

EXPLANATORY MEMORANDUM TO
THE ENTERPRISE AND REGULATORY REFORM ACT 2013 (CONSEQUENTIAL
AMENDMENTS) (EMPLOYMENT) (No. 2) ORDER 2014

2014 No. 853

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 Enterprise and Regulatory Reform 2013 Act (Consequential Amendments) (Employment) (No. 2) Order 2014 makes a consequential amendment to a limitation period that is required in light of the introduction of early conciliation.

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

3.1 None.

4. Legislative Context

4.1 Sections 7 - 9 of the Enterprise and Regulatory Reform Act 2013 amend the Employment Tribunals Act 1996 to set out the framework for the introduction of Early Conciliation. The Act provides that a prospective claimant wishing to take a case to employment tribunal must first contact the Advisory, Conciliation and Arbitration Service (Acas) about their dispute, and consider conciliation before presenting a claim to an employment tribunal.

4.2 This Order makes a consequential amendment to the Transfer of Undertakings (Protection of Employment) Regulations 2006 to allow for the necessary extension to a limitation period where a claimant complies with the requirement for early conciliation in section 18A(1) of the Employment Tribunals Act 1996.

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 negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 It is this Government's ambition to resolve as many employment disputes as possible without the need for an employment tribunal. The introduction of Early Conciliation is a key part of achieving this aim.

7.2 Early Conciliation will place a mandatory requirement on a prospective claimant involved in a workplace dispute to contact Acas before they can proceed to present a claim at an employment tribunal.

8. Consultation outcome

8.1 In November 2011, in the Government response to the Resolving Workplace Disputes, the Department for Business, Innovation and Skills formally announced its intention to introduce Early Conciliation. In January 2013 Government consulted on the draft Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations. The response to that consultation was published in July 2013 and we set out what stakeholder feedback would be incorporated into future iterations of the regulations.

9. Guidance

9.1 Guidance on the Early Conciliation process aimed at employees and employers will be prepared by Acas and published on its website.

10. Impact

10.1 The impact of Early Conciliation on employers is savings in staff time and legal costs estimated at £64.6m a year (of which the business impact is 80%) and deliver an estimated net benefit of £37m.

10.2 The impact of Early Conciliation on the public sector is an estimated £2.6m savings from fewer employment tribunal claims.

10.3 A regulatory impact assessment of Early Conciliation has been prepared and will be published on www.legislation.gov.uk. The impact on businesses as a result of Early Conciliation is estimated at a saving of £64.6m per year. This is based on multiplying the anticipated reduction of employment tribunal claims (16,554) by the average amount an employer spends responding to a claim, (£3,900).

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 To minimise the impact of the requirements on firms employing up to 20 people we have published draft regulations in advance of the commencement date to allow small businesses sufficient time for familiarisation. Acas and BIS have worked with businesses to inform them of the new processes through online guidance and stakeholder events.

12. Monitoring & review

12.1 Early Conciliation will have been a success if it can be shown that, at least in part, it has caused a reduction in employment tribunal claims and/or earlier resolution of workplace disputes and/or resolution of workplace disputes that lead to better satisfaction with dispute resolution services.

12.2 There is a range of existing data on employment tribunal claims published by HMCTS. Annual statistics will be monitored closely to look at the overall number of employment tribunal claims and whether changes to patterns within the system are being seen. Acas also publish a range of management information and have a forward evaluation programme which will allow a look at success measures for Early Conciliation.

13. Contact

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