



Employment Act 2008

2008 CHAPTER 24

Dispute resolution

1 Statutory dispute resolution procedures

In the Employment Act 2002 (c. 22), sections 29 to 33 and Schedules 2 to 4 (which make provision for statutory dispute resolution procedures) are repealed.

2 Procedural fairness

In the Employment Rights Act 1996 (c. 18), section 98A (procedural fairness) is repealed.

3 Non-compliance with statutory Codes of Practice

(1) The Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) is amended as specified in subsections (2) and (3).

(2) After section 207 there is inserted—

“207A Effect of failure to comply with Code: adjustment of awards

(1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.

(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 a relevant Code of Practice applies,
- (b) the employer has failed to comply with that Code in relation to that matter, and
- (c) that failure was unreasonable,

Status: This is the original version (as it was originally enacted).

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

- (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 a relevant Code of Practice applies,
 - (b) the employee has failed to comply with that Code in relation to that matter, and
 - (c) that failure was unreasonable,
- the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 25%.
- (4) In subsections (2) and (3), “relevant Code of Practice” means a Code of Practice issued under this Chapter which relates exclusively or primarily to procedure for the resolution of disputes.
- (5) Where an award falls to be adjusted under this section and under section 38 of the Employment Act 2002, the adjustment under this section shall be made before the adjustment under that section.
- (6) The Secretary of State may by order amend Schedule A2 for the purpose of—
- (a) adding a jurisdiction to the list in that Schedule, or
 - (b) removing a jurisdiction from that list.
- (7) The power of the Secretary of State to make an order under subsection (6) includes power to make such incidental, supplementary, consequential or transitional provision as the Secretary of State thinks fit.
- (8) An order under subsection (6) shall be made by statutory instrument.
- (9) No order shall be made under subsection (6) unless a draft of the statutory instrument containing it has been laid before Parliament and approved by a resolution of each House.”

(3) After Schedule A1 there is inserted—

“SCHEDULE A2

Section 207A

TRIBUNAL JURISDICTIONS TO WHICH SECTION 207A APPLIES

- Section 2 of the Equal Pay Act 1970 (c. 41) (equality clauses)
- Section 63 of the Sex Discrimination Act 1975 (c. 65) (discrimination in the employment field)
- Section 54 of the Race Relations Act 1976 (c. 74) (discrimination in the employment field)
- Section 145A of this Act (inducements relating to union membership or activities)
- Section 145B of this Act (inducements relating to collective bargaining)
- Section 146 of this Act (detriment in relation to union membership and activities)
- Paragraph 156 of Schedule A1 to this Act (detriment in relation to union recognition rights)

Section 17A of the Disability Discrimination Act 1995 (c. 50) (discrimination in the employment field)

Section 23 of the Employment Rights Act 1996 (c. 18) (unauthorised deductions and payments)

Section 48 of that Act (detriment in employment)

Section 111 of that Act (unfair dismissal)

Section 163 of that Act (redundancy payments)

Section 24 of the National Minimum Wage Act 1998 (c. 39) (detriment in relation to national minimum wage)

The Employment Tribunal Extension of Jurisdiction (England and Wales) Order 1994 (SI 1994/1623) (breach of employment contract and termination)

The Employment Tribunal Extension of Jurisdiction (Scotland) Order 1994 (SI 1994/1624) (corresponding provision for Scotland)

Regulation 30 of the Working Time Regulations 1998 (SI 1998/1833) (breach of regulations)

Regulation 32 of the Transnational Information and Consultation of Employees Regulations 1999 (SI 1999/3323) (detriment relating to European Works Councils)

Regulation 28 of the Employment Equality (Sexual Orientation) Regulations 2003 (SI 2003/1660) (discrimination in the employment field)

Regulation 28 of the Employment Equality (Religion or Belief) Regulations 2003 (SI 2003/1661) (discrimination in the employment field)

Regulation 45 of the European Public Limited-Liability Company Regulations 2004 (SI 2004/2326) (detriment in employment)

Regulation 33 of the Information and Consultation of Employees Regulations 2004 (SI 2004/3426) (detriment in employment)

Paragraph 8 of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (SI 2006/349) (detriment in employment)

Regulation 36 of the Employment Equality (Age) Regulations 2006 (SI 2006/1031) (discrimination in the employment field)

Regulation 34 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (SI 2006/2059) (detriment in relation to involvement in a European Cooperative Society)

Regulation 17 of the Cross-border Railway Services (Working Time) Regulations 2008 (SI 2008/1660) (breach of regulations).”

- (4) In section 124A of the Employment Rights Act 1996 (c. 18) (adjustments under the Employment Act 2002), in paragraph (a), for the words from “section 31” to “procedures” there is substituted “section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 (effect of failure to comply with Code: adjustment of awards)”.

4 Determination of proceedings without hearing

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

“(3AA) Employment tribunal procedure regulations under subsection (3A) may only authorise the determination of proceedings without any hearing in circumstances where—

- (a) all the parties to the proceedings consent in writing to the determination without a hearing, or
- (b) the person (or, where more than one, each of the persons) against whom the proceedings are brought—
 - (i) has presented no response in the proceedings, or
 - (ii) does not contest the case.

(3AB) For the purposes of subsection (3AA)(b), a person does not present a response in the proceedings if he presents a response but, in accordance with provision made by the regulations, it is not accepted.”

5 Conciliation before bringing of proceedings

(1) In the Employment Tribunals Act 1996, section 18 (conciliation) is amended as follows.

(2) In subsection (3), for the words from “shall act” to the end there is substituted “may endeavour to promote a settlement between the parties without proceedings being instituted”.

(3) For subsection (5) there is substituted—

“(5) Where a conciliation officer acts pursuant to subsection (3) in a case where the person claiming as specified in paragraph (a) of that subsection has ceased to be employed by the employer and the proceedings which he claims could be brought by him 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 that person 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 person 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 that person.”

6 Conciliation after bringing of proceedings

(1) In the Employment Tribunals Act 1996 (c. 17), in section 18 (conciliation), subsection (2A) is repealed.

(2) In that Act, in section 19 (conciliation procedure), subsection (2) is repealed.

7 Compensation for financial loss

(1) In the Employment Rights Act 1996 (c. 18), in section 24 (determination of complaints relating to deductions from wages or payments to employer)—

- (a) the existing provision becomes subsection (1), and
- (b) after that provision there is inserted—

“(2) Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.”

(2) In that Act, in section 163 (determination of questions relating to redundancy payments), at the end there is inserted—

“(5) Where a tribunal determines under subsection (1) that an employee has a right to a redundancy payment it may order the employer to pay to the worker such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the non-payment of the redundancy payment.”