
STATUTORY INSTRUMENTS

1994 No. 1624

INDUSTRIAL TRIBUNALS

**The Industrial Tribunals Extension
of Jurisdiction (Scotland) Order 1994**

Made - - - - *11th July 1994*
Coming into force - - *12th July 1994*

Whereas a draft of the following Order was laid before Parliament in accordance with section 131(8) of the Employment Protection (Consolidation) Act 1978(1) and approved by resolution of each House of Parliament.

Now, therefore, the Lord Advocate, in exercise of the powers conferred on him by sections 131(1), (4A), (5) and (5A) and 154(3) of that Act(2), and of all other powers enabling him in that behalf, hereby makes the following Order:—

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Industrial Tribunals Extension of Jurisdiction (Scotland) Order 1994 and comes into force on the first day after it is made.

(2) In this Order—

“contract claim” means a claim in respect of which proceedings may be brought before an industrial tribunal by virtue of article 3 or 4; and

“the 1978 Act” means the Employment Protection (Consolidation) Act 1978.

Transitional provision

2. This Order does not enable proceedings in respect of a contract claim to be brought before an industrial tribunal unless—

- (a) the effective date of termination (as defined in section 55(4) of the 1978 Act) in respect of the contract giving rise to the claim, or
- (b) where there is no effective date of termination, the last day upon which the employee works in the employment which has terminated,

(1) 1978 c. 44; section 131 was amended by section 38 of the Trade Union Reform and Employment Rights Act 1993 (c. 19).
(2) By virtue of section 131(1), the power to make this Order is vested in “the appropriate Minister”; by section 131(7), as amended by section 38(e) of the Trade Union Reform and Employment Rights Act 1993 (c. 19), that expression means the Lord Advocate as respects a claim in respect of which an action could be heard and determined by a court in Scotland.

occurs on or after the day on which the Order comes into force.

Extension of jurisdiction

3. Proceedings may be brought before an industrial tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—

- (a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in Scotland would under the law for the time being in force have jurisdiction to hear and determine;
- (b) the claim is not one to which article 5 applies; and
- (c) the claim arises or is outstanding on the termination of the employee's employment.

4. Proceedings may be brought before an industrial tribunal in respect of a claim of an employer for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—

- (a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in Scotland would under the law for the time being in force have jurisdiction to hear and determine;
- (b) the claim is not one to which article 5 applies;
- (c) the claim arises or is outstanding on the termination of the employment of the employee against whom it is made; and
- (d) proceedings in respect of a claim of that employee have been brought before an industrial tribunal by virtue of this Order.

5. This article applies to a claim for breach of a contractual term of any of the following descriptions—

- (a) a term requiring the employer to provide living accommodation for the employee;
- (b) a term imposing an obligation on the employer or the employee in connection with the provision of living accommodation;
- (c) a term relating to intellectual property;
- (d) a term imposing an obligation of confidence;
- (e) a term which is a covenant in restraint of trade.

In this article, "intellectual property" includes copyright, rights in performances, moral rights, design right, registered designs, patents and trade marks.

Manner in which proceedings may be brought

6. Proceedings on a contract claim may be brought before an industrial tribunal by presenting a complaint to an industrial tribunal.

Time within which proceedings may be brought

7. An industrial tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented—

- (a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or

- (b) where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has terminated, or
- (c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.

8. An industrial tribunal shall not entertain a complaint in respect of an employer's contract claim unless—

- (a) it is presented at a time when there is before the tribunal a complaint in respect of a contract claim of a particular employee which has not been settled or withdrawn;
- (b) it arises out of a contract with that employee; and
- (c) it is presented—
 - (i) within the period of six weeks beginning with the day, or if more than one the last of the days, on which the employer (or other person who is the respondent party to the employee's contract claim) received from the tribunal a copy of an originating application in respect of a contract claim of that employee; or
 - (ii) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

Death and legal incapacity

9. Where proceedings in respect of a contract claim have been brought before an industrial tribunal and an employee or employer party to them dies or comes under legal incapacity before the conclusion of the proceedings, the tribunal may order any person who represents that party or his estate to be made a party to the proceedings in place of the party who has died or come under legal incapacity and the proceedings to be carried on accordingly.

Limit on payment to be ordered

10. An industrial tribunal shall not in proceedings in respect of a contract claim, or in respect of a number of contract claims relating to the same contract, order the payment of an amount exceeding £25,000.

Dated 11th July 1994

Rodger of Earlsferry
Lord Advocate

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which applies in relation to Scotland and comes into force on the day after it is made, enables an employee to bring a claim for damages for breach of his contract of employment, or for a sum due under that contract, before an industrial tribunal if the claim arises or is outstanding on the termination of his employment. The Order also enables an employer to make such a claim against an employee where the employee has claimed against him under the Order.

Article 5 contains certain exclusions. Broadly, these relate to claims about the provision of living accommodation, intellectual property (for example, copyright), obligations of confidence on the employee and covenants in restraint of trade.

Articles 7 and 8 provide that an employee's complaint about a contractual claim must normally be presented within a period of three months beginning with the "effective date of termination" as defined in section 55(4) of the Employment Protection (Consolidation) Act 1978, and that an employer's complaint about a contractual claim must be presented within six weeks of receiving a copy of an originating application relating to the employee's complaint. The tribunal is given a discretion to allow a complaint to be presented later if it was not reasonably practicable for the complaint to be presented within these periods.

Article 10 provides that the maximum which a tribunal may order to be paid in respect of a contract claim, or a number of claims relating to the same contract, is £25,000.

The Order contains a transitional provision.