

**EXPLANATORY MEMORANDUM TO
THE ENTERPRISE AND REGULATORY REFORM ACT 2013 (CONSEQUENTIAL
AMENDMENTS) (EMPLOYMENT) ORDER 2013**

2013 No. 1956

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 This order amends various pieces of secondary legislation to reflect the re-naming of “compromise agreements” and “compromise contracts” as “settlement agreements” and “settlement contracts” by section 23 of the Enterprise and Regulatory Reform Act 2013.

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

3.1 None.

4. Legislative Context

4.1 This instrument makes consequential amendment arising from section 23 of the Enterprise and Regulatory Reform Act 2013 (the ERRA) which came into force on 29 July 2013. Section 23 of the ERRA changes references to “compromise agreements” and “compromise contracts” to “settlement agreements” and “settlement contracts” in specified primary legislation relating to employment matters.

5. Territorial Extent and Application

5.1 This instrument amends some legislation which applies to Great Britain and some legislation which applies to the United Kingdom. In relation to the legislation which applies to Northern Ireland, the instrument ensures that the terms “compromise agreement” and “compromise contact” will continue to apply in Northern Ireland as the re-naming of these terms by the ERRA does not apply there.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 This Government committed, through the Employment Law Review, to undertake a Parliament-long review of employment law, with the goal of ensuring the United Kingdom’s labour market is fair, flexible, and effective. Part 2 of the Enterprise and Regulatory Reform Act 2013 was developed to address several issues identified by this review. This includes measures aimed at facilitating the use of settlement agreements.

7.2 Settlement agreements are a recognised way of dealing with an employment dispute, so that the matter is resolved in accordance with terms agreed by both parties. Provided that the applicable statutory requirements are met, the agreement is legally-binding and the issues covered by it cannot be the subject of a claim to an employment tribunal.

7.3 Section 23 of the ERRA changes the references to “compromise agreements” and “compromise contracts” to “settlement agreements” and “settlement contracts” in specified primary legislation relating to employment matters and was brought into force on 29 July 2013.

7.4 The term ‘settlement’ more accurately describes the nature and outcome of these agreements, and is intended to help remove any negative perception relating to the use of the word ‘compromise’. The Government believes that ‘settlement agreement’ is a more widely understood term, being used in the treatment of contract claims.

8. Consultation outcome

8.1 The Resolving Workplace Disputes Consultation issued on 27 January 2011 sought views on a range of measures aimed at streamlining the employment tribunal process and encouraging earlier resolution of workplace disputes, including through compromise agreements. The consultation closed on 20 April 2011 and received over 400 responses.

8.2 The Government response to the consultation was published on 23 November 2011 and can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31439/1-1365-resolving-workplace-disputes-government-response.pdf. The response announced the Government’s intention to change from “compromise agreements” to “settlement agreements”.

9. Guidance

9.1 In support of the implementation of section 14 of the Enterprise and Regulatory Reform Act which aims to facilitate the use of settlement agreements, Acas has produced a Statutory Code of Practice on settlement agreements which came into effect on 29 July 2013, and practical guidance on negotiating settlement (including templates employers can use). Both of these sources of guidance – available at www.acas.org.uk – make clear that there has been the change in terminology.

10. Impact

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

10.2 The impact on the public sector is nil in cost.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 This measure has no cost impact on business.

12. Monitoring & review

12.1 We are developing an overarching monitoring and review plan for the measures in the Enterprise and Regulatory Reform Act, including evaluating the impact of this measure.

13. Contact

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