

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT RIGHTS (INCREASE OF LIMITS) ORDER
2010 No. 2926

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Innovation & Skills and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

- 2.1 From 1st February 2011, this Order increases, in line with the increase in the retail prices index (RPI) between September 2009 and September 2010 (+4.6%) and in accordance with the formula set out in section 34 of the Employment Relations Act 1999 (ERA 1999), the limits (maximum or minimum), applying to certain awards of employment tribunals, and other amounts payable under employment legislation, as specified in the Schedule to the Order.

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

- 3.1 The relevant Order-making power is section 34(2) of the ERA 1999 and the list of sums to be increased (or decreased) as a result of the change in the RPI is set out in section 34(1) ERA 1999.
- 3.2 In applying the relevant percentage increase (or, as it may be, decrease), the Secretary of State is required to round up the new sums to the nearest 10 pence, £10 or £100 (as the case may be) in accordance with the provisions set out in section 34(3) of the ERA 1999 with the result that variations in the percentage change can occur.
- 3.3 From September 2008 to September 2009 the RPI was minus 1.4%. Consequently, the Employment Rights (Revision of Limits) Order 2009 (the 2009 Order) resulted in a decrease of limits in section 176(6A) of the Trade Union and Labour Relations (Consolidation) Act 1992 and in sections 31(1) and 124(1) of the Employment Rights Act 1996. Three of the limits were unchanged last year, due to the effect of the rounding up formula in section 34(3) of the ERA 1999, and therefore were not included in the 2009 Order. The limits unchanged last year are those in section 145E(3) and 156(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 and

section 120(1) of the Employment Rights Act 1996. Further, the 2009 Order did not revise the limits in section 186(1)(a) and (b) of the Employment Rights Act 1996 and that in section 227(1) of that Act. Those limits were increased from £350 to £380 from the 1st October 2009 by the Work and Families (Increase of Maximum Amount) Order 2009 (S.I. 2009/1903) pursuant to a one-off uprating power under the Work and Families Act 2006. Article 3 of that Order excluded the operation of section 34 of the ERA 1999.

- 3.4 This Order increases all of the limits specified in section 34(1) of the ERA 1999, and referred to above, to the amounts referred to in the Schedule.

4. Legislative Background

- 4.1 Section 208 of the Employment Rights Act 1996 required the Secretary of State, in each calendar year, to undertake a review of various limits and to decide whether limits should be varied.
- 4.2 Section 34 ERA 1999 replaced section 208 with a simpler duty. It provided that, if the retail prices index for September of a year is higher (or lower) than the index for the previous September, the Secretary of State is required to change the limits, by Order, by the amounts of the increase (or decrease). The relevant payments and awards were revised pursuant to this legislation for the first time in February 2000, and have been each year since.

5. Territorial Extent and Application

- 5.1 This Order applies to Great Britain.

6. European Convention on Human Rights

- 6.1 The Minister for Employment Relations, Consumer and Postal Affairs has made the following statement regarding Human Rights: In my view the provisions of the Employment Rights (Increase of Limits) Order 2010 are compatible with the Convention rights.

7. Policy background

- 7.1 The purpose of the changes introduced by section 34 ERA 1999 was to replace a time-consuming annual review process with a system of annual automatic indexation, linking payments to the rate of inflation and giving greater certainty to businesses and workers. This annual exercise usually attracts little interest and is of no special legal or political importance.

8. Consultation outcome

- 8.1 No formal consultation exercise was undertaken for this Order.

8.2 The limits are required to be reviewed annually by legislation.

9 Guidance

9.1 Any reference to the statutory limits will be updated. This includes electronic and other media such as Businesslink.gov.uk and Direct.gov.uk

10. Impact

10.1 An Impact Assessment is not required because the 1999 Act provides for indexation according to a pre-determined formula (i.e. the RPI).

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring and review

12.1 The limits are revised every year as required by legislation.

13. Contact

David Dugmore, Department for Business, Innovation & Skills
Tel: 0121 698 4048 or e-mail: David.Dugmore@bis.gsi.gov.uk.