These notes refer to the Enterprise and Regulatory Reform Act 2013 (c.24) which received Royal Assent on 25 April 2013

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Employment

Summary and Background

55. This Part of the Act makes provision to facilitate agreement of employment disputes without the need for determination at an employment tribunal; to introduce a power for an employment tribunal to impose a financial penalty on an employer found to have breached an individual's rights in order to encourage greater compliance with employment obligations; to introduce a power to amend the definition of worker for the purposes of whistleblowing, and extend the scope of protections available for whistleblowing; and to address unintended consequences arising from previous legislation.

Conciliation

Summary and Background

56. The Employment Tribunals Act 1996 ("ETA 1996") provides a discretionary power for the Advisory, Conciliation and Arbitration Service ("ACAS"), to provide pre-claim conciliation to parties in an employment dispute that could be the subject of tribunal proceedings where either party requests it and where the conciliator believes that there is a reasonable prospect of a settlement being reached. In the main, matters are referred to pre-claim conciliation via the ACAS telephone helpline, e.g. where the operator believes that a caller has a justifiable case and is likely to make a claim to an employment tribunal, the operator can offer the caller the opportunity to go to pre-claim conciliation.

57. At present there is no obligation on prospective claimants to contact ACAS and/or consider conciliation at any stage and an employment tribunal cannot refuse to accept a claim on the basis that a claimant has not contacted ACAS. In addition, there is no duty on ACAS to provide conciliation before a claim has been filed at an employment tribunal – there is only a discretionary power.

58. Of all the claims lodged at an employment tribunal, less than a fifth of claimants will have contacted ACAS for advice before submitting their claim. As a result, the opportunity for ACAS to offer pre-claim conciliation is limited. Section 7 therefore requires individuals to contact ACAS with details of their claim and obtain written confirmation that pre-claim conciliation has been declined or unsuccessful before they can present a claim to an employment tribunal.

Section 7: Conciliation before institution of proceedings

59. This section inserts new sections 18A and 18B into the ETA 1996.

60. Section 18A provides that, other than in certain circumstances (subsection (7)), a prospective claimant must first have submitted the details of their claim to ACAS before they can lodge the claim at an employment tribunal. The kinds of proceedings to which this requirement applies are set out in section 18(1) of the ETA 1996, and are referred to as "relevant proceedings" (see the amendment made by paragraph 5(3) of Schedule 1 to the Act). Under subsection (3) of section 18A, an ACAS conciliation officer will be required to try and achieve a settlement to the dispute, within a prescribed period, so that employment tribunal proceedings can be avoided. Subsection (4) of section 18A provides that, if during that time the conciliation officer concludes that a settlement is not possible, or the period expires with no settlement having been reached, the officer must issue a certificate to the prospective claimant and a claimant will not be able to lodge a claim with an employment tribunal without such a certificate (subsection (8)). The conciliation officer will, however, be able to continue to try and achieve a settlement to the dispute after the prescribed period has expired.

61. Subsection (9) of section 18A provides that, where prospective claimants are no longer employed by the employer, the conciliation officer may attempt to promote either the reinstatement or re-engagement of the individual or, if the individual does not want to be reinstated or re-engaged, or this is not practicable, attempt to achieve an agreement between the parties on the level of compensation to be paid by the employer.

62. Subsections (11) and (12) of section 18A give the Secretary of State the power to make any employment tribunal procedure regulations which are necessary for the operation of the early conciliation process.

63. Section 18B places an additional duty on ACAS to promote settlement in certain cases in which the duty under section 18A does not apply. Subsection (1) of section 18B requires an ACAS conciliation officer to try and achieve a settlement in a dispute where a person contacts ACAS requesting the services of a conciliation officer in a matter that might otherwise result in employment tribunal proceedings against them even though the prospective claimant has not contacted ACAS. Subsection (2) of section 18B requires the conciliation officer to try and achieve a settlement in a dispute where the prospective claimant contacts them, even where that person is exempted by virtue of section 18A(7) from the requirement to provide information to ACAS.

64. Currently, section 18(3) of the ETA 1996 provides a discretionary power for ACAS to provide pre-claim conciliation to parties in an employment dispute, which could be the subject of tribunal proceedings, where either party requests it and where the conciliator believes that there is a reasonable prospect of a settlement being reached.

Section 8: Extension of limitation periods to allow for conciliation

65. This section gives effect to Schedule 2, which sets out how the relevant time limits for bringing a claim will be extended where necessary to provide sufficient time for early conciliation to take place and to ensure that the claimant is not disadvantaged.

Section 9: Extended power to define "relevant proceedings" for conciliation purposes

66. This section amends section 18 of the ETA 1996 to provide that orders made by the Secretary of State and Lord Chancellor may add or remove proceedings from the list in section 18(1) of the ETA 1996. Orders which add proceedings to the list may also amend the applicable time limit in any relevant enactment. Where the order removes proceedings from the list, consequential changes can be made to any extension to the time limit which is provided in any relevant enactment.

Acas

Section 10: ACAS: prohibition on disclosure of information

67. This section introduces a provision into the Trade Union and Labour Relations (Consolidation) Act 1992 prohibiting ACAS, or those appointed by ACAS, from releasing information relating to a worker, employer of a worker, or a trade union, that they hold in the course of performing their functions. Subsection (2) specifies the circumstances in which the prohibition does not apply, for example if the disclosure is made for the purposes of a criminal investigation, or the disclosure is made in a way that means that no-one to whom the information relates can be identified. Subsection (4) makes a breach of the prohibition a criminal offence, punishable by a fine but, by virtue of subsection (5), any such proceedings in England and Wales can only be instituted with the consent of the Director of Public Prosecutions.

Procedure for deciding tribunal cases

Summary and Background

68. Section 4 of the ETA 1996 sets out the required composition of employment tribunals for the determination of claims and provides that any claim submitted to an employment tribunal that is not withdrawn or settled must be determined at a hearing by either a judge sitting alone or a judge and lay members. The need for parties to attend a hearing for simple or low value claims can often involve costs in excess of the value of the claim, and can involve parties waiting a number of weeks for the case to be heard.

69. At present, legal officers may be appointed in accordance with regulations under section 1(1) of the ETA 1996 and may do certain acts (see section 4(6B) of the ETA 1996), but may not determine proceedings unless the parties agree the terms of the determination or the claim is withdrawn.

70. Currently, section 28(2) of the ETA 1996 provides that proceedings before the Employment Appeal Tribunal shall be heard by a judge and either two or four appointed members, so that in either case there is an equal number of persons whose knowledge and experience of industrial relations is as a representative of (a) employers; and (b) workers. That general rule can be varied, with the consent of the parties, to allow a judge to sit with one or three members (section 28(3)). It can also be varied so that, on an appeal from an employment tribunal constituted by an Employment Judge sitting alone, a judge shall sit alone in the Employment Appeal Tribunal unless the judge directs that proceedings should be heard with members (section 28(4) and 28(4A)).

Section 11: Decisions by legal officers

71. This section amends section 4 of the ETA 1996 to provide that legal officers may make determinations of certain employment tribunal claims. Legal officers will be competent to make determinations where the parties consent in writing and the proceedings are of a type specified in an order made by the Secretary of State and the Lord Chancellor. Any such order will be subject to the affirmative resolution of Parliament.

72. Section 11 would allow employment tribunal claims to be determined by a legal officer without the need for a hearing, subject to the consent of both parties. Cases determined by a legal officer would have the same status as if they had been determined by a judge or a judge and lay members.

Section 12: Composition of Employment Appeal Tribunal

73. This section amends the statutory framework governing the composition of the Employment Appeal Tribunal.

74. *Subsection (2)* substitutes new subsections (2) to (7) for the current (2) to (4A) of section 28 of the ETA 1996. Under the new provisions, proceedings before the

Employment Appeal Tribunal are to be heard by a judge alone. However, a judge may direct that proceedings are to be heard by a judge and either two or four appointed members. In addition, a judge may, with the consent of the parties, direct that proceedings are to be heard by a judge and either one or three appointed members.

75. New subsection (5) of section 28 provides that the Lord Chancellor may by order specify that proceedings of a particular description must be heard by a judge and either two or four appointed members.

76. New subsection (6) of section 28 provides that where the judges is to sit with either two or four appointed members there shall be an equal number of worker and employer representative members.

77. *Subsection (4)* provides that any order made by the Lord Chancellor under the power inserted by subsection (2) must be subject to the affirmative resolution of Parliament.

78. *Subsection (5)* repeals paragraph 46 of Schedule 8 to the Tribunals Courts and Enforcement Act 2007; that paragraph made a previous amendment to section 28 of the ETA 1996.

Unfair Dismissal

Summary and Background

79. Employees who have a qualifying period of service of two years, or one year if service commenced before 6 April 2012, are eligible to file a claim if they believe they have been unfairly dismissed (section 94 of the Employment Rights Act 1996 ("ERA 1996")). Section 108(3) of the ERA 1996 lists types of claims for dismissal in which the requirement for an employee to have a qualifying period of employment does not apply; dismissals on the grounds of political opinion or affiliation are not included in that list.

80. The limit on the compensatory award for unfair dismissal has been subject to various changes since the introduction of the right to claim unfair dismissal in 1971. Most recently, the limit was subject to a 'one-off' increase from £12,000 to £50,000 in 1999. The limit has subsequently been linked to a formula that has meant that it has increased slightly in excess of Retail Price Index inflation and is currently £74,200.

81. Where an employer and employee are discussing ending the employment relationship under the terms of a settlement agreement, they can currently have these discussions on a confidential basis if the 'without prejudice' principle applies. The principle of without prejudice developed through case law and prevents written or oral statements which are made in a genuine attempt to settle an existing dispute from being submitted as evidence in court. If the without prejudice principle does apply, it means that a settlement offer and anything said during settlement negotiations cannot be submitted as evidence in a subsequent employment tribunal claim.

82. The without prejudice principle will not apply where there is no formal dispute between the employer and employee. So it will often not apply to a settlement offer, or negotiations about the offer, taking place before the employment relationship has ended. In such cases, the offer or negotiations can be submitted as evidence in a subsequent tribunal claim. The purpose of section 14 is to provide a means for employers and employees to discuss settlement before any dispute has actually arisen, with certainty that the offer and any discussions about it cannot be used as evidence against them in a subsequent unfair dismissal claim.

Section 13: Dismissal for political opinions: no qualifying period of employment

83. This section inserts a new subsection into section 108 of the ERA 1996. The effect of the new subsection is that the two year qualification period for employment will not apply where the reason (or principal reason) for dismissal is the employee's political opinions or affiliation. Dismissal for political opinions or affiliation will not, however, be an automatically unfair dismissal; where such proceedings are lodged with an employment

tribunal, the tribunal will still need to go on to consider reasonableness (section 98(4) of the ERA 1996).

Section 14: Confidentiality of negotiations before termination of employment

84. This section inserts a new section 111A into the ERA 1996. The aim is to facilitate the use of settlement agreements as a means of ending the employment relationship.

85. Subsection (1) of section 111A provides that an offer to terminate the employment relationship on agreed terms is not admissible as evidence in any subsequent unfair dismissal case. This applies to offers made by either the employer or employee. It applies to the offer itself and also to the content of any negotiations about the offer (see subsection (2)).

86. Subsection (3) of section 111A provides that the confidentiality provided by *subsection (1)* does not apply in cases where the employee claims to have been dismissed for an automatically unfair reason. The automatically unfair reasons for dismissal are set out in existing primary and secondary legislation and a number of the reasons are listed in sections 98B to 105 of the ERA 1996.

87. Subsection (4) of section 111A provides that where the employer or employee behaved improperly in making or negotiating the offer the tribunal may consider this as evidence in an unfair dismissal claim. This is intended to mirror the test of 'unambiguous impropriety' which has been established in case law as an exception to the common law principle of without prejudice. It is also expected that a statutory Code of Practice will be issued by ACAS giving guidance as what amounts to improper behaviour in this context.

88. Subsection (5) of section 111A provides that the offer of settlement is not admissible as evidence when the tribunal turns to deciding whether to award costs or expenses at the end of a case (costs are known in Scotland as expenses), unless the party which made the offer stated otherwise when doing so. So it will still be possible to make a settlement offer on the basis that it will be admissible when determining costs or expenses in any subsequent claim.

Section 15: Power by order to increase or decrease limit of compensatory award

89. This section confers a power on the Secretary of State to amend section 124 of the ERA 1996 to increase or decrease the limit of the compensatory award for unfair dismissal. Any new limit must be a set amount (*subsection (2)(a)*), or the lower of a set amount and a certain number of weeks' pay (*subsection (2)(b)*). Different amounts can be specified under subsection (2)(a) or (b)(i) for different kinds of employer; for example there could be a lower amount for small businesses. The power is subject to certain constraints and the affirmative resolution of Parliament.

90. The effect of *subsections (2), (4) and (5)* is that the limit cannot be decreased to less than the lower of median annual earnings (defined in *subsection (9)*) and the individual's annual earnings; and it cannot be increased to more than three times median annual earnings. The figure for median annual earnings will be taken from the Office of National Statistics' Annual Survey of Hours and Earnings publication; the Office of National Statistics is the executive office of the Statistics Board.

91. *Subsection (10)* amends section 34 of the Employment Relations Act 1999 ("ERe1A 1999") (the automatic indexation provision) to prevent section 124(1) of the ERA 1996 having to be amended twice in the same year.

Financial penalties

Summary and Background

92. Where an employment tribunal finds in favour of a claimant, it has the power to award various remedies. However, it currently has no power to penalise an employer for the

actual breach of employment law. In order to encourage employers to take appropriate steps to ensure that they meet their obligations in respect of their employees, and to reduce deliberate and repeated breaches of employment laws, employment tribunals will be given the discretion to impose a financial penalty on any respondent found to have breached the claimant's rights.

Section 16: Power of employment tribunal to impose financial penalty on employers etc

93. This section adds a new section 12A to the ETA 1996. Section 12A gives employment tribunals the discretion to impose a financial penalty on a respondent employer where there has been a breach of a worker's employment right(s) and the employment tribunal considers that, in the circumstances, the employer's behaviour in committing the breach had one or more aggravating features. Section 12A provides that a financial penalty can be imposed on the employer irrespective of the nature of the remedy awarded to the claimant.

94. Subsection (2) of section 12A requires the tribunal to have regard to the employer's ability to pay when deciding whether to order an employer to pay a penalty under this section and, subject to subsections (3) to (7), in deciding the amount of the penalty. An employment tribunal may, for example, conclude that where the employer is a business in formal insolvency proceedings the imposition of a penalty is inappropriate. The tribunal may decide that, in the circumstances and considering that the imposition of a penalty would have the effect of reducing the monies available to satisfy the creditors or would adversely affect the sale of the business as a going concern, a penalty should not be imposed.

95. If the employment tribunal makes a non-financial award (e.g. an order for reinstatement) then any financial penalty imposed must be at least £100 and cannot exceed £5,000 (subsection (3)). If the remedy awarded by the employment tribunal to the claimant is a financial award (e.g. compensation) then any financial penalty imposed must be set at 50% of the amount of the claimant's financial award subject to a minimum of £100 and a maximum of £5,000 (subsections (4) and (5)).

96. Subsection (7) of section 12A will apply where the employment tribunal is dealing with claims brought by different workers against the same employer together, i.e. in what are widely known by employment tribunal users as 'multiple claims'. Where a financial award is made in such cases, the employment tribunal will have a discretion as to the amount of the financial penalty which it can impose in each claim, subject to a total minimum payment of £100 and to a maximum of £5,000 and 50% of the amount of the award for each individual claim.

97. Where a single act by an employer leads to multiple claims by a worker (for example, where a dismissal leads to claims for unfair dismissal and holiday pay), subsection (8) of section 12A provides that only one financial penalty can be imposed by the employment tribunal.

98. The effect of subsection (9) of section 12A is that when *subsections (5) and (7)* refer to "50% of the amount of the award" this does not include any additional compensation awarded for a failure to comply with an order or recommendation of the tribunal.

99. The Secretary of State has the power to change, by regulations, the figures set out in subsections (3), (5), (7) and (10) (subsection (12)). If the employer complies with the order to pay a financial penalty no later than 21 days after the date that written notice of the decision is sent by the employment tribunal to the employer, the amount of the financial penalty is reduced by 50% (subsection (10)). The financial penalty shall be paid into the Consolidated Fund (subsection (13)).

100. Section 12A does not prescribe the features which employment tribunals should take into consideration when determining whether a breach had aggravating features; this

is for the employment tribunal to decide, taking into account any factors which it considers relevant, including the circumstances of the case and the employer's particular circumstances. The employment tribunal should only take into account information of which it has become aware during its consideration of the claim. A non-exhaustive list of factors which an employment tribunal may consider in deciding whether to impose a financial penalty under this section could include the size of the employer; the duration of the breach of the employment right; or the behaviour of the employer and of the employee. The concept of aggravating features in section 12A is not the same as the existing regime of aggravated damages in discrimination claims in England and Wales.

101. An employment tribunal may be more likely to find that the employer's behaviour in breaching the law had aggravating features where the action was deliberate or committed with malice, the employer was an organisation with a dedicated human resources team, or where the employer had repeatedly breached the employment right concerned. The employment tribunal may be less likely to find that the employer's behaviour in breaching the law had aggravating features where an employer has been in operation for only a short period of time, is a micro business, has only a limited human resources function, or the breach was a genuine mistake.

Protected disclosures

Summary and Background

102. The Public Interest Disclosure Act 1998 ("PIDA 1998") inserted a new Part 4A into the ERA 1996 to provide protection, in certain circumstances, for whistleblowers (i.e. those who expose evidence of wrongdoing by employers or third parties in the context of the workplace). The ERA 1996 defines the type of disclosures that are protected and also seeks to regulate to whom the disclosures can be made. The relevant provisions came into force on 2 July 1999.

103. The Employment Appeal Tribunal decision in *Parkins v Sodexho Ltd* [2002] IRLR 109 raised the possibility that any complaint about any aspect of an individual's employment contract could lay the foundation for a protected disclosure. This has led to claims being lodged at employment tribunals that would not otherwise have been brought and is contrary to the intention of the legislation.

104. Sections 43C, 43E, 43F, 43G and 43H of the ERA 1996 require that a disclosure be made in good faith in order to be a protected disclosure and benefit from whistleblowing protections.

105. A worker who makes a protected disclosure within the meaning of Part 4A of the ERA 1996 has a right not to be unfairly dismissed and a right not to suffer a detriment as a result of having made such a disclosure. Section 43K of the ERA 1996 defines who is a "worker" for the purposes of the whistleblowing protections contained in Part 4A of the ERA 1996.

106. The definition of "worker" in section 43K of the ERA 1996 is broader than the definition of "worker" in section 230 of the ERA 1996, which applies to rights set out elsewhere in the ERA 1996. The definition serves to ensure that the protection of the statute in relation to whistleblowers applies more broadly than other employment rights.

107. The following four sections amend Part 4A of the ERA 1996 which deals with public interest disclosures.

Section 17: Disclosures not protected unless believed to be made in the public interest

108. The effect of the section is to insert a specific public interest test into the ERA 1996. This ensures that, in order to benefit from protection, whistleblowing claims must in the future satisfy a public interest test and disclosures which can be characterised as

being of a personal rather than public interest will not be protected. For example, if a worker does not receive the correct amount of holiday pay (which may be a breach of the terms of his/her contract of employment), this is a matter of personal rather than wider interest. The claimant must also show that the belief that the disclosure was in the public interest was reasonable in the circumstances.

Section 18: Power to reduce compensation where disclosure not made in good faith

109. The effect of this section is to remove the requirement in sections 43C, 43E, 43F, 43G and 43H that a disclosure be made in good faith in order to be a protected disclosure and benefit from whistleblowing protections. In addition, the section amends the ERA 1996 to provide employment tribunals with the power to reduce an award of compensation by up to 25%, where a protected disclosure has not been made in good faith.

110. "Good faith" is not defined in the ERA 1996, but the courts have held that where the predominant motive of the individual making the disclosure was not directed at remedying one of the wrongs listed in section 43B of the ERA 1996, but was instead for some ulterior purpose, the disclosure is unlikely to have been made in good faith. (See *Street v Derbyshire Unemployed Workers' Centre [2004] IRLR 687*)

111. Currently, the requirement for a disclosure to be made in good faith can effect the success of the claim. If an employment tribunal finds that a disclosure was not made in good faith and instead there was an ulterior motive which was the predominant reason for the disclosure, the claim will fail.

112. Section 18 alters the effect of the good faith test; the issue of good faith will now be considered by a tribunal in relation to remedy, rather than liability, so a claim will not fail as a result of an absence of good faith. The employment tribunal will have the discretion to reduce a compensatory award by up to 25% in the event they find the disclosure has not been made in good faith.

Section 19: Worker subjected to detriment by co-worker or agent of employer

113. The effect of this section is to introduce a vicarious liability provision so that where a worker is subjected to a detriment by a co-worker done on the ground that the worker made a protected disclosure, and this detriment is done in the course of the co-worker's employment with the employer, that detriment is a legal wrong and is actionable against both the employer and the co-worker.

114. The employer will only be liable for a detriment where it is done by a worker in the course of employment or by an agent of the employer with the employer's authority. In this context, the term "agent" refers to someone who is appointed by the employer to perform duties on their behalf (such as a contractor).

115. Employers are able to rely on the defence in new subsection (1D) of section 47B of the ERA 1996 if they have taken all reasonable steps to prevent the co-worker from subjecting the whistleblower to a detriment. If the defence applies the employer will not be liable for the actions of the co-worker.

116. Where a whistleblower is bullied or harassed by a co-worker but the employer can use the defence in subsection (1D), the co-worker will still be liable and the worker could bring a claim against that co-worker.

Section 20: Extension of meaning of "worker"

117. The effect of this section is to widen the definition of "worker" in section 43K of the ERA 1996. At present, the NHS has certain contractual arrangements in place for workers in health services in England, Scotland and Wales which are not afforded whistleblowing protection because they fall outside the definition. This amendment will ensure that section 43K will apply to these workers.

118. In addition, the section includes a power so that the definition of "worker" in section 43K can more readily be amended so as to keep it up to date. The power can be used to increase the scope of protection. It can, however, only be used to remove categories of individuals where, in the opinion of the Secretary of State, no such individuals exist (i.e. the category has become obsolete).

Miscellaneous

Summary and Background

119. The Employment Tribunal Rules of Procedure are set out in Schedule 1 to the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2004. These regulations are made under various powers contained in the ETA 1996.

120. As part of his review of the Employment Tribunal Rules of Procedure, Mr. Justice Underhill recommended certain changes that would require amendments to the existing powers in primary legislation.

121. In certain claims, the amount able to be awarded by an employment tribunal is subject to a statutory limit. These limits are subject to annual adjustment in line with the Retail Prices Index. However, the rounding mechanism currently applicable has led to increases in the limits far greater than the rate of inflation. Section 22 will allow the rounding mechanism to be adjusted so that all limits are rounded up or down to the nearest pound, thereby ensuring that the changes closely reflect the rate of inflation.

122. Compromise agreements are being renamed as "settlement agreements". This is the term more generally used for civil claims and is therefore more widely understood than compromise agreement. It also more accurately reflects their use and content.

Section 21: Tribunal Procedure: Miscellaneous

123. This section amends existing powers in sections 9 and 13 of the ETA 1996 to make employment tribunal procedure regulations and introduces a new definition to section 42 of that Act.

124. *Subsection (2)* amends section 9(2) of the ETA 1996, which provides a power to make regulations on the payment of a deposit if a party wishes to continue to participate in proceedings. The amendment has the effect of enabling employment tribunal procedure regulations also to provide for tribunal deposit orders if a party wishes to pursue a specific allegation or argument within proceedings. This will enable the Secretary of State to make tribunal regulations which will allow tribunals to be more targeted with their case management.

125. Section 13(1)(a) of the ETA 1996 authorises employment tribunal procedure regulations to provide for the award of costs or expenses (costs are known in Scotland as expenses); witness expenses are recoverable as part of such a costs or expenses order. At present, section 13A(3) of the ETA 1996 prevents employment tribunal procedure regulations from allowing for costs orders and preparation time orders in favour of the same person in the same proceedings. This could prevent litigants in person from recovering witness expenses and therefore is unfair to such unrepresented parties. *Subsection (3)* amends section 13A of the ETA 1996 so that employment tribunal regulations can be made which allow for a costs order in respect of witness expenses and a preparation time order to be made in favour of the same person in the same proceedings.

126. It is possible to make employment tribunal procedure regulations under section 13(1)(a) of the ETA 1996 to permit costs orders in respect of the costs of lay representatives. However, the Government considers that the scope of this power could be clearer. *Subsection (4)* amends section 42 of the ETA 1996, introducing a definition of the meaning of the word "representative", so that it is clearer that costs of representation by a non-lawyer are covered by the terminology in section 13(1)(a) of the ETA 1996.

Section 22: Indexation of amounts: timing and rounding

127. This section amends section 34(3) of the ERe1A 1999 by introducing a time that orders made under that section are to come into force and amending the calculation which is to be used to increase or decrease the relevant limits.

128. The section means that future changes to the relevant limits would be made on 6 April each year. All limits remain linked to the Retail Prices Index. However, the section changes the rounding calculation so that all limits are rounded up or down to the nearest pound.

129. Section 34(2) of the ERelA 1999 provides that, if the Retail Prices Index for September of a year is higher or lower than the Retail Prices Index for the previous September, the Secretary of State is required to make an order to increase or decrease the limits which apply to certain awards of employment tribunals and other amounts payable under employment legislation.

130. The list of sums to be increased or decreased as a result of a change in the Retail Prices Index is set out in section 34(1) of the ERelA 1999. These include the amount of a week's pay used for statutory redundancy payments and the basic award and compensatory award for unfair dismissal. The sums for the relevant payments and awards were revised by order under the ERelA 1999 for the first time in February 2000 (Employment Rights (Increase of Limits) Order 1999 (S.I. 1999/3375)) and a total of 12 orders have been made.

131. In applying the relevant percentage increase or decrease, the Secretary of State has been required to round up the new sums to the nearest 10 pence, £10 or £100 (as applicable) in accordance with section 34(3) of the ERelA 1999, with the result that variations in the percentage change can occur.

132. In recent years the calculation has led to increases in limits which were significantly above the Retail Prices Index rate of inflation. The most significant impact on business has been the rate at which the limit used for calculating statutory redundancy payments has increased, sometimes by 6-7% more than average earnings or the Retail Prices Index in the applicable period.

Section 23: Renaming of "compromise agreements", "compromise contracts" and "compromises"

133. This section provides for the terms "compromise agreement" and "compromise contract" to be replaced with "settlement agreement" where they appear in specified legislation relating to employment matters.

134. Compromise agreements are a recognised way of dealing with an employment dispute, so that the matter is resolved in accordance with terms agreed by both parties. Provided that the applicable statutory requirements are met, the agreement is legally-binding and the issues covered by it cannot be the subject of a claim to an employment tribunal. Compromise agreements are referred to as compromise contracts in the context of the Equality Act 2010, but they operate in the same way as compromise agreements.

General

Section 24: Transitional provision

135. Section 24 sets out transitional arrangements for some of the sections in Part 2.