

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT TRIBUNALS (CONSTITUTION AND RULES OF
PROCEDURE) (EARLY CONCILIATION: EXEMPTIONS AND RULES OF
PROCEDURE) (AMENDMENT) REGULATIONS 2021

2021 No. 1037

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument amends the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 (the “2014 Regulations”) to allow for improved, more proportionate handling of early conciliation notifications involving multiple businesses.
- 2.2 The instrument also amends the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (the “2013 Regulations”) to clarify the position on notice for preliminary hearings and insert wording at rule 54 that the Tribunal may direct a preliminary hearing as the result of an application by a party.

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 Great Britain.
- 4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Employment Tribunals Rules of Procedure are made under the Employment Tribunals Act 1996 (1996 Act) and are set out in the 2013 Regulations.
- 6.2 The Early Conciliation Rules of Procedure are also made under the 1996 Act and are set out in the 2014 Regulations.

7. Policy background

What is being done and why?

- 7.1 The employment dispute resolution system continues to face significant pressures from the impact of both Covid-19 and an increase in Employment Tribunal claims following the abolition of Employment Tribunal fees in 2017.
- 7.2 The changes to rules for early conciliation will allow the name of more than one prospective respondent to be included on a single early conciliation notification form as is currently the case with Employment Tribunal claim forms. This is intended to simplify the way that multiple claims are handled reducing the administrative burden to all parties and allowing parties to focus on dispute resolution rather than technical procedural issues.
- 7.3 The previous Employment Tribunals (Constitution and Rules of Procedure) (Early Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2020 SI amended rule 54 of the Employment Tribunals Rules of Procedure on preliminary hearings to allow Employment Tribunals to list cases for a hearing on receipt of the claim form to expedite listing for hearing dates. The intent was that by changing the rules to allow automatic listing on receipt of a claim form Employment Tribunals would have maximum flexibility to list hearings as quickly as possible.
- 7.4 An issue was identified after the rule came into effect whereby the amending text could be read as replacing the existing safeguards on reasonable notice in rule 54. This instrument therefore clarifies the position on notice for preliminary hearings by requiring reasonable notice of the date of the hearing and, in the case of a hearing involving any preliminary issues, at least 14 days' notice.
- 7.5 The instrument also inserts wording at rule 54 that the Tribunal may direct a preliminary hearing as the result of an application by a party. This ensures consistency with regulation 10B(3)(f) of the 2013 Regulations, which authorises legal officers to determine certain applications made under rule 54.

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.

9. Consolidation

- 9.1 None.

10. Consultation outcome

- 10.1 These measures were previously subject to a targeted stakeholder engagement exercise in 2020 where the Minister invited views from a cross-selection of stakeholders representing business, unions, and employment lawyers over a three-week period.
- 10.2 Most respondents welcomed most of these changes as they address many of the criticisms about bureaucracy over process adding cost and distracting from the aim of dispute resolution.

11. Guidance

- 11.1 Information on the new measures will be published on GOV.UK and the new details will be included in the user guidance available online. Details of the new measures will also be communicated to stakeholder groups through use of the national Employment Tribunal user groups.

12. Impact

- 12.1 There is no, or no significant impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because the impact on business, charities or voluntary bodies is expected to be well below the threshold of £5 million a year required for the production of a full impact assessment.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is to work closely with Acas and Employment Tribunal users to gain feedback on the impact of the Regulations on dispute resolution.
- 14.2 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 Minister for Small Business, Consumers and Labour Markets has made the following statement:

“I have decided that it is not appropriate to make provision for review in this instrument. The instrument is concerned solely with the amendment of secondary legislation and as such falls outside the scope of the government’s policy objectives regarding provision for review.”

15. Contact

- 15.1 Richard Boyd at the Department for Business, Energy and Industrial Strategy, telephone: 0207 215 0912 or email: richard.boyd@beis.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 James Stevens at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Small Business, Consumers and Labour Markets at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.