EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT RIGHTS (INCREASE OF LIMITS) ORDER 2017

2017 No. 175

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 From 6 April 2017 this Order increases the limits (maximum or minimum) applying to certain awards of employment tribunals and other amounts payable under employment legislation, as specified in the Schedule to the Order. This is in line with the increase in the retail prices index ('RPI') between September 2015 and September 2016 (+2.0%) and in accordance with the formula set out in section 34 of the Employment Relations Act 1999 ('ERA 1999').

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The relevant order-making power is section 34(2) of the ERA 1999 and the list of sums to be increased (or decreased) as a result of the change in the RPI is set out in section 34(1) of the ERA 1999.

3.2 In applying the relevant percentage increase (or, as it may be, decrease), the Secretary of State is required to round up the new sums to the nearest whole pound, taking 50p as nearest to the next whole pound above, in accordance with the provisions set out in section 34(3) of the ERA 1999.

3.3 This Order increases all of the limits specified in section 34(1) of the ERA 1999 to the amounts referred to in the Schedule.

Other matters of interest to the House of Commons

3.4 As this instrument is not subject to parliamentary procedure, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 208 of the Employment Rights Act 1996 required the Secretary of State, in each calendar year, to undertake a review of various limits and to decide whether those limits should be varied.

4.2 Section 34 of the ERA 1999 replaced section 208 with a simpler duty. It provided that, if the retail prices index for September of a year is higher (or lower) than the index for the previous September, the Secretary of State is required to change the

limits, by Order, by the amount of the increase (or decrease). The relevant limits were revised pursuant to this legislation for the first time in February 2000, and have been amended each year since.

4.3 Section 34 of the ERA 1999 was amended by the Enterprise and Regulatory Reform Act 2013. This changed the method of calculation used to increase or decrease the relevant limits (as noted in paragraph 3.2) and specified that the changes to the limits be made on 6 April each year.

5. Extent and Territorial Application

5.1 The extent of this instrument is Great Britain.

5.2 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 The Minister of State for Small Business, Consumers and Corporate Responsibility has made the following statement regarding human rights:

In my view the provisions of The Employment Rights (Increase of Limits) Order 2017 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The purpose of the changes introduced by section 34 ERA 1999 was to replace a time-consuming annual review process with a system of annual automatic indexation, linking payments to the rate of inflation and giving greater certainty to businesses and workers.

Consolidation

7.2 There are no plans to consolidate the relevant provisions in the ERA 1999.

8. Consultation outcome

8.1 No formal consultation exercise was necessary for this Order since the limits are required to be reviewed annually by legislation.

9. Guidance

9.1 Any reference to the statutory limits will be updated. This includes electronic and other media such as Gov.uk.

10. Impact

10.1 The impact on business, charities or voluntary bodies is to increase the maximum or minimum amounts they may be ordered to pay by employment tribunals if they are found to have breached certain employment legislation, and to increase amounts they must pay under other employment legislation in certain circumstances. The increases will only apply where the event giving rise to the entitlement to compensation or other payments occurred on or after 6 April 2017. In cases where the relevant event took place before 6 April 2017, limits previously in force under the Employment Rights (Increase of Limits) Order 2016 (S.I. 2016/288) are preserved.

10.2 The impact on public sector organisations is to increase the maximum or minimum amounts they may be ordered to pay by employment tribunals if they are found to have breached certain employment legislation, and to increase amounts they must pay under other employment legislation in certain circumstances. The increases will only apply where the event giving rise to the entitlement to compensation or other payments occurred on or after 6 April 2017. In cases where the relevant event took place before 6 April 2017, limits previously in force under the Employment Rights (Increase of Limits) Order 2016 (S.I. 2016/288) are preserved.

10.3 An Impact Assessment has not been prepared for this instrument. It is not required because the ERA 1999 provides for indexation according to a pre-determined formula (i.e. the RPI).

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The limits are revised every year as required by section 34 ERA 1999.

13. Contact

13.1 Carol Wheeler at the Department for Business, Energy and Industrial Strategy Telephone 0207 215 5993 or email: Carol.Wheeler@beis.gov.uk can answer any queries regarding the instrument.