

**BIS** | Department for Business  
Innovation & Skills

**CONSULTATION**

Employment tribunal claims  
and the Public Interest  
Disclosure Act

JULY 2009

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# 1. Introduction

This Consultation seeks views on an issue concerning employment tribunal claims made under the Public Interest Disclosure Act (PIDA). This is to allow details of employment tribunal claims involving PIDA allegations to be forwarded to the relevant regulator so that the allegations of the underlying issue e.g. fraud, non-compliance with health and safety law, care home standards, etc can be investigated where appropriate by the regulator.

The Consultation was published on 3 July 2009 and closes on 2 October 2009. Responses are welcomed from employers, employees, trade unions, representative bodies and other interested parties.

## What is PIDA?

The Public Interest Disclosure Act 1998<sup>1</sup> (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 dangers
- 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 isn't prescribed.

For further information about PIDA and whistleblowing, please refer to DirectGov<sup>2</sup>

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<sup>1</sup> [www.opsi.gov.uk/acts/acts1998/ukpga\\_19980023\\_en\\_1](http://www.opsi.gov.uk/acts/acts1998/ukpga_19980023_en_1)

<sup>2</sup> [www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/Whistleblowingintheworkplace/index.htm](http://www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/Whistleblowingintheworkplace/index.htm)

## **Employment tribunal claims and PIDA**

Complaints can be made to an employment tribunal where the claimant believes they have suffered a detriment at work or have been dismissed, for making a protected disclosure. 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 the employment tribunal is 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.

## **Sending employment tribunal claim information to the relevant regulator**

The issue of how allegations of underlying abuse in PIDA cases might be addressed was raised during the passage of the Employment Act 2008. Government committed to explore whether there is a practical process which would enable the substance of allegations giving rise to PIDA claims to the employment tribunals to be assessed and where appropriate acted upon, without involving the release of unsubstantiated allegations into the public domain. It was envisaged this would involve information being passed from the employment tribunals to regulators. 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.

Working jointly with the Tribunals Service, regulators and stakeholders, we have developed a preferred process on which we are seeking views in this Consultation.

## 2. How to respond

Responses to this Consultation must be received by 2 October 2009. These can be submitted online via survey monkey at: <http://tinyurl.com/l9aetv> or alternatively you can respond by email or post using the [consultation response form](#).

Email: [etclaims.pida@bis.gsi.gov.uk](mailto:etclaims.pida@bis.gsi.gov.uk)

Address:

Niel Sutton, ET Claims and PIDA consultation  
Bay 464, Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the Consultation Response Form and, where applicable, how the views of members were assembled.

A list of those organisations and individuals consulted is in Annex D: List of consultees. We would welcome suggestions of others who may wish to be involved in this Consultation process.

### Impact Assessment

An Impact Assessment is not required for this Consultation as there are no additional burdens for employers or employees and only minor additional costs for the public sector (below £5 million). Further, any future action that may flow as a result of this transfer of information is within the remit of independent regulators who will respond proportionately in line with the regulators compliance code.

### Additional copies

You may make copies of this document without seeking permission. Further printed copies of the Consultation document can be obtained from:

BIS Publications Orderline  
ADMAIL 528  
London SW1W 8YT

Tel: 0845-015 0010  
Fax: 0845-015 0020  
Minicom: 0845-015 0030  
[www.bis.gov.uk/publications](http://www.bis.gov.uk/publications)

Other versions of the document in Braille, other languages or audio-cassette are available on request.

An electronic version can be found at [www.berr.gov.uk/files/file51554.pdf](http://www.berr.gov.uk/files/file51554.pdf)

## **Confidentiality & data protection**

Information provided in response to this Consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide, to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

## **Help with queries**

Questions about the policy issues raised in the document can be addressed to:

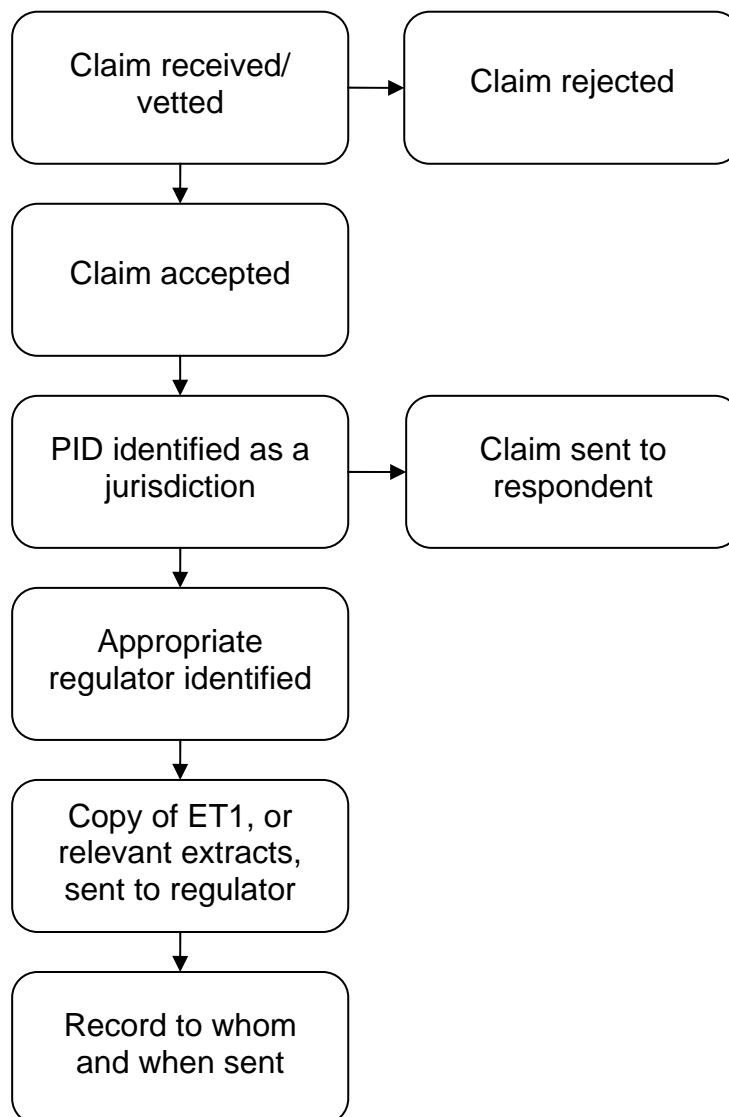
ET Claims and PIDA Consultation  
Bay 464, Department for Business, Innovation and Skills  
1 Victoria Street, London, SW1H 0ET  
Tel: 0207 215 6112  
Email: [etclaims.pida@bis.gsi.gov.uk](mailto:etclaims.pida@bis.gsi.gov.uk)

The Consultation Code of Practice criteria are in Annex E: Consultation Code of Practice criteria.

This consultation relates to England, Wales and Scotland.

### 3. 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 PIDA claim) 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<sup>3</sup> 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

<sup>3</sup>

[www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/Whistleblowingintheworkplace/DG\\_175821?IdcService=GET\\_FILE&dID=195409&Rendition=Web](http://www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/Whistleblowingintheworkplace/DG_175821?IdcService=GET_FILE&dID=195409&Rendition=Web)

any unsubstantiated allegations being put in the public domain by the employment tribunal, with any information only being shared with the relevant regulator.

We have considered other options for the process such as employment tribunals requesting further information from the claimant in relation to the PIDA disclosure by way of an additional letter or questionnaire; or by advising the claimant to send details directly to a regulator. Whilst these other options might have the benefit of providing the regulator with detailed information at an early stage, we believe that there are significant disadvantages for both the claimant and the Tribunals Service. We are concerned that, at the time when the claimant is focused on their employment tribunal claim, they should not be asked to complete an additional questionnaire, nor should potential breaches of PIDA be allowed to go unchallenged because the claimant did not complete and return a form. Similarly, we do not want to place additional burdens on the Tribunals Service, potentially causing delays in processing the employment tribunal claim.

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

## **4. Express consent**

We believe it is important that the employment tribunal claimant making a PIDA claim 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 propose 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. Please see Annex A: Amended ET1 claim form.

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 accordance with data protection guidance and means that information will not be shared with the regulator where the employment tribunal claimant does not wish to do so; or indeed where the claimant may have already informed the regulator and so there is no need for any further action.

For employment tribunal PIDA claims where the claimant has given express consent, and where the information is shared with the regulator, the Tribunals Service will also notify the respondent of the action they have taken so that the respondent is fully aware.

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

## **5. 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. Please see Annex B: Draft Statutory Instrument

**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.**

## **6. 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. There are currently some 50 regulators on this list. 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 suggest the Tribunals Service introduces a phased implementation of the new process to these regulators initially. The Tribunals Service would issue internal guidance accordingly.

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

## **7. General**

Having looked at specific aspects of the proposed process, we would also welcome any general comments that you might have.

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

## 8. Summary of questions

In this Consultation, the Government invites 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.

## **9. What happens next?**

This Consultation will close on 2 October 2009. The Government will consider the responses to the Consultation and then publish a government response, setting out how it intends to proceed. The proposal set out in this Consultation could 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.

## **Annex A: Amended ET1 claim form**

Please note: this has been included on the next page



# Claim to an Employment Tribunal

This form is to be used if your claim relates only to events that happened on, or after, 6 April 2009. If the events you are complaining about happened before this date please contact the Employment Tribunals Public Enquiry Line on 0845 795 9775.

If you have not already done so, you are strongly advised to ring the **Acas Helpline on 08457 474747** for advice on how you might be able to resolve your complaint without having to make a claim. **You should remember, though, that in most cases the tribunal must receive your claim within three months. This three months begins with the date your employment ended or when the matter you are complaining about happened.**

If, after considering advice, you want to make a claim **please read the guidance notes** and the notes on this page before filling in the form.

Your claim must be on a form provided by the Tribunals Service and you must provide the information marked with \* and the information marked ● if it is applicable.

Where there are tick boxes, please tick the one that applies.

Please write clearly in black ink using CAPITAL LETTERS.

You can submit your claim via the website at **[www.employmenttribunals.gov.uk](http://www.employmenttribunals.gov.uk)**. The website also provides the facility to submit a multiple claim if you are one of a number of claimants making a claim arising out of the same or similar circumstances. If you do not have access to the website you can give the names and addresses of additional claimants on a separate sheet or sheets of paper. Please make sure that all the information you give is as accurate as possible.

For claims made in England and Wales only, if someone is advising or representing you in relation to your claim, they must, unless they are a practising solicitor or barrister, be authorised to do so, wherever they are based (including Scotland, the Channel Islands and all of Europe). Trade union officials, Citizens' Advice Bureau advisors or a personal friend helping you present your claim may be exempted from these requirements. However, to check your representative's status, and for more information, phone 0845 450 6858 or go to [www.claimsregulation.gov.uk](http://www.claimsregulation.gov.uk).

If, having made your claim, you have any questions about employment tribunal procedures or practice, contact the Employment Tribunals Enquiry Line on 0845 795 9775.



### 3 Employment details

3.1 Please give the following information if possible.

When did your employment start?

DD-MM-YYYY

Is your employment continuing?

Yes  No

If your employment has ceased, or you are in a period of notice, when did it, or will it, end?

DD-MM-YYYY

3.2 Please say what job you do or did.

### 4 Earnings and benefits

4.1 How many hours on average do, or did, you work each week?   hours each week

4.2 How much are, or were, you paid?

Pay before tax

£    ,    .00

Hourly

Normal take-home pay (including overtime, commission, bonuses and so on)

£    ,    .00

Weekly

Monthly

Yearly

4.3 If your employment has ended, did you work (or were you paid for) a period of notice?

Yes  No

If 'Yes', how many weeks' or months' notice did you work, or were you paid for?

weeks   months

4.4 Were you in your employer's pension scheme?

Yes  No

**Please answer 4.5 to 4.9 if your claim, or part of it, is about unfair or constructive dismissal.**

4.5 If you received any other benefits, e.g. company car, medical insurance, etc, from your employer, please give details.

4.6 Since leaving your employment have you got another job?  
If 'No', please now go straight to section 4.9.

Yes  No

4.7 Please say when you started (or will start) work.

4.8 Please say how much you are now earning (or will earn). £  ,  .00 each

4.9 Please tick the box to say what you want if your case is successful:

- a To get your old job back and compensation (reinstatement)
- b To get another job with the same employer and compensation (re-engagement)
- c Compensation only

## 5 Your claim

5.1\* Please tick one or more of the boxes below. In the space provided, describe the event, or series of events, that have caused you to make this claim:

- a I was unfairly dismissed (including constructive dismissal)
- b I was discriminated against on the grounds of
 

Sex (including equal pay)	<input type="checkbox"/>	Race	<input type="checkbox"/>
Disability	<input type="checkbox"/>	Religion or belief	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	Age	<input type="checkbox"/>
- c I am claiming a redundancy payment
- d I am owed
 

notice pay	<input type="checkbox"/>
holiday pay	<input type="checkbox"/>
arrears of pay	<input type="checkbox"/>
other payments	<input type="checkbox"/>
- e Other complaints

5.2\* Please set out the background and details of your claim in the space below. The details of your claim should include **the date when the event(s) you are complaining about happened**; for example, if your claim relates to discrimination give the dates of all the incidents you are complaining about, or at least the date of the last incident. If your complaint is about payments you are owed please give the dates of the period covered. Please use the blank sheet at the end of the form if needed.

- 5.3 If your claim consists of, or includes, a claim that you are making a protected disclosure under the Employment Rights Act 1996 (otherwise known as a 'whistle blowing' complaint), 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.

## 6 What compensation or remedy are you seeking?

- 6.1 Completion of this section is optional, but may help if you state what compensation or remedy you are seeking from your employer as a result of this complaint. If you specify an amount, please explain how you have calculated that figure.

## 7 Other information

- 7.1 Please do not send a covering letter with this form. You should add any extra information you want us to know here. Please use the blank sheet at the end of the form if needed.

## 8 Your representative

Please fill in this section only if you have appointed a representative. If you do fill in this section, we will in future only send correspondence to your representative and not to you.

8.1 Representative's name:

8.2 Name of the representative's organisation:

8.3 Address:      Number or Name  
                          Street  
                          + Town/City  
                          County  
                          Postcode

8.4 Phone number (including area code):

Mobile number (if different):

8.5 Reference:

8.6 How would they prefer us to communicate with them?      E-mail       Post   
 (Please tick only one box)

E-mail address:  @

## 9 Disability

9.1 Please tick this box if you consider you have a disability      Yes   
 Please say what this disability is and tell us what assistance, if any, you will need as your claim progresses through the system, including for any hearings that may need to be held at Tribunal Service premises.

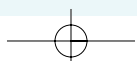
## 10 Multiple cases

10.1 To your knowledge, is your claim one of a number of claims against the same employer arising from the same, or similar, circumstances?      Yes       No





Additional information for sections 5.2 and 7. Further sheets can be used if necessary.



# Equal Opportunities Monitoring Form

You are not obliged to fill in this section but, if you do so, it will enable us to monitor our processes and ensure that we provide equality of opportunity to all. The information you give here will be treated in strict confidence and this page will not form part of your case. It will be used only for monitoring and research purposes without identifying you.

## 1. What is your country of birth?

- England  Wales  
 Scotland  
 Northern Ireland  
 Republic of Ireland  
 Elsewhere, *please write in the present name of the country*


## 2. What is your ethnic group? Choose ONE section from A to E, then ✓ the appropriate box to indicate your cultural background.

### A White

- British  Irish  
 Any other White background  
*please write in*


### B Mixed

- White and Black Caribbean  
 White and Black African  
 White and Asian  
 Any other Mixed background  
*please write in*


## C Asian or Asian British

- Indian  Pakistani  
 Bangladeshi  
 Any other Asian background  
*please write in*


## D: Black or Black British

- Caribbean  African  
 Any other Black background  
*please write in*


## E Chinese or other ethnic group

- Chinese  
 Any other, *please write in*


## 3. What is your religion? ✓ box only

- None  
 Christian (including Church of England, Catholic, Protestant and all other Christian denominations)  
 Buddhist  
 Hindu  
 Jewish  
 Muslim  
 Sikh  
 Any other religion,  
*please write in*


## 4. Sexual orientation

**Which of these best describes you?**  
✓ box only

- Heterosexual  
 Gay or lesbian or homosexual  
 Bisexual  
 Other

## 5. Disability

**Do you have any health problems or disabilities that you expect will last for more than a year?**  
✓ box only

- Yes  
 No



# Annex B: Draft Statutory Instrument

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## STATUTORY INSTRUMENTS

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**2009 No. 0000**

### **EMPLOYMENT TRIBUNALS**

#### **Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2009**

*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(a), 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(b), makes the following Regulations:

#### **Citation and commencement**

1. These Regulations may be cited as the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2009 and shall come into force on 6th April 2010.

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

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

(2) 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 has—

- (a) so requested; and
- (b) alleged in the claim that they have made a protected disclosure.

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(a) 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).

(b) 2007 c. 15.

(c) S.I. 2004/1861, as amended by S.I. 2004/2351, 2005/435, 2005/1865, 2008/2683 and 2008/3240.

(4) For the purposes of paragraph (3) a regulator means a person listed in Schedule 1A; and a protected disclosure has the meaning given to that expression by section 43A of the 1996 Act<sup>(d)</sup>”.

(3) After Schedule 1 insert—

## “SCHEDULE 1A

### Employment Tribunals: Protected Disclosures (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<sup>(e)</sup>.
- Commissioners of Customs and Excise.
- Commissioners of the Inland Revenue.
- 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<sup>(f)</sup> 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.
- Lord Advocate, Scotland.
- Environment Agency.
- Scottish Environment Protection Agency.
- Food Standards Agency.

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<sup>(d)</sup> 1996 c. 18. Section 43A was inserted by section 1 of the Public Interest Disclosure Act 1998 c. 23.

<sup>(e)</sup> 2000 c. 8. There are amendments to this Act which are not relevant to these Regulations.

<sup>(f)</sup> 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.

- Financial Services Authority.
- 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.
- 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.

Date

*Name*  
Minister of State (Business)  
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) (“the main Regulations”).

These Regulations make provision for the Employment Tribunal Service to forward a claim to a regulator listed in new Schedule 1A. Schedule 1A broadly reflects the list of prescribed persons listed in the Public Interest Disclosure (Prescribed Persons) Order 1999 (S.I. 1999/1549), as amended. The Employment Rights Act 1996 (c. 18) provides a worker with the right not to suffer 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.

## **Annex C: Consultation Response Form**

It is recommended this response form is completed online through survey monkey: <http://tinyurl.com/l9aetv>

Alternatively, you can send a completed response form to:

[etclaims.pida@bis.gsi.gov.uk](mailto:etclaims.pida@bis.gsi.gov.uk)

or

Niel Sutton  
Department for Business, Innovation and Skills  
Bay 464  
1 Victoria Street  
London SW1H 0ET

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is 2 October 2009.

## Your details

Name:

Organisation (if applicable):

Address:

Telephone:

Fax:

Email:

Please state if you are responding as an individual or representing the views of an organisation, by selecting the appropriate group on the Consultation Response Form. If responding on behalf of a company or an organisation, please make it clear who the organisation represents and, where applicable, how the views of the members were assembled. Please tick the box below that best describes you as a respondent to this consultation:

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	“Prescribed Person” under PIDA legislation
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe):

## Responses to questions raised in consultation document

### Question 1: Do you agree with the proposed process?

Yes [  ] No [  ]

If no, please explain why and describe any other better options.

### Question 2: Do you agree with obtaining express consent of the claimant?

Yes [  ] No [  ]

If no, please explain why.

### Question 3: 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.

### Question 4: Do you agree with a phased implementation?

Yes [  ] No [  ]

If no, please give your reasons.

**Question 5: Do you have any further comments on what is proposed?**

Yes [  ] No [  ]

If yes, please detail below.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply [  ]

We will publish all the responses received in this consultation unless you tick the box below.

Please treat my response as confidential [  ]

## **Annex D: List of consultees**

Acas  
Accounts Commission for Scotland  
Administrative Justice and Tribunals Council  
Auditor General for Scotland  
British Chambers of Commerce  
British Retail Consortium  
Citizens Advice  
Care Council for Wales  
Care Quality Commission  
Charity Commission for England and Wales  
Chartered Institute of Personnel and Development  
Civil Aviation Authority  
Companies Investigation Branch  
Confederation of British Industry  
Construction Confederation  
Council of Tribunal Members Association  
Criminal Cases Review Commission  
Department of Transport  
Director General of Water Services  
Employment Appeal Tribunal  
Engineering Employers Federation  
Employment Lawyers Association  
Employment Tribunal System Steering Board  
Equalities and Human Rights Commission  
Federation of Small Businesses  
Financial Services Authority  
Food Standards Agency  
Forum for Private Business  
Free Representation Unit  
Gas and Electricity Markets Authority  
General Social Care Council  
GMB  
Health and Safety Executive  
HM Revenue and Customs  
Independent Police Complaints Commission  
Information Commissioner  
Institute of Directors  
Law Society  
Law Society of Scotland  
Local Authority Co-ordinators of Regulatory Services  
Local Commissioner in Wales  
Local Government Employers  
National Assembly for Wales  
National Audit Office  
National Care Standards Commission  
Office of Fair Trading  
Ofsted

Public and Commercial Services Union  
Public Concern at Work  
Scottish Commission for the Regulation of Care  
Scottish Criminal Cases Review Commission  
Scottish Information Commissioner  
Scottish Social Services Council  
Scottish Trades Union Congress  
Serious Fraud Office  
Social Services Inspectorate for Wales  
Standards Board for England  
Standards Commissioner for Scotland and the Chief Investigating Officer  
Transport and General Workers Union  
The Audit Commission for England and Wales  
The Certification Officer  
The Children's Commissioner  
The Children's Commissioner for Wales  
The Commissioner for Children and Young People in Scotland  
The Environment Agency  
The Healthcare Inspectorate Wales  
The Lord Advocate, Scotland  
The Office of Communications (Ofcom)  
The Office of Scottish Charity Regulator  
The Pensions Regulator  
The Rail Regulator  
The Scottish Environment Protection Agency  
The Standards Commission for Scotland  
The Welsh Housing Directorate  
Tribunal President England & Wales  
Tribunal President Scotland  
Tribunals Service  
Trades Union Congress  
Union of Construction, Allied Trades and Technicians  
Unite  
Unison  
Union of Shop, Distribution, and Allied Workers  
Water Industry Commissioner for Scotland  
Welsh Audit Office

## **Annex E: Consultation Code of Practice criteria**

1. Formal Consultation should take place at a stage when there is scope to influence policy outcome.
2. Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the Consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of Consultation to a minimum is essential if Consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the Consultation.
7. Officials running Consultations should seek guidance in how to run an effective Consultation exercise and share what they have learned from the experience.

### **Comments or complaints**

If you wish to comment on the conduct of this Consultation or make a complaint about the way this Consultation has been conducted, please write to:

Tunde Idowu  
Department for Business, Innovation and Skills Consultation Co-ordinator  
1 Victoria Street  
London  
SW1H 0ET

Telephone: 020 7215 0412

Email: [Babatunde.Idowu@bis.gsi.gov.uk](mailto:Babatunde.Idowu@bis.gsi.gov.uk)

