

**EXPLANATORY MEMORANDUM TO THE
COMPROMISE AGREEMENTS (DESCRIPTION OF PERSON) ORDER 2004
(AMENDMENT) ORDER 2004**

2004 No.2515

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The instrument amends the Compromise Agreements (Description of Person) Order 2004 (“the Principal Order”). The Principal Order extended the category of person able validly to advise employee/worker complainants in relation to compromise agreements under certain Acts and statutory instruments to include Fellows of the Institute of Legal Executives (ILEX). A compromise agreement is a legally binding agreement not to institute or continue employment tribunal proceedings under, *inter alia*, the Acts and statutory instruments in question.

2.2 Those Acts and statutory instruments are the Sex Discrimination Act 1975, the Race Relations Act 1976, the Trade Union and Labour Relations (Consolidation) Act 1992, the Disability Discrimination Act 1995, the Employment Rights Act 1996, the National Minimum Wage Act 1998, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

2.3 The instrument amends the Principal Order by deleting the requirement that a Fellow, when advising in relation to a compromise agreement, must be supervised by a solicitor with a practising certificate.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The instrument is being made for the domestic policy reasons described at paragraph 7 of this memorandum.

5. Extent

5.1 This instrument applies, so far as it has effect for the purposes of the National Minimum Wage Act 1998, to the United Kingdom and, so far as it has effect for the purposes of the other legislation mentioned in paragraph 2.2 above, to Great Britain

6. European Convention on Human Rights

Not applicable.

7. Policy background

7. We anticipate an increase in demand for compromise agreements following developments such as the implementation of fixed periods of conciliation and the introduction of dispute resolution procedures. If compromise agreements are not readily available, parties may attempt to settle outside the proper legal framework, which could lead to further challenge and disputes. The Department's objective is, therefore, to maintain a balance between a controlled expansion of the list of relevant independent advisers whilst maintaining quality and impartiality, which are vital components of the existing system. By extending the scope for ILEX Fellows working in solicitors firms to act as relevant independent advisers, we should maintain existing quality controls whilst ensuring that demand for compromise agreements can be met.

7.2 Experience of the operation of the Principal Order since its introduction earlier this year has shown the condition revoked by the instrument, that a Fellow of ILEX must be supervised by a solicitor when advising on a compromise agreement, to be too restrictive. We now consider that the requirement in the Principal Order that a Fellow of ILEX must be employed by a solicitors' practice is of itself sufficient to secure that the Fellow will be subject to adequate supervision when giving such advice.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

9. Contact

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DEPARTMENT OF TRADE AND INDUSTRY

