



Employment Act 2002

2002 CHAPTER 22

VALID FROM 09/07/2004

PART 2

TRIBUNAL REFORM

Costs and expenses

22 Employment tribunals

(1) In section 13 of the Employment Tribunals Act 1996 (c. 17) (costs and expenses), for subsection (1) there is substituted—

- “(1) Employment tribunal procedure regulations may include provision—
- (a) for the award of costs or expenses;
 - (b) for the award of any allowances payable under section 5(2)(c) or (3).

(1A) Regulations under subsection (1) may include provision authorising an employment tribunal to have regard to a person’s ability to pay when considering the making of an award against him under such regulations.

(1B) Employment tribunal procedure regulations may include provision for authorising an employment tribunal—

- (a) to disallow all or part of the costs or expenses of a representative of a party to proceedings before it by reason of that representative’s conduct of the proceedings;
- (b) to order a representative of a party to proceedings before it to meet all or part of the costs or expenses incurred by a party by reason of the representative’s conduct of the proceedings;
- (c) to order a representative of a party to proceedings before it to meet all or part of any allowances payable by the Secretary of State under

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Changes to legislation: Employment Act 2002, Part 2 is up to date with all changes known to be in force on or before 18 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

section 5(2)(c) or (3) by reason of the representative’s conduct of the proceedings.

(1C) Employment tribunal procedure regulations may also include provision for taxing or otherwise settling the costs or expenses referred to in subsection (1) (a) or (1B)(b) (and, in particular in England and Wales, for enabling the amount of such costs to be assessed by way of detailed assessment in a county court).”

(2) After that section there is inserted—

“13A Payments in respect of preparation time

(1) Employment tribunal procedure regulations may include provision for authorising an employment tribunal to order a party to proceedings before it to make a payment to any other party in respect of time spent in preparing that other party’s case.

(2) Regulations under subsection (1) may include provision authorising an employment tribunal to have regard to a person’s ability to pay when considering the making of an order against him under such regulations.

(3) If employment tribunal procedure regulations include—

(a) provision of the kind mentioned in subsection (1), and

(b) provision of the kind mentioned in section 13(1)(a),

they shall also include provision to prevent an employment tribunal exercising its powers under both kinds of provision in favour of the same person in the same proceedings.”

23 Employment Appeal Tribunal

For section 34 of the Employment Tribunals Act 1996 (c. 17) (costs and expenses) there is substituted—

“34 Costs and expenses

(1) Appeal Tribunal procedure rules may include provision for the award of costs or expenses.

(2) Rules under subsection (1) may include provision authorising the Appeal Tribunal to have regard to a person’s ability to pay when considering the making of an award against him under such rules.

(3) Appeal Tribunal procedure rules may include provision for authorising the Appeal Tribunal—

(a) to disallow all or part of the costs or expenses of a representative of a party to proceedings before it by reason of that representative’s conduct of the proceedings;

(b) to order a representative of a party to proceedings before it to meet all or part of the costs or expenses incurred by a party by reason of the representative’s conduct of the proceedings.

(4) Appeal Tribunal procedure rules may also include provision for taxing or otherwise settling the costs or expenses referred to in subsection (1) or (3)

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(b) (and, in particular in England and Wales, for enabling the amount of such costs to be assessed by way of detailed assessment in the High Court).”

Miscellaneous

24 Conciliation

(1) In section 7 of the Employment Tribunals Act 1996 (employment tribunal procedure regulations), in subsection (3)(f) (power to prescribe the procedure to be followed in proceedings before an employment tribunal), before sub-paragraph (ii) there is inserted—

“(ia) for postponing fixing a time and place for a hearing, or postponing a time fixed for a hearing, for such period as may be determined in accordance with the regulations for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn, and”.

(2) In section 18 of that Act (conciliation), after subsection (2) there is inserted—

“(2A) Where employment tribunal procedure regulations include provision postponing the fixing of a time and place for a hearing for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn, subsection (2) shall have effect from the end of the postponement to confer a power on the conciliation officer, instead of imposing a duty.”

(3) In section 19 of that Act (conciliation procedure), paragraph (c) (which requires employment tribunal procedure regulations, in relation to conciliation cases, to include provision postponing the hearing to give an opportunity for conciliation) shall cease to have effect.

(4) In that section, the existing provision (as amended by subsection (3)) becomes subsection (1) and at the end there is inserted—

“(2) If employment tribunal procedure regulations include provision postponing the fixing of a time and place for a hearing for the purpose of giving an opportunity for the proceedings to be settled by way of conciliation and withdrawn, they shall also include provision for the parties to proceedings to which the provision for postponement applies to be notified that the services of a conciliation officer may no longer be available to them after the end of the postponement.”

25 Power to delegate prescription of forms etc.

In section 7 of the Employment Tribunals Act 1996 (c. 17) (employment tribunal procedure regulations), after subsection (3) there is inserted—

“(3ZA) Employment tribunal procedure regulations may—

(a) authorise 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 instituting, or entering an appearance to, proceedings before employment tribunals,

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- (b) authorise the Secretary of State to prescribe requirements in relation to documents to be supplied with any such form, and
- (c) make provision about the publication of anything prescribed under authority conferred by virtue of this subsection.”

26 Determination without a hearing

In section 7 of the Employment Tribunals Act 1996 (employment tribunal procedure regulations) for subsection (3A) there is substituted—

“(3A) Employment tribunal procedure regulations may authorise the determination of proceedings without any hearing in such circumstances as the regulations may prescribe.”

27 Practice directions

After section 7 of the Employment Tribunals Act 1996 (c. 17) there is inserted—

“7A Practice directions

- (1) Employment tribunal procedure regulations may include provision—
 - (a) enabling the President to make directions about the procedure of employment tribunals, including directions about the exercise by tribunals of powers under such regulations,
 - (b) for securing compliance with such directions, and
 - (c) about the publication of such directions.
- (2) Employment tribunal procedure regulations may, instead of providing for any matter, refer to provision made or to be made about that matter by directions made by the President.
- (3) In this section, references to the President are to a person appointed in accordance with regulations under section 1(1) as—
 - (a) President of the Employment Tribunals (England and Wales), or
 - (b) President of the Employment Tribunals (Scotland).”

28 Pre-hearing reviews

(1) Section 9 of the Employment Tribunals Act 1996 (pre-hearing reviews) is amended as follows.

(2) In subsection (1) (power to make provision for pre-hearing reviews), for paragraph (a) there is substituted—

“(a) for authorising an employment tribunal to carry out a review of any proceedings before it at any time before a hearing held for the purpose of determining them (a “pre-hearing review”),”.

(3) After subsection (2) there is inserted—

“(2A) Regulations under subsection (1)(b), so far as relating to striking out, may not provide for striking out on a ground which does not apply outside a pre-hearing review.”

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