Employment Act 2002

2002 CHAPTER 22

PART 3

DISPUTE RESOLUTION ETC.

Statutory procedures

29 Statutory dispute resolution procedures

(1) Schedule 2 (which sets out the statutory dispute resolution procedures) shall have effect.

(2) The Secretary of State may by order—

(a) amend Schedule 2;

(b) make provision for the Schedule to apply, with or without modifications, as if—

(i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of the Schedule were an employee for those purposes; and

(ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.

(3) Before making an order under this section, the Secretary of State must consult the Advisory, Conciliation and Arbitration Service.

30 Contracts of employment

(1) Every contract of employment shall have effect to require the employer and employee to comply, in relation to any matter to which a statutory procedure applies, with the requirements of the procedure.

(2) Subsection (1) shall have effect notwithstanding any agreement to the contrary, but does not affect so much of an agreement to follow a particular procedure as requires

the employer or employee to comply with a requirement which is additional to, and not inconsistent with, the requirements of the statutory procedure.

(3) The Secretary of State may for the purpose of this section by regulations make provision about the application of the statutory procedures.

(4) In this section, "contract of employment" has the same meaning as in the Employment Rights Act 1996 (c. 18).

31 Non-completion of statutory procedure: adjustment of awards

(1) This section applies to proceedings before an employment tribunal relating to a claim under any of the jurisdictions listed in Schedule 3 by an employee.

(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—

(a) the claim to which the proceedings relate concerns a matter to which one of the statutory procedures applies,

(b) the statutory procedure was not completed before the proceedings were begun, and

(c) the non-completion of the statutory procedure was wholly or mainly attributable to failure by the employee—

(i) to comply with a requirement of the procedure, or

(ii) to exercise a right of appeal under it,

it must, subject to subsection (4), reduce any award which it makes to the employee by 10 per cent, and may, if it considers it just and equitable in all the circumstances to do so, reduce it by a further amount, but not so as to make a total reduction of more than 50 per cent.

(3) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—

(a) the claim to which the proceedings relate concerns a matter to which one of the statutory procedures applies,

(b) the statutory procedure was not completed before the proceedings were begun, and

(c) the non-completion of the statutory procedure was wholly or mainly attributable to failure by the employer to comply with a requirement of the procedure,

it must, subject to subsection (4), increase any award which it makes to the employee by 10 per cent and may, if it considers it just and equitable in all the circumstances to do so, increase it by a further amount, but not so as to make a total increase of more than 50 per cent.

(4) The duty under subsection (2) or (3) to make a reduction or increase of 10 per cent does not apply if there are exceptional circumstances which would make a reduction or increase of that percentage unjust or inequitable, in which case the tribunal may make no reduction or increase or a reduction or increase of such lesser percentage as it considers just and equitable in all the circumstances.

(5) Where an award falls to be adjusted under this section and under section 38, the adjustment under this section shall be made before the adjustment under that section.

(6) The Secretary of State may for the purposes of this section by regulations—

(a) make provision about the application of the statutory procedures;
(b) make provision about when a statutory procedure is to be taken to be completed;
(c) make provision about what constitutes compliance with a requirement of a statutory procedure;
(d) make provision about circumstances in which a person is to be treated as not subject to, or as having complied with, such a requirement;
(e) make provision for a statutory procedure to have effect in such circumstances as may be specified by the regulations with such modifications as may be so specified;
(f) make provision about when an employee is required to exercise a right of appeal under a statutory procedure.

(7) The Secretary of State may by order—
(a) amend Schedule 3 for the purpose of—
(i) adding a jurisdiction to the list in that Schedule, or
(ii) removing a jurisdiction from that list;
(b) make provision, in relation to a jurisdiction listed in Schedule 3, for this section not to apply to proceedings relating to claims of a description specified in the order;
(c) make provision for this section to apply, with or without modifications, as if—
(i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this section were an employee for those purposes, and
(ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.

32 Complaints about grievances

(1) This section applies to the jurisdictions listed in Schedule 4.

(2) An employee shall not present a complaint to an employment tribunal under a jurisdiction to which this section applies if—
(a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 2 applies, and
(b) the requirement has not been complied with.

(3) An employee shall not present a complaint to an employment tribunal under a jurisdiction to which this section applies if—
(a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 2 has been complied with, and
(b) less than 28 days have passed since the day on which the requirement was complied with.

(4) An employee shall not present a complaint to an employment tribunal under a jurisdiction to which this section applies if—
(a) it concerns a matter in relation to which the requirement in paragraph 6 or 9 of Schedule 2 has been complied with, and
(b) the day on which the requirement was complied with was more than one month after the end of the original time limit for making the complaint.

(5) In such circumstances as the Secretary of State may specify by regulations, an employment tribunal may direct that subsection (4) shall not apply in relation to a particular matter.

(6) An employment tribunal shall be prevented from considering a complaint presented in breach of subsections (2) to (4), but only if—

(a) the breach is apparent to the tribunal from the information supplied to it by the employee in connection with the bringing of the proceedings, or

(b) the tribunal is satisfied of the breach as a result of his employer raising the issue of compliance with those provisions in accordance with regulations under section 7 of the Employment Tribunals Act 1996 (c. 17) (employment tribunal procedure regulations).

(7) The Secretary of State may for the purposes of this section by regulations—

(a) make provision about the application of the procedures set out in Part 2 of Schedule 2;

(b) make provision about what constitutes compliance with paragraph 6 or 9 of that Schedule;

(c) make provision about circumstances in which a person is to be treated as having complied with paragraph 6 or 9 of that Schedule;

(d) make provision for paragraph 6 or 9 of that Schedule to have effect in such circumstances as may be specified by the regulations with such modificiations as may be so specified.

(8) The Secretary of State may by order—

(a) amend, repeal or replace any of subsections (2) to (4);

(b) amend Schedule 4;

(c) make provision for this section to apply, with or without modifications, as if—

(i) any individual of a description specified in the order who would not otherwise be an employee for the purposes of this section were an employee for those purposes, and

(ii) a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes.

(9) Before making an order under subsection (8)(a), the Secretary of State must consult the Advisory, Conciliation and Arbitration Service.

(10) In its application to orders under subsection (8)(a), section 51(1)(b) includes power to amend this section.

33 Consequential adjustment of time limits

(1) The Secretary of State may, in relation to a jurisdiction listed in Schedule 3 or 4, by regulations make provision about the time limit for beginning proceedings in respect of a claim concerning a matter to which a statutory procedure applies.

(2) Regulations under this section may, in particular—

(a) make provision extending, or authorising the extension of, the time for beginning proceedings,

(b) make provision about the exercise of a discretion to extend the time for beginning proceedings, or

(c) make provision treating proceedings begun out of time as begun within time.

34 Procedural fairness in unfair dismissal

(1) Part 10 of the Employment Rights Act 1996 (c. 18) (unfair dismissal) is amended as follows.

(2) After section 98 there is inserted—

"**98A Procedural fairness**

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

(a) one of the procedures set out in Part 1 of Schedule 2 to the Employment Act 2002 (dismissal and disciplinary procedures) applies in relation to the dismissal,

(b) the procedure has not been completed, and

(c) the non-completion of the procedure is wholly or mainly attributable to failure by the employer to comply with its requirements.

(2) Subject to subsection (1), failure by an employer to follow a procedure in relation to the dismissal of an employee shall not be regarded for the purposes of section 98(4)(a) as by itself making the employer's action unreasonable if he shows that he would have decided to dismiss the employee if he had followed the procedure.

(3) For the purposes of this section, any question as to the application of a procedure set out in Part 1 of Schedule 2 to the Employment Act 2002, completion of such a procedure or failure to comply with the requirements of such a procedure shall be determined by reference to regulations under section 31 of that Act."

(3) In section 112 (the remedies: orders and compensation), at the end there is inserted—

"(5) Where—

(a) an employee is regarded as unfairly dismissed by virtue of section 98A(1) (whether or not his dismissal is unfair or regarded as unfair for any other reason), and

(b) an order is made in respect of the employee under section 113,

the employment tribunal shall, subject to subsection (6), also make an award of four weeks' pay to be paid by the employer to the employee.

(6) An employment tribunal shall not be required to make an award under subsection (5) if it considers that such an award would result in injustice to the employer."

(4) In section 117 (under which an award of compensation falls to be made if an employee is reinstated or re-engaged in pursuance of an order under section 113, but the terms of the order are not fully complied with), after subsection (2) there is inserted—

"(2A) There shall be deducted from any award under subsection (1) the amount of any award made under section 112(5) at the time of the order under section 113."

(5) In section 123 (compensatory award) at the end there is inserted—

"(8) Where the amount of the compensatory award falls to be calculated for the purposes of an award under section 117(3)(a), there shall be deducted from the compensatory award any award made under section 112(5) at the time of the order under section 113."

(6) In section 120 (basic award: minimum in certain cases) after subsection (1) there is inserted—

"(1A) Where—

(a) an employee is regarded as unfairly dismissed by virtue of section 98A(1) (whether or not his dismissal is unfair or regarded as unfair for any other reason),

(b) an award of compensation falls to be made under section 112(4), and

(c) the amount of the award under section 118(1)(a), before any reduction under section 122(3A) or (4), is less than the amount of four weeks' pay,

the employment tribunal shall, subject to subsection (1B), increase the award under section 118(1)(a) to the amount of four weeks' pay.

(1B) An employment tribunal shall not be required by subsection (1A) to increase the amount of an award if it considers that the increase would result in injustice to the employer."