

**EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT TRIBUNALS (CONSTITUTION AND RULES OF
PROCEDURE) (AMENDMENT) REGULATIONS 2010**

2010 No. 131

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 To amend the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (S.I. 2004/1861) as amended to enable the Tribunals Service to forward a claim, or extracts from it, to a regulator listed in the new Annex to schedule 1 in certain circumstances where the claim alleges a protected disclosure under the Public Interest Disclosure Act has been made.

3. **Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]**

3.1 None

4. **Legislative Context**

4.1 The Public Interest Disclosure Act 1998 (c. 23) inserted provisions in the Employment Rights Act 1996 (c.18) to give protection to ‘whistleblowers’ who raise concerns about serious fraud or malpractice at their place of work against victimisation or dismissal, as a result of making a qualifying disclosure to a prescribed person in accordance with the requirements of the Employment Rights Act 1996.

5. **Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

6. **European Convention on Human Rights**

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

7. **Policy background**

7.1 This instrument will allow details of employment tribunals claims which allege a protected disclosure has been made under the Public Interest Disclosure Act (PIDA) to be forwarded to the relevant regulator so that the allegations of the

underlying issues e.g. fraud, non compliance with health and safety regulation, care home standards, can be investigated and action taken, as appropriate, by the regulator.

8. Consultation outcome

8.1 The Government published a consultation on 3 July 2009 to seek views on the preferred option for a practical process which would enable the substance of allegations giving rise to PIDA claims to the employment tribunals to be assessed and where appropriate acted upon, without involving the release of unsubstantiated allegations into the public domain. The preferred option provides for administrative staff supporting the employment tribunals to identify PIDA claims and send copies of the ET1 claim form, or extracts from it, to the appropriate regulator.

8.2 The consultation closed on 2 October 2009 and the Government received some 40 responses and is grateful to everyone who took the time and trouble to comment. These responses came from a broad spectrum of interests ranging from individuals and small business to charities and large business.

8.3 The majority (61%) of respondents supported the proposed approach. Having considered all the consultation responses, the Government believes that the preferred option set out in the consultation offers the best practical solution for forwarding relevant claims to the regulators without imposing undue burdens on the claimant, employers or the Tribunals Service.

9. Guidance

9.1 Guidance will be provided with the ET1 claim form, and information will be available on BusinessLink and DirectGov websites.

10. Impact

10.1 An impact assessment is not required as there are no additional burdens for employers or employees and only minor additional costs for the public sector which are significantly below the Impact Assessment reporting level of £5M per annum.

11. Regulating small business

11.1 The legislation applies to small business but the changes to procedure that will take place as a result of this instrument will not impose any additional costs or regulatory burden on business.

12. Monitoring & review

12.1 Tribunals Service will keep a record of the numbers of claims forwarded to each regulator.

13. Contact

Sue Cope at the Department for Business, Innovation and Skills Tel: 0207 215 6112 or email: susan.cope@bis.gsi.gov.uk can answer any queries regarding the instrument.