

**EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT TRIBUNALS (CONSTITUTION AND RULES OF PROCEDURE)
REGULATIONS 2013**

2013 No. 1237

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.

2. Purpose of the instrument

2.1 The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“the Regulations”) amend the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004. The provision will come into force on 29 July 2013.

2.2 The regulations simplify and shorten the rules of procedure which set out how the Employment Tribunal operates and how a claim is managed through the process.

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

3.1 None.

4. Legislative Context

4.1 As part of its consultation “Resolving Workplace Disputes”, launched in January 2011, Government set out its intention to modernise the Employment Tribunals, to ensure that the system works as effectively as possible. Responses to this consultation outlined how stakeholders felt that the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2004 had, over time, suffered from piecemeal change and were overly prescriptive, thereby restricting the tribunal’s ability to manage cases in the most effective and efficient manner. Stakeholders suggested that further amendments to the regulations would not be sufficient to meet concerns, and what was required was a complete review of Schedule 1 of those regulations. Government therefore asked Mr Justice Underhill (now Lord Justice Underhill), the then outgoing President of the Employment Appeals Tribunal to lead this review. He completed his work in July 2012, writing to the then responsible Minister, Norman Lamb setting out his recommendations and new draft of schedule 1.

5. Territorial Extent and Application

5.1 This instrument applies 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

- What is being done and why

7.1 Schedule 1 of the Regulations, which sets out the rules of procedure, is far shorter than its predecessor and much of the detail on the administration of the system, and prescriptive detail has been removed. In some areas, the policy remains unchanged and the Regulations have simplified the previous rules to aid understanding. In others, the review sought to make amendments to the system that improve the speed, efficiency and proportionality of the system, whilst also promoting consistency in the way cases are managed. Some elements of the rules of procedure also codify some of the best practice in the way Employment Tribunals have been operating. The main changes are:

- The combining of separate case management discussions and pre-hearing reviews into one preliminary hearing;
- Changes to the initial paper sift and strike out provisions which seek to ensure that weak cases that should not proceed are identified and dealt with more effectively
- Written reasons and reviews (renamed “reconsiderations”) will be provided to parties on a proportionate basis;
- The provision of a clear legal structure for combining multiple cases to be headed up by a lead case mechanism;
- Removing the requirement for cost orders of over £20,000 to be referred to the county court for assessment;
- A greater degree of flexibility in the issuing of deposit orders, which will allow Employment Judges to make an order if a party wishes to pursue a specific allegation or argument which has little reasonable prospect of success.

7.2 Government has also taken the opportunity to include the necessary procedural rules to provide for the intended introduction of fees into the Employment Tribunals.

8. Consultation outcome

8.1 A draft version of the procedural rules produced by the working group were consulted on through the Employment Tribunal Rules: review by Mr Justice Underhill consultation, which closed on 23rd November 2012. Government responded to this consultation on 14th March 2013, setting out how it would incorporate stakeholder feedback in the final draft of the regulations.

9. Guidance

9.1 Extensive guidance on Employment Tribunals is produced by Her Majesty's Courts and Tribunal Service. This will be updated as a result of the changes made by these Regulations and the Employment Tribunal (Interest) Order 2013.

10. Impact

10.1 A triage assessment was prepared to accompany these Regulations. It was assessed by the Regulatory Policy Committee and has been validated.

10.2 These Regulations are shorter, simpler and easier to navigate for those who use the Employment Tribunal for the first time. Based on the figures calculated in the impact assessment, annual benefits at 2012/13 prices will be £0.42m for the state, £0.04m for claimants and £0.28m for employers.

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 The effectiveness of these Regulations will be monitored as part of the data that Her Majesty's Courts and Tribunal Service collect on the administration of the Employment Tribunal.

13. Contact

Nicola Cullen at the Department for Business Innovation and Skills, (Tel: 020 7215 2290) or email, (nicola.cullen@bis.gsi.gov.uk) can answer any queries regarding the instrument.