EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT TRIBUNALS ACT 1996 (APPLICATION OF CONCILIATION PROVISIONS) ORDER 2015

2015 No. 2054

1. Introduction

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

2. Purpose of the instrument

2.1 The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015 (S.I. 2015/2021) ('the 2015 Regulations') make provision in relation to the right for eligible individuals on a zero hours contract ('ZHCs') not to be unfairly dismissed or subjected to a detriment because they have breached a provision of a ZHC which prohibits the individual from doing work under another contract or arrangement. Eligible individuals will be able to bring proceedings in an employment tribunal and may be awarded compensation.

2.2 This Order amends the Employment Tribunals Act 1996 ('the Act') to make the detriment proceedings created in the 2015 Regulations subject to Early Conciliation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, 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 18(1) of the Act is a list of relevant proceedings for the purposes of Early Conciliation. A prospective claimant wishing to take a case to the employment tribunal must first contact the ACAS (the Advisory, Conciliation and Arbitration Service) about their dispute before presenting a claim to an employment tribunal. This gives ACAS the chance to encourage the parties to resolve their differences through conciliation without the need for an employment tribunal claim to be made. Whilst notifying ACAS of a potential employment tribunal claim is mandatory, participating in conciliation is entirely voluntary.

4.2 This Order amends section 18(1) of the Act to include the detriment proceedings created in the 2015 Regulations.

4.3 This Order also amends the 2015 Regulations to extend the limitation period which applies for bringing a claim to an employment tribunal for the proceedings that are added to the section 18(1) list by this Order.

4.4 This Order has been laid in Parliament after the 2015 Regulations have been made because the new detriment proceedings created in the 2015 Regulations have to be enacted in law before this Order can add those proceedings to the list of 'relevant proceedings' in section 18(1) of the Act which are subject to Early Conciliation.

4.5 Sections 7-9 of the Enterprise and Regulatory Reform Act 2013 amended the Act to set out the framework for the introduction of Early Conciliation. The provisions in the Order which extend the limitation date to bring a claim in the employment tribunal (which is needed given the application of Early Conciliation) reflect other amendments to legislation which arose out of the Enterprise and Regulatory Reform Act 2013.

5. Extent and Territorial Application

5.1 The extent of this instrument is Great Britain.

5.2 The territorial application of this instrument is Great Britain.

6. European Convention on Human Rights

6.1 The Minister of State for Skills and the Parliamentary Under Secretary of State for Courts and Legal Aid have made the following statement regarding Human Rights:

"In our view the provisions of the Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2015 are compatible with the Convention rights."

7. Policy background

7.1 Following an information gathering exercise in 2013 aimed at examining the use of ZHCs in the UK labour market, and two consultations in 2014, Government rendered exclusivity terms in ZHCs unenforceable by section 27A of the Employment Rights Act 1996. This means an employer cannot prevent an individual on a ZHC from accepting work elsewhere or request that that individual seek permission before finding alternative work.

7.2 The 2015 Regulations make provision for individuals on ZHCs to bring a complaint to an employment tribunal if they are dismissed or subjected to a detriment because they have breached a provision of a ZHC which prohibits the individual from doing work under another contract or arrangement.

7.3 The amendments made by this Order mean that all prospective claimants seeking to bring cases under the 2015 Regulations must first contact ACAS about their dispute before they can proceed to present a claim at an employment tribunal. It is the Government's ambition to resolve as many employment disputes as possible without the need for an employment tribunal. Early Conciliation is a key part of achieving this aim.

8. Consultation outcome

8.1 The Government consulted on the use of exclusivity terms on ZHCs in December 2013, seeking views on whether to ban such clauses. The responses showed overwhelming support (83%) in favour of banning these clauses. A Government response was published on 25 August 2015 and can be found in Chapter 4 of the Zero Hours Employment Contracts: Tackling Avoidance.

8.2 Government undertook a further consultation in August 2014 seeking views specifically on the order making power that allow for the 2015 Regulations to be made. 71% of respondents agreed that individuals on a ZHC should have redress to an employment tribunal if they suffered detriment, including unfair dismissal as a result of working for another employer.

8.3 The Government Response was published on 6 March 2015 and can be found in the Exclusivity Clauses: Tackling Avoidance document.

9. Guidance

9.1 Guidance on ZHCs is available on the gov.uk website. We intend to update this guidance once this instrument comes into force.

10. Impact

10.1 The impact on business, charities or voluntary bodies is estimated at a cost of £35,000.

10.2 The impact on the public sector is estimated at a cost of £5,000.

10.3 An Impact Assessment (in the form of a regulatory triage assessment) for the 2015 Regulations and this Order has been published on the www.legislation.gov.uk website.

10.4 By making the detriment proceedings created in the 2015 Regulations subject to Early Conciliation, this will have an impact on both the private and public sectors. However, access to the Early Conciliation process will ensure the impact of the 2015 Regulations can be minimised if the complainant takes up this option.

11. Regulating small business

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

11.2 There will be an impact on all businesses regardless of size as this Order and the 2015 Regulations create a protection for individuals who are employed on a zero hours contract if they are treated unfairly. Small businesses are not being disadvantaged and it would be inappropriate to exempt them from a measure designed to protect individuals.

11.3 The potential impact of this has been considered and is detailed as part of the Impact Assessment published on www.legislation.gov.uk .

12. Monitoring & review

12.1 The Department for Business, Innovation and Skills will undertake an internal review of the 2015 Regulations within 5 years of implementation.

13. Contact

13.1 Maggie Slinger or Tony Thomas, Department for Business, Innovation and Skills.

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