



# 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 [<sup>F1</sup>Education Tribunal for Wales];
  - (f) [<sup>F2</sup>the First-tier Tribunal for Scotland Health and Education Chamber] .

*Status: Point in time view as at 01/02/2023.*

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**Textual Amendments**

- F1** Words in s. 136(6)(e) substituted (E.W.) (1.9.2021) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 19(3)**; S.I. 2021/373, art. 8(j)(xxxiii)
- F2** Words in s. 136(6)(f) substituted (S.) (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Additional Support Needs Tribunals for Scotland\) Regulations 2018 \(S.S.I. 2018/4\)](#), reg. 1(1), **sch. 2 para. 4(3)**

**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](#))

**F3 138 Obtaining information, etc.**

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### Textual Amendments

- F3** S. 138 omitted (6.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 66\(1\), 103\(3\)](#) (with [s. 66\(2\)](#)); [S.I. 2014/416](#), [art. 3\(c\)](#)

## 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.
- (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

- I3** 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>F4</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,

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- (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.
- (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**

**F4** 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

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- (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, [<sup>F5</sup>the county court];
  - (b) in relation to proceedings in Scotland, the sheriff.

**Textual Amendments**

**F5** Words in s. 140(6) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 52](#); [S.I. 2014/954](#), art. 2(c) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

**Commencement Information**

**I4** 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)

**<sup>F6</sup>140A Extension of time limits because of mediation in certain cross-border disputes**

**Textual Amendments**

**F6** S. 140A omitted (31.12.2020) by virtue of [The Cross-Border Mediation \(EU Directive\) \(EU Exit\) Regulations 2019 \(S.I. 2019/469\)](#), reg. 1(1), [Sch. 1 para. 17\(5\)](#) (with reg. 5) (as amended by [S.I. 2020/1493](#), regs. 1(1), 4(5)(6)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

**<sup>F7</sup>140A Extension of time limits because of alternative dispute resolution in certain cross border or domestic contractual disputes**

- (1) In this section—
  - <sup>F8</sup>(a) .....
  - [<sup>F9</sup>(b) “ADR entity” means a person whose name appears on a list maintained in accordance with regulation 10 of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 ([S.I. 2015/542](#))].
  - <sup>F10</sup>(c) .....
  - [<sup>F11</sup>(d) “ADR procedure” means a procedure for the out-of-court resolution of disputes through the intervention of an ADR entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution]
  - [<sup>F12</sup>(da) “consumer” means an individual acting for purposes which are wholly or mainly outside that individual’s trade, business, craft or profession;]
  - (e) “non-binding ADR procedure” means an ADR procedure the outcome of which is not binding on the parties;
  - [<sup>F13</sup>(f) “relevant dispute” means a dispute that—
    - (a) concerns obligations under a sales contract or a service contract, and

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- (b) is between a trader established in the United Kingdom or the European Union and a consumer resident in the United Kingdom, which the parties attempt to settle by recourse to a non-binding ADR procedure.]
- [ “sales contract” means a contract under which a trader transfers, or agrees to transfer, the ownership of goods to a consumer and the consumer pays, or agrees to pay, the price, including any contract that has both goods and services as its object;
- <sup>F14</sup>(g) (h) “service contract” means a contract, other than a sales contract, under which a trader supplies, or agrees to supply, a service to a consumer and the consumer pays, or agrees to pay, the price;
- (i) “trader” means a person acting for purposes relating to that person’s trade, business, craft or profession, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf.]
- (2) Subsection (3) applies where—
- (a) a time limit is set by section 118(1)(a) and (2) in relation to the whole or part of a relevant dispute;
  - (b) a non-binding ADR procedure 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 non-binding ADR procedure ends or less than eight weeks after it ends.
- (3) For the purposes of initiating judicial proceedings, the time limit expires instead at the end of eight weeks after the non-binding ADR procedure ends (subject to subsection (4)).
- (4) If a time limit 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) Where more than one time limit applies in relation to a relevant dispute, the extension by subsection (3) of one of those time limits does not affect the others.
- (6) For the purposes of this section, a non-binding ADR procedure starts in relation to a relevant dispute on the date when the dispute is first sent or otherwise communicated to the ADR entity in accordance with the entity’s rules regarding the submission of complaints.
- (7) For the purposes of this section, the non-binding ADR procedure 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 non-binding ADR procedure;
  - (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) that the ADR entity notifies the party that submitted the relevant dispute to the ADR entity that, in accordance with its policy, the ADR entity refuses to deal with the relevant dispute;
  - (e) after the parties are notified that the ADR entity can no longer act in relation to the relevant dispute (for whatever reason), the parties fail to agree within 14 days to submit the dispute to an alternative ADR entity;
  - (f) the non-binding ADR procedure otherwise comes to an end pursuant to the rules of the ADR entity.

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- (8) For the purpose of subsection (6), a qualifying request is a request by a party that another (A) confirm to all parties that A is continuing with the non-binding ADR procedure.
- (9) In the case of any relevant dispute, references in this section to a non-binding ADR procedure are references to the non-binding ADR procedure so far as it relates to that dispute, and references to a party are to be read accordingly.
- (10) Where a court or tribunal has power under section 118(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

- F7** S. 140AA inserted (9.7.2015) by [The Alternative Dispute Resolution for Consumer Disputes \(Amendment\) Regulations 2015 \(S.I. 2015/1392\)](#), regs. 1(2), **7(3)** (with reg. 1(3))
- F8** S. 140AA(1)(a) omitted (31.12.2020) by virtue of [The Equality \(Amendment and Revocation\) \(EU Exit\) Regulations 2019 \(S.I. 2019/305\)](#), regs. 1, **5(2)(a)** (with reg. 10) (as amended by S.I. 2020/1139, regs. 1(2), 6(3); 2020 c. 1, Sch. 5 para. 1(1))
- F9** S. 140AA(1)(b) substituted (31.12.2020) by [The Equality \(Amendment and Revocation\) \(EU Exit\) Regulations 2019 \(S.I. 2019/305\)](#), regs. 1, **5(2)(b)** (with reg. 10) (as substituted by S.I. 2020/1139, regs. 1(2), **6(2)(a)** (with reg. 7))
- F10** S. 140AA(1)(c) omitted (9.1.2016) by virtue of [The Alternative Dispute Resolution for Consumer Disputes \(Amendment\) \(No. 2\) Regulations 2015 \(S.I. 2015/1972\)](#), regs. 1, **5(2)**
- F11** S. 140AA(1)(d) substituted (31.12.2020) by [The Equality \(Amendment and Revocation\) \(EU Exit\) Regulations 2019 \(S.I. 2019/305\)](#), regs. 1, **5(2)(c)** (with reg. 10) (as amended by S.I. 2020/1139, regs. 1(2), 6(3); 2020 c. 1, Sch. 5 para. 1(1))
- F12** S. 140AA(1)(da) inserted (31.12.2020) by S.I. 2019/305, reg. 5(2)(ca) (as inserted by [The Alternative Dispute Resolution for Consumer Disputes \(Extension of Time Limits for Legal Proceedings\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1139\)](#), regs. 1(2), **6(2)(b)** (with reg. 7))
- F13** S. 140AA(1)(f) substituted (31.12.2020) by [The Equality \(Amendment and Revocation\) \(EU Exit\) Regulations 2019 \(S.I. 2019/305\)](#), regs. 1, **5(2)(d)** (with reg. 10) (as amended by S.I. 2020/1139, regs. 1(2), 6(2)(c)(3); 2020 c. 1, Sch. 5 para. 1(1))
- F14** S. 140AA(1)(g)-(i) inserted (31.12.2020) by S.I. 2019/305, reg. 5(2)(e) (as inserted by [The Alternative Dispute Resolution for Consumer Disputes \(Extension of Time Limits for Legal Proceedings\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1139\)](#), regs. 1(2), **6(2)(d)** (with reg. 7))

#### [<sup>F15</sup>140B Extension of time limits to facilitate conciliation before institution of proceedings

- (1) This section applies where a time limit is set by section 123(1)(a) or 129(3) or (4).

<sup>F16</sup> ...

- (2) In this section—

- (a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and
- (b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under

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subsection (11) of that section) the certificate issued under subsection (4) of that section.

- (3) In working out when the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.
- (4) If the time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.
- (5) The power conferred on the employment tribunal by subsection (1)(b) of section 123 to extend the time limit set by subsection (1)(a) of that section is exercisable in relation to that time limit as extended by this section.]

#### Textual Amendments

- F15** S.140B inserted (6.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [Sch. 2 para. 45](#); [S.I. 2014/253](#), [art. 3\(g\)](#)
- F16** Words in [s. 140B\(1\)](#) omitted (31.12.2020) by virtue of [The Cross-Border Mediation \(EU Directive\) \(EU Exit\) Regulations 2019 \(S.I. 2019/469\)](#), [reg. 1\(1\)](#), [Sch. 1 para. 17\(6\)](#) (with [reg. 5](#) (as amended by [S.I. 2020/1493](#), [regs. 1\(1\)](#), [4\(5\)\(6\)](#))); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

## 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)).
- [<sup>F17</sup>(8) Service complaint” means a complaint made under section 340A(1) or (2) of the Armed Forces Act 2006.]
- (9) “Criminal matter” means—
  - (a) an investigation into the commission of an alleged offence;



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- (b) a decision whether to commence criminal proceedings;
- (c) criminal proceedings.

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**Textual Amendments**

**F17** S. 141(8) substituted (1.1.2016) by [Armed Forces \(Service Complaints and Financial Assistance\) Act 2015 \(c. 19\)](#), s. 7(1), [Sch. para. 15](#); S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)

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**Commencement Information**

**I5** 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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