EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT TRIBUNALS (CONSTITUTION AND RULES OF PROCEDURE) (AMENDMENT) REGULATIONS 2024

2024 No. 366

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade (DBT) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 These Regulations amend Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the 2013 Rules") which sets out the rules that govern the procedure in the Employment Tribunals ("the Tribunal").

2.2 The 2013 Rules are amended as follows:

- allows the Tribunal to direct that the 28-day time limit for the filing of a response restarts from the date the Tribunal has sent a copy of the claim form to the respondent at an alternative address to that provided by the claim form;
- to require a respondent to file a response to the claim in the prescribed form and in accordance with the requirements of any practice direction;
- inserts a new rule 92A to deem that a party or Tribunal has complied with any requirement in the rules to send, deliver or present a document to the Tribunal or another party, if they do so through the Tribunal's digital case management system, where this is in compliance with any practice direction; and
- makes minor consequential amendments, including removing redundant drafting in rule 8(1).

2.3 The primary purpose of these Regulations is to support the implementation of a new digital case management system ("the Reform System") in the Employment Tribunals, as well as to increase tribunal efficiency.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 England and Wales, and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, and Scotland

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Section 7(1) of the Employment Tribunals Act 1996 ("the 1996 Act") provides the Secretary of State with the power, by regulations, to make rules of procedure that are to apply to proceedings before the Employment Tribunals.

6.2 These Regulations contain amendments to the 2013 Rules that are urgently needed to achieve the policy intent of the HM Courts and Tribunal Service (HMCTS) Reform Programme ("the Reform Programme") (see section 7.1), and to enhance the efficiency of the Tribunals more widely.

7. Policy background

What is being done and why?

7.1 The Employment Tribunals are moving to a new digital approach to filing documents and managing Employment Tribunal claims, which forms part of the wider HMCTS Reform Programme. The overarching intent of the Reform Programme is to reduce current paper-based processes, increase efficiency, and reduce costs for both parties and the Tribunal. This will be achieved by the full implementation of a new digital case management system ("the Reform System"), which is currently being tested at four early adopter sites and is intended to be rolled out nationally later this year.

7.2 The Reform System allows users to submit claim and response forms, make digital applications and manage their claim online, whereas the existing online system ("the legacy online system") only allows for submission of claim and response forms.

7.3 The Employment Tribunal Presidents have identified key areas where they believe the existing 2013 Rules require amendment to assist HMCTS in achieving the full benefits of the Reform System and improve the efficiency of the Tribunal.

Response forms

7.4 When a claimant presents a claim, a response form is generated which the respondent can complete and present though the legacy online system to the Tribunal but can also, under the current 2013 Rules, do so by post, email or by hand.

7.5 This flexibility in how respondents can present their response forms with the Tribunal has meant that only 12% of respondents currently present their response through the legacy online system, with the vast majority being submitted by email. This requires additional work for the Tribunal, with each paper or email form taking approximately twice the time to process when compared with response forms submitted online. This frustrates the intent of the Reform Programme to improve efficiency and remove paper-based processes. This is also inconsistent with the obligations imposed on claimants; claimants must present a claim in compliance with any practice direction, and presentation by email is not permitted for claimants under the current Practice Direction[1].

7.6 These Regulations amend rules 16(1) and 85(2) of the 2013 Rules to facilitate the Employment Tribunal Presidents' desire to direct, by practice direction, the permitted methods of delivery for respondents to present their responses to the Tribunal. These amendments allow the Employment Tribunal Presidents to require that response forms be presented to the Tribunal through the Reform System, with appropriate safeguards for those who are unable to use digital services. These amendments will both improve

[1] https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

the efficiency of the Employment Tribunals and allow for more equalised obligations on claimants and respondents.

Reform System and delivery of documents or communication

7.7 When parties send communications to the Tribunal, rule 92 of the 2013 Rules specifies that these must be copied to the other parties in the proceedings and requires the sending party to provide confirmation to the Tribunal that they have complied with this rule. The new Reform System is designed to automate this process, so that whenever a party sends, delivers, or presents a document or communication to the Tribunal through the Reform System, a copy will automatically be provided to the other parties.

7.8 The current 2013 Rules frustrates the intent of the Reform System as parties must unnecessarily duplicate tasks that can be done automatically by the Reform System.

7.9 These Regulations insert a new rule 92A to allow for deemed compliance with the rules, where a party or the Tribunal sends, delivers or presents a document or communication to another party, through the Reform System where this is permitted by practice direction. This will reduce the unnecessary duplication of tasks and provide greater clarity as to what constitutes compliance with the 2013 Rules.

Time limit for respondents

7.10 In cases where claimants include an incorrect address for the respondents in their claim form, the respondent will not receive notice of the claim or the prescribed response form. This is typically resolved by an Employment Tribunal Judge subsequently directing that the claim be sent to the respondent's registered address. However, respondents only have 28 days to respond to the claim from the date that a copy of the claim was originally sent by the Tribunal. As a result of the decision of the Employment Appeal Tribunal in Grant v Asda UKEAT/0231/16[2], a direction from an Employment Tribunal Judge to resend a copy of the claim form to a different address from that provided in the claim form does not restart this period. Consequently, respondents who are not able to reply within the 28-day period as a result of this issue must apply for an extension of time to file their response.

7.11 This application requires a judicial determination and takes up administrative and judicial time. Where these applications are required solely on the basis that the claimant provided the wrong address, these determinations are typically made on the papers, without evidence being required, and are typically uncontested. However, they still require between five and fifteen minutes of judicial time. Contested applications that require a hearing take up a significantly greater amount of time and resources, although these are rare.

7.12 These Regulations amend rules 15 and 86 to set out that the Tribunal may, when sending a copy of the claim form to an alternative address, also direct that the 28-day time limit for a response will restart from the date that the form is resent to that alternative address. This would remove the need for the respondent to apply for extension of time where the delay in responding to the claim has been caused by the respondent simply not receiving a copy of the claim form. This will also allow the claim to proceed more quickly and ensure that administrative and judicial time is utilised more efficiently.

[2] https://www.bailii.org/uk/cases/UKEAT/2017/0231_16_1603.html

7.13 These Regulations also amend rule 8(1) to remove reference to practice directions being 'made under regulation 11 which supplement this rule'. This drafting is considered redundant and is inconsistent with other rules which also provide for procedural matters to be dealt with by practice direction.

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 No consolidation is taking place.

10. Consultation outcome

10.1 These are largely technical changes to facilitate the benefits of the Reform System and have been discussed with stakeholders. They have also been communicated to the Employment Tribunal National User Groups comprising members from a cross-section of employer and employee representative groups.

11. Guidance

11.1 The Employment Tribunal Presidents will prepare one or more practice directions relating to the changes made to the 2013 Rules which will be published on GOV.UK.

12. Impact

12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because the estimated familiarisation costs to business, and the ongoing costs and benefits to business from these reforms are expected to be well below the threshold of £10 million a year required to produce a full impact assessment. The primary impact of these changes is to reduce unnecessary bureaucracy in providing access to justice through the Employment Tribunal system.

13. Regulating small business

13.1 The legislation does apply to activities that are undertaken by small businesses. However, the impact is expected to be minimal.

14. Monitoring & review

14.1 The Department for Business and Trade will keep these Rules under review. The transfer of Employment Tribunal rule making powers to the TPC is anticipated to take place later in 2024, at which point the TPC will become responsible for monitoring and reviewing the Employment Tribunal Rules.

15. Contact

15.1 Richard Boyd at the Department for Business and Trade, Telephone: 07867 143512 or email: richard.boyd@businessandtrade.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, Parliamentary Under Secretary of State, Minister for Enterprise, Markets and Small Business at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.