

# EQUALITY ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 9: Enforcement**

##### *Chapter 1: Introductory*

##### *Section 113: Proceedings*

#### **Effect**

372. This section applies the provisions of Part 9 to claims made under the Act. These claims must be brought either in a county court (sheriff court in Scotland) or in an employment tribunal. Sections 114 and 120 set out which claims should be brought in the civil courts and which in tribunals.
373. This section does not affect the enforcement powers of the Equality and Human Rights Commission which are in Part 1 of the Equality Act 2006. Nor does it prevent judicial review proceedings (or the equivalent in Scotland) or certain immigration proceedings related to compliance with the Act's provisions.

#### **Background**

374. This provision replaces similar provisions in the previous legislation.

##### *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.

### **Chapter 3: Employment tribunals**

#### **Section 120: Jurisdiction**

##### **Effect**

392. This section sets out what types of claims under the Act the employment tribunals have jurisdiction to hear. These are cases involving discrimination in a work context (which includes contract workers, partners, office-holders and barristers and advocates). Their jurisdiction also includes cases about the terms of collective agreements (which can cover any of the terms of employment) and rules of undertakings which are unenforceable under section 145 because they provide for treatment which is prohibited by the Act. This is made clear in section 145 of the Act.
393. It also gives jurisdiction to employment tribunals to hear complaints relating to breaches of a non-discrimination rule. Jurisdiction for hearing a complaint regarding a breach of an equality clause or an equality rule is set out in section 127. An employment tribunal can also make a ruling on an application made by a responsible person in relation to an occupational pension scheme (as defined in section 61(4)) for a declaration about his or her rights and those of a worker or member or prospective member of the scheme.

##### **Background**

394. This section is designed to replicate the effect of provisions in the previous legislation.

##### **Examples**

- A worker is racially abused by a co-worker. She could bring a discrimination claim in the employment tribunal.
- A gay man has applied to become a partner in a firm of accountants but because he is gay he has not been invited for an interview despite being equally or better qualified than other candidates who were invited for an interview. He could bring a discrimination claim in the employment tribunal.

#### **Section 121: Armed forces cases**

##### **Effect**

395. This section establishes that, before bringing a claim under the work provisions of the Act to an employment tribunal, a member of the armed forces must raise his or her complaint through the armed services internal complaints procedure and not withdraw that complaint. If the complainant fails properly to progress his or her internal complaint then it may, in certain circumstances, be treated as if it had been withdrawn. The internal service complaint procedures do not have to be concluded before the complainant brings a claim to an employment tribunal.

##### **Background**

396. This section is designed to replicate the effect of provisions in the previous legislation.

##### **Example**

- A black soldier who thinks he has been discriminated against by being passed over for promotion would have to make an internal service complaint before bringing his claim to an employment tribunal.

### ***Section 122: References by court to tribunal, etc.***

#### **Effect**

397. The Act does not prevent the civil courts from considering a claim that a pension scheme operates in a discriminatory manner. This section enables a court to strike out such a claim if it would be more convenient for an employment tribunal to deal with it, or to refer an issue relating to such a claim to an employment tribunal.

#### **Background**

398. Employment tribunals have the specialist knowledge and procedures to handle claims relating to discrimination in the work context and this section gives a court power to refer such issues to a tribunal. This section reflects similar provisions in previous legislation.

#### **Example**

- An employee who is a member of a pension scheme sues his employer in court alleging the employer operates the scheme in a discriminatory manner. The court decides to refer the issue to an employment tribunal and postpones the case until the tribunal's decision.

### ***Section 123: Time limits***

#### **Effect**

399. This section deals with time limits for cases in the employment tribunals. A person must bring a claim within three months of the alleged conduct taking place. The exception to that rule is a case involving an armed forces complaint, which must be brought within six months. If a person wants to make a claim after that period it is at the tribunals' discretion whether they grant permission to allow them to do so. The test applied by the tribunals is what is "just and equitable" in the circumstances.
400. 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. This section does not apply to a breach of an equality clause or an equality rule, which is covered by section 129.

#### **Background**

401. This section is designed to replicate the effect of provisions in previous legislation.

### ***Section 124: Remedies: general***

#### **Effect**

402. This section sets out the remedies available to employment tribunals hearing cases under the Act. It does not however apply to a breach of an equality clause or an equality rule, which is dealt with in sections 132, 133 and 134.
403. An employment tribunal can make a declaration regarding the rights of the complainant and/or the respondent; order compensation to be paid, including damages for injury to feelings; and make an appropriate recommendation. The measure of compensation is that which applies in tort claims, for example claims of negligence, where the compensation puts the claimant in the same position, as far as possible, as he or she would have been in if the unlawful act had not taken place.

404. Where a tribunal makes a recommendation it does not have to be aimed only at reducing the negative impact on the individual claimant(s) of the respondent's actions which gave rise to the successful claim, but can be aimed at reducing that impact on the wider workforce. The recommendation must state that the respondent should take specific action within a specified period of time. A tribunal has the power in any case where a recommendation made for the benefit of the individual claimant only is not complied with, to award compensation or increase any award already made.
405. In a case of indirect discrimination where the respondent proves that there was no intention to treat the claimant unfavourably, a tribunal cannot award damages to a claimant unless it has first considered making either a declaration or recommendation.

### **Background**

406. This section is designed generally to replicate the effect of provisions in previous legislation, under which employment tribunals could make a declaration, order compensation to be paid and make recommendations. However, under that legislation the recommendations that they could make could only be for the benefit of the individual claimant(s). The Act extends the recommendations power so that employment tribunals can make recommendations which benefit persons other than the claimant.

### **Example**

- A tribunal could recommend that the respondent:
  - introduces an equal opportunities policy;
  - ensures its harassment policy is more effectively implemented;
  - sets up a review panel to deal with equal opportunities and harassment/grievance procedures;
  - re-trains staff; or
  - makes public the selection criteria used for transfer or promotion of staff.

### **Section 125: Remedies: national security**

#### **Effect**

407. This section sets out the restrictions on the types of remedies available to an employment tribunal in cases which have been designated as "national security proceedings". National security proceedings are those where an order has been made under various provisions of the Employment Tribunals Act 1996 or regulations made under that Act.
408. In national security proceedings a recommendation must not be made for the benefit of the respondent's wider workforce, if the recommendation would affect anything done by the Security Service, the Secret Intelligence Service, the Government Communications Headquarters or a part of the armed forces which assists the Government Communications Headquarters. In such cases the tribunal is limited to making recommendations for the benefit of the individual claimant or claimants.

### **Background**

409. Because the Act extends the recommendations power to benefit persons other than the claimant, this provision is necessary to ensure that such recommendations do not affect national security.

### ***Section 126: Remedies: occupational pension schemes***

#### **Effect**

410. This section sets out the additional remedies available to employment tribunals in cases involving occupational pension schemes. These are cases in which the respondent is an employer, or the trustee or manager of the pension scheme; and the complaint relates to the terms on which membership is offered to a pension scheme or how members of an existing scheme are treated. In these cases the tribunal can, in addition to the remedies of declaration, compensation and recommendation, also make a declaration about the terms on which a person should be admitted as a member to that scheme or a declaration about the rights of an existing member of that scheme not to be discriminated against.
411. However, a tribunal can award compensation only for injured feelings or for failure to comply with a recommendation; it cannot compensate the claimant for loss caused by the unlawful discrimination.

#### **Background**

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

### ***Chapter 4: Equality of terms***

#### ***Section 127: Jurisdiction***

#### **Effect**

413. This section sets out the types of cases relating to equality of terms which employment tribunals have jurisdiction to hear. Tribunals may hear and decide claims (including those referred to them by courts) involving equality in the rules of occupational pension schemes and claims relating to an equality clause, including claims relating to pregnancy and maternity equality.
414. A responsible person (as defined in section 80, such as an employer, or a pension scheme trustee or manager) can also ask a tribunal for a declaration of each party's rights in relation to a dispute or claim about an equality clause or rule.
415. Members of the armed forces must bring a complaint under service complaints procedures before they can bring a claim to a tribunal.
416. This section does not alter any jurisdiction the courts or the sheriff have in relation to an equality clause or rule.

#### **Background**

417. This section is designed to replicate the effect of provisions in previous legislation.

#### **Example**

- An employment tribunal can hear claims brought by an employee, office-holder or member of the armed forces in relation to a breach of an equality clause and in relation to breach of an equality rule concerning a pension scheme.

### ***Section 128: References by court to tribunal, etc.***

#### **Effect**

418. The Act does not prevent the civil courts from considering a contractual claim relating to an equality clause or rule. However, this section gives a court the power to strike out such a claim if it would be more convenient for a tribunal to deal with it, or to refer an issue relating to such a claim to an employment tribunal.



## **Background**

419. Employment tribunals have the specialist knowledge and procedures to handle claims relating to equality of terms and this section gives a court power to refer such issues to a tribunal. This section replaces similar provisions in previous legislation.

## **Example**

- An employer sues an employee in a civil court for breach of her employment contract. In response, the employee counterclaims for breach of an equality clause. The court decides to refer the counterclaim to an employment tribunal and postpones the case until the tribunal's decision.

## **Section 129: Time limits**

### **Effect**

420. A person who wishes to bring a claim for breach of an equality clause or rule or to apply for a declaration about the effect of such a clause or rule must normally do so within six months of the end of the employment contract. In certain circumstances, this section gives a claimant more time to make a claim. This applies where the employer conceals certain information from the claimant or where the claimant has an incapacity (as defined in section 141). Members of the armed forces have an additional three months in which to bring a claim because they must first make a complaint under the service complaint procedures.

## **Background**

421. This section replaces similar provisions in previous legislation. Time limits provide certainty by requiring claims to be brought within specified periods and also take into account factors which may affect a claimant's ability to assert his or her claim.

## **Example**

- A former member of the armed forces wishes to bring a claim about her terms of service. She first makes a service complaint and then brings a claim for breach of an equality clause in an employment tribunal. The claim for breach of an equality clause must be brought in an employment tribunal within nine months after her period of service ended.

## **Section 130: Section 129: supplementary**

### **Effect**

422. Under section 129, the time limit for bringing a claim for breach of an equality clause is six months (nine months for members of the armed forces) from the date on which employment ended in a standard case. Different time limits apply to non-standard cases. This section defines what is not a standard case.
423. In a stable work case, a series of fixed- or short-term contracts and breaks between contracts is treated as a continuing single contract. In a standard case, the time limit would start at the end of the contract of employment. In a stable work case, the time limit only begins to run when the stable working relationship ends.
424. In a concealment case, the employer deliberately conceals relevant information from the employee. The time limit starts to run when the employee discovers, or could reasonably have discovered, the information.
425. In an incapacity case, the appropriate time limit will start to run when the incapacity ends. Section 141 sets out when a person has an incapacity.



426. The section makes similar provisions for claims by members of the armed forces and in relation to occupational pension schemes.

### **Background**

427. This provision replaces similar provisions in the previous legislation.

### **Examples**

- A woman's employment ends due to mental health problems which result in her temporary loss of capacity to make decisions for herself. She could make a claim for breach of an equality clause to an employment tribunal but is not well enough to do so. The six month time limit will start when she recovers sufficiently to make a claim.
- A woman suspects that her male colleagues who do the same work are better paid. Her employer reassures her that she and her colleagues get the same salary but he deliberately does not tell her that the men also receive performance bonuses under their contracts. Her male colleagues refuse to discuss their pay with her. The woman only discovers the discrepancy between her pay and the men's when one of the men tells her 18 months after she ceases employment. Within six months, she makes an equal pay claim to a tribunal based on the value of the bonus payments she would have received if her contract had provided for them. Although the woman's claim is made more than six months after her employment ends, she shows that her employer deliberately misled her into believing that her salary was the same as the men's. She had no way of discovering the truth earlier. Her claim can proceed as a concealment case.

### ***Section 131: Assessment of whether work is of equal value***

#### **Effect**

428. Where an employment tribunal has to decide if the work of a claimant and comparator are of equal value, this section gives it the power to require an independent expert, designated by the Advisory, Conciliation and Arbitration Service, to prepare a report on the matter.
429. Unless the tribunal withdraws its request for a report (in which case it can ask the expert to give it any documents or other information the expert has to help it make a decision) it must wait for the expert's report before deciding whether the work is of equal value.
430. If there has been a job evaluation study in relation to the work involved and the study finds that the claimant's work is not of equal value to the work of the comparator, the tribunal is required to come to the same decision unless it has a good reason to suspect that the study is discriminatory or unreliable.

### **Background**

431. This provision replaces similar provisions in previous legislation.

### **Example**

- A woman claims that her job is of equal value to that of a male comparator. The employer produces a job evaluation study to the tribunal in which the woman's job is rated below her comparator's job. The employer asks the tribunal to dismiss the woman's claim but the woman is able to show that the study is unreliable because it is out of date and does not take account of changes in the jobs resulting from new technology. The tribunal can disregard the study's conclusion and can proceed to decide if the work of the claimant and the work of the comparator are of equal value.

### **Section 132: Remedies in non-pensions cases**

#### **Effect**

432. If a claim for breach of an equality clause (other than in relation to a pension scheme) succeeds, the court or employment tribunal can make a declaration clarifying what the rights of the parties to the claim are.
433. The court or tribunal can also order the employer to pay the claimant arrears of pay or damages. The period used for calculating arrears depends on the type of case. There are different periods for claims brought in England and Wales and in Scotland. The basic period in relation to England and Wales is six years from the date a claim is made. In relation to Scotland, the period is five years. Special provision is made for claims involving concealment and/or incapacity (as set out in section 135).

#### **Background**

434. This provision replaces similar provisions in previous legislation.

#### **Example**

- A woman successfully establishes that her work is the same as her male comparator's and that in addition to a discrepancy between her pay and that of her male comparator, she has been denied access to the benefit of a company car. The claimant is entitled to claim the difference in pay going back up to six years from the date of the claim. She is also entitled to monetary compensation for not having had the use of a company car.

### **Section 133: Remedies in pensions cases**

#### **Effect**

435. This section allows an employment tribunal to declare that in cases where an equality rule or equality clause has been breached in relation to:
- scheme membership, the complainant is entitled to be admitted to the scheme from a date specified by the tribunal, although the date cannot be earlier than 8 April 1976;
  - scheme rights, the complainant is entitled to have any rights which would have accrued under the scheme secured from a date specified by the tribunal, although the date cannot be earlier than 17 May 1990.
436. However, the section prevents a tribunal ordering an award of compensation to the complainant.

#### **Background**

437. This section replicates requirements in the Equal Pay Act 1970, as modified by the Occupational Pension Schemes (Equal Treatment) Regulations 1995.
438. The restrictions on dates derive from judgments of the European Court:
- for scheme membership: 8 April 1976, the date of the Court's judgment in *Defrenne v Sabena* ((C 43/75) [1981] 1 All ER 122; [1976] ECR 455). The Court, in holding that the principle of equal pay was directly effective, held that what was Article 119 of the Treaty of Rome (now Article 157 of the Treaty on the Functioning of the European Union) should not be applied to periods of service before the judgment.
  - for scheme rights: 17 May 1990, the date of the Court's judgment in *Barber v Guardian Royal Exchange Assurance Group* ((C 262/88) [1991] 1 QB 344; [1990] ECR I-1889), which established that occupational pensions were pay for the purposes of what was Article 119 of the Treaty of Rome.

### ***Section 134: Remedies in claims for arrears brought by pensioner members***

#### **Effect**

439. This section allows a court or an employment tribunal to require compensation to be paid to a pensioner member for a breach of an equality clause or rule in relation to an occupational pension scheme and sets out the period for which arrears may be awarded for different types of cases. In a standard case in England and Wales, the period is six years before the date when a claim is made. Different periods apply to cases brought in England and Wales and to cases brought in Scotland. Special provision is made for claims involving concealment and/or incapacity (as set out in section 135).

#### **Background**

440. This section replicates requirements previously in the Equal Pay Act 1970, as modified by the Occupational Pension Schemes (Equal Treatment) Regulations 1995.

### ***Section 135: Supplementary***

#### **Effect**

441. The amount an employment tribunal can award a successful claimant is affected by how far back in time it can go in making its calculation. The type of case which is before the tribunal determines this period. This section defines the different types of cases.

#### **Background**

442. This section replicates the effect of similar provisions in previous legislation.

### ***Chapter 5: Miscellaneous***

### ***Section 136: Burden of proof***

#### **Effect**

443. This section provides that, in any claim where a person alleges discrimination, harassment or victimisation under the Act, the burden of proving his or her case starts with the claimant. Once the claimant has established sufficient facts, which in the absence of any other explanation point to a breach having occurred, the burden shifts to the respondent to show that he or she did not breach the provisions of the Act. The exception to this rule is if the proceedings relate to a criminal offence under this Act.

#### **Background**

444. Under previous legislation, in most cases the burden of proof was reversed once the claimant had established a case to an initial level. However, the burden of proof was not previously reversed in race discrimination claims brought because of colour and nationality; claims of victimisation which related to race discrimination; non-work disability discrimination claims; and sex discrimination claims which related to the exercise of public functions. In these areas the burden of proof is now reversed once the claimant establishes his or her case to an initial level.

#### **Example**

- A man of Chinese ethnic origin applies for a promotion at work but is not given an interview for the job. He finds that a number of white colleagues were given interviews despite having less experience and fewer qualifications. He brings a case for race discrimination before the employment tribunal and provides sufficient evidence to show that he had been treated less favourably because of his ethnic origin. It would then be up to his employer to prove that she had not discriminated against him in the promotion process.

### ***Section 137: Previous findings***

#### **Effect**

445. This section provides that if a person has brought a case under any of the previous legislation listed in this section (which this Act replaces), and a finding by a tribunal or court has been finalised, the issues decided in that case cannot be re-opened and litigated again under the provisions in this Act.

#### **Background**

446. This provision is necessary because the Act replaces many of the provisions in the legislation listed at subsection (2). It would not be appropriate for the Act to allow the re-opening of issues which have been decided in proceedings under the previous legislation.

### ***Section 138: Obtaining information, etc.***

#### **Effect**

447. This section provides a mechanism for a person who thinks that he or she may have been unlawfully discriminated against, harassed or victimised to obtain information from the person he or she thinks has acted unlawfully against him or her (that is to say, the potential respondent or defendant). The person may ask questions either on a form prescribed by order by a Minister of the Crown or in some other form.
448. The questions and the answers are admissible as evidence in a case brought under the Act and the court or tribunal may draw inferences from a failure by the respondent to answer the questions posed within eight weeks or from evasive or equivocal answers.
449. However, the court or tribunal cannot draw such inferences in certain specified circumstances. These are if the respondent says that to answer differently would have prejudiced criminal proceedings or revealed the reason for criminal proceedings being withdrawn or not being brought and this is reasonable. The section contains a power for a Minister of the Crown to specify by order additional circumstances where such inferences may not be drawn.

#### **Background**

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

### ***Section 139: Interest***

#### **Effect**

451. This section enables a Minister of the Crown to make regulations enabling an employment tribunal to add interest payments to any award of compensation made to a claimant as a result of a discrimination case brought under this Act. The regulations can set out how the tribunal should calculate how much interest should be paid.
452. The regulations may provide that interest is to be calculated in a different way in discrimination proceedings from how it is in other cases before the employment tribunals, so they can modify the effect of an order made under the Employment Tribunals Act 1996 about interest calculations which applies to employment cases more generally.

#### **Background**

453. This replicates powers contained in previous legislation.

### **Example**

- A claimant is awarded compensation for being discriminated against by his employer. Regulations made under this section may provide that if the award is not settled by the respondent within 14 days of the employment tribunal's decision then interest is to accrue on this award. The current regulations specify that the rate of interest applied to unpaid awards is fixed at 8%. A different rate can be applied if this is provided in regulations.

### ***Section 140: Conduct giving rise to separate proceedings***

#### **Effect**

454. This section enables an employment tribunal to transfer a case to a county or sheriff court, or a court to transfer a case to an employment tribunal, if it is based on the same conduct as one or more separate cases and one of the claims relates to instructing, causing or inducing a person to discriminate against, harass or victimise another person. It also provides that an employment tribunal or court cannot make a decision about such a case which is inconsistent with an earlier decision about the same conduct.

#### **Background**

455. This is a new provision which will allow for the transfer of certain types of connected cases between the tribunals and courts.

### **Example**

- An employer instructs an employee to discriminate against a customer. The customer brings a case against the employer or an employee in a county court. The employee brings a case against the employer in an employment tribunal. These claims both arise out of the same conduct and so the court and the tribunal can transfer one set of proceedings so that they can be dealt with together as this is a better way of managing the cases.

### ***Section 141: Interpretation, etc.***

#### **Effect**

456. This section explains the meaning of various terms used in this Part.