

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Enforcement

Chapter 2: Civil courts

Section 114: Jurisdiction

Effect

375. This section sets out what types of claims under the Act a county court or (in Scotland) the sheriff court has jurisdiction to hear. These are claims related to provision of services, the exercise of public functions, disposal and management of premises, education (other than in relation to disability), and associations.
376. There is a presumption that a judge or sheriff will appoint an assessor to assist the court when hearing discrimination cases. However, an assessor need not be appointed where there are good reasons not to (for example, after an assessment of the judge's own level of experience, the nature of the case and the wishes of the claimant).

Background

377. This section is designed to replicate the effect of provisions in previous legislation. However, for the first time the Act enables disability discrimination in schools cases in Scotland to be heard in the Additional Support Needs Tribunals (Scotland) rather than the sheriff courts, where they were previously heard.
378. Previously, two assessors would sit with judges in cases involving race and sex discrimination only. This section extends the requirement to have assessors for cases of discrimination based on any protected characteristic, such as sexual orientation or religion or belief, but reduces the number of assessors used in each case to one.

Examples

- A woman has joined a golf club but because she is a woman she is allowed to play golf only on Tuesday afternoons and is not allowed access to the club bar. She could bring a discrimination claim in the county or (if the golf course is in Scotland) sheriff court.
- A gay man applies for residential housing in a local authority area, but is told that he can choose from only three housing blocks because all homosexual people are housed together. He could bring a discrimination claim in the county or sheriff court.

Section 115: Immigration cases

Effect

379. This section sets out which claims under the Act are outside the jurisdiction of the county or sheriff courts because they are being dealt with in immigration proceedings.

These are claims in relation to decisions on whether a person may enter or remain in the UK and claims where the question of whether there has been a breach of Part 3 of the Act (dealing with services and public functions) has either been raised in immigration proceedings and rejected, or could be raised on appeal.

Background

380. This provision is designed to replicate the effect of provisions in previous legislation.

Section 116: Education cases

Effect

381. This section sets out which education-related claims under the Act are outside the jurisdiction of the county and sheriff courts. These are claims about discrimination because of disability in schools which should be brought instead in specialist tribunals (there is a separate tribunal for England and Wales and for Scotland).

Background

382. The position for England and Wales remains unchanged. As noted in relation to section 114, the Act for the first time enables disability discrimination in schools cases in Scotland to be heard in the Additional Support Needs Tribunals (Scotland) rather than the sheriff courts, where they were previously heard.

Section 117: National security

Effect

383. A county or sheriff court may need to take various steps during proceedings in order to safeguard national security. This section enables the Civil Procedure Rules Committee (for England and Wales) and the Sheriff Court Rules Council (for Scotland) to make rules of court to enable the court to exclude a claimant, representative or assessor from part or all of the proceedings; permit a claimant or representative who has been excluded to make a statement before the proceedings begin; and ensure that part or all of the reasons for a decision on the merits of the case are kept secret. Where the claimant or his or her representative is excluded from proceedings, a special advocate can be appointed to represent the claimant's interests.

Background

384. This provision is designed to replicate and extend powers in previous legislation. The previous powers applied in relation to some discrimination proceedings but not to those involving sexual orientation and age. This provision extends the power so that it applies across all the protected characteristics.

Section 118: Time limits

Effect

385. A person must bring a claim under the Act in the county and sheriff courts within six months of the alleged unlawful act taking place. If a person wants to make a claim after that period it is at the court's discretion whether it grants permission to allow this. The test applied by the court is what is "just and equitable" in the circumstances.

386. The exception to this rule is for claims which have been referred to a student complaints scheme within six months or to the Equality and Human Rights Commission for conciliation. In these instances the time limit for bringing a claim is increased to nine months. The six month period will only begin, in a claim involving a decision of an

immigration body, when that body has ruled that there is a breach of Part 3 and that ruling can no longer be appealed.

387. Where the conduct in respect of which a claim under the Act might arise continues over a period of time, the time limit starts to run at the end of that period. Where it consists of a failure to do something, the time limit starts to run when the person decides not to do the thing in question. In the absence of evidence to the contrary, this is either when the person does something which conflicts with doing the act in question; or at the end of the time when it would have been reasonable for them to do the thing.

Background

388. This section is designed to replicate the effect of provisions in the previous legislation, except that the provision allowing a longer time limit in respect of complaints referred to the student complaints scheme and for conciliation by the Equality and Human Rights Commission is new.

Section 119: Remedies

Effect

389. This section gives powers to county and sheriff courts hearing claims under the Act to grant any remedy that the High Court or Court of Session in Scotland can grant in proceedings in tort or in a claim for judicial review. The main remedies available are damages (including compensation for injuries to feelings), an injunction and a declaration. In cases based on indirect discrimination, if the respondent proves that he or she did not intend to treat the claimant unfavourably then the award of damages cannot be considered until a court has looked at the other remedies available to it.
390. A court cannot grant some remedies, such as an injunction, if doing so would prejudice a criminal investigation or proceedings.

Background

391. This provision is designed to replicate the effect of provisions in the previous legislation.