EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT RIGHTS (INCREASE OF LIMITS) ORDER 2023

2023 No. 318

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business 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.

2. Purpose of the instrument

2.1 From 6 April 2023 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 2021 and September 2022 (+12.6%) 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) because 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 the sums specified in section 34(1) of the ERA 1999 to the amounts referred to in the Schedule (except for certain cases where +12.6% is insufficient, after rounding down, to result in an increase).

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Great Britain.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain.

5. European Convention on Human Rights

5.1 As the instrument is not subject to parliamentary procedure, no statement is required.

6. Legislative Context

6.1 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.

6.2 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.

6.3 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.

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 the previous 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.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 The previous rate of inflation to be applied to the Employment Tribunal awards identified in the legislation was +4.9%.

Why is it being changed?

7.3 This change is in line with the increase in the RPI' between September 2021 and September 2022 (+12.6%) and in accordance with the formula set out in section 34 of the ERA 1999.

What will it now do?

7.4 It will increase the outlined Employment Tribunal awards by +12.6%.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 None.

10. Consultation outcome

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

11. Guidance

11.1 Any reference to the statutory limits will be updated. This includes electronic and other media such as GOV.UK.

12. Impact

12.1 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 2023. In cases where the relevant event took place before 6 April 2023, limits previously in force under the Employment Rights (Increase of Limits) Order 2022 (S.I. 2022/182) are preserved.

12.2 The impact on the 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 2023. In cases where the relevant event took place before 6 April 2023, limits previously in force under the Employment Rights (Increase of Limits) Order 2022 (S.I. 2022/182) are preserved.

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

13. Regulating small business

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

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the limits are revised every year as required by section 34 ERA 1999.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Kevin Hollinrake has made the following statement: “a review would be disproportionate considering the economic impact of the regulatory provision on the qualifying activity. The original purpose of the legislative approach was to replace a review process with a system of annual automatic indexation, linking payments to the rate of inflation and giving greater certainty to businesses and workers.”.

15. Contact

15.1 Richard Boyd at the Department for Business and Trade, telephone: 07867 143512 or email: richard.boyd@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 James Stevens, Deputy Director for Employment Rights and Enforcement, at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kevin Hollinrake MP at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.