

This consultation document covers the Government's proposals for the Employment Act 2002 (Dispute Resolution) Regulations ('the Dispute Resolution Regulations').

The Government firmly believes in commitment and partnership in the workplace. Resolving disputes between employers and employees is an important part of this objective.

After previous consultation, the Employment Act 2002 set out a new framework for dispute resolution. Therefore, this consultation document will focus on the detailed application of these dispute resolution procedures.

A wide spectrum of stakeholders have helped to shape these proposals, ensuring the Regulations are sufficiently flexible and practical. The Government wants this consultation process to test whether these ideas are fully workable in all different types of workplaces, or if the procedures need to be further refined before implementation. Therefore, the consultation exercise will be vital for establishing that the draft Regulations will be fully effective in practice.

<b>Issued</b>	9 July 2003
<b>Respond by</b>	29 October 2003
<b>Enquiries to</b>	Niel Sutton Dispute Resolution team Department of Trade and Industry 1 Victoria Street UG120 London SW1H 0ET Email: <a href="mailto:niel.sutton@dti.gsi.gov.uk">niel.sutton@dti.gsi.gov.uk</a> Tel: 020 7215 5985 Fax: 020 7215 2635

## TABLE OF CONTENTS

<b>Foreword .....</b>	<b>1</b>
<b>Executive summary .....</b>	<b>2</b>
<b>Questions for consultation.....</b>	<b>4</b>
<b>Chapter 1 - Introduction.....</b>	<b>6</b>
Background .....	6
Testing proposals with stakeholders .....	6
Consultation.....	7
Next steps.....	8
Other information.....	8
Submitting your comments .....	9
<b>Chapter 2 - Statutory dismissal and disciplinary procedures</b>	<b>10</b>
Overview.....	10
Adjustment of Awards.....	11
Application of the standard (three-step) dismissal and disciplinary procedure.....	12
Application of the modified (two-step) dismissal procedure.....	15
Dismissals in circumstances where employment cannot continue .....	15
"Gross misconduct" dismissals .....	15
Relationship with the Acas Code of Practice on Disciplinary and Grievance Procedures .....	16
<b>Chapter 3 - Statutory grievance procedures.....</b>	<b>18</b>
Adjustment of awards and admissibility .....	19
Application of the standard (three-step) grievance procedure.....	20
Application of the modified (two-step) grievance procedure.....	21
<b>Chapter 4 - When the procedures do not need to be completed .....</b>	<b>22</b>
Exemptions.....	22
Unreasonable behaviour of one party .....	22

Not practicable to comply .....	23
Employment tribunal application presented before the modified dismissal procedure starts.....	23
“Collective” issues.....	24
Interim relief .....	24
Industrial action dismissals.....	25
National security.....	25
Circumstances where parties are treated as not subject to the procedures.....	25
<b>Chapter 5 - Extending time limits for tribunal applications....</b>	<b>27</b>
Grievance procedures.....	28
Dismissal and disciplinary procedures .....	28
<b>Chapter 6 - “Overlapping” disciplinary and grievance issues .....</b>	<b>31</b>
<b>Chapter 7 - Implied contractual terms .....</b>	<b>34</b>
<b>Chapter 8 – Communication, guidance and transitional provisions.....</b>	<b>34</b>
Raising awareness.....	35
Example documents.....	36
Transitional provisions .....	37
<b>Chapter 9 - How to comment.....</b>	<b>39</b>
<b>Annex A – Draft Regulations.....</b>	<b>40</b>
<b>Annex B – Partial Regulatory Impact Assessment (including Small Firms Impact Test).....</b>	<b>47</b>
<b>Annex C – Organisations involved in pre-consultation .....</b>	<b>65</b>
<b>Annex D – Example documents and letters.....</b>	<b>67</b>
Step One grievance letter.....	67
Example written statement of employment particulars.....	68
<b>Annex E – Sources of advice .....</b>	<b>78</b>
<b>Annex F – Consultation criteria and making a complaint or general comment on the consultation.....</b>	<b>81</b>

Consultation criteria .....	81
Comments or complaints .....	81

## Foreword

Employment disputes are bound to arise from time to time. Most employers and employees recognise that it is best for these disputes to be raised first – and preferably resolved – in the place of work, rather than in an employment tribunal or court.

The costs associated with employment disputes can be considerable, both in human and in financial terms. They are stressful, disruptive and expensive for employees and employers alike. Discussing problems in the workplace will not solve all of them; but in many cases dialogue can be expected to result in quick and flexible solutions, which preserve the employment relationship.

The Employment Act 2002 tackled this issue by establishing statutory minimum dismissal and disciplinary and grievance procedures. These procedures will create strong incentives for the parties to attempt, in the first instance, to resolve problems through dialogue. We expect it to help forestall legal action, especially in those workplaces where such procedures have not previously existed or been used. This document sets out and seeks comments on the detail on how the Government intends to implement these procedures.

The statutory minimum procedures have been carefully designed with a particular emphasis on the needs of small businesses and the people who work in them. They are based on the principles of good regulation and have benefited greatly from the contribution of many different stakeholder groups. We will continue working hard during the course of this consultation to talk to as many interested parties as possible, collecting views from businesses of all sizes, trade unions, professional specialists, trade associations, interest groups and individuals. This consultation document will be of particular interest to small firms and their employees and the organisations that represent them.

To help us build highly effective Regulations, I would greatly welcome your views on the proposals contained in this document by Wednesday 29 October 2003, to the address shown in paragraph 17.

**Gerry Sutcliffe**

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

## Executive summary

The Employment Act 2002 established a framework for resolving employment disputes in the workplace – the Government proposes to fully implement these procedures in October 2004. The key points are:

- All employers and employees will be required to follow statutory minimum dismissal and disciplinary procedures and statutory minimum grievance procedures, in the circumstances specified in the new Regulations (these procedures are set out on pages 12-13 and 21-22).
- The **standard dismissal and disciplinary procedure** will normally apply where an employer wishes to dismiss an employee or take action against him or her on grounds of conduct or capability. See Chapter 2 for further details.
- The **modified dismissal procedure** will apply, instead of the standard procedure, in a very limited number of situations. These include where the action is a dismissal necessitated by circumstances outside the control of the employer, or an immediate “gross misconduct” dismissal in the kind of highly exceptional conditions where such a dismissal would be found to be fair by an employment tribunal.
- However, when an employer dismisses an employee, going through the relevant minimum procedure will not necessarily be sufficient to ensure that the dismissal is fair under the unfair dismissal legislation. The guidance in the *Acas Code of Practice on Disciplinary and Grievance Procedures* will be updated in October 2004 (after public consultation early next year).
- The **standard grievance procedure** will generally apply where an employee wishes to complain about any action by an employer, apart from actions which fall within the dismissal and disciplinary procedure. See Chapter 3 for details.
- The **modified grievance procedure** will apply, instead of the standard procedure, only where the employment has already ended. In addition, either it will not be reasonably practical for one or other of the parties to use the standard procedure or both parties agree in writing to use the modified procedure.
- Failure to follow the statutory procedures may impact employment tribunal applications. If the employer has not followed the procedures in a dismissal case, this will be found to be an automatically unfair dismissal. If the employee has not written to the employer prior to presenting his or her complaint to the employment tribunal the complaint will not be admissible. If either party has not completed the relevant procedure, the tribunal must

increase or decrease the compensation by 10% (depending on which party is at fault) and may do so by up to 50%.

- Neither party has to follow the statutory procedures when one of the following conditions exists (see Chapter 4 for details):
  - The other party is violent, abusive or behaves in an unacceptable way;
  - factors beyond the control of either party make it effectively impossible for the procedure to be gone through;
  - in circumstances where the modified dismissal procedure would apply, the employee makes an employment tribunal complaint about the dismissal before the employer has issued the Step One letter;
  - the issue is being discussed “collectively”;
  - the employee applies for “interim relief”; or
  - to do so would require the disclosure of information contrary to the interests of national security.
- The time limits associated with employment tribunal applications will be extended in certain circumstances to allow extra time for the statutory procedures to be completed. (See Chapter 5).
- When a workplace dispute concerns a number of “overlapping” issues, one or other of the statutory procedures will apply in relation to each specific action that the employer takes or wishes to take, just as it would if that were the only action in dispute. However, **any** letter sent between the parties, and **any** meeting that takes place between them, can potentially fulfil a step under the statutory procedures, regardless how many or what type of subjects it covers in addition to the specific action in question. (See Chapter 6).
- The Government does not propose to commence section 30 of the Employment Act at this time. This provision would make the dispute resolution procedures an implied term of all employment contracts. Instead, the Government would prefer to wait and see how the initial implementation of the procedures beds down and will consider the need to commence this provision in the light of evidence evaluating the impact of these Regulations.

## Questions for consultation

Views are welcomed on any aspects of the draft Regulations and in particular on the following issues:

### Dismissal and disciplinary procedures

- 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?

### Grievance procedures

- 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)?

### When the procedures do not need to be completed

- 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 or 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?

### Extending time limits

- 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.

### “Overlapping” disciplinary and grievance issues

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

### Implied contractual rights

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

### Communication, guidance and best practice

- Question 14 Please give comments on the examples of model documents in Annex D.
- 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.

The Government would welcome your replies to these questions and any other comments on the draft Regulations. These should be sent by **Wednesday 29 October 2003** to:

Niel Sutton  
Dispute Resolution team  
Department of Trade and Industry  
1 Victoria Street UG120  
London  
SW1H 0ET  
Email: [niel.sutton@dti.gsi.gov.uk](mailto:niel.sutton@dti.gsi.gov.uk)  
Tel: 020 7215 5985  
Fax: 020 7215 2635

## Chapter 1 - Introduction

1. From October 2004, all employers and employees in Great Britain will be required, in the event of an employment dispute, to follow the new statutory dispute resolution procedures. These procedures have been designed to be flexible and pragmatic and to provide a good framework for discussion between the parties. Employees will have the right to information about how the procedures will apply in their workplace. Employers will be helped by guidance.

### *Background*

2. The Government's policy on dispute resolution was set out in the 2001 consultation paper *Routes to Resolution*. The Government listened to the responses to that consultation and announced that there would be light-touch legislation binding both employees and employers that would build on existing good practice, and recognise the particular needs of small businesses.

3. This model for dispute resolution was laid out in primary legislation, forming part of the Government's Employment Act 2002<sup>1</sup>, which received Royal Assent on 8 July 2002. The Act set out basic procedures for handling disputes in the workplace, the detailed application of which will be specified in new Dispute Resolution Regulations. This consultation document sets out those Regulations.

4. Acas (the Advisory, Conciliation and Arbitration Service) publishes the *Code of Practice on Disciplinary and Grievance Procedures*, which plays a central role in managing employment disputes (see Acas contact details in Annex E to obtain a copy). The statutory Dispute Resolution Regulations will underpin the Code of Practice by setting out the minimum requirements for resolving disputes that both parties must follow. Acas are currently revising the Code of Practice to reflect the legislative changes flowing from the new Regulations (see Chapter 2 for further discussion of this issue). It is anticipated that public consultation on the revised Code will begin later in 2003 or early 2004. The new Regulations and the new Acas Code will come into force simultaneously in October 2004, together with other key provisions from the Employment Act.

### *Testing proposals with stakeholders*

5. The Government recognises that these Regulations are likely to have a significant impact on Britain's workplaces – only practical, flexible solutions are appropriate. With that in mind, an Advisory Group was formed, involving a wide spectrum of stakeholders. Participants include:

---

<sup>1</sup> Information on the Employment Act 2002 is available at <http://www.dti.gov.uk/er/employ/index.htm>.

- Acas
- British Hospitality Association/  
Restaurant Association
- Confederation of British Industry
- Construction Confederation
- Engineering Employers Federation
- Forum for Private Business
- Small Business Council
- Transport and General Workers  
Union
- Union of Shop, Distributive and  
Allied Workers
- British Chambers of Commerce
- British Retail Consortium
- Citizens Advice
- Employment Tribunals Service
- Federation of Small Business
- GMB
- Small Business Service
- Trades Union Congress

6. This Group has provided valuable feedback on policy intentions, helped shape the Government's information and guidance programme, and articulated the links between the forthcoming Regulations and best practice in the workplace. We are very grateful to the organisations concerned for their work and time. DTI has also consulted key professional bodies and other groups.

7. The Government has, in addition, tested its policy plans at the "grass-roots" levels. Focus groups have been held with small firms, large businesses, trade union legal specialists, and Acas conciliators and advisers (see Annex C for more details).

8. Widespread awareness of the new procedures will be a critical success factor for the implementation of these Regulations. Therefore, the Government proposes to run a well-resourced, integrated publicity campaign in the run-up to implementation, reaching out to employers, employees, trade associations, trade unions, advisory bodies, and others. This information and awareness programme is already underway. Full details can be seen in Chapter 9.

9. A full assessment has been made of the costs and benefits of the proposed Regulations. The Partial Regulatory Impact Assessment (see Annex B) indicates that the cost to business of these proposals will be £ 35-65 million one-off costs and annual recurring costs of £31-£52 million. These costs will be more than offset by direct benefits, from fewer tribunal cases, of £70-80 million per annum plus £19-22 million tax payers savings, together with unquantified benefits from better employment relations, increased productivity and higher staff retention.

### *Consultation*

10. It is vital that the dispute resolution procedures are implemented in a way that is down-to-earth and resilient – the Government therefore intends this to be a fully interactive consultation exercise, and expects that the Regulations will evolve during this process.

11. Public consultation on these draft Regulations will last for sixteen weeks. It will be aimed at employers, employees, and the organisations that support and advise these groups. The Government is particularly keen to learn more about the views of small firms and their staff. The consultation document will be supplemented by a range of outreach activities to gather feedback from across the country, and a straightforward summary of the Regulations will be produced shortly.

12. This document is structured around a number of chapters (see table of contents for more details).

- Chapter 2 Statutory dismissal and disciplinary procedures
- Chapter 3 Statutory grievance procedures
- Chapter 4 Circumstances where the statutory procedures do not need to be followed
- Chapter 5 The impact on time limits associated with employment tribunal claims
- Chapter 6 “Overlapping” disciplinary and grievance issues
- Chapter 7 Implied contractual terms
- Chapter 8 The Government’s communication and guidance programme for the Regulations
- Chapter 9 How to comment on the draft Regulations

13. There is a summary at the end of each chapter, which highlights the key issues for discussion. There are also a number of Annexes that provide further details on key areas.

14. This consultation document is available on request in Welsh and alternative formats. See Chapter 9 for more details.

### *Next steps*

15. Once the consultation exercise is complete, the Government will analyse replies, and publish a response to consultation in due course. It is anticipated that the revised Regulations will be laid before Parliament by the end of 2003. Subject to Parliamentary approval, the Regulations will come into force in October 2004, together with other associated Regulations.

### *Other information*

16. A wide range of information, including this consultation document and the associated draft Regulations, is available at the Dispute Resolution website at [www.dti.gov.uk/er/hot\\_topics.htm](http://www.dti.gov.uk/er/hot_topics.htm). The website includes other earlier publications such as *Routes to Resolution* paper, and guidance for employers, employees and other interested parties. There will also be links to other forthcoming consultations on draft Regulations which will also affect the legislative framework for dispute resolution:

- Acas Code of Practice on Disciplinary and Grievance Procedures (to be published early 2004)

- Employment tribunal rules of procedure (to be published Autumn 2003)
- Employment Appeal Tribunal rules of procedure (to be published in 2004)
- New prescribed forms for applicants and respondents in employment tribunal cases (public consultation on the forms to start in Autumn 2003)

### *Submitting your comments*

17. We welcome your replies to these questions and any other comments on the draft Regulations. These should be sent via post, email or fax by **Wednesday 29 October 2003** to:

Niel Sutton  
Dispute Resolution team  
Department of Trade and Industry  
1 Victoria Street UG120  
London  
SW1H 0ET  
Email: [niel.sutton@dti.gsi.gov.uk](mailto:niel.sutton@dti.gsi.gov.uk)  
Tel: 020 7215 5985/ Fax: 020 7215 2635

18. Comments received, as part of this consultation may be made publicly available in whole or in part at the Department's discretion. If you do not wish all or part of your response (including your identity) to be made public you must state in the comments which parts you wish to be kept confidential. Where confidentiality is not requested, responses may be made available to any enquirers, including from outside the UK, or published by any means, including on the Internet.

## Chapter 2 - Statutory dismissal and disciplinary procedures

19. The statutory dismissal and disciplinary procedures will create a new minimum standard for addressing disputes about dismissal and certain other types of action that an employer might take in relation to an employee.

### Overview

20. The Employment Act 2002 established that, when an employer is contemplating taking disciplinary action against an employee, the first step in the statutory minimum dismissal and disciplinary procedure will be for the employer to notify the employee in writing. The employee will then be invited to attend a meeting to discuss the issue, and to appeal if that fails to resolve the matter. (See figures 1 and 2 for full details of the procedures to be followed.) There are some exceptions to these rules, which are set out in Chapter 4. The procedures themselves have already been established in the Act so do **not** form part of this consultation exercise. The statutory grievance procedures (set out in Chapter 3) largely mirror these procedures.

Figure 1

<b>Standard (three-step) dismissal and disciplinary procedure</b>	
Step One	The employer sets down in writing the nature of the employee's conduct, capability or other circumstances which may result in dismissal or disciplinary action, and sends a copy of this statement to the employee. The employer must inform the employee of the basis for his/her complaint.
Step Two	The employer should invite the employee to a meeting to discuss the issue. The employee should take all reasonable steps to attend. After the meeting, the employer must inform the employee about any decision, and offer the employee the right of appeal.
Step Three	If the employee wishes to appeal, he/she must inform the employer. The employer should invite the employee to attend a further meeting to discuss the appeal. The final decision must be communicated to the employee.

Figure 2

### Modified (two-step) dismissal procedure

Step One	The employer sets down in writing the nature of the alleged misconduct that has led to the dismissal, the evidence for this decision, and the right to appeal against the decision, and sends a copy of this to the employee.
Step Two	If the employee wishes to appeal, he/she must inform the employer. The employer should invite the employee to attend a further meeting to discuss the appeal. The final decision must be communicated to the employee.

21. The following general requirements have also been established in the Employment Act 2002 (in Part 3 of Schedule 2):

- Each step and action of the procedures must be taken without unreasonable delay.
- The timing and location of meetings must be reasonable.
- Meetings must allow both the employer and the employee to explain their cases.
- In the case of appeal meetings, the employer should, as far as reasonably practicable, be represented by a more senior manager than attended the first meeting.
- The employee can choose to be accompanied to the Step Two meeting and/or the Step Three appeal by either a colleague or a trade union representative.

22. When a disabled employee is involved in a statutory dispute resolution procedure, the employer will be required to make “reasonable adjustments” to any provisions, criteria or practices associated with following the statutory procedure that may affect the employee<sup>2</sup>.

### *Adjustment of Awards*

23. The Employment Act 2002 provides that failure to complete the statutory dispute resolution procedures would affect subsequent employment tribunal cases under certain specified jurisdictions. The figure below sets out the key points which will determine how tribunal decisions and awards are made.

- If an employer dismisses an employee without completing the statutory dismissal and disciplinary procedure, then that dismissal becomes **automatically unfair** (subject to eligibility conditions e.g. the 12 months qualifying period). If an employment tribunal makes this finding, there will

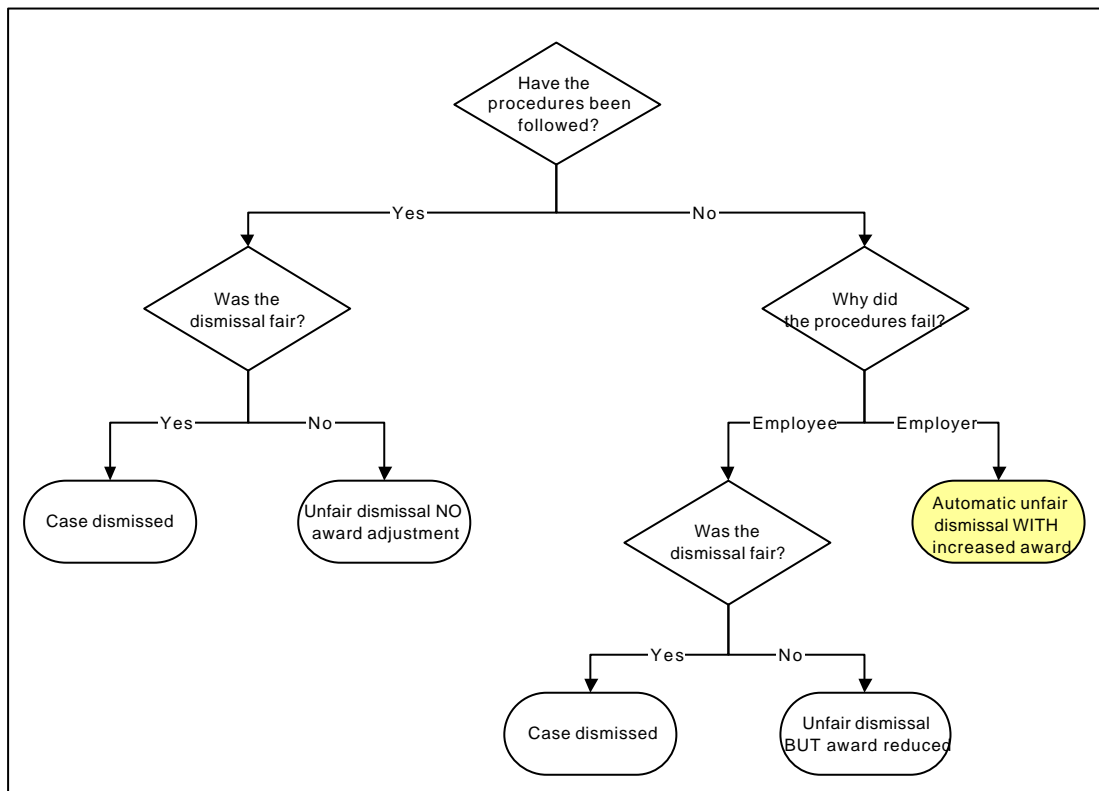
---

<sup>2</sup> This requirement is established by section 6 of the Disability Discrimination Act 1995 (and associated Regulations).

be a mandatory minimum award of four weeks' pay – any additional compensation for the employee must be increased by 10% and can be increased by up to 50%.

- However, if an employment tribunal finds a dismissal to be unfair on its substantive merits, but the statutory procedures was completed satisfactorily, there will be **no adjustment** of awards.
- If the procedure is not completed, because the **employee** did not meet his/her obligations, any ensuing award will be subject to a **reduction** of 10% and may be reduced by up to 50%.

Figure 3



24. The current limit for a compensatory award for ordinary unfair dismissal is £53,500 (as provided for in section 124 (1) of the Employment Rights Act 1996). The new Regulations will **not** affect this limit, and adjustments will not breach it.

*Application of the standard (three-step) dismissal and disciplinary procedure*

25. The Government intends that the **standard** dismissal and disciplinary procedure (see regulation 3 in Annex A) will apply in relation to:

- all types of **dismissals** (including dismissals on grounds of capability, conduct, redundancy, expiry of a fixed term contract and redundancy) **except** for:

- “collective” dismissals (see Chapter 4) ;
  - constructive dismissals (see Chapter 3);
  - dismissals in circumstances where employment cannot continue (see paragraph 32); 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 (see paragraph 33); 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 suspensions;
    - “collective” actions (see Chapter 4).

26. When an employer takes action short of dismissal against an employee for **reasons other than conduct or capability**, this will not trigger the application of the standard dismissal and disciplinary procedure but will instead fall for consideration under the statutory **grievance procedures**. This also applies to warnings and suspensions (whatever the reason for them) and **constructive dismissals**. The statutory grievance procedures are covered in the next chapter.

27. The Government believes it is straightforward in practice for the parties to recognise the difference between actions taken wholly or mainly by reason of an employee’s conduct or capability – where the standard dismissal and disciplinary procedure will apply – and other types of actions short of dismissal. These may be regarded by the employer as simply the implementation of management decisions and not in any way “punitive”. Another reason for drawing the line in this place is that this should help to ensure that the provisions operate as clearly and effectively as possible in cases where there are “overlapping” disciplinary and grievance issues (see Chapter 6).

28. There are a number of reasons why **warnings** (oral and written) are to be excluded from the application of the statutory dismissal and disciplinary procedures:

- It would, in the Government’s view, make little sense to require an employer to write a letter warning about potential disciplinary action before the disciplinary action takes place i.e. a written warning. This would be, at best, unnecessary repetition. It would make even less sense to require an employer to give a written warning (Step One letter) before giving an oral warning. Oral warnings are often relatively informal, in any event.

- Where a written warning (whether initial or final) precedes substantive disciplinary action, the written warning **may** meet the statutory criteria to count as the employer's Step One letter in relation to that action. To make the issuing of a letter meeting the Step One criteria a disciplinary action in itself, so that it had to be foreshadowed by (another) Step One letter and a Step Two meeting, would be onerous and illogical.
- The issuing of warnings will normally be evidence of following an existing workplace procedure – the warnings being steps in that procedure – and the Government does not intend the new provisions to cut across such existing procedures.

#### EXAMPLE

An employer in a small firm with five employees writes to one of those employees to say that his timekeeping is poor and that (for various specified reasons) his performance is not up to scratch, and that if matters do not improve, he will have to be dismissed. The employer subsequently invites the employee to a meeting to discuss this, and they both have an opportunity to state their position. Subsequently, the employee's performance shows no sign of improvement, and he is dismissed. The employer gives the employee an opportunity to appeal against this action at a post-dismissal meeting. If the employee complains of unfair dismissal, the employer will be able to show that the statutory dismissal and disciplinary procedure requirements were fulfilled, as the warning letter will count as Step One, the pre-dismissal meeting will count as Step Two and the post-dismissal meeting will count as Step Three (provided, in each case, that all the criteria specified in the 2002 Act were met). The tribunal will then have to consider whether or not the dismissal was fair, taking into account as appropriate the guidance in the Acas Code of Practice.

Because the issuing of a written warning will not in itself count as a disciplinary action to which the statutory dismissal and disciplinary procedure applies, the employer will not have been under any obligation to write a letter to the employee and have a meeting **prior to** issuing the warning letter, or to give the employee a chance to attend a meeting to appeal against the issuing of the warning letter. The Government considers that this would constitute an unreasonably cumbersome procedure to be required as a statutory minimum in all cases.

29. Disciplinary suspension, where the employee is **suspended without pay or on reduced pay**, will attract the application of the standard dismissal and disciplinary procedure. This is because the withholding or reduction of pay is a conduct- or capability-related action additional to the suspension itself. **Investigatory suspension on full pay will not trigger the application of this procedure.** However, if the employee is dissatisfied with this, he/she can initiate the standard grievance procedure (see following chapter for details on the grievance procedures).

30. The Government would welcome views about the use of the standard dismissal and disciplinary procedures:

Question 1 Is the definition of “disciplinary action” appropriate (i.e. not oral or written warnings, or suspension on full pay)?

### *Application of the modified (two-step) dismissal procedure*

31. The modified procedure is only intended to be used after the employee has been dismissed (see regulation 3 (2) in Annex A). There are two main circumstances where this might happen fairly:

- where employment cannot continue;
- The small subset of “gross misconduct” dismissals where instant dismissal is fair.

### Dismissals in circumstances where employment cannot continue

32. This provision is designed to cover cases where there are reasons other than the conduct of the employee that cause the employer to have, in effect, no choice but to dismiss without delay. These reasons make it pointless to carry out a procedure prior to dismissal. It is envisaged that such circumstances will be very rare – e.g. where the employer becomes aware that the employee is working illegally (without a required work permit, for instance), or becomes unable to carry out his/ her duties (e.g. a bus driver who loses his/her driving licence) or where the employer’s business suddenly and unexpectedly collapses. The Government considers that whether or not such circumstances are present in any particular case can be left to an employment tribunal to judge, in the event that the dispute escalates to legal action.

### “Gross misconduct” dismissals

33. It is well established in case law that an employer is sometimes entitled, by reason of an employee’s gross misconduct, to dismiss without notice or pay in lieu of notice. Even in these circumstances, however, if the employee complains to an employment tribunal, it will almost always be held to be unfair dismissal if the employer has dismissed immediately on or after becoming aware of the act of gross misconduct and without first investigating the circumstances (perhaps after suspending the employee). In most cases of this kind, therefore, the application of the standard dismissal and disciplinary procedure will be appropriate. There is, however, a **small subset** of “gross misconduct” dismissal cases where, despite the fact that the employer has dismissed immediately, an employment tribunal will, very exceptionally, find the dismissal to be fair. In the past, this has usually been where the tribunal has decided that investigation of the circumstances would have been futile.

34. The Government wishes to preserve the possibility of an employment tribunal finding an immediate “gross misconduct” dismissal to be fair in these

very exceptional situations. The Regulations will therefore provide for the modified dismissal procedure, rather than the standard dismissal and disciplinary procedure, to apply.

35. It is essential to note that it is **not** the intention of this aspect of the Regulations to encourage employers to dismiss immediately, without prior investigation, in gross misconduct cases. On the contrary, the new provisions will provide an added **disincentive** for employers to dismiss immediately, as such action will normally constitute a breach of the standard procedure and result in an automatic finding of unfair dismissal and an award adjustment in the employee's favour. An employer is still required to go through the modified dismissal procedure, or else the dismissal would be judged automatically unfair, and the award to the employee will be increased by between 10%-50%. ***As indicated in the Acas Code of Practice, suspension pending investigation is almost always the appropriate approach for an employer to take on becoming aware of an alleged act of gross misconduct.*** However, the Government believes that it would not be right for the legislation to have the effect that immediate dismissal in a "gross misconduct" case was **invariably** unfair (as it would become in the absence of the modified procedure), given that employment tribunals do, very exceptionally, find it to be fair.

36. The Government would welcome views about the use of the modified dismissal procedure:

Question 2 Are the circumstances where the modified (two-step) dismissal procedure should be used adequately defined?

### *Relationship with the Acas Code of Practice on Disciplinary and Grievance Procedures*

37. Key to understanding how this new regime will work in relation to **dismissal** is the fact that, for an employer, doing the minimum required in order to comply with the relevant statutory procedure **will not necessarily be enough to ensure that a dismissal is fair under unfair dismissal** legislation. 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 Acas Code of Practice. The Code of Practice will be revised to reflect the legislative changes which will be introduced by these draft Regulations, and this revised document will be the subject of a separate consultation. An issue for consideration is the development of a separate Code of Practice specifically for small firms to set out the requirements this group of employers must meet.

38. The Government would welcome views about the relationship between the draft Regulations and the Acas Code of Practice on Disciplinary and Grievance Procedures:

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?

### **Summary**

This chapter explains the statutory dismissal and disciplinary procedures. Views are invited on any aspects of the draft Regulations and in particular on the following issues:

- |            |  |
|------------|--|
| 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? |

## Chapter 3 - Statutory grievance procedures

39. The statutory grievance procedure will create a new minimum standard for addressing employees' grievances within the workplace. In many ways, this is a mirror image of the dismissal and disciplinary procedures.

40. The statutory grievance procedure will be initiated by the employee writing a letter to the employer. In response, the employer will be required to arrange a meeting to discuss the issue, and to provide an opportunity for the employee to appeal if the meeting fails to resolve the matter. (See figures 4 and 5 for more details.) There are some exemptions to these requirements, which are set out in Chapter 4. The procedures themselves are not covered by this consultation – they have already been established in the Employment Act 2002. As noted in the previous chapter, the statutory dismissal and disciplinary procedures are largely mirrored by the statutory grievance procedures.

Figure 4

<b>Standard (three-step) grievance procedure</b>	
Step One	The employee sets down in writing the nature of the alleged grievance and sends the written complaint to the employer. He/she must inform the employer of the basis for his/her complaint.
Step Two	The employer should invite the employee to at least one hearing at a reasonable time and place at which the alleged grievance can be discussed. The employee should take all reasonable steps to attend. After the meeting, the employer must inform the employee about any decision, and offer the employee the right of appeal.
Step Three	If the employee considers that the grievance has not been satisfactorily resolved, he/she should inform the employer that he wishes to appeal against the employer's decision or failure to make a decision. The employer should arrange a meeting to discuss the appeal. After the meeting, the employer's final decision should be communicated to the employee.

Figure 5

### **Modified (two-step) grievance procedure**

Step One	The employee sets down in writing the nature of the alleged grievance and sends the written complaint to the employer.
Step Two	The employer must set out his response in writing and send it to the employee.

41. The following general requirements have also been established in the Employment Act 2002

- Each step and action of the procedures must be taken without unreasonable delay.
- The timing and location of meetings must be reasonable.
- Meetings must allow both the employer and the employee to explain their cases.
- In the case of appeal meetings, the employer should, as far as reasonably practicable, be represented by a more senior manager than attended the first meeting.
- The employee can choose to be accompanied to the Step Two meeting and/ or the Step Three appeal by either a colleague or a trade union representative.

42. When a disabled employee is involved in a statutory dispute resolution procedure, the employer will be required to make “reasonable adjustments” to any provisions, criteria or practices associated with following the statutory procedure that may affect the employee<sup>3</sup>.

### *Adjustment of awards and admissibility*

43. The Employment Act 2002 established that failure to complete the statutory dispute resolution procedures would affect subsequent employment tribunal claims under certain specified jurisdictions.

44. If an employee wishes to submit an employment tribunal application based on a grievance, he/she **must** write the Step One letter and wait 28 days (unless otherwise exempt from going through the procedures) or the complaint **will not be admitted**. This will apply both to current employees and employees who are no longer in the employer’s employment. However, once this condition has been met, the employee will be able to bring a claim. Time limits will be extended to allow procedures to complete (see Chapter 5). If the procedures as a whole have **not** been completed, then any award may be subject to adjustment.

---

<sup>3</sup> This requirement is established by section 6 of the Disability Discrimination Act 1995 (and associated Regulations).

45. If an employer does not meet the requirements set out in the procedures, then any award made to the employee by the tribunal, in a case under one of the specified jurisdictions, will be increased by 10% and may be increased by up to 50%. If the employee does not meet the requirements set out in the procedures, then any award made to him/her will be reduced by at least 10% and may be reduced by up to 50%.

46. As the adjustment and admissibility provisions have already been established in primary legislation, they are **not** part of this consultation. These provisions will come into force at the same time as the Regulations (i.e. October 2004).

### *Application of the standard (three-step) grievance procedure*

47. The Government intends that the standard grievance procedure will apply in cases where an employee is aggrieved about an action taken by an employer in relation to him/her, and where the employee asserts that the action was taken wholly or mainly by reason of **something other than his/her conduct or capability** (see regulation 4 (1) in Annex A). The types of action in question will **include** warnings (written and oral), investigatory suspensions and those actions giving rise to constructive dismissals, but **exclude** other dismissals and “collective” actions (see Chapter 4). It will also apply when an employee wishes to complain about actions taken by colleagues – should the employer fail to address the issue, then the employee should initiate the standard grievance procedure.

48. The standard (three-step) procedure will apply in **all cases** where the employee 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 instead.

49. The merit of providing for the standard grievance procedure apply, even in cases where the employment has ended, is that the parties, by meeting to discuss the grievance, could succeed in resolving the matter to their mutual satisfaction. In allowing for the grievance to be fully aired, it could also assist the employer in identifying any helpful changes that could be made in workplace practices. However, the parties will not be obliged to meet each other if neither wants to do so, and confirms this in writing. Nor will they be obliged to meet if one or other finds it not reasonably practicable to do so (e.g. if the employee has moved to another location and would have to travel a significant distance to attend a meeting). In such circumstances, the **modified** grievance procedure will apply (see below) and neither party will be held at fault for the failure to complete the standard procedure.

50. The Government welcomes views about the use of the standard grievance procedures:

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)?

### *Application of the modified (two-step) grievance procedure*

51. As suggested above, the modified (two-step) grievance procedure (see regulation 4 (2) and (3) in Annex A) will apply in circumstances where the standard grievance procedure would otherwise apply but **where the employment has ended** and **either**:

- **both parties agree in writing** that the modified procedure should apply (i.e. that they don't want to have meetings with each other); **or**
- it is **not reasonably practicable** for one or other party to take the next action that falls to him/her to take under the standard procedure e.g. an employee cannot attend a meeting because he/she cannot get time off from his/her new job.

### **Summary**

This chapter explains the statutory grievance procedures. Views are welcomed on any aspects of the draft Regulations and in particular on the following issues:

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)?

## Chapter 4 - When the procedures do not need to be completed

52. The Government recognises that there are certain circumstances in which one or other of the statutory procedures either should not or cannot operate because:

- the parties ought to be exempt; or
- one party has made reasonable attempts to go through the procedures but has been prevented from doing so.

### *Exemptions*

53. **Exemptions** from the statutory procedures are to apply in 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.

Each of these categories is dealt with in more detail below.

### Unreasonable behaviour of one party

54. The Government believes that a party – whether an employer or an employee – should not be expected to follow all or any parts of a statutory dispute resolution procedure if (see regulation 5 (1) (a) and (b) and regulation 5 (2) in Annex A):

- there are reasonable grounds to believe that following the procedure would result in harm to that party, his/her property or any other person; or
- the other party has subjected him/her to harassment.

55. This exemption will apply, for example, when there is an assault or the threat of such an assault. It will also apply where one of the parties has been harassed, which is defined as creating an intimidating, hostile, degrading, humiliating or offensive environment, for instance where there is harassment related to gender, race or disability. Such circumstances make the constructive discussion of workplace disputes impossible. However, it is important to note that stress or anxiety on the part of one party will not usually be sufficient in itself to cause the exemption to apply. The Government acknowledges that going through these procedures may be demanding for some employees and managers, but the benefits of workplace dialogue offer a significant counterbalance.

56. If a procedure is not completed by virtue of the fact that this exemption applies, this will be taken into account in any subsequent employment tribunal case under one of the specified jurisdictions. The party at fault would be liable to an adverse adjustment of any award made by the tribunal – and, in a dismissal case where the employer was at fault, a finding of automatic unfair dismissal.

#### Not practicable to comply

57. There are some circumstances where factors beyond the control of either party will effectively prevent the statutory procedure from being gone through for the foreseeable future. Examples could include long-term illness, incapacity, one of the parties being abroad for a long period and cessation of the employer's business. In these circumstances an exemption will apply, but neither party will be held at fault for the failure to follow the appropriate statutory procedure. (See regulation 5 (1) (c) in Annex A).

#### Employment tribunal application presented before the modified dismissal procedure starts

58. An employee who wishes to challenge his/her dismissal in circumstances where the **modified dismissal procedure** applies will be free to present a tribunal application (e.g. an unfair dismissal complaint, if he/she has the necessary qualifying service) straight away, as the Act imposes no admissibility conditions in this regard. If he/she presents the application before the employer sends the Step One letter, this will effectively forestall the carrying out of the procedure. (See regulation 3 (3) (d) in Annex A for details). However, the Government does not intend that any award should be adjusted in these circumstances.

59. If, however, **the employer sends the Step One letter to the employee before the employee has presented a tribunal complaint**, the procedure should be gone through, and either party could potentially be held at fault if the employee subsequently presents a complaint before the procedure has been completed.

### “Collective” issues

60. The Government considers that in some circumstances it may make more sense for issues to be discussed collectively by an employer and his/her employees, rather than be subject to one of the new statutory procedures (see regulation 3 (3) (a) and (b) and regulation 4 (4) and (5) in Annex A). These circumstances are:

- where the employer is under a statutory obligation to inform and consult the employees through representatives;
- where the employer seeks to dismiss all employees of a description or in a category and offers to re-engage all those employees;
- where an appropriate employee representative raises the same, or substantially the same, grievance on behalf of a group of 20 or more employees at or around the same time.

61. The term “appropriate employee representative” as used here is intended to mean any official of an independent trade union recognised for collective bargaining purposes in respect of employees of the category in question **or** any employee from among the aggrieved group who has the authority of the others in the group to raise the matter with the employer.

62. The Regulations will therefore provide an exemption for such “collective” cases.

### Interim relief

63. An employee who makes an application to a tribunal claiming to have been unfairly dismissed by his/her employer can claim for interim relief in certain circumstances. This is possible where the reason (or, if more than one, the principal reason) for his/her dismissal was one of the following: trade union membership or activities, health and safety, occupation pension trustee, business transfer or redundancy representation, working time, protected disclosure, or right to be accompanied. If the tribunal considers it likely that at the full hearing it will uphold the complaint for any of those reasons, it will either order reinstatement, re-engagement or will make an order for the temporary continuation of the contract of employment.

64. An interim relief application must be submitted to the tribunal within seven days of the effective date of dismissal (although the unfair dismissal application itself can be submitted up to seven days after that). The standard dismissal and disciplinary procedure will normally apply in such cases, and the employer will be expected to have carried out the first two steps of that procedure prior to dismissing. The Government considers however that, given the very short time allowed, neither party should be held to be at fault for failure to complete the third step of the procedure – the appeal meeting – if the employee is entitled to and does then apply for interim relief (regardless whether or not that application is successful). An exemption will therefore apply, to the Step Three meeting, in these circumstances. (See regulation 5 (3) in Annex A).

65. There may also be exceptional cases where an employee is entitled to make, and does make, an interim relief application in circumstances where the **modified** dismissal procedure applies. The Government considers that, for the reasons explained above, there should be an exemption in relation to Step Two if the employer has already sent the Step One letter, and thereby started the procedure, before the employee files an employment tribunal application. Again, neither party should be held at fault for the failure to complete the procedure.

#### Industrial action dismissals

66. In some situations, an employer may wish to dismiss employees who are engaged in industrial action. It would not be practical to expect either party to participate in any statutory dispute resolution procedure. Therefore, the Government intends that these dismissals will be exempt from these statutory procedures (see regulation 3 (3) (c) in Annex A).

#### National security

67. If complying with the statutory dispute resolution procedures would require the disclosure of information which would be contrary to the interests of national security, neither party will be required to go through the statutory procedures (see regulation 11 in Annex A).

#### *Circumstances where parties are treated as not subject to the procedures*

68. As previously mentioned, the Regulations will provide an exemption when it is not reasonably practical for either party to participate in the statutory procedures over time. However, there will also be an exemption for short-term situations when the parties cannot meet some of the procedural requirements. If, at any time during the procedures, it is not reasonably practical for one of the parties to complete a particular step, then that party shall **not** be treated as being in breach of the procedure (see regulation 7 (1) in Annex A). This is subject to the proviso that where an arranged meeting has fallen through because, at the time, one or both parties found it not reasonably practicable to attend (perhaps due to an unforeseen transport problem), the employer will be expected to rearrange the meeting – but only once. If the meeting falls through a second time, the employer will be under no obligation under the statutory procedures to rearrange it again. (See regulation 7 (2) and (3) in Annex A).

69. It is possible that missing a step in the procedure may make it not reasonably practicable for a subsequent step to be taken. For instance, if the employee has been unable to send the Step One letter under the standard grievance procedure then, as a consequence, the employer might fail to arrange the Step Two meeting. In these situations, both parties will be deemed to have complied with the procedure, and thus neither party will be held at fault.

70. The Government would welcome views about the provisions specifying when the statutory dispute resolution procedures do not have to be completed:

- 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 or 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?

### **Summary**

This chapter explains the circumstances in which employers and employees are not required to complete the statutory dispute resolution procedures. Views are welcomed on any aspects of the draft Regulations and in particular on the following issues:

- 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 or 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?

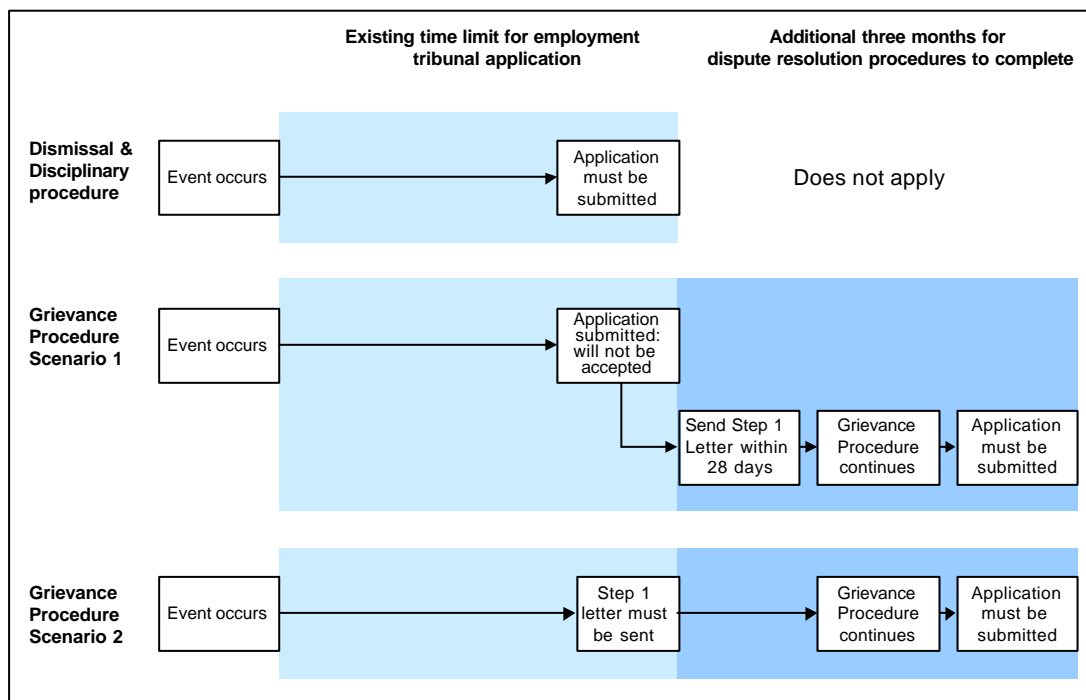
## Chapter 5 - Extending time limits for tribunal applications

71. The Regulations will provide for the time limits associated with presenting employment tribunal applications to be extended in certain circumstances (see regulation 9 in Annex A). This will allow extra time for workplace discussions to continue, without the employee feeling obliged to cut them short simply in order to avoid being out of time for presenting an application. However, it should be noted that if the employee has neither initiated the statutory grievance procedure, nor attempted to present an employment tribunal application, before the expiry of the usual time limits, there will be **no** extra time.

72. An employee wishing to present an employment tribunal application must normally do so within a specified time limit – typically three months from the date of the act complained of in most cases (although the position differs under some jurisdictions).

73. It is important to note that an applicant will not be **obliged** to delay submitting his/her claim until the expiry of the extended time limit. Provided the basic admissibility requirements have been met, a claim can be submitted at any time. Of course, if the statutory procedures have not been completed, then any award may be subject to adjustment.

**Figure 6: Proposed time limit extensions for dismissal and disciplinary procedures and grievance procedures**



## *Grievance procedures*

74. Where the standard or modified grievance procedure applies, there are two circumstances where a time limit extension will be triggered:

- 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 (see the section on adjustment of awards and admissibility in Chapter 3). 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, he/she will still have 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. 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 these changes.
- 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.

75. It will not be possible for a time limit to be extended twice under these provisions. The two possible triggers for an extension will apply in a mutually exclusive way.

## *Dismissal and disciplinary procedures*

76. **No time limit extensions will 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.**

77. So far as the standard dismissal and disciplinary procedure is concerned, at least the first two steps should already have been completed before the employer dismisses the employee or takes other action short of dismissal. Thus, these steps should occur before the time period for presenting an employment tribunal application has even started to run. Although in some cases the third step of the procedure – the appeal meeting – will still remain to be completed, the Government considers that there should be sufficient opportunity for this to be done within the normal time limit.

Similarly, so far as the modified dismissal procedure is concerned, the normal time limit – three months in most cases – should allow sufficient opportunity for the employer to send the Step One letter and to hold the Step Two meeting.

78. This contrasts with the position under the statutory grievance procedures. The possibility of an employee initiating the standard grievance procedure will not arise until the employer has actually taken some action in relation to him/her, and thus not until **after** the start of the normal time period for presenting a tribunal application. Similarly, where the modified grievance procedure applies, it may not be until some time toward the end of the normal time period for presenting a tribunal application that the employee becomes aware of a grievance that could potentially give rise to such an application. For instance, the employee may discover, some time after leaving employment, that the employer has provided unfavorable references because of his/her race, potentially providing the basis for an employment tribunal claim. Where the modified dismissal procedure applies, by contrast, the fact that the employee has been dismissed will normally be immediately apparent to all concerned, and action under the statutory procedure can be initiated straight away. The Government considers that these differences of context justify a difference of approach between the two types of procedures. If, under either the standard disciplinary and dismissal procedure or the modified dismissal procedure, steps still remain to be completed at the point when the employee presents a tribunal application, the tribunal will need to consider whether or not either party was at fault for this, and make its decision accordingly.

79. The Government would welcome views on these proposed provisions on adjustment of time limits:

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.

### *Staying of proceedings*

80. There are to be no further time limit extensions. However, once an application has been made and registered, an employment tribunal will have discretion to decide, either of its own motion or on application by one or both of the parties, that the proceedings should be stayed (or sisted, in Scotland) pending further attempts to resolve the matter through the dispute resolution procedures. The Government considers that no specific new provisions are required in order to allow for this, as the tribunals already have a general discretion to stay proceedings in appropriate circumstances.

## **Summary**

This chapter explains how the dispute resolution procedures will impact on the time limits associated with making employment tribunal applications. Views are welcomed on any aspects of the draft Regulations and in particular on the following issues:

- 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.

## Chapter 6 - “Overlapping” disciplinary and grievance issues

81. The Employment Act deals separately with disciplinary and grievance issues, but it is often the case that there is no such clear distinction between the two matters in the workplace. The Regulations 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.

82. Examples of “overlapping” disciplinary and grievance issues may include:

- Where an employer takes disciplinary action against an employee, this may prompt the employee to raise a grievance, either about that action or something else, or to resign and complain of constructive dismissal.
- An employer may have multiple disciplinary issues to address with an employee.
- An employee may have multiple grievances to raise with an employer.

83. The Regulations ensure 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** (see regulation 4 (4) (c) in Annex A).

84. 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**.

85. Where the action is something other than dismissal, 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 (subject to any exemptions). 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 (similarly, subject to any exemptions). In these circumstances, 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. (The prudent employer would also ensure, prior to taking the action in question, that a meeting was arranged that would satisfy the Step Two

requirement under the standard dismissal and disciplinary procedure.)

86. It is possible that a situation sometimes described as a “grievance arising out of disciplinary action” may occur. For example, during what the employer considered to be a Step Two or Step Three meeting under the standard dismissal and disciplinary procedure, the employee may make 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. 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.

87. **Letters and meetings under the statutory procedures may be “multi-purpose”** (see regulation 2 (2) in Annex A). Provided that the disputed action by the employer has been raised in an appropriate letter by the relevant party, and has been discussed in initial (Step Two) and appeal (Step Three) meetings, that will be sufficient to satisfy the requirements of the procedure. It will make no difference whether the disputed action in question was the sole issue raised in the letter or discussed in the meetings, or whether other (related or unrelated) issues were raised and discussed at the same time. In the case of a “grievance arising out of disciplinary action”, as discussed above, the Step Three meeting under the dismissal and disciplinary procedure – on the employer’s view of the situation – could “double” as the Step Two meeting under the grievance procedure – on the employee’s view of the situation. An employer writing to invite an employee to a Step Two meeting in relation to one disciplinary matter could use the same letter as the Step One letter in relation to another disciplinary matter. And so on.

88. Where disciplinary action that has been subject to the statutory dismissal and disciplinary procedure leads on, some time later, to dismissal, the dismissal will also be subject to the statutory dismissal and disciplinary procedure. Although this will in some circumstances result in the same disciplinary issue having to be considered under two separate iterations of the statutory procedure, the Government considers that this is reasonable. Either the initial action or the dismissal could potentially form the subject of an employment tribunal application, and there will

normally be an interval of some weeks, if not months, between the disciplinary action and the dismissal.

89. This is a complex aspect of the Regulations where it is essential that the legislation is workable in practice. Therefore, the Government welcomes views on managing overlapping disciplinary and grievance issues:

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

## **Summary**

This chapter explains how the dispute resolution procedures will operate when there are overlapping disciplinary and grievance issues. Views are welcomed on any aspects of the draft Regulations and in particular on the following issue:

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

## Chapter 7 - Implied contractual terms

90. Section 30 of the Employment Act sets out 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 intends **not to commence 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. The Government will consider the need to commence this provision in the light of evidence evaluating the impact of these Regulations.

91. The main effect of commencing this provision would be to allow for one party to make a breach of contract claim against the other in the civil courts, or in some circumstances in the employment tribunals, if the other party failed to follow the statutory procedures. This would apply even though the failure in question could not in itself give rise to an application under any existing employment tribunal jurisdiction. The Government has concluded on reflection that, before opening up this possibility, it would be advisable to wait and see how the statutory procedures operate in practice in relation to substantive disputes that could form the basis of an employment tribunal application. Therefore, the Government will monitor and evaluate the existence and use of these procedures after the proposed implementation in October 2004 before deciding to commence this provision.

92. The Government welcomes views on the dispute resolution procedures becoming an implied contractual term for all employees:

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

### Summary

This chapter explains the Government’s approach to the dispute resolution procedures becoming an implied contractual term for all employees. Views are welcomed on any aspects of this subject and in particular on the following issue:

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

## Chapter 8 – Communication, guidance and transitional provisions

93. These Regulations are likely to have a considerable impact upon employers and employees. They will particularly affect those

who run and work for the smallest firms, where dispute resolution procedures are most commonly inadequate or non-existent. 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 bring. This chapter sets out how the Government will meet the challenge of communicating the new Regulations to a very broad audience both leading up to and after implementation in October 2004. This chapter also explains the transitional provisions for the Regulations.

### *Raising awareness*

94. The Government has developed a publicity campaign to raise awareness of these new rights and responsibilities. The campaign will be delivered in conjunction with a number of stakeholder partners, benefiting from their expertise and reputation. Acas will be a particularly important partner in this publicity drive. Up to £2m will be available to support the campaign until the end of 2004.

95. The campaign is divided into four phases – phases one and two are already underway. Ultimately, the awareness campaign will directly target employers (especially small firms) and employees. However, the initial focus will be on intermediary organisations and large companies. Intermediaries, such as trade associations, lawyers and unions, have trust-based relationships with a wide range of employers. Also, large firms, unlike small employers, are more likely to have dedicated personnel resources that will be available to consider these issues in advance of full implementation.

96. Furthermore, whilst the proposed Regulations will impact on all sectors of the economy, the following industries have been identified as high priority targets: construction, hotels and restaurants, agriculture, community services and voluntary sector, wholesale and retail, manufacturing, transport/storage and the care home sector.

**Phase One:** *March to June 2003*

- Raise awareness of policy and timetable, dispel myths and gauge existing level of awareness; prepare publicity material briefing and fact sheets.
- A brochure *Information For Employers: Employment Act 2002 – Introduction of Statutory Dispute Resolution Procedures during 2004* has been published and was launched in March at the British Chambers of Commerce Conference.

**Phase Two:** *July to October 2003*

- Organise and hold a series of regional briefings for intermediaries.
- Coincides with the consultation period. We will be using this period to encourage and support the intermediaries in their activities to generate a better understanding of the changes amongst their members. Lessons here will help target phases three and four.
- A website is being set up that will provide up-to-date information as the consultation exercise and awareness programme progresses.

**Phase Three:** *November 2003 to April 2004*

- Preparation of material for advertising campaign.
- In this phase we will bring in employees through the design and introduction of workplace posters and mass distribution of leaflets via trade unions.

**Phase Four:** *May to December 2004*

- Hold a series of regional conferences/workshops for intermediaries and businesses.
- Focus on a national advertising campaign.

*Example documents*

97. Pre-consultation activities have highlighted the need to make complying with the statutory procedures as straightforward as possible. There has been some concern that the procedures (and in particular the requirement for Step One letters to be in writing) may make it difficult for those people with literacy or language problems or some disabilities to make claims to employment tribunals. This requirement is set out in the Act and, as such, is **not** part of this consultation. The Government recognises these concerns but considers that it is important for the nature of the problem to be written down at the outset, so it is there for both sides to refer to during discussion. The letters may also be used in evidence in any employment tribunals.

98. Stakeholders have suggested that example letters or forms could be a very useful mechanism for helping parties to comply with the procedures. This has certainly be seen in other situations, such as *Acas' Discipline and Grievances in the Workplace* and supporting materials for the introduction of flexible working for parents. With that in mind, an example of the Step One grievance letter is included in this consultation paper (see Annex D).

99. The Government already publishes an example of a written statement of employment particulars. This will become particularly useful when the key provisions in the Employment Act 2002 are commenced in parallel with these draft Regulations. From October 2004, all employers (regardless of size) will be required to notify employees about their dispute resolution procedures. The current version of this example written statement is also included in Annex D.

100. The Government would welcome views about these example documents:

Question 14 Please give comments on the examples of model documents in Annex D.

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.

### *Transitional provisions*

101. The draft Regulations set out transitional arrangements (see regulation 12 in Annex A). The Government proposes that the Regulations will only apply in the following circumstances:

- Where the employer takes disciplinary action or informs the employee he is going to dismiss 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.

### **Summary**

This chapter explains the communication and guidance programme that will accompany the introduction of the statutory dispute resolution procedures, and also the role of model documents in promoting compliance. Views are welcomed on any aspects of this chapter and in particular on the following issues:

Question 14	Please give comments on the examples of model documents in Annex D.
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.

## Chapter 9 - How to comment

102. This chapter explains how to obtain a copy of the consultation document, and how interested parties can submit their comments.

103. This consultation paper sets out questions surrounding the draft Regulations required to implement the statutory disciplinary and grievance procedures laid out in Employment Act 2002. Comments on these issues and any other aspects of the draft Regulations, particularly communication and guidance, are invited.

104. Copies of this consultation and draft Regulations are available from the DTI's website [www.dti.gov.uk/er/hot\\_topics.htm](http://www.dti.gov.uk/er/hot_topics.htm). A Welsh version of this document will be made available on request. Braille, large print and taped versions of the document will be made available on request. A summary of the issues raised in this consultation will be available shortly.

105. Responses are required by **Wednesday 29 October 2003** and should be sent to:

Niel Sutton  
Dispute Resolution team  
Department of Trade and Industry  
1 Victoria Street UG120  
London  
SW1H 0ET  
Email: [niel.sutton@dti.gsi.gov.uk](mailto:niel.sutton@dti.gsi.gov.uk)  
Tel: 020 7215 5985/ Fax: 020 7215 2635

106. When responses are sent from representatives groups, it would be appreciated if a summary could be included of the people and organisations the group represents

107. If there are specific policy questions to be explored, please contact:

Alicia Law  
Dispute Resolution team  
Department of Trade and Industry  
7-9th Floor, Hagley House  
83-85 Hagley Road  
Birmingham  
B16 8QG  
Email: [alicia.law@dti.gsi.gov.uk](mailto:alicia.law@dti.gsi.gov.uk)  
Tel: 0121 678 1834/ Fax: 0121 455 0771

## Annex A – Draft Regulations

*Draft Regulations laid before Parliament under section 51 of the Employment Act 2002, for approval by resolution of each House of Parliament.*

---

### DRAFT STATUTORY INSTRUMENTS

---

**200[3] No.**

## **EMPLOYMENT TRIBUNALS**

### **TERMS AND CONDITIONS OF EMPLOYMENT**

The Employment Act 2002 (Dispute Resolution) Regulations 200[ ]

Made ..... 200[ ]

Coming into force.....[1<sup>st</sup> October 200[4]

Whereas a draft of these Regulations was laid before Parliament in accordance with section 51(4) of the Employment Act 2002<sup>4</sup> and approved by a resolution of each House of Parliament:

Now, therefore, the Secretary of State, in exercise of the powers conferred on her by sections 31, 32 and 33 of that Act, hereby makes the following Regulations:

#### **Citation and Commencement**

1. These Regulations may be cited as the Employment Act 2002 (Dispute Resolution) Regulations 200[ ] and shall come into force on 1<sup>st</sup> October 2004.

#### **Interpretation**

2. (1) In these Regulations-

“1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992<sup>5</sup>;

“1996 Act” means the Employment Rights Act 1996<sup>6</sup>;

---

<sup>4</sup> 2002 c. 22.

<sup>5</sup> 1992 c.52.

<sup>6</sup> 1996 c. 18.

“2002 Act” means the Employment Act 2002;

“relevant disciplinary action” means action, short of dismissal, on the grounds of conduct or capability, other than suspension or the issuing of warnings either oral or written;

“dismissal and disciplinary procedures” means the statutory procedures set out in Part 1 of Schedule 2;

“grievance procedures” means the statutory procedures set out in Part 2 of Schedule 2;

“modified dismissal procedure” means the procedure set out in Chapter 2 of Part 1 of Schedule 2;

“modified grievance procedure” means the procedure set out in Chapter 2 of Part 2 of Schedule 2;

“party” means the employer or the employee;

“standard dismissal and disciplinary procedure” means the procedure set out in Chapter 1 of Part 1 of Schedule 2; and

“standard grievance procedure” means the procedure set out in Chapter 1 of Part 1 of Schedule 2.

and a reference to a Schedule is a reference to a Schedule to the 2002 Act.

(2) In determining whether a meeting or written communication fulfils a requirement of Schedule 2, it is irrelevant whether the meeting communication deals with any other matter or procedure (including another meeting or communication intended to fulfil a requirement of Schedule 2).

### **Application of dismissal and disciplinary procedures**

**3.** (1) Subject to paragraphs (2) and (3), the standard dismissal and disciplinary procedure applies when an employer proposes to dismiss or take relevant disciplinary action against an employee.

(2) Subject to paragraph (3), the modified dismissal procedure applies in the following circumstances -

(a) where the employer dismissed the employee –

(i) without notice or payment in lieu of notice; and

(ii) at the time the employer became aware of the employee’s conduct or immediately thereafter, in circumstances in which he was entitled to do so by reason of the employee’s conduct; or

- (b) where the employer dismissed the employee in circumstances in which, for reasons outside the employer's control, he could not continue to employ the employee.
- (3) Neither paragraph (1) nor (2) applies when the employer proposes to dismiss or take relevant disciplinary action where that action -
- (a) consists of the dismissal of all employees of a description or in a category provided that –
    - (i) the action is taken for a business or economic reason; and
    - (ii) the employer offers to re-engage all the employees so dismissed either before or upon the termination of their contracts.

and in this paragraph, an offer of re-engagement means an offer (made either by the original employer or by a successor of that employer or an associated employer) to re-engage an employee, either in the job which he held immediately before the date of dismissal or in a different job which would be suitable in his case.
  - (b) consists of the dismissal of an employee on the grounds of redundancy where that dismissal is one of a number of dismissals in respect of which the duty in section 188 of the 1992 Act (duty of employer to consult representatives when proposing to dismiss as redundant a certain number of employees) applies;
  - (c) consists of the dismissal of an employee and on the date of dismissal the employer is conducting a lock-out or the employee is taking part in a strike or other industrial action; or
  - (d) where the modified dismissal procedure would apply by virtue of paragraph (2) but the employee presents a complaint of unfair dismissal to an employment tribunal before the employer complies with paragraph 4 of Schedule 2.

#### **Application of the grievance procedures**

4. (1) (a) Subject to paragraphs (2) to (4), the standard grievance procedure applies when the employee has a grievance in relation to any action that his employer has taken, or proposes to take, in relation to him.
- (b) In this paragraph 'action' means any act or omission.
- (2) (a) If it is not reasonably practicable for a party to comply with paragraph 6, 7 or 8 of the Schedule and if, at the time it becomes not reasonably practicable, the employee is no longer employed by the employer then, subject to sub-paragraph (b), neither party is under any obligation to comply with any of the requirements of the procedure.

- (b) In the circumstances referred to in sub-paragraph (a), if the parties have attended the meeting referred to in paragraph 7 of Schedule 2 and the employer has not complied with sub-paragraph (4) of that paragraph, the employer must inform the employee of his decision as to his response to the grievance.
- (3) The modified grievance procedure applies in any case where the employee is no longer employed by the employer and both parties agree in writing that the modified procedure should apply instead of the standard procedure.
- (4) None of paragraphs (1) to (3) applies where –
- (a) prior to the employee making a complaint to the tribunal under one of the jurisdictions listed in Schedule 4, the grievance that is the subject matter of that complaint has been raised at approximately the same time on behalf of at least 20 employees including the complaining employee by an appropriate representative of that employee;
  - (b) the grievance is that the employer dismissed the employee by virtue of action falling within paragraph (a) or (b) of section 136(1) of the 1996 Act (circumstances in which an employee is dismissed); or
  - (c) the grievance is that relevant disciplinary action has been taken by the employer against the employee unless the employee claims that the basis for the relevant disciplinary action taken by the employer is not, regardless of the reason given by the employer for the action, wholly or mainly the employee's conduct or capability, but some other basis.
- (5) For the purposes of paragraph (4)(a), an “appropriate representative” means –
- (a) a trade union which, at the time the grievance was raised, was recognised by the employer for the purposes of collective bargaining in respect of employees who included the complaining employee; or
  - (b) an employee representative appointed or elected by employees including the complaining employee who (having regard to the purposes for and the method by which he was appointed or elected) has authority from the employees to raise grievances on their behalf.

**Circumstances in which a party is treated as not subject to the statutory procedures**

5. (1) A party shall not be treated as being subject to any of the statutory procedures if –
- (a) he has reasonable grounds to believe that complying with that procedure would result in a significant threat to himself, his property or any other person;
  - (b) the other party has subjected him to harassment; or

- (c) his circumstances are such that it is not practicable for him to comply with that procedure for the foreseeable future.
- (2) (a) In paragraph (1)(b), “harassment” means conduct which has the purpose or effect of –
- (i) violating the person’s dignity; or
  - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
- (b) Conduct shall be regarded as having the purpose or effect referred to in subparagraph (i) or (ii) of paragraph (2)(a) only if, having regard to all the circumstances, including in particular the perception of the person who was the subject of the conduct, it should reasonably be considered as having that purpose or effect.
- (3) The parties shall not be treated as being subject to paragraph 3 or 5, as the case may be, of Schedule 2 if the employee has presented to an employment tribunal an application for interim relief pursuant to section 128 of the 1996 Act (interim relief pending determination of complaint).

### **Consequences of being treated as not subject to the statutory procedures**

6. (1) If either party is treated as not being subject to any of the statutory procedures pursuant to regulation 5 –
- (a) neither party is under any further obligation to comply with any requirement of the statutory procedures in relation to the issue which was the subject matter of the statutory procedure; and
  - (b) subject to paragraph (2), the non-completion of the statutory procedure is not to be treated as attributable to either party.
- (2) Paragraph (1)(b) does not apply if the reason for a party being treated as not subject to a statutory procedure was one of those in regulation 5(1)(a) or (b) and the tribunal is satisfied that the behaviour of the other party was such that the non-completion of the statutory procedure was attributable to him.

### **Failure to attend a meeting**

7. (1) Without prejudice to regulation 5(1)(c), if it is not reasonably practicable for the employee to attend a meeting organised in accordance with any of the statutory procedures, for a reason which was not foreseeable when the meeting was arranged, he shall not be treated as being in breach of the relevant statutory procedure.
- (2) In the circumstances set out in paragraph (1), the employer shall continue to be under the duty in the relevant statutory procedure to invite the employee to attend a meeting.

(3) The duty referred to in paragraph (2) shall cease if the employer has invited the employee to attend two meetings and paragraph (1) applied in relation to each of them.

### **Failure to comply with a statutory procedure**

**8.** Without prejudice to regulation 5, if either party fails to comply with a requirement of a statutory procedure, including a general requirement set out in Part 3 of Schedule 2, the non-completion of the statutory procedure shall be attributable to that party and neither party shall be under any further obligation to comply with any requirement under that statutory procedure.

### **Extension of time limits**

**9.** (1) Where an employee presents a complaint to an employment tribunal in relation to a jurisdiction listed in Schedule 4 to the 2002 Act and the circumstances in subparagraphs (a) or (b) of paragraph (2) apply, the normal time limit for presenting that complaint is extended for a period of three months beginning on the day after the day on which it would otherwise have expired.

(2) The circumstances referred to in paragraph (1) are –

(a) the employee purports to present a complaint to the tribunal within the normal time limit for presenting that complaint but is prevented from doing so by section 32(2) or (3) of the 2002 Act; or

(b) the complaint is presented to the tribunal after the expiry of the normal time limit for presenting that complaint but the employee complied with paragraph 6 or 9, as the case may be, of Schedule 2 within the normal time limit for bringing that complaint.

(3) In this regulation, the ‘normal time limit’ means the period within which a complaint under the relevant jurisdiction has to be presented disregarding any extension to that period that the tribunal has the power or is required to grant.

### **National security**

**10.** Where it would not be possible to comply with any statutory procedure without disclosing information the disclosure of which would be contrary to the interests of national security nothing in these Regulations requires either party to comply with that statutory procedure.

### **Amendments to other legislation**

**11.** The following provisions shall be amended –

(a) In section 147(1)(b) of and in paragraph 157(1)(b) of Schedule A1 to the 1992 Act, after ‘that period’ there shall be inserted –

“or that period as extended by regulation 9 of the Dispute Resolution Regulations 200[ ].”;

- (b) In sections 23(4), 48(3)(b) and 111(2)(b) of the 1996 Act, after ‘three months’ there shall be inserted –

“or that period as extended by regulation 9 of the Dispute Resolution Regulations 200[ ].”; and

- (c) In regulation 30(2)(b) of the Working Time Regulations 1998<sup>7</sup>, after the words ‘six months’ there shall be inserted –

“or either of those periods as extended by regulation 9 of the Dispute Resolution Regulations 200[ ].”.

### **Transitional Provisions**

**12.** (1) These Regulations shall apply -

- (a) in relation to dismissal or relevant disciplinary action, where the employer first contemplates dismissing the employee, or taking the relevant disciplinary action, on or after the date on which these Regulations come into force;
- (b) in relation to grievances, where the employee raises a grievance on or after the date on which these Regulations come into force;

---

<sup>7</sup> S.I. 1998/1833.

## Annex B – Partial Regulatory Impact Assessment (including Small Firms Impact Test)

### Background and objective

B1. The proposal to introduce statutory dispute resolution procedures is intended to improve dispute resolution in the workplace. Whilst many employers use sophisticated dispute resolution mechanisms, a large number of firms have inadequate or non-existent procedures.

B2. The statutory procedures will set a new minimum standard for resolving disciplinary and grievance issues in the workplace. Using internal procedures that conform to the defined minimum standards, straightforward cases will be quickly identified and discussed in the workplace. This approach is far more likely to lead to the identification of flexible solutions. Furthermore, using these procedures could prevent the breakdown of the employment relationship (leaving the employee out of work and the employer having to recruit new staff).

B3. These Regulations will apply to all employers and employees. They will affect a wide range of tribunal applications, including claims of discrimination, unfair dismissal, working time, collective rights, and so on (see Schedules 3, 4 and 5 of the 2002 Employment Act for more detail).

B4. The current system of dispute resolution often works very differently. Some employers do not have or do not consistently apply adequate disciplinary procedures, and many employees are unwilling to raise grievances in the workplace. Thus, it is not uncommon for an employer to become aware of a workplace dispute only when summonsed to appeal before an employment tribunal. This is clearly an unsatisfactory solution for all parties concerned.

B5. The table below summarises both quantified and unquantified costs and benefits (expressed in 2001/02 prices) and assumes 100% compliance as the base case. When quantifying benefits and costs we have also used different levels of initial compliance below 100% (i.e. 60% and 80%) in order to assess its impact on costs and benefits. A table with the results can be found in the Appendix.

**Table B1: Quantified and unquantified costs and benefits**

	Benefits	Costs
To employers	<ul style="list-style-type: none"> <li>• Better employment relations</li> <li>• Increased productivity through keeping skilled staff</li> <li>• Lower recruitment costs through higher staff retention</li> <li>• Reduced costs from 35-40,000 fewer tribunal applications per annum= £70-80 million (recurring)</li> </ul>	<ul style="list-style-type: none"> <li>• Implementation of new procedures = one-off costs of £35-£65 million.</li> <li>• Using statutory procedures = annual recurring costs of £31-52 million</li> </ul>
To individuals	<ul style="list-style-type: none"> <li>• Improved employment prospects for individuals</li> <li>• Reduced stress and costs from 35-40,000 fewer tribunal applications per annum</li> </ul>	N/a
To the taxpayer	<ul style="list-style-type: none"> <li>• Savings from fewer tribunal applications = £19-22 million per annum (recurring)</li> </ul>	<ul style="list-style-type: none"> <li>• One-off £2 million cost for a guidance and advice campaign prior to the legislation coming into force</li> </ul>

B6. The table below classifies both benefits and costs either as recurring or one-off.

**Table B2: Classification of costs and benefits**

Recurring annual benefits	One-off benefits	Recurring annual costs	One-off costs
<ul style="list-style-type: none"> <li>• £70-80 million from fewer tribunal applications</li> <li>• £19-22 million taxpayers savings</li> </ul>	N/a	<ul style="list-style-type: none"> <li>• £31-52 million using new procedures</li> </ul>	<ul style="list-style-type: none"> <li>• £35-65 million from implementation procedures</li> <li>• £2 million guidance campaign</li> </ul>

B7. The table below shows the net present value (NPV)<sup>8</sup> of costs and benefits over 10 years, both recurring and one-off, in each scenario regarding compliance with the legislation.

<sup>8</sup> Net Present Value is a standard tool in economic appraisals to value future returns. It takes into account that future returns are worth less than returns today. This is captured in the discount rate applied to future returns. The above calculations are based on a discount rate suggested by the Treasury Green Book of 3.5%. See [http://www.hm-treasury.gov.uk/economic\\_data\\_and\\_tools/greenbook/data\\_greenbook\\_index.cfm](http://www.hm-treasury.gov.uk/economic_data_and_tools/greenbook/data_greenbook_index.cfm).

Table B3: Net Present Value of costs and benefits with varying compliance rates

60% initial compliance		80% initial compliance		100% initial compliance	
NPV benefits	NPV costs	NPV benefits	NPV costs	NPV benefits	NPV costs
£570m - £680m	£260m - £450m	£660m - £770m	£280m - £470m	£740m - £850m	£300m - £500m

B8. As can be seen from table B3, benefits outweigh costs under any compliance scenario.

## Risk assessment

B9. The proposals seek to mitigate risks to both employers and employees:

- The risk of employers being drawn into employment tribunals without the employee having made any initial attempt at resolving the dispute within the workplace;
- The risk of individuals seeking legal redress about grievances that were not explored through formal procedures in the workplace.
- The overburdening of the employment tribunal system and reduction in the speed and efficiency in case handling.

## Numbers affected

B10. The proposed Regulations will have the following effect:

- All employers will have to ensure that a satisfactory three-step procedure is in place. This affects up to 1.2 million employers.
- Those employers and employees who are involved in a dispute will have to follow the three-step procedures. Currently disputes are handled either without any procedures, with sub-standard procedures or using satisfactory procedures. We estimate that there are between 500,000 and 800,000 justiciable disputes<sup>9</sup> each year<sup>10</sup>. These employment disputes can

<sup>9</sup> A “justiciable event” is defined by Genn (see footnote 10) as a matter experienced by a respondent which raised legal issues, whether or not it was recognised by the respondent as being “legal” and whether or not any action taken by the respondent to deal with the event involved the use of any part of the civil justice system.

<sup>10</sup> Based on Genn, *Paths to Justice*, 1998, it is estimated that 2.4 million serious employment problems, which might have involved recourse to law, occurred in the five years to 1997. Over this period, there were 429,000 Tribunal applications. Over this period, that equates to 18% of disputes going to Tribunal. In 2001/02, there were about 110,000 Tribunal applications. Applying the same ratio would imply a higher annual level of justiciable disputes in 2001/02. However, it is equally possible that the proportion of disputes going to Tribunal had increased since the study period with the number of justiciable disputes remaining

include: dismissal, change to terms or conditions of employment, harassment or discrimination, unauthorised deductions from wages, payment of the National Minimum Wage, and so on.

- In some instances, individuals with a potential dispute against their employer will decide not to take any action. It is estimated that this occurs in 7% of cases where disputes arise. This means that the total population of disputes that these proposals apply to is between 465,000 and 744,000 disputes.<sup>11</sup> For the purposes of the RIA, we assume that the total number of disputes occurring each year is constant. The distribution of Employment Tribunal cases according to the main category of the claim is shown in the table below:

Table B4: Main categories of employment tribunal claims<sup>12</sup>

Unfair dismissals	39%
Redundancy/Insolvency Pay	4%
Discrimination & Equal Pay	19%
Wages Act/ Breach of contract	29%
Other	9%

## Equity and fairness

B11. The proposed Regulations are unlikely to have a significant impact on diversity. However, a number of positive and negative factors exist, which are explored below.

B12. The Regulations may have a positive impact on diversity, in that the statutory dispute resolution procedures will encourage more flexible and timely solutions to discrimination grievances.

B13. It should be noted that the admissibility provisions will affect the ability to employees to apply to employment tribunals. However, this will be balanced by the proviso that parties need not follow the procedures in the event of bullying, intimidation and other unacceptable conduct - this will provide additional protection for those being harassed.

B14. However, the admissibility requirements are unlikely to affect any particular groups of employees. Evidence from employment tribunal applicants (see table below) shows that they are a fairly good representation of the diversity existing in the working population, with regard to age, sex and ethnicity.

---

broadly constant. Given these uncertainties, the number of potentially justiciable disputes is taken to be 500-800,000 with 14-22% of such disputes going to a Tribunal.

<sup>11</sup> Based on Genn, *Paths to Justice*. 7% of people experiencing justiciable problems at work did not seek to contact their employer or seek advice to resolve the problem. The individual takes no action and procedures to resolve the dispute are not required.

<sup>12</sup> Employment Tribunals Facts and Figures 2002.

Table B5: Demographic comparison between employment tribunal applicants and GB employees<sup>13</sup>

	Employment tribunal applicants	GB employees aged 16+
<b>Age</b>		
Median age	42	38
Mean age	41	39
<b>Sex</b>		
Men	60%	53%
Women	40%	47%
<b>Race</b>		
Asian	3%	3%
Black	2%	2%
White	93%	93%

B15. However, small firms are likely to be over-represented as respondents under these new regulations. Small businesses (with 1-19 employees) represent 784,000, or 97%, out of the 804,000 companies which currently have sub-standard or no procedures at all. However, they form 92% of the total number of firms (with at least one employee) in Great Britain. Therefore the cost of adopting dispute resolution procedures will affect small firms disproportionately. The Small Firms Impact Test (see paragraph B50) explores how the draft Regulations may impinge on this particular group.

B16. Therefore, this leads us to believe that the Regulations will not have a significant impact on any particular groups of employees, but small firms are more likely to be affected than any other type of employer. Mitigation strategies for this are explored in the Small Firms Impact Test and elsewhere in the consultation document.

## Consultation

B17. The proposed Regulations have been developed with input from a wide range of external stakeholders. An Advisory Group was formed, with representation from small firms associations, trade organizations, trade unions and other key agencies. A full membership list can be seen in Annex C of the consultation document.

B18. The Government has, in addition, tested its policy plans at the “grass-roots” levels. Focus groups have been held with small firms, large businesses, trade union legal specialists, and Acas advisers and conciliators.

## Incentives

B19. The proposals will establish rights and responsibilities for both employers and employees in terms of how they resolve disputes at work.

<sup>13</sup> ET applicants, Survey of Employment Tribunal Applications (SETA) 1998. GB Employees, Labour Force Survey (LFS) -spring 02.

B20. Employers will need to consider the costs of introducing and using the statutory procedures – the cost of introducing the procedures is estimated to be £12-92 on average, and £171-190 each time it is used in a workplace dispute (see details below). These figures will vary considerably between firms. These costs will need to be weighed up against the possible costs of defending a tribunal case, estimated to be £2,000 on average.<sup>14</sup> In addition, if the employer has not used the statutory procedures, any awards to the applicant can be increased by 10%-50%. Dismissals that do not use the statutory procedures will be automatically unfair. This could increase the average award by up to £1,300.<sup>15</sup>

B21. In some cases, it is probable that the employment relationship will break down irreparably when a dispute is handled via a tribunal as opposed to the use of workplace procedures. Replacing an employee is estimated to involve an average cost of £3,500, again with wide variation<sup>16</sup>.

B22. Equally, employees have an incentive to use the statutory procedures because this approach is more likely to solve the dispute and preserve the employment relationship. In addition, employees will avoid the stress and negative impact on future employment prospects associated with going to a tribunal.

## **Sensitivity analysis**

B23. In the following sections, benefits and costs of the introduction of this legislation are listed and measured (where possible). In order to come up with some estimates of these, certain level of compliance with the legislation must be assumed. This Regulatory Impact Assessment assumes initial compliance rates of 60%, 80% and 100%. When only partial initial compliance is assumed (i.e. 60% and 80%), we assume full compliance (100%) will be achieved after 5 years. If employers fail to comply with these requirements, the costs of implementing and using procedures will be reduced as will the benefits from reduced tribunal applications to employers, individuals and taxpayers.

## **Benefits**

### Better employment relations and its impact on productivity

---

<sup>14</sup> Survey of Employment Tribunal Applications 1998

<sup>15</sup> The Employment Act 2002 established that in the event that either party in the dispute failed to use the statutory procedures, any subsequent award would be varied by between 10% - 50%, i.e. if an employer failed to use the statutory procedures, any subsequent award to the applicant could be increased by 10%-50%. The median award in cases with unfair dismissal jurisdictions was £2,563 in 2001/02 (Source: Employment Tribunal Service Annual Report). This would therefore increase the average costs of a tribunal where the applicant is successful by up to about £1,300. This includes a possible increase in the award if the employer has not issued a written statement or the statement is incomplete or inaccurate.

<sup>16</sup> Chartered Institute of Personnel and Development, Labour Turnover Survey, October 2002: £3,462.

B24. Employment disputes can give rise to tensions at the workplace and damage wider management-employee relations. This may impact the productivity of the business.

B25. There is evidence of a positive relationship between having formal disciplinary and grievance procedures in place and workplace well-being measures, such as the number of voluntary resignations, dismissals and tribunal applications<sup>17</sup>. Measures that improve workplace well-being may have beneficial effects on economic performance in the long term.

B26. Furthermore, there is indirect evidence that points to a likely positive relationship between having formal disciplinary and grievance procedures and above-average labour productivity. Data shows that 62% of workplaces following a certain number of high commitment management practices (one of which is having formal grievance and disciplinary procedures in place), achieved above-average labour productivity<sup>18</sup>.

B27. Whilst the evidence mentioned above suggests a positive impact from better employment relations on productivity, the data is not conclusive on the potential size of the effect. For this reason we do not attempt to quantify this benefit.

#### Less damage to individuals' employment prospects

B28. Making a tribunal application can damage the future job prospects of the individual (as well as leading to increased stress). Around 50% of those making a tribunal application report lower status or lower paid employment following an application, and almost 25% are unemployed after the case<sup>19</sup>.

B29. Solving more disputes in the workplace should allow more employees to stay in post. Therefore, they will retain these higher paid, higher status jobs, and their employment prospects will not be damaged.

#### Lower recruitment costs

B30. Using the dispute resolution procedures in the workplace should reduce the number of cases where the employment relationship breaks down and the employee leaves the firm. The average saving per case to the employer is £3,500.

#### Reduced costs for advice organisations

B31. A reduction in the number of cases that reach a tribunal may benefit organisations such as Citizens Advice Bureaux and trade unions that advise individuals. Supporting an individual through a tribunal hearing can be very expensive for employee advisors.

---

<sup>17</sup> Cully M., Woodland S., O'Reilly A. and Dix G. (1999). *Britain at Work*.

<sup>18</sup> Cully M., Woodland S., O'Reilly A. and Dix G. (1999). *Britain at Work*.

<sup>19</sup> Survey of Employment Tribunal Applications (SETA) 1998.

### Fewer employment tribunal applications

B32. The proposal aims to improve dispute resolution within the firm, through use of procedures. This in turn reduces the likelihood of disputes reaching an employment tribunal. Many tribunal cases have not been explored through workplace procedures.

B33. Survey evidence from 1997/98<sup>20</sup> showed that 48% of tribunal applications had taken place in workplaces with no written procedures, 14% in workplaces with written procedures that had not been used, 7% in workplaces where written procedures had been only part used, leaving just 30% of applications where a written procedure had been followed all the way through. Since 88% of workplaces with 25 or more employees do have written procedures, this implies that tribunal applications are disproportionately concentrated among workplaces without procedures or where these are used inconsistently. More widespread application and use of procedures should therefore reduce the number of tribunal applications.

B34. Taking the 2001/02 level of tribunal applications as the starting point (110,000 applications per year), this implies that about 390-690,000<sup>21</sup> disputes were resolved in some other way, including those where no action was taken (disputes where no action was taken are estimated to be about 35-56,000<sup>22</sup>).

B35. Among the tribunal applications, it can be assumed that 30% (33,000) arose even with full procedures being followed, and that 62% (68,000) had followed no procedure at all (i.e. 48% with no written procedure plus 14% with written procedures that had not been followed). It has been assumed that 50% of disputes were settled using workplace dispute resolution procedures (without resort to an employment tribunal). This implies that 178,000-317,000 disputes<sup>23</sup> are solved in the workplace. This in turn implies that when action is taken and dispute resolution procedures are used, 10-15 %<sup>24</sup> of these disputes will result in an employment tribunal claim. However, when action is taken and procedures are **not** used, 20-30%<sup>25</sup> of disputes can be expected to lead to a tribunal application.

B36. Assuming full compliance (100%), we would expect the number of employment tribunals to be 70-75,000<sup>26</sup> from the year after the legislation comes into force. This is a reduction of 35-40,000 or about 35-40% in the 2000/01 number of applications.

---

<sup>20</sup> Source: 1998 Survey of Employment Tribunal Applications (SETA98).

<sup>21</sup> Calculated as (500,000-800,000) – 110,000

<sup>22</sup> Calculated as 7% (see footnote 8 ) x (500,000-800,000)

<sup>23</sup> Calculated as {(390,000-690,000) – (35,000-56,000)} x 0.5

<sup>24</sup> Calculated as 33,000 / {[178-317,000] + 33,000} = 9-15%, rounded to 10-15%.

<sup>25</sup> Calculated as 68,000/ {[178- 317,000] + 68,000}= 18-28%, rounded to 20-30%.

<sup>26</sup> Range derived as (15% x 465,000) to (10% x 744,000)= 70-75,000

B37. Assuming an initial compliance of 60%, we would expect the initial number of employment tribunals to be 100-105,000<sup>27</sup>. This number would decrease gradually to 70-75,000 after five years, as the level of compliance increases gradually to 100% over the same time period. This would represent an initial reduction of 5-10,000 or about 5-10%.

B38. Finally, assuming initial compliance of 80%, the expected initial number of employment tribunals would be 85-90,000<sup>28</sup>, gradually easing to 70-75,000 over five years. This represents an initial reduction of about 20-25%. It is expected that there would be a lag of perhaps a year from when the procedures are fully implemented.

#### Reduced costs to employers of defending tribunal applications

B39. A tribunal application costs an employer £2,000 on average in management time and legal fees (if represented). The cost will vary substantially from firm to firm and upon the outcome of the case. Many applications that are settled or withdrawn at an early stage will cost the respondent very little. Some cases that go to a hearing are very expensive. This cost estimate does not include the cost of awards made to successful applicants. A reduction of 35-40,000 applications will produce annual cost savings of £70-80 million for employers.

B40. This amount would be lower for the cases in which only partial compliance is assumed, until they achieve full compliance. When an initial 60% compliance is assumed (5-10,000 initial reduction in the number of applications) initial savings to employers would amount to £10-20 million, increasing to £70-80 million after five years. If 80% initial compliance is assumed (20-25,000 initial reduction in the number of applications), initial savings to employers would amount to £40-50 million.

#### Savings to the taxpayer

B41. A reduction in employment tribunal applications reduces the costs of running the employment tribunal system. Each application processed is estimated to cost £540. A 35-40,000 annual reduction in the number of applications would save the taxpayer £19-22 million per year.

B42. This amount would be lower for the cases in which only partial compliance is assumed, until they achieve full compliance. When an initial 60% compliance is assumed, initial savings to the taxpayer would amount to £3- 5.5 million, going up to £19-22 million after five years. If 80% initial compliance is assumed, initial savings to the taxpayer would amount to £11-14 million.

---

<sup>27</sup> Calculated:  $\{[10\% \times 0.6] + [20\% \times 0.4]\} \times 744,000$  to  $\{[15\% \times 0.6] + [30\% \times 0.4]\} \times 465,000 = 98-104$  rounded to 100-105,000 for the initial year.

<sup>28</sup> Calculated:  $\{[10\% \times 0.8] + [20\% \times 0.2]\} \times 744,000$  to  $\{[15\% \times 0.8] + [30\% \times 0.2]\} \times 465,000 = 84-89,000$ , rounded to 85-90,000 for the initial year.

## Costs

### Costs of introducing statutory dispute resolution procedures

B43. The proposals will involve **one-off 'adjustment' costs** to all businesses (introduction costs). The adjustment costs represent time taken for businesses to familiarise themselves with the basic procedures model and, for those who already have procedures, checking that their existing procedures comply. To estimate the costs we used two scenarios. Firms with strong procedures in place will, on average, spend 30 minutes to check whether the procedures meet the statutory standard. This will vary from a phone call between a manager and a personnel officer who knows about the procedures (especially in large firms) to cases where some time is spent on establishing compliance. This assumption is identical in both high and low scenarios.

B44. In addition, firms with existing procedures that fall short of the minimum level or with no procedures currently in place will have to spend time introducing the statutory procedures. Firms with sub-standard procedures are assumed to spend on average one hour on adjusting their procedures. The high cost scenario assumes two hours for this process. We assume that managers in firms with no procedures will need an average of two hours to collect the relevant information and set up procedures. This is possible if they have access to the internet and download the "blueprint" that will be provided by DTI/Acas. The high cost scenario assumes an average of four hours for this process. The actual amount of time spent by individual employers may differ from these averages. We consider the high cost scenario to be more realistic than the low cost scenario. The total one-off costs are estimated to be £35-65 million (see Appendix for details).

B45. If only partial initial compliance is assumed (i.e. either 60% or 80%), the one-off cost would be spread over five years, until full compliance is achieved.

B46. A publicity campaign will be launched prior to the introduction of the minimum standard procedures in order to increase awareness among employers and employees, so that they become widespread, and therefore their benefits felt, in a relatively short time. The publicity campaign will have a non-recurring cost of £2 million.

### Costs of using statutory dispute resolution procedures

B47. The **recurring costs** to employers from the proposal come from dealing with disputes through following the statutory procedures. Previously, these disputes were either not handled at all or were dealt with using sub-standard procedures. The cost of applying the procedures is associated with the absorption of management and employee time.

B48. As before we assume a low cost and a high cost scenario. The difference between the two is in the written stages of the procedures. All

disputes that need an appeal hearing are assumed to take 2 hours of management and employee time. The average costs to employers of using the 3-step procedure is £190 in the high cost scenario and £171 in the low cost scenario, with a lower average cost of £114 where some form of (insufficient) procedure is used at present. The average cost of the 2-step scenario ranges from £69 to £99, in the low and high scenario respectively, with a lower average cost of £57 where some form of insufficient procedure is at present. The total range of annual costs is £31-52 million (see Appendix for details).

B49. If only partial initial compliance is assumed (i.e. either 60% or 80%), initial annual costs would be £19-31 million<sup>29</sup> and £25-42 million<sup>30</sup> respectively. These levels of initial costs would gradually increase up to £31-52 million per year after five years, and thereafter, when full compliance would be achieved.

### **Impact on small firms**

B50. Many small businesses do not have a specialised personnel function and therefore lack staff who deal with human resources issues on a day-to-day basis. Businesses with small numbers of employees are also likely to see certain employment situations occur very infrequently (e.g. parental leave following an adoption). This combination of a lack of specialised personnel and infrequent exposure to employment rights issues may contribute to a greater incidence of disputes in small firms.

B51. As discussed in the consultation document, DTI recognises the need for user-friendly guidance and standard forms to reduce the implementation costs, particularly for small firms.

#### Small Firms Impact Test – Stage One

B52. The first stage of the Small Firms Impact Test clearly indicated that the proposal could have an impact on small firms. The Stage One Impact Test “Sounding” involved a broad portfolio of stakeholder organisations. An advisory group was formed to act as a sounding board for policy, legal and guidance developments. Participants include the British Chambers of Commerce, the Small Business Council, the Forum for Private Business and the Federation of Small Business. Priority sectors, such as construction, hospitality and retail, were also represented by specialist groups – e.g. the British Retail Consortium, the Construction Confederation and the British Hospitality Association/ Restaurant Association. The advisory group has met six times (and will continue to meet to discuss the forthcoming guidance campaign for these Regulations).

B53. These stakeholder groups generally accepted that the statutory dispute resolution procedures could have a strong positive impact on solving workplace problems. The stakeholder groups were keen to ensure that the

---

<sup>29</sup> Calculated as (£31-52 million) x 0.6

<sup>30</sup> Calculated as (£31-52 million) x 0.8.

Regulations should be as pragmatic and straightforward as possible. They were concerned that overly complex requirements would be unworkable for small firms. The group also provided valuable input on developing a suitable communications and guidance programme.

B54. The Small Business Service was consulted, and agreed that these Regulations could have a significant impact on small businesses. As a result, it was necessary to carry out Stage Two.

#### Small Firms Impact Test – Stage Two

B55. Stage Two of the Impact Test requires soundings to be taken with small firms. With that in mind, the Small Business Service organised two small firms focus groups on 15 and 16 April 2003.

B56. Eleven organisations drawn from across the United Kingdom participated in the two events – an additional four were also invited. There were seven small firms from a variety of sectors including construction, consultancy, training, and software; and also four trade associations, from the hospitality, professional services and retail sectors. These firms were drawn from a database held by the Small Business Service – it is possible that the firms were not truly representative of the small business community as a whole.

B57. The focus group participants felt that the procedures could be adopted without too much difficulty. Most firms felt their existing procedures were largely in line with the proposed Regulations. There was no feeling that the modified dismissal procedure would encourage employers to dismiss summarily, as the standard procedures were not seen as being unduly onerous.

B58. Successfully informing small firms about the new Regulations was seen as a particularly important challenge, and the participants' preferred approach to communicating these policies was discussed in some depth.

## Small Firms Impact Test - Conclusions

B59. Both stages of the Small Firms Impact Test confirmed that the proposed Regulations could potentially have a significant effect on small firms. However, the evidence gathered in focus groups suggested that there would be limited consequence to the many firms that already have dispute resolution procedures in place. Policy feedback from main stakeholder organisations has directly shaped the proposed Regulations to address the concerns of small firms.

### **Competition assessment**

B60. This legislation will apply to all firms. It is unlikely to affect the competitiveness of any particular sector. It is designed to reduce cost of dealing with disputes in the workplace for both employers and employees. We believe it will also improve the workings of the labour market.

B61. Individuals can face both short and long run costs from making tribunal applications. A quarter of all applicants of employment tribunals are unemployed subsequent to the case<sup>31</sup>. The introduction of statutory dispute resolution procedures, by reducing the number of employment tribunal applications, may have a positive impact on labour participation rates.

B62. Employment disputes may lead to skilled labour resigning their job for reasons other than professional or career development. By improving dispute resolution within the workplace, this legislation may enhance the match between skills required at work and the skills workers have, in the labour market.

### **Enforcement, sanctions, monitoring and review**

B63. The proposal contains enforcement mechanisms such as the adjustment of awards. The Employment Tribunal Service will be able to monitor the number of cases where failure to comply with the procedural requirements becomes an issue, including the number of cases where awards are adjusted because of procedural failings. The overall volume of tribunal applications will also be an indicator of effectiveness.

### **Contact details**

B64. Any comments on this Regulatory Impact Assessment should be addressed to:

Beatrice Parrish or Jose Seisdedos  
Employment Relations Directorate  
Department of Trade and Industry  
1 Victoria Street  
London SW1H 0ET

---

<sup>31</sup> Survey of Employment Tribunal applications (SETA) (1998).

## Appendix: Details of cost calculations

### Costs of introducing procedures

B65. All employers will face adjustment costs. Once the firm has become familiar with and understood the procedures and implications of non-use, they will not face this cost again.

B66. Table B6 shows the assumptions made about the existing (pre-legislation) use of procedures. The data for larger firms are based on WERS98 data.<sup>32</sup> It is assumed that small firms are less likely to have procedures at all or ones that meet the minimum requirement (labelled as 'sub-standard').

Table B6: Proportions of firms with satisfactory and unsatisfactory procedures

Number of employees	Number of firms <sup>33</sup>	Satisfactory Procedures	Sub standard Procedures	No Procedures
1-4	764,000	25%	25%	50%
5-9	203,000	30%	30%	40%
10-19	115,000	40%	30%	30%
20-49	56,000	79%	9%	12%
50-99	19,000	79%	9%	12%
100-199	8,000	79%	9%	12%
200-249	2,000	79%	9%	12%
250-499	4,000	79%	9%	12%
500+	4,000	79%	9%	12%

<sup>32</sup> Workplace Employee Relations Survey 1998

<sup>33</sup> Source of employer numbers is Small Business Service, Statistical Bulletin, Small and Medium Enterprises, Statistics for Great Britain, 2001.

B67. Table B7 shows these expressed as numbers of firms.

**Table B7: Numbers of firms with satisfactory and unsatisfactory procedures<sup>34</sup>**

Number of employees	Satisfactory procedures	Sub-standard procedures	No procedures
1-4	191,000	191,000	382,000
5-9	61,000	61,000	82,000
10-19	46,000	35,000	35,000
20-49	44,000	5,000	7,000
50-99	15,000	2,000	3,000
100-199	6,000	1,000	1,000
200-249	2,000	200	200
250-499	3,000	400	500
500+	3,000	400	500
<b>Total</b>	<b>371,000</b>	<b>296,000</b>	<b>511,000</b>

B68. Table B8 then lists the assumptions made about the amount of management time required to understand the new requirements and, if necessary, to improve procedures and make any necessary changes to written statements.

**Table B8: Introduction of procedures: Time spent by managers (in hours)**

Number of employees	High cost scenario			Low cost scenario		
	Satisfactory	Sub standard	None	Satisfactory	Sub standard	None
1-4	0.5	2	4	0.5	1	2
5-9	0.5	2	4	0.5	1	2
10-19	0.5	2	4	0.5	1	2
20-49	0.5	2	4	0.5	1	2
50-99	0.5	2	4	0.5	1	2
100-199	0.5	2	4	0.5	1	2
200-249	0.5	2	4	0.5	1	2
250-499	0.5	2	4	0.5	1	2
500+	0.5	2	4	0.5	1	2

B69. Multiplying the numbers of firms affected in Table B7 by the hour assumptions in Table B8 and valuing management time at £23 per hour<sup>35</sup>, this implies total one-off adjustment costs of £35-65 million.

<sup>34</sup> Source of employer numbers is Small Business Service, Statistical Bulletin, Small and Medium Enterprises, Statistics for Great Britain, 2001.

<sup>35</sup> In 2002, the average hourly pay, excluding overtime, of a manager/administrator (1 digit SOC90) in Great Britain was £17.97. Source: New Earnings Survey (NES) 2002. The cost of a manager's time includes non-wage costs and overheads, estimated at 30% of wage costs. The hourly cost of a manager's time is, therefore, £17.97 x 1.3 = £ 23.36.

B70. If only partial initial compliance is assumed (i.e. either 60% or 80%), the above one-off cost would be spread over five years, until full compliance is achieved. This is shown in the table below.

B71. If only partial initial compliance is assumed (i.e. either 60% or 80%), the above one-off cost would be spread over five years, until full compliance is achieved. This is shown in the table below.

**Table B9: One-off adjustment costs with varying compliance rates**

		<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
<b>60% compliance</b>	Low cost	£21m	£3.5m	£3.5m	£3.5m	£3.5m
	High cost	£39m	£6.5m	£6.5m	£6.5m	£6.5m
<b>80% compliance</b>	Low cost	£28m	£1.75m	£1.75m	£1.75m	£1.75m
	High cost	£52m	£3.25m	£3.25m	£3.25m	£3.25m

### Costs of using procedures

B72. In all cases where procedures are not currently used, or where those procedures do not meet the new minimum requirements, employers will incur additional costs from running these procedures.

B73. There are estimated to be 500-800,000 disputes per year that could involve recourse to the law. Action is not taken in 7% of cases leaving 465-744,000 disputes where some form of action will be taken. It is assumed that, at present, procedures that meet the new minimum standard are used in 50% of all cases (i.e. 233-372,000). In 30% of cases (i.e. 140-223,000 cases), a procedure is used but it does not meet the minimum requirements. And in the remaining 20% of cases (93-149,000 cases), no procedure is followed at all.

B74. Tables B10 and B11 set out the assumptions on the average amount of time that employers and employees need to spend using the three-step and two-step procedures, respectively. Average employer (manager) and employee time spent on the three-step procedure equal to 4.5 hours and 5 hours, in the low and high scenario, respectively. In the two-step procedure, the manager's time on average would amount to 2 and 3 hours in the low and high scenarios, while the employee's time would amount to 1.5 and 2 hours in the low and high scenarios.

Table B10: Average company time used to complete the standard (three-step) grievance/ dismissal and disciplinary procedures

	DISMISSAL AND DISCIPLINARY PROCEDURE				GRIEVANCE PROCEDURE			
	Manager time (hours)		Employee time (hours)		Manager time (hours)		Employee time (hours)	
	High cost	Low cost	High cost	Low cost	High cost	Low cost	High Cost	Low cost
Writing complaint	2	1	-	-	-	-	2	1
Hearing	2	2	2	2	2	2	2	2
Appeal hearing	2	2	2	2	2	2	2	2
<b>Total</b>	<b>6</b>	<b>5</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>6</b>	<b>5</b>

Table B11: Average company time used to complete the modified (two-step) grievance/ dismissal procedures

	DISMISSAL PROCEDURE				GRIEVANCE PROCEDURE			
	Manager time (hours)		Employee time (hours)		Manager time (hours)		Employee time (hours)	
	High cost	Low cost	High cost	Low cost	High cost	Low cost	High cost	Low cost
Writing complaint	2	1	-	-	-	-	2	1
Hearing	-	-	-	-	2	1	-	-
Appeal hearing	2	2	2	2	-	-	-	-
<b>Total</b>	<b>4</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>1</b>

B75. On the basis that management time costs £23 per hour and employee time costs £15 per hour<sup>36</sup>, the average cost of using the 3 step procedure is £171-190 per case<sup>37</sup>, the average cost of the 2 step procedure is £69-99<sup>38</sup>. These are the additional costs that will apply when no procedures at all are used at present. When procedures are used, but these need to be improved, the **additional cost** will be lower - here assumed to be 3 and 1.5 hours of manager and employee time, for the 3 and 2-step procedures, respectively, which produces a unit cost of £114 per case for the three-step procedure and £57 for the two-step procedure.

B76. Multiplying these unit costs by the number of disputes where new or better procedures will be required, and assuming that the 2-step procedure is

<sup>36</sup> This is calculated as the average gross hourly earnings of all employees on adult rates, excluding overtime all occupations, whose pay was not affected by absence. GB: £11.19. (Source New Earnings Survey 2002) Multiplied by a factor of 1.3 to take into account non-wage labour costs: £14.55

<sup>37</sup> Three-step procedure calculated as  $[4.5 \times (£15 + £23)]$  to  $[5 \times (£15 + £23)]$

<sup>38</sup> Two-step procedure calculated as  $[(2 \times £23) + (1.5 \times £15)]$  to  $[(3 \times £23) + (2 \times £15)]$ .

used in about 5%<sup>39</sup> of the disputes where any action is taken, and that a there is full compliance with the new legislation, it produces a total recurring cost estimate of £31-52 million<sup>40</sup>.

B77. If only partial initial compliance is assumed (i.e. either 60% or 80%), initial annual costs would be £19-31 million<sup>41</sup> and £25-42 million<sup>42</sup> respectively. These levels of initial costs would gradually increase up to £31-52 million per year after five years, and thereafter, when full compliance would be achieved. This is shown in table B12.

Table B12: Annual costs with varying compliance rates

		Year 1	Year 2	Year 3	Year 4	Year 5
<b>60% compliance</b>	Low cost	£18.6m	£21.7m	£24.8m	£27.9m	£31.0m
	High cost	£31.2m	£36.4m	£41.6m	£46.8m	£52.0m
<b>80% compliance</b>	Low cost	£24.8m	£26.35m	£27.9m	£29.45m	£31.0m
	High cost	£41.6m	£44.2m	£46.8m	£49.4m	£52.0m

<sup>39</sup> Analysis of evidence from *Paths to Justice* suggests a possible range of between 1%-14%. We have opted for a conservative middle of the range of 5%. We use incidents of harassment at work as a proxy of circumstances that would lead to using a two-step procedure. 14% represents those suffering employment related problems who had experienced harassment at work (Figure 2.7). 1% represents the proportion of employees who experienced employment related problems and did not do anything about it because they were too scared (Figure 2.8).

<sup>40</sup> Calculated as [93-149,000] x ([£171- £190] x0.95) + [£69-99]x0.05)) [cases with no procedure] + [140-223,000] x (£114x0.95) +[£57 x0.05]) [cases with sub-standard procedure] = £30-52 million.

<sup>41</sup> Calculated as (£30-52 million) x 0.6

<sup>42</sup> Calculated as (£30-52 million) x 0.8.

## Annex C – Organisations involved in pre-consultation

### *Advisory Group*

- Acas
- British Hospitality Association/  
Restaurant Association
- Confederation of British Industry
- Construction Confederation
- Engineering Employers Federation
- Forum for Private Business
- Small Business Council
- Transport and General Workers  
Union
- Union of Shop, Distributive and  
Allied Workers
- British Chambers of Commerce
- British Retail Consortium
- Citizens Advice
- Employment Tribunals Service
- Federation of Small Business
- GMB
- Small Business Service
- Trades Union Congress

The National Farmers Union was also invited to participate but was unable to do so.

### *Focus Group participants*

#### Small Firms

- Construction Firm 1
- Consultancy Firm 2
- Recruitment Firm 1
- Training Firm 1
- Trade Association 2
- Trade Association 4
- Consultancy Firm 1
- Electronics Firm 1
- Software Firm 1
- Trade Association 1
- Trade Association 3

The following firms were also invited to participate, but were unable to do so.

- Consultancy 3
- Software Firm 2
- Marketing Firm 1
- Trade Association 5

#### Large firms

- Communications Firm 1
- Professional Services Firm 1
- Telecommunications Firm 1
- Manufacturing Firm 1
- Restaurant Chain 1

The following firms were also invited to participate, but were unable to do so.

- Drinks Firm 1
- Telecommunications Firm 2
- Technology Firm 1

### Trade unions

- Amicus
- Communication Workers Union
- Graphical, Paper and Media Union
- National Association of Schoolmasters and the Union of Women Teachers
- Transport and General Workers Union
- Union of Shop, Distributive and Allied Workers
- Association for College Management
- GMB
- Musicians Union
- Trade Unions Congress
- UNIFI
- Unison

Equity was also invited to participate, but was unable to do so.

### Acas conciliators and advisers

Six conciliators and advisers from the London regional office.

### *Other meetings*

- Chartered Institute of Personnel and Development
- Employment Lawyers Association
- Employment Tribunals President of England and Wales
- Peninsula Business Services
- Disability Rights Commission
- Employment Lawyers Bar Association
- Employment Tribunals President of Scotland

## Annex D – Example documents and letters

D1. The Government intends that a number of sample documents and letters will be produced to help both employers and employees comply with the statutory dispute resolution procedures. This Annex gives examples of two of the most important documents.

### *Step One grievance letter*

D2. This example letter, which meets the statutory requirements, could be used by employees as the Step One letter to start a standard (three-step) grievance procedure.

#### Guidance notes

- **Please retain a copy of this letter.** If you later wish to apply to an employment tribunal it may be used as evidence.
- Your employer should ensure you have access to a written statement of employment particulars within 8 weeks of you starting work. Please check this document for details of the employer's grievance policy. It may, for example, indicate who this letter should be sent to (e.g. personnel manager). You should follow these specific instructions, where possible.
- If you no longer work for the employer, you should send this letter to their last known address
- It may be useful to be able to prove when you sent this letter – if you chose to post it, you might want to consider getting a proof of posting, or sending the letter by recorded delivery
- It is important to give as much information as possible in this letter

Dear.....[insert manager's name]

Date.....

I am writing to tell you that I wish to raise a grievance under Employment Act 2002 (Dispute Resolution) Regulations 2003.

My grievance is based on the following situation

.....  
.....  
.....

My grievance happened on .....[insert start and finish dates, if appropriate].

I would like you to arrange a meeting to discuss this matter. I am entitled, if I wish, to be accompanied by another work colleague or my trade union representative.

Yours sincerely

Signed ..... (employee)

### *Example written statement of employment particulars*

D3. The Government publishes an example of a written statement of employment particulars. This form, with guidance, is reproduced below. The latest version of this form is published on the Internet at <http://www.dti.gov.uk/er/individual/example-pl700a.htm>. It should be noted that when the provisions in Part 3 of the Employment Act 2002 are commenced, then this document will be updated to reflect revised statutory requirements.

#### Guidance notes

- This leaflet is an example of a possible form of a written statement of employment particulars meeting the requirements of employment legislation.
- The Department of Trade and Industry booklet *Written Statement of Employment Particulars* (PL700) has a detailed explanation of these requirements.
- The written statement may be provided either:
  - a. As a single document, or
  - b. In a number of instalments – *provided that certain details, dealt with in*

*paras 1-8 overleaf, are always given together in the same instalment*

- Unless otherwise indicated, all particulars must be set out in the statement itself and **not** be given by reference to: a collective agreement, a handbook; or any other document which does not form part of the written statement
- Lengthy or complicated particulars may be given on the continuation sheet provided or via an attached booklet or other annex *provided it is clear that this is integral to the statement, or the relevant instalment of it, and forms part of the same document.*
- **Where there are no particulars to be given for paras 1-14 overleaf, the statement must say so in each case.**
- Some of the separate stages in paras 15-21 overleaf may be combined where, for example:
  - a. The same person is the first to be approached for appeals against disciplinary decisions **and** for grievances; or
  - b. The method of application in both cases is the same.
- Explanatory notes for completion are given in the right hand column on each page

Note: Some terms and conditions of employment are subject to statutory requirements, e.g. rates of pay, working hours and holidays and notice of termination of employment. For information see the booklets *A detailed guide to the national minimum wage* (URN 99/662), obtainable by calling 0845 8450 360; *A short guide to the working time regulations* (URN 00/632), obtainable by calling 0845 6000 925; and *Rights to notice and reasons for dismissal* (PL 707) (URN 99/948), obtainable by calling 0870 1502 500.

Written statement of employment particulars		Notes for completion of form
<b>Insert</b>		
<b>P1</b>	You <input type="text" value="1"/> Began employment with <input type="text" value="2"/> On <input type="text" value="3"/>	<b>P1:</b> 1 Name of employee 2 Name of employer 3 Date employment started
<b>P2</b>	*a. Your previous employment with <input type="text" value="4"/> <b>Does</b> count as part of your period of continuous employment which therefore began on <input type="text" value="5"/>	<b>P2:</b> * delete (a) or (b) as appropriate 4 Name of previous employer or employers 5 Date period of continuous employment commenced
Or	*b. Your previous employment <b>does not</b> count as party of your period of continuous employment	
<b>P3</b>	a. You are employed as <input type="text" value="6"/>	<b>P3:</b> (complete (a) <b>or</b> (b), delete the other) 6 Job title
Or	b. A brief description of the work for which you are employed is: <input type="text" value="7"/>	<b>Or</b> 7 Brief work description
<b>P4</b>	a. Your place of work is <input type="text" value="8"/>	<b>P4:</b> (complete (a) <b>or</b> (b), delete the other) 8 Address of workplace

		Notes for completion of form
b. You are <b>*required/ permitted</b> to work at the following places		<b>Or *delete as appropriate</b>
	9	9 Give details
And the address of your employer is		
	10	10 Address of employer
<b>P5</b>	Your pay will be	<b>P5:</b>
	11	11 Particulars of scale or rate of remuneration, or of the method of calculating remuneration (see "Note" on page 74)
<b>P6</b>	You will be paid	<b>P6:</b>
	12	12 Particulars of intervals at which remuneration is to be paid
<b>P7</b>	Your hours of work are	<b>P7:</b>
	13	13 Particulars (see "Note" on page 74) – including details of any normal working hours
<b>P8</b>	Your holiday entitlement is	<b>P8:</b>
	14	14 Particulars (see "Note" on page 74) – including entitlement to holiday pay and public holidays. You <b>must</b> give enough information to enable entitlement, including accrued holiday pay on termination, to be precisely calculated.

		<b>Notes for completion of form</b>
<b>P9</b>	a. In case of incapacity to work	
	<div style="border: 1px solid black; background-color: #ffff00; width: 100%; height: 80px; display: flex; justify-content: flex-end; align-items: center; padding-right: 5px;">15</div>	15 Terms and conditions relating to sickness or injury and any provision for sick pay
or	b. Particulars of any terms and conditions relating to incapacity to work due to sickness or injury, including any provision for sick pay, can be found in	Or
	<div style="border: 1px solid black; background-color: #ffff00; width: 100%; height: 150px; display: flex; justify-content: flex-end; align-items: center; padding-right: 5px;">16</div>	16 Refer to provisions of some other document which the employee has reasonable opportunities of reading in the course of his or her employment or which is made reasonably accessible to him or her in some other way
<b>P10</b>	a. Particulars of pensions and pension schemes are	
	<div style="border: 1px solid black; background-color: #ffff00; width: 100%; height: 80px; display: flex; justify-content: flex-end; align-items: center; padding-right: 5px;">17</div>	17 Particulars
Or	b. Particulars of terms and conditions relating to pensions and pension schemes, can be found in	Or
	<div style="border: 1px solid black; background-color: #ffff00; width: 100%; height: 150px; display: flex; justify-content: flex-end; align-items: center; padding-right: 5px;">18</div>	18 Refer to provisions of some other document which the employee has reasonable opportunities of reading in the course of his or her employment or which is made reasonably accessible to him or her in some other way

		Notes for completion of form
<b>P11</b>	a. The amount of notice of termination of your employment you are entitled to receive is	<b>P11:</b> (complete (a) or (b), delete the other)
	19	19 Period of notice (see "Note" on page 74)
	The amount of notice you are required to give is	
Or	b. Particulars of the amount of notice of termination of your employment that you are entitled to receive and are required to give are given in	<b>Or</b>
	21	21 Refer to relevant legislation or the provisions of any collective agreement directly affecting the terms and conditions of the employment, which the employee has reasonable opportunities of reading in the course of his or her employment or which is made reasonably accessible to him or her in some other way
<b>P12</b>	a. Your employment is permanent – subject to 11 above, to general rights of termination under the law and to the following	<b>P12:</b> (complete (a) or (b) or (c), delete the other two)
	22	22 Details of any other rights of termination
Or	b. Your employment contract is for a fixed term and expires on	<b>Or</b>
	23	23 Date

		Notes for completion of form
Or	c. Your employment is temporary and expected to continue for <div style="border: 1px solid black; background-color: yellow; width: 100%; height: 20px; margin-top: 5px;"></div> 24	<b>Or</b> 24 Period of likely duration
<i>This should be used only as an indication of the likely duration.</i>		
<b>P13</b>	The collective agreements which directly affect the terms and conditions of your employment are <div style="border: 1px solid black; background-color: yellow; width: 100%; height: 80px; margin-top: 5px;"></div> 25	<b>P13:</b> 25 Details identifying the relevant agreements and indicating, where the employer is not a party, the persons by whom they were made
<b>P14</b>	*a. You are not expected to work outside the UK (for more than one month) 26	<b>P14:</b> (*delete (a) or (b), as appropriate) 26 Delete words in brackets if they are appropriate
Or	*b. You will be required to work in <div style="border: 1px solid black; background-color: yellow; width: 100%; height: 20px; margin-top: 5px;"></div> 27	<b>Or</b> 27 Details of work location outside the UK
For	<div style="border: 1px solid black; background-color: yellow; width: 100%; height: 20px; margin-top: 5px;"></div> 28	28 Period of work outside the UK, where more than one month
You will be paid in	<div style="border: 1px solid black; background-color: yellow; width: 100%; height: 20px; margin-top: 5px;"></div> 29	29 Currency
And will be entitled to	<div style="border: 1px solid black; background-color: yellow; width: 100%; height: 80px; margin-top: 5px;"></div> 30	30 Details of any additional remuneration payable to the employee, and any benefits to be provided, because he/she is required to work outside the UK

		Notes for completion of form
The terms relating to your return to the UK are		
	31	Details
<b>P15</b>	a. The disciplinary rules which apply to you are	<b>P15:</b> (complete (a) <i>or</i> (b), delete the other)
	32	32 An explanation of the rules
Or	b. The disciplinary rules which apply to you can be found in	<b>Or</b>
	33	33 Refer to provisions of some other document which the employee has reasonable opportunities of reading in the course of his or her employment of which is made reasonably accessible to him or her in some other way
<b>P16</b>	If you are dissatisfied with any disciplinary decision which affects you, you should apply in the first instance to	<b>P16:</b>
	34	34 Name of person application should be made to, or position held (e.g. supervisor)
<b>P17</b>	You should make your application by	<b>P17:</b>
	35	35 Explain how applications should be made

		Notes for completion of form
<b>P18</b>	If you have a grievance about your employment you should apply in the first instance to	<b>P18:</b>
	<div style="border: 1px solid black; background-color: yellow; width: 100%; height: 40px; display: flex; justify-content: flex-end; align-items: center; padding-right: 5px;">36</div>	36 Name of person grievance should be raised with, or position held ( <i>e.g. personnel officer</i> )
<b>P19</b>	You should make your application by	<b>P19:</b>
	<div style="border: 1px solid black; background-color: yellow; width: 100%; height: 40px; display: flex; justify-content: flex-end; align-items: center; padding-right: 5px;">37</div>	37 Explain how grievances are to be raised
<b>P20</b>	a. Subsequent steps to the firm's disciplinary and grievance procedures are	<b>P20:</b> ( <i>complete (a) or (b), delete the other</i> )
	<div style="border: 1px solid black; background-color: yellow; width: 100%; height: 40px; display: flex; justify-content: flex-end; align-items: center; padding-right: 5px;">38</div>	38 An explanation of the steps
Or	b. Subsequent steps in the firm's disciplinary and grievance procedures are set out in	<b>or</b>
	<div style="border: 1px solid black; background-color: yellow; width: 100%; height: 40px; display: flex; justify-content: flex-end; align-items: center; padding-right: 5px;">39</div>	39 Refer to provisions of some other document which the employee has reasonable opportunities of reading in the course of his or her employment of which is made reasonably accessible to him or her in some other way
<b>P21</b>	A contracting-out certificate under the Pension Schemes Act 1993 <b>*is/ is not</b> in force for the employment this statement is being issued for. 40	40 For further information on contracting out certificates call 0191 225 01501 * <i>delete as appropriate</i>

Notes

## Annex E – Sources of advice

<b>Service</b>	<b>Description</b>	<b>Contact details</b>
<b>Acas</b>	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.	National Helpline: 08457 47 47 47 (textphone: 08456 06 16 00)  <a href="http://www.acas.org.uk">www.acas.org.uk</a>
<b>Business Link</b>	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  <a href="http://www.businesslink.org.uk">www.businesslink.org.uk</a>
<b>Citizens Advice Bureaux</b>	The Citizens Advice Bureaux service 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.	<b>England and Wales</b> 020 7833 2181 <a href="http://www.citizensadvice.org.uk">www.citizensadvice.org.uk</a>  <a href="http://www.adviceguide.org.uk">www.adviceguide.org.uk</a>  <b>Scotland</b> 0131 550 1000 <a href="http://www.cas.org.uk">www.cas.org.uk</a>
<b>Commission for Racial Equality</b>	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	<b>England</b> 020 7939 0000  <b>Scotland</b> 0131 524 2000  <b>Wales</b> 0292 0729 200  <a href="http://www.cre.gov.uk">www.cre.gov.uk</a>

<b>Community Legal Service</b>	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.	<a href="http://www.justask.org.uk">www.justask.org.uk</a>
<b>DIALOG</b>	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	<a href="http://www.lg-employers.gov.uk">www.lg-employers.gov.uk</a>
<b>Disability Rights Commission</b>	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 <a href="http://www.drc.org.uk">www.drc.org.uk</a>
<b>Equal Opportunities Commission</b>	The Equal Opportunities Commission (EOC) is an agency working to eliminate sex discrimination in 21 <sup>st</sup> Century Britain	<b>National</b> 0845 601 5901 <b>Scotland</b> 0141 245 1800 <b>Wales</b> 029 2064 1079 <a href="http://www.eoc.org.uk">www.eoc.org.uk</a>
<b>Equality Direct</b>	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 <a href="http://www.equalitydirect.org.uk">www.equalitydirect.org.uk</a>

<b>REAS</b>	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
<b>Small Business Service</b>	The Small Business Service (SBS) is a Government agency, which champions the interests of small businesses	020 7215 5000 <a href="http://www.sbs.gov.uk">www.sbs.gov.uk</a>
<b>Trades Union Congress</b>	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  <a href="http://www.tuc.org.uk">www.tuc.org.uk</a>  workSMART (world of work website) <a href="http://www.worksmart.org.uk">www.worksmart.org.uk</a>

## Annex F – Consultation criteria and making a complaint or general comment on the consultation

### *Consultation criteria*

F1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.

F2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.

F3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.

F4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others) and effectively drawn to the attention of all interested groups and individuals.

F5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.

F6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.

F7. Departments should monitor and evaluate consultations, designating a consultation coordinator who will ensure the lessons are disseminated. The complete code is available on the Cabinet Office's web site <http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>.

### *Comments or complaints*

F8. If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please contact Philip Martin, DTI Consultation Coordinator, Department of Trade and Industry, Room 725, 1 Victoria Street, London SW1H 0ET, Phone: 020 7215 6206, Email: Philip.Martin@dti.gsi.gov.uk.