

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT TRIBUNALS ACT 1996 (TRIBUNAL COMPOSITION) ORDER
2012

2012 No. 988

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

2. Purpose of the instrument

2.1 This Order amends section 4(3) of the Employment Tribunals Act 1996, which details the proceedings which may be heard by an Employment Judge sitting alone, i.e. without lay members. The amendment contained in this Order enables proceedings in respect of unfair dismissal to be heard by an Employment Judge sitting alone.

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

3.1 None

4. Legislative Context

4.1 In ‘Resolving Workplace Disputes: Government Response to Consultation’ the Government confirmed that it would make the necessary legislation to add unfair dismissal to the list of proceedings where an Employment Judge can sit alone. This Order amends the Employment Tribunal Act 1996 to that effect.

5. Territorial Extent and Application

5.1 This instrument 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 Tribunals Act 1996 (Tribunal Composition) Order 2012 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 Employment tribunals usually sit with three members hearing a case. One of the three members is an Employment Judge, and the other two are members drawn respectively from panels of people appointed after consultation with organisations representative of employees, or of employers.

7.2 In certain circumstances, the general rule is varied and an employment judge can sit alone – i.e. without members. Cases about (for example) unpaid wages, holiday or redundancy payments, and interim relief applications, can be heard by an Employment Judge alone, without the need for a full panel. Cases in other jurisdictions, where all parties consent to the judge sitting alone, are also permitted to run in that way.

7.3 Where appropriate, hearing cases in front of a single Employment Judge brings benefits. The tribunal costs are decreased, using less resource to hear the matter. Listing arrangements (and particularly re-listing arrangements, where a case needs to return to be heard by the original panel) are easier. And in certain instances hearing for a judge sitting alone can be shorter for all participants.

7.4 Currently, ET Judges have no power hear an unfair dismissal claim alone, regardless of the complexity or otherwise of the case. This Order will add unfair dismissal to the list of jurisdictions where an Employment Judge can sit alone, where they consider it appropriate to do so ie where the issues are relatively straightforward.

7.5 As the Government explained in ‘Resolving Workplace Disputes: A consultation’ it considers that this change would help the tribunals manage its caseload in the most efficient manner. However, as a safeguard to procedural justice, the tribunal will always be bound by the overriding objective of dealing with cases justly, including in respect of the judicial decisions made over whether to sit with a full panel of members in specific cases

- Consolidation

7.6 This Order amends the Employment Tribunals Act 1996; there is no need to consolidate any legislation.

8. Consultation outcome

8.1 The Government published ‘Resolving Workplace Disputes: A consultation’ on 27 January 2011 and the consultation closed on 20 April 2011. The Government response was issued on 23 November 2011.

8.2 Over 400 responses to the consultation were received; about 25% from individuals, about 33% from businesses and their representative organisations, and the remainder from trade unions, Government agencies, charities, legal representatives and others.

8.3 Of the 227 consultees responding to the consultation question about judges sitting alone in unfair dismissal cases, 33% supported the proposal and 65% were opposed.

8.4 The Government accepted that some unfair dismissal cases can be ‘fact heavy’ and that the input of lay members can be beneficial. But evidence from consultation responses (including from some judges and lawyers/law firms, and in particular from business) suggested that, for those cases which revolve essentially around questions of fact rather than any complex legal point, Employment Judges are competent to deal with an assessment of the evidence against established legal tests and criteria without the need for lay members.

8.5 However, the Government’s clear view is that tribunals should have the flexibility to manage their caseload in the most efficient and effective manner. Accordingly, the Government has decided to make an Order to the effect that Employment Judges can sit alone to hear unfair dismissal cases, but that there must be discretion for the Employment Judge to direct that full panel if the judge decides it is appropriate because of the specific circumstances of the case

9. Guidance

9.1 The Department is not providing any guidance or publicity in relation to this Order as it does not impose any new obligations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Management information, annual statistics and financial accounting data arrangements are already in place across HMCTS. Unit costs for 2010/11 are currently being developed and will be monitored after these proposals take effect. Furthermore, BIS is looking at the feasibility of running surveys of employment tribunal applicants (SETA survey) in or around 2012 and/or 2016.

13. Contact

Gail Davis at the Department for Business, Innovation and Skills, Tel: 020 7215 3589 or email: gail.davis@bis.gsi.gov.uk, can answer any queries regarding the instrument.