

Subsidiary Legislation made under s.12(3).

EMPLOYMENT TRIBUNAL (EXTENSION OF JURISDICTION) ORDER 2016

(LN. 2016/201)

Commencement **13.10.2016**

Amending enactments	Relevant current provisions	Commencement date
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In exercise of the powers conferred upon him under section 12(3) of the Employment Act, and of all other powers enabling him in that behalf, hereby makes the following Order:-

Title, commencement and interpretation.

1.(1) This Order may be cited as the Employment Tribunal (Extension of Jurisdiction) Order 2016 and come into force on their date of publication.

(2) In this Order–

“contract claim” means a claim in respect of which proceedings may be brought before the Employment Tribunal by virtue of section 3 or 4;

“cross-border dispute” has the meaning given by section 72C of the Supreme Court Act;

“excluded claim” means a claim for breach of a contractual term of any of the following descriptions–

- (a) a term requiring the employer to provide living accommodation for the employee;
- (b) a term imposing an obligation on the employer or the employee in connection with the provision of living accommodation;
- (c) a term relating to intellectual property (including copyright, rights in performances, moral rights, design right, registered designs, patents and trade marks);
- (d) a term imposing an obligation of confidence;
- (e) a term which is a covenant in restraint of trade.

“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 as amended from time to time;

“mediation” has the meaning given by section 72B(1) of the Supreme Court Act;

“mediator” has the meaning given by section 72B(1) of the Supreme Court Act;

“relevant claim” means a claim for–

- (a) damages for breach of a contract of employment or other contract connected with employment,
- (b) a sum due under such a contract; or
- (c) for the recovery of a sum in pursuance of any enactment relating to the terms or performance of such a contract; and

“relevant dispute” means a cross-border dispute that is subject to the Mediation Directive.

Transitional provision.

2. This Order does not enable proceedings in respect of a contract claim to be brought before the Employment Tribunal unless–

- (a) the effective date of termination (as defined in section 64(5) of the Employment Act) in respect of the contract giving rise to the claim, or
- (b) where there is no effective date of termination, the last day upon which the employee works in the employment which has terminated,

occurs on or after the day on which this Order comes into force.

Extension of jurisdiction for employee’s contract claim.

3. Proceedings may be brought before the Employment Tribunal in respect of a claim of an employee (other than a claim for damages, or for a sum due, in respect of personal injuries) if–

- (a) the claim is a relevant claim and one to which the Supreme Court would have jurisdiction to hear and determine;
- (b) the claim is not an excluded claim; and
- (c) the claim arises or is outstanding on the termination of the employee's employment.

Extension of jurisdiction for employer’s contract claim.

4. Proceedings may be brought before the Employment Tribunal in respect of a claim of an employer for the recovery of damages or any other sum

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(other than a claim for damages, or for a sum due, in respect of personal injuries) if–

- (a) the claim is a relevant claim and one to which the Supreme Court would have jurisdiction to hear and determine;
- (b) the claim is not an excluded claim;
- (c) the claim arises or is outstanding on the termination of the employment of the employee against whom it is made; and
- (d) proceedings in respect of a claim of that employee have been brought before the Employment Tribunal by virtue of this Order.

Manner in which proceedings may be brought.

5. Proceedings on a contract claim may be brought before the Employment Tribunal by presenting a complaint to the Employment Tribunal.

Presentation of employee's contract claim.

6. Subject to article 8, the Employment Tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented–

- (a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or
- (b) where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has terminated, or
- (c) where the period within which a complaint must be presented in accordance with paragraph (a) or (b) is postponed by section 83A(3) of the Employment Act or 68A of the Equal Opportunities Act 2006, the period within which the complaint must be presented shall be the postponed period rather than the period in paragraph (a) or (b).
- (d) where the Employment Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the Employment Tribunal considers reasonable in the circumstances of the case.

Presentation of employer's contract claim.

7. Subject to article 8, the Employment Tribunal shall not entertain a complaint in respect of an employer's contract claim unless–

- (a) it is presented at a time when there is before the Employment Tribunal a complaint in respect of a contract claim of a particular employee which has not been settled or withdrawn;
- (b) it arises out of a contract with that employee; and
- (c) it is presented–
 - (i) within the period of six weeks beginning with the day, or if more than one the last of the days, on which the employer (or other person who is the respondent party to the employee's contract claim) received from the Employment Tribunal a copy of an originating application in respect of a contract claim of that employee; or
 - (ii) where the Employment Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the Employment Tribunal considers reasonable.

Postponement of time limits because of mediated cross-border disputes.

8.(1) Paragraph (2) applies where–

- (a) a time limit is set by article 6(a) or (b) 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.

(2) The time limit expires instead at the end of four weeks after the mediation ends (subject to paragraph (3)).

(3) If a time limit mentioned in paragraph (1)(a) has been extended by this section, paragraphs (1) and (2) apply to the postponed time limit as they apply to a time limit mentioned in article (1)(a).

(4) Article (5) applies where—

- (a) a time limit is set by article 7(c)(i) 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 article the time limit would expire before the mediation ends or less than two weeks after it ends.

(5) The time limit expires instead at the end of two weeks after the mediation ends (subject to paragraph (6)).

(6) If a time limit mentioned in paragraph (4)(a) has been extended by this section, paragraphs (4) and (5) apply to the extended time limit as they apply to a time limit mentioned in paragraph (4)(a).

(7) Where more than one time limit applies in relation to a relevant dispute, the extension by subsection (2) or (5) of one of those time limits does not affect the others.

(8) For the purposes of this article, a mediation starts on the date of the agreement to mediate that is entered into by the parties and the mediator.

(9) For the purposes of this article, 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;
- (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; or
- (e) the mediation otherwise comes to an end pursuant to the terms of the agreement to mediate.

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(10) For the purpose of paragraph (9), a qualifying request is a request by a party that another (A) confirm to all parties that A is continuing with the mediation.

(11) In the case of any relevant dispute, references in this article 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.

(12) Where the Employment Tribunal has the power under article 6(c) or 8(c)(ii) to extend a period of limitation, the power is exercisable in relation to the period of limitation as extended by this section.

Death and bankruptcy.

9.(1) Where proceedings in respect of a contract claim have been brought before the Employment Tribunal and an employee or employer party to them dies before their conclusion, the proceedings shall not abate by reason of the death and the Employment Tribunal may, if it thinks it necessary in order to ensure that all matters in dispute may be effectually and completely determined and adjudicated upon, order the personal representatives of the deceased party, or other persons whom the Employment Tribunal considers appropriate, to be made parties and the proceedings to be carried on as if they had been substituted for the deceased party.

(2) Where proceedings in respect of a contract claim have been brought before the Employment Tribunal and the employee or employer who is the applicant party to them becomes bankrupt before their conclusion, the proceedings shall not abate by reason of the bankruptcy and the Employment Tribunal may, if it thinks it necessary in order to ensure that all matters in dispute may be effectually and completely adjudicated upon, order the person in whom the interest of the bankrupt party has vested to be made a party and the proceedings to be carried on as if he had been substituted for the bankrupt party.

Limit on payment to be ordered.

10. The Employment Tribunal shall not in proceedings in respect of a contract claim, or in respect of a number of contract claims relating to the same contract, order the payment of an amount exceeding £50,000.

Extension for Gibraltar Development Corporation Pre-Occupational Pensions Levy and the Employment Regulations.

11. The jurisdiction of the Employment Tribunal is extended to include matters referred to it under the provisions of the Gibraltar Development

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Corporation (Pre-Occupational Pensions) Levy Regulations, 1993 and the Employment Regulations, 1994.

Extension for the Employment Act.

12. The jurisdiction of the Employment Tribunal is extended to include matters referred to it under the provisions of sections 52J to 52P and 78A to 78K of the Employment Act.

Extension for Management of Health and Safety at Work Regulations 1996 and Employment (Maternity and Health and Safety) Regulations, 1996

13. The jurisdiction of the Employment Tribunal is extended to include matters referred to it under the provisions of regulation 21 of the Management of Health and Safety at Work Regulations 1996 and regulations 17, 18 and 20 of the Employment (Maternity and Health and Safety) Regulations, 1996.

Extension for European Public Limited-Liability Company Act 2005.

14. The jurisdiction of the Employment Tribunal is extended to include matters referred to it under the provisions of the European Public Limited-Liability Company Act 2005.

Repeal.

15. The following rules are repealed—

- (a) the Industrial Tribunal (Extension Of Jurisdiction) Rules 1993;
- (b) the Industrial Tribunal (Extension Of Jurisdiction) Rules 1994;
- (c) the Industrial Tribunal (Extension Of Jurisdiction) Rules 1996;
- (d) the Industrial Tribunal (Extension Of Jurisdiction)(No.2) Rules 1996; and
- (e) the Industrial Tribunal (Extension Of Jurisdiction) Rules 2005.

Savings and transitional provisions.

16. Notwithstanding the repeal of the Rules by article 15, any complaint relying on the extension of jurisdiction granted by any of the Rules prior to the date of commencement of these Regulations, which on the date of the

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commencement of these Regulations has not been determined, shall be determined in accordance with the provisions of the repealed Rules.