EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT TRIBUNALS AND THE EMPLOYMENT APPEAL TRIBUNAL FEES (AMENDMENT) ORDER 2015

2015 No. 414

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013 (S.I. 2013/1893) ("2013 Order"). The amendments are made to clarify an interpretation of the 2013 Order, to update a reference to terminology reflecting recent changes to the rules of procedure in the employment tribunals, and to rectify an omission in the 2013 Order.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative context

4.1 The Employment Tribunals and the Employment Appeal Tribunal Fees (Amendment) Order 2015 amends the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013 (S.I. 2013/1893).

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales and Scotland.

6. European Convention on Human Rights

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

7. Policy background

7.1 Fees in the Employment Tribunals and Employment Appeal Tribunal were introduced in July 2013 in line with Government policy that it is reasonable that those who use the employment tribunals system, and can afford to, should pay a fee as a contribution towards the cost of administering their claim or appeal. The fees payable depend on whether the claim is a Type A claim or a Type B claim and are set out in the Schedules to the 2013 Order. Type B fees are more

expensive than Type A claims, as they take longer and use more judicial and administrative resource to determine.

7.2 The policy intention, which has always been applied operationally, was that an employer's contract claim made as part of a response to an employee's contract claim (i.e. a counterclaim), would always be charged as a Type A claim (the same as the employee's contract claim). However, a firm of solicitors wrote to HMCTS arguing the wording of the fee order did not cover their client's situation. In that case, the employee's contract claim contained both Type A and Type B elements. The solicitors asserted that the fee for a Type B claim was therefore payable, in accordance with article 11(2) of the 2013 Order. Column 2 of the Table at Schedule 1 to the 2013 Order does not set a fee for a Type B claim in respect of such claim, and therefore it was argued that no fee was payable. Although we disagreed in principle, we decided that it was better to remove the perceived ambiguity in the fees order by finding a clearer way of expressing the point that the fee is a type A whenever an employer's contract claim is made as part of the response to an employee's contract claim.

7.3 Another amendment arises from the revision of the Employment Tribunal (Constitution and Rules of Procedure) in 2013 (S.I. 2013/1237). Prior to this a judgment made when a response to a claim was rejected, not presented or not contested was referred to as a 'default' judgment. This was changed to a 'rule 21' judgment when the Rules were revised; this Order amends the 2013 Order to reflect this change.

7.4 The Order also adds a reference to the Social Care (Self-directed Support (Scotland) Act 2013 to the list of benefits legislation which is taken into account when determining entitlement to a fee remission.

8. Consultation

8.1 Before making this Order, the Lord Chancellor consulted the Senior President of Tribunals as required by section 42(5) of the Tribunals, Courts and Enforcement Act 2007.

9. Guidance

9.1 Her Majesty's Courts and Tribunal Service will update its guidance on fees payable in line with these amendments.

10. Impact

10.1 This instrument does not introduce or make any changes to the fees payable.

11. Regulating small business

11.1 The Order has no impact on small businesses.

12 Monitoring & review

12.1 Fees and the impact of any changes are monitored by way of feedback from courts and tribunals and their users, and by the monitoring of fee income and volumes.

13. Contact

13.1 Bill Dowse, Head of Fees Policy at the MOJ Fees Policy Team Tel: 020 3334 6099 or email: bill.dowse@justice.gsi.gov.uk can answer any queries regarding the instrument.