

EXPLANATORY MEMORANDUM TO

The Industrial Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations (Northern Ireland) 2011

S.R. 2011 No. 161

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Employment and Learning ("the Department") to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 26(1) of the Health and Safety at Work (Northern Ireland) Order 1978 and Articles 3(1), 6(6), and (6A), 9(1), (3), (3ZA), (3A) and (5), 11(1) and (4), 13(1) and (1B), 21 and 25(5) of the Industrial Tribunals (Northern Ireland) Order 1996 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Regulations amend the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005 ("the 2005 Regulations"). The 2005 Regulations set out the regulations and Rules of Procedure governing industrial tribunals.
- 2.2. The amendments to the 2005 Regulations have two purposes. The first is to take account of changes to primary legislation made by the Employment Act (Northern Ireland) 2011 ("the 2011 Act"). The second is to set in place efficiency measures and improvements agreed by the Standing Advisory Committee on the Tribunal Rules of Procedure ("Rules Committee").
- 2.3. Regulation 1 cites the name of the Regulations and the date on which they come into operation. Regulation 2 specifies that the subsequent amendments will be applied to the 2005 Regulations.
- 2.4. Regulation 3(1) adds a minor clarification to the interpretation of the 2005 Regulations. Regulation 3(2) makes it clear that a fair employment case involving matters that would otherwise be heard by an industrial tribunal may be heard by the Fair Employment Tribunal exercising all of the powers of an industrial tribunal, provided that the President or Vice-President so directs. This regulation is consequential upon section 11 of the 2011 Act.
- 2.5. Regulation 4 specifies that a range of subsequent amendments are to Schedule 1 to the 2005 Regulations. Paragraph (2) and (4) make changes related to the repeal by the 2011 Act of the statutory grievance procedures for resolving workplace disputes, which until now have had implications for tribunal processes.
- 2.6. Paragraphs (3), (8)(b) and (13) also make changes consequential upon the 2011 Act. They remove from the 2005 Regulations provisions dealing with

time limits on the Labour Relations Agency's duty to offer conciliation following lodgement of a tribunal claim.

- 2.7. Paragraphs (5), (6) and (8)(a) make changes designed to address issues identified by the Rules Committee in relation to the provision of late responses to tribunal claims. Under the new process, it will be possible for the tribunal to accept a request for an extension to the time available for providing a response after the normal period for providing a response has ended, provided that a completed response form accompanies the request and that the tribunal chairman considers it just and equitable to accept the request. Where extension is agreed, the parties will be informed and will have seven days during which they may lodge an objection if they wish.
- 2.8. Paragraph (7) amends the procedure for issuing default judgements by making clear that a default judgement shall not be issued in situations where the tribunal lacks appropriate jurisdiction or has insufficient evidence, or where the parties have concluded a compromise agreement or conciliated settlement. A default judgement is a judgement arrived at in circumstances where a response to a claim has not been received, has not been accepted, or where a response has been received but the claim is not contested.
- 2.9. Paragraph (8)(c) amends the tribunals' general power to manage proceedings so that it will not be necessary to inform all parties when the tribunal orders attendance of a witness. Paragraph (9) makes similar amendments concerning the information that must be supplied by a party making an application to the tribunal and the relevant time limits, and includes provision consequential upon the changes made by paragraph (5).
- 2.10. Paragraphs (10), (11) and (12) clarify the process for dealing with applications for interim relief. Interim relief provides for the continuation of a contract of employment pending the outcome of certain unfair dismissal cases.
- 2.11. Paragraphs (14) and (15) make changes to the 2005 Regulations concerning the withdrawal of proceedings. Paragraph (14) clarifies that a claimant cannot restart proceedings which have been dismissed unless there has been a successful review or appeal. Paragraph (15) provides for the automatic dismissal of claims which have been settled through the Labour Relations Agency.
- 2.12. Paragraph (16) amends the procedure for reviewing default judgements. The effect is to clarify existing provision; enable preliminary matters surrounding an application for a review to be dealt with by a chairman sitting alone; and allow for a review to take place in the absence of a hearing where the parties give their written consent.
- 2.13. Paragraph (17) modifies the 2005 Regulations to reflect changes made by section 6 of the 2011 Act. It widens scope to restrict reporting where issues of a particularly sensitive nature are raised as part of the proceedings. The change responds to developments in case law and demand from stakeholders for protections ensuring that vulnerable groups do not feel constrained from

going to tribunal for fear that sensitive personal information could be publicised during the proceedings.

- 2.14. Paragraphs (18) and (19) modify provisions in the 2005 Regulations relating to the communication of information in relation to proceedings. Paragraph (18) deals with requests for certain documents from the Attorney General for Northern Ireland. Paragraph (19) concerns the addresses to which particular notices should be sent.
- 2.15. Regulation 5 amends the procedure for dealing with equal value claims so that a chairman sitting alone will be able to preside over stage 1 of the process.
- 2.16. Regulations 6, 7 and 8 make minor consequential amendments, respectively, to Schedules 4, 5 and 6 to the 2005 Regulations.
- 2.17. Regulation 9 provides for transitional arrangements. Paragraph (1) harmonises arrangements for the repeal of aspects of the statutory dispute resolution procedures with related provisions in the Employment Act (Northern Ireland) 2011 (Commencement No. 1, Transitional Provisions and Savings) Order (Northern Ireland) 2011 (S.R. 2011 No. 000 (C. 00)). Paragraphs (2) to (5) provide for transitional arrangements in relation to default judgements, the automatic dismissal of proceedings where a Labour Relations Agency settlement has been reached, the power of a chairman to review a default judgement on his own initiative, and the changes to stage 1 equal value hearings respectively.

3. Background

- 3.1. The amendments to the 2005 Regulations give effect to certain provisions of the 2011 Act insofar as these have implications for industrial tribunal procedures. Provided for are repeal of the statutory grievance procedures for resolving workplace disputes; repeal of statutory time limitations on the Labour Relations Agency's duty to offer conciliation in respect of tribunal proceedings; widening of powers to restrict publicity in cases where sensitive matters are raised; a new mechanism allowing the Fair Employment Tribunal to hear aspects of fair employment cases which otherwise would fall to be heard and determined separately by an industrial tribunal.
- 3.2. More broadly, the Regulations are made in the context of a comprehensive two-year review of systems for resolving disputes which identified the need for a more efficient and effective tribunal system. With that in mind, taking into account the views of the Rules Committee, the 2005 Regulations are amended to make a series of clarifications of and improvements to tribunal processes.

4. Consultation

- 4.1. The final package of amendments set out in the Regulations has been arrived at following a two-year fundamental review of systems for resolving disputes in the workplace. They supplement certain policy decisions already given legislative expression in the 2011 Act, as well as responding to the efficiency and effectiveness concerns highlighted by the review. There has been detailed

consultation on the final content of the Regulations with the Rules Committee which consists of representation from the tribunal judiciary, tribunal users, the Department for Employment and Learning and the Northern Ireland Courts and Tribunals Service.

5. Equality Impact

- 5.1. The policy decisions arising from the review of systems for resolving disputes were subject to an Equality Impact Assessment which identified modest positive differential impacts for all of the section 75 groups. A more efficient and effective tribunal system will be associated with improved access to justice. Specifically, the repeal of the statutory grievance arrangements will reduce confusion around the time limits associated with lodging a tribunal claim and modest impacts can be expected from less complex tribunal forms. The Fair Employment Tribunal's ability to hear proceedings that would otherwise fall to be heard and determined by an industrial tribunal also has advantages in terms of reduced complexity and stress. Particular benefits associated with the specific changes in the Regulations fall to those whose first language is not English (those of differing racial or religious background), those bringing complaints of unlawful political or religious discrimination, and individuals with disabilities relating to mental health.

6. Regulatory Impact

- 6.1. A Regulatory Impact Assessment was carried out in relation to policy proposals resulting from the dispute resolution review. It identified that businesses are likely to realise savings of around £1.5 million per annum as a direct result of the repeal of the statutory grievance procedures across all employment rights jurisdictions. These Regulations ensure that tribunal processes are in keeping with the repeal of the procedures.

7. Financial Implications

- 7.1. Repeal of the statutory grievance procedures across all employment rights jurisdictions will result in savings of around £25,000 per annum to the Office of Industrial Tribunals and the Fair Employment Tribunal as a result of the reduced complexity of claims and pre-acceptance procedures (source: Regulatory Impact Assessment referred to above).

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department has received legal clearance to the making of the Regulations. The provisions of the Regulations are not considered to be in breach of Section 24.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. The Regulations introduce changes corresponding, in part, to amendments set out in S.I. 2008/3240 which were arrived at following a separate dispute

resolution review in Great Britain. Only partial parallels can be drawn between the respective sets of Regulations given the differing outcome of the respective review processes.

11. Additional Information

11.1. Not applicable.