



Armed Forces Act 1996

1996 CHAPTER 46

Complaints to industrial tribunals

21 Sex discrimination: Great Britain

(1) Section 85 of the Sex Discrimination Act 1975 (application of that Act to the Crown) shall be amended as set out in subsections (2) to (5) below.

(2) In subsection (2), after paragraph (b) there shall be inserted—

“or

(c) service in the armed forces.”

(3) In subsection (4), for the words from “naval” to the end there shall be substituted the words “armed forces.”

(4) After subsection (9) there shall be inserted the following subsections—

“(9A) This subsection applies to any complaint by a person (“the complainant”) that another person—

(a) has committed an act of discrimination against the complainant which is unlawful by virtue of section 6; or

(b) is by virtue of section 41 or 42 to be treated as having committed such an act of discrimination against the complainant,

if at the time when the act complained of was done the complainant was serving in the armed forces and the discrimination in question relates to his service in those forces.

(9B) No complaint to which subsection (9A) applies shall be presented to an industrial tribunal under section 63 unless—

(a) the complainant has made a complaint to an officer under the service redress procedures applicable to him and has submitted that complaint to the Defence Council under those procedures; and

(b) the Defence Council have made a determination with respect to the complaint.

Status: This is the original version (as it was originally enacted).

- (9C) Regulations may make provision enabling a complaint to which subsection (9A) applies to be presented to an industrial tribunal under section 63 in such circumstances as may be specified by the regulations, notwithstanding that subsection (9B) would otherwise preclude the presentation of the complaint to an industrial tribunal.
- (9D) Where a complaint is presented to an industrial tribunal under section 63 by virtue of regulations under subsection (9C), the service redress procedures may continue after the complaint is so presented.
- (9E) Regulations under subsection (9C) shall be made by the Secretary of State by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (5) For subsection (10) there shall be substituted the following subsection—
- “(10) In this section—
- “armed forces” means any of the naval, military or air forces of the Crown;
- “service for purposes of a Minister of the Crown or government department” does not include service in any office for the time being mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975;
- “the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in section 180 of the Army Act 1955, section 180 of the Air Force Act 1955 and section 130 of the Naval Discipline Act 1957; and
- “statutory body” means a body set up by or in pursuance of an enactment and “statutory office” means an office so set up.”
- (6) In section 76(1) of the Sex Discrimination Act 1975 (period within which complaint under section 63 of that Act to be presented to an industrial tribunal), for the words from “the period” to the end there shall be substituted the following words “—
- (a) the period of three months beginning when the act complained of was done; or
- (b) in a case to which section 85(9A) applies, the period of six months so beginning.”

22 Sex discrimination: Northern Ireland

- (1) Article 82 of the Sex Discrimination (Northern Ireland) Order 1976 (application of that Order to the Crown) shall be amended as set out in subsections (2) to (5) below.
- (2) In paragraph (2), after sub-paragraph (b) there shall be inserted—
- “or
- (c) service in the armed forces,”.
- (3) In paragraph (5), for the words from “naval” to the end there shall be substituted the words “armed forces”.
- (4) After paragraph (9) there shall be inserted the following paragraphs—

“(9A) This paragraph applies to any complaint by a person (“the complainant”) that another person—

- (a) has committed an act of discrimination against the complainant which is unlawful by virtue of Article 8; or
- (b) is by virtue of Article 42 or 43 to be treated as having committed such an act of discrimination against the complainant,

if at the time when the act complained of was done the complainant was serving in the armed forces and the discrimination in question relates to his service in those forces.

(9B) No complaint to which paragraph (9A) applies shall be presented to an industrial tribunal under Article 63 unless—

- (a) the complainant has made a complaint to an officer under the service redress procedures applicable to him and has submitted that complaint to the Defence Council under those procedures; and
- (b) the Defence Council have made a determination with respect to the complaint.

(9C) Regulations made by the Secretary of State may make provision enabling a complaint to which paragraph (9A) applies to be presented to an industrial tribunal under Article 63 in such circumstances as may be specified by the regulations, notwithstanding that paragraph (9B) would otherwise preclude the presentation of the complaint to an industrial tribunal.

(9D) Where a complaint is presented to an industrial tribunal under Article 63 by virtue of regulations under paragraph (9C), the service redress procedures may continue after the complaint is so presented.

(9E) Regulations under paragraph (9C) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.”

(5) For paragraph (10) there shall be substituted the following paragraph—

“(10) In this Article—

“armed forces” means any of the naval, military or air forces of the Crown;

“service for purposes of a Minister of the Crown or government department” does not include service in any office for the time being mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975;

“the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in section 180 of the Army Act 1955, section 180 of the Air Force Act 1955 and section 130 of the Naval Discipline Act 1957; and

“statutory body” means a body set up by or in pursuance of a statutory provision and “statutory office” means an office so set up.”

(6) In Article 76(1) of the Sex Discrimination (Northern Ireland) Order 1976 (period within which complaint under Article 63 of that Order to be presented to an industrial

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

tribunal), for the words from “the period” to the end there shall be substituted the following words “—

- (a) the period of three months beginning when the act complained of was done; or
- (b) in a case to which Article 82(9A) applies, the period of six months so beginning.”.

- (7) In Article 80(1) of the Sex Discrimination (Northern Ireland) Order 1976 (orders and regulations subject to negative resolution of the Northern Ireland Assembly), after the words “regulations made under this Order” there shall be inserted the words “(except Article 82(9C))”.

23 Racial discrimination

- (1) Section 75 of the Race Relations Act 1976 (application of that Act to the Crown) shall be amended as set out in subsections (2) and (3) below.

- (2) For subsection (9) there shall be substituted the following subsections—

“(9) No complaint to which subsection (8) applies shall be presented to an industrial tribunal under section 54 unless—

- (a) the complainant has made a complaint to an officer under the service redress procedures applicable to him and has submitted that complaint to the Defence Council under those procedures; and
- (b) the Defence Council have made a determination with respect to the complaint.

(9A) Regulations may make provision enabling a complaint to which subsection (8) applies to be presented to an industrial tribunal under section 54 in such circumstances as may be specified by the regulations, notwithstanding that subsection (9) would otherwise preclude the presentation of the complaint to an industrial tribunal.

(9B) Where a complaint is presented to an industrial tribunal under section 54 by virtue of regulations under subsection (9A), the service redress procedures may continue after the complaint is so presented.”

- (3) In subsection (10), after paragraph (a) there shall be inserted the following paragraphs—

- “(aa) “regulations” means regulations made by the Secretary of State;
- (ab) “the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in section 180 of the Army Act 1955, section 180 of the Air Force Act 1955 and section 130 of the Naval Discipline Act 1957;”.

- (4) In section 68(1) of the Race Relations Act 1976 (period within which complaint under section 54 of that Act to be presented to an industrial tribunal), for the words from “the period” to the end there shall be substituted the following words “—

- (a) the period of three months beginning when the act complained of was done; or
- (b) in a case to which section 75(8) applies, the period of six months so beginning.”

- (5) In section 74(2) of the Race Relations Act 1976 (parliamentary control of orders and regulations), after the words “section 75(5)(a)” there shall be inserted the words “or (9A)”.

24 Equal treatment: Great Britain

- (1) Section 1(9) of the Equal Pay Act 1970 (exclusion of armed forces from requirement of equal treatment for women and men in same employment) shall cease to have effect.
- (2) For section 7 of that Act (service pay) there shall be substituted the following section—

“7A Service pay and conditions

- (1) Sections 1 and 6 above shall apply, with the modifications mentioned in subsection (2) below and any other necessary modifications, to service by a woman in any of the armed forces as they apply to employment by a private person.
- (2) In the application of those sections to service by a woman in any of the armed forces—
- (a) references to a contract of employment shall be regarded as references to the terms of service;
 - (b) in section 1, in subsection (6), paragraph (c) and the words “or any associated employer” and subsections (8) to (11) (which have no application) shall be omitted; and
 - (c) references to an equality clause shall be regarded as referring to a corresponding term of service capable of requiring the terms of service applicable in her case to be treated as modified or as including other terms.
- (3) Any claim in respect of the contravention of a term of service modified or included, in relation to a woman’s service in any of the armed forces, by a term corresponding to an equality clause in a contract of employment (including a claim for arrears of pay or damages in respect of the contravention) may be presented by way of complaint to an industrial tribunal.
- Any such contravention shall be regarded for the purposes of a claim under this subsection as if it were a breach of contract.
- (4) Subsections (5) to (10) below apply in relation to any claim by a woman (“the claimant”) arising from a contravention of a term of service referred to in subsection (3) above.
- (5) No complaint in respect of the claim shall be presented to an industrial tribunal unless—
- (a) the claimant has made a complaint to an officer under the service redress procedures applicable to her and has submitted that complaint to the Defence Council under those procedures; and
 - (b) the Defence Council have made a determination with respect to the complaint.
- (6) Regulations may make provision enabling a complaint in respect of the claim to be presented to an industrial tribunal in such circumstances as may be

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

specified by the regulations, notwithstanding that subsection (5) above would otherwise preclude its presentation.

- (7) Where a complaint is presented to an industrial tribunal by virtue of regulations under subsection (6) above, the service redress procedures may continue after the complaint is presented.
- (8) No complaint in respect of the claim shall be presented to an industrial tribunal if the period of service during which the claim arose ended more than nine months before the date of the presentation of the complaint to the tribunal.
- (9) A woman shall not be entitled, in proceedings on a complaint in respect of the claim, to be awarded any payment by way of arrears of pay or damages in respect of a time earlier than two years before the date on which her complaint under the service redress procedures was made.
- (10) Section 2A above shall apply in relation to a complaint in respect of the claim as it applies to a complaint presented to an industrial tribunal under section 2(1) above.
- (11) Regulations under subsection (6) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) In this section—
 - “armed forces” means the naval, military or air forces of the Crown; and
 - “the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in section 180 of the Army Act 1955, section 180 of the Air Force Act 1955 and section 130 of the Naval Discipline Act 1957.”

25 Equal treatment: Northern Ireland

- (1) Section 1(10) of the Equal Pay Act (Northern Ireland) 1970 (exclusion of armed forces from requirement of equal treatment for women and men in same employment) shall cease to have effect.
- (2) After section 6 of that Act there shall be inserted the following section—

“6A Service pay and conditions

- (1) Sections 1 and 6 shall apply, with the modifications mentioned in subsection (2) and any other necessary modifications, to service by a woman in any of the armed forces as they apply to employment by a private person.
- (2) In the application of those sections to service by a woman in any of the armed forces—
 - (a) references to a contract of employment shall be regarded as references to the terms of service;
 - (b) in section 1, in subsection (7), paragraph (c) and the words “or any associated employer” and subsections (9) to (12) (which have no application) shall be omitted; and

(c) references to an equality clause shall be regarded as referring to a corresponding term of service capable of requiring the terms of service applicable in her case to be treated as modified or as including other terms.

(3) Any claim in respect of the contravention of a term of service modified or included, in relation to a woman's service in any of the armed forces, by a term corresponding to an equality clause in a contract of employment (including a claim for arrears of pay or damages in respect of the contravention) may be presented by way of complaint to an industrial tribunal.

Any such contravention shall be regarded for the purposes of a claim under this subsection as if it were a breach of contract.

(4) Subsections (5) to (10) apply in relation to any claim by a woman ("the claimant") arising from a contravention of a term of service referred to in subsection (3).

(5) No complaint in respect of the claim shall be presented to an industrial tribunal unless—

- (a) the claimant has made a complaint to an officer under the service redress procedures applicable to her and has submitted that complaint to the Defence Council under those procedures; and
- (b) the Defence Council have made a determination with respect to the complaint.

(6) Regulations made by the Secretary of State may make provision enabling a complaint in respect of the claim to be presented to an industrial tribunal in such circumstances as may be specified by the regulations, notwithstanding that subsection (5) would otherwise preclude its presentation.

(7) Where a complaint is presented to an industrial tribunal by virtue of regulations under subsection (6), the service redress procedures may continue after the complaint is presented.

(8) No complaint in respect of the claim shall be presented to an industrial tribunal if the period of service during which the claim arose ended more than nine months before the date of the presentation of the complaint to the tribunal.

(9) A woman shall not be entitled, in proceedings on a complaint in respect of the claim, to be awarded any payment by way of arrears of pay or damages in respect of a time earlier than two years before the date on which her complaint under the service redress procedures was made.

(10) Section 2A shall apply in relation to a complaint in respect of the claim as it applies to a complaint presented to an industrial tribunal under section 2(1).

(11) Regulations under subsection (6) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(12) In this section—

“armed forces” means the naval, military or air forces of the Crown; and

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

“the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in section 180 of the Army Act 1955, section 180 of the Air Force Act 1955 and section 130 of the Naval Discipline Act 1957.”

26 Other complaints: Great Britain

- (1) Section 192 of the Employment Rights Act 1996 (application of Act to armed forces) shall be amended as follows.
- (2) In subsection (4), for the words from “the person” to the end there shall be substituted the following words “—
 - (a) the person aggrieved has made a complaint to an officer under the service procedures for the redress of complaints applicable to him and has submitted that complaint to the Defence Council under those procedures; and
 - (b) the Defence Council have made a determination with respect to the complaint.”
- (3) For subsection (5) there shall be substituted the following subsection—
 - (5) Where modifications made by an Order in Council under subsection (3) include provision such as is mentioned in subsection (4), the Order in Council shall also include provision—
 - (a) enabling a complaint or reference to be made to an industrial tribunal in such circumstances as may be specified in the Order, notwithstanding that provision such as is mentioned in subsection (4) would otherwise preclude the making of the complaint or reference; and
 - (b) where a complaint or reference is made to an industrial tribunal by virtue of provision such as is mentioned in paragraph (a), enabling the service procedures for the redress of complaints to continue after the complaint or reference is made.”
- (4) In subsection (6), for the words “sections 180 and 181” in both places where those words occur there shall be substituted the words “section 180”.

27 Other complaints: Northern Ireland

- (1) Article 10 of the Industrial Relations (Northern Ireland) Order 1993 (application of Industrial Relations Orders to armed forces) shall be amended as follows.
- (2) In paragraph (3), for the words from “the person” to the end there shall be substituted the following words “—
 - (a) the person aggrieved has made a complaint to an officer under the service procedures for the redress of complaints applicable to him and has submitted that complaint to the Defence Council under those procedures; and
 - (b) the Defence Council have made a determination with respect to the complaint.”
- (3) For paragraph (4) there shall be substituted the following paragraph—

- “(4) Where modifications made by an order under paragraph (2) include provision such as is mentioned in paragraph (3), the order shall also include provision—
- (a) enabling a complaint or reference to be made to an industrial tribunal in such circumstances as may be specified in the order, notwithstanding that provision such as is mentioned in paragraph (3) would otherwise preclude the making of the complaint or reference; and
 - (b) where a complaint or reference is made to an industrial tribunal by virtue of provision such as is mentioned in paragraph (a), enabling the service procedures for the redress of complaints to continue after the complaint or reference is made.”
- (4) In paragraph (7), for the words “sections 180 and 181” in both places where those words occur there shall be substituted the words “section 180”.