EXPLANATORY MEMORANDUM TO THE

EMPLOYMENT APPEAL TRIBUNAL (AMENDMENT) RULES 2005

2005 No. 1871

1. This Explanatory Memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty**.** This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

These Rules amend the Employment Appeal Tribunal Rules 1993 (S.I. 1993/2864) (as amended by the Employment Appeal Tribunal (Amendment) Rules 2001 (S.I. 2001/1128) and the Employment Appeal Tribunal (Amendment) Rules 2004 (S.I. 2004/2526)) ("the 1993 Rules"). The main purpose of these Rules is to implement section 36 of the Employment Relations Act 2004 (c.24)("ERA 2004"). They also replace Form 1 (Notice of Appeal form) with an amended version, and make minor amendments to Form 3 (Respondents' Answer).

3. Matters of special interest to the JCSI

None

4. Legislative Background

4.1 Section 36 of ERA 2004 replaced subsection (6) of section 10 of the Employment Tribunals Act 1996(c.17) ("the 1996 Act") to clarify that powers available to employment tribunals under employment tribunal procedure regulations for use in national security proceedings can be used in any proceedings where a national security issue is at stake and not just Crown employment proceedings. Section 30(2A) of the 1996 Act provides that appeal tribunal procedure rules may make provision of a kind which may be made by employment tribunal procedure regulations under section 10(6) (and other subsections) of the 1996 Act. Rule 2 implements the amendments introduced by ERA 2004.

4.2 Rule 3(1) replaces Form 1 in the Schedule to the 1993 Rules with an amended version and Rule 3(2) makes minor amendments to Form 3, to reflect changes introduced by the Employment Appeal Tribunal (Amendment) Rules 2004.

5. Extent

These Regulations apply to England, Wales and Scotland.

6. European Convention on Human Rights

No statement is required.

7. Policy background

7.1 The amendment to provisions in section 10(6) of the 1996 Act relating to employment tribunal cases where there may be implications for national security was made in order to put beyond doubt that they achieve the scope originally intended on their introduction in 1999 (section 41 of the Employment Relations Act 1999). That legislation extended the right to pursue employment claims through employment tribunals to employees of the intelligence and security services, but put in place safeguards to avoid sensitive information being made public. A risk was subsequently identified that those provisions might be interpreted as applying only to Crown employment proceedings. The employment tribunals rules of procedure are being amended to make it clear that the powers in section 10(6) of the 1996 Act can be applied in any national security proceedings before an employment tribunal, whether or not they are Crown employment proceedings. Rule 2 implements corresponding provisions with respect to Employment Appeal Tribunal proceedings.

7.2 Forms 1 and 3 are being revised to reflect amendments already introduced by the Employment Appeal Tribunal (Amendment) Rules 2004 (S.I. 2004/2526)

8. Impact

The final Regulatory Impact Assessment (RIA) for ERA 2004 indicated that any impact on business arising from section 36 (the national security amendment) would be likely to be negligible. For this reason, and because none of the other amendments is substantive, and will therefore not impact on business, charities, voluntary bodies or the public sector, no RIA has been prepared for this instrument.

9. Contact

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DEPARTMENT OF TRADE AND INDUSTRY