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Conciliation



Conciliation

18 Conciliation

(1) This section applies in the case of [employment tribunal] proceedings and claims which could be the subject of [employment tribunal] proceedings--

[(a) under section 120 or 127 of the Equality Act 2010,]

(b) arising out of a contravention, or alleged contravention, of section 64, 68[, 86], 137, 138, [145A, 145B,] 146, 168, [168A,] 169, 170, 174, 188 or 190 of the Trade Union and Labour Relations (Consolidation) Act 1992,

(c) . . .

(d) [under or] arising out of a contravention, or alleged contravention, of section 8, 13, 15, 18(1), 21(1), 28[, 63F(4), (5) or (6), 63I(1)(b).] [80G(1), 80H(1)(b),] 80(1)][, 92 or 135,] or of Part V, VI, VII or X, of the Employment Rights Act 1996,

[(dd) under or by virtue of section 11, 18, 20(1)(a) or 24 of the National Minimum Wage Act 1998],

(e) which are proceedings in respect of which an [employment tribunal] has jurisdiction by virtue of section 3 of this Act, . . .

(f) [under or] arising out of a contravention, or alleged contravention, of a provision specified by an order under subsection (8)(b) as a provision to which this paragraph applies, [. . .

(ff) under regulation 30 of the Working Time Regulations 1998], [. . .

(g) under regulation 27 or 32 of the Transnational Information and Consultation of Employees Regulations 1999], [or

(h) arising out of a contravention, or alleged contravention of regulation [5(1) or] 7(2) of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000][,

(i) arising out of a contravention, or alleged contravention of regulation 3 or 6(2) of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, . . .

(j) under regulation 9 of those Regulations], [. . .

(k) . . .]

[(l) . . .]

[(m) under regulation 18 of the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003], [. . .

(n) under regulation 41 or 45 of the European Public Limited-Liability Company Regulations 2004,]

[[o) under regulation 19 of the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004], [. . .

(p) under regulation 29 or 33 of the Information and Consultation of Employees Regulations 2004][, . . .

(q) under paragraph 4 or 8 of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006],[. . .

(r) . . .] [, . . .

(s) under regulation 30 or 34 of the European Cooperative Society (Involvement of Employees) Regulations 2006], [. . .

- (t) under regulation 45 or 51 of the Companies (Cross-Border Mergers) Regulations 2007][, . . .
- (u) under regulation 17 of the Cross-border Railway Services (Working Time) Regulations 2008][, . . .
- (v) under section 56 of the Pensions Act 2008][, or
- (v) under regulation 28 or 32 of the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009(SI 2009/2401)][, . . .
- (w) under regulation 5, 6 or 9 of the Employment Relations Act 1999 (Blacklists) Regulations 2010][, or
- (x) arising out of a contravention, or alleged contravention of regulation 5, 12, 13 or 17(2) of the Agency Workers Regulations 2010].

(2) Where an application has been presented to an [employment tribunal], and a copy of it has been sent to a conciliation officer, it is the duty of the conciliation officer--

- (a) if he is requested to do so by the person by whom and the person against whom the proceedings are brought, or
- (b) if, in the absence of any such request, the conciliation officer considers that he could act under this subsection with a reasonable prospect of success,

to endeavour to promote a settlement of the proceedings without their being determined by an [employment tribunal].

[(2A) . . .]

(3) Where at any time--

- (a) a person claims that action has been taken in respect of which proceedings could be brought by him before an [employment tribunal], but
- (b) before any application relating to that action has been presented by him a request is made to a conciliation officer (whether by that person or by the person against whom the proceedings could be instituted) to make his services available to them,

the conciliation officer [may endeavour to promote a settlement between the parties without proceedings being instituted].

(4) Where a person who has presented a complaint to an [employment tribunal] under section 111 of the Employment Rights Act 1996 has ceased to be employed by the employer against whom the complaint was made, the conciliation officer shall (for the purpose of promoting a settlement of the complaint in accordance with subsection (2)) in particular--

- (a) seek to promote the reinstatement or re-engagement of the complainant by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the conciliation officer to be equitable, or
- (b) where the complainant does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, and the parties desire the conciliation officer to act, seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to the complainant.

[(5) Where a conciliation officer acts pursuant to subsection (3) in a case where the person claiming as specified in paragraph (a) of that subsection has ceased to be employed by the employer and the proceedings which he claims could be brought by him are proceedings under section 111 of the Employment Rights Act 1996, the conciliation officer may in particular--

- (a) seek to promote the reinstatement or re-engagement of that person by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the conciliation officer to be equitable, or
 - (b) where the person does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to that person.]
- (6) In proceeding under this section a conciliation officer shall, where appropriate, have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.
- (7) Anything communicated to a conciliation officer in connection with the performance of his functions under this section shall not be admissible in evidence in any proceedings before an [employment tribunal], except with the consent of the person who communicated it to that officer.
- (8) The Secretary of State [and the Lord Chancellor, acting jointly,] may by order--
- (a) direct that further provisions of the Employment Rights Act 1996 be added to the list in subsection (1)(d), or
 - (b) specify a provision of any other Act as a provision to which subsection (1)(f) applies.

NOTES

Derivation

Sub-s (1) derived from the Employment Protection (Consolidation) Act 1978, s 133(1) (as amended by the Employment Act 1980, s 20(2), Sch 1, para 17, as repealed in part by the Social Security Act 1986, s 86(2), Sch 11, as amended by the Wages Act 1986, s 32(1), Sch 4, para 9, and as amended by the Employment Act 1988, s 33(1), Sch 3, Part I, para 2(3)), as repealed in part by the Trade Union and Labour Relations (Consolidation) Act 1992, s 300(1), Sch 1, as amended and repealed in part by the Trade Union Reform and Employment Rights Act 1993, ss 49(2), 51, Sch 8, para 20, Sch 10, as amended by the Betting, Gaming and Lotteries Act 1963, Sch 5A, para 21 (as added by the Deregulation and Contracting Out Act 1994, s 20(1), (5)), as amended by the Sunday Trading Act 1994, Sch 4, para 21, as amended by the Pensions Act 1995, Sch 3, paras 1, 8, and as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1995, SI 1995/2587, regs 12(3), 13(3); that subsection also derived from the Trade Union and Labour Relations (Consolidation) Act 1992, s 290, as amended and repealed in part by the Trade Union Reform and Employment Rights Act 1993, ss 49(2), 51, Sch 8, para 86, Sch 10, and contains drafting provisions; sub-s (2) derived from the Sex Discrimination Act 1975, s 64(1), from the Race Relations Act 1976, s 55(1), from the Employment Protection (Consolidation) Act 1978, ss 133(2), 134(1), and from the Disability Discrimination Act 1995, Sch 3, Part I, para 1(1); sub-s (3) derived from the Sex Discrimination Act 1975, s 64(2); from the Race Relations Act 1976, s 55(2); from the Employment Protection (Consolidation) Act 1978, s 133(3), (4); and from the Disability Discrimination Act 1995, Sch 3, Part I, para 1(2); sub-s (4) derived from the Employment Protection (Consolidation) Act 1978, s 134(2); sub-s (5) derived from the Employment Protection (Consolidation) Act 1978, s 134(3) (as substituted by the Employment Act 1980, s 20(2), Sch 1, para 18); sub-s (6) derived from the Sex Discrimination Act 1975, s 64(3); from the Race Relations Act 1976, s 55(3); from the Employment Protection (Consolidation) Act 1978, ss 133(5), 134(4); and from the Disability Discrimination Act 1995, Sch 3, Part I, para 1(3); sub-s (7) derived from the Sex Discrimination Act 1975, s 64(4); from the Race Relations Act s 55(4); from the Employment Protection (Consolidation) Act 1978, ss 133(6), 134(5); and from the Disability Discrimination Act 1995, Sch 3, Part I, para 1(4); sub-s (8) derived from the Employment Protection (Consolidation) Act 1978, s 133(7).

Initial Commencement

Specified date

Specified date: 22 August 1996: see s 46.

Amendment

Sub-s (1): words "employment tribunal" in square brackets in each place they occur substituted by the Employment Rights (Dispute Resolution) Act 1998, s 1(2)(a).

Date in force: 1 August 1998: see SI 1998/1658, art 2(1), Sch 1.

Sub-s (1): para (a) substituted by the Equality Act 2010, s 211(1), Sch 26, Pt 1, paras 27, 31(a) (as inserted by SI 2010/2279, arts 2, 12, Sch 1, para 5).

Date in force: 1 October 2010: see SI 2010/2317, art 2(1), (15)(b), (e)(ii); for savings see art 15 thereof.

Sub-s (1): in para (b) reference to ", 86" in square brackets inserted by the Employment Rights (Dispute Resolution) Act 1998, s 15, Sch 1, para 16.

Date in force: 1 August 1998: see SI 1998/1658, art 2(1), Sch 1.

Sub-s (1): in para (b) references to "145A, 145B," in square brackets inserted by the Employment Relations Act 2004, s 57(1), Sch 1, para 25.

Date in force: 1 October 2004 (except where the act or failure to act to which the complaint relates was done before that date, or where the act or failure to act to which the complaint relates is part of a series and the first act or failure in the series was done before that date): see SI 2004/2566, arts 3(b), 4, 6.

Sub-s (1): in para (b) reference to "168A," in square brackets inserted by the Employment Act 2002, s 53, Sch 7, para 23(1), (2)(a).

Date in force: 27 April 2003: see SI 2003/1190, art 2(2)(b); for transitional provisions see art 3 thereof.

Sub-s (1): para (c) repealed by the Equality Act 2010, s 211, Sch 26, Pt 1, paras 27, 31(b), Sch 27, Pt 1 (as amended by SI 2010/2279, arts 2, 12, 13, Sch 1, para 5, Sch 2).

Date in force: 1 October 2010: see SI 2010/2317, art 2(1), (15)(b), (c), (e)(ii), (f); for savings see arts 15, 16 thereof.

Sub-s (1): in para (d) words "under or" and reference to "80G(1), 80H(1)(b)," in square brackets inserted by the Employment Act 2002, s 53, Sch 7, para 23(1), (2)(b).

Date in force: 6 April 2003: see SI 2002/2866, art 2(3), Sch 1, Pt 3.

Sub-s (1): in para (d) reference to ", 80(1)" in square brackets inserted by SI 2000/1299, art 2.

Date in force: 6 June 2000: see SI 2000/1299, art 1.

Sub-s (1): in para (d) words "63F(4), (5) or (6), 63I(1)(b)," in square brackets inserted by the Apprenticeships, Skills, Children and Learning Act 2009, s 40(5), Sch 1, paras 1, 16.

Date in force (except in relation to small employers and their employees): 6 April 2010: see SI 2010/303, art 4, Sch 3.

Date in force (for remaining purposes): to be appointed: see the Apprenticeships, Skills, Children and Learning Act 2009, s 269(4).

Sub-s (1): in para (d) words ", 92 or 135," in square brackets substituted by the Employment Rights (Dispute Resolution) Act 1998, s 11(1).

Date in force: 1 October 1998: see SI 1998/1658, art 2(2), Sch 2.

Sub-s (1): para (dd) inserted by the National Minimum Wage Act 1998, s 30(1).

Date in force: 1 November 1998 (in so far as it relates to the National Minimum Wage Act 1998, s 24): see SI 1998/2574, art 2(1), Sch 1.

Date in force: 1 April 1999 (for remaining purposes): see SI 1998/2574, art 2(2), Sch 2.

Sub-s (1): in para (e) word omitted repealed by SI 1998/1833, reg 33(a).

Date in force: 1 October 1998: see SI 1998/1833, reg 1(1).

Sub-s (1): in para (f) words "under or" in square brackets inserted by the Employment Act 2002, s 53, Sch 7, para 23(1), (2)(c).

Date in force: 6 April 2003: see SI 2002/2866, art 2(3), Sch 1, Pt 3.

Sub-s (1): para (ff) inserted by SI 1998/1833, reg 33(b).

Date in force: 1 October 1998: see SI 1998/1833, reg 1(1).

Sub-s (1): in para (f) word omitted repealed by SI 1999/3323, reg 33(1)(a).

Date in force: 15 January 2000: see SI 1999/3323, reg 1(1).

Sub-s (1): para (g) and word immediately preceding it inserted by SI 1999/3323, reg 33(1)(b).

Date in force: 15 January 2000: see SI 1999/3323, reg 1(1).

Sub-s (1): in para (ff) word omitted repealed by SI 2000/1551, reg 10, Schedule, para 1(a)(i).

Date in force: 1 July 2000: see SI 2000/1551, reg 1(1).

Sub-s (1): para (h) and word immediately preceding it inserted by SI 2000/1551, reg 10, Schedule, para 1(a)(ii).

Date in force: 1 July 2000: see SI 2000/1551, reg 1(1).

Sub-s (1): in para (g) word "or" in italics repealed, except in relation to Government training schemes, agency workers or apprentices, by SI 2002/2034, regs 11, 18-20, Sch 2, Pt 1, para 2(a)(i).

Date in force: 1 October 2002: see SI 2002/2034, reg 1(1).

Sub-s (1): in para (h) words "5(1) or" in square brackets inserted by SI 2001/1107, reg 2.

Date in force: 1 May 2001: see SI 2001/1107, reg 1.

Sub-s (1): paras (i), (j) inserted, except in relation to Government training schemes, agency workers or apprentices, by SI 2002/2034, regs 11, 18-20, Sch 2, Pt 1, para 2(a)(ii).

Date in force: 1 October 2002: see SI 2002/2034, reg 1(1).

Sub-s (1): in para (i) word omitted repealed by SI 2003/1661, reg 39, Sch 5, para 1(a)(i).

Date in force: 1 December 2003: see SI 2003/1661, reg 1(1).

Sub-s (1): para (k) and word omitted immediately preceding it inserted by SI 2003/1661, reg 39, Sch 5, para 1(a)(ii).

Date in force: 1 December 2003: see SI 2003/1661, reg 1(1).

Sub-s (1): in para (j) word omitted repealed by SI 2003/1660, reg 39(2), Sch 5, para 1(a)(i).

Date in force: 2 December 2003: see SI 2003/1660, reg 1(1).

Sub-s (1): paras (k), (l) repealed by the Equality Act 2010, s 211, Sch 26, Pt 1, paras 27, 31(b), Sch 27, Pt 1 (as amended by SI 2010/2279, arts 2, 12, 13, Sch 1, para 5, Sch 2).

Date in force: 1 October 2010: see SI 2010/2317, art 2(1), (15)(b), (c), (e)(ii), (f); for savings see arts 15, 16 thereof.

Sub-s (1): para (l) inserted by SI 2003/1660, reg 39(5), Sch 5, para 1(a)(ii).

Date in force: 2 December 2003: see SI 2003/1660, reg 1(1).

Sub-s (1): para (m) inserted by SI 2003/3049, reg 20, Sch 2, para 2(1), (2).

Date in force: 24 December 2003: see SI 2003/3049, reg 1.

Sub-s (1): para (n) and word omitted immediately preceding it inserted by SI 2004/2326, reg 46.

Date in force: 8 October 2004: see SI 2004/2326, reg 1(2).

Sub-s (1): in para (m) word omitted repealed by SI 2004/3426, reg 34(a).

Date in force: 6 April 2005: see SI 2004/3426, reg 1(1).

Sub-s (1): para (o) inserted by SI 2004/1713, reg 21, Sch 2, para 1(1), (2).

Date in force: 16 August 2004: see SI 2004/1713, reg 1.

Sub-s (1): para (o) renumbered as such by SI 2004/3426, reg 34(b).

Date in force: 6 April 2005: see SI 2004/3426, reg 1(1).

Sub-s (1): para (p) and word omitted immediately preceding it inserted by SI 2004/3426, reg 34(c).

Date in force: 6 April 2005: see SI 2004/3426, reg 1(1).

Sub-s (1): in para (o) word omitted repealed by SI 2006/349, reg 17, Schedule, para 9(a).

Date in force: 6 April 2006: see SI 2006/349, reg 1(2).

Sub-s (1): para (q) and word omitted immediately preceding it inserted by SI 2006/349, reg 17, Schedule, para 9(b).

Date in force: 6 April 2006: see SI 2006/349, reg 1(2).

Sub-s (1): in para (p) word omitted repealed by SI 2006/1031, reg 49(1), Sch 8, Pt 1, paras 18, 19(1), (2).

Date in force: 1 October 2006: see SI 2006/1031, reg 1(1).

Sub-s (1): para (r) and word omitted immediately preceding it inserted by SI 2006/1031, reg 49(1), Sch 8, Pt 1, paras 18, 19(1), (3).

Date in force: 1 October 2006: see SI 2006/1031, reg 1(1).

Sub-s (1): in para (q) word omitted repealed by SI 2006/2059, reg 35(a).

Date in force: 18 August 2006: see SI 2006/2059, reg 1(2).

Sub-s (1): para (r) repealed by the Equality Act 2010, s 211, Sch 26, Pt 1, paras 27, 31(b), Sch 27, Pt 1 (as amended by SI 2010/2279, arts 2, 12, 13, Sch 1, para 5, Sch 2).

Date in force: 1 October 2010: see SI 2010/2317, art 2(1), (15)(b), (c), (e)(ii), (f); for savings see arts 15, 16 thereof.

Sub-s (1): para (s) and word omitted immediately preceding it inserted by SI 2006/2059, reg 35(b).

Date in force: 18 August 2006: see SI 2006/2059, reg 1(2).

Sub-s (1): in para (r) word omitted repealed by SI 2007/2974, reg 52(a).

Date in force: 15 December 2007: see SI 2007/2974, reg 1.

Sub-s (1): para (t) and word omitted immediately preceding it inserted by SI 2007/2974, reg 52(b).

Date in force: 15 December 2007: see SI 2007/2974, reg 1.

Sub-s (1): in para (s) word omitted repealed by SI 2008/1660, reg 19, Sch 3, para 1(a)(i).

Date in force: 27 July 2008: see SI 2008/1660, reg 1(1).

Sub-s (1): para (u) and word ", or" (omitted) immediately preceding it inserted by SI 2008/1660, reg 19, Sch 3, para 1(a)(ii).

Date in force: 27 July 2008: see SI 2008/1660, reg 1(1).

Sub-s (1): in para (t) word omitted repealed by SI 2009/2401, reg 33.

Date in force: 1 October 2009: see SI 2009/2401, reg 1(2).

Sub-s (1): first para (v) and word omitted immediately preceding it inserted by the Pensions Act 2008, s 56(6).

Date in force: 30 June 2012: see SI 2012/1682, art 2(1), (2)(b), Sch 2.

Sub-s (1): in para (u) word omitted repealed by SI 2010/493, reg 17(1), (4)(a).

Date in force: 2 March 2010: see SI 2010/493, reg 1(b).

Sub-s (1): second para (v) and word omitted immediately preceding it inserted by SI 2009/2401, reg 33.

Date in force: 1 October 2009: see SI 2009/2401, reg 1(2).

Sub-s (1): para (w) and word ", or" immediately preceding it inserted by SI 2010/493, reg 17(1), (4)(b).

Date in force: 2 March 2010: see SI 2010/493, reg 1(b).

Sub-s (1): in second para (v) word omitted repealed by SI 2010/93, reg 25, Sch 2, Pt 1, para 8(a)(i).

Date in force: 1 October 2011: see SI 2010/93, reg 1(1).

Sub-s (1): para (x) and word ", or" immediately preceding it inserted by SI 2010/93, reg 25, Sch 2, Pt 1, para 8(a)(ii).

Date in force: 1 October 2011: see SI 2010/93, reg 1(1).

Sub-s (2): words "employment tribunal" in square brackets in each place they occur substituted by the Employment Rights (Dispute Resolution) Act 1998, s 1(2)(a).

Date in force: 1 August 1998: see SI 1998/1658, art 2(1), Sch 1.

Sub-s (2A): inserted by the Employment Act 2002, s 24(2).

Date in force: 9 July 2004: see SI 2004/1717, art 2(1).

Sub-s (2A): repealed by the Employment Act 2008, ss 6(1), 20, Schedule, Pt 1.

Date in force: 6 April 2009: see SI 2008/3232, art 2.

Sub-s (3): words "employment tribunal" in square brackets in each place they occur substituted by the Employment Rights (Dispute Resolution) Act 1998, s 1(2)(a).

Date in force: 1 August 1998: see SI 1998/1658, art 2(1), Sch 1.

Sub-s (3): words "may endeavour to promote a settlement between the parties without proceedings being instituted" in square brackets substituted by the Employment Act 2008, s 5(1), (2).

Date in force: 6 April 2009: see SI 2008/3232, art 2.

Sub-s (4): words "employment tribunal" in square brackets substituted by the Employment Rights (Dispute Resolution) Act 1998, s 1(2)(a).

Date in force: 1 August 1998: see SI 1998/1658, art 2(1), Sch 1.

Sub-s (5): substituted by the Employment Act 2008, s 5(1), (3).

Date in force: 6 April 2009: see SI 2008/3232, art 2.

Sub-s (7): words "employment tribunal" in square brackets substituted by the Employment Rights (Dispute Resolution) Act 1998, s 1(2)(a).

Date in force: 1 August 1998: see SI 1998/1658, art 2(1), Sch 1.

Sub-s (8): words "and the Lord Chancellor, acting jointly," in square brackets inserted by the Tribunals, Courts and Enforcement Act 2007, s 48(1), Sch 8, paras 35, 38.

Date in force: 1 December 2007: see SI 2007/2709, art 4.

See Further

For the purposes of sub-s (1)(d) above, ss 10-13 of the Employment Relations Act 1999 shall be treated as provisions of Part V of the Employment Rights Act 1996, by virtue of the Employment Relations Act 1999, s 14(b).

Subordinate Legislation

Employment Tribunals Act (Application of Conciliation Provisions) Order 2000, SI 2000/1299 (made under sub-s (8)(a), (b)).

Employment Tribunals Act (Application of Conciliation Provisions) Order 2000 (Revocation) Order 2000, SI 2000/1336 (made under sub-s (8)(a), (b)).

Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2000, SI 2000/1337 (made under sub-s (8)(a), (b)).