

**EXPLANATORY MEMORANDUM TO**  
**THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER (AMENDMENT) ORDER**  
**2013**

**2013 No. 1671**

**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 (Interest) Order (Amendment) Order 2013 (“the Order”) amends the Employment Tribunals (Interest) Order 1990. The Order will come into force on 29 July 2013 and contains a transitional provision so that the changes only apply to claims presented to an Employment Tribunal on or after 29 July.

2.2 The order amends the way in which interest is charged on an Employment Tribunal award made in a non-discrimination case. Under the 1990 Order, interest does not accrue on an award until a 42 day period has elapsed from judgment. This is despite payment of an award being due from the date of judgment. This Order changes this requirement, and provides that interest should accrue from the date of judgment, but that no interest will be payable if payment of the amount of the award is received in the 14 day period following judgment.

This will bring the provisions on accrual of post-award interest on awards in non-discrimination cases into line with the current position in respect of post-award interest in discrimination cases under the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996.

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

3.1 None.

**4. Legislative Context**

4.1 The issue of late or non payment of employment tribunal awards was debated at Committee stage of the Employment and Regulatory Reform Bill in the House of Commons. The relevant Minister, Norman Lamb, undertook to look at the issues, and the Department for Business subsequently commissioned more research into the reasons for non payment. At the same time, Government felt that clarification could be provided around when an award should be paid and, in the event of non payment, when enforcement action should be pursued. This element is being taken forward as part of a redraft of the Employment Tribunal Rules of Procedure 2004, due to commence on 29

July 2013. Alongside this work, Government decided to make an amendment to the current interest regime, to ensure that parties were incentivised to make prompt payments.

## **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 Interest of unpaid Employment Tribunal awards was introduced in 1990. The Order provides that interest will accrue on an unpaid award if payment is not received within 42 days following judgment. This timeframe is aligned with the period in which parties have to lodge an appeal against their original judgment in the Employment Appeals Tribunal.

7.2 Government has been considering measures to address the non payment of Employment Tribunal awards. Figures from research commissioned by the Ministry of Justice in 2009 suggest that around 39% of awards remain unpaid 6 months following judgment. An up-to-date piece of research has been commissioned into the problem, with a view to taking further action to address concerns.

7.3 Government has, however, decided that it can take action now to help encourage parties to pay awards more promptly. Currently, there is no date specified in the Employment Tribunal Rules of Procedure 2004 specifying when an award should be paid and interest is not applied until 42 days. Government considers that these arrangements provide no incentive to pay promptly, and do not provide guidance to the claimant as to when it might be appropriate to pursue enforcement action against an unpaid award.

7.4 This amendment is not designed to address the problem of non payment of awards. It is instead designed to provide financial incentives for prompt payment of awards in non-discrimination cases and certainty as to when enforcement action should be pursued. BIS Ministers have been under pressure during the course of the Enterprise and Regulatory Reform Bill to take action to address non payment, and plan to evaluate their policy options in the light of the results of the commissioned research.

## **8. Consultation outcome**

8.1 An amendment in this area was consulted on as part of the Employment Tribunal Rules:review by Mr Justice Underhill consultation, which closed on 23<sup>rd</sup> Novemer 2012. Government agreed to pursue this option in light of responses.

## **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 both the changes recommended by Mr Justice Underhill, and this amendment.

## **10. Impact**

10.1 A triage assessment was prepared to accompany this amendment. It was assessed by the Regulatory Policy Committee as a low cost regulatory measure. An impact assessment has been submitted to the Regulatory Policy Committee for validation of the estimated annual net cost to business (EANCB) figures.

10.2 Businesses who comply with the employment law obligations and the orders of the Employment Tribunal will not be affected by this amendment. The final assessment indicates that based on a median award amount of £4,560 the maximum amount of additional interest that a business will be paying on 42 days of unpaid award will be £40.56.

## **11. Regulating small business**

11.1 The legislation applies to small business.

## **12. Monitoring & review**

12.1 The effectiveness of this amendment will be considered as part of the next report commissioned by Government into the non payment of Employment Tribunal awards.

## **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.