

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT TRIBUNALS (CONSTITUTION AND RULES OF
PROCEDURE) (AMENDMENT) REGULATIONS 2022

2022 No. 1034

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument corrects the obsolete legislative reference in the Employment Tribunals Rules of Procedure relating to taxation of Employment Tribunal expense orders.

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 extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Great Britain.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 current rules refer to the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993. This has been replaced in Scotland by the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019.
- 6.2 The change to the Employment Tribunals Rules of Procedure updates the reference and clarifies which legislation should be considered, this will address the potential ambiguity over whether section 17 of the Interpretation Act 1978 (repeal and re-enactment) is enough to allow an auditor of court or Employment Judge to substitute the newer legislation for the now obsolete Act of Sederunt 1993.

7. Policy background

What is being done and why?

- 7.1 Employment Tribunals have the power to issue cost orders (in Scotland these are called expenses orders) in certain circumstances for example if a party (or their

representative) has acted vexatiously or disruptively in either the bringing of the proceedings or the way the proceeding have been conducted. Unlike civil courts, legal costs are not awarded to the successful party automatically.

- 7.2 Any assessment of legal expenses will need to be made in line with the principles and amounts set out in the relevant legislation.
- 7.3 For Scotland, the relevant legislation changed in 2019 and the Employment Tribunals Rules of Procedure were not corrected to take account of this change.
- 7.4 There is no change as to when costs orders are made by Employment Tribunals. This is to clarify which legislation should be applied in Scotland by either the employment judge or auditor of court to determine expenses by way of taxation.

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 While no formal consultation is required for this legislative change, there were discussions with Scottish employment law practitioners and Employment Tribunal judiciary.

11. Guidance

- 11.1 Guidance on this is not necessary as this is a technical change to reflect the updated legislation reference, the changes will be communicated to the Employment Tribunal user community and stakeholders through the National User Groups.

12. Impact

- 12.1 There is no significant, impact on business, charities, or voluntary bodies.
- 12.2 There is no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because this regulation is not a regulatory provision.
- 12.4 This measure is a technical amendment to correct an obsolete legislative reference, there is no change in policy and the change in legislation was made by the Scottish judiciary. The Act of Sederunt (Taxation of Judicial Expenses Rules) has been in place since 2019, and so the parties concerned are likely to be familiar with it already. Even so, the analysis has estimated familiarisation costs for Scottish Employment lawyers, the cost of them updating expense order calculations, and the familiarisation costs for Sheriffs that may need to assess these orders. As a result, this measure affects a very small number of businesses and will have a negligible cost to employment lawyers and so this measure qualifies for de minimis. Furthermore, this minor change is to clarify which Act of Sederunt should be followed when making an expenses order, as the impacts are so minor, we do not believe a review provision to be proportionate.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause as this is a minor change to update legislation and the identified impacts are minor. We do not believe that a review provision is proportionate or appropriate as it is not for the UK Government to review legislation made by the Scottish courts.

15. Contact

15.1 Richard Boyd at the Department for Business, Energy, and Industrial Strategy Telephone: 07867 143512 or email: richard.boyd@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 James Stevens, Deputy Director for Dispute Resolution, at the Department for Business, Energy, and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Dean Russell MP at the Department for Business, Energy, and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.