BIS | Department for Business Innovation & Skills

GOVERNMENT RESPONSE

Employment tribunal claims and the Public Interest Disclosure Act

JANUARY 2010

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1. Introduction

Complaints can be made to an employment tribunal where claimants believe they have suffered a detriment at work or have been dismissed, for making a protected disclosure under the Public Interest Disclosure Act[a] (PIDA). For example, employees who are protected by the provisions may make a claim for unfair dismissal if they are dismissed for making a protected disclosure. Last year, employment tribunals received some 1,700 claims involving (PIDA) allegations.

The employment tribunal hears the employment claim and makes a judgment according to the facts of the case. The employment tribunal does not make any assessment or take any action on the issue of the underlying PIDA allegation, which could relate to serious fraud, health and safety issues, financial irregularities, care home standards, etc. The Government does not believe that employment tribunals are best placed to do so as their expertise and knowledge is about employment rights. The relevant regulator does, however, have the necessary knowledge and expertise.

The Government committed to explore whether there was a practical process to allow the substance of allegations giving rise to PIDA claims to employment tribunals to be forwarded to the relevant regulator so that the allegations of the underlying issue can be investigated where appropriate by the regulator. This means that the regulator can take action where appropriate in accordance with their own practices and procedures. It would then be a matter for the regulator to address instances of unlawful, fraudulent or dangerous behaviour. Proposals for such a process were contained in the consultation published on 3 July 2009.

[a] The Public Interest Disclosure Act 1998 (PIDA) received Royal Assent in July 1998 and came into force on 2 July 1999. The Act inserted provisions into the Employment Rights Act 1996 to give protection to 'whistleblowers' who raise concerns, by making a protected disclosure, about serious fraud or malpractice at their place of work against victimisation or dismissal, provided they have acted in a responsible way in dealing with their concerns. The provisions allow an exception to an employee's normal contractual duty of confidentiality. Qualifying disclosures can cover: criminal offences; failure to comply with legal obligations; miscarriages of justice; health and safety; and environmental risks. Protection applies if the qualifying disclosure is made in good faith to the employer; in certain cases to a government minister; or to a person prescribed by the Secretary of State (called a 'relevant regulator' in this Consultation). In limited circumstances, 'whistleblowers' may be able to make a disclosure to someone who is not prescribed.
www.opsi.gov.uk/acts/acts1998/ukpga_19980023_en_1 For further information about PIDA and whistleblowing, please refer to
http://www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/Whistleblowinginthework place/index.htm

The consultation closed on 2 October 2009. The Government received some 40 responses and is grateful to everyone who took the time and trouble to comment. These responses came from a broad spectrum of interests ranging from individuals and small business to charities and large business, as shown in the table below.

Respondent	Response per cent
Business representative	21
Charity or social enterprise	8
Individual	8
Large business (over 250 staff)	5
Legal	11
Local government	5
Other	21
Prescribed person	8
Small business (10 to 49 staff)	2
Trade union or staff association	11

The detailed analysis of the comments received and how the Government intends to respond to them are set out in the following sections of this document.

2. Proposed process

Our proposed process is to allow employment tribunals to send copies of the employment tribunal claim form (ET1 claim form), or extracts from it (for example the ET1 claim form may have lots of other information not relevant to the underlying PIDA allegation) directly to the relevant regulator. The regulator would then assess the information and investigate if appropriate as part of their normal regulatory duties, procedures and processes. Only those claims accepted by the employment tribunal where PIDA is identified as a jurisdiction would be subject to this process. The relevant regulator would be identified from the list of prescribed persons[b] under the PIDA legislation.

This process imposes no additional burden or delay on either the claimant or respondent in dealing with the employment tribunal claim and only minimal additional administrative burden for the Tribunals Service. Nor will it involve any unsubstantiated allegations being put in the public domain by the employment tribunal, with any information only being shared by the Tribunals Service with the relevant regulator.

The consultation asked consultees whether they agreed with the proposed process.

Overview

The majority (61%) of respondents support the proposed approach. For example Public Concern at Work (PCaW) welcomes the proposals:

"…as a means of strengthening regulatory oversight and ensuring that important public interest issues are not buried in the settlement of employment tribunal claims under the Public Interest Disclosure Act. If implemented, it will help regulators to gather critical information, inform and prompt regulatory responses and assist regulators to discharge their regulatory functions. It should also provide an incentive for employers to address concerns about wrongdoing quickly, fairly and effectively, knowing they may have to account for their actions to a regulator."

Similarly, the NASUWT said:

"…there is a clear public need for transparency in relation to claims involving public interest disclosures and, therefore, welcomes the proposals in the consultation where they act as a means of increasing regulatory oversight in this area. The Union believes that the mechanisms proposed will go some way to address wrong doing currently 'hushed up' by settlement in 70% of public interest disclosure cases, whilst at the same time giving organisations further encouragement to address the underlying wrongdoing…"

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b

www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/Whistleblowingintheworkplace/DG_175821?IdcService=GET_FILE&dID=195409&Rendition=Web

Another respondent said:
"Seems a perfectly reasonable and carefully explored way to proceed with this difficult topic".

Some respondents also made additional suggestions including an option for confidentiality; whether employment tribunals should themselves become a "prescribed regulator"; different points of referral during the claim process; and writing to both the claimant and respondent, which we consider below.

Several other respondents supported the intention that, in appropriate cases, details about PIDA claims should be passed to the relevant regulator, but suggested slightly different processes.

Those respondents not in favour of the proposed approach questioned whether any additional process is needed, and raised concerns about additional administrative burden and litigation, and the potential impact on respondents, which we also consider below.

Views of respondents

Option for claimant confidentiality

Whilst recognising that openness is the ideal, three respondents including the Law Society and the TUC suggested that an option of confidentiality should be available to the claimant in order to protect the claimant's position if, for example, an out of court settlement is contemplated or where it may deter the claimant giving permission in the first place.

We agree that there should continue to be an option of confidentiality and propose that the guidance which accompanies the ET1 claim form should make it clear that the claimant can go direct to the regulator, as now, if they prefer. This will also reassure claimants that withholding consent, and/or going direct to the regulator, will have no bearing by the Tribunals Service on the handling and consideration of the employment tribunal claim. To ensure claimants have access to the advice and guidance they need on PIDA, the Tribunals Service also propose to add references in the employment tribunal claim form guidance to PIDA guidance already available for example on Business Link and Directgov websites.

Employment tribunals should become 'prescribed regulators'

Two respondents, the Law Society and Thompsons, questioned whether employment tribunals should become 'prescribed regulators' so that the claimant retains their PIDA rights if their employer, or a future employer, takes further action against the individual as a result of the regulator receiving the information. However, this does not sit well with the existing legislation as it could suggest employment tribunals are a regulatory body for these purposes, which they are not. The ET claim form guidance will make it clear that by ticking the request box, the individual is asking that the Tribunals Service forward the details. This means that the Tribunals Service is simply forwarding

the information on behalf of the individual and as such we consider that the worker retains their PIDA rights in this situation. We do not consider it necessary, therefore, for employment tribunals to become 'prescribed persons'.

The TUC suggested amending the PIDA legislation to cover the possibility of further detriment or victimisation but, for the reasons given above, we do not consider this is necessary.

Point of referral to regulator

Several respondents suggested alternative points in the employment claim process at which information could be sent to the regulator e.g. when the ET3 form was available; when the case had been heard and proceedings closed; or when the case is settled. It was suggested that using these alternative points in the process might make it easier for the Tribunals Service to identify the relevant regulator and be able to provide the regulator with more information.

Some suggestions included only allowing allegations to be passed to regulators if there is a finding of PIDA detriment or unfair dismissal.

However, and as several respondents pointed out, this could cause considerable delay and without necessarily providing any further relevant information. Furthermore, it is the employment rights case that is being assessed by the employment tribunal and not the underlying PIDA allegation.

Using the acceptance of an ET claim as the point at which information is provided to the regulator allows details to be transferred by the Tribunals Service with the minimum of delay and administrative burden. It will be for the regulator to consider whether the information provided merits further consideration and they will then seek further information directly from the parties concerned where appropriate. It is not intended that the Tribunals Service collate detailed information about the underlying PIDA allegation or investigate the underlying allegation. We believe that there will only be a small number of cases where the relevant regulator cannot be identified from the ET1.

CBI suggests referrals should not be made where there is a formal hearing as the details of the case, to some extent, will be in the public domain. However, there is no current mechanism for the judge or the Tribunals Service to notify the regulator of the case details. Some respondents, including CBI and EEF, also suggested that it should be the judge rather than administrative staff who address whether to send information. Again, this would cause considerable delay and in any event, the judge is not assessing the underlying PIDA allegation, only the employment rights case, as explained previously.

Writing to claimants and respondents

Several respondents, including Prospect and Barnardos, suggested writing to the claimant and respondent to confirm that the information has been sent and to whom. We agree that this is desirable as part of an open and transparent

process and to ensure there are no misunderstandings about when an ET1, or extracts from it, has been sent and to whom.

Additional administrative burdens and litigation

Some respondents raised concerns that the proposed process may lead to additional litigation and/or significant administrative burdens for the Tribunals Service, for example delays in processing claims whilst information is extracted and the regulator identified; case management delays if the regulator seeks a stay of the employment tribunal claim; satellite litigation due to disclosure of applications, and more appeals to the Employment Appeal Tribunal (EAT).

However, we consider that none of these issues arise simply as a consequence of the Tribunals Service forwarding the ET1 or extracts from it. It does not change the position that claimants can already provide information to a regulator whilst making an employment tribunal claim, but it may make claimants address the question of whether to send information to a regulator where they might otherwise not have done so.

Furthermore, for example, whilst it may theoretically be possible for a regulator to request a stay, we do not believe there is a reason for the regulator to do so as the regulator is investigating the underlying PIDA allegation and not the employment rights claim, and so we do not believe that this will happen in practice.

The Tribunals Service intend setting up a centralised process whereby copies of the ET1 forms subject to the new policy are sent to a central processing point to identify the regulator, send on the information and issue letters to the claimant and respondent. This means there will be no impact on handling of the employment tribunal claim itself, which will continue to be dealt with as usual by the relevant employment tribunal office, while risks of delays in sending information to the regulator; information being sent to the wrong regulator (or not at all), or sending irrelevant information, will be minimised.

Impact on employers

One respondent was concerned that an employer may have to defend two processes at the same time and the ELA were concerned that the process might give improper bargaining power to the claimant. However, both of these situations can already arise as a claimant can send information directly to a regulator; the new policy does not change that position in principle although, in practice, more cases may be referred to the regulators than might otherwise have been the case as the claimants can trigger referral through the ET process rather than having to take separate action.

The British Retail Consortium thought many claimants include PIDA allegations that are unfounded/malicious/vexatious and that these spurious allegations would be forwarded to the regulator. We have no evidence to support these concerns but do not consider this to be a significant issue in any event as the regulator will assess the information as part of their normal regulatory duties and procedures and investigate only if appropriate.

No need for change

CBI and another respondent thought that the current arrangements are sufficient whereby the claimant can go direct to the regulator or be directed to do so without involving the Tribunals Service. However, we consider that, in practice, the claimant may not have thought about sending information to a regulator without the process now being proposed. Furthermore, arrangements such as the employment tribunal sending a leaflet to the claimant will not be sufficient for the claimant to forward details themselves, at a time when they are focused on their employment tribunal claim.

Other changes

Two respondents raised issues about the primary PIDA legislation. EEF would like the Government to reverse in legislation an EAT finding (Parkins v Sodexho [2002] IRLR 109) which has been interpreted as broadening the scope for claims to be brought under PIDA by allowing for cases which relate solely to breaches of an individual contract of employment, without necessarily raising issues of wider public interest.

Another respondent proposed setting up a new investigative body as a public interest champion.

Whilst we are grateful for these comments, both proposals would require changes to primary legislation and the Government currently has no plans to make such changes. PIDA is designed to provide protection against dismissal or detrimental treatment for workplace 'whistleblowers'. It is an employment-protection measure that we believe has been successful.

PCaW, in addition to supporting the proposed process, suggested re-establishing an open register of PIDA claims. Government has consulted on this previously and has no plans to change the current arrangements whereby employment tribunal judgments (except in certain sensitive cases, for example those involving matters of national security) are entered on the Register, but details of claimants and respondents are not entered in cases where no judgment has been reached.

Government response

Taking into account all the consultation responses, we consider that the preferred option outlined in the consultation continues to offer the best practical solution without imposing undue burdens on the employers, claimant or the Tribunals Service.

In addition the guidance which accompanies the ET1 claim form will make it clear what happens if a claimant with an accepted PIDA claim ticks the consent box and will explain that a claimant can go direct to the regulator if they prefer e.g. for reasons of confidentiality. The ET claim form guidance will also provide links to sources of PIDA guidance such as the Business Link and Directgov websites. In those cases where a claimant has consented to their information being provided to a regulator, the Tribunals Service will write to

the claimant and respondent to ensure there are no misunderstandings about when an ET1 or extracts from it has been sent and to whom.

3. Express consent

We believe it is important that the employment tribunal claimant making a PIDA allegation is aware that their ET1 claim form, or extracts from it, can be passed to the relevant regulator, and that they are happy for this to be done. We therefore proposed that express consent be obtained, by the claimant ticking a 'yes' box on the ET1 claim form to show that they are requesting the information be sent.

If the 'yes' box is not ticked then the information will not be sent. Thus any sharing of employment tribunal claim information will take place only with the consent of the individual claimant concerned. This is in line with data protection principles and means that information will not be passed to the regulator where the employment tribunal claimant does not wish that to happen. This may be for a variety of reasons, for example the claimant may have already informed the regulator and so there is no need for any further action.

Our consultation asked whether consultees agreed with obtaining the express consent of the claimant.

Overview

More respondents (53%) were in favour of express consent than against. Furthermore, of those saying no to express consent, many still wanted to see consent obtained but suggested opting out rather than opting in so as to potentially maximise the number of cases referred to regulators. Some respondents suggested relying on Data Protection Act (DPA) exemptions rather than obtaining consent.

Views of respondents

Opting out

Several respondents suggested allowing the claimant to opt out rather than opt in i.e. consent should be on the basis that the claimant ticks the box if they do not want their claim form shared with the regulator. It was thought that this would help maximise opportunities for providing regulators with information.

Use of Data Protection Act (DPA) exemptions

Some respondents, such as Barnardos, PCaW, ELA and NASUWT, who did not agree that either express or implied consent was required, suggested relying on exemptions in the DPA i.e. section 35 whereby personal data is exempt from the non-disclosure provisions where the disclosure is required by or under any enactment, by any rule of law, or by the order of a court. However, this would mean that the Secretary to the employment tribunal would need to be compelled by the ET Rules to send the ET1 to the regulator. Our view is that the Secretary should have discretion as to whether to send the information or not e.g. this discretion would be needed during the initial

period when not all regulators might be covered as part of the phased implementation, or where information has already been sent to the regulator.

One respondent commented that as the claimant has already brought a claim to a public court, the disclosure is already public knowledge. However, the Tribunals Service will be passing details to the regulators prior to information being in the public domain i.e. before the case is listed for hearing.

Consent box on ET claim form

Three respondents (CBI, PCaW, and ELA) made suggestions to the wording proposed for the consent box on the ET claim form to avoid any misunderstandings and to make it clear that a protected disclosure has been made. We have revised the text which now reads:

'If your claim consists of, or includes, a claim that you have made a protected disclosure under the Employment Rights Act 1996, (otherwise known as a whistleblowing claim), please tick the box below if you wish a copy of this form, or information from it, to be forwarded on your behalf to a relevant regulator (known as a 'prescribed person' under the relevant legislation) by the Tribunals Service.

Other suggestions made by respondents such as pointing out that a claimant should not consent if they have already contacted a regulator and recommending that the claimant seeks advice and sources of advice, etc, can be included in the accompanying ET1 guidance.

Protecting third parties

Some respondents including the CBI and ELA raised concerns over the provision of third party information to the regulator. We agree that it is important that any such information is properly handled. The Tribunals Service will ensure that they comply with the DPA and will consider what DPA exemptions apply in cases where respondent/third party information relates to an individual. It may well be that in certain cases there will be a need to redact or not forward certain pieces of information.

Other

The TUC pointed out that the DPA declaration on page 6 of the form relating to where copies of the form are currently sent should be amended. We agree this is a sensible suggestion and will arrange for the necessary change.

The CBI suggested as well as obtaining express consent, claimants should be warned that they may open themselves up to a claim for defamation. We do not consider this is necessary because individuals are protected from defamation claims in certain circumstances by 'privilege'. "Absolute privilege" applies to documents brought into existence for the purpose of the tribunal proceedings, and means neither the claimant or respondent can be sued for defamation in relation to such information. If absolute privilege does not apply to a disclosure, "qualified privilege" provides the claimant (or respondent) with a defence unless they disclosed the information maliciously.

Government response

We believe seeking express consent is the safest option as it avoids any subsequent argument or misunderstanding that the claimant did not want their information forwarded to the relevant regulator. The wording of the consent box is specifically drafted to emphasise that the onus is on the claimant to say that they want the form sent, rather than simply agreeing that the Tribunals Service can send it. The wording of the DPA declaration on page 6 of the form will also be amended. The Tribunals Service will, of course, ensure that they comply with the DPA and will consider what DPA exemptions apply in cases where respondent/third party information relates to an individual.

4. Amending the employment tribunal rules

Employment tribunals will need a legal power to be able to send a copy of the ET1 claim form, or relevant information from it, to another body. Section 7(5) of the Employment Tribunals Act 1996 specifically provides for Rules to be made in relation to the transmission of documents. Secondary legislation will therefore be required to provide the necessary amendment to the employment tribunal rules.

Our consultation asked consultees if they were content with the Statutory Instrument (S.I.) as drafted.

Overview

Half of respondents answered no but with most seeking amendments to cover the process changes they had proposed in question 1 and to cover opting out rather than opting in for consent in question 2. Other issues raised are considered below.

Views of respondents

Clause 2(2) (3) b

One respondent thought that proposed clause 2(2) (3) b could give rise to "perfecting an imperfect claim". In ELA's view, by the claimant ticking a box when a whistleblowing complaint has been made, it could emerge as a short-hand method of allowing an incompletely pleaded claim to successfully become a whistleblowing claim. Conversely, if the claimant does not tick the box at 5.3 of the proposed new claim form, a respondent may seek to argue that the claimant had not intended to bring a whistleblowing claim. This is certainly not the Government's intention and we do not believe a tribunal would place weight on the fact the claimant had ticked the box when deciding whether the relevant provisions of the ERA inserted by PIDA apply. As in other cases, the tribunal would look at the facts of the case in making a determination.

"Good faith"

Two respondents, CBI and Thompsons, thought that express provision is needed regarding the "good faith" requirement of ERA 1996. However, in our proposals the Secretary is not required to examine whether the claimant is acting on good faith, they need only to be satisfied that the claimant is alleging they have made a protected disclosure.

Sensitive cases

CBI pointed out that protection is needed for sensitive cases such as national security, allegations of sexual misconduct, etc. We agree with this and the legislative changes proposed enable the Secretary to forward only relevant information, rather than the entire ET1. The Tribunals Service will develop

internal procedures in relation to sensitive cases; for example there may need to be a specific letter to the regulator flagging the sensitive nature of a case.

Obligations on regulators

One respondent suggested there should be an obligation on the regulator to investigate the referral, and an obligation to make a report upon it, for monitoring purposes. Our proposals do not affect the way in which regulators perform their duty, nor is it our intention to do so; it will be for the regulators to consider whether the information provided justifies further investigation in accordance with their own procedures.

List of regulators

One respondent thought that the creation of two lists of regulators is confusing. We have considered this but there are legal difficulties which support the approach we are taking. This is because if this ET Rules S.I. simply referred to the 1999 prescribed persons Order[c] it would apply only to the list of regulators as at the date this SI came into force, and would not reflect any subsequent changes to the 1999 prescribed persons Order. Thompsons indicated that the Commission for Healthcare Audit and Inspection and the Commission for Social Care Inspection are missing. However, they are not covered separately in the 1999 prescribed persons Order anymore and the relevant entry is Care Quality Commission. The ET Rules S.I. will also be updated to include new prescribed persons as and when new regulators are added to the 1999 prescribed persons Order. Some respondents suggested adding other regulators who are not prescribed persons and another suggested extending to public companies (PLCs) and private companies. Our policy is to cover prescribed persons in respect of PIDA, not all regulators or other organisations.

Detailed procedures

Some respondents suggested that the S.I. should include more detail on when information should be sent by the Secretary, timescales, etc. However, we believe it is more effective for the S.I. not to be so prescriptive, thus enabling administrative details to be determined by the Tribunals Service in the way that best meets operational requirements. It is not a legal requirement to include such details.

Government response

An updated version of the draft Statutory Instrument is at Annex A: Draft Statutory Instrument This includes changes to the Schedule to incorporate a number of regulators who have recently been prescribed for the purposes of PIDA legislation.

[c] Public Interest Disclosure (Prescribed Persons) Order 1999 S.I. 1999/1549

5. Phased implementation

As detailed previously, it is proposed that the relevant regulators for the purpose of sharing employment tribunal claim information are those on the list of 'prescribed persons' under the PIDA legislation. Based on a sampling exercise, we believe that the majority of PIDA claims are likely to be the responsibility of a relatively small number of these, namely Local Authorities; the Health and Safety Executive; the Care Quality Commission; Companies Investigation Branch; the Financial Services Authority, HM Revenue and Customs and the Serious Fraud Office. We therefore suggested that the Tribunals Service introduce a phased implementation of the new process to these regulators initially.

Our consultation asked consultees whether they agreed with a phased implementation.

Overview

A majority (55%) agreed with a phased implementation, with comments that it would help iron out any initial problems, be useful to obtain feedback from regulators and provide some assistance to employers. The reasons given by respondents for not having a phased implementation are mostly around there being no need as there are not likely to be a vast number of cases and so unlikely to save significant costs. Some respondents commented that a phased implementation would be more likely to cause confusion inside and outside the Tribunals Service and that it would be wrong to elevate some regulators to be more important than others. One respondent suggested implementation should be retrospective to the date the original PIDA legislation was brought in.

Government response

We note the majority supported a phased implementation but understand the arguments for not doing so. Bearing in mind the centralised process being proposed by the Tribunals Service, and the relatively small numbers of claims likely to be involved, we will explore whether it is possible for the Tribunals Service to deal with all accepted PIDA claims from the outset.

6. General

Having looked at specific aspects of the proposed process, we also welcomed any general comments that consultees might have.

Additional points raised were about whether there is a need to amend the ET1 form to say if the claim relates to events that happened on or after 6 April 2010. This is not necessary as there will be no transitional requirements; the new policy will simply apply to any revised version of the ET1 with an accepted PIDA claim received by the Tribunals Service on or after commencement in April 2010.

Another respondent commented about resource impact and additional funding requirements for regulators. However, it is for the regulators themselves to decide whether and what action they wish to take in accordance with their own practices and procedures. In practical terms, given the relatively small number of employment tribunal PIDA cases, there are not likely to be many additional cases for each regulator each year.

7. Summary of consultation questions

In this Consultation, the Government invited responses to the following questions:

Q1. Do you agree with the proposed process? Yes/No – if no, please explain why and describe any other better options.

Q2. Do you agree with obtaining express consent of the claimant? Yes/No – if no, please explain why.

Q3. Are you content with the Statutory Instrument as drafted? Yes/No – if no, please explain why and detail the amendments you would wish to see.

Q4. Do you agree with a phased implementation? Yes/No – if no, please give your reasons.

Q5. Do you have any further comments on what is proposed? Yes/No – if yes, please detail below.

8. Next steps

The proposals set out will be taken forward under existing powers to make secondary legislation and we would intend this to come into effect from April 2010 subject to Parliamentary approval. The necessary secondary legislative instrument will be laid before Parliament shortly.

Annex A: Draft Statutory Instrument

STATUTORY INSTRUMENTS

2010 No.

EMPLOYMENT TRIBUNALS

Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2010

Made - - - -	***
Laid before Parliament	***
Coming into force - -	*6th April 2010*

The Secretary of State, in exercise of the powers conferred by sections 7(1) and (5) and 41(4) of the Employment Tribunals Act 1996([d]), and after consultation with the Administrative Justice and Tribunals Council, and that Council having consulted with the Scottish Committee and the Welsh Committee, in accordance with paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007([e]), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2010 and shall come into force on 6th April 2010.

Amendment of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004

2.—a. Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004([f]) is amended as follows.

(1) At the end of rule 2 insert—

"(3) If the claim or part of it is accepted, the Secretary may, if the Secretary considers it appropriate, send a copy of the claim or part of it, to a regulator where the claimant (C) has—

(a) consented; and

([d]) 1996 c. 17; by virtue of section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) industrial tribunals were renamed employment tribunals and references to "industrial tribunal" and "industrial tribunals" in any enactment were substituted with "employment tribunal" and "employment tribunals". Section 7 was interpreted by section 239(4) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), as inserted by paragraph 1 of Schedule 5 to the Employment Relations Act 1999 (c. 26).
([e]) 2007 c. 15.
([f]) S.I. 2004/1861, as amended by S.I. 2004/2351, 2005/435, 2005/1865, 2008/2683 and 2008/3240.

(b) alleged in the claim that C has made a protected disclosure.

(4) For the purposes of paragraph (3) a regulator means a person listed in the Annex to this Schedule; and a protected disclosure has the meaning given to that expression by section 43A of the 1996 Act([g])".

(2) At the end of Rule 61 insert—

"ANNEX

LIST OF REGULATORS

Accounts Commission for Scotland and auditors appointed by the Commission to audit the accounts of local government bodies.

Audit Commission for England and Wales and auditors appointed by the Commission to audit the accounts of local government, and health service, bodies.

Certification Officer.

Charity Commissioners for England and Wales.

The Scottish Ministers.

Chief Executive of the Criminal Cases Review Commission.

Chief Executive of the Scottish Criminal Cases Review Commission.

Civil Aviation Authority.

Office of Communications.

The competent authority under Part IV of the Financial Services and Markets Act 2000([h]).

Commissioners for Her Majesty's Revenue and Customs.

Comptroller and Auditor General of the National Audit Office.

Auditor General for Wales.

Auditor General for Scotland and persons appointed by that person (or on behalf of that person) under the Public Finance and Accountability (Scotland) Act 2000([i]) to act as auditors or examiners for the purposes of sections 21 to 24 of that Act.

Audit Scotland.

Gas and Electricity Markets Authority.

Water Services Regulation Authority.

Convener of the Water Customer Consultation Panels and any member of those Panels.

Water Industry Commission for Scotland.

Water Industry Commissioner for Scotland.

Director of the Serious Fraud Office.

([g]) 1996 c. 18. Section 43A was inserted by section 1 of the Public Interest Disclosure Act 1998 c. 23.

([h]) 2000 c. 8. There are amendments to this Act which are not relevant to these Regulations.

([i]) 2000 (asp 1). Section 21(5) was amended by S.I. 2000/948. There are other amendments to this Act which are not relevant to these Regulations.

Lord Advocate, Scotland.

Environment Agency.

Scottish Environment Protection Agency.

Food Standards Agency.

Financial Services Authority.

The Financial Reporting Council Limited and its operating bodies the Professional Oversight Board, the Financial Reporting Review Panel and the Accountancy and Actuarial Discipline Board.

General Social Care Council.

Care Council for Wales.

Scottish Social Services Council.

Children's Commissioner.

Commissioner for Children and Young People in Scotland.

Children's Commissioner for Wales.

Health and Safety Executive.

Regulator of Social Housing.

Local authorities which are responsible for the enforcement of health and safety legislation.

Independent Police Complaints Commission.

Information Commissioner.

Scottish Information Commissioner.

Care Quality Commission.

The Independent Regulator of NHS Foundation Trusts.

National Assembly for Wales.

Scottish Commission for the Regulation of Care.

Pensions Regulator.

Office of Fair Trading.

Office of Rail Regulation.

Standards Board for England.

Local Commissioner in Wales.

Standards Commission for Scotland and the Chief Investigating Officer.

Treasury.

Secretary of State for Business, Innovation and Skills.

Secretary of State for Transport.

Local authorities which are responsible for the enforcement of consumer protection legislation.

Local authorities which are responsible for the enforcement of food standards.

A person (regulator A) carrying out functions, by virtue of legislation, relating to matters in respect of which another regulator (regulator B), who is listed in this Schedule and was previously responsible for carrying out the same or substantially similar functions and has ceased to be so responsible.”.

Transitional provisions

3. Regulation 2 shall not have effect where the claim is presented to an Employment Tribunal Office on or before 5th April 2010.

Name
Minister of State (Business)
Date Department for Business, Innovation and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations come into force on 6th April 2010 and amend the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (S.I. 2004/1861) (as amended by S.I. 2004/2351, 2005/435, 2005/1865, 2008/2683 and 2008/3240).

These Regulations make provision to enable the Tribunals Service to forward a claim to a regulator listed in the new Annex to Schedule 1 in certain circumstances. The Annex reflects the list of prescribed persons listed in the Public Interest Disclosure (Prescribed Persons) Order 1999 Order (S.I. 1999/1549), as amended. The Employment Rights Act 1996 (c. 18) provides a worker with the right not to suffer a detriment, or be dismissed, as a result of making a qualifying disclosure to a prescribed person in accordance with the requirements of that Act. A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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Annex B: List of respondents[j]

Administrative Justice and Tribunals Council
J Airey
Audit Commission
Barnardos
BP Plc
British Retail Consortium
Care Quality Commission
Confederation of British Industry
Council of Tribunal Members Association
Doncaster Chamber of Commerce
Engineering Employers Federation
Employment Lawyers Association
Professor Graeber
J Laddie
Law Society
Professor Lewis
Local Government Employers
Maidstone Borough Council
NASUWT (National Association of Schoolmasters Union of Women Teachers)
The Newspaper Society
Office of the Scottish Charity Regulator
Photogenic
Prospect
Public Concern at Work
Scottish Commission for the Regulation of Care
Scottish Environment Protection Agency
South East Employers
Thompsons Solicitors
TSSA
Trades Union Congress

[j] Excluding those respondents who asked for their response to be treated as confidential

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URN 10/505