

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT RIGHTS (REVISION OF LIMITS) ORDER 2009

2009 No. 3274

1. This explanatory memorandum has been prepared by the Department for Business, Innovation & Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 From 1st February 2010, this Order revises, in line with the decrease in the retail prices index between September 2008 and September 2009 (minus 1.4%), some limits (maximum or minimum), applying to certain awards of employment tribunals, and another amount payable under employment legislation, as specified in the Schedule to the Order.

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

3.1 The relevant Order-making power is section 34(2) of the Employment Relations Act 1999 (ERA 1999) and the list of sums to be increased or decreased in line with the change in the retail prices index comprises section 34(1) of the ERA 1999, with the exception, on this occasion only, of the limits referred to in section 34(1)(d) and (e). The Work and Families (Increase of Maximum Amount) Order 2009 (S.I.2009/1903) excluded the duty to revise those two limits, as explained in paragraph 4.2 below.

3.2 In applying the relevant percentage increase or, as was the case this year, decrease, the Secretary of State is required by section 34(3) to round up the new sums variously to the nearest 10 pence, £10 or £100 with the result that variations in the percentage revisions occur.

3.3 This year the retail prices figure used in the calculation is minus 1.4%. The requirement to round up has meant that three of the sums are reduced, but three sums remain the same. The limits which remain the same are not included in this Order, although they are set out for information in the Explanatory Note.

4. Legislative Context

4.1 Section 208 of the Employment Rights Act 1996 required the Secretary of State, in each calendar year, to undertake a review of various limits and to decide whether limits should be varied. Section 34 of the ERA 1999 replaced section 208 with a simpler duty. It provided that, if the retail prices index for September of a year is higher or lower than the index for the previous September, the Secretary of State is required to change the limits, by Order, by the amounts of the increase or decrease. The relevant payments and awards were revised pursuant to this legislation for the first time in February 2000, and have been each year since. This is the first time since February 2000 that the retail prices index has been lower than that for the previous September.

4.2 The Work and Families (Increase of Maximum Amount) Order 2009 (S.I. 2009/1903) increased the maximum weekly amount used to calculate certain awards and payments in employment legislation from £350 to £380 as from 1st October 2009. It also excluded, for one time only, the operation of section 34 of the ERA 1999 in relation to those limits, on the occasion of the retail prices index for September 2009 being higher or lower than that for the previous September. Therefore, on this occasion, these limits (namely those in sections 186(1)(a) and (b) and 227(1) of the Employment Rights Act 1996) are not revised by the Order.

5. Territorial Extent and Application

5.1 This Order applies to Great Britain.

6. European Convention on Human Rights

The Minister of State for Employment Relations and Postal Affairs has made the following statement regarding Human Rights.

In my view the provisions of the Employment Rights (Revision of Limits) Order 2009 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 The purpose of the changes introduced by section 34 of the ERA 1999 was to replace a time-consuming annual review process with a system of annual automatic indexation, linking payments to the rate of inflation and giving greater certainty to businesses and workers. This annual exercise normally attracts little interest and is of no special legal or political importance.

7.2 This year the RPI variation is minus 1.4%. The relevant legislation, however, requires limits to be rounded-up, variously to the nearest 10 pence, £10 or £100. This has produced the result that three of the limits have been reduced, whilst the other three limits remain unchanged and so have not been included in the Order.

- ***Consolidation***

7.3 This Order does not consolidate any other Instrument.

8. Consultation outcome

No formal consultation exercise was undertaken for this Order. The limits are required to be reviewed annually by legislation.

9. Guidance

9.1 Any reference to the statutory limits will be updated. This includes electronic and other media such as Businesslink.gov.uk and DirectGov.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 We believe that small firms should not be treated differently to larger firms.

12. Monitoring and review

12.1 The annual revision of the limits is a mandatory requirement.

13. Contact

David Dugmore, at the Department for Business, Innovation & Skills Tel: 0121 698 4048 or e-mail: David.Dugmore@bis.gsi.gov.uk can answer any queries regarding the instrument.

