

Dispute Resolution Regulations

Government Response to Public Consultation

January 2004

Foreword

In July, I asked for your views on draft Regulations to promote workplace resolution of disciplinary and grievance issues. The Government aims to set a sensible and practical minimum standard that applies to all organisations, including the smallest employers. This will help up to 7.2 million employees who, should they face problems at work, currently have no opportunity for discussions with their managers. For employers, it offers the best possible chance of resolving disputes early on without the disruption and expense of protracted tribunal cases.

I would like to offer my thanks to all those who responded to the consultation document. A summary of their views is given here. These responses, from a broad range of stakeholders, should be read in conjunction with the analysis and statistical evidence presented in the consultation document. This feedback has proved invaluable in revising the Regulations to meet the needs of all parties.

I am laying the Regulations before Parliament today.



A handwritten signature in black ink that reads "Gerry Sutcliffe". The signature is written in a cursive style with a long horizontal stroke at the bottom.

Parliamentary Under Secretary of State for Employment Relations,
Competition and Consumers

20 January 2004

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INTRODUCTION

1. The Employment Act 2002 established a framework for promoting the resolution of employment disputes in the workplace¹. The detail of how the procedures would operate in practice was left to be set out in separate legislation. The Government launched a public consultation on its proposals for these Regulations in July 2003. This document summarises the responses to consultation and explains the Government's final decisions on key points.

Pre-consultation

2. The Government recognises that these statutory procedures are likely to have a significant impact on Britain's workplaces. A wide range of pre-consultation activities was therefore undertaken. These included extensive discussions with a specially established Advisory Group of external stakeholders, and focus group meetings with small firms, large firms, trade union legal specialists and Acas conciliators and advisors.

Consultation activities

3. Draft Regulations were developed and published in a consultation document on 9 July 2003². The consultation document sought views on the draft Regulations and on particular issues arising from them.

4. Copies of the consultation document were sent to members of the aforementioned Advisory Group, to other organisations that had participated in previous informal consultation, to those who had expressed a prior interest in similar consultations, and to other significant contacts. Copies were also supplied in response to orders from individual enquirers. More than 650 paper copies were despatched altogether. The consultation document was available on the DTI website; the consultation document page received more than 13,000 hits during the July-October period.

5. In parallel, the DTI also ran an online consultation to make it easier for small firms and others to respond. More than 500 individuals and groups were emailed to encourage them to respond to the consultation. The consultation was also advertised on the businesslink.gov website.

6. The consultation was, in addition, widely publicised via a series of "road shows" around the country. These involved trade unions and small firm organisations represented on the Advisory Group, as well as DTI staff – 235 people attended these sessions.

¹ For further information on the Employment Act 2002 see <http://www.dti.gov.uk/er/employ/index.htm>.

² To download an electronic version of the consultation document see <http://www.dti.gov.uk/disputeresolution.htm>.

7. Officials also met a number of stakeholders in one-off meetings to canvass their views in depth.

Responses to consultation

8. The deadline for responses was 29 October 2003. A total of 203 responses were recorded – the majority of them via the online consultation website. These broke down as follows.

Category	Number of responses
Individual employers	66
Solicitors and legal organisations	26
Employer organisations	25
Individuals responding in a personal capacity, academic researchers and public sector organisations	25
Unions or union groups	20
Total of full responses	162
Organisations and individuals who accessed the online consultation but gave incomplete or no formal response	41
Total of all responses recorded	203

9. The Government would like to thank respondents for supplying a great deal of high-quality feedback. As well as input on policy issues, a large number of useful technical drafting suggestions were received.

10. The responses, except those made in confidence, are available in the DTI Library and can be accessed on request by contacting the Information and Library Services in the DTI on 020 7215 6226. The majority of responses were submitted online. A list of those respondents who were willing to have their names and responses disclosed can be found at Annex A.

Regulatory Impact Assessment

11. The consultation document contained a draft Regulatory Impact Assessment (RIA) that evaluated the potential impact of the draft Regulations.

12. A small number of respondents offered detailed comments on the analysis and the information presented in the RIA. Where relevant, this feedback has been incorporated in the full RIA that accompanies the finalised Regulations. This document will be available separately on the DTI website (see Annex B for details).

13. The following table summarises the main costs and benefits associated with adopting the statutory procedures.

	<u>Annual benefits</u>	<u>Annual costs</u>	<u>One-off costs</u>
To employers	<ul style="list-style-type: none"> • Better employment relations with positive impact on productivity • Keeping skilled staff • Lower recruitment costs • Reduced costs from 34,000-37,000 fewer Tribunal claims per annum = £68-74 million 	<ul style="list-style-type: none"> • Annual recurring policy costs of using statutory procedures = £35-48 million, plus time cost of companion where right to be accompanied used (cost may sometimes be to a Trade union) 	<ul style="list-style-type: none"> • Implementation costs = £39-£73 million

	<u>Annual benefits</u>	<u>Annual costs</u>	<u>One-off costs</u>
To individuals	<ul style="list-style-type: none"> • More employment disputes solved • Improved employment prospects • Reduced stress and costs from 34,000-37,000 fewer Tribunal claims per annum 		
To the taxpayer	<ul style="list-style-type: none"> • Savings from fewer Tribunal claims = £31-34 million 	<ul style="list-style-type: none"> • Increased costs to the Employment Tribunal Service for extra time needed to sift cases 	<ul style="list-style-type: none"> • Up to £2m for a publicity campaign prior to the Regulations coming into force

All costs and benefits quoted to 2 significant figures

Understanding this document

14. This report follows the order of the July consultation document. It gives an account of the views expressed in relation to each of the areas in which the Government made a proposal. The total number of respondents on each issue is given before the main points are summarised. Not every respondent is cited in each case, not least because some submissions repeated views already expressed by others. The Government's conclusions are set out in bold print at the end of each section.

15. In the light of comments received, a number of changes have been made on detailed points of policy. As a result, the Regulations have been substantially revised since consultation. In particular, many respondents called for the draft Regulations to be more precisely drafted in certain respects, and many requested that they be made more detailed, either in relation to specific issues or more generally, to cater appropriately for the wide diversity of circumstances that can arise in workplace disputes. These points have been taken on board where possible, although inevitably at the cost of the draft Regulations becoming somewhat longer and more complicated.

16. Many respondents offered views on issues that were outside the scope of the consultation – in many cases these issues had already been

determined in the Employment Act 2002. Where possible, this document contains a summary of these additional views, although discussion of them is generally more limited.

DISMISSAL AND DISCIPLINARY PROCEDURES

17. The Government consulted on the basis that the standard (three-step) dismissal and disciplinary procedure should apply in relation to:

- all types of dismissals (including dismissals on grounds of capability, conduct, redundancy, expiry of a fixed term contract and retirement) except for:
 - “collective” dismissals;
 - constructive dismissals;
 - dismissals in circumstances where employment cannot continue, for reasons beyond the parties’ control; and
 - the small subset of immediate “gross misconduct” dismissals where, very exceptionally, an employment tribunal would find an immediate dismissal to be fair, in line with existing case law; and
- any actions short of dismissal that are taken by an employer in relation to an employee wholly or mainly by reason of the employee’s conduct or capability, except for
 - actions which are themselves part of a workplace procedure, i.e. warnings (oral or written) and paid suspensions;
 - certain “collective” actions.

18. The consultation document proposed that the modified (two-step) dismissal procedure would be used only after the employee has been dismissed, and where:

- employment cannot continue, for reasons beyond the parties’ control; or
- the circumstances fall within the small subset of “gross misconduct” dismissals where instant dismissal is fair.

19. The consultation document posed the following questions:

- Question 1 Is the definition of “disciplinary action” appropriate (i.e. not oral or written warnings, or suspension on full pay)?
- Question 2 Are the circumstances where the modified (two-step) dismissal procedure should be used adequately defined?

Question 3 The Acas Code of Practice on Disciplinary and Grievance Procedures sets the good practice standard which tribunals consider in unfair dismissal claims. Should a separate Code of Practice be developed for small employers?

Question 1 – Definition of disciplinary action

20. The consultation document proposed that employers would have to go through the standard (three-step) dismissal and disciplinary procedure before dismissing an employee, or before taking some other action, short of dismissal, on conduct or capability grounds – however, there would be no requirement to go through any procedure before issuing any kind of warning or suspending an employee on full pay.

21. The definition of disciplinary action was an important point for many respondents, and so attracted a great deal of comment. There were 133 responses, of which 61 (or 45.9%) agreed that the proposed definition of “disciplinary action” was appropriate, 66 (or 49.6%) disagreed and 6 (or 4.5%) either did not know or were not sure.

22. Those respondents who objected to the proposed definition of disciplinary action generally thought it was too narrow. The TUC and individual unions would prefer to see the statutory procedure followed before the employer could issue warnings or suspend on full pay. They point out that the commonly understood definition of disciplinary action is around warnings – indeed, the vast majority of actions taken against employees fall into this category. Engineering Employers Federation was concerned that the definition would create inconsistency, and instead suggested that either all or no disciplinary actions (including warnings and suspensions) should attract the use of the statutory procedures, which would give greater certainty both to employers and to employees.

23. By contrast, most other employer groups thought that the definition of disciplinary action was appropriate. They felt that requiring employers to use a three-step procedure before issuing a warning would be unduly onerous as a minimum standard established in law. This was particularly important for small firms – if warnings were to be included in the definition of disciplinary action, then it would be necessary to write a letter, hold a meeting, and potentially an appeal meeting as well, before issuing an oral or written warning, and it was felt that this would be unreasonable in many cases for firms with very modest resources.

24. **The Government notes that many employers, in line with good practice, choose to follow formal procedures before issuing warnings or suspending employees. However, the Government believes that to require the use of procedures before issuing warnings or instituting paid suspensions would be incompatible with a minimum legal standard. Such a requirement would also, in most cases, be**

unenforceable in practice. This is because (given that the Government does not, at this stage, propose to imply the procedures into employment contracts – see below) it would be only in very limited circumstances that the issuing of a warning or the suspension of an employee on full pay could constitute grounds for making a tribunal complaint. (And in those circumstances, as proposed in the consultation document, it would seem more appropriate for the employee to have to raise the matter as a grievance). Therefore, the Government has decided to retain the definition of disciplinary action as set out in the consultation document.

Question 2 - Circumstances where the modified (two-step) dismissal procedure can be used

25. It is almost always unfair to dismiss an employee instantly, without first going through some form of procedure or carrying out some form of investigation, even in a case of apparently obvious gross misconduct. However, tribunals have occasionally found such dismissals to be fair. The consultation document proposed that the Regulations should preserve that possibility, by providing that the standard dismissal and disciplinary procedure (under which instant dismissals are automatically unfair) does not apply in relation to this small subset of gross misconduct dismissal cases. It also proposed, however, that the Regulations should give employers no greater leeway to dismiss instantly than they have at present, and that even in this small category of gross misconduct cases, they should in future have to follow the modified dismissal procedure.

26. The second type of case in which the consultation document proposed that the modified dismissal procedure, rather than the standard dismissal and disciplinary procedure, should apply was where workplace dialogue prior to dismissal would generally be pointless, because circumstances beyond the parties' control mean that it is impossible for the employment to continue. This might occur, for instance, where the employer is a small business owner whose shop burns down overnight, or where the employee is engaged as a driver in a small business and, following a motoring offence, loses his/her driving licence and no alternative role exists within the firm.

27. There were 128 responses to question 2, of which 63 (or 49.2%) agreed the circumstances where the modified (two-step) procedure should be used were adequately defined, 51 (or 39.8%) disagreed and 14 (or 10.9%) either did not know or were not sure.

28. Some respondents also expressed reservations as to whether or not the draft Regulations correctly reflected the policy proposed in the

consultation document, particularly in relation to “gross misconduct” dismissals.

29. The Engineering Employers Federation felt it was inappropriate for the modified procedure to be used in circumstances where employment could not continue (for example when an employer’s business suddenly and unexpectedly collapses or an employee becomes unable to carry out his role without infringement of a legal requirement – e.g. the requirement for a driver to have a driving licence). Where the employer genuinely cannot continue to employ the employee, they felt such a termination should be altogether exempt from the procedures. The TUC commented that in circumstances where an employer suddenly goes out of business and *all* staff are laid off, so there is no selection process for redundancies, then the requirement to hold consultation meetings may be excessive.

30. In the light of the extensive feedback received, the description in the Regulations of the circumstances in which the modified (two-step) dismissal procedure will apply has been substantially revised. The provision relating to “gross misconduct” dismissals has been redrafted to remove any doubt that it correctly reflects the policy intention as set out in the consultation document. This is now the only type of case in relation to which the modified procedure will apply.

31. The other types of cases in relation to which it was envisaged that the modified dismissal procedure would apply, will now fall outside the statutory procedures altogether – although the descriptions of those types of cases have now been more tightly drawn to ensure that they do not go wider than intended. The Government has concluded that in these types of cases, where pre-dismissal workplace dialogue would generally serve little or no useful purpose, the same could also be said of post-dismissal workplace dialogue, and that it would be wrong to require this as a minimum legal standard. The types of cases in question are where:

- **the employer’s business suddenly ceases to function, because of an event unforeseen by the employer (e.g. the premises burn down), and it becomes impractical to employ any employees; and**
- **the employee cannot continue to work, in the position which he or she held, without contravention (by either party) of a legal duty or restriction.**

Question 3 - Separate Code of Practice for small firms

32. Acas publishes the *Code of Practice on Disciplinary and Grievance Procedures*. An employment tribunal considering an ordinary unfair dismissal complaint is required to decide whether or not the employer acted reasonably in the circumstances, and to take into account as appropriate the guidance in the Code of Practice. Following the new minimum statutory procedures will not necessarily be enough to ensure that a dismissal is fair under unfair

dismissal legislation – an employer must also act in accordance with the principles of natural justice. The Acas Code is a widely respected, useful document – the Government asked respondents to consider if, alongside the Code, a separate Code should be produced that would specifically address the position in small firms.

33. There were 130 responses to question 3, of which 45 (or 34.6%) considered that a separate Code of Practice should be developed for small employers, 77 (or 59.2%) were opposed to this idea and 8 (or 6.2%) either did not know or were not sure.

34. Respondents had high regard for the existing Acas Code of Practice and expressed the view that it must embrace all employers, including small employers, to ensure fairness. Many felt it would be difficult to establish a suitable threshold for the use of a separate small firms Code. A numerical threshold (for instance, less than 50 employees) would be challenging for those industries with considerable staff turnover around that threshold, or a high percentage of part time employees.

35. The Government notes that the clear majority of respondents were opposed to a separate Code for small firms. Acas is currently revising its Code of Practice, with the aim of providing guidance for all employers and employees. This will be the subject of a separate public consultation by Acas shortly.

Other issues

Retirement dismissals

36. The consultation document proposed that the standard (three-step) dismissal and disciplinary procedure should apply in relation to all dismissals, including retirements. Where retirement is by mutual agreement, clearly no issue will arise. In addition, there will be no need for the employer to go through the procedure where the employee could not in any event make an unfair dismissal complaint about his/her retirement – i.e., under the current unfair dismissal legislation (although the Government has been seeking views on this issue as part of its consultation process on forthcoming age discrimination legislation), where the dismissal is at the normal retirement age for the job or, in the absence of such an age, age 65.

37. Whilst very few respondents mentioned this issue, some employer organisations objected to the application of the procedure in retirement cases. For example, the Small Business Council felt it would be unnecessarily onerous on employers.

38. The Government continues to believe that, in situations where an employer seeks to dismiss an employee compulsorily on grounds of age in circumstances where the employee could claim unfair dismissal – i.e. before the normal retirement age for the job, or before age 65 where there is no such normal retirement age – it is reasonable that the

standard dismissal procedure should be followed. It therefore intends that the procedure should apply in all cases where an employee would be entitled to claim unfair dismissal, if he/she was aggrieved about the dismissal.

Fixed term contract dismissals

39. The draft Regulations required the standard (three-step) dismissal and disciplinary procedure to be used where dismissal consists or the expiry (without renewal) of a fixed term contract.

40. This proposal was opposed by some employer organisations, particularly trade associations that represent industries that rely on short-term staff (e.g. British Hospitality Association). These respondents saw little value in going through a three-step procedure before the expiry of a short fixed term contract.

41. Fixed-term and permanent employees must be treated equally, as enshrined in the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002. Therefore, the Government intends that the statutory procedures will apply both to fixed term and to permanent employees. In the case of fixed-term contracts of less than one year's duration, however, an employee will normally have no right to claim unfair dismissal if the contract is not renewed, as the one year qualifying period will continue to apply.

GRIEVANCE PROCEDURES

42. The Government consulted on the basis that the standard (three-step) grievance procedure will apply in all cases where the employee who has the grievance is still in the employer's employment. It will also apply in all cases where the employee is no longer in the employer's employment, unless:

- at any point it becomes not reasonably practicable for one or other party to take the next action that falls to be taken under the procedure; *or*
- the parties agree in writing that the modified procedure should be followed;

in which event, the modified procedure would apply instead.

43. The Government asked respondents to consider the following questions:

Question 4 Is it reasonable to expect the parties to have meetings with each other after the employment has ended (unless they both choose otherwise or it is not reasonably practical to do so)?

Question 5 Is it appropriate for complaints about suspensions and warnings (both written and oral) to have to be raised as grievances before the employee is free to take them to a tribunal (in the limited circumstances where they could give rise to a tribunal complaint)?

Question 4 - Meeting after employment has ended

44. There were 122 responses to this question, of which 68 (or 55.7%) agreed that it was reasonable for the parties to be expected to have meetings after the employment has ended (unless they both choose otherwise or it is not reasonably practical to do so), and 48 (or 39.3%) disagreed and 6 (or 4.9%) either did not know or were not sure.

45. Respondents expressed a broad range of views on this matter. The Small Business Council agreed that both parties should be encouraged to meet after employment has ended. The CBI was keen that former employees should have to raise their grievance in writing, but supported the idea that the parties should be free to agree to opt-out of the remaining stages of the grievance procedure, dependent on their particular circumstances. The TUC commented that it was not reasonable to oblige employees to have meetings with their former employers after employment has ended or to reduce levels of compensation awarded to employees for failing to do so. From another perspective, the Employment Lawyers Association thought that whilst it was reasonable to expect parties to meet after the end of employment, employers might be reluctant to acknowledge or deal with any grievance raised by a former employee. GMB strongly opposed any requirement for employees to meet their former employer after the employment relationship has ended – they were particularly concerned about bullying and harassment issues.

46. The Government recognises that there is a wide spectrum of views on this issue. In line with the proposals set out in the consultation document, the Government believes it is reasonable to expect both parties to meet after the employment relationship has ended, except in the limited circumstances described, and that such meetings could be useful in helping to resolve outstanding disagreements between them. The Regulations will protect the victims of bullying or harassment. Therefore, the Government proposes that, subject to certain exceptions, both parties will be required to follow the standard (three-step) grievance procedure after the end of the employment relationship. The drafting of the Regulations has been amended in line with helpful technical suggestions to make their effect in this regard clearer.

Question 5 - Dealing with warnings and suspension through the grievance procedures

47. There were 121 responses to question 5, of which 84 (or 69.4%) agreed that it is appropriate for complaints about suspensions and warnings (both written and oral) to have to be raised as grievances before the employee is free to take them to a tribunal (in the limited circumstances where they could give rise to a tribunal complaint), whilst 34 (or 28.1%) disagreed and 3 (or 2.5%) either did not know or were not sure.

48. The majority of responses were in favour of this approach. For example, the Federation of Small Businesses thought it was important for an employee to raise any complaints as a grievance before taking an employer to a tribunal. Others, notably the TUC, disagreed with this aspect of the draft Regulations. As discussed elsewhere (see above), they felt these actions should instead be covered by the application of the statutory dismissal and disciplinary procedures, in which case the onus would be on the employer to initiate the workplace dialogue.

49. In line with the proposals as set out in the consultation document, and reaffirmed above, the Government believes that warnings and suspensions should not be covered by the statutory dismissal and disciplinary procedures. Therefore, in the limited circumstances where these actions can give rise to an admissible tribunal claim, the Government considers that it is reasonable to expect the employee to raise his or her complaint as a grievance. (See below for further discussion of the Government's decisions on other matters concerning "overlapping" disputes.)

Other issues

Definition of grievance

50. The draft Regulations included in the consultation document contained no explicit definition of a grievance.

51. In response to comments from some respondents to the effect that this was a significant omission, the revised Regulations now include such a definition – i.e. that a grievance is “a complaint by an employee about action which his employer has taken or is contemplating taking in relation to him”. This definition will, in the appropriate circumstances, also cover the actions of a third party (e.g. a colleague). Regulation 6 then provides that the grievance procedures apply in relation to any grievance about action by the employer that could form the basis of a complaint under one of the tribunal jurisdictions covered by Schedule 3 or 4 of the 2002 Act.

52. It should be noted that this will not affect the position, established in the Employment Act 2002, that the statutory grievance procedures do not apply where an employee makes a protected disclosure within the meaning of the Public Interest Disclosure Act, unless the employee actually intends the making of the disclosure to constitute the raising of a grievance. The provisions in the Act will always take precedence. These effectively give the employee the right to choose whether to raise a concern as a grievance or as a protected disclosure.

WHEN THE PROCEDURES DO NOT NEED TO BE COMPLETED

53. The consultation document set out a number of proposed exemptions from the statutory procedures. These exemptions were designed to address circumstances where:

- the violent, abusive or otherwise unacceptable behaviour of one party makes it unreasonable to expect the other party to go through the relevant statutory procedure;
- factors beyond the control of either party make it effectively impossible for the procedure to be gone through for the foreseeable future;
- the employee is dismissed in circumstances where the modified dismissal procedure applies, and presents an employment tribunal application in relation to that dismissal before the employer sends any Step One letter under the procedure;
- the dismissal or disciplinary action or grievance is of a “collective” nature;
- the employee applies for interim relief;
- the dismissals are made because of industrial action; or
- there are issues of national security involved.

54. Furthermore, the draft Regulations contained provisions designed to cater for short-term situations where the parties cannot meet some procedural requirements. If an arranged meeting has fallen through because, at the time, one or both parties found it not reasonably practical to attend, the employer will be expected to rearrange the meeting, but only once. If the meeting falls through a second time, neither party will be under any further obligation under the statutory procedures.

55. The consultation document asked for feedback on the following questions:

Question 6 Are the proposed exemptions appropriate?

Question 7 Are there any other circumstances where exemptions should apply?

- Question 8 Is it reasonable to expect employers to rearrange the Steps Two and Three meetings if either party cannot attend?
- Question 9 Are exemptions for “collective” dismissal and disciplinary matters appropriate? Are the circumstances in which these collective exemptions would apply appropriately defined?

Question 6 – Proposed exemptions

56. There were 117 responses on this issue, of which 86 (or 73.5%) agreed that the proposed exemptions are appropriate, 29 (or 24.8%) disagreed and 2 (1.7%) either did not know or were not sure. Whilst these statistics show that most respondents were satisfied with the Government’s approach, certain areas attracted a wide spread of opinions, explored in more detail below.

57. On a general point, the Government has decided that it would not be right for a complete exemption to apply in all cases (as identified in the consultation document) where it would be inappropriate for the parties to have to go through a statutory procedure (or, if such a procedure has already been commenced, to complete it). One consequence of a complete exemption is that the employee does not have to meet the admissibility conditions in section 32 of the 2002 Act in relation to a grievance, and does not benefit from the proposed extension of the normal time limit for presenting a tribunal complaint. There are however some cases where, even though it would be inappropriate for the parties to have to go through (or complete) a statutory procedure, the admissibility conditions and the extension of time limit should still apply – e.g. cases where a grievance is raised collectively rather than by an individual employee. The revised Regulations therefore draw a distinction between those types of cases where it is right for the admissibility conditions (in relation to a grievance) and the time limit extension to apply, and those claims where the time limit extensions should not apply. Time limit extensions may be invoked in cases where the procedures would otherwise apply but the parties will be *treated* as having complied with them (or, where procedures have already been commenced, with the remaining stages of them), even though they have not. There will be no time limit extensions for those cases where there is a complete exemption from the procedures.

Harassment

58. Respondents expressed a wide range of views on this issue. CBI welcomed the Government’s approach of describing the exemptions in general terms rather than including a specific list. The Engineering Employers Federation stated that the Regulations did not adequately deal with disruptive behaviour by employees in a Step 2 or Step 3 meeting. Both Engineering

Employers Federation and Peninsula Business Services believe the definition of harassment is too broad, and would allow too many employees to bypass workplace grievance procedures and proceed straight to the tribunal. By contrast, other groups such as the Disability Rights Commission feel the definition is too narrow. GMB was concerned that the word “property” in Regulation 5(1)(a) should be removed – they believe there is a risk that the employer will be able to argue that “property” encompasses the financial/pecuniary interests of the employer.

59. The Government believes both employers and employees must be protected from harassment and other unreasonable behaviour. A number of helpful drafting suggestions from respondents have been incorporated in the revised Regulations. Either party must have reasonable grounds to believe that going through a statutory procedure, or a particular step of one, would result in further harassment. The Government does not consider that “property” could be held to have the meaning that the GMB suggested.

Not practical to comply

60. Few respondents made comments on this proposed exemption. The Engineering Employers Federation commented that the term “foreseeable future” could be misleading in some circumstances. The Employment Lawyers Association suggested that whilst it may not be practical to follow the procedures in full, it might instead be feasible to follow a procedure without a meeting. The Law Society was concerned that this provision would reduce protection for employees on long-term sick leave. The TUC stated that larger employers should only be able to benefit from this exemption in exceptional circumstances.

61. The Government continues to believe that a provision of this kind is needed, to cater for situations where there are long-term barriers to completing the procedures (which might include illness, incapacity, cessation of the employer’s business and so on). Certain drafting suggestions were very helpful and are incorporated into the finalised Regulations.

Claim submitted before modified (two-step) dismissal procedure is initiated

62. Few respondents addressed this matter. The Employment Lawyers Association agreed with this proposal.

63. The Government proposes to retain this exemption.

“Collective” disputes

64. Please see from paragraph 78 onwards for a full discussion of this topic.

Interim relief

65. Very few respondents commented on this exemption. However, GMB and the Employment Lawyers Association amongst others felt it was appropriate that, in circumstances where the employee was entitled to claim interim relief, there should be no penalty for failing to complete the procedures.

66. The Government proposes to retain provisions relieving the parties of the need to go through the remaining step of the statutory dismissal procedures in these circumstances.

Industrial action

67. Please see paragraph 83 for a full discussion of this point.

National security

68. Again, very few responses were received on this proposal. However, the Employment Lawyers Association agreed with the draft provision.

69. The Government proposes to retain this exemption.

Question 7 – Should there be other exemptions?

70. There were 107 responses to this question, of which 56 (or 52.3%) did not consider that there are any other circumstances where exemptions should apply, 32 (or 29.9%) considered there were and 19 (or 17.8%) either did not know or were not sure.

71. In terms of additional exemptions, as mentioned in paragraphs 36-41, some respondents wanted retirements and the termination (without renewal) of fixed term contracts to be excluded from the application of the statutory procedures. Paragraphs 38 and 41 set out the Government's intentions on these issues.

72. As previously discussed, some respondents had concerns about the circumstances where the modified dismissal procedure would apply. Therefore, this will be replaced by some additional exemptions (see paragraphs 30-31 for more details).

73. Other respondents highlighted the importance of existing collectively agreed dispute resolution procedures, for example as found in the construction industry.

74. The Government was grateful for a number of suggestions for additional or alternative exemptions from going through the statutory procedures. It therefore proposes to create the following exceptions:

- **The employer's business suddenly and unexpectedly ceases to function (e.g. the premises burn down), and it becomes impractical to employ any employees;**

- **The employee cannot continue to work, in the position which he or she held, without contravening a duty or restriction imposed by or under any other law;**
- **The parties have participated in an alternative, collectively agreed dispute resolution procedure;**
- **The employee is covered by a dismissal procedures agreement or has raised a grievance under an appropriate alternative procedure.**

Question 8 – Rearranging Steps Two and Three meetings

75. There were 111 responses to question 8, of which 96 (86.5%) agreed that it is reasonable to expect employers to rearrange the Step Two or Step Three meeting if either party cannot attend, 10 (or 9%) disagreed and 5 (or 4.5%) either did not know or were not sure.

76. The majority of respondents agreed with the Government's proposals in this area. The CBI thought this proposal would be a welcome clarification of the law, but the Engineering Employers Federation felt it was unnecessary to regulate on this point. The TUC agreed it was reasonable to expect employers to rearrange the Step Two or Step Three meeting, however they were concerned that employers would be required to rearrange the meeting only once. In addition, TUC expressed the view that the requirements to rearrange meetings created by these Regulations ought to be consistent with the right to be accompanied at grievance and disciplinary hearings, as set out in section 10 of the Employment Relations Act 1999. These concerns were echoed by individual trades unions.

77. The Government proposes to retain the requirement for employers to rearrange a Step Two or Step Three meetings if either party cannot attend. Helpful drafting suggestions, related to the right to be accompanied, are also now included in this section of the Regulations.

Question 9 – “Collective” exemptions

78. There were 107 responses to the first half of question 9. Of these responses, 72 (67.3%) agreed that exemptions for “collective” dismissal and disciplinary matters are appropriate, 22 (20.6%) disagreed and 13 (12.1%) either did not know or were not sure.

79. There were 105 responses to the second half of question 9. Out of that, 63 (or 60%) agreed that the circumstances in which these “collective” exemptions would apply are appropriately defined, 31 (29.5%) disagreed and 11 (10.5%) either did not know or were not sure.

80. This topic generated a wide variety of views from respondents. The responses are explored in more detail below.

Dismissal then re-engagement

81. Trade unions expressed concern about this exemption. The TUC felt this would encourage employers to subvert existing employment contracts and thus undermine collective agreements. They felt it would lead to an increase in interim relief applications.

82. The Government believes an exemption of this kind is necessary because dismissal and re-engagement is widely used as a mechanism for reissuing contracts or changing terms and conditions. In the case where an individual employee did not choose to accept a new contract, then it would be necessary for the employer to go through the statutory dismissal and disciplinary procedure before termination. Useful technical drafting suggestions received during consultation have been incorporated where necessary.

Dismissal of employees on industrial action

83. The TUC and other trade unions expressed concern about exempting the dismissal of employees engaged in industrial action. They believed that the fact that an individual is taking part in lawful industrial action, as protected by statute, should not result in any diminution of their rights, including their right to be accompanied.

84. The Government intends, in most circumstances, to exempt employees engaged in industrial action from these procedures. The Employment Relations Act 1999 and the Employment Relations Bill now before Parliament set out detailed procedures that must be followed to promote settlement of disputes before employers can dismiss strikers taking lawfully organised industrial action. The Government believes it would be inappropriate for statutory dispute resolution procedures to cut across the operation of other legislative requirements. Therefore, in the case of other unofficial or other non-protected strike or other industrial action, the Government will not introduce specific obligations for employers. However, a number of responses provided valuable drafting suggestions that have been included in the Regulations.

Collective redundancies

85. The draft Regulations also included a provision whereby collective redundancies would not require the statutory procedures to be followed. The Employment Lawyers Association and the Engineering Employers Federation broadly agreed with the Government's proposals. However, the TUC and individual unions disagreed. For example, the TUC felt that this would conflict with judicial rulings based around the *Polkey* principle, which articulate the duty of employers to hold meetings with individual members of staff.

86. The Government proposes to retain an exemption for collective redundancies. The need for individual meetings is well established and well understood amongst employers – it would be inappropriate for

these statutory procedures to cut across existing collective and individual discussions.

Collective grievances

87. The draft Regulations set out that, in certain circumstances, there would be an exemption from going through the statutory procedures if a grievance was raised, by an “appropriate representative”, on behalf of 20 or more employees. Whilst the idea of an exemption for collective grievances was positively received by a wide range of stakeholders (including CBI, TUC, Federation of Small Businesses and others), the threshold was widely perceived as too high.

88. The Government also received a range of views on the definition of an “appropriate representative”. The TUC suggested that the definition should match that applying in relation to the right to be accompanied (in the Employment Rights Act 1999). Others suggested that the definition of “appropriate representative” should be in line with the definitions that apply in information and consultation, TUPE and collective redundancies legislation.

89. The Government will retain an exemption for grievances that have been raised collectively. The Regulations will allow for a grievance to be raised collectively on behalf of two or more employees. Changes have also been made to the definition of “appropriate representative”, in the light of comments received.

EXTENDING TIME LIMITS

90. The Government believes it is sensible to give workplace procedures time to complete before an employee involved in a dispute is obliged to make an employment tribunal claim in order to avoid being out of time. Therefore, the draft Regulations proposed to extend the normal time limit for submitting tribunal claims, to allow extra time for workplace discussions to continue, without obliging employees to submit premature applications in order to meet deadlines. It should be noted that the existing discretion of the tribunal to extend a time limit where it was not reasonably practicable for it to be met is unaffected by the following changes. The consultation document set out the following circumstances in which these time limit extensions would apply.

Grievance procedures

- If an employee attempts to present a tribunal application arising from a grievance within the normal time limit for doing so under the relevant jurisdiction, but he/she has not written the Step One letter under the procedure and waited twenty-eight days, the tribunal will decline to register the application as the relevant admissibility conditions will not have been met. This will however prompt an automatic three-month extension of the time limit from the date when it would otherwise have expired. In this event, the applicant must send the Step One letter by no later than 28 days after the date when the normal time limit would have expired. If he/she does so, there will still be an opportunity to present a valid tribunal application under the jurisdiction in question, within the extended time limit. If not, however, he/she will be barred from doing so.
- If the employee sends the Step One letter to the employer under the grievance procedure, within the normal time limit for presenting a tribunal application, this will trigger an automatic three-month extension of the time limit from the date when it would otherwise have expired. It will not be necessary for either party to have contacted a tribunal in any way for this automatic extension to be activated.

Dismissal and disciplinary procedures

- The Government consulted on the proposal that no time limit extensions would apply in cases where an employee wishes to complain to an employment tribunal about dismissal or action short of dismissal falling within the statutory dismissal and disciplinary procedures.

91. The consultation document posed the following questions:

Question 10 Is it appropriate that there should be no time limit extensions for employment tribunal complaints about matters falling under the dismissal and disciplinary procedures?

Question 11 Is it appropriate to allow a three-month extension period for tribunal claims about grievances? Is this a suitable length of time? If unsuitable, please state your preferred period.

Question 10 – Time limit extensions for dismissal and disciplinary claims

92. There were 108 responses to this question, of which 78 (or 72.2%) agreed it was appropriate that there should be no time limit extensions for employment tribunal complaints about matters falling under the dismissal and disciplinary procedures, 28 (or 25.9%) disagreed and 2 (or 1.9%) either did not know or were not sure.

93. The TUC, most unions and others suggested that time limits should be extended for dismissal and disciplinary cases. For example, many public sector employers have very protracted procedures that may not complete within the existing three-month time limit. The TUC and GMB were concerned that different time limits in multi-jurisdictional tribunal claims would be difficult to deal with. Nonetheless, the Small Business Council (and other business groups) did not want to see extended time limits for dismissal and disciplinary tribunal claims.

94. The Government has been persuaded that there is value in extending time limits in dismissal and disciplinary situations where workplace discussions are still continuing at the three month point. However, it would not be appropriate to offer a blanket extension in all cases. Therefore, the Government proposes to introduce a time limit extension for dismissal and disciplinary claims where the employee has reasonable grounds for believing a disciplinary procedure is still ongoing at the point when the normal time limit expires.

Question 11 – Time limit extensions for grievance claims

95. There were 107 responses to this question, of which 57 (or 53.3%) agreed it is appropriate to allow a three-month extension period for tribunal claims about grievances, 43 (40.2%) disagreed and 7 (6.5%) either did not know or were not sure.

96. In addition, 31 respondents gave their preference for an alternative time limit extension. 26 (or 83.9%) stated a preferred period of 1 or 2 months, 4 (or 12.9%) stated a preferred period of 4 to 6 months and 1 (3.2%) stated a preferred period of more than 6 months.

97. The TUC, British Hospitality Association and others believed it was reasonable to extend time limits as suggested in the draft Regulations. GMB agreed that time limits should be extended – however, they wanted a six-month extension (rather than the proposed three months). The Federation of Small Businesses, Engineering Employers Federation and Peninsula

Business Services thought it would be inappropriate for time limits to be extended in any circumstances. Citizens Advice and the Law Society felt the proposals on time limits were too complicated. The SBC were in favour of sunsetting time limit extensions, so that they would cease to apply after a given period. CBI urged the Government to monitor the effect of time limit extensions over time.

98. Whilst employer organisations are not generally in favour of time limit extensions, there was particular opposition to the scenario where an employee attempts to submit a tribunal claim without going through the grievance procedure, but is then granted an additional three months to discuss the grievance. They felt it was unfair that employees got a “second chance” to comply with the procedures when employers would not benefit from a similar opportunity.

99. As an alternative to the Government’s proposals, the Employment Lawyers Association suggested that the time limits for submitting tribunal claims should not be changed, but tribunals should instead be able to automatically stay proceedings where the grievance procedure has not yet been completed.

100. The Government considers that the time limit extension is a key aspect of the statutory procedure; without it, there may be little time to resolve the grievance within the workplace. Equally, the Government believes that it is fair to allow employees extra time to meet their obligations under this legislation. Therefore, the Regulations will retain a three-month extension for grievance claims.

Other issues

Discrimination questionnaires

101. Discrimination legislation provides for the use of questionnaires by employees to gather evidence from their employers about potential discrimination claims. The proposed changes to time limits for submitting tribunal claims will also impact these questionnaires, whose validity is time-limited.

102. The Regulations will ensure the time limits for submitting both tribunal claims and discrimination questionnaires remain consistent, and that the information in these questionnaires will be admissible evidence in tribunals where time limit extensions apply.

103. In addition, the Government proposes that issuing a questionnaire of this kind will not count as a Step One grievance letter. The Government believes that using one document for both these purposes may be particularly confusing for employers.

“OVERLAPPING” DISCIPLINARY AND GRIEVANCE ISSUES

104. The Government recognises that disciplinary and grievance issues may overlap in the workplace, for example where an employee complains that a disciplinary case against him/her is discriminatory. The draft Regulations were designed to ensure that the application of the statutory procedures is as clear and straightforward as possible, given the complexity of the situations that may arise in practice. Moreover, the Government wishes to avoid obliging the parties to go through any unnecessary repetition of procedures.

105. The consultation document set out that any given action taken by an employer in relation to an employee can fall under only one type of statutory procedure – either disciplinary or grievance – but not both.

106. Furthermore, where the action taken by the employer is dismissal (leaving aside constructive dismissal), the position will be clear-cut: the matter cannot fall under the statutory grievance procedure.

107. Where the action is something other than dismissal, the consultation document acknowledged that there may be room for disagreement between the parties as to which type of statutory procedure applies. The employer may assert that the action was taken wholly or mainly by reason of the employee’s conduct or capability – in which event the dismissal and disciplinary procedures would apply. But the employee may consider that the action was taken wholly or mainly by reason of something else (e.g. trade union membership, or race) – in which event the grievance procedures would apply. Given these circumstances, the consultation document noted that both parties would be well advised to ensure that they had sent a letter that could, in the event that an employment tribunal ultimately resolved the disagreement in their favour, serve as the Step One letter under the procedure that they considered applied.

108. Should a grievance arise out of disciplinary action, it may be possible that during a Step 2 or 3 meeting under the dismissal and disciplinary procedures, the employee makes for the first time an allegation that the action proposed or taken was in fact due wholly or mainly to something other than his/her conduct or capability. The consultation document noted that in these circumstances, the raising of the issue at the meeting would **not** be sufficient action on the employee’s part to meet the requirements of the statutory grievance procedure. In order to satisfy those requirements, the employee would subsequently have to put the grievance in writing to the employer. Otherwise, he/she would be barred from presenting a tribunal application on the basis that the matter was one falling within the grievance procedure.

109. The Government also proposed that letters and meetings under the statutory procedures may be “multi-purpose.

110. The consultation document asked for feedback on the following question:

Question 12 What sort of “overlaps” arise in the workplace? Do the proposed Regulations deal with them appropriately?

111. There were 98 responses to question 12, of which 40 (or 40.8%) agreed that the proposed Regulations deal with overlaps appropriately, 37 (37.8%) disagreed and 21 (or 21.4%) either did not know or were not sure.

112. Respondents expressed a wide variety of views. The Small Business Council felt the draft Regulations adequately covered overlapping disputes. The British Hospitality Association felt the Government’s proposals were sensible and logical. The TUC was concerned that the grievance procedure should not be usurped by employers attempting to initiate disciplinary action against employees. They were also concerned about the complexity of the overlapping procedures, particularly for unrepresented employees. The Federation of Small Businesses said the draft Regulations were far too complicated for small businesses to operate.

113. There was a spectrum of opinions on the suggestion of multi-purpose meetings and letters. The Employment Lawyers Association agreed with this proposal. Citizens Advice and British Retail Consortium thought permitting multi-purpose meetings and letters may be confusing.

114. The Engineering Employers Federation was particularly concerned that the draft Regulations did not deal appropriately with the common situation when a grievance arises out of a disciplinary procedure. They believed if both the disciplinary and grievance procedures must both be followed in full, there was a real risk that well meaning employers may fall foul of this procedural trap.

115. This is a complex and important area of the Regulations. The Government welcomes the many helpful comments received, and has incorporated many technical drafting suggestions. The Government has decided that the following provisions should be established in the Regulations:

- **Where the action taken by the employer is *dismissal* (other than constructive dismissal), the matter does not fall under the statutory grievance procedure. The onus is on the employer to initiate workplace dialogue under the applicable dismissal and disciplinary procedure. The employer should realise that it is incumbent on him/her to ensure that the dismissal is for a fair reason, and free of any taint of unlawful discrimination.**
- **If the action taken by the employer is *not* taken on the grounds of conduct or capability, then there is no need for the employer to initiate the dismissal and disciplinary procedures and instead the employee should start the grievance procedure.**
- **If the action taken by the employer is asserted to be on the basis on conduct or capability, then the standard (three-step)**

dismissal and disciplinary procedure must be followed, and the statutory grievance procedures will not normally apply.

- **However, if the employee feels that the action which the employer asserts is being contemplated or taken for reasons of conduct or capability is actually being contemplated or taken for other reasons or that it is or would be unlawfully discriminatory, he/she must initiate the grievance procedure.**

116. The Regulations will ensure that statutory requirements are met where an employee raises a grievance in writing during a disciplinary procedure, and the grievance is discussed with the employer, for example at a disciplinary appeal. In this way, the aims of the statutory procedures are fulfilled, as the problems will have been discussed in the workplace, and the risk of unnecessary duplication of procedures is avoided.

117. The Government will retain the proposal set out in the consultation document that letters and meetings under the statutory procedures can be multi-purpose.

IMPLIED CONTRACTUAL TERM

118. Section 30 of the Employment Act provided that the requirement to comply with the statutory procedures, if applicable, would be implied into every contract of employment between an employer and an employee. The Government consulted on the basis of *not* commencing this provision at present, but to wait and see how the procedures as a whole “bed down” before deciding whether or not it would be appropriate to introduce this implied contractual term. Instead, the Government proposed to consider the need to commence this provision in the light of evidence evaluating the impact of these Regulations.

119. The consultation document raised the following question:

Question 13 What are your views on delaying the implementation of this provision?

120. There were 106 responses to question 13, of which 66 (or 62.3%) agreed with delaying the implementation of this provision, 31 (or 29.2%) disagreed, 6 (or 5.7%) thought the provision should never be implemented at all, 1 (or 0.9%) felt it would make no difference, and 2 (or 1.9%) were not sure.

121. Employer organisations, the Employment Lawyers Association, Citizens Advice and others believed it was appropriate to delay the implementation of the implied contractual right. CBI was concerned that making the procedures an implied term would open the door for a large number of breach of contract claims, which could undermine the one-year qualifying period for unfair dismissal. The Employment Lawyers Association commented that implementing the implied right would give rise to a number of complex legal issues and as such it may be wise to wait until employers and employees have developed some familiarity with operating the statutory procedures.

122. However, this view was strongly opposed by the TUC and individual unions. The TUC feel not implementing the implied term will reduce the protections offered to employees, and instead encourage employers to undermine existing standards. GMB stated that a failure to proceed with statutory incorporation would mean that many employees would not know about the statutory procedures, no matter how well the Government publicises them.

123. The Government does not intend to commence section 30 of the Employment Act 2002 at this time. The statutory procedures in themselves will represent a significant change for many employers and employees. Before extending them further, the Government believes it would be sensible to see how they operate in practice

124. In order to ascertain the take-up of these procedures in the workplace, the Government proposes to undertake a survey, with a particular focus on the smallest businesses, after two years in

operation. If the Government finds that adoption levels are inadequate, and the statutory procedures have otherwise worked as intended, there may be a good case to commence the implied contractual right, on the basis of clear evidence. Consequential revisions to the Regulations would be necessary if the implied contractual right is implemented.

COMMUNICATION, GUIDANCE AND TRANSITIONAL PROVISIONS

125. As noted in the consultation document, these Regulations are likely to have a significant impact on many employers and employees. The Government intends to run a broad-reaching, user-friendly communications programme to ensure that both employers and employees are aware of the new rights and responsibilities these Regulations will introduce. In keeping with best practice, guidance on the Regulations will be introduced at least 12 weeks before implementation.

126. Pre-consultation activities made it very clear that standardised documentation would make it easier for both employers and employees to follow the statutory procedures. Therefore the consultation document included an example of a model Step One grievance letter and a written statement of employment particulars.

127. The consultation document posed the following questions:

- Question 14 Please give comments on the examples of model documents.
- Question 15 Would standardised forms be more appropriate than letters?
- Question 16 How should these documents be made available? E.g. hard copy, online etc.

Question 14 – Model documents

128. There were 85 responses to question 14. There were a wide range of responses which are summarised in the table below.

	Number of responses	Percentage of total responses
Appropriate	35	41.1%
Should be standardised and made compulsory in the form of an information pack	11	12.9%
Not enough detail	8	9.4%
Should only be used as guidelines	6	7.1%
No comment	4	4.7%
Should be included in the ACAS Code	4	4.7%
Not appropriate	3	3.5%
Right to be accompanied should be made clear	3	3.5%
Should be widely publicised	3	3.5%
Clear	2	2.4%
Do not know	2	2.4%
Too long for SMEs (with less than 5 employees)	1	1.2%

Too much detail	1	1.2%
Overlaps with written terms and conditions	1	1.2%
Should be less legalistic	1	1.2%

129. Other respondents, such as SBC and Peninsula Business Services, wanted to see a wider range of model letters, such as a Step One Disciplinary letter.

130. The Government will ensure that a full range of model documents to be used by employers and employees will be developed and publicised, incorporating feedback from respondents. These documents will address all the requirements of the statutory procedures.

Question 15 – Forms versus letters

131. There were 82 responses to this question, of which 46 (or 56.1%) agreed standardised forms would be more appropriate than letters. 36 (43.9%) of respondents disagreed.

132. On balance, the Government proposes to develop standardised letters in association with partner organisations.

Question 16 – Making model documents available

133. There were 99 responses to question 16³, of which 67 (or 67.7%) suggested hard copies ordered by help line, 66 (66.7%) wanted hard copies ordered from the web site, 78 (78.8%) preferred documents downloaded from a web site, and 26 (26.3%) suggested some other distribution channel.

134. The Government recognises it will be important to use a wide variety of communication channels.

³ It should be noted that respondents could choose more than one option when answering question 16.

Other issues

Development of advice and guidance campaign

135. The Government received a great deal of helpful feedback on the proposed advice and guidance campaign. It would continue to welcome suggestions on how to support the implementation of the Regulations.

Transitional provisions

136. The Government consulted on the basis that the Regulations would apply in the following circumstances:

- Where the employer first contemplates taking disciplinary action against an employee or dismissing him on or after the date the Regulations come into force (i.e. 1 October 2004); or
- Where the grievance about which the employee complains occurs or continues on or after 1 October 2004.

137. The Government proposes to retain these transitional provisions. However, a number of minor drafting suggestions were made, which have been incorporated into the Regulations. Most significantly, if the grievance is continuing at the date the Regulations come into force but if the employee has already raised the issue with his employer, the Regulations will not apply.

OTHER ISSUES ARISING FROM THE CONSULTATION

138. Respondents also raised a number of other issues. A number of responses restated positions on Employment Act policies – these are mostly not relevant to the drafting of the Regulations. The main issues that are relevant are discussed below.

Employee status

139. As set out in the draft Regulations, the statutory procedures will apply only to employees, and not to other categories of workers.

140. The TUC and other unions contended that the procedures should be extended to all workers. This, they considered, would enable greater consistency and may arguably help to solve more disputes in the workplace, because non-employee workers would need to raise formal grievances before being able to go to tribunal.

141. The Government intends that the statutory procedures should apply only to employees. The Government has been undertaking a general review of employment status issues relating to employment legislation, and to act before conclusions have been made would be premature.

Complexity

142. Some respondents believe the statutory procedures are too complicated for employers and employees to operate.

143. CBI felt that was much in the draft Regulations which employers welcomed, but felt some elements were overcomplicated. The Law Society believed the statutory procedures would complicate the right not to be unfairly dismissed. Citizens Advice noted that many aspects of the regulations could be confusing for both employers and employees. The Engineering Employers Federation argued that the proposed Regulations would increase the length and complexity of cases that proceed to tribunal.

144. A small number of respondents, including CBI and Engineering Employers Federation, suggested that the implementation of the statutory procedures should be delayed whilst the proposals are reworked.

145. The Government acknowledges that the Regulations are not simple. However, this is unavoidable to ensure that they work sensibly in all the different situations that arise in employment, and the overall thrust of comments made in response to the consultation document has been that the provisions should be more precise and detailed. Practical guidance is being developed with Acas and other partner organisations. The Government believes the planned implementation date of October 2004 allows time for the new requirements to be widely publicised.

Continuity of employment

146. Where an employee is dismissed, his/her continuity of employment is generally broken. The Government therefore proposes to amend the Employment Protection (Continuity of Employment) Regulations 1996 so that continuity of employment is preserved where an employee is dismissed but subsequently re-employed or re-instated after following a statutory procedure.

ANNEX A – LIST OF ORGANISATIONS THAT RESPONDED TO THE CONSULTATION

The following table gives a list of those responded publicly to the consultation on the Dispute Resolution, Draft Regulations.

AB Camolin Printers Ltd	The Construction Confederation
Acas	Countryside Agency
A-2-Sea Solutions Ltd	Coventry Law Centre
Andrew Acland & Associates	Coventry & Warwickshire Chamber of Commerce
The Aikin Driver Partnership	Croner Consulting
ASDA Stores Limited	Crown Photo Systems (UK) Limited
Association of Chartered Certified Accountants ACCA	Cumberland Ellis Peirs
Association of University Teachers	CWU
Association of Teachers and Lecturers	Dawsons Music Ltd
BAE Systems	Deeson Group Ltd
Bath Steam Laundry t/a Regency Laundry Services	Dennis & Robinson Limited
Better Regulation Task Force	Digital Applications International Ltd
BMA	Disability Rights Commission
Bevans Solicitors	ECIA
Michael Blake Esq MA MCIPD	Edinburgh University
British Hospitality Association	Engineering Employers Federation
British Retail Consortium	Employment Lawyers Association
Birmingham Law Society	Employment Tribunals Service (ETS)
British Nuclear Fuels PLC	Employers' Organisation for Local Government
British Velvets Ltd	Equal Opportunity Commission
Britton Group - Hartlepool (Trading as Britton Decoflex)	Eversheds LLP
BUPA care services	Federation of Licensed Victuallers Associations
Burgess Salmon	Federation of Small Businesses
Business Link South Yorkshire	Alan Fish Ltd
Business Services Association	Food and Drink Federation
CBI	Ford Motor Company Ltd
Ceramic Tile Distributors (Newcastle) Ltd	Freshfields Bruckhaus Deringer
CETMA	Gibbs and Dandy plc
H Charlesworth & Co Ltd	GMB
Chartered Institute of Personnel and Development	Graphical, Paper & Media Union (GPMU)
Choice Recruitment Limited	Graves (Cumberland) Ltd
CIPD	Hammonds
CIPD Policy Group	Hardwick
Citalia Holidays	Herne Consultants Ltd
Citizens Advice	Peninsula Business Services Limited
Citizens Advice Scotland	Philip Leisure Group
CIU Working Men's Club & Institute Union Limited	Police Federation of England and Wales
	Port of London
	Prosaw

Connect the union for
 professionals in communications
 Hewland Engineering
 Home Care Services (Kent) Ltd
 Hook & Tucker Zenyx Ltd
 Intervect UK Ltd
 Institute of Directors
 ISA Poultry UK Ltd
 ISA (Holdings) Ltd.
 ITM-Soil Ltd
 Johnson Controls Limited
 Keysource Ltd.
 The Law Society
 The Law Society of Scotland
 Leicester Community Legal
 Service Partnership
 Lewis & Co (Fabrics) Ltd
 LloydsTSB
 London Chamber of Commerce
 and Industry
 Management Advisory
 The Managerial and Professional
 Staffs Association (MPA)
 Marks & Spencer PLC
 MHA HR Consultancy
 Micron Sprayers Ltd
 National Association of
 Schoolmasters
 Union of Women
 National Probation Directorate
 National Union Of Teachers (NUT)
 Nationwide Building Society
 The Newspaper Society
 North Western Local Authorities'
 Employers Organisation
 Northumberland County Council
 National Union of Maritime,
 Aviation and Shipping Transport
 Officers
 The Old Bridge House Hotel
 Palser Grossman
 West Yorkshire Police
 Whitehead Monckton
 Brian Whitney Esq
 Yellowfin Ltd

Prospect
 Edward Pryor & Son Ltd
 Public and Commercial Services
 union
 The Participation Forum
 Quebec Systems
 Rank Brothers Ltd
 Recruitment and Employment
 Confederation
 RS Components Limited
 Red Mill Snack Foods Limited
 Reed Executive PLC
 Road Haulage Association Limited
 Rolls-Royce plc
 Royal Mail Group plc ("RM")
 William Santus & Co Ltd
 Sanderson Wilson & Company
 Limited Skanska Construction Group
 Scottish Trade Union Congress
 Small Business Council
 Society of Local Council Clerks
 South East Employers
 Southampton Advice &
 Representation Centre S.A.R.C.
 John Stamford + Associates
 Stentor Music Co Ltd
 Thompsons
 Timsons Ltd
 Total Conflict Management Limited
 The Travel Centre (Norwich) Ltd
 Travers Smith Braithwaite
 Trade Unions Congress
 Universities and Colleges Employers
 Association
 UNIFI
 Wales TUC Cymru
 West Midlands Employment & Low
 Pay Unit Employment Law Group of
 Applicant Representatives (ELGAR)
 West Sussex County Council

ANNEX B – SOURCES OF ADVICE

Service	Description	Contact details
Acas	Acas are the employment relations experts, helping people work together effectively. Acas provides impartial information, help and guidance on employment matters. It also prevents and resolves problems between employers and their workforces, settling complaints about employees rights and encouraging people to work together effectively.	08457 47 47 47 Textphone 08456 06 16 00 www.acas.org.uk
Business Link	A national service, which provides help and advice to business owners and managers on all aspects of setting up and running a business	0845 600 9006 www.businesslink.org.uk
Citizens Advice	Citizens Advice offers free, confidential, impartial and independent advice on problems that are central to people's lives. These include debt and consumer issues, benefits, housing, legal matters, employment, and immigration. Advisers can help fill out forms, write letters, negotiate with creditors and represent clients at court or tribunal.	England and Wales 020 7833 2181 www.citizensadvice.org.uk www.adviceguide.org.uk Scotland 0131 550 1000 www.cas.org.uk
Commission for Racial Equality	The Commission for Racial Equality is a publicly funded, non-governmental body set up under the Race Relations Act 1976 to tackle racial discrimination and promote racial equality	England 020 7939 0000 Scotland 0131 524 2000 Wales 0292 0729 200 www.cre.gov.uk

Community Legal Service	To make it easier for the public to get legal help and advice, the Community Legal Service brings together organisations offering these services into local networks. The networks include solicitors, Citizens Advice Bureaux, law centres, local authority services (including libraries), community centres and a host of other organisations. Many of the organisations within the CLS offer some or all of their services for free.	www.justask.org.uk
DIALOG	The Diversity Action in Local Government unit provides information for local authority managers on legislative developments and good practice on equality matters. The unit promotes the new Equality Standard for Local Government	www.lg-employers.gov.uk
Disability Rights Commission	The Disability Rights Commission (DRC) is an independent body set up by the Government to help secure civil rights for disabled people	0845 7622 633 www.drc.org.uk
DTI Dispute Resolution	The dispute resolution website draws together a number of useful publications on this topic	http://www.dti.gov.uk/di-sputeresolution
Equal Opportunities Commission	The Equal Opportunities Commission (EOC) is an agency working to eliminate sex discrimination in 21 st Century Britain	National 0845 601 5901 Scotland 0141 245 1800 Wales 029 2064 1079 www.eoc.org.uk
Equality Direct	This service is designed to give business managers easy access to authoritative and joined-up advice on a wide range of equality issues	0845 600 3444 www.equalitydirect.org.uk

REAS	The Race and Equality Advisory Service (REAS) is a part of Acas. The service provides free and confidential strategic advice to employers and others so that they can develop and implement policies and practices for racial equality among the workforce. It is a national service with a team of regional advisers based throughout the country to ensure local expertise is available to all their clients	Phone Acas and ask for REAS adviser
Small Business Service	The Small Business Service (SBS) is a Government agency, which champions the interests of small businesses	020 7215 5000 www.sbs.gov.uk
Trades Union Congress	The TUC is the umbrella organisation for Britain's unions. It provides information on rights at work and the right union to join through its <i>know your rights</i> line and workSMART, the TUC's world of work website.	General - 020 7636 4030 <i>know your rights</i> line 0870 600 4 882 www.tuc.org.uk workSMART (world of work website) www.worksmart.org.uk