

The background of the entire page is a blue-tinted photograph showing the silhouettes of several construction workers in hard hats and work clothes. They are working together to carry a long, heavy pipe across a construction site. The workers are positioned in a line, with some in the foreground and others further back, creating a sense of depth and teamwork. The lighting is bright, likely from the sun, which creates a strong silhouette effect against the lighter background.

dti

SUCCESS AT WORK

Resolving disputes
in the workplace

A CONSULTATION

MARCH 2007

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Issues for consultation

The Government is seeking views on measures to help resolve employment disputes successfully in the workplace so that:

- productivity is raised through improved workplace relations;
- access to justice is ensured for employees and employers;
- the cost of resolving disputes is reduced for all parties;
- disputes are resolved swiftly before they escalate; and
- employment rights are not diluted.

These measures include repealing the current statutory dispute resolution procedures; providing better help and guidelines to resolve disputes at an earlier stage; and improving the way employment tribunals work. The Government proposes to pilot any new approach.

The Government is considering measures to help resolve more disputes successfully in the workplace by:

- repealing the Employment Act 2002 (Dispute Resolution) Regulations 2004 and the corresponding sections of the Employment Act 2002, and examining any consequential changes to other areas of law;
- providing clear guidelines on good practice for resolving disputes, building on the work currently being done by Acas;
- providing encouragement to follow good practice in resolving disputes, which could include penalties for those who make little or no attempt to resolve their dispute before an employment tribunal hearing; and
- inviting employer and employee organisations and others to develop guidelines for using alternative dispute resolution and to promote its use to their members.

The Government is considering measures to help employers and employees to resolve disputes beyond the workplace by:

- providing a new advice service on dispute resolution accessible by telephone and internet;
- providing a new, swift way to settle straightforward monetary disputes without the need for employment tribunal hearings; and
- encouraging earlier conciliation in appropriate cases and removing the fixed conciliation periods which place time limits on Acas' duty to conciliate employment tribunal claims.

The Government is considering measures to make the employment tribunal system simpler and cheaper by:

- simplifying employment tribunal forms;
- considering unifying time limits and the grounds for extension;
- improving procedure and encouraging more active case management;
- simplifying management of multiple-claimant claims;
- improving the handling of weak claims and vexatious claimants; and
- considering when chairs should sit alone in employment tribunals.

Views are sought from businesses, individuals, trade unions, representative bodies, and other interested parties on these possible measures. The consultation will close on 20 June 2007.

This consultation relates to England, Wales and Scotland. The Department for Employment and Learning, Northern Ireland will develop a similar consultation for Northern Ireland.

How to respond

The Department of Trade and Industry invites views on all the policy issues discussed in this consultation document. We particularly welcome responses to the specific questions which are raised at the end of Sections 2, 3 and 4 and are collected together on pages 28-30.

This consultation will close on 20 June 2007. A response can be completed online, or can be submitted by letter, fax or email to:

Dispute Resolution Review Team
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000
Fax: 020 7215 0168
Email: disputereview@dti.gsi.gov.uk

To complete the response form online, please go to:
www.surveymonkey.com/s.asp?u=959683386087

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

A copy of the consultation response form is enclosed at Annex D. The Department will also be able to arrange for other languages or copies in Braille to be provided if required. Further copies of the electronic consultation document and the response form can be obtained from the DTI website at www.dti.gov.uk/consultations. Further printed copies of the consultation document can be obtained from DTI publications orderline at www.dti.gov.uk/publications (Tel: 0845 0150010).

Queries

Queries on the issues raised in this consultation should be addressed to the Dispute Resolution Review Team at the contact address above.

Confidentiality & Data Protection

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

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

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Complaints

If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Stephen Childerstone
Department of Trade and Industry
Better Regulation Team
1 Victoria Street
London SW1H 0ET
E-mail: Stephen.Childerstone@dti.gsi.gov.uk
Tel: 020 7215 0354
Fax: 020 7215 8303

A copy of the Code of practice on consultation is attached at Annex A.

Introduction

The Government's policy on resolving disputes in the workplace was last set out in the 2001 consultation paper 'Routes to Resolution: Improving Dispute Resolution in Britain'. This proposed three principles for a modern dispute resolution system: access to justice; fair and efficient tribunals; and a modern, user-friendly public service. A framework to achieve this was laid out in primary legislation in the Employment Act 2002. This established statutory minimum dismissal and disciplinary and grievance procedures. These procedures came into effect in the Employment Act 2002 (Dispute Resolution) Regulations 2004 ('the Regulations') together with revised employment tribunal rules of procedure and a revised Acas Code of Practice on disciplinary and grievance procedures.

The central theme of these changes was to encourage employees and employers to resolve disputes in the workplace with employment tribunals used only as a matter of last resort. The Government gave a commitment to review the Regulations after two years to see if these objectives had been met. This commitment was confirmed in 'Success at Work'¹ as part of our programme to deliver better regulation. This is a key part of DTI's work to simplify regulation, by removing compliance costs and complexity, and addressing irritants for business and others affected by employment law, while ensuring that employee rights are protected.

Initial discussions with interested parties during 2006 confirmed that there is real scope for changes to the system that will help businesses and employees. In December 2006, the Government broadened the review to look end-to-end at the whole dispute resolution framework with the appointment of Michael Gibbons as an independent reviewer. Michael Gibbons was asked to review the options for simplifying and improving all aspects of employment dispute resolution, to make the system work better for employers and employees. The Gibbons Review² has involved business representatives, unions and others in considering the options for change and has now put forward recommendations. These cover the impact of the statutory dispute resolution procedures, the scope for new initiatives to help

¹ 'Success At Work: Protecting vulnerable workers, supporting good employers' March 2006

² 'Better Dispute Resolution: A review of employment dispute resolution in Great Britain.' Michael Gibbons March 2007

resolve disputes at an earlier stage and improve the way employment tribunals work.

The Government welcomes the Gibbons Review. Building on its recommendations, this consultation seeks views on measures to help resolve disputes successfully in the workplace. We welcome views from all interested parties on these measures.

The need for change

There is significant scope for improving the current dispute resolution system in Great Britain, based on evidence from employers, employees, intermediaries and delivery bodies, as set out in the report of the review led by Michael Gibbons ('the Gibbons Review').

1.1 Evidence shows that the current dispute resolution system in Great Britain is costing all parties too much in terms of both money and time. Disputes still need to be resolved at the earliest opportunity. This points to a future model that is more efficient, simpler to use, offers users more proportionate ways of resolving their disputes and aims to resolve disputes earlier.

Problems with the dispute resolution system

1.2 The Gibbons Review has identified several problems with the current dispute resolution system in Great Britain.

1.3 The statutory dispute resolution procedures introduced in 2004 carry a high administrative burden for employers and employees. The average cost to business of defending an employment claim has been estimated at around £9,000. The financial cost to employees is lower but there are significant non-financial costs such as stress and damaged employment prospects.

1.4 The statutory dispute resolution procedures have brought more clarity about the steps to follow in a dispute, but are not relevant to all dispute situations and have had unintended negative consequences which outweigh their benefits. These consequences include the need to use formal procedures in cases where other approaches would be more appropriate, and the parties feeling the need to seek external advice earlier than they would otherwise do.

1.5 The current dispute resolution system is reasonably successful at resolving those employment disputes that turn into employment tribunal claims before they reach a tribunal hearing. Around 75% of claims made to tribunal are resolved without the need for a hearing, a substantial proportion with the involvement of Acas. But many settlements happen too long after the

dispute first occurred and a significant proportion of those cases that do reach a tribunal hearing are capable of being resolved beforehand between the parties. Both the parties and the Government would face lower costs if more cases were resolved earlier.

1.6 The employment tribunals are judicial bodies designed to hear and decide legal disputes concerning employment rights. They are expensive for users and the Government, and offer a 'one size fits all' approach to resolving disputes, many of which could potentially be resolved more quickly and simply by other means. The problems include: claim forms that are difficult to complete; confusing claim time limits and grounds for extension; perceived inconsistency in case management and judgments; and concerns that too many weak or vexatious cases are still entering the system. The system is also struggling to cope with rising numbers of multiple-claimant cases which create pressure on administrative resources and judicial time. There is therefore scope to offer users more proportionate ways of resolving their disputes, and to make the tribunals more efficient.

Discrimination Law Review

1.7 The Discrimination Law Review undertaken by the new department of Communities and Local Government has considered possible ways of improving the resolution of discrimination disputes in the employment field, as part of its work on the effective enforcement of discrimination law. Following the announcement of the Gibbons Review, it was agreed that the Discrimination Law Review would not make recommendations in this area, but would pass on the evidence it had received and the changes it had considered to the Gibbons Review. Section 4 of this consultation document invites views on these issues.

Solutions identified by the Gibbons Review

1.8 The Review recommends that the Government should:

Support employers and employees to resolve more disputes in the workplace

1. Repeal the statutory dispute resolution procedures set out in the Dispute Resolution Regulations.
2. Produce clear, simple, non-prescriptive guidelines on grievances, discipline and dismissal in the workplace, for employers and employees.
3. Ensure there are incentives to comply with the new guidelines, by maintaining and expanding employment tribunals' discretion to take into account reasonableness of behaviour and procedure when making awards and cost orders.
4. Challenge all employer and employee organisations to commit to implementing and promoting early dispute resolution, e.g. through greater use of in-house mediation, early neutral evaluation and provisions in contracts of employment.

Actively assist employers and employees to resolve disputes that have not been resolved in the workplace

5. Introduce a new, simple process to settle monetary disputes, on issues such as wages, redundancy and holiday pay, without the need for tribunal hearings.
6. Increase the quality of advice to potential claimants and respondents, through an adequately resourced helpline and the internet, including as to the realities of tribunal claims and the potential benefits of alternative dispute resolution to achieve more satisfactory and speedier outcomes.
7. Redesign the employment tribunal application process so that potential claimants access it through the helpline and receive advice on alternatives when doing so.
8. Offer a free early dispute resolution service, including where appropriate mediation, before a tribunal claim is lodged for those disputes likely to benefit from it. The Government should pilot this approach.
9. Offer incentives to use early resolution techniques by giving employment tribunals discretion, to take into account the parties' efforts to settle the dispute, when making awards and cost orders.
10. Abolish the fixed periods within which Acas must conciliate.

Make the employment tribunal system simpler and cheaper for users and government

11. Simplify employment law, recognising that its complexity creates uncertainty and costs for employers and employees.
12. Simplify the employment tribunal claim and response forms, removing requirements for unnecessary and legalistic detail, eliminating the 'tick-box' approach to specifying claims and encouraging claimants to give a succinct statement or estimate of loss.
13. Unify the time limits on employment tribunal claims and the grounds for extension of those limits; this should simplify claim pre-acceptance procedures.
14. Give employment tribunals enhanced powers to simplify the management of so-called 'multiple-claimant' cases where many claimants are pursuing the same dispute with the same employer.
15. Encourage employment tribunals to engage in active, early case management and consistency of practice in order to maximise efficiency and direction throughout the system and to increase user confidence in it.
16. Review the circumstances in which it is appropriate for employment tribunal chairs to sit alone, in order to ensure that lay members are used in a way that adds most value.
17. Consider whether the employment tribunals have appropriate powers to deal with weak and vexatious claims and whether the tribunals use them consistently.

Issues for consultation

1.9 Building on these recommendations, the Government is seeking views on possible measures aimed at helping to resolve workplace disputes successfully and as early as possible. These measures include repealing the statutory dispute resolution procedures; providing better help and guidelines to resolve disputes at an earlier stage; and improving how employment tribunals work.

1.10 In addition, the Government is continuing its efforts to reduce the costs and complexity of employment law more generally, without diluting employee or union rights. The Gibbons Review recognised that the complexity of employment law creates uncertainty and costs for employers and employees, and increases the likelihood of disputes. The Employment Law Simplification Review (ELSR) was launched last year to address this issue and is taking forward a range of proposed measures including significant improvements to the content, delivery and awareness of employment law advice and guidelines. As part of the ELSR process, a Practitioner Panel was appointed to advise the Government in December 2006. As well as advising on the various elements in the ELSR, the Panel has been invited to suggest any other ways in which employment law could be simplified or clarified. The Panel's work should ensure that all opportunities for simplifying employment law without diluting rights are properly identified and assessed. The Government will fully consider all recommendations that the Panel puts to it.

Section 2

Resolving more disputes in the workplace

Resolving disputes successfully in the workplace results in better employment relations, increased productivity, lower human resources costs and fewer employment tribunal claims.

2.1 The Government has put in place a solid framework of employment rights and responsibilities that combines social justice with economic prosperity. When a dispute arises it is in the interests of both employer and employee to try to resolve it swiftly and amicably.

Repealing the 2004 statutory dispute resolution procedures

2.2 The intention behind the introduction in 2004 of statutory dispute resolution procedures was to facilitate early resolution by providing a clear set of steps to follow in order to resolve a dispute.

2.3 Both employer and employee organisations have expressed support for the principle behind the statutory procedures. However, the procedures have had unintended negative consequences including an increase in the number of disputes needlessly reaching a formal stage, an increased use of legal advice and a greater focus on following a process rather than reaching an outcome.

2.4 The Government is therefore seeking views on whether to remove the statutory dispute resolution procedures by repealing sections 29-35 of the Employment Act 2002 and making necessary amendments in other primary and secondary legislation. Removing the statutory procedures would have a consequential effect on unfair dismissal law (see below). The Government invites comments on other consequential effects which might arise from such a change.

Offering clear guidelines on good practice

2.5 Repealing the statutory dispute resolution procedures would give employers and employees the flexibility to choose the means of resolving a dispute that best fit their circumstances. However, with an increase in

flexibility would come a reduction in certainty about the most appropriate process to follow. In order to give employers and employees confidence to resolve disputes, clear, non-prescriptive guidelines on good practice and recommended actions for different sets of circumstances would be required.

2.6 Currently the primary sources of guidance on good practice, for use by employers, employees and employment tribunals alike, are codes of practice produced by Acas under its statutory powers. The Acas code of practice on disciplinary and grievance procedures provides a sound foundation on which to base revised guidelines, but a number of areas for improvement have been identified. Small businesses can find it hard to understand and apply. It could helpfully cover a wider range of situations, such as those where employment has already terminated, and give more information about how to apply alternative dispute resolution techniques.

2.7 The Government is therefore seeking views on whether to provide clear guidelines on good practice for resolving disputes, building on the work already done by Acas. Placing such guidelines on a statutory basis would mean that employment tribunals must refer to them when deciding the merits of a case to which they are relevant.

Encouraging good practice

2.8 There is a risk that repeal of the statutory dispute resolution procedures would result in some employees and employers not attempting to resolve disputes in the workplace prior to an employment tribunal claim. In order to encourage employers and employees to follow good practice, without the inflexibility and other problems inherent in dictating a particular set of steps to follow in all cases, the Gibbons Review recommended that there should be a mechanism built into the system to encourage parties to follow good practice guidelines. The Review suggested an expansion of tribunals' discretion to take into account reasonableness of behaviour and procedure when making awards and costs orders.

2.9 The Government is considering whether to introduce such a mechanism and target it at the small number of employers and employees who would not otherwise make efforts to resolve a dispute. Employment tribunals could be given discretion to consider the behaviour of parties to a case and to penalise those who make either no attempt, or wholly inadequate attempts, to reach an outcome to their dispute prior to an employment tribunal hearing. In reaching a view in such cases, the tribunal would take account of any relevant factors, including the parties' willingness to make use of alternative resolution services where available. Such a discretion would complement current powers to award costs in employment tribunal cases.

2.10 Employment tribunals currently have powers to make costs orders against parties who have acted vexatiously, abusively, disruptively or otherwise unreasonably. The powers set a relatively high threshold and apply to behaviour relating to the tribunal process itself rather than to the dispute more generally. A new discretion would differ from this by implying a positive

duty on the parties to seek to resolve the dispute, where it was reasonable to do so, rather than merely a duty not to act badly once proceedings had started. The scope of the new discretion would also be wider, covering behaviour from the initial occurrence of the dispute in the workplace all the way up to the tribunal hearing.

2.11 The potential penalty would need careful consideration. There are two means of reflecting the behaviour of parties recommended by the Gibbons Review: costs orders and modifications to compensation. The key advantage of modifying compensation (for example giving discretion to increase or decrease an award of compensation up to a fixed percentage) is that it would always be proportionate to the value of the claim; however, it could not be used in cases where the employee is unsuccessful. Costs can apply regardless of which party is successful but may not reflect the value of the claim and are likely to have a disproportionate impact on employees (as employers will generally choose to engage professional legal support and therefore have higher costs). Quantifying costs and enforcing costs orders can also be difficult and expensive.

2.12 The Government welcomes views on methods of penalising parties who make wholly inadequate attempts to resolve their dispute. The Government welcomes innovative suggestions beyond the imposition of costs orders or the modification of compensation.

The role of procedure in unfair dismissal

2.13 If the statutory dispute resolution procedures were repealed, the current statutory provisions on unfair dismissal would be affected. This is because the nature of the legal protection against unfair dismissal was altered when the statutory procedures were introduced. Before that point, case law provided that if an employer failed to comply with a procedure, the dismissal would be found unfair, even if the employer could show that his failure did not affect the decision to dismiss.

2.14 Under the current provisions, failure by an employer to comply with the statutory procedures will automatically lead to a finding of unfair dismissal. However, if an employer complies with the statutory procedures but fails to comply with some other procedure in respect of a dismissal, that dismissal can be found to be fair, provided that the employer could show that his or her failure would not have affected the decision to dismiss.

2.15 If the Government were to repeal all the provisions relating to the statutory procedures, the law on unfair dismissal would revert to the pre-2004 position, so that a failure to comply with procedure would normally lead to a finding of unfair dismissal. This position was well-understood, and reverting to it would have a relatively limited impact on the respective rights of employers and employees.

2.16 Alternatively, the Government could review the law relating to procedural fairness in unfair dismissal. One option could be to maintain and

expand on the changes introduced alongside the statutory dispute resolution procedures, so that a failure by an employer to comply with a procedure could be found to be fair, provided the employer could show that the failure did not affect the decision to dismiss.

2.17 Any review of the law on unfair dismissal would entail reconsidering the current balance of employment rights, which is beyond the remit of the Government's current Employment Law Simplification Review. However, the Gibbons Review heard that the current law on unfair dismissal could benefit from re-examination. The Government is therefore seeking views on whether the law on procedural fairness should revert to the pre-2004 position, or whether there is merit in a wider review of the law relating to procedural fairness in unfair dismissal.

Promoting early resolution

2.18 It is widely acknowledged that when a problem arises between employer and employee, it is better to resolve it as early and amicably as possible, resulting in less cost and stress for all parties. Many organisations recognise this and have well-developed processes utilising modern techniques such as mediation in order to achieve better outcomes. The Government considers that the use of such alternative dispute resolution techniques should be promoted more widely, with the CBI, TUC and other organisations that represent employers and employees using their influence to aid this.

2.19 The Government is seeking views on whether to invite these organisations to commit to developing guidelines on best practice in dispute resolution, including greater use of in-house mediation, early neutral evaluation, and use of mediation provisions in contracts of employment.

Questions

- **Should the statutory dispute resolution procedures be repealed?**
- **Would repealing the procedures have unintended consequences that the Government should address, in legislation or otherwise?**
- **Should the Government offer new guidelines on resolving disputes?**
- **Should there be a mechanism to encourage parties to follow such guidelines?**
- **Should the mechanism take the form of discretion for employment tribunals to impose penalties on those who have made wholly inadequate attempts to resolve their dispute?**
- **What form should such penalties take?**

- **If the statutory dispute resolution procedures were repealed, should the law relating to procedural fairness in unfair dismissal:**
 - **revert to the pre-2004 position; or**
 - **be reviewed in order to assess whether it should be restated entirely?**

- **Should the Government invite the CBI, TUC and other representative organisations to produce guidelines aimed at encouraging and promoting early resolution?**

Section 3

Beyond the workplace

The Gibbons Review recommends that if a dispute is not resolved through best efforts in the workplace, quick, well-informed help should be made available to deal with it in the most cost effective way.

3.1 The Government believes employees and employers should be more aware of the employment dispute resolution system and how best to use it to resolve their problems successfully. This means more employees and employers being better informed about the options available and the implications of taking a dispute to an employment tribunal. Different ways of handling cases could include access to a new process for straightforward claims; improving the uptake of dispute resolution services; and ensuring Acas conciliation is offered in a flexible way when a claim is made.

Offering a new advice service

3.2 The Government is considering introducing a new advice service on dispute resolution including an enhanced telephone and internet helpline. The service would be designed to offer help and guidance, so that advice was available before and during the dispute resolution process and before making an employment tribunal claim. It would provide impartial advice about different methods for resolving disputes and about the tribunal process, in an accessible and efficient way. The service would also be able to direct appropriate cases to the new process for straightforward claims and to encourage appropriate cases towards early mediation.

Providing a new entry point for employment tribunal applications

3.3 The Gibbons Review recommends that anyone who is considering bringing a claim, or who is finding out how to respond to one, should receive the advice of this new service. The Government is considering whether to redesign the employment tribunal application process, so that potential claimants access it through the helpline and receive advice on alternatives when doing so. This redesign would need to include consideration of how to ensure that, where a representative is obtaining a form on behalf of a client, the client still receives the relevant briefing. The Government is seeking

views on whether such an advice service should be the entry point for potential employment tribunal claims and how it should best be structured.

Providing a new approach to straightforward claims

3.4 A significant number of straightforward claims currently go through employment tribunals. These make up at least 10% of the current caseload. They often involve determination of fact in monetary disputes, for example deductions from wages and redundancy payments. In these cases the law is clear and what is needed is a clear statement of remedy. These cases could be settled quickly and effectively without the need for a tribunal hearing. This should make it easier for vulnerable workers, who can find it difficult to enforce their rights, to obtain money due to them. It would allow employers to defend any unfounded claims quickly and inexpensively.

3.5 The Government is seeking views on whether there should be a new service for determining cases of this kind. It would be delivered by an existing body either outside or within the dispute resolution system e.g. the Tribunals Service or Acas. The service could be conducted over the phone and by mail, and would require the power to enforce decisions, but would not require powers of inspection. Parties to a dispute that is handled by the new service would continue to have the right to seek a full tribunal hearing.

Making dispute resolution services available earlier in appropriate cases

3.6 Acas has a good track record of achieving settlement in the period after a claim is made to an employment tribunal but before the tribunal hearing. The Government is considering building on this by providing more Acas capacity to help settle potential claims in the period before a claim is made to a tribunal, via conciliation, mediation or other appropriate interventions. These additional pre-claim services would be made available to users free of charge, in the same way as existing Acas statutory conciliation services. They would offer a new opportunity to resolve disputes quickly, reducing overall costs for users and the Government.

3.7 The new advice service discussed above could tell the parties what help is available and explain how to access it. Parties would be encouraged to use pre-claim Acas services, where appropriate, but would not be required to do so. Whether or not they used them, the parties would still be able to access Acas conciliation after a claim was made.

3.8 At present, Acas has a statutory duty to provide assistance in settling disputes before they become tribunal claims where asked to do so. If the cumulative impact of these changes to the dispute resolution system resulted in a very high demand for pre-claim assistance, it might be necessary for Acas to target its pre-claim resources on particular types of dispute in order to ensure that these resources are used to best effect. This would require a change to the scope of Acas' statutory duty.

3.9 The Government is considering whether, if necessary, it should set criteria to guide Acas in allocating its pre-claim resources. Any criteria would need to be able to take account of changing circumstances, such as the introduction of new employment rights, over time.

3.10 The Government's view is that it would be most appropriate to target pre-claim Acas activity on the following types of dispute:

- those disputes that are likely to be most costly and time-consuming for the parties if they become claims e.g. discrimination and unfair dismissal cases;
- those where the employee is still in employment; and
- those involving small businesses with fewer than 250 employees.

Removing fixed periods for Acas conciliation

3.11 The Government is seeking views on whether to remove the fixed conciliation periods which place time limits on Acas' duty to offer to conciliate employment tribunal claims. This would give Acas a clear remit to conciliate in any employment tribunal claim, at any stage in the process, where the parties wished it to do so.

Questions

- **Should the Government develop a new advice service with the structure and functions suggested?**
- **Should the Government redesign the employment tribunal application process, so that potential claimants access the system through a new advice service, and receive advice on alternatives when doing so?**
- **Should there be a new, swift approach for dealing with straightforward claims without the need for employment tribunal hearings?**
- **Should additional Acas dispute resolution services be made available to the parties in potential tribunal claims, in the period before a claim is made?**
- **If it is necessary to target these new services, should the Government set criteria to guide Acas to prioritise particular types of dispute?**
- **If these new services are to be targeted then, in the current circumstances, would it be appropriate for the Government to guide Acas to prioritise the following types of dispute:**

- **those likely to occupy the most tribunal time and resources if they proceed to a hearing, e.g. discrimination and unfair dismissal cases;**
 - **those where the potential claimant is still employed; and**
 - **those where the employer is a small business with fewer than 250 employees.**
-
- **Should the fixed conciliation periods which place time limits on Acas' duty to conciliate employment tribunal claims be removed?**

Section 4

More effective employment tribunals

The Gibbons Review recommended that for those disputes that go on to become a tribunal claim, there should be an improved system, fit for purpose, with streamlined administration and processes, providing value for money for the tax payer.

4.1 Employment tribunals need to operate in an effective and efficient way, offering justice in a cost-effective manner for all parties, whether in complex or more straightforward cases. Some 160,000 employment tribunal claims were disposed of in 2005/06, with employment tribunals sitting on nearly 30,000 occasions³. There are already case management procedures in place but improvements could be made in the way claims are handled (including the claim and response forms), in the processing of claims and responses and in some judicial procedures. The Government is therefore considering measures to achieve such improvements, most of which would require secondary legislation and would involve detailed consultation at a later date.

Simplifying forms

4.2 Where a dispute cannot be resolved in the workplace and the only way forward is to resolve it at an employment tribunal, claimants and respondents are required to provide sufficient written information about the dispute. These information requirements should be easy to understand. The information itself should not be too burdensome to provide, and no unnecessary detail should be required. The current claim form is eight pages long, with up to five separate sections depending on the basis of the claim, and the response form is four pages long. The Government is seeking views on whether the forms should be simplified and shortened.

4.3 The Government is also considering whether claimants should include a statement or an estimate of loss when submitting an application form. This could help both parties and the tribunal to understand what the claimant is claiming to have suffered and what outcome is being sought, and could therefore enable faster settlement of straightforward claims.

³ Employment Tribunals Annual Report and Accounts 2005/06

Unifying time limits and grounds for extension

4.4 In the current system there are mandatory time limits for presenting a claim to an employment tribunal. There are different time limits depending on the claim in question but the majority are either three or six months from the time of the act complained of. They are important in regulating access to justice. A tribunal must refuse to hear claims (and responses) presented out of time (subject to certain narrow exceptions e.g. for fraud) unless grounds for granting an extension apply.

4.5 The grounds for granting an extension to the prescribed time limit depend on the claim concerned. For most of the rights under the Employment Rights Act 1996, such as the right to claim unfair dismissal, the claim must be presented within the prescribed time period or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not 'reasonably practicable' for the complaint to be presented before the end of the prescribed period. In contrast, equality legislation generally allows claims to be presented within the prescribed period, or where the tribunal considers it would be 'just and equitable' to consider the complaint, which would otherwise be out of time. The 'just and equitable' formula confers a wider discretion on tribunals as to what claims they can consider out of time than the 'reasonably practicable' approach.

4.6 Where the statutory dispute resolution procedures currently apply, normal time limits for certain tribunal claims are extended in certain circumstances by three months to allow for compliance with the statutory procedures. The complexity of time limits would be reduced by a repeal of the statutory dispute resolution procedures.

4.7 The Government is considering whether the current time limits regime could be simplified through harmonisation. This could reduce administrative burdens for the parties, their representatives and employment tribunals. However, it could be argued that the repeal of the statutory dispute resolution procedures would in itself simplify the current regime significantly by reverting to the pre-2004 situation, and that further change would be unnecessary. The Government therefore welcomes views on:

- whether simplifying the current time limits regime through harmonisation would be a helpful additional reform, whether or not the statutory dispute resolution procedures are repealed; and
- if harmonisation is considered helpful, whether the harmonised time limit should be set at three months, six months or another time period.

4.8 The Government is also considering whether harmonising the grounds for extension of time to submit claims would simplify and improve the employment tribunal process. As noted above, at present the grounds for extension are 'reasonably practicable' in some cases and 'just and equitable' in others. To some extent the differing approaches in different jurisdictions are driven by legal constraints, including those of European law, and so harmonisation across all jurisdictions may not be straightforward or desirable. Any change would also need to take into account the interplay between claim

time limits and grounds for extension. The Government welcomes views on whether total or partial harmonisation of the grounds for extension, where possible, subject to legal constraints including those of European law, would be helpful to users of the system. If so, the Government welcomes views on what the grounds for extension in respect of the relevant jurisdictions should be.

Improving procedure and case management

4.9 If the statutory dispute resolution procedures are repealed there would be less need for employment tribunals to make complex pre-acceptance checks on new claims. The Government would therefore be able to design a more user friendly and efficient case management system. There would also be an opportunity to consider other measures to facilitate active, early case management.

4.10 The Employment Tribunals Act 1996 s4(6B) provides for the Employment Tribunal Procedure Regulations to allow legal officers (to be defined by the regulations) to carry out a limited set of judicial functions. No provisions making use of this power were included in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004.

4.11 The functions that legal officers could most usefully perform would be those that free chairs from routine and administrative tasks. These functions might encompass granting postponements and extensions of time; making witness orders; requiring parties to answer questions; and ordering further and better particulars and the discovery of documents. In such an event, issues in relation to training and competencies would need to be addressed. The Government welcomes views on whether the introduction of legal officers would be a helpful reform, and on what roles they might perform.

4.12 The Gibbons Review heard concerns about consistency within the employment tribunal system, particularly regional variations. These range from concerns about how cases are managed, and the scope and use of practice directions, to the issue of how decisions are reached. The Government would welcome views on whether this is a problem, and if so, what might be done to address it.

Simplifying management of multiple-claimant claims

4.13 Employment tribunals are receiving an increasing number of multiple-claimant claims (where a number of individuals claim against the same employer over the same issue), particularly equal pay cases. In 2005/06 more than half of all employment tribunal claims were multiple-claimant claims, and this proportion is expected to rise further in 2006/07.

4.14 In order to manage multiple-claimant claims efficiently, employment tribunals have to rely on the co-operation of parties to each similar claim in identifying 'test' cases, agreeing to be bound by the outcome of these cases, and thereafter withdrawing or settling each of the related individual claims.

This involves a significant amount of administrative and judicial time, and is also time-consuming and confusing for the parties.

4.15 Before the Gibbons Review was announced, the Discrimination Law Review undertaken by the new department of Communities and Local Government also considered the case for simplifying the management of groups of similar claims, in order to save time and costs for employers and the Government. It concluded that there could be scope to extend the powers available to tribunals to manage such cases, e.g. through the use of ‘test’ cases in which judgments would be binding on other related cases, whether or not they were already underway. A similar power exists in the High Court. Although currently a tribunal judgment in one case would normally be applied in a subsequent similar case – effectively discouraging further claims – the tribunal has no power to make a judgment binding on other actions or to prevent further cases being brought.

4.16 In the light of the findings of the Gibbons Review and representations made to the Discrimination Law Review in this area, the Government is considering whether it would be helpful to change the powers available to employment tribunals in respect of multiple-claimant claims. The Government welcomes views on what changes might be appropriate.

4.17 The Government is also considering whether the employment tribunals are the most appropriate and efficient way of resolving multiple-claimant claims, including equal pay and equal value claims, or whether other mechanisms might better serve the interests of all the parties involved.

Considering processes to manage weak and vexatious claims

4.18 The Gibbons Review was told there are instances where claimants bring cases unnecessarily to an employment tribunal, incurring costs for both respondents and the tribunals. Employment tribunals are perceived to be failing to deal with these cases by not effectively or consistently using their existing powers. At present employment tribunals have powers to act against vexatious parties and those found to be acting unreasonably and wasting tribunal (and the other party’s) time and resources. These powers include requiring that deposits be submitted before proceedings are continued, issuing costs orders against parties and striking out claims that are considered to be vexatious or unreasonable. These powers also apply to weak cases where the chair decides that contentions put forward by either party have no reasonable prospect of success.

4.19 The Government is considering whether such powers are sufficient and whether a review of the application of existing powers would improve user confidence that they are being applied in a fair and effective way. The Government would welcome views on this.

4.20 Any new discretion for employment tribunals to consider the behaviour of parties before, as well as during, a case (see section 2) would give tribunals a further way of discouraging parties from acting unreasonably.

Considering when chairs should sit alone in employment tribunals

4.21 Employment tribunals are commonly heard by a full panel comprising the tribunal chair and two lay members, one from a trade union or employee background and one from an employer background. Chairs can only sit alone on proceedings specified in S4(3) of the Employment Tribunals Act 1996. The chair can also make a procedural order on his or her own initiative with or without hearing the parties or obtaining written or oral representations. Chairs also hold case management discussions and pre-hearing reviews alone.

4.22 The Gibbons Review heard that there may be scope to use lay members in employment tribunals more efficiently, bringing their unique expertise to bear where it is most effective. The Government is considering how current arrangements might be better structured to ensure chairs sit alone where appropriate, thereby freeing lay members to be employed where they add most value and to minimise delays that might be caused by their absence or unavailability. This work will feed into a broader review that has been initiated by the Department of Constitutional Affairs (DCA), to consider how lay members are deployed across the whole Tribunals Service. This review will be taken forward once the Tribunals, Courts and Enforcement Bill has finished its passage through Parliament.

Making recommendations on discriminatory policies and practices

4.23 As noted above, the Discrimination Law Review considered issues around the enforcement of discrimination disputes in employment tribunals, including the management of multiple-claimant claims.

4.24 The Discrimination Law Review also considered whether there is scope for employment tribunals to contribute to promoting employers' compliance with discrimination law, by helping those who have had a discrimination claim upheld against them to learn from their experience and rectify discriminatory practices. In particular, it looked at the suggestion, first made in the 2003 Strategy Unit report '*Ethnic Minorities and the Labour Market*⁴', that the existing powers of employment tribunals to make recommendations about discriminatory practices should be made available in a wider range of circumstances, so that tribunals could make recommendations aimed at protecting not just the claimant, but also others who could be affected by the acts of unlawful discrimination which have been proved in the case.

4.25 The Government has considered this idea carefully in the light of the evidence heard by the Discrimination Law Review, and the findings of the Gibbons Review. The policy aim underlying the idea, of spreading good practice and helping employers to understand their obligations under the law, is a good one. However, the Government has concluded that widening the scope of the power to make formal recommendations is not the most appropriate way of achieving this, since the policy aim can be better

⁴ http://www.cabinetoffice.gov.uk/strategy/downloads/su/ethnic_minorities/report/downloads/ethnic_minorities.pdf

addressed through advice and guidelines for employers on employment law. As part of its work on employment law simplification, the Government is currently considering how best to improve such advice and guidelines generally. Furthermore, once the Commission for Equality and Human Rights (CEHR) is established in October 2007 it will play a key role in providing advice and information for individuals and employers on their rights and responsibilities under discrimination and human rights law, supplementing the work of existing bodies such as Acas.

Questions

- **Should the Government simplify employment tribunal forms?**
- **Should claimants be asked to provide an estimate or statement of loss when making a claim?**
- **Would simplifying the current time limits regime through harmonisation be a helpful additional reform, whether or not the statutory dispute resolution procedures are repealed?**
- **If so, should the harmonised limit be three months, six months or another time period?**
- **Would total or partial harmonisation of the grounds for extension to the extent possible subject to legal constraints, be a helpful additional reform?**
- **If so, what should the grounds for extension be in respect of the relevant jurisdictions?**
- **Do you have views on specific ways in which employment tribunal procedures and case management could be improved?**
- **Would it be helpful to change the case management powers available to employment tribunals in respect of multiple-claimant claims?**
- **Do employment tribunals provide the most appropriate way of resolving multiple-claimant claims, or could other mechanisms better serve the interests of all the parties involved?**
- **Are the existing powers of employment tribunals sufficient to deal with weak and vexatious claims?**
- **Do you have views on when employment tribunal chairs should sit alone to hear cases?**
- **Do you have views on how best to structure employment tribunal panels and use lay members more efficiently?**

- **Should the Government aim to promote employers' compliance with discrimination law through better advice and guidance, rather than by widening the powers of employment tribunals to make recommendations in discrimination cases?**

Summary of Questions

In this consultation the Government invites responses to the following questions:

1. Should the statutory dispute resolution procedures be repealed?
2. Would repealing the procedures have unintended consequences that the Government should address, in legislation or otherwise?
3. Should the Government offer new guidelines on resolving disputes?
4. Should there be a mechanism to encourage parties to follow such guidelines?
5. Should the mechanism take the form of discretion for employment tribunals to impose penalties on those who have made wholly inadequate attempts to resolve their dispute?
6. What form should such penalties take?
7. If the statutory dispute resolution procedures were repealed, should the law relating to procedural fairness in unfair dismissal:
 - revert to the pre-2004 position; or
 - be reviewed in order to assess whether it should be restated entirely?
8. Should the Government invite the CBI, TUC and other representative organisations to produce guidelines aimed at encouraging and promoting early resolution?
9. Should the Government develop a new advice service with the structure and functions suggested?
10. Should the Government redesign the employment tribunal application process, so that potential claimants access the system through a new advice service, and receive advice on alternatives when doing so?

11. Should there be a new, swift approach for dealing with straightforward claims without the need for employment tribunal hearings?
12. Should additional Acas dispute resolution services be made available to the parties in potential tribunal claims, in the period before a claim is made?
13. If it is necessary to target these new services, should the Government set criteria to guide Acas to prioritise particular types of dispute?
14. If these new services are to be targeted then, in the current circumstances, would it be appropriate for the Government to guide Acas to prioritise the following types of dispute:
 - those likely to occupy the most tribunal time and resources if they proceed to a hearing, e.g. discrimination and unfair dismissal cases;
 - those where the potential claimant is still employed; and
 - those where the employer is a small business with fewer than 250 employees.
15. Should the fixed conciliation periods which place time limits on Acas' duty to conciliate employment tribunal claims be removed?
16. Should the Government simplify employment tribunal forms?
17. Should claimants be asked to provide an estimate or statement of loss when making a claim?
18. Would simplifying the current time limits regime through harmonisation be a helpful additional reform, whether or not the statutory dispute resolution procedures are repealed?
19. If so, should the harmonised limit be three months, six months or another time period?
20. Would total or partial harmonisation of the grounds for extension to the extent possible subject to legal constraints, be a helpful additional reform?
21. If so, what should the grounds for extension be in respect of the relevant jurisdictions?
22. Do you have views on specific ways in which employment tribunal procedures and case management could be improved?
23. Would it be helpful to change the case management powers available to employment tribunals in respect of multiple-claimant claims?

24. Do employment tribunals provide the most appropriate way of resolving multiple-claimant claims, or could other mechanisms better serve the interests of all the parties involved?
25. Are the existing powers of employment tribunals sufficient to deal with weak and vexatious claims?
26. Do you have views on when employment tribunal chairs should sit alone to hear cases?
27. Do you have views on how best to structure employment tribunal panels and use lay members more efficiently?
28. Should the Government aim to promote employers' compliance with discrimination law through better advice and guidance, rather than by widening the powers of employment tribunals to make recommendations in discrimination cases?

What happens next?

This consultation will close on 20 June 2007. The Government will consider the responses to the consultation and then publish a Government response, setting out how it intends to proceed. Some of the measures set out in this consultation document would require primary legislation to implement, and if the Government decides to take these forward, it will do so when Parliamentary time allows. Other measures could be taken forward under existing powers to make secondary legislation or rules, subject to further consultation where appropriate.

We also intend, in due course, to consider appropriate arrangements for testing before any new measures are introduced.

In preparing this consultation, initial discussions have been held with a number of businesses, employees, representatives, professionals, trade bodies and associations. As part of this consultation, we would welcome the opportunity to discuss the issues with other interested parties. To help the consultation process, the Government is considering planning a number of events, further details of which will be placed on the consultation website www.dti.gov.uk/consultations. If you wish to be kept informed of these meetings and progress on the consultation, please tick the box on the response form, giving your email address.

Annex A

The consultation code of practice criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address <http://www.cabinetoffice.gov.uk/regulation/consultation/index.asp>

Annex B

List of organisations consulted

Advisory, Conciliation and Arbitration Service
Amicus the Union
British Airways
British Chambers of Commerce
British Retail Consortium
Centre for Effective Dispute Resolution
Chartered Institute of Personnel and Development
Chemical Industries Association
Citizens Advice
Commission for Equality and Human Rights
Commission for Racial Equality
Confederation of British Industry
Construction Confederation
Council on Tribunals
Disability Rights Commission
E.ON UK
Employment Appeal Tribunal
Employment Lawyers Association
Employment Tribunal System Steering Board
Engineering Employers' Federation
Equal Opportunities Commission
Federation of Small Business
Forum for Private Business
GlaxoSmithKline

HSBC
Institute of Directors
John Lewis Partnership
Law Society
Network Rail
Presidents of the Employment Tribunals
Royal Mail
Small Business Council
Trades Union Congress
Transport and General Workers Union

Partial regulatory impact assessment

Purpose and intended effect

Objective

1. The Government is considering a package of measures to help solve employment disputes successfully in the workplace so that:
 - productivity is raised through improved workplace relations;
 - access to justice is ensured for employees and employers;
 - the cost of resolving disputes is reduced for all parties;
 - disputes are resolved swiftly before they escalate; and
 - employment rights are not diluted.
2. These measures include: repealing the statutory dispute resolution procedures; providing better help and guidelines to resolve disputes at an earlier stage; and improving the way employment tribunals work.

Background

3. The Government's policy on resolving disputes in the workplace was last set out in the 2001 consultation paper 'Routes to Resolution: Improving Dispute Resolution in Britain'. This proposed three principles for a modern dispute resolution system: access to justice; fair and efficient tribunals; and a modern, user-friendly public service. A framework to achieve this was laid out in primary legislation in the Employment Act 2002. This established statutory minimum dismissal and disciplinary and grievance procedures. A three-step process of a written statement, a meeting and an appeal was introduced by The Employment Act 2002 (Dispute Resolution) Regulations 2004 (the Regulations), and accompanied by revised employment tribunal rules of procedure and a revised Acas Code of Practice on disciplinary and grievance procedures.
4. The Government gave a commitment to review the Regulations after two years, to see if these objectives had been met. This commitment was

confirmed in 'Success at Work'⁵ as part of our programme to deliver better regulation. This is a key part of DTI's work to simplify regulation, by removing compliance costs and complexity, and addressing irritants for business and others affected by employment law, while ensuring that employee rights are protected.

5. In December 2006, the Government broadened the review to look end-to-end at the whole dispute resolution framework with the appointment of Michael Gibbons as an independent reviewer. The Gibbons Review (the Review) has looked at the options for simplifying and improving all aspects of employment dispute resolution, to make the system work better for employers and employees.

6. The Review has put forward recommendations for change, covering the current legal requirements, the way employment tribunals work and the scope for new initiatives to help resolve disputes at an earlier stage.

7. The accompanying Government consultation document considers these recommendations and invites views on various measures to help resolve disputes successfully in the workplace. This regulatory impact assessment (RIA) estimates the costs and benefits of these measures. These estimates will be developed and refined in the subsequent full RIA in the light of responses to the Consultation.

Rationale for Government Intervention

8. The Review has identified several key problems with the current dispute resolution system in Great Britain:

- the statutory dispute resolution procedures introduced in 2004 carry a high administrative burden for employers and employees and have had unintended negative consequences, which outweigh their benefits;
- around 75% of claims made to an employment tribunal are resolved without the need for a hearing, a substantial portion with the involvement of Acas. But many settlements happen too long after the dispute first occurred and a significant proportion of those cases that do reach a tribunal hearing are capable of being resolved beforehand between the parties;
- employment tribunals are judicial bodies designed to hear and decide legal disputes concerning employment rights. They are expensive for users and the Government, and offer a 'one size fits all' approach to resolving disputes, many of which could potentially be resolved more quickly and simply by other means.

9. The evidence therefore suggests that the current dispute resolution system is costing too much for all parties both in terms of money and time; and that it could do more to resolve disputes at the earliest opportunity. This points to a future model that is more efficient, simpler to use, offers users

⁵ 'Success At Work: Protecting vulnerable workers, supporting good employers' March 2006 URN 06/1024.

more proportionate ways of resolving their disputes, and aims to resolve disputes earlier.

Consultation

Within government

10. The Review has consulted widely within government. DTI, Acas and the Tribunals Service have all been key contributors to the Review, along with other government departments.

Public consultation

11. The Review has also sought the input from key non-government stakeholders, including representatives of business (including the CBI) and of workers (including the TUC). The Government is now undertaking a further three-month public consultation on the recommendations of the Review.

Options

Summary of options

12. A summary of the measures on which the Government is consulting is set out below. This RIA considers the entire package of measures (Option 3) against two alternatives: do nothing (Option 1) and repeal the statutory procedures and streamline employment tribunals (Option 2).

Option 1	Do nothing
Option 2	Repeal the statutory dispute resolution procedures and streamline employment tribunals
Option 3	As Option 2 above, but also introducing a package of measures to promote effective dispute resolution including: <ul style="list-style-type: none">• offering a new advice service;• providing a new entry point for employment tribunal applications;• providing a new approach to straightforward claims;• making dispute resolution services available earlier in appropriate cases;• removing fixed periods for Acas conciliation.

Option 1: Do nothing

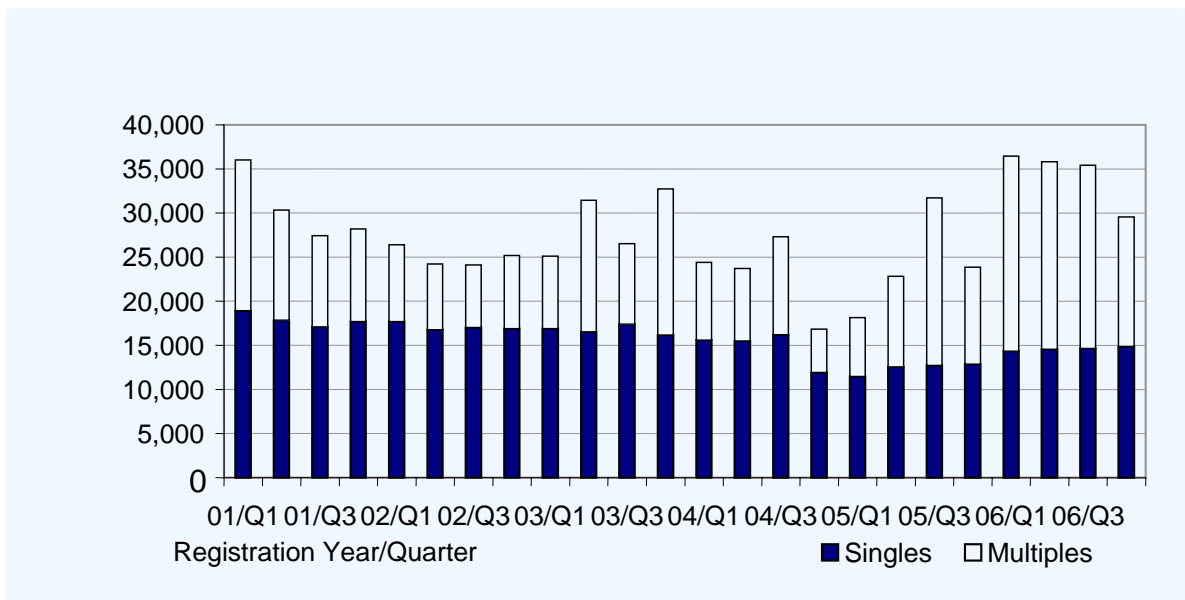
13. Despite the fact that the available data to assess the effects of the 2004 reforms is limited, the Review has identified some key concerns with the current system.

14. Figure 1 shows that since the introduction of the reforms in October 2004, the number of single tribunal claims has fallen and is now stable at around 12,000-13,000 per quarter. However, by the end of 2006 the total number of claims had risen to around 37,000 per quarter compared to an average of 27,000 per quarter in the period before October 2004. This increase was entirely driven by a significant rise in the number of multiple claims. Therefore, the 2004 reforms have not resulted in any reduction in the total number of claims, though the number of multiple claims can vary significantly from one quarter to another.

15. The PricewaterhouseCoopers / BRE administration burdens exercise 2005 identified that the costs to business of complying with and carrying out the various elements of the statutory dispute resolution procedures amounted to £114.8 million⁶ (after taking account of business as usual costs):

16. In terms of the number of tribunal claims and associated costs together with the administrative burden placed on employers of having to follow the statutory procedures, Option 1 would not reduce the number of claims or the costs for all parties.

Figure 1 – Employment tribunal claims registered



⁶ This is based on the number of employment tribunal claims registered in 2004/05, i.e. around 86,000

Option 2: Repeal the statutory dispute resolution procedures and streamline employment tribunals

17. Under this Option the statutory procedures would be repealed. Alongside this, there would be a series of changes to streamline employment tribunals. The aim of these changes would be to increase the flexibility of the dispute resolution system and reduce the administrative burdens placed on firms, while at the same time protecting individuals' access to justice.

Repeal the statutory dispute resolution procedures

18. The principle behind the statutory procedures is supported by employer and employee organisations. However, the procedures have had a number of unintended negative consequences, including an increase in the number of disputes needlessly reaching a formal stage, an increased use of legal advice and a focus on following a procedure rather than reaching an outcome. The Government is therefore consulting on whether to repeal the statutory procedures⁷.

19. Many workplaces readily operate the statutory dispute procedures. Evidence from the 2004 workplace employment relations survey (WERS)⁸ shows that 43% of workplaces with 10 or more employees operated all three steps in grievance cases and 71% did so in respect of disciplinary action. A further 29% and 16% respectively used the three steps for some but not all grievance and/or disciplinary issues.

20. If the regulations were repealed the Government would consider further measures which are set out in detail in the consultation document and include:

- offering clear guidelines on good practice;
- encouraging good practice;
- promoting early resolution.

Streamline employment tribunals

21. Employment tribunals need to operate in an effective and efficient way. In 2005/06 some 160,000 employment tribunal claims were disposed of, with employment tribunals sitting on nearly 30,000 occasions.

22. There are already case management procedures in place, but improvements could be made in the way claims are handled (including the claim and response forms), in the processing of claims and responses and in some judicial procedures.

23. The Government is therefore seeking views on measures to achieve such improvements, most of which will require secondary legislation and will be consulted on in more detail at a later date. These measures are outlined in the consultation document, and include:

⁷ Sections 29-35 and Schedules 2, 3 and 4 of Employment Act 2002, along with s98A Employment Rights Act 1996 and consequential amendments in other primary and secondary legislation

⁸ See Table 8.3 of 'Inside the Workplace: Findings from the 2004 Workplace Employment Relations Survey'

- simplifying forms for claims and responses;
- unifying time limits and grounds for extension;
- improving procedure and case management;
- simplifying management of multiple-claimant claims;
- considering processes to manage weak and vexatious claims;
- considering when chairs should sit alone in employment tribunals.

Option 3: Repeal the statutory dispute resolution procedures, streamline employment tribunals and introduce a further package of measures to promote effective dispute resolution

24. The Government also considers employees and employers should be more aware of the employment dispute resolution system and how best to use it to resolve their problems successfully. This means more employees and employers being better informed about the implications of taking a dispute to an employment tribunal and the other available options.

25. In relation to this the Government is seeking views on a package of measures which is outlined in the consultation document and includes:

- offering a new advice service;
- providing a new entry point for employment tribunal applications;
- providing a new approach to straightforward claims;
- making dispute resolution services available earlier in appropriate cases; and
- removing fixed periods for Acas conciliation.

Costs and Benefits

26. The estimated costs and benefits associated with Options 2 and 3 are presented and discussed below. They are compared against the baseline Option 1, the current system with no change.

27. Since some of the measures contained in the options are dynamic in nature, in that changes to one area will have a consequential impact on other aspects of the system, the various cost implications have been analysed using a simple model of the employment tribunal system. This model is based on a number of illustrative assumptions:

- the effect of any change to the system must be analysed against a consistent baseline number of tribunal claims. It is straightforward to assess the level of single claims from Tribunals Service data, around 52,000 in 2005/06. It is inherently more difficult to do so for multiple claims as the underlying unit, and hence average, costs will vary according to how many claims an individual employer is facing. This model therefore adopts an estimate of single-equivalent claims with a baseline of 67,000 claims;
- the model estimates costs and benefits for employers, employees and the Exchequer. The unit costs used for each group vary but reflect the costs of the current system;

- evidence from the Survey of Employment Tribunals 2003 (SETA 2003) shows that costs vary according to a number of factors, but are mainly affected by:
 - the stage reached in the dispute resolution process⁹. This is reflected to some extent in the model; and
 - the jurisdiction(s) under which the claim is filed. This is not yet reflected in the model;
- these estimates will therefore be refined further in the full RIA;
- some data are available from the PricewaterhouseCoopers / BRE Administrative Burdens Measurement Exercise database. Both the aggregate information obligation burdens and their underlying unit costs have been used where appropriate;
- although the measures could not take full effect before 2009/10 some involve initial set-up costs;
- finally, only a relatively small proportion of employment disputes end up in the employment tribunal system. Many are settled or may be withdrawn along the way. The RIA on the statutory dispute resolution procedures estimated, on the basis on the Legal Services Research Centre (LSRC) Periodic Survey, that there may be between 700,000 and 900,000 employment-related justiciable¹⁰ events each year.

28. It is possible that changes to the dispute resolution system could induce a change in the number of justiciable disputes that result in an employment tribunal claim. Changes that make the system more user friendly could lead to a rise in employment tribunal claims and greater demand for Acas conciliation and mediation services. In this case, the costs to the Government would be likely to rise.

Option 2

Costs

29. In static state, we assume that the (gross) cost implications from the repeal of the statutory procedures should be minimal. As the statutory procedures will not be replaced there should be no gross recurring or fixed cost implications for business as a result of the change.

30. There is likely to be a cost implication to Government from better guidelines on good practice and promotion of early resolution. This could equate to a one-off charge of £0.5 million. An accurate assessment of these costs is not possible at this stage, and will in part depend on responses to the consultation exercise.

31. However the major disadvantage of Option 2 is that it does little to mitigate the risk of increasing employment tribunal claims as a result of the

⁹ Before reaching an employment tribunal hearing, claims may be withdrawn, settled privately or a settlement reached using Acas conciliation.

¹⁰ A 'justiciable event' is defined by Genn, Paths to Justice, 1998 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.

removal of the dispute resolution procedures. Therefore, there is a risk of rising claims and associated costs.

Benefits

32. Repealing the statutory procedures will result in savings to the Government from the reduced complexity of claims and pre-acceptance procedures, which may in turn reduce the time employment tribunals spend in case management and hearings. This could save the Tribunals Service around £1 million per year. The full RIA will draw on further analysis and evidence from the consultation to refine this figure.

33. Repealing the procedures will also lead to significant savings for business. The DTI Simplification Plan calculates the cumulative administrative burden of the statutory procedures as £115 million, based on aggregate information obligations net of business as usual costs. Repealing the statutory procedures should therefore result in a saving of a similar magnitude. If there was a fall in the number of tribunal claims either as a result of the repeal of the procedures or as a result of better guidelines on dispute resolution, then these savings could be larger.

34. Potential savings to the Government and users from streamlining employment tribunals have not yet been estimated. However, they may be substantive and achievable at low or negligible investment cost, largely through process redesign and changes to employment tribunal rules. The full RIA will provide estimates of these savings.

Figure 2: Summary of Costs and Benefits for Option 2

£m	2007/08	2008/09	2009/10	2010/11
COSTS				
Exchequer – Total One-off costs	0.0	0.5	0.0	0.0
- support for new guidelines/promotion of early resolution	0.0	0.5	0.0	0.0
- streamline Tribunal Service	tbd	tbd	tbd	tbd
BENEFITS				
Exchequer – Total	tbd	tbd	tbd	tbd
- streamline Tribunal Service > lower admin costs and fewer ET cases	tbd	tbd	tbd	tbd
Employers – Total	0.0	0.0	114.8	114.8
- repeal three steps	0.0	0.0	114.8	114.8

Source: DTI estimates

Option 3

35. Option 3 includes the measures under Option 2 and additional measures to promote effective dispute resolution. The cost and benefit estimates are partly model-derived and partly based on estimates of set-up costs.

36. The model-derived estimates are based on the following assumptions:

- the number of initial disputes entering the system is set at 67,000;
- the new advice service successfully resolves 5% of potential disputes;
- of the remainder, around 10% are designated for the new process for dealing with straightforward claims and are as such re-routed;
- a further 40% take up some form of early conciliation, with half of these being successfully conciliated. The rest re-enter the main employment tribunal system;
- of all the cases that enter the employment tribunal system proper, conciliation is attempted in some 90% of cases and 40% of the time the case is resolved. Of those that are not resolved, 60% of cases fall out of the system for other reasons.

37. In addition to this there is a further saving in administrative burden. The PricewaterhouseCoopers / BRE Administrative Burdens Measurement Exercise estimated that the cost to business (excluding business as usual costs) of having to respond formally to an employment tribunal claim form (i.e. having to complete and get legal advice on completing an employment tribunal response form ET3) was £172 million. The model assumes that the new advice service and the new process for dealing with straightforward claims will mitigate some of this cost in a proportion of these cases.

38. There are also estimates of the set up costs for implementing the new services and other changes. These are explained below.

39. Overall, the model assumes a four-year timeframe to allow for set-up and implementation and then to realise the first real benefits after the policy changes come fully into effect from 2009/10 onwards.

Costs

40. One-off implementation costs will be incurred by the Government, particularly in the first three years, i.e. between 2007/08 and 2009/10.

41. In total these costs are estimated at £1.3 million in 2007/08. There will be £1 million in business process redesign costs and £0.3 million in external consultancy to help design the new advice service in both 2007/08 and 2008/09.

42. Exchequer costs rise to £7.8 million in 2008/09 and fall back to £5 million in 2009/10 as a result of the costs of setting up the new advice service which totals £10 million and is spread over these two years.

43. Ongoing Exchequer costs then come on stream from 2009/10 onwards and total £27.2 million each year.

44. These costs include the running costs associated with the new approach to straightforward claims (estimated at £2.2 million a year), the new advice service (estimated at £15 million a year) and extra funding for earlier conciliation in appropriate cases (£10 million, which is estimated to fund an extra 20,000 mediations a year).

Benefits

45. As a result of these policy and service changes, benefits are estimated to accrue to employers, employees and the Exchequer. In each case benefits are realised mainly from 2009/10 onwards when the changes become fully effective.

46. A proportion of the benefits derived under Option 3 are as a result of savings made from the redesign of the employment tribunal system. On the basis of the model, we estimate that the number of employment tribunal hearings will fall by around 30%. It should be noted once again that this is based on single-equivalent cases entering the system to take account of multiples and therefore may not be directly comparable to published data by the Tribunal Service. However, the changes will have an effect throughout the system as cases take different routes to reach resolution and hence the savings identified amount to more than just those associated with a fall in the number of employment tribunal hearings.

47. Benefits to the Exchequer are estimated to amount to £16.3 million each year in 2009/10 and 2010/11. All of this is achieved through employment tribunal savings as a result of the repeal of the statutory procedures, the new approach to dealing with straightforward claims, the new advice service and earlier conciliation.

48. Employers will benefit from employment tribunal savings too. This will amount to £26.6 million as a result of the effect of the new approach to dealing with straightforward claims and the new advice service. They will also benefit from a reduction in the administrative burden of £17.4 million.

49. Employers will also benefit from the repeal of the statutory procedures, as identified under Option 2, by £114.8 million.

50. Encouraging early dispute resolution will benefit employers by saving time spent on disputes that would otherwise last longer and might progress to full tribunals. We estimate the cost saving to employers from early resolution at £26 million

51. Employees/individuals will benefit by £4.1million from 2009/10 onwards as a result of the effects of the new process for dealing with straightforward claims and early resolution.

Figure 3: Summary of Costs and Benefits for Option 3

£m	2007/08	2008/09	2009/10	2010/11
COSTS				
Exchequer – Total One-off costs	1.3	7.8	5.0	0.0
- support for new guidelines/promotion of early resolution	0.0	0.5	0.0	0.0
- streamline Tribunals Service	tbd	tbd	tbd	tbd
- business process redesign	1.0	0.0	0.0	0.0
- regional piloting	0.0	2.0	0.0	0.0
- advice service set-up	0.0	5.0	5.0	0.0
- advice service – external consultancy	0.3	0.3	0.0	0.0
Exchequer – Total Recurring costs	0.0	0.0	27.2	27.2
- new approach to straightforward claims	0.0	0.0	2.2	2.2
- interactive advice service	0.0	0.0	15.0	15.0
- more early resolution	0.0	0.0	10.0	10.0
BENEFITS				
Exchequer – Total Recurring Benefits	0.0	0.0	16.3	16.3
- repeal 3 steps – ET saving	0.0	0.0	1.0	1.0
- new approach to straightforward claims – ET saving	0.0	0.0	3.3	3.3
- interactive advice service – ET saving	0.0	0.0	3.0	3.0
- more early resolution – ET saving	0.0	0.0	9.0	9.0
Employers – Total	0.0	0.0	184.8	184.8
- repeal 3 steps	0.0	0.0	114.8	114.8
- new approach to straightforward claims	0.0	0.0	15.6	15.6
- interactive advice service	0.0	0.0	11.0	11.0
- more early resolution	0.0	0.0	26.0	26.0
- reduce admin burden of ET3s	0.0	0.0	17.4	17.4
Employees – Total	0.0	0.0	4.1	4.1
- new approach to straightforward claims	0.0	0.0	2.1	2.1
- more early resolution	0.0	0.0	0.0	0.0
- interactive advice service	0.0	0.0	2.0	2.0

Source: DTI estimates

Small firms' impact test

52. In general the changes set out in the consultation document would apply to firms of all sizes. However, smaller firms tend to be disproportionately represented in employment tribunal claims. Therefore the impact of any

changes to the system, both in terms of any costs incurred by firms but also in terms of benefits in terms of reduced workplace disputes, are likely to affect smaller firms disproportionately.

Race equality impact assessment

53. The measures set out above and in the consultation document should apply equally to all groups. As such, for any given jurisdiction there should be no differential treatment across racial groups. The final RIA will contain a full Race Equality Impact Assessment.

Competition assessment

54. This legislation will apply to all firms. It is unlikely to affect the competitiveness of any particular sector. It is designed to reduce the 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.

55. Employment disputes may lead to job separations for reasons other than professional or career development. By improving dispute resolution within the workplace, these measures may enhance the match between skills required at work and the skills workers have.

Figure 4 - Competition assessment

Question	Answer
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	Not relevant
Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	No

Enforcement, sanctions and monitoring

56. Enforcement of employment law will continue through the employment tribunal system. Additionally, any new process for dealing with straightforward claims may have an enforcement role. The full RIA will consider these in more detail.

57. Any changes will be tested through regional piloting of early dispute resolution procedures. The overall volume of tribunal claims will also be an indicator of the effectiveness of the changes. Subsequently, the next Survey of Employment Tribunal Applications (SETA) will give a benchmark upon which to assess the impact of any changes.

Annex D

Resolving disputes in the workplace

Consultation response form

The closing date for this consultation is 20 June 2007

You may find it helpful to set out your responses to the consultation using this response form.

Name:

Organisation's name and
remit (if applicable):

Address:

.....

Email:

Return completed forms (preferably by e-mail) to:

Dispute Resolution Review
Department of Trade and Industry
Bay 3109,
1 Victoria Street
London SW1H 0ET
Fax: 00 44 (0) 20 7215 0168

E-mail: disputereview@dti.gsi.gov.uk

Please cross one box from the following list of options that best describes you.

- Individual
- Small to Medium Enterprise
- Large Enterprise
- HR professional
- Legal representative
- Trade Union
- Interest Group
- Regional Organisation
- Devolved Administration
- Local Government
- Central Government
- Other (please specify) _____

Please feel free to answer as many or as few questions as you wish. It is helpful if you can explain your views as fully as possible in the comments boxes, continuing on a separate sheet if necessary, especially where you disagree with the measures set out in the consultation paper.

Question 1

Should the statutory dispute resolution procedures be repealed?

Yes No No view

Comments

Question 2

Would repealing the procedures have unintended consequences that the Government should address, in legislation or otherwise?

Yes No No view

Comments

Question 3

Should the Government offer new guidelines on resolving disputes?

Yes No No view

Comments

Question 4

Should there be a mechanism to encourage parties to follow such guidelines?

Yes No No view

Comments

Question 5

Should the mechanism take the form of a power for employment tribunals to impose penalties on those who have made wholly inadequate attempts to resolve their dispute?

Yes

No

No view

Comments

Question 6

What form should such penalties take?

Comments

Question 7

If the statutory dispute resolution procedures were repealed, should the law relating to procedural fairness in unfair dismissal:

- revert to the pre-2004 position, or
- be reviewed in order to assess whether it should be restated entirely?

Revert

Review

Other

No view

Comments

Question 8

Should the Government invite the CBI, TUC and other representative organisations to produce guidelines aimed at encouraging and promoting early resolution?

Yes

No

No view

Comments

Question 9

Should the Government develop a new advice service with the structure and functions suggested?

Yes

No

No view

Comments

Question 10

Should the Government redesign the employment tribunal application process, so that potential claimants access the system through a new advice service, and receive advice on alternatives when doing so?

Yes

No

No view

Comments

Question 11

Should there be a new, swift approach for dealing with straightforward claims without the need for employment tribunal hearings?

Yes

No

No view

Comments

Question 12

Should additional Acas dispute resolution services be made available to the parties in potential tribunal claims, in the period before a claim is made?

Yes

No

No view

Comments

Question 13

If it is necessary to target these new services, should the Government set criteria to guide Acas to prioritise particular types of dispute?

Yes

No

No view

Comments

Question 14

If the new services are to be targeted, then in the current circumstances, would it be appropriate for the Government to guide Acas to prioritise the following types of dispute:

- those likely to occupy the most tribunal time and resources if they proceed to a hearing, e.g. discrimination and unfair dismissal cases;
- those where the potential claimant is still employed; and
- those where the employer is a small business with fewer than 250 employees.

Yes

No

No view

Comments

Question 15

Should the fixed conciliation periods which place time limits on Acas' duty to conciliate employment tribunal claims be removed?

Yes

No

No view

Comments

Question 16

Should the Government simplify employment tribunal forms?

Yes

No

No view

Comments

Question 17

Should claimants be asked to provide an estimate or statement of loss when making a claim?

Yes No No view

Comments

Question 18

Would simplifying the current time limits regime through harmonisation be a helpful additional reform, whether or not the statutory dispute resolution procedures are repealed?

Yes No No view

Comments

Question 19

If so, should the harmonised limit be three months, six months or another time period?

3 months 6 months Other No view

Comments

Question 20

Would total or partial harmonisation of the grounds for extension to the extent possible subject to legal constraints, be a helpful additional reform?

Yes

No

No view

Comments

Question 21

If so, what should the grounds for extension be in respect of the relevant jurisdictions?

Comments

Question 22

Do you have views on specific ways in which employment tribunal procedures and case management could be improved?

Comments

Question 23

Would it be helpful to change the case management powers available to employment tribunals in respect of multiple-claimant claims?

Yes No No view

Comments

Question 24

Do employment tribunals provide the most appropriate way of resolving multiple-claimant claims, or could other mechanisms better serve the interests of all the parties involved?

Comments

Question 25

Are the existing powers of employment tribunals sufficient to deal with weak and vexatious claims?

Yes No No view

Comments

Question 26

Do you have views on when chairs should sit alone to hear cases?

Yes

No

Comments

Question 27

Do you have views on how best to structure employment tribunal panels and use lay members more efficiently?

Yes

No

Comments

Question 28

Should the Government aim to promote employers' compliance with discrimination law through better advice and guidance, rather than by widening the powers of employment tribunals to make recommendations in discrimination cases?

Yes

No

No view

Comments

Thank you for taking the time to let us have your views.

We do not intend to acknowledge receipt of individual responses unless you tick the box below.

We would like to keep you informed of the progress of this consultation, including further consultations. If you wish to join the mailing list, tick the box below.



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