

## EXPLANATORY MEMORANDUM TO

### THE LIABILITY OF TRADE UNIONS IN PROCEEDINGS IN TORT (INCREASE OF LIMITS ON DAMAGES) ORDER 2022

2022 No. 699

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) and is laid before Parliament by Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 Employers who consider legal action in response to unlawful industrial action may decide to bring a claim for damages in tort against a trade union involved in organising, endorsing or authorising the action. Section 22(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) sets the upper limits to damages that can be awarded. These have not been reviewed since 1982 and are significantly out of date.
- 2.2 Section 22(3) of TULRCA provides the Secretary of State the legal power to vary the sums set out in TULRCA in secondary legislation, using the negative procedure.
- 2.3 Ministers have considered that the limits on damages are so out of date that the prospect of a damages claim no longer acts as a deterrent to unlawful strike action in the way that Parliament intended. This statutory instrument increases the existing limits on damages awarded against trade unions for organising, authorising or endorsing unlawful strike action broadly in line with inflation, using Retail Price Index (RPI) as the measure of inflation.

#### 3. Matters of special interest to Parliament

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales and Scotland.
- 4.2 The territorial application of this instrument is Great Britain.

#### 5. European Convention on Human Rights

- 5.1 The Secretary of State for Business, Energy and Industrial Strategy, the Rt Hon Kwasi Kwarteng, has made the following statement regarding Human Rights:

“In my view the provisions of the Liability of Trade Unions in Proceedings in Tort (Increase of Limits on Damages) Order 2022 are compatible with the Convention rights.”

## **6. Legislative Context**

- 6.1 Under the Trade Union and Labour Relations (Consolidation) Act 1992, unions are protected from tort claims from employers or third parties, so long as they carry out official protected industrial action. Official protected action is industrial action which has complied with all statutory provisions.
- 6.2 Where a union proceeds with industrial action that has not complied with all the statutory provisions, then that action is unprotected from tort claims, which may allow employers and others to sue the union for damages caused.
- 6.3 Since the Employment Act 1982, subsequently subsumed into TULRCA, Great Britain's trade union legislation has placed limits on the amount of damages that can be claimed, in order to help protect unions' finances and hence their ability to continue to serve their members.
- 6.4 Section 22(2) of TULRCA sets the upper limits to damages that can be awarded. The levels of the limits depend on the number of members of the relevant union. These have not been reviewed since 1982 and are significantly out of date.
- 6.5 Section 22(3) of TULRCA provides the Secretary of State the legal power to vary the sums set out in TULRCA in secondary legislation, using the negative procedure.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The Government considers that the existing limits for damages are considerably out of date, given they have not been reviewed since 1982. Ministers want to continue to discourage unions from undertaking unlawful strike action and increasing damages in line with inflation is the best way of doing that. This is, in their view, in line with what Parliament intended when the legislation was originally passed. Following the uprating in line with inflation there is otherwise no change in real terms.
- 7.2 This proposal does not affect the right to strike. So long as unions follow statutory requirements when undertaking industrial action, they will continue to be protected from damages claims as they are now. The Government is increasing the damages limits to roughly the level they would have been, had they been updated regularly since 1982, by uprating against the Retail Price Index (RPI). RPI is a well-understood measure currently used to uprate employment measures including employment tribunal award limits.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

## **9. Consolidation**

- 9.1 There are no plans to further consolidate this legislation.

## **10. Consultation outcome**

- 10.1 There is no statutory duty to consult on increasing the limits on damages.

- 10.2 The Government considers that increasing the damages caps to broadly the levels they would have been at, had they been regularly updated over the past 40 years, a sufficient and justifiable rationale.

## **11. Guidance**

- 11.1 Guidance titled ‘Industrial Action and the Law’ is available at GOV.UK. This guidance sets out the statutory immunities regime, explains the tests for determining whether there is statutory immunity, and how the law works when the statutory immunities do not apply in the case of unprotected industrial action. We will update this guidance to reflect the changes made by the Statutory Instrument.

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies is negligible, there will be some very minor familiarisation costs for unions and businesses. The impact of raising the limits on damages does not apply to unions that comply with statutory industrial action balloting and other statutory requirements, hence are not scored under the business impact target.
- 12.2 The impact on the public sector is negligible. Unlawful strikes are currently very rare.
- 12.3 An Impact Assessment has not been prepared for this instrument as the impacts will be minimal and below the de minimis threshold. The impact of raising the limits would therefore only apply to those non-compliant unions that carry out or endorse unofficial strike action. Historically there have been very few cases where damages have been awarded for unlawful strike action.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses. However, there will be minimal impacts on small businesses. Most unions taking industrial action are medium or larger unions, however there could be a small number of small unions taking industrial action.

## **14. Monitoring & review**

- 14.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Secretary of State for Business, Energy and Industrial Strategy, the Rt Hon Kwasi Kwarteng, has made the following statement:

“I do not believe that any statutory review clause is necessary.”.

## **15. Contact**

- 15.1 Laurence Evans at the Department for Business, Energy and Industrial Strategy (BEIS) Telephone: 020 7215 6086 or email: laurence.evans@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 James Stevens, Deputy Director for Employment Rights and Enforcement, at the Department for Business, Energy, and Industrial Strategy (BEIS) can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kwasi Kwarteng, Secretary of State, at the Department for Business, Energy and Industrial Strategy (BEIS) can confirm that this Explanatory Memorandum meets the required standard.