

# Supplement to the Employment Statutory Code of Practice

This supplement does not form part of the Statutory Code of Practice. It is intended to assist those using the Code by identifying developments in the law since the Code was approved and is a statement of the law as at 31 March 2014. It should be read alongside the Code.

References to paragraph numbers below are references to paragraphs in the Statutory Code.

Para.	Note
-------	------

<b>2.31</b>	<b>Marriage and civil partnership</b>
-------------	---------------------------------------

In England and Wales marriage is no longer restricted to a union between a man and a woman but now includes a marriage between a same-sex couple.<sup>1</sup> This will also be true in Scotland when the relevant legislation is brought into force.<sup>2</sup>

The Commission has produced guidance for England and Wales to explain the equality and human rights implications of the Marriage (Same Sex Couples) Act 2013. The guidance covers 5 main areas: the law; public authorities; the workplace and service delivery; religious organisations; and school education and can be found at:

<http://www.equalityhumanrights.com/advice-and-guidance/marriage-same-sex-couples-act-2013-guidance/>

---

<sup>1</sup> Section 1, Marriage (Same Sex Couples) Act 2013.

<sup>2</sup> Marriage and Civil Partnership (Scotland) Act 2014

Para.	Note
-------	------

<b>2.36</b>	<b>Race</b>
-------------	-------------

Caste may be an aspect of race (as denoting a particular “ethnic origin”).<sup>3</sup> The definition of race will be amended in 2015 to make it clear that “race” includes a group of people defined by their caste.<sup>4</sup> The government is expected to consult on how this legislation should be framed.

---

<b>2.61</b>	<b>Manifestation of religion or belief</b>
-------------	--

A person does not have to prove that the manifestation of their religion or belief is a core component of the religion or philosophical belief they follow. It may instead be a means by which they choose to express their adherence to their religious belief.<sup>5</sup>

Further, when pursuing a claim of indirect religion or belief discrimination a claimant does not need to establish that others are also put at a particular disadvantage by a provision, criterion or practice; rather the question is whether the limitation on the claimant’s right under the European Convention on Human Rights to manifest their religious beliefs is proportionate given the legitimate aims of the employer. This is because protection of the right to manifest religion under the Convention does not require “group disadvantage” to be shown<sup>6</sup>

For a full discussion on the balancing exercise required following the cases of *Eweida, Chaplin, Ladele & McFarlane v United Kingdom* (2013) in the European Court of Human Rights, see the EHRC’s guidance; “*Religion or belief in the workplace: an explanation of recent European Court of Human Rights judgments*” available at <http://www.equalityhumanrights.com/advice-and-guidance/guidance-for-employers/religion-or-belief-new-guidance-february-2013/>

---

<sup>3</sup> *Tirkey v Chandok* ET 3400174/2013 [2014] EqLR 183, ET.

<sup>4</sup> Section 97(1) – (4), Enterprise and Regulatory Reform Act 2014.

<sup>5</sup> *Mba v Mayor & Burgesses of the London Borough of Merton* [2013] EWCA Civ 1562 and *Eweida, Chaplin, Ladele & McFarlane v United Kingdom* (2013) applications numbers 48420/10, 59842/10, 51671/10 and 36516/1.

<sup>6</sup> *Mba v Mayor & Burgesses of the London Borough of Merton* [2013] EWCA Civ 1562, and *Eweida, Chaplin, Ladele & McFarlane v United Kingdom* (2013) applications numbers 48420/10, 59842/10, 51671/10 and 36516/1.

Para.	Note
-------	------

<b>3.31</b>	<b>Comparators in sexual orientation cases</b>
-------------	--

The Supreme Court has confirmed that the fact that one person is a civil partner while another is married is not a material difference between the circumstances relating to each case. This means that where any less favourable treatment is because a person is not married - but they are in a civil partnership — this will be unlawful direct sexual orientation discrimination.<sup>7</sup>

An employer must also treat those who are married to a person of the same sex in the same way as they treat other workers who are married to a person of the opposite sex.

---

<b>3.36 –</b>	<b>Justifiable direct discrimination because of age</b>
---------------	---

<b>3.41</b>	
-------------	--

If the treatment is less favourable because of age then it can only be justified if it has a legitimate aim. The range of aims that can justify less favourable treatment because of age is narrower than the range of aims that can justify other forms of discrimination (such as discrimination arising from disability) or any form of indirect discrimination.

For an aim to be regarded as legitimate for the purpose of justifying less favourable treatment because of age, it must pursue social policy objectives, such as those related to employment policy, the labour market or vocational training. It must be of a public interest nature, distinguishable from purely individual reasons particular to an employer's situation, such as cost reduction or improving competitiveness.

---

<b>3.4.2</b>	Legitimate aims can be summarised as promoting inter-generational fairness and “dignity” and may include:
--------------	---

- promoting access to employment for younger people;
- the efficient planning of the departure and recruitment of staff;
- sharing out employment opportunities fairly between the generations;
- ensuring the mix of generations of staff so as to promote the exchange of

---

<sup>7</sup> *Bull & Another v Hall & Another* [2013] UKSC 73.

Para.	Note
	<p>experience and new ideas;</p> <ul style="list-style-type: none"><li>• rewarding experience;</li><li>• cushioning the blow for long-serving employees who may find it hard to find new employment if dismissed</li><li>• facilitating the participation of older workers in the workforce</li></ul>
<b>3.4.3</b>	<p>If it is established that a particular aim is capable of being a legitimate aim, it must also be legitimate in the particular circumstances of the employment concerned.</p>
<b>3.44</b>	<p>Where it is established that a particular aim is legitimate, an employer still has to be able to show that the means used are proportionate, meaning that they are both appropriate to the aim and reasonably necessary to achieve it (paragraphs 4.30 – 4.32).</p>
<b>4.20</b>	<p><b>Making the comparison in indirect religion or belief discrimination claims</b></p> <p>The position is somewhat different where the claim is one of indirect religion or belief discrimination. Where the Convention applies to a claim of indirect discrimination connected to religion or belief, it is not necessary to show that that others are also put at a particular disadvantage by a provision, criterion or practice; rather the question is whether the limitation of an individual’s right to manifest their religious beliefs is proportionate given the legitimate aims of the employer.<sup>8</sup> This is because protection of the right to manifest religion under the Convention does not require “group disadvantage” to be shown.<sup>9</sup></p>

<sup>8</sup> *Mba v Mayor & Burgesses of the London Borough of Merton* [2013] EWCA Civ 1562.

<sup>9</sup> *Mba v Mayor & Burgesses of the London Borough of Merton* [2013] EWCA Civ 1562 and *Eweida, Chaplin, Ladele & McFarlane v United Kingdom* (2013) applications numbers 48420/10, 59842/10, 51671/10 and 36516/1.

Para.	Note
<b>5.14</b>	<b>What if the employer does not know that the person is disabled?</b>  The required knowledge is of the <i>facts</i> of the workers’s disability but an employer does not also need to know that their disability meets the legal definition of a “disabled person” (paragraphs 2.8-2.20). <sup>10</sup>
<b>5.15</b>	When deciding if a worker is disabled, an employer has to form their own judgment and cannot simply rubber-stamp an external occupational health adviser’s opinion that the worker is not disabled. <sup>11</sup>
<b>6.19</b>	<b>What if the employer does not know the worker is disabled</b>  The required knowledge is of the <i>facts</i> of the worker’s disability but an employer does not also need to know that their disability meets the legal definition of a “disabled person” (paragraphs 2.8-2.20). <sup>12</sup>
<b>6.20</b>	When deciding if a worker is disabled, an employer has to form their own judgment and cannot simply rubber-stamp an external occupational health adviser’s opinion that the worker is not disabled.
<b>7.20</b>	<b>Liability of employers for harassment by third parties</b>  The provisions addressing harassment by third parties have been repealed. <sup>13</sup> However, whilst this means that usually an employer will not be responsible for discrimination, harassment or victimisation by someone other than their employee or agent (see paragraphs 10.45-10.49), case law indicates that it is possible that they could be found to be legally responsible for failing to take action in specific circumstances. These would arise where the employer has some degree of control over a situation where there is a continuing course of

<sup>10</sup> *Gallop v Newport City Council* [2013] EWCA Civ 1583.

<sup>11</sup> *Gallop v Newport City Council* [2013] EWCA Civ 1583.

<sup>12</sup> *Gallop v Newport City Council* [2013] EWCA Civ 1583.

<sup>13</sup> Section 65, Enterprise and Regulatory Reform Act 2013.

Para.	Note
-------	------

offensive conduct of which they are aware but do not take action to prevent its recurrence.<sup>14</sup>

**Example:** A woman is employed to work in a hostel for young men aged between 18 and 21. Some of the young men regularly make sexually abusive comments to her and sometimes touch her inappropriately. She has complained to her manager about this many times, but he has done nothing to stop it, by, for example, warning the young men that the conduct is unacceptable and that they might be required to leave the hostel if it does not stop. The employer may be legally responsible for the harassment by the young men.

---

### 8.36 Health and Safety at Work

The current web address is [www.hse.gov.uk/mothers/](http://www.hse.gov.uk/mothers/)

---

### 9.4 Victimisation

Case law has confirmed that a worker is protected from victimisation by an ex-employer (after termination of the employment relationship).<sup>15</sup>

---

### 10.20 – Harassment by third parties

**10.24** The provisions addressing harassment by third parties have been repealed.<sup>16</sup> However, whilst this means that usually an employer will not be responsible for discrimination, harassment or victimisation by someone other than their employee or agent (see paragraphs 10.45-10.49), case law indicates that it is possible that they could be found to be legally responsible for failing to take action where they have some degree of control over a situation where there is

---

<sup>14</sup> *Sheffield City Council v Norouzi* [2011] IRLR 897 (and see *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] IRLR 327).

<sup>15</sup> *Jessemey v Rowstock Limited & Another* [2014] EWCA Civ 185.

<sup>16</sup> Section 65, Enterprise and Regulatory Reform Act 2013.

Para.	Note
-------	------

a continuing course of offensive conduct, but they do not take action to prevent its recurrence even though they are aware of it happening.<sup>17</sup>

**Example:** A woman is employed to work in a hostel for young men aged between 18 and 21. Some of the young men regularly make sexually abusive comments to her and sometimes touch her inappropriately. She has complained to her manager about this many times but he has done nothing to stop it, by, for example, warning the young men that the conduct is unacceptable and that they might be required to leave the hostel if it does not stop. The employer may be legally responsible for the harassment by the young men.

---

### 10.52 How employers and principals can avoid liability

Taking these steps will also help reduce the likelihood that an employer will be found to be legally responsible for any discrimination, harassment or victimisation carried out by a person who is not their employee or agent, in circumstances where they might otherwise be found to be legally responsible (see paragraphs 7.20 and 10.20 – 10.24 above).<sup>18</sup>

---

### 10.57 Liability of employees and agents under the Act

It is also unlawful to victimise an employee after termination of the employment relationship where the act of victimisation arises out of the work relationship and is closely connected to it.<sup>19</sup>

---

### 10.62 Relationships that have ended

If the conduct or treatment which an individual receives after termination of the employment relationship amounts to victimisation, this will now be dealt with in

---

<sup>17</sup> *Sheffield City Council v Norouzi* [2011] IRLR 897 (and see *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] IRLR 327).

<sup>18</sup> *Sheffield City Council v Norouzi* [2011] IRLR 897 (and see *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] IRLR 327).

<sup>19</sup> *Jessemey v Rowstock Limited & Another* [2014] EWCA Civ 185.

Para.	Note
-------	------

the same way as discrimination or harassment occurring after termination of the employment relationship.<sup>20</sup>

### 12.3 Positive Action

The provision addressing positive action in recruitment and promotion was brought into force on 6 April 2011.<sup>21</sup>

In certain circumstances, this allows an employer or other body with responsibilities under the provisions addressing “work” under the Equality Act, to treat a person more favourably in connection with recruitment or promotion because they have a particular protected characteristic.

Those circumstances are where the employer reasonably thinks (see paragraphs 12.14-15) that:

- persons who share a protected characteristic suffer a disadvantage connected to the characteristic (see paragraphs 12.16), or
- participation in an activity by persons who share a protected characteristic is disproportionately low (see paragraphs 12.20-12.23).

The employer may then treat a person with that protected characteristic more favourably in connection with recruitment or promotion than another person, so long as the aim of doing so is to enable or encourage persons who share the protected characteristic to overcome or minimise that disadvantage, or participate in that activity.

However, the more favourable treatment in these circumstances is only permissible where:

- the person with the particular protected characteristic is “as qualified” as the competing candidate;
- the employer does not have a policy of treating people who share that protected characteristic more favourably in connection with recruitment or promotion, as compared to those who do not share it; and

---

<sup>20</sup> *Jessemey v Rowstock Limited & Another* [2014] EWCA Civ 185.

<sup>21</sup> Equality Act 2010 (Commencement No.5 Order) 2011, SI 2011/96 and Section 159, Equality Act 2010.



Para.	Note
-------	------

- taking the action is a proportionate means of achieving the aim of overcoming or minimising the relevant disadvantage or participating in the relevant activity (see, paragraphs 12.25-12.28).

This provision essentially allows positive action in recruitment and promotion relation to a “tie-breaker.” It allows an employer faced with making a choice between two or more candidates who are of equal merit to take into consideration whether one is from a group that is disproportionately under-represented or otherwise disadvantaged within the workforce.

**Example:** A counselling service for teenagers has no Muslim employees, but is in an area with a high Muslim population. Where a vacancy arises, two candidates of equal merit are in a tie-breaker situation with the employer having to find some way to choose between them. One candidate is Muslim and the other candidate is not. The service manager could choose to offer the job to the Muslim candidate. This would be allowed under the positive action provisions (provided that taking action is a proportionate means of achieving the aim of increasing the number of the under-represented group employed and the employer does not have a policy of treating that group more favourably in connection with recruitment or promotion), so the non-Muslim candidate could not claim discrimination.

As to what is meant by “equal merit”, employers should establish a set of criteria against which candidates will be assessed when applying for a job. This can take into account a candidate’s overall ability, competence and professional experience together with any relevant formal or academic qualifications, as well as any other qualities required to carry out the particular job.

**Example:** A retailer advertises for a trainee fashion buyer. One applicant has a degree in French. None of the other applicants has a degree in any subject. The fact that one candidate has higher academic qualifications than the others does not automatically make that person better qualified for this particular job. The employer will need to decide if that qualification is a relevant factor in assessing who might be best for the job.

Para.	Note
-------	------

Employers must consider whether candidates are of equal merit in relation to the specific job or position they are applying for. While two candidates may be considered to be of equal merit for one particular post, the same two candidates might not be equally suitable for another job.

It is lawful for an employer to treat a disabled person more favourably in comparison to a non-disabled person, because of their disability in any circumstances at any stage in the recruitment or promotion process. The “two-ticks” guaranteed interview scheme means that an employer will interview all disabled applicants who meet the minimum requirement for a job vacancy. Employers can also use the positive action provisions to overcome disadvantage or increase the participation of people with a particular form of impairment.

---

**13.26 – Default Retirement Age**

**13.39**

The exceptions in relation to retirement (“the Default Retirement Age”) have been repealed.<sup>22</sup> This means that an employer must objectively justify any retirement age.

---

**13.42 Objective justification**

Whether the aim of having a retirement age is legitimate will depend on whether it has a social policy objective (paragraphs 3.36 - 3.41 above).

---

**14.30 Exception relating to life assurance**

The position in relation to life assurance and age discrimination has been modified.<sup>23</sup> This reflects the repeal of the provisions addressing a Default Retirement Age. An employer is now allowed to stop offering group insured benefits, for example private medical cover or life assurance, to workers who have reached the age of 65 (or, if greater, the state pensionable age).

---

<sup>22</sup> Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011, SI 2011/1069.

<sup>23</sup> Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 SI 2011/1069.

### **14.35 Exception for benefits based on marital status**

This exemption has been modified to take account of the fact that same-sex partners may now enter into a marriage in England and Wales (a similar exemption is expected to apply to Scotland when the Marriage and Civil Partnership (Scotland) Act 2014 comes into force). The effect of the modification is limited and the exception remains substantively the same.

The exception now ensures that it is not unlawful sexual orientation discrimination to restrict a benefit exclusively to workers who are in opposite sex marriages or married to a person of the same sex in a relevant gender change case, provided that the benefit in question accrued before 5 December 2005 (the day on which section 1 of the Civil Partnership Act 2004 came into force), or where payment is in respect of periods of service before that date. A relevant gender change case is a case where the married couple were of the opposite sex at the time of their marriage and a full gender recognition certificate has been issued to one of the couple under the Gender Recognition Act 2004.<sup>24</sup>

---

### **14.43 Occupational pension schemes**

There are also exceptions relating to age and occupational pension schemes. In relation to contributions to personal pension schemes it is lawful for an employer to maintain or apply practices, actions, or decisions relating to age in certain circumstances concerning:

- the minimum and maximum age for admission to a scheme;
- the minimum level of pensionable pay for admission (subject to qualifications);
- the use of age criteria in actuarial calculations in the scheme;
- different rates of contributions by an employer to a money purchase or defined benefit scheme according to the age of the workers in respect of whom the contributions are made, where this is for certain prescribed purposes; and

---

<sup>24</sup> Schedule 9, para 18(1) as amended by Section 11(4) and Schedule 4, Marriage (Same Sex Couples) Act 2013.

- 
- different rates of contributions by an employer to personal pensions by, for example, allowing employers to limit their contributions by reference to a maximum level of pay.<sup>25</sup>

These exemptions apply to the employer or the trustees or managers of a scheme, except in the case of contributions to personal pension schemes, where they apply to the employer only.

---

### **15.3 Enforcement**

Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 has been replaced by Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.<sup>26</sup>

---

### **15.6 – The procedure for obtaining information**

#### **15.10**

The questions procedure was abolished on 6 April 2014.<sup>27</sup> It will continue to apply to breaches of the Equality Act 2010 that happened before 6 April 2014.<sup>28</sup> It will remain good practice for persons who think that they may have been unlawfully discriminated against, harassed or victimised under equality law to seek relevant information before issuing a formal claim. This may prevent the complaint escalating to a formal claim.

ACAS has produced non-statutory guidance for employers and employees asking and answering questions after 6 April 2014. It is available at <http://www.acas.org.uk/media/pdf/m/p/Asking-and-responding-to-questions-of-discrimination-in-the-workplace.pdf>

---

<sup>25</sup> Equality Act (Age Exceptions for Pension Schemes) Order 2010 SI 2010/2133.

<sup>26</sup> SI 2013/1237.

<sup>27</sup> S.138 of the Equality Act 2010 was repealed by s.66 of the Enterprise and Regulatory Reform Act 2013 which was brought into effect from 6 April 2014 by the Enterprise and Regulatory Reform Act 2013 (Commencement No.6, Transitional Provisions and Savings Order 2014)..

<sup>28</sup> S.66(2) of the Enterprise and Regulatory Reform Act 2013.

---

## **15.11 – Settling complaints without recourse to an Employment Tribunal**

### **15.12**

From 6 May 2014, all claimants (with very limited exceptions) are required to comply with the Early Conciliation Procedure before they can issue a claim in the Employment Tribunal. The rules require that before instituting proceedings a claimant must present a completed early conciliation form to ACAS in a prescribed form or telephone ACAS giving their details and those of their employer.<sup>29</sup> ACAS will then offer a free conciliation service for the parties in dispute. The limitation period for a claim may be extended to allow for conciliation.<sup>30</sup>

It will not be necessary to comply with this procedure where another person has complied with the requirement for early conciliation in relation to the same dispute and an employee wishes to institute proceedings on the same claim form (in which case the requirement for early conciliation will be treated as satisfied for the purposes of any provision extending the time limit).<sup>31</sup>

The prescribed notification form and guidance on the early conciliation procedure are available from the ACAS website:

<http://www.acas.org.uk/index.aspx?articleid=4028>

---

**15.13** A “Qualifying Compromise Contract” is now known as a “Qualifying Settlement Agreement.”<sup>32</sup>

---

### **15.14 Jurisdiction for hearing complaints of discrimination in work cases**

Fees are now payable to an Employment Tribunal when starting proceedings on or after 29 July 2013.<sup>33</sup> Different fee structures apply depending upon whether or not a claimant is a single claimant or part of a group. The fees are payable when a claim form is presented to an Employment Tribunal and then

---

<sup>29</sup> The Employment Tribunals (Early Conciliation Rules of Procedure, Schedule to the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014, SI 2014/254

<sup>30</sup> Section 140B, Equality Act 2010 (requirement to contact ACAS before instituting proceedings)

<sup>31</sup> The Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 SI 2014/254.

<sup>32</sup> The new wording was substituted in s.147 Equality Act 2010 by s.23(6) of the Enterprise and Regulatory Reform Act 2013 with effect from 29 July 2013.

<sup>33</sup> Employment Tribunals and Employment Appeal Tribunal Fees Order 2013, SI 2013/1893.

later on in respect of a final hearing of the claim.

The amount of fees payable will depend on whether the claim is Type A or Type B. Most discrimination claims will be Type B claims. The Government has published online guidance on the fees payable to issue a claim:

<https://www.gov.uk/employment-tribunals/apply-to-the-tribunal>

Remission arrangements are in place, which mean that if a worker's income is below a certain level (and this varies depending upon, for example, family size), the fee will be reduced or waived entirely.<sup>34</sup>

When making certain applications, employers may also have to pay fees.

The tribunal will have the power to order the unsuccessful party to reimburse the fees paid by the successful party

---

**15.17** The Supreme Court has now confirmed that the High Court and the County Court or (in Scotland) the Court of Session or the sheriff court also have jurisdiction to hear equal pay claims.<sup>35</sup>

---

## **15.20 Time Limits**

Where a claimant is required to notify ACAS of their claim before starting proceedings in the Employment Tribunal and to comply with the early conciliation Rules of Procedure, special rules apply in relation to time limits. Time limits are extended in certain circumstances where a claimant has notified ACAS that he or she intends to bring an Employment Tribunal claim. For more information see the ACAS guidance on the early conciliation procedure: <http://www.acas.org.uk/media/pdf/h/o/Early-Conciliation-explained.pdf>

The rules are not straightforward and legal advice should be taken where there is any doubt about how the rules apply.

---

<sup>34</sup> Courts and Tribunals Fee Remission Order 2013, SI 2013/2302 substituting the arrangements in Schedule 3 of the Fees Order 2013, SI 2013/1893.

<sup>35</sup> See EHRC's Code of Practice on Equal Pay para 133 and the Supplementary Note to that code.

---

## 15.37 Remedies for unlawful acts relating to work

### *Additional Employment Tribunal powers*

From 6 April 2014, the Employment Tribunal may impose financial penalties of between £100 – £5,000 (payable to the Government) on employers if they lose and the case has “aggravating features”<sup>36</sup> These awards are likely to be imposed sparingly and in instances where the employer’s conduct has been particularly reprehensible.

The Government also intends to introduce legislation in October 2014 which will require an Employment Tribunal to order, subject to certain exceptions, an employer to undertake an equal pay audit where the Tribunal finds that the employer has breached an equality clause and/or discriminated because of sex in relation to pay.<sup>37</sup>

---

## 15.37 Employment Tribunal Recommendations

and

15.46 –

15.51

### *Recommendations*

The Government is proposing to remove the Employment Tribunal’s power to make recommendations affecting the wider workforce. Instead, a Tribunal will only be able to recommend that a respondent take specified steps to obviate or reduce the adverse effect *on the claimant* of any matter relating to the proceedings.<sup>38</sup> This change has not yet entered into law but workers and employers who think that these powers may be relevant to any claim in which they are involved should check the up-to-date position.

---

## 15.65 National Security

The rules governing national security proceedings have been replaced by Rule 94 of the Employment Tribunal Rules 2013.<sup>39</sup> They are materially the same as the rules that existed under the Employment Tribunal Rules 2004.

---

<sup>36</sup> Section 16, Enterprise and Regulatory Reform Act 2013.

<sup>37</sup> Section 139A, Equality Act 2010 (inserted by section 98(1), (2), of the Enterprise and Regulatory Reform Act 2013).

<sup>38</sup> Clause 2, De-Regulation Bill.

<sup>39</sup> Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, SI 2013/1237.

---

## **16.68 Eligibility to work in the UK**

The Home Office has now published full guidance on preventing illegal working in the United Kingdom. This can be found at:

<https://www.gov.uk/government/publications/prevent-illegal-working-in-the-uk>

---

## **16.69 Job offers**

Provisions addressing “tie-break” situations and the scope for taking positive action are addressed above at paragraph 12.3.

---

## **17.8 Flexible working**

From 30 June 2014 the right to request flexible working will be extended to all employees (not just those with caring responsibilities) with more than 26 weeks service. Further, the statutory procedures governing the employer’s consideration and decision in relation to any such request will be repealed.

Instead an employer will be under a duty to consider any request in a reasonable manner.<sup>40</sup> An ACAS guide: *“Handling Requests to Work Flexibly in a Reasonable Manner”* is available at

<http://www.acas.org.uk/media/pdf/p/6/Handling-requests-to-work-flexibly-in-a-reasonable-manner-an-Acas-guide.pdf>

---

## **17.31 Maternity, paternity, adoption and parental leave**

Further extensive changes are expected to entitlements to parental leave. It is expected that from April 2015 mothers, fathers and adopters will be able to opt to share parental leave. Further, adoption leave and pay will match the entitlements enjoyed by birth parents, from April 2015. It is expected that parents in surrogacy and “foster to adopt” arrangements will also qualify for adoption leave and pay from that date.

From 1 October 2014, prospective fathers or a mother’s partner will be able to take time off to attend up to two ante-natal appointments.<sup>41</sup>

---

<sup>40</sup> Section 131 and 132, Children and Families Act 2014.

<sup>41</sup> See various provisions of the Children and Families Act 2014 and Draft Regulations (Statutory Shared Parental) (General) Regulations 2014; Shared Parental Leave Regulations 2014; Maternity and Adoption Leave (Curtailed of Statutory Rights to Leave) Regulations 2014, all in draft form.



An ACAS guide: “*Handling Requests to Work Flexibly in a Reasonable Manner*” is available at <http://www.acas.org.uk/media/pdf/p/6/Handling-requests-to-work-flexibly-in-a-reasonable-manner-an-Acas-guide.pdf>

---

**17.39 Avoiding discrimination – accommodating workers’ needs**

For guidance as to the manifestation of religion and belief in the workplace see “*Religion or Belief in the Workplace: A Guide for Employers following recent European Court of Human Rights Judgments*” (2013) EHRC, available at: [http://www.equalityhumanrights.com/uploaded\\_files/RoB/religion\\_or\\_belief\\_in\\_the\\_workplace\\_a\\_guide\\_for\\_employers.pdf](http://www.equalityhumanrights.com/uploaded_files/RoB/religion_or_belief_in_the_workplace_a_guide_for_employers.pdf)

---

**17.82 Promotion and Transfer**

For the availability of positive action in “tie-break” situations, see paragraph 12.3 above.

---

**17.91 Disciplinary and Grievance matters**

The current web address is <http://www.acas.org.uk/index.aspx?articleid=2174>

---