



# 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.

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*Status: This is the original version (as it was originally enacted).*

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### 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  - (a) when an appeal against the finding is dismissed, withdrawn or abandoned, or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.

### 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.
- (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;

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- (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.

### **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.

### **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.

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- (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.

#### **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 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.