

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT TRIBUNALS (CONSTITUTION AND RULES OF
PROCEDURE) (AMENDMENT) REGULATIONS 2008

2008 No. 2771

1. This explanatory memorandum has been prepared by the Ministry of Justice on behalf of the Department for Business and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. These Regulations make changes to the eligibility requirements for the following judicial offices:

- President of Employment Tribunals (England and Wales),
- President of Employment Tribunals (Scotland), and
- member of panel of full-time and part-time chairmen of Employment Tribunals in England and Wales and in Scotland.

2.2. The Regulations are intended to widen the range of lawyers with relevant experience that may apply to hold these offices by lowering the number of years qualification required from 7 to 5 years and by introducing a requirement for candidates qualified in England and Wales to satisfy a judicial-appointment eligibility condition during that period. That condition will require candidates to hold a relevant qualification and demonstrate post qualification legal experience which is not required at present.

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

3.1 None

4. Legislative Background

4.1 The Tribunals, Courts and Enforcement Act 2007 (2007 Act) contains 3 sections (50-52) revising the eligibility requirements for judicial appointment. Section 50 introduces the judicial-appointment eligibility condition and provides that where reference is made to the judicial-appointment eligibility condition in relation to eligibility for judicial office in statute candidates for judicial office must hold a relevant qualification and have gained experience in law over a period whilst holding that qualification. Section 50(4) of the 2007 Act provides that a person holds a relevant qualification if the person is a solicitor or barrister or holds a qualification specified in an order made under section 51(1) of that Act in relation to offices identified in the order.

4.2 Section 52 of the 2007 Act defines what is meant by gaining experience in law for these purposes.

4.3 Eligibility for specific judicial offices, for the most part, is set out elsewhere in statute. Schedule 10 to the 2007 Act substitutes, where relevant, reference to

the judicial-appointment eligibility condition in place of the existing eligibility requirements for specified offices and also lowers the number of years' experience required from 10 to 7 and from 7 to 5 years in the provisions regarding eligibility for judicial office in statute.

- 4.4 These Regulations make corresponding changes to those made by Schedule 10 to the 2007 Act for the purposes of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004.

5. Extent

- 5.1 The amendments to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 apply to England, Wales and Scotland.

6. European Convention on Human Rights

- 6.1. As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

- 7.1. The policy intention is to widen the eligibility criteria for appointment to judicial offices, to ensure that all those with the relevant skills and experience can apply. Widening the pool of those eligible to apply will support the policy aim to encourage diversity in the range of persons available for selection for judicial appointments. Judicial Diversity is a priority for the Ministry of Justice.

- 7.2. The Trilateral Judicial Diversity Strategy, agreed in 2006 between the Lord Chancellor, Lord Chief Justice and the Chairman of the Judicial Appointments Commission, had four key strands:

- Strand 1 - Promote judicial service and widen the range of people eligible to apply for judicial office
- Strand 2 - To encourage a wider range of applicants, so as to ensure the widest possible choice of candidates for selection
- Strand 3 - Promote diversity through fair and open processes for selection to judicial office solely on merit
- Strand 4 - Ensure that the culture and working environment for judicial office holders encourages and supports a diverse judiciary and increases understanding of the communities served

- 7.3. The legislative changes set out in these Regulations will support Strand 1 – widening the range of people eligible to apply.

- 7.4. BERR consulted on this proposal as part of the Dispute Resolution Secondary Legislation consultation. The majority of respondents supported the change.

8. Impact

8.1. No Regulatory Impact Assessment has been prepared because there is no regulatory impact on any part of the private or voluntary sector.

9. Contact

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