EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT APPEAL TRIBUNAL (AMENDMENT) (NO. 2) RULES 2026

2026 No. 1077

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Justice 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 Sarah Sackman KC MP, Minister of State for Courts and Legal Services at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

2.2 Rawfiah Choudry, Deputy Director for Tribunals, Fees and Irregular Migration, at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Sam Pearce at the Department for Business, Innovation, Science and Trade can be contacted by email at the following address with any queries regarding the instrument: tradeunionpolicy@businessandtrade.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Employment Appeal Tribunal Rules 1993, which govern procedure in the Employment Appeal Tribunal. It makes consequential procedural amendments, so that appeals from determinations, declarations and orders made by the Central Arbitration Committee under the new right of trade unions to access workplaces framework, can be brought and dealt with under the existing Employment Appeal Tribunal Rules. The amendments include inserting references to the new appeal route under section 70ZM(1) and (2) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"), adding references to Central Arbitration Committee "determinations" alongside existing references to decisions, declarations and orders, and updating the relevant appeal form.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdictions in which the instrument forms part of the law) is England and Wales and Scotland.

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

5. Policy Context

What is being done and why?

5.1 Section 59(2) of the Employment Rights Act 2025 inserted Chapter 5ZA into the 1992 Act, to establish a new statutory framework for trade unions to access workplaces for the purposes of meeting, supporting, representing, recruiting or organising workers, and facilitating collective bargaining. The framework is overseen by the Central Arbitration Committee. The Central Arbitration Committee is an independent statutory body with responsibility for determining disputes and exercising functions relating to trade unions and collective employment relations. Where a union and employer are unable to agree access terms, the Central Arbitration Committee may make a determination imposing access and the terms that apply. The Central Arbitration Committee may also make declarations and orders in relation to enforcement of statutory access agreements. Section 70ZM(1) and (2) of the 1992 Act provides for appeals to the Employment Appeal Tribunal from those determinations, declarations and orders. This instrument makes the procedural changes needed so that those appeals can operate within the existing Employment Appeal Tribunal framework.

What was the previous policy, how is this different?

5.2 The previous Employment Appeal Tribunal Rules 1993 already made procedural provision for appeals involving certain Central Arbitration Committee decisions, declarations and orders. However, those Rules did not refer to the new rights of appeal created by section 70ZM(1) and (2) of the 1992 Act, or to Central Arbitration Committee "determinations" (made under the new right of trade unions to access workplaces framework). The instrument updates the existing procedural rules and Form 1A (notices of appeal from the Central Arbitration Committee) so that the new appealable Central Arbitration Committee determinations, declarations and orders under Chapter 5ZA of the 1992 Act are covered. It does not create a new policy framework; it makes minor consequential amendments to ensure that the appeal route provided for in primary legislation can function coherently in practice.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 59(2) of the Employment Rights Act 2025 inserted Chapter 5ZA into the 1992 Act. Section 70ZM(1) and (2) of that Chapter provides for appeals to the Employment Appeal Tribunal from specified determinations, declarations and orders of the Central Arbitration Committee relating to trade union access to workplaces. The Employment Appeal Tribunal Rules 1993 govern procedure before the Employment Appeal Tribunal. This instrument amends those Rules to reflect the new appeal route by inserting references to section 70ZM(1) and (2), updating terminology to include "determinations", and making corresponding amendments to the Schedule containing Form 1A. The Rules are made by the Lord Chancellor under section 30(1) and (2) of the Employment Tribunals Act 1996, following consultation with the Lord President of the Court of Session as required by section 30(1).

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes. The new right of appeal is already provided for in primary legislation. The Employment Appeal Tribunal Rules 1993 must therefore be amended to ensure that the procedural rules

governing institution of appeals, service, respondents, hearings, orders and appeal forms apply appropriately to appeals under section 70ZM(1) and (2) of the 1992 Act.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Lord Chancellor is required by section 30(1) of the Employment Tribunals Act 1996 to consult the Lord President of the Court of Session before making Employment Appeal Tribunal Rules. The Ministry of Justice also consulted the Senior President of Tribunals and the President of the Employment Appeal Tribunal on the proposed amendments. The amendments are technical and consequential and are intended to ensure that the new appeal route for Central Arbitration Committee determinations, declarations and orders under the right of trade unions to access workplaces framework can operate through existing Employment Appeal Tribunal procedures.

8. Applicable Guidance

8.1 No specific guidance is being provided for this instrument. The instrument makes technical consequential amendments to existing Employment Appeal Tribunal procedure. Guidance on the wider right of trade unions to access workplaces framework is being provided separately as part of the implementation of that policy.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, voluntary or public sectors is foreseen. The instrument makes minor consequential amendments to tribunal procedure rules and does not itself impose new obligations on employers, trade unions, workers or public bodies.

9.2 A full Impact Assessment on the statutory right of trade union access was submitted with the Draft Code of Practice: Right of Trade Unions to Access Workplaces, the Trade Unions (Right to Access Workplaces) Regulations 2026 and the Trade Unions (Right to Access Workplaces) (Required Information) Regulations 2026 and was published on GOV.UK[1].

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies because the instrument makes technical consequential amendments to Employment Appeal Tribunal procedure rules and does not impose new regulatory requirements on those bodies.

9.4 The legislation does not impact small or micro businesses.

9.5 There is no, or no significant, impact on the public sector because the instrument makes procedural amendments to the Employment Appeal Tribunal Rules and does not impose new operational duties on public sector bodies.

[1] Trade Union Statutory Access to Workplaces Final Impact Assessment (https://assets.publishing.service.gov.uk/media/6a4b9af3d200ca05e289e5e7/trade-union-statutory-access-to-workplaces-final-impact-assessment.pdf)

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to keep the operation of the amended Employment Appeal Tribunal Rules under review as part of the wider implementation of the right of trade unions to access workplaces framework.

10.2 The instrument does not include a statutory review clause because it makes minor consequential amendments to procedural rules and no significant impact on business, charities, voluntary bodies or the public sector is expected.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument is connected to the implementation of the right of trade unions to access workplaces framework introduced by the Employment Rights Act 2025. It is, however, limited to minor consequential amendments to Employment Appeal Tribunal procedure rules so that appeals from relevant Central Arbitration Committee determinations, declarations and orders can be brought under the existing Rules.

12. European Convention on Human Rights

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

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").