117 of the Employment Rights Act 1996 (failure to reinstate etc.),
  - (c) section 124(7) of the Equality Act 2010 (failure to comply with tribunal's recommendation), or
  - (d) any other provision empowering the tribunal to award compensation, or further compensation, for a failure to comply (or to comply fully) with an order or recommendation of the tribunal.
- (10) An employer's liability to pay a penalty under this section is discharged if 50% of the amount of the penalty is paid no later than 21 days after the day on which notice of the decision to impose the penalty is sent to the employer.
- (11) In this section—
  - “claim”—
    - (a) means anything that is referred to in the relevant legislation as a claim, a complaint or a reference, other than a reference made by virtue of section 122(2) or 128(2) of the Equality Act 2010 (reference by court of question about a non-discrimination or equality rule etc), and
    - (b) also includes an application, under regulations made under section 45 of the Employment Act 2002, for a declaration that a person is a permanent employee;
  - “employer” has the same meaning as in Part 4A of the Employment Rights Act 1996, and also—
    - (a) in relation to an individual seeking to be employed by a person as a worker, includes that person;

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- (b) in relation to a right conferred by section 47A or 63A of the Employment Rights Act 1996 (right to time off for young person for study or training), includes the principal within the meaning of section 63A(3) of that Act;
- (c) in relation to a right conferred by the Agency Workers Regulations 2010 (S.I. 2010/93), includes the hirer within the meaning of those Regulations and (where the worker is not actually employed by the temporary work agency) the temporary work agency within that meaning;

“financial award” means an award of a sum of money, but does not including anything payable by virtue of section 13;

“worker” has the same meaning as in Part 4A of the Employment Rights Act 1996, and also includes an individual seeking to be employed by a person as a worker.

(12) The Secretary of State may by order—

- (a) amend subsection (3), (5) or (7) by substituting a different amount;
- (b) amend subsection (5), (7) or (10) by substituting a different percentage;
- (c) amend this section so as to alter the meaning of “claim”.

(13) The Secretary of State shall pay sums received under this section into the Consolidated Fund.”

(2) Schedule 3 (financial penalties: minor and consequential amendments) has effect.

#### Commencement Information

- I11** S. 16 partly in force; s. 16 in force for specified purposes at Royal Assent, see s. 103(1)(i)
- I12** S. 16 in force at 6.4.2014 by S.I. 2014/253, art. 3(e)

#### *Protected disclosures*

### **17 Disclosures not protected unless believed to be made in the public interest**

In section 43B of the Employment Rights Act 1996 (disclosures qualifying for protection), in subsection (1), after “in the reasonable belief of the worker making the disclosure,” insert “ is made in the public interest and ”.

### **18 Power to reduce compensation where disclosure not made in good faith**

(1) Omit the words “in good faith” in the following provisions of Part 4A of the Employment Rights Act 1996 (protected disclosures)—

- (a) subsection (1) of section 43C (disclosure to employer or other responsible person);
- (b) paragraph (b) of section 43E (disclosure to Minister of the Crown);
- (c) subsection (1)(a) of section 43F (disclosure to prescribed person).

(2) In section 43G of that Act (disclosure in other cases), in subsection (1)—

- (a) omit paragraph (a);

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- (b) in paragraph (b), for “he” substitute “ the worker ”.
- (3) In section 43H of that Act (disclosure of exceptionally serious failure), in subsection (1)—
  - (a) omit paragraph (a);
  - (b) in paragraph (b), for “he” substitute “ the worker ”.
- (4) In section 49 of that Act (remedies for detriment suffered in employment), after subsection (6) insert—
 

“(6A) Where—

  - (a) the complaint is made under section 48(1A), and
  - (b) it appears to the tribunal that the protected disclosure was not made in good faith,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the worker by no more than 25%.”
- (5) In section 123 of that Act (compensatory award for unfair dismissal), after subsection (6) insert—
 

“(6A) Where—

  - (a) the reason (or principal reason) for the dismissal is that the complainant made a protected disclosure, and
  - (b) it appears to the tribunal that the disclosure was not made in good faith,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the complainant by no more than 25%.”

## **19 Worker subjected to detriment by co-worker or agent of employer**

- (1) In section 47B of the Employment Rights Act 1996 (protected disclosures), after subsection (1) insert—
 

“(1A) A worker (“W”) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

  - (a) by another worker of W's employer in the course of that other worker's employment, or
  - (b) by an agent of W's employer with the employer's authority,

on the ground that W has made a protected disclosure.
- (1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.
- (1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.
- (1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—
  - (a) from doing that thing, or
  - (b) from doing anything of that description.

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(1E) A worker or agent of W's employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—

- (a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and
- (b) it is reasonable for the worker or agent to rely on the statement.

But this does not prevent the employer from being liable by reason of subsection (1B)."

(2) In section 48 of that Act (complaints to employment tribunals), in subsection (5)—

- (a) for "includes, where" substitute "includes—
  - (a) where";
- (b) at the end insert—
  - "(b) in the case of proceedings against a worker or agent under section 47B(1A), the worker or agent."

#### Commencement Information

**I13** S. 19 in force at 25.6.2013 by S.I. 2013/1455, art. 2(a) (with art. 4(2))

## 20 Extension of meaning of "worker"

(1) Section 43K of the Employment Rights Act 1996 (extension of meaning of "worker") is amended as set out in subsections (2) to (7).

(2) In subsection (1)(ba)—

- (a) for "section 84 or 100 of" substitute "section 83(2), 84, 92, 100, 107, 115(4), 117 or 134 of, or Schedule 12 to, ";
- (b) for "section 42 or 57 of" substitute "section 41(2)(b), 42, 50, 57, 64 or 92 of, or Schedule 7 to, ";
- (c) omit the words after "the National Health Service (Wales) Act 2006".

(3) In subsection (1)(bb), after "section 17J" insert "or 17Q".

(4) In subsection (1)(c)—

- (a) for the words before "in accordance with arrangements" substitute "works or worked as a person providing services";
- (b) in sub-paragraph (ii), after "section" insert "2C, 17AA, 17C, ".

(5) Omit subsection (1)(ca) and the preceding "or".

(6) Omit subsection (2)(ba).

(7) After subsection (3) insert—

"(4) The Secretary of State may by order make amendments to this section as to what individuals count as "workers" for the purposes of this Part (despite not being within the definition in section 230(3)).

(5) An order under subsection (4) may not make an amendment that has the effect of removing a category of individual unless the Secretary of State is satisfied that there are no longer any individuals in that category."

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- (8) In section 236(3) of that Act (orders etc subject to affirmative resolution procedure), after “shall be made under section” insert “ 43K(4), ”.
- (9) In consequence of the amendments made by subsections (5) and (6), omit paragraph 7(a)(ii) and (b) of the Schedule to the Smoking, Health and Social Care (Scotland) Act 2005 (Consequential Modifications) (England, Wales and Northern Ireland) Order 2006 (S.I. 2006/1056).
- (10) Until the coming into force of the repeal (made by Schedule 3 to the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13)) of sections 27 to 28 of the National Health Service (Scotland) Act 1978 (“the 1978 Act”), section 43K(1)(c)(ii) of the Employment Rights Act 1996 has effect as if it included a reference to section 27A of the 1978 Act.

#### Commencement Information

**I14** [S. 20](#) wholly in force at 25.6.2013; [s. 20](#) in force for specified purposes at Royal Assent and otherwise in force at 25.6.2013, see [s. 103\(1\)\(i\)\(2\)\(b\)](#)

### Miscellaneous

## 21 Tribunal procedure: miscellaneous

- (1) The Employment Tribunals Act 1996 is amended as follows.
- (2) In section 9 (pre-hearing reviews and preliminary matters), in subsection (2) (deposit orders), in paragraph (a)—
  - (a) omit “, if he wishes to continue to participate in those proceedings,”;
  - (b) after “an amount not exceeding £1,000” insert “as a condition of—
    - (i) continuing to participate in those proceedings, or
    - (ii) pursuing any specified allegations or arguments”.
- (3) In section 13A (payments in respect of preparation time)—
  - (a) in subsection (3), after “shall also” insert “, subject to subsection (4), ”;
  - (b) after subsection (3) insert—
    - “(4) Subsection (3) does not require the regulations to include provision to prevent an employment tribunal from making—
      - (a) an order of the kind mentioned in subsection (1), and
      - (b) an award of the kind mentioned in section 13(1)(a) that is limited to witnesses' expenses.”
- (4) In section 42 (interpretation), in subsection (1), after the definition of “employment tribunal procedure regulations” insert—
  - ““representative” shall be construed in accordance with section 6(1) (in Part 1) or section 29(1) (in Part 2),”.

*Changes to legislation: There are currently no known outstanding effects for the Enterprise and Regulatory Reform Act 2013, PART 2. (See end of Document for details)*

### Commencement Information

**I15** [S. 21](#) wholly in force at 25.6.2013; [s. 21](#) in force for specified purposes at Royal Assent and otherwise in force at 25.6.2013, see [s. 103\(1\)\(i\)\(2\)\(b\)](#)

## 22 Indexation of amounts: timing and rounding

- (1) Section 34 of the Employment Relations Act 1999 (indexation of amounts, etc) is amended as follows.
- (2) In subsection (2)—
  - (a) omit “as soon as practicable”;
  - (b) at the end insert “, with effect from the following 6th April ”.
- (3) In subsection (3), for the words after “the Secretary of State shall” substitute “ round the result to the nearest whole pound, taking 50p as nearest to the next whole pound above ”.

## 23 Renaming of “compromise agreements”, “compromise contracts” and “compromises”

- (1) In the following provisions, for “compromise” (in each place where it occurs) substitute “ settlement ”
  - (a) section 288(2A) and (2B) of the Trade Union and Labour Relations (Consolidation) Act 1992 (restriction on contracting out);
  - (b) section 203(2)(f) and (3) of the Employment Rights Act 1996 (restrictions on contracting out);
  - (c) section 58(4) and (5) of the Pensions Act 2008 (restrictions on agreements to limit operation of Part 1).
- (2) In section 19A of the Employment Tribunals Act 1996 (conciliation: recovery of sums payable under compromises)—
  - (a) in subsections (1), (3), (4), (5) and (6), for “compromise” (in each place where it occurs) substitute “ settlement ”;
  - (b) in subsection (12)—
    - (i) for “compromise” (in the first two places it occurs) substitute “ settlement ”;
    - (ii) omit “, or compromise,”;
  - (c) in the heading, for “compromises” substitute “ settlements ”.
- (3) In section 49 of the National Minimum Wage Act 1998 (restrictions on contracting out)—
  - (a) in subsections (3) and (4), for “compromise” (in each place where it occurs) substitute “ settlement ”;
  - (b) after subsection (8) insert—

“(8A) In the application of this section in relation to Northern Ireland, subsections (3) and (4) above shall have effect as if for “settlement agreements” (in each place) there were substituted “compromise agreements.”

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**Changes to legislation:** There are currently no known outstanding effects for the Enterprise and Regulatory Reform Act 2013, PART 2. (See end of Document for details)

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- (4) In section 28 of the Equality Act 2006 (legal assistance), in subsection (11), for “compromise contract or agreement” substitute “settlement agreement”.
- (5) In section 144 of the Equality Act 2010 (contracting out), in subsection (4)(b), for “compromise contract” substitute “settlement agreement”.
- (6) In section 147 of that Act (meaning of “qualifying compromise contract”), in subsections (2) and (5) and in the heading, for “compromise contract” substitute “settlement agreement”.

#### Commencement Information

**I16** S. 23 in force at 29.7.2013 by S.I. 2013/1648, art. 2(c)

### General

#### 24 Transitional provision

- (1) Section 10 does not apply in relation to a disclosure, or a request for information, made before that section comes into force.
- (2) Section 12 does not apply in relation to proceedings that are in the process of being heard by the Employment Appeal Tribunal when that section comes into force.
- (3) Section 13 does not apply where the effective date of termination of the contract of employment in question is earlier than the date on which that section comes into force.  
“Effective date of termination” here has the meaning given by section 97(1) of the Employment Rights Act 1996.
- (4) Section 14 does not apply to any offer made or discussions held before the commencement of that section.
- (5) Section 16 does not apply in relation to any claim presented before the end of the sixth month after the day on which this Act is passed (or before the commencement of that section).
- (6) Section 17, 18, 19 or 20 does not apply to a qualifying disclosure made before the section comes into force.  
“Qualifying disclosure” here has the meaning given by section 43B of the Employment Rights Act 1996.



**Changes to legislation:**

There are currently no known outstanding effects for the Enterprise and Regulatory Reform Act 2013, PART 2.