

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

LN.2020/523

Paras. 1(2), 6, (c), 8

1.1.2021

1932-16

Employment

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2016**

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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;

“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.

“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

Transitional provision.

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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 (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.

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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. 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) *Deleted*
- (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.

8. *Deleted.*

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commencement of these Regulations has not been determined, shall be determined in accordance with the provisions of the repealed Rules.