

**EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT TRIBUNALS ACT 1996 (APPLICATION OF CONCILIATION
PROVISIONS) ORDER 2014**

2014 No. 431

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 Act 1996 (Application of Conciliation Provisions) Order 2014 amends the list of proceedings in section 18(1) of the Employment Tribunals Act 1996; this is the list of relevant proceedings for the purposes of Early Conciliation and other conciliation services provided by Acas. This Order also amends the limitation periods which apply for bringing a case to employment tribunal for the proceedings that are added to the section 18(1) list by this Order. The amendments to those limitation periods are needed as a result of the introduction of Early Conciliation. Finally, the Order amends cross-references to section 18(1) which appear in other pieces of legislation.

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

3.1 None.

4. Legislative Context

4.1 Currently, section 18 of the Employment Tribunals Act 1996 provides a discretionary power for the Advisory, Conciliation and Arbitration Service (Acas), to conciliate a dispute that could be subject to employment tribunal proceedings. A list of relevant proceedings applicable to section 18 is provided in section 18(1).

4.2 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.

4.3 This Order will come into force on 6 April.

4.4 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 (Constitution and Rules of Procedure) (Amendment) Regulations 2014, and the Employment Tribunals Act 1996 (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014.

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales and Scotland.

6. European Convention on Human Rights

6.1 The Secretary of State for Business, Innovation and Skills has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2014 are compatible with the Convention rights.

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. 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 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 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 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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