

## Employment tribunal postponement procedures

### Department for Business, Innovation and Skills

RPC rating: **validated**

#### Description of proposal

Businesses and stakeholders have expressed concern about the time and cost associated with postponement of employment tribunals (ETs). In response, the Government propose to introduce the following measures:

- Where a party has been granted two previous postponements of hearings in the same case, any further applications by that party for a postponement will be granted only in exceptional circumstances.
- Any application for a postponement presented less than seven days before the scheduled date of the relevant hearing, or made at the hearing itself, shall be granted only in exceptional circumstances.
- Oblige ETs to consider the imposition of a cost order, or a preparation time order, against a party that is granted a late postponement.

#### Impacts of proposal

Only four per cent of the 23,250 ET postponements in 2014-15 were initiated by the respondent (i.e. the employer). 82 per cent were due to the claimant; with the remainder being due to the tribunal itself. The party not initiating postponement is likely to benefit most from fewer ET postponements. The proposals are, therefore, expected to be net beneficial to business. The impact assessment monetises two ongoing costs to business: familiarisation, and the potential 'cost order', where businesses are responsible for the postponement. Familiarisation costs are based upon evidence from employers for the time taken to understand other comparable changes in employment law. Overall, costs are estimated at £0.08 million each year.

The main benefit to business is the avoidance of costs resulting from ETs being postponed late by claimants (or from being the beneficiary of a cost order, where the late postponement still occurs). About four per cent (784) of postponements by claimants are on the day of the hearing or afterwards<sup>1</sup>. Data from the survey of employment tribunal applications indicate that the cost per postponement for an

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<sup>1</sup> Contact made after a hearing to explain failure to attend

employer is around £660. Multiplying these two figures together give a benefit to business of £0.517 million each year. Deducting the costs above gives an equivalent annual net cost to business (EANCB) of -£0.41 million.

## Quality of submission

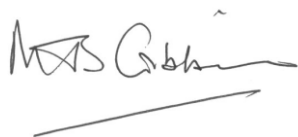
The Department's assessment of the benefit to business appears to be conservative because it is based only upon postponements being made on the day of the hearing or afterwards, whereas the proposals define a late postponement as one presented less than seven days before the hearing. The IA would benefit from further consideration of whether ET judges might apply 'exceptional circumstances' more widely than expected and the impact this might have on the benefits to employers. Overall, the Department has provided a reasonable assessment and the RPC is able to classify the measures as qualifying regulatory provisions and to validate the EANCB figure of -£0.41 million. The measures will be implemented through new regulations that are beneficial to business. The Department has classified this as zero net cost in line with the Better Regulation Framework Manual (March 2015). The RPC understands that the framework is being amended to enable such regulation to be recorded as an OUT for the purposes of the business impact target.

## Departmental assessment

|                            |                                      |
|----------------------------|--------------------------------------|
| Classification             | Zero IN (net beneficial to business) |
| EANCB                      | -£0.41 million                       |
| Business net present value | £3.70 million                        |

## RPC assessment

|                                     |   |
|-------------------------------------|---|
| Classification                      | Qualifying regulatory provision (OUT)         |
| EANCB – RPC validated               | -£0.41 million                                |
| Small and micro business assessment | Not required (fast track low-cost regulation) |



**Michael Gibbons CBE**, Chairman