

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT TRIBUNALS (CONSTITUTION AND RULES OF PROCEDURE)
(AMENDMENT) REGULATIONS 2014

2014 No. 271

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) (Amendment) Regulations 2014 amend the employment tribunal rules of procedure to incorporate the necessary provisions to give effect to 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 employment tribunal.

4.2 These Regulations come into force on 6 April 2014.

4.3 The following statutory instruments are also relevant to the implementation of Early Conciliation and come into force on or before 6 April: The Enterprise and Regulatory Reform Act 2013 (Commencement No. 5, Transitional Provisions and Savings) Order 2014; the Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) 2014; the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014, and the Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2014.

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 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.

7.3 When a prospective claimant contacts Acas, this triggers a 'stop-the-clock' mechanism in the limitation period running on their employment tribunal claim. This means that the claimant's limitation period is put on hold, initially for up to one calendar month (with a provision for an additional two weeks, if Acas believe that the claim is close to settling after a month. This will allow enough time for conciliation to take place without the need for the claimant to take any legal steps to protect their rights. If Acas concludes that settlement is not possible, the pause on the limitation period will end on the day that the prospective claimant receives (or is treated as receiving) an Early Conciliation certificate from Acas, which demonstrates that they have completed the Early Conciliation process. Prospective claimants will need the reference number from the certificate to complete any subsequent employment tribunal claim form.

7.4 Early Conciliation will be provided free of charge. Both the claimant and the respondent will be able to decline Acas's services at any stage.

7.5 Regulations and changes to the Employment Tribunal rules are required to implement Early Conciliation.

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. From 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 iteration 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 for this instrument 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 the 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 occur. 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

Nick Morgan at the Department for Business Innovation and Skills, (Tel: 020 7215 8543) or email, (nick.morgan1@bis.gsi.gov.uk) can answer any queries regarding the instrument.