EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT TRIBUNALS (CONSTITUTION AND RULES OF PROCEDURE) (AMENDMENT) REGULATIONS 2016

2016 No. 271

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 This instrument amends the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 to:

i) limit the number of employment tribunal hearing postponements that can be granted to a party, in a single case, to two postponements other than in exceptional circumstances, the parties agree or the postponement has been necessitated by an act or omission of another party or the Tribunal;

ii) introduce a deadline of seven days prior to the hearing date after which applications for the postponement of a hearing would only be allowed in exceptional circumstances, the parties agree or the postponement has been necessitated by an act or omission of another party or the Tribunal;

iii) place an obligation on employment tribunals to consider granting costs orders where late notice postponements (of less than seven days) are granted.

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 yet 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 The Employment Tribunal Act 1996 ("the ETA") contains the relevant powers to make procedural rules for the operation of employment tribunals. These rules are set out in the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 ("the Rules").

4.2 Section 151 of the Small Business, Enterprise and Employment Act 2015 (the SBEE Act") introduced additional powers to make regulations governing the Employment Tribunal postponement procedure.

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

7. Policy background

What is being done and why

7.1 The Government is responding to concerns voiced by businesses and other stakeholders about the cost and inconvenience caused by unnecessary delays in employment tribunal proceedings caused by short notice and repeated postponements.

7.2 The Government introduced measures in the Small Business, Enterprise and Employment Act 2015 to provide additional powers to make regulations governing Employment Tribunal postponement procedure. Using these, together with existing powers in the Employment Tribunals Act 1996 the Government is amending the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 to:

i) limit the number of employment tribunal hearing postponements that can be granted to a party, in a single case, to two postponements other than in exceptional circumstances, the parties agree or the postponement has been necessitated by an act or omission of another party or the Tribunal;

ii) introduce a deadline of seven days prior to the hearing date after which applications for the postponement of a hearing would only be allowed in exceptional circumstances, the parties agree or the postponement has been necessitated by an act or omission of another party or the Tribunal;

iii) place an obligation on employment tribunals to consider granting costs orders where late notice postponements (of less than seven days) are granted.

7.3 The Government considers that these changes will be beneficial to the users of the service, by encouraging parties to think carefully about the need for a postponement, and motivating them to focus on bringing the case to a conclusion. The Government also believes that they will give users of the service more confidence that the process would not be subject to repeated or short notice delays.

Consolidation

7.4 There are no immediate plans to consolidate the relevant provisions in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2016. However, associated guidance will be consolidated and updated in due course.

8. Consultation outcome

8.1 The Government undertook a public consultation from 16 January 2015 to 12 March 2015, seeking views on a draft of the new rules. A total of 33 responses were submitted. The Government response to the consultation was published on 11 February 2016.

8.2 The Government has taken into consideration the responses to the consultation. The draft Regulations reflect a number of changes made in response to the Consultation Responses and this is set out in the Government Response.

9. Guidance

9.1 Her Majesty's Court and Tribunal Service guidance for users of the employment tribunal system is being updated to take account of the changes. Changes will also be publicised through the gov.uk website.

10. Impact

10.1 The costs on business, charities or voluntary bodies relate to the need to familiarise themselves with the changes to the postponement regime when applying for a postponement to an employment tribunal. In addition, they may be ordered to pay costs where postponements are requested less than 7 days before the date on which the hearing begins. These costs are estimated to total £0.07 million. The estimated benefits are a reduction in the number of postponements instigated by claimants and compensation to the non-requesting party by way of costs orders where late postponements are requested. These benefits are estimated to total £4.5 million.

10.2 A specific analysis of the impact on the public sector has not been conducted.

10.3 A validation Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website. The Regulatory Policy Committee assessed and validated the equivalent annual net cost to business as -£0.41 million per annum (a £0.41 million benefit).

11. Regulating small business

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

11.2 The validation Impact Assessment estimated that there would be a small annual benefit to business (see paragraph 10.3) and it is expected that small businesses would share in that benefit.

12. Monitoring & review

12.1 Her Majesty's Court and Tribunal Service are monitoring the use of postponements pre and post implementation of this instrument. The Department will carry out a post implementation review in 2021.

13. Contact

13.1 Debra MacLeod at the Department for Business, Innovation and Skills. Telephone: 020 7215 0973 or email: debra.macleod@bis.gsi.gov.uk can answer any queries regarding the instrument.