EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT RIGHTS ACT 2025 (UNFAIR DISMISSAL) (REMOVAL OF LIMIT ON COMPENSATION) (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2026

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Business, Innovation, Science and Trade and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Kate Dearden, Minister of State at the Department for Business, Innovation, Science and Trade, confirms that this Explanatory Memorandum meets the required standard.

2.2 Mark Holmes, Deputy Director for Security of Work at the Department for Business, Innovation, Science and Trade, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Hannah Bertram-Coates at the Department for Business, Innovation, Science and Trade can be contacted by email at the following address with any queries regarding the instrument: hannah.bertramcoates@businessandtrade.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations make amendments to legislation in consequence of section 25(3) of the Employment Rights Act 2025 ("the 2025 Act"), which repeals section 124 of the Employment Rights Act 1996 ("the 1996 Act"). Section 124 currently sets a statutory limit on the compensatory award which may be awarded in most claims for unfair dismissal under section 98 of the 1996 Act. Once the provisions are commenced on 1 January 2027, compensatory awards made by tribunals in unfair dismissal cases will no longer be subject to a statutory cap.

4.2 A number of other statutory employment law claims do not have their own standalone limits on compensation but instead limit the remedies which can be awarded by cross-referring to the statutory limit for unfair dismissal claims in section 124.

4.3 These Regulations replace or remove references to section 124 of the 1996 Act where necessary in those provisions.

Where does the legislation extend to, and apply?

4.4 The extent of most of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, and Scotland.

4.5 The territorial application of most of this instrument (that is, where the instrument produces a practical effect) is England and Wales, and Scotland.

4.6 The instrument includes, however, amendments to the National Minimum Wage Act 1998. Employment law, including the law on unfair dismissal, is a transferred matter in relation to Northern Ireland, but the national minimum wage is a reserved matter. These Regulations preserve the current position in Northern Ireland, which requires parity between employees and workers in relation to the level of compensation which can be awarded in claims relating to the termination of an employee's or a worker's contract.

5. Policy Context

What is being done and why?

5.1 These Regulations are part of the wider reforms made to unfair dismissal under the 2025 Act. The changes to unfair dismissal made by the Act include reducing the qualifying period for protection against unfair dismissal from 2 years to 6 months, reducing the qualifying period for employees' right to written reasons for dismissal on request from 2 years to 6 months, and removing the cap on compensatory awards for unfair dismissal claims.

5.2 These Regulations relate specifically to the removal of the cap on compensatory awards for unfair dismissal claims. The Act provided for the removal of the cap and gave Ministers the power to make consequential amendments to deal with the consequences of that removal for other provisions on the statute book.

5.3 A number of employment tribunal claims do not have their own standalone limits on compensation but instead limit awards by cross-referring to the limit on unfair dismissal compensation. In effect, these provisions align with the unfair dismissal cap to restrict the overall amount of compensation that may be awarded. When section 124 is repealed, those cross-references will no longer operate as intended in some cases.

5.4 The majority of those provisions relate to 'worker dismissal' claims (claims brought by workers for 'detriment', where that detriment consists of termination of their worker contract). The policy in these provisions is, broadly, that the amount of compensation that a worker can get for such a claim should not be more than they would be able to get if they were an employee who was claiming unfair dismissal. The amendments made by the Regulations ensure that these provisions remain aligned with the compensation that can be awarded in the case of unfair dismissal, with no statutory cap on the compensation that may be awarded. Workers will continue to be entitled to no more (or less) than they would receive if they were employees bringing an unfair dismissal claim.

5.5 For these provisions, references to the compensatory award cap (section 124 of the 1996 Act) have been replaced with a cross-reference to section 123, which sets out how employment tribunals are to calculate compensatory awards. This means that awards will continue to be assessed on the basis of what is 'just and equitable' in all the circumstances and based on evidence of actual or anticipated financial loss. In practice, most awards are expected to remain modest, reflecting the continued application of established tribunal principles. The tribunal will continue to focus on claimants' actual and projected losses when determining awards.

5.6 The Regulations also amend provisions of a different nature in the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"). The first provision,

section 140, deals with the remedies available where an employment tribunal has found that an employer has refused employment, or an employment agency has refused to provide someone with any of its services, on grounds related to trade union membership. That includes a power to award compensation, to be assessed on the same basis as damages for breach of statutory duty, and including an award for injury to feelings, but with the overall total limited to the cap currently set out in section 124 of the 1996 Act. The Regulations remove that cap, ensuring that the award which can be made remains aligned with compensatory awards for unfair dismissal.

5.7 The other provisions in the 1992 Act amended by the Regulations are sections 67 and 176. These provisions provide remedies in cases where a trade union member has been unjustifiably disciplined or excluded or expelled by the union, and they include the power to award compensation. They are therefore awards that a trade union would pay to a trade union member, or former trade union member. Compensation is currently limited to the aggregate of (a) the limit currently set in section 124 of the 1996 Act and (b) 30 times a week's pay (not exceeding £751 per week). The Government's policy intention in the Employment Rights Act 2025 is to remove the statutory cap on compensation for unfair dismissal claims (and, by extension, the cap on compensation in cases where a worker's contract has been terminated for the same reasons). As such, extending the removal of the limit to provisions concerning awards paid by trade unions would go beyond the scope of that policy intention. These regulations therefore replace the cross reference to section 124 with a specific limit which mirrors the current monetary cap on the compensatory award for unfair dismissal (£123,543). They also make provision for this sum to rise annually in line with inflation. The second limb of the cap is retained so that the limit on compensation will continue to be calculated as the aggregate of the monetary cap and the 30 weeks' pay limit. The general principles governing calculation of awards remain in place (requiring an employment tribunal to calculate an award based on what it considers 'just and equitable', taking account of, for example, any contributory conduct). Union members will continue to receive the same levels of compensation as they would at present, and the amount of compensation for which unions may be liable will not increase.

5.8 The Regulations also make changes to the ACAS Arbitration Scheme (Great Britain) Order 2004 in relation to the powers of an arbitrator to award compensation when a decision in favour of the employee has been made. Generally speaking, those powers are limited in the same way that the powers of an employment tribunal are limited. Accordingly, these regulations remove the reference to the compensatory award cap for unfair dismissal, ensuring that the arbitrator's powers remain aligned with those of a tribunal.

What was the previous policy, how is this different?

5.9 The unfair dismissal provisions of the 2025 Act will come into force on 1 January 2027. Prior to this date, the amount of compensation that an employment tribunal can award in most unfair dismissal claims has been subject to a statutory cap. The statutory cap is the lower of a fixed monetary limit (£123,543 from 6 April 2026) or 52 weeks of the claimant's normal pay. The 2025 Act removes these limits.

5.10 Prior to these Regulations, the provisions amended have not had their own standalone limits and instead limited awards by cross-referring to the unfair dismissal compensatory award cap. This statutory instrument is necessary to make consequential changes to these provisions to reflect the removal of the compensatory award cap across the statute book. If these amendments were not made, the affected

provisions would continue to refer to a cap that will no longer exist for claims relating to dismissals from 1 January 2027.

6. Legislative and Legal Context

How has the law changed?

6.1 These Regulations make amendments to legislation in consequence of section 25(3) of the Employment Rights Act 2025, which repeals section 124 of the 1996 Act.

6.2 These Regulations replace or remove references to section 124 of the 1996 Act in a number of other provisions.

6.3 For the majority of the provisions, these Regulations replace cross-references to section 124 with cross-references to section 123 of the 1996 Act, which governs how compensatory awards for unfair dismissal are to be calculated by an employment tribunal.

6.4 The Regulations also amend section 67 and 176 of the 1992 Act. Cross-references to section 124 in these provisions are replaced with a fixed monetary amount which matches the amount currently specified in section 124. Provision is made for that amount to be uprated in line with inflation each year.

6.5 These Regulations amend Article 6 of, and the Schedule to, the ACAS Arbitration Scheme (Great Britain) Order 2004 to remove references to section 124 of the 1996 Act.

Why was this approach taken to change the law?

6.6 These are consequential amendments which are necessary due to the repeal of section 124 of the 1996 Act by section 25(3) of the 2025 Act.

7. Consultation

Summary of consultation outcome and methodology

7.1 Changes to the policy on unfair dismissal were agreed as a result of a series of constructive Government-convened tripartite conversations between trade unions and business representatives and no formal consultation was undertaken. Those conversations did not cover the contents of these Regulations.

7.2 The Department for Business, Innovation, Science and Trade held stakeholder roundtables in January and February 2026 to gather views on what the impacts of the changes to the law on unfair dismissal might be, focussing on the removal of the compensatory award cap. These roundtables did not cover the contents of these Regulations. The Government published a summary of the stakeholder roundtables[1].

7.3 The Department has not carried out a public consultation relating to these consequential changes as the changes are either minor and technical in nature, or are encompassed within the scope of the policy pursued in the 2025 Act, or are limited to preserving the effect of measures where the underlying policy is not within the scope of the changes in the 2025 Act. These consequential amendments to legislation will

[1] Unfair dismissal changes: summary of stakeholder roundtables https://www.gov.uk/government/publications/summary-of-stakeholder-roundtables-on-unfair-dismissal-changes. Printed copies can be obtained from the Department for Business, Innovation, Science and Trade at Old Admiralty Building, Admiralty Place, London, SW1A 2DY

ensure relevant legislation reflects, or is consistent with, provision made under the 2025 Act.

8. Applicable Guidance

8.1 The Department will not provide any guidance in relation to this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full impact assessment has not been prepared for this instrument as no significant impacts are foreseen. The consequential changes in scope of this instrument are either minor and technical in nature, or are encompassed within the scope of the policy pursued in the 2025 Act, or are limited to preserving the effect of measures where the underlying policy is not within the scope of the changes in the 2025 Act. The government previously published a full impact assessment for the 2025 Act.[2]

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies. The main substantive change made by this instrument is the removal of the cap on compensation which can be awarded to workers for 'detriment', where that detriment consists of termination of their worker contract. The primary impact is potential higher compensation for individuals where employers have been non-compliant with relevant legislation. Employers compliant with the relevant legislation are not expected to experience any direct impacts. There is no readily available data for awards given to workers for 'detriment', where that detriment consists of termination of their worker contract. However, the available data on the compensation awarded in other comparable jurisdictions related to the termination of employment, such as unfair dismissal claims, indicates that the impact of the instrument on compensation awards is likely to be limited.[3] Awards will continue to be based on evidence of actual or anticipated financial loss. It is possible that this instrument could potentially lead to a higher number of Acas claims and employment tribunal cases, with administrative and legal costs for employers. The overall impact depends on the behavioural response of workers and employers. The Government will monitor available data to identify any significant changes in claim volumes over time.

9.3 The legislation does impact small or micro businesses.

9.4 Small or micro businesses are not exempt from this policy as exemption would undermine the policy objectives and violate the underlying principle that all workers have the right to better working practices no matter who they work for. Non-exemption of small and micro businesses also minimises the complexity for businesses to understand and comply with these measures as their situation changes, as well as any enforcement costs. Furthermore, exempting small and micro businesses from these measures could create perverse incentives, where small businesses seek not to grow to avoid being captured by this legislation, undermining the policy objectives.

[2] Employment Rights Act 2025: impact assessments - GOV.UK https://www.gov.uk/guidance/employment-rights-bill-impact-assessments. Printed copies can be obtained from the Department for Business, Innovation, Science and Trade at Old Admiralty Building, Admiralty Place, London, SW1A 2DY

[3] Tribunals statistics quarterly: April to June 2024 https://www.gov.uk/government/statistics/tribunals-statistics-quarterly-april-to-june-2024. Printed copies can be obtained from the Department for Business, Innovation, Science and Trade at Old Admiralty Building, Admiralty Place, London, SW1A 2DY

9.5 There is no, or no significant, impact on the public sector. The main impact is likely driven by a potential increase in Acas claims and employment tribunal cases. This overall impact depends on the behavioural response of workers and employers. The Government will monitor available data to identify any significant changes in claim volumes over time.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to undertake proportionate monitoring and evaluation of reforms. The Government will monitor available data to identify any significant changes in claim volumes over time.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Minister of State (Minister for the Future of Work) at the Department for Business, Innovation, Science and Trade (Kate Dearden) has made the following statement: "There is no expected significant annualised net impact on business (greater than +/-£5 million net annualised). There are no other factors that would make it particularly desirable to include a review clause."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 These Regulations are made by the Secretary of State in exercise of the powers conferred by sections 154 and 156 of, and paragraph 5 of Schedule 3 to, the 2025 Act to make amendments which are consequential on the changes brought in by that Act. Those amendments include changes made to primary legislation.

11.2 The extent and territorial application of the Regulations is, on the whole, limited to England and Wales, and Scotland. However, the amendments made to the National Minimum Wage Act 1998 also extend to, and apply in, Northern Ireland. Employment law, including the law on unfair dismissal, is a transferred matter in relation to Northern Ireland, but the national minimum wage is a reserved matter.

12. European Convention on Human Rights

12.1 The Minister of State (Minister for the Future of Work) at the Department for Business, Science, Innovation and Trade has made the following statement regarding Human Rights: "In my view the provisions of the Employment Rights Act 2025 (Unfair Dismissal) (Removal of Limit on Compensation) (Consequential Amendments) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").