EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT TRIBUNALS (INTEREST ON AWARDS IN DISCRMINATION CASES) (AMENDMENT) REGULATIONS 2013

2013 No. 1669

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 Employment Tribunals (Interest on Awards in Discrimination Cases) (Amendment) Regulations 2013 ("the Regulations") amend the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. The regulations will come into force on 29 July 2013 and contain a transitional provision so that the changes only apply to claims presented to an Employment Tribunal on or after 29 July.

2.2 Regulation 2 corrects an anomaly between the way in which pre-judgment interest on awards in discrimination cases is calculated in England and Wales compared with the way it is calculated in Scotland.

2.3 Awards in discrimination cases are calculated from the point at which the discrimination took place, rather than the date of judgment. However, there are currently different provisions for the rates at which pre-judgment interest is charged between England and Wales, and Scotland. The Government's Equalities Office have confirmed that there is no policy rationale for this different. Government is therefore seeking to ensure both systems operate in the same way.

2.4 Regulation 3 makes a consequential amendment to the Regulations which is needed as a result of the changes which are being effected by the Employment Tribunals (Interest) Order (Amendment) Order 2013, which will come into force on the same day. The Order will have the effect that post-award interest in non-discrimination cases (as well as in discrimination cases) will be dealt with in the same way as is currently provided in regulation 8 in relation to discrimination cases only. Thus regulation 8 needs to be deleted because it will be made redundant by the changes to be effected by the Order.

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

3.1 None.

4. Legislative Context

4.1 When Government was considering making changes to the way in which interest on Employment Tribunal awards (for non discrimination cases) is applied post-judgment,

it noted that there was a disparity between the provisions for England and Wales, and those for Scotland, which deal with the way pre-judgment interest accrues on discrimination awards. In both jurisdictions, interest accrues from the date of the discrimination, but the applicable interest rate differs. Pre-judgment interest in Scotland is set at the rate fixed by the Sheriff Courts (Scotland) Extracts Act 1892(c), which is currently 8%. In England and Wales, pre-judgment interest is set at the Special Account Rate, which is currently 0.5%. After judgment, interest on discrimination awards is charged at 8% in both jurisdictions..

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales and Scotland.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 Government is amending the regulations to ensure that pre-judgment interest on discrimination awards in England and Wales and Scotland is charged at the same rate, to avoid confusion and ensure consistency.

7.2 Government believes that interest charged on discrimination awards should be charged at the same rate throughout, and has amended the regulations to this effect. This effectively means changing the provisions for England and Wales to ensure they reflect the system in Scotland.

7.3 The amendment is designed both to make the system simpler and easy to understand, and to ensure there is consistency in the way cases are managed in the Employment Tribunal.

7.4 An unrelated consequential amendment, the deletion of regulation 8, is also being made, because regulation 8 will be made redundant when the Employment Tribunals (Interest) Order (Amendment) Order 2013 comes into force on 29 July 2013. That Order will have the effect that post-judgment interest on both discrimination and non-discrimination awards will be made at 8% under the Employment Tribunals (Interest) Order 1990.

8. Consultation outcome

8.1 As this is a correction to an anomaly, no formal consultation is required. Government has informed both the President of the Employment Tribunal in England and Wales and in Scotland of the change.

9. Guidance

9.1 Extensive guidance on Employment Tribunals is produced by Her Majesty's Courts and Tribunal Service. This will be updated as a result of this amendment where appropriate.

10. Impact

10.1 Because this amendment corrects an anomaly for which there is no policy intention, no formal impact assessment has been required.

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 The effectiveness of this amendment and other accompanying amendments to the way in which interest is charged under the Employment Tribunals (Interest) Order will be considered as part of the next report commissioned by Government into the non payment of Employment Tribunal awards.

13. Contact

Nicola Cullen at the Department for Business Innovation and Skills, (Tel: 020 7215 2290) or email, (nicola.cullen@bis.gsi.gov.uk) can answer any queries regarding the instrument.