

**EXPLANATORY MEMORANDUM TO THE
EMPLOYMENT TRIBUNALS (CONSTITUTION AND RULES OF
PROCEDURE AMENDMENTS) (No.2) REGULATIONS 2005**

2005 No. 1865

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Description**

These Regulations amend the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (S.I./2004/1861) (as amended by the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2004 (S.I. 2004/2351) and the Employment Tribunals (Constitution and Rules of Procedure (Amendment) Regulations 2005 (S.I.2005/435)) (“the main Regulations”). The main purpose of the Regulations is to implement section 36 of the Employment Relations Act 2004 (c.24) (“ERA 2004”). They also make minor clarifications to, and correct drafting errors in, the main Regulations.
3. **Matters of special interest to the Joint Committee on Statutory Instruments/Select Committee on Statutory Instruments**

None
4. **Legislative Background**

4.1 Section 36 of ERA 2004 replaced subsection (6) of section 10 of the Employment Tribunals Act 1996 (c. 17) (“the 1996 Act”) (procedure regulations in relation to cases involving issues of national security) to clarify that the power conferred by that subsection applies to any proceedings where a national security issue is at stake and not just Crown employment proceedings.

4.2 Regulation 2(4)(j) of these Regulations implements section 36 of ERA 2004 by amending Rule 54(2) of the main Regulations.
5. **Extent**

These Regulations apply to England, Wales and Scotland.
6. **European Convention on Human Rights**

Not applicable
7. **Policy background**

7.1 The amendment to provisions in section 10(6) of the 1996 Act relating to employment tribunal cases where there may be implications for national security was made in order to put beyond doubt that they achieve the scope originally intended on their introduction in 1999 (section 41 of the Employment Relations Act 1999) . That legislation extended the right to pursue employment claims through employment tribunals to employees of the

intelligence and security services, but put in place safeguards to avoid sensitive information being made public. A risk was subsequently identified that those provisions might be interpreted as applying only to Crown employment proceedings. The amendment in Regulation 2(4)(j) of these Regulations makes it clear that the powers in section 10(6) of the 1996 Act can be applied in any national security proceedings before an employment tribunal, whether or not they are Crown employment proceedings.

- 7.2 These Regulations make some additional small amendments to the main Regulations, for example to: make clear that case management discussions are to be held in private, as is currently the practice (Regulation 2(4)(c)); rectify the omission of claims relating to paid annual leave from the list of jurisdictions to which the short conciliation period applies (Regulation 2(4)(f)) and further clarify the circumstances in which written reasons for a judgment or order shall be given (Regulation 2(4)(h)).

8. Impact

- 8.1 The final Regulatory Impact Assessment (RIA) for ERA 2004 indicated that any impact on business arising from section 36 (the national security amendment) would be likely to be negligible. For this reason, and because none of the other amendments is substantive, and will therefore not impact on business, charities, voluntary bodies or the public sector, no RIA has been prepared for this instrument.

9. Contact

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