EXPLANATORY MEMORANDUM TO THE

COMPROMISE AGREEMENTS (DESCRIPTION OF PERSON) ORDER 2005

2005 No. 2364

1. This explanatory memorandum has been prepared by The Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

This Order extends the category of person validly able to give advice in relation to compromise agreements under the Disability Discrimination Act 1995 (c.50) ("the Act") to a Fellow of the Institute of Legal Executives employed by a solicitors' practice.

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

None

4. Legislative Background

4.1 This is the first time that the relevant principal power – at sub-paragraph 3(d) of paragraph 2 of Schedule 3A to the Act – is being exercised. Pursuant to this power, the Secretary of State may specify additional categories of person (ie. in addition to those categories listed in the Act) as able to advise in relation to compromise agreements under the Act.

4.2 This Order reverses an unintended consequence of changes made to the Disability Discrimination Act 1995 by the Disability Discrimination Act 1995 (Amendment) Regulations 2003 (SI 2003/1673). A power identical to the power now being exercised originally existed within the Act, which power had already been exercised to specify Fellows of the Institute of Legal Executives as able to advise in relation to compromise agreements under the Act (see the Compromise Agreements (Description of Person) Order 2004 (SI 2004/754) and the Compromise Agreements (Description of Person) 2004 (Amendment) Order 2004 (SI 2004/2515)). Unfortunately, this original enabling power was removed by SI 2003/1673, causing the loss of this original specification such that ILEX Fellows are no longer able to provide this advice. This power once again to specify additional categories of person as advisers was restored to the Act by the Disability Discrimination Act 2005 (c. 13).

5. Extent

This instrument applies to Great Britain .

6. European Convention on Human Rights

Not applicable

7. Policy background

7.1 A compromise agreement is a contract not to institute or continue employment tribunal proceedings. The objective is relatively informally to resolve a workplace dispute making a formal tribunal hearing and judgement unnecessary and saving all parties time, expense and stress. Various conditions need to be satisfied in order for such an agreement to be legally binding including the receipt by the employee concerned of advice from an appropriately qualified and independent person as to the meaning and effect of the agreement.

7.2 The Department anticipates an increase in the use of compromise agreements and its objective is to facilitate a controlled expansion, whilst ensuring quality and impartiality, in the numbers of those able to give advice in relation thereto. As mentioned, ILEX Fellows were originally empowered to act as advisers in relation to compromise agreements under the Act and this Order restores the *status quo ante*.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is negligible.

9. Contact

Michael Noakes at the Department of Trade and Industry Tel: 020 7215 2862 or e-mail: Michael.Noakes@dti.gsi.gov.uk can answer any queries regarding the instrument.