

Title: The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020	Regulatory Impact Assessment (RIA)	
	Date: October 2019	
Lead department or agency: DfE	Type of measure: Secondary Legislation	
	Stage: Enacted	
Other departments or agencies: OITFET	Source of intervention: Domestic NI	
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Summary Intervention and Options

What is the problem under consideration? Why is government intervention necessary? (7 lines maximum)

The rules of procedure governing industrial tribunals and the Fair Employment Tribunal are in need of revision to reflect current best practice, to improve their comprehensibility for users, to support more effective and efficient processes, and to support processes which encourage the early resolution of disputes that are not best suited to legal remedy.

What are the policy objectives and the intended effects? (7 lines maximum)

The objective is clearer rules (consolidating separate industrial tribunal and Fair Employment Tribunal rules), a more efficient service, better case management, improved user understanding and clearer expectations on the part of all parties to the tribunal process.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) (10 lines maximum)

The option of no change (**Option 1**) was considered but ruled out as, even if guidance was updated and full use of procedural discretion exercised, it would fail to achieve in substance any of the policy objectives outlined. Piecemeal change to the rules, while it would achieve the policy objectives to a degree, would not allow for the consolidation of the separate industrial tribunal and Fair Employment Tribunal provisions into a single set of rules. A piecemeal approach would also render problematic the development of a set of fully internally consistent provisions clearly distinct from the previous rules. **Option 2** – the preferred option, is discussed in the following sections.

Will the policy be reviewed? Yes

If applicable, set review date: 1 year after implementation

Cost of Preferred (or more likely) Option – Option 2

Total outlay cost for business £m	Total net cost to business per year £m	Annual cost for implementation by Regulator (OITFET) £m
-	-	Notional/minimal

Does Implementation go beyond minimum EU requirements?	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>		
Is this measure likely to impact on trade and investment?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>		
Are any of these organisations in scope?	Micro Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Small Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Medium Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Large Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

The final RIA supporting legislation must be attached to the Explanatory Memorandum and published with it.

Approved by: Colin Jack Date: 8 October 2019

Description:

ECONOMIC ASSESSMENT (Option 2)

Costs (£m)	Total Transitional (Policy) (constant price)	Years	Average Annual (recurring) (excl. transitional) (constant price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised costs by ‘main affected groups’ Maximum 5 lines
 Neither claimants nor respondents will experience additional costs over and above those they are likely to encounter through use of the tribunal system at present. This revision of the tribunal rules does not introduce a change from the end user perspective – the separate RIA on Early Conciliation goes into detail about the only proposed change.

Other key non-monetised costs by ‘main affected groups’ Maximum 5 lines
 None.

Benefits (£m)	Total Transitional (Policy) (constant price)	Years	Average Annual (recurring) (excl. transitional) (constant price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised benefits by ‘main affected groups’ Maximum 5 lines
 Monetary benefits are difficult to quantify but early resolution (through Labour Relations Agency conciliation, settlement or withdrawal) is generally less costly than taking a case to a full tribunal hearing, whatever its outcome.

Other key non-monetised benefits by ‘main affected groups’ Maximum 5 lines
 Clearer rules; a more efficient service; better case management; improved user understanding; clearer expectations; greater likelihood of preserving the employment relationship where early resolution takes place (thus avoiding the costs of losing a job/ employee); reduced stress.

Key Assumptions, Sensitivities, Risks Maximum 5 lines
 A key assumption is that the rules will deliver the expected outcomes. The Department will engage with OITFET, the tribunal judiciary, and tribunal users to keep the effectiveness of the provisions under review.

BUSINESS ASSESSMENT (Option 2)

Direct Impact on business (Equivalent Annual) £m			
Costs: -	Benefits: Unquantified Negligible	Net: Unquantified Negligible	

Cross Border Issues (Option 1)

How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland) Maximum 3 lines
 The revised rules will be broadly comparable to those operating in respect of Employment Tribunals in Great Britain. Systems for resolving disputes in the Republic of Ireland are significantly different, but do place significant emphasis on attempts to resolve without a legal determination where appropriate. Systems across the EU vary.

Evidence Base

There is discretion for departments and organisations as to how to set out the evidence base. It is however desirable that the following points are covered:

- Problem under consideration;
- Rationale for intervention;
- Policy objective;
- Description of options considered (including do nothing), with reference to the evidence base to support the option selection;
- Monetised and non-monetised costs and benefits of each option (including administrative burden);
- Rationale and evidence that justify the level of analysis used in the RIA (proportionality approach);
- Risks and assumptions;
- Direct costs and benefits to business;
- Wider impacts (in the context of other Impact Assessments in Policy Toolkit Workbook 4, economic assessment and NIGEAE)

Inserting text for this section:

Text can be pasted from other documents as appropriate

The rationale for intervention, and supporting evidence, is set out in the 2015 consultation **Developing Modern, Efficient and Effective Employment Tribunals**, which is available from the Department for the Economy.

As noted above, doing nothing was not deemed a credible option given the policy objectives outlined and, while a piecemeal approach would have had some benefits, it would have failed in the key objective of delivering a consolidated, more easily understood and consistent set of rules for both industrial tribunals and the Fair Employment Tribunal.

The 2015 consultation contained a regulatory impact assessment which considered the changes. In broad terms, it suggested that modest cost savings, while difficult to quantify, would arise if the revised rules achieved their stated objective of supporting a more efficient service, facilitating better case management, improving understanding and supporting clearer expectations on the part of users. No differential impacts were indicated for small businesses.

As the tribunal system in Northern Ireland closely resembles that in Great Britain, the GB costs model reproduced below was used for illustrative purposes. The assessment suggested that, where effective case management leads to a case not proceeding to a final hearing, perhaps because it has been settled or withdrawn, savings will be realised for claimants and more especially for respondents.

	Tribunal hearing	LRA conciliated	Privately settled	Withdrawn	Dismissed	Total
Value of time spent on case	£714	£568	£636	£636	£908	£636
Costs for advice and representation post ET1	£1,017	£558	£1,026	£763	£134	£763
Costs incurred for travel, communication	£23	£20	£20	£22	£17	£21
Total (rounded)	£1,800	£1,100	£1,700	£1,400	£1,100	£1,400
RESPONDENTS						
Cost of time spent on case (directors and senior staff)	£2,268	£1,234	£1,645	£822	£1,234	£1,234

Cost of time spent on case (other staff)	£444	£444	£444	£444	£444	£444
Costs for advice and representation post ET1	£3,488	£1,780	£3,115	£1,736	£1,780	£2,225
Total (rounded)	£6,200	£3,500	£5,200	£3,000	£3,500	£3,900

The impact assessment concluded that, while savings to users would be modest (and in many respects non-monetary), they represented a sound better regulation measure.

Responses to the consultation suggested that there was broad agreement with this conclusion and the Department believes that the message articulated in 2015 remains a realistic and reasonable assessment of the position at this time.