



# Equality Act 2010

## 2010 CHAPTER 15

### PART 9

#### ENFORCEMENT

### CHAPTER 5

#### MISCELLANEOUS

#### **136 Burden of proof**

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
- (5) This section does not apply to proceedings for an offence under this Act.
- (6) A reference to the court includes a reference to—
  - (a) an employment tribunal;
  - (b) the Asylum and Immigration Tribunal;
  - (c) the Special Immigration Appeals Commission;
  - (d) the First-tier Tribunal;
  - (e) the Special Educational Needs Tribunal for Wales;
  - (f) an Additional Support Needs Tribunal for Scotland.

*Status: Point in time view as at 25/04/2013.*

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### Commencement Information

- II** S. 136 wholly in force; s. 136 not in force at Royal Assent see s. 216; s. 136(1)-(5)(6)(a)-(e) in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(g)** (with **art. 15**, and subject to transitional provision in **art. 7**); s. 136(6)(f) in force at 18.3.2011 by S.I. 2010/2317, **art. 3(c)** (with **art. 15**, and subject to transitional provision in **art. 7**)

## 137 Previous findings

- (1) A finding in relevant proceedings in respect of an act which has become final is to be treated as conclusive in proceedings under this Act.
- (2) Relevant proceedings are proceedings before a court or employment tribunal under any of the following—
  - (a) section 19 or 20 of the Race Relations Act 1968;
  - (b) the Equal Pay Act 1970;
  - (c) the Sex Discrimination Act 1975;
  - (d) the Race Relations Act 1976;
  - (e) section 6(4A) of the Sex Discrimination Act 1986;
  - (f) the Disability Discrimination Act 1995;
  - (g) Part 2 of the Equality Act 2006;
  - (h) the Employment Equality (Religion and Belief) Regulations 2003 (S.I. 2003/1660);
  - (i) the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661);
  - (j) the Employment Equality (Age) Regulations 2006 (S.I. 2006/1031);
  - (k) the Equality Act (Sexual Orientation) Regulations 2007 (S.I. 2007/1263).
- (3) A finding becomes final—
  - (a) when an appeal against the finding is dismissed, withdrawn or abandoned, or
  - (b) when the time for appealing expires without an appeal having been brought.

### Commencement Information

- I2** S. 137 wholly in force; s. 137 not in force at Royal Assent see s. 216; s. 137 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(h)** (with **art. 15**, and subject to transitional provision in **art. 7**)

## 138 Obtaining information, etc.

- (1) In this section—
  - (a) P is a person who thinks that a contravention of this Act has occurred in relation to P;
  - (b) R is a person who P thinks has contravened this Act.
- (2) A Minister of the Crown must by order prescribe—
  - (a) forms by which P may question R on any matter which is or may be relevant;
  - (b) forms by which R may answer questions by P.

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- (3) A question by P or an answer by R is admissible as evidence in proceedings under this Act (whether or not the question or answer is contained in a prescribed form).
- (4) A court or tribunal may draw an inference from—
  - (a) a failure by R to answer a question by P before the end of the period of 8 weeks beginning with the day on which the question is served;
  - (b) an evasive or equivocal answer.
- (5) Subsection (4) does not apply if—
  - (a) R reasonably asserts that to have answered differently or at all might have prejudiced a criminal matter;
  - (b) R reasonably asserts that to have answered differently or at all would have revealed the reason for not commencing or not continuing criminal proceedings;
  - (c) R's answer is of a kind specified for the purposes of this paragraph by order of a Minister of the Crown;
  - (d) R's answer is given in circumstances specified for the purposes of this paragraph by order of a Minister of the Crown;
  - (e) R's failure to answer occurs in circumstances specified for the purposes of this paragraph by order of a Minister of the Crown.
- (6) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
- (7) A Minister of the Crown may by order—
  - (a) prescribe the period within which a question must be served to be admissible under subsection (3);
  - (b) prescribe the manner in which a question by P, or an answer by R, may be served.
- (8) This section—
  - (a) does not affect any other enactment or rule of law relating to interim or preliminary matters in proceedings before a county court, the sheriff or an employment tribunal, and
  - (b) has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.

#### **Commencement Information**

- I3** S. 138 wholly in force; s. 138 not in force at Royal Assent see s. 216; s. 138(1)(2)(5)-(7) in force for certain purposes at 6.7.2010 by [S.I. 2010/1736](#), [art. 2](#), [Sch.](#); s. 138 in force at 1.10.2010 in so far as not already in force by [S.I. 2010/2317](#), [art. 2\(1\)\(9\)\(i\)](#) (with [art. 15](#), and subject to transitional provision in [art. 7](#))

## **139 Interest**

- (1) Regulations may make provision—
  - (a) for enabling an employment tribunal to include interest on an amount awarded by it in proceedings under this Act;
  - (b) specifying the manner in which, and the periods and rate by reference to which, the interest is to be determined.

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- (2) Regulations may modify the operation of an order made under section 14 of the Employment Tribunals Act 1996 (power to make provision as to interest on awards) in so far as it relates to an award in proceedings under this Act.

**Commencement Information**

**I4** S. 139 wholly in force; s. 139 not in force at Royal Assent see s. 216; s. 139 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(j)** (with **art. 15**, and subject to transitional provision in **art. 7**)

**[<sup>F1</sup>139A Equal pay audits**

- (1) Regulations may make provision requiring an employment tribunal to order the respondent to carry out an equal pay audit in any case where the tribunal finds that there has been an equal pay breach.
- (2) An equal pay breach is—
  - (a) a breach of an equality clause, or
  - (b) a contravention in relation to pay of section 39(2), 49(6) or 50(6), so far as relating to sex discrimination.
- (3) An equal pay audit is an audit designed to identify action to be taken to avoid equal pay breaches occurring or continuing.
- (4) The regulations may make further provision about equal pay audits, including provision about—
  - (a) the content of an audit;
  - (b) the powers and duties of a tribunal for deciding whether its order has been complied with;
  - (c) any circumstances in which an audit may be required to be published or may be disclosed to any person.
- (5) The regulations must provide for an equal pay audit not to be ordered where the tribunal considers that—
  - (a) an audit completed by the respondent in the previous 3 years meets requirements prescribed for this purpose,
  - (b) it is clear without an audit whether any action is required to avoid equal pay breaches occurring or continuing,
  - (c) the breach the tribunal has found gives no reason to think that there may be other breaches, or
  - (d) the disadvantages of an equal pay audit would outweigh its benefits.
- (6) The regulations may provide for an employment tribunal to have power, where a person fails to comply with an order to carry out an equal pay audit, to order that person to pay a penalty to the Secretary of State of not more than an amount specified in the regulations.
- (7) The regulations may provide for that power—
  - (a) to be exercisable in prescribed circumstances;
  - (b) to be exercisable more than once, if the failure to comply continues.
- (8) The first regulations made by virtue of subsection (6) must not specify an amount of more than £5,000.

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- (9) Sums received by the Secretary of State under the regulations must be paid into the Consolidated Fund.
- (10) The first regulations under this section must specify an exemption period during which the requirement to order an equal pay audit does not apply in the case of a business that—
  - (a) had fewer than 10 employees immediately before a specified time, or
  - (b) was begun as a new business in a specified period.
- (11) For the purposes of subsection (10)—
  - (a) “specified” means specified in the regulations, and
  - (b) the number of employees a business had or the time when a business was begun as a new business is to be determined in accordance with the regulations.
- (12) Before making regulations under this section, a Minister of the Crown must consult any other Minister of the Crown with responsibility for employment tribunals.]

#### Textual Amendments

**F1** S. 139A inserted (25.4.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 98(2), 103(1)

## 140 Conduct giving rise to separate proceedings

- (1) This section applies in relation to conduct which has given rise to two or more separate proceedings under this Act, with at least one being for a contravention of section 111 (instructing, causing or inducing contraventions).
- (2) A court may transfer proceedings to an employment tribunal.
- (3) An employment tribunal may transfer proceedings to a court.
- (4) A court or employment tribunal is to be taken for the purposes of this Part to have jurisdiction to determine a claim or complaint transferred to it under this section; accordingly—
  - (a) a reference to a claim within section 114(1) includes a reference to a claim transferred to a court under this section, and
  - (b) a reference to a complaint within section 120(1) includes a reference to a complaint transferred to an employment tribunal under this section.
- (5) A court or employment tribunal may not make a decision that is inconsistent with an earlier decision in proceedings arising out of the conduct.
- (6) “Court” means—
  - (a) in relation to proceedings in England and Wales, a county court;
  - (b) in relation to proceedings in Scotland, the sheriff.

#### Commencement Information

**I5** S. 140 wholly in force; s. 140 not in force at Royal Assent see s. 216; s. 140 in force at 1.10.2010 by S.I. 2010/2317, art. 2(1)(9)(j) (with art. 15, and subject to transitional provision in art. 7)

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## **[<sup>F2</sup>140A Extension of time limits because of mediation in certain cross-border disputes**

- (1) In this section—
  - (a) “ Mediation Directive ” means Directive [2008/52/EC](#) of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters,
  - (b) “ mediation ” has the meaning given by article 3(a) of the Mediation Directive,
  - (c) “ mediator ” has the meaning given by article 3(b) of the Mediation Directive, and
  - (d) “ relevant dispute ” means a dispute to which article 8(1) of the Mediation Directive applies (certain cross-border disputes).
- (2) Subsection (3) applies where—
  - (a) a time limit is set by section 118(1)(a), 118(2) or 129(3) in relation to the whole or part of a relevant dispute,
  - (b) a mediation in relation to the relevant dispute starts before the time limit expires, and
  - (c) if not extended by this section, the time limit would expire before the mediation ends or less than eight weeks after it ends.
- (3) The time limit expires instead at the end of eight weeks after the mediation ends (subject to subsection (4)).
- (4) If a time limit mentioned in subsection (2)(a) has been extended by this section, subsections (2) and (3) apply to the extended time limit as they apply to a time limit mentioned in subsection (2)(a).
- (5) Subsection (6) applies where—
  - (a) a time limit is set by section 123(1)(a) in relation to the whole or part of a relevant dispute,
  - (b) a mediation in relation to the relevant dispute starts before the time limit expires, and
  - (c) if not extended by this section the time limit would expire before the mediation ends or less than four weeks after it ends.
- (6) The time limit expires instead at the end of four weeks after the mediation ends (subject to subsection (7)).
- (7) If a time limit mentioned in subsection (5)(a) has been extended by this section, subsections (5) and (6) apply to the extended time limit as they apply to a time limit mentioned in subsection (5)(a).
- (8) Where more than one time limit applies in relation to a relevant dispute, the extension by subsection (3) or (6) of one of those time limits does not affect the others.
- (9) For the purposes of this section, a mediation starts on the date of the agreement to mediate that is entered into by the parties and the mediator.
- (10) For the purposes of this section, a mediation ends on the date of the first of these to occur—
  - (a) the parties reach an agreement in resolution of the relevant dispute,
  - (b) a party completes the notification of the other parties that it has withdrawn from the mediation,

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- (c) a party to whom a qualifying request is made fails to give a response reaching the other parties within 14 days of the request,
  - (d) the parties, after being notified that the mediator's appointment has ended (by death, resignation or otherwise), fail to agree within 14 days to seek to appoint a replacement mediator,
  - (e) the mediation otherwise comes to an end pursuant to the terms of the agreement to mediate.
- (11) For the purpose of subsection (10), a qualifying request is a request by a party that another (A) confirm to all parties that A is continuing with the mediation.
- (12) In the case of any relevant dispute, references in this section to a mediation are references to the mediation so far as it relates to that dispute, and references to a party are to be read accordingly.
- (13) Where a court or tribunal has power under section 118(1)(b) or 123(1)(b) to extend a period of limitation, the power is exercisable in relation to the period of limitation as extended by this section.]

#### Textual Amendments

- F2** S. 140A inserted (20.5.2011 with application as mentioned in regs. 3, 4 of the amending S.I.) by The [Cross-Border Mediation \(EU Directive\) Regulations 2011 \(S.I. 2011/1133\)](#), **reg. 58**

#### 141 Interpretation, etc.

- (1) This section applies for the purposes of this Part.
- (2) A reference to the responsible person, in relation to an equality clause or rule, is to be construed in accordance with Chapter 3 of Part 5.
- (3) A reference to a worker is a reference to the person to the terms of whose work the proceedings in question relate; and, for the purposes of proceedings relating to an equality rule or a non-discrimination rule, a reference to a worker includes a reference to a member of the occupational pension scheme in question.
- (4) A reference to the terms of a person's work is to be construed in accordance with Chapter 3 of Part 5.
- (5) A reference to a member of an occupational pension scheme includes a reference to a prospective member.
- (6) In relation to proceedings in England and Wales, a person has an incapacity if the person—
  - (a) has not attained the age of 18, or
  - (b) lacks capacity (within the meaning of the Mental Capacity Act 2005).
- (7) In relation to proceedings in Scotland, a person has an incapacity if the person—
  - (a) has not attained the age of 16, or
  - (b) is incapable (within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4)).
- (8) “Service complaint” means a complaint under section 334 of the Armed Forces Act 2006; and “service complaint procedures” means the procedures prescribed

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by regulations under that section (except in so far as relating to references under section 337 of that Act).

- (9) “Criminal matter” means—
- (a) an investigation into the commission of an alleged offence;
  - (b) a decision whether to commence criminal proceedings;
  - (c) criminal proceedings.

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**Commencement Information**

- I6** S. 141 wholly in force; s. 141 not in force at Royal Assent see s. 216; s. 141 in force at 1.10.2010 by S.I. 2010/2317, **art. 2(1)(9)(j)** (with **art. 15**, and subject to transitional provision in **art. 7**)



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