

Consultation Question 1.

We provisionally propose that employment tribunals' exclusive jurisdiction over certain types of statutory employment claims should remain. Do consultees agree?

Yes. Employment Tribunals have specialist knowledge and a wealth of experience in relation to the claims for which they have exclusive jurisdiction so are best placed to adjudicate such claims. Furthermore, it would create unnecessary complication if the system were to be changed so that there was more shared jurisdiction between the Employment Tribunals and the civil courts.

Consultation Question 2.

Should there be any extension of the primary time limit for making a complaint to employment tribunals, either generally or in specific types of case? If so, should the amended time limit be six months or some other period?

No. Claimants should be encouraged to submit claims as soon as possible and three months from the date of the alleged unlawful conduct/the effective date of termination is considered sufficient time for a claim to be lodged. Extending the time limit is likely to create a bigger gap between the date of the act complained about and the date of the Tribunal Hearing which could be prejudicial to all parties.

Consultation Question 3.

In types of claim (such as unfair dismissal) where the time limit can at present only be extended where it was "not reasonably practicable" to bring the complaint in time, should employment tribunals have discretion to extend the time limit where they consider it just and equitable to do so?

No. The parties should have certainty that when the primary time limit has expired, claims will only be allowed to proceed in certain limited and specified circumstances. The discretion allowed under the just and equitable test creates significant uncertainty for employers and it would be preferable if, in all cases, the time limit could only be extended if it was not reasonably practicable to bring the claim in time. Claimants have access to support and advice to assist them in bringing claims and therefore should be able to do so within the relevant time limits.

Consultation Question 4.

We provisionally propose that the county court should retain jurisdiction to hear non-employment discrimination claims. Do consultees agree?

Yes if county court judges receive the appropriate training to enable them to deal with such claims.

Consultation Question 5.

Should employment tribunals be given concurrent jurisdiction over non-employment discrimination claims?

There is no compelling reason to transfer jurisdiction for non-employment discrimination claims to the Employment Tribunals. Therefore, there is no need for there to be concurrent jurisdiction over such claims either. It would not be appropriate to deal with non-employment related claims in the Employment Tribunals.

Consultation Question 6.

If employment tribunals are to have concurrent jurisdiction over non-employment discrimination claims, should there be power for judges to transfer claims from one jurisdiction to the other?

See above responses..

If so, what criteria should be used for deciding whether a case should be transferred:

(1) from county courts to employment tribunals; and/or

See above responses.

(2) from employment tribunals to county courts?

See above responses.

Should county courts be given the power to refer questions relating to discrimination cases to employment tribunals?

County courts should only be able to refer such questions to the Employment Tribunal if they arise in an employment context.

Consultation Question 7.

If employment tribunals are to have concurrent jurisdiction over non-employment discrimination claims, should a triage system be used to allocate the claim as between the county court or the employment tribunal? If so, what form should this triage take?

See above responses.

Consultation Question 8.

Do consultees consider that employment judges should be deployed to sit in the county court to hear non-employment discrimination claims?

Only if there is sufficient capacity and expertise to determine such claims.

Consultation Question 9.

If consultees consider that employment judges should be deployed to sit in the county court, should there be provision for them to sit with one or more assessors where appropriate?

See response to question 8 above.

Consultation Question 10.

Should employment tribunals have jurisdiction to hear a claim by an employee for damages for breach of contract where the claim arises during the subsistence of the employee's employment?

Yes this would make the position much clearer and simpler.

Consultation Question 11.

Should employment tribunals have jurisdiction to hear a claim for damages for breach of contract where the alleged liability arises after employment has terminated?

Yes as the current position is confusing.

Consultation Question 12.

We provisionally propose that the current £25,000 limit on employment tribunals' contractual jurisdiction should be increased. Do consultees agree?

Yes because the limit has not increased over time to take account of inflation, increased salaries etc.

Consultation Question 13.

What (if any) should the financial limit on employment tribunals' contractual jurisdiction be, and why?

The financial limit should align with the High Court minimum value for breach of contract claims so that breach of contract claims can be heard in the Employment Tribunal.

Consultation Question 14.

If the financial limit on employment tribunals' contractual jurisdiction is increased, should the same limit apply to counterclaims by the employer as to the original breach of contract claim brought by the employee?

Yes

Consultation Question 15.

Do consultees agree that the time limit for an employee's claim for breach of contract under the Extension of Jurisdiction Order 1994 should remain aligned with the time limit for unfair dismissal claims? Should a different time limit apply if tribunals are given jurisdiction over claims that arise during the subsistence of an employee's employment?

The time limit for bringing a breach of contract claim should remain three months, which is the same as the time limit for bringing an unfair dismissal claim.

Consultation Question 16.

We provisionally propose that employment tribunals' contractual jurisdiction should not be extended to include claims for damages, or sums due, relating to personal injuries. Do consultees agree?

Yes.

Consultation Question 17.

We provisionally propose that the prohibition against employment tribunals hearing claims for contractual breaches relating to living accommodation should be retained. Do consultees agree?

Yes.

Consultation Question 18.

We provisionally propose that the prohibition against employment tribunals hearing breach of contract claims relating to intellectual property rights should be retained. Do consultees agree?

Yes.

Consultation Question 19.

We provisionally propose that the prohibition against employment tribunals hearing claims relating to terms imposing obligations of confidence (or confidentiality) should be retained. Do consultees agree?

Yes.

Consultation Question 20.

We provisionally propose that the prohibition against employment tribunals hearing claims relating to terms which are covenants in restraint of trade should be retained. Do consultees agree?

Yes.

Consultation Question 21.

We provisionally propose that employment tribunals expressly be given jurisdiction to determine breach of contract claims relating to workers, where such jurisdiction is currently given to tribunals in respect of employees by the Extension or Jurisdiction Order. Do consultees agree?

Yes.

Consultation Question 22.

If employment tribunals' jurisdiction to determine breach of contract claims relating to employees is extended in any of the ways we have canvassed in consultation questions 10 to 20, should tribunals also have such jurisdiction in relation to workers? If consultees consider that there should be any differences between employment tribunals' contractual jurisdiction in relation to employees and workers, please would they provide details.

The Employment Tribunal's jurisdiction in relation to workers should mirror its jurisdiction in relation to employees so as to provide a consistent approach.

Consultation Question 23.

We provisionally propose that employment tribunals should not be given jurisdiction to determine breach of contract disputes relating to genuinely self-employed independent contractors. Do consultees agree?

Yes.

Consultation Question 24.

We provisionally propose that employment tribunals should continue not to have jurisdiction to hear claims originated by employers against employees and workers. Do consultees agree?

Yes.

Consultation Question 25.

We provisionally propose that employers should continue not to be able to counterclaim in employment tribunals against employees and workers who have brought purely statutory claims against them. Do consultees agree?

No.

Consultation Question 26.

Should employment tribunals have jurisdiction to interpret or construe terms in contracts of employment in order to exercise their jurisdiction under Part I of the ERA 1996?

Yes.

Consultation Question 27.

Should employment tribunals be given the power to hear unauthorised deductions from wages claims which relate to unquantified sums?

Yes.

Consultation Question 28.

Where an employment tribunal finds that one or more of the "excepted deductions" listed by section 14(1) to 14(6) of the Employment Rights Act 1996 applies, should the tribunal also have the power to determine whether the employer deducted the correct amount of money from an employee's or worker's wages?

Yes.

Consultation Question 29.

Should employment tribunals be given the power to apply setting off principles in the context of unauthorised deductions claims? If so:

Yes.

(1) should the jurisdiction to allow a set off be limited to liquidated claims (ie claims for specific sums of money due)?

Yes.

(2) should the amount of the set off be limited to extinguishing the employee's claim?

Yes.

Consultation Question 30.

We provisionally propose that employment tribunals should continue not to have jurisdiction in relation to employers' statutory health and safety obligations. Do consultees agree?

Yes.

Consultation Question 31.

We provisionally propose that employment tribunals should continue not to have jurisdiction over workplace personal injury negligence claims. Do consultees agree?

Yes.

Consultation Question 32.

We provisionally propose that employment tribunals should retain exclusive jurisdiction over Equality Act discrimination claims which relate to references given or requested in respect of employees and workers and former employees and workers. Do consultees agree?

Yes.

Consultation Question 33.

Do consultees consider that employment tribunals should have any jurisdiction over common law claims (whether in tort or contract) which relate to references given or requested in respect of employees and workers (and former employees and workers)?

No.

Consultation Question 34.

Should employment tribunals and civil courts retain concurrent jurisdiction over equal pay claims?

Yes.

Consultation Question 35.

Should the time limit for bringing an equal pay claim in employment tribunals be extended so that it achieves parity with the time limit for bringing a claim in the civil courts?

No.

Consultation Question 36.

What other practical changes, if any, are desirable to improve the operation of employment tribunals' and civil courts' concurrent equal pay jurisdiction?

The law of equal pay is a complex area and it would be helpful to have equal pay specialists on hand in both jurisdictions to hear such claims.

Consultation Question 37.

Should the current allocation of jurisdictions across employment tribunals and the civil courts regarding the non-discrimination rule applying to occupational pension schemes remain unchanged?

Yes.

Consultation Question 38.

The present demarcation of employment tribunals' and civil courts' jurisdictions over the TUPE Regulations 2006 should not be changed. Do consultees agree?

Yes.

Consultation Question 39.

The present demarcation of employment tribunals', civil courts' and criminal courts' jurisdictions over the Working Time Regulations should not be changed. Do consultees agree?

Yes.

Consultation Question 40.

Do consultees agree that the present demarcation of employment tribunals', civil courts' and criminal courts' jurisdictions over the NMW should not be changed?

Yes.

Consultation Question 41.

We provisionally propose that the present demarcation of employment tribunals' and civil courts' jurisdictions over the Blacklists Regulations should not be changed. Do consultees agree?

Yes.

Consultation Question 42.

Should the £65,300 cap applying to employment tribunal claims brought under the Blacklists Regulations be increased so that it is the same as the cap on compensatory awards for ordinary unfair dismissal claims, as amended from time to time? Are consultees aware of any cases affected by the £65,300 cap on compensation which have had to be brought in the civil courts?

Yes.

Consultation Question 43.

Should members of trades or professions who are aggrieved by the decisions of their qualifications bodies be able to challenge such decisions on public law grounds in the High Court and separately be able to claim unlawful discrimination in the employment tribunal? If not, please would consultees explain why and what changes they would make.

No. Members of trades or professions should only be able to bring such challenges in one forum. If such claims can be brought in two separate forums then it could lead to conflicting decisions and/or double recovery.

Consultation Question 44.

Should any other changes be made to the jurisdiction of employment tribunals or of the civil courts in respect of alleged discrimination by qualifications bodies?

No.

Consultation Question 45.

Should a police officer who is aggrieved by the decision of a police misconduct panel be able to challenge that decision by way of statutory appeal to the Police Appeals Tribunal and separately to complain that the decision is discriminatory in an employment tribunal? If consultees take the view that the answer is “no”, what changes do they suggest?

No. A police officer should only be able to bring such challenges in one forum. If such claims can be brought in two separate forums then it could lead to conflicting decisions and/or double recovery.

Consultation Question 46.

Our provisional view is that employment tribunals should not be given the power to grant injunctions. Do consultees agree?

Yes.

Consultation Question 47.

Should employment tribunals have the power to apportion liability between co-respondents in discrimination cases, so that each is separately liable to the claimant for part of the compensation? If so, on what basis should tribunals apportion liability?

Whilst on the face of it, this could be seen to be a positive step, giving the Employment Tribunal the power to apportion liability between co-respondents could cause practical problems. For example, it would be difficult to clearly attribute the harm caused to one respondent or another unless one party was 100% liable and the other was blameless.

Consultation Question 48.

We provisionally propose that employment tribunals should be given the power to make orders for contribution between respondents in appropriate circumstances and subject to appropriate criteria. Do consultees agree? If so, we welcome consultees' views as to appropriate circumstances and criteria.

Whilst on the face of it, this could be seen to be a positive step, giving the Employment Tribunal the power to make orders for contribution as between respondents could cause practical problems. For example, it would be difficult to ascertain clear fault or liability on the part of a respondent which can be properly determined and assessed in financial terms so that an order for contribution could be fairly made. Furthermore, this would only be appropriate in cases where the respondents are already parties to the proceedings –the Tribunal should not be able to expand the scope of a case by adding additional respondents. Finally, the Employment Tribunal would have to be mindful of the fact that respondents in an Employment Tribunal claim may well have to preserve an ongoing working relationship going forwards which may become problematic if one has been ordered to make a contribution to another.

Consultation Question 49.

If respondents are given the right to claim contribution from one another in employment tribunals, do consultees consider that this right should precisely mirror the position in common law claims brought in the civil courts, or be modified to suit the employment context? If the latter, we would be grateful to hear consultees' views on appropriate modifications.

This right should precisely mirror the position in common law claims brought in the civil courts.

Consultation Question 50.

Should employment tribunals be given the jurisdiction to enforce their own orders for the payment of money? If so, what powers should be available to employment tribunals and what would be the advantages of giving those powers to tribunals instead of leaving enforcement to the civil courts?

Yes. This would mean that there would be no need to have to lodge (and pay for) a claim in the civil courts in order to enforce an award made in an Employment Tribunal. Employment Tribunals would be best placed to determine what is the appropriate enforcement action in an employment context.

Consultation Question 51.

Should the EAT be given appellate jurisdiction over the CAC's decisions in respect of trade union recognition and derecognition disputes? If such an appellate jurisdiction were created, do consultees agree that it should be limited to appeals on questions of law?

Yes and if such an appellate jurisdiction were to be created it should be limited to appeals on questions of law as that is the general function of the EAT.

Consultation Question 52.

We provisionally propose that there is no need to alter or remove the EAT's current jurisdiction to hear original applications in certain limited areas. Do consultees agree?

Yes.

Consultation Question 53.

We provisionally propose that an informal specialist list to deal with employment-related claims and appeals should be established within the Queen's Bench Division of the High Court. Do consultees agree? If so, what subject matter should come within its remit?

No. Employment-related claims and appeals should be dealt with by specialist judges who sit in the Employment Tribunal and who have the appropriate knowledge, experience and expertise hear such claims, rather than by judges from an informal specialist list within the Queen's Bench Division.

Consultation Question 54.

What name should it be given: Employment List, Employment and Equalities List or some other name?

See response to question 53 above.