Title: **Early Conciliation (EC)**	**Regulatory Impact Assessment (RIA)**
	Date: 10-9-19
	Type of measure: Secondary Legislation
Lead department or agency: **Department for the Economy**	**Stage:**Enacted
	Source of intervention: Domestic NI
Other departments or agencies: **Labour Relations Agency, Office of the Industrial Tribunals and Fair Employment Tribunal.**	**Contact details:** Kellie Sprott
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Summary Intervention and Options

What is the problem under consideration? Why is government intervention necessary? (7 lines maximum)
Employment related tribunals can be stressful and costly for claimants and employers. Early resolution has clear benefits. Protracted disputes tend to damage or end employment relationships; resolution before legal action starts is more likely to preserve those relationships, and in this respect the assistance of a conciliation officer can be invaluable. The necessary primary legislation was passed by the Assembly in 2016. This intervention is about improving the efficiency of our dispute resolution system by reducing costs to the key parties to such disputes.

What are the policy objectives and the intended effects? (7 lines maximum)
With the introduction of early conciliation we are looking to: Increase the number of cases where parties reach an agreed settlement; Ensure the claimant and respondent benefit from contact with LRA in terms of information and understanding, even where they do end up at employment tribunal; Improve overall satisfaction with the employment dispute resolution system; Achieve a reduction in the number of new claims lodged at the tribunals.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) (10 lines maximum)
3 policy options were considered as part of the detailed business case.
Option 1 – Do minimum.
Option 2 – Basic Implementation of EC.
Option 3 – Quality Implementation of EC.
The preferred option was option 3 – Quality Implementation. When compared with the other options, this option was deemed to provide: much less risk; at least 1.6 times the non-monetary benefits; less sensitivity in terms of cost of outcome; and less sensitivity to variations in the effectiveness of implementation.
Overall while option 3 has the highest costs of all the options it has the lowest risks and the highest non-monetary benefit score of all the options. Only Option 1 and Option 3 are discussed in detail as part of this RIA. All of the pertinent points for Option 2 are covered in the detail for Option 3. Option 2 represents a lower level form of EC, with less promotion, awareness and resource. It was ruled out at Business Case stage.

Will the policy be reviewed? It will be reviewed	**If applicable, set review date: January 2021**

Cost of Preferred (or more likely) Option - More detail and rationale for these costs are available later in the document under Cost Section at para 1.37 onwards.		
Total outlay cost for business £m	**Total net cost to business per year** £m	**Annual cost for implementation by Regulator (LRA)** £m
£0	£0	Circa 0.25m per year.

Does Implementation go beyond minimum EU requirements?			**NO** ☒	**YES** ☐
Are any of these organisations in scope?	**Micro** Yes ☒ No ☐	**Small** Yes ☒ No ☐	**Medium** Yes ☒ No ☐	**Large** Yes ☒ No ☐

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

Approved by: Colin Jack Date: 8 October 2019

Summary: Analysis and Evidence Policy Option

Description: **All prospective ET claims to be submitted to LRA in the first instance and offered early conciliation**

ECONOMIC ASSESSMENT (Option 3)

Costs (£m)	Total Transitional (Policy) (constant price)	Years	Average Annual (recurring) (excl. transitional) (constant price)	Total Cost (Present Value)
Circa 0.25m	**N/A** **Optional**		**250,000** **Optional**	**Optional**
per year	**Optional**		**Optional**	**Optional**

Description and scale of key monetised costs by 'main affected groups' Maximum 5 lines

The Labour Relations Agency is responsible for the implementation and operation of early conciliation. Its costs for early conciliation will be £250,000 per annum. This additional budget requirement will be met by the Department for the Economy.

More detail and rationale for these costs are available later in the document under Cost Section at para 1.37 onwards.

Other key non-monetised costs by 'main affected groups' Maximum 5 lines

The Labour Relations Agency, DfE and OITFET have put considerable time and effort into preparing for the introduction of EC. This has included making required legislative amendments, creation of EC online portal, training of staff and communications.

Benefits (£m)	Total Transitional (Policy) (constant price)	Years	Average Annual (recurring) (excl. transitional) (constant price)	Total Benefit (Present Value)
Low	**N/A** **Optional**		**Optional**	**Optional**
High	**Optional**		**Optional**	**Optional**
Best Estimate			**1.7m**	

Description and scale of key monetised benefits by 'main affected groups' Maximum 5 lines

The costs that would otherwise be incurred, on average, by entering a tribunal process. The number of tribunal claims avoided as a result of successful early conciliation. Using these estimates, claimants will experience total savings of around **£800,000** and respondents of some **£2,200,000. £1.7m of annual benefits is explained at para 1.44.**

More detail and rationale for these costs are available later in the document under Cost Section at para

Other key non-monetised benefits by 'main affected groups' Maximum 5 lines

4 non-monetary costs and benefits were assessed as part of the business case process.

These were: the reputation of the Labour Relations Agency; ease of obtaining resolution for the employee; ease of obtaining resolution for the employer; and sustainability of the option. The chosen option had the highest non-monetary benefits when compared with the other options.

Key Assumptions, Sensitivities, Risks Maximum 5 lines

The estimates presented are dependent on a number of key factors, including the profile of employment claims remaining similar and the volumes following historic patterns (in the absence of this intervention).

BUSINESS ASSESSMENT (Option 3)

Direct Impact on business (Equivalent Annual) £m				
Costs:0.895m	**Benefits:2.2m**	**Net:1.305m**		

Cross Border Issues (Option 3)

How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland) Maximum 3 lines

Directly comparable with equivalent service provided in GB.

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.

1.1. The following impact assessment across a range of areas outlines the impacts which the Department considers may arise when early conciliation (EC) is implemented.

1.2. The assessment is informed by feedback sought as part of the consultation process and incorporates final policy decisions.

1.3. It should be noted that, given the dearth of Northern Ireland specific data, the assessment is closely based upon that carried out by the then Department for Business, Innovation and Skills (BIS) relating to the introduction of a very similar initiative in Great Britain.[1]

Background

1.4. Taking account of responses to the 2012 discussion paper on employment law issues, the then Minister for Employment and Learning, Dr. Stephen Farry MLA, invited the Labour Relations Agency (LRA) to develop a model for referring potential Industrial Tribunal and Fair Employment Tribunal claims to the LRA in the first instance. The model that the LRA developed was based upon but not identical to the EC model developed by ACAS in Great Britain

1.5. The Employment Act (Northern Ireland) 2016 ("the Act"), which received Royal Assent on 22 April 2016, establishes a duty on the Labour Relations Agency (LRA) to deliver 'early conciliation' (EC), a service requiring potential tribunal claimants to contact the LRA in the first instance to consider the offer of conciliation as an alternative to formal litigation at an employment tribunal.

1.6. When the relevant sections of the Act are commenced and relevant regulations brought into operation, in most circumstances, it will not be possible to lodge a claim with the Office of Industrial Tribunals and the Fair Employment Tribunal (OITFET) unless the potential claimant has notified the LRA of the potential claim and received from it an EC certificate confirming that this approach has been made. For the avoidance of doubt, potential claimants are not required to engage in conciliation; rather, the requirement is to contact the LRA so that the offer can be made. Those who wish to go to tribunal will

[1] 'Early Conciliation: A consultation on proposals for implementation. Impact assessment' (BIS. January 2013). https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/52611/13-539-early-conciliation-a-consultation-on_proposals-for-implementation-impact.pdf

not be prevented from doing so provided they can reference the EC certificate confirming that they have complied with the minimum requirement to contact the LRA.

Rationale for intervention

1.7. There is general acceptance that if disputes are resolved in the workplace this is far less costly to both parties and it delivers more positive results in terms of continued employment and business productivity.

1.8. Even where it is not possible to resolve the dispute in the workplace or to preserve the employment relationship, there are still clear benefits to parties of resolving the matter without the need for judicial intervention. Not only can such an approach be less costly, in terms of time and money, but it can also deliver outcomes that are not possible at a tribunal – for example, an agreed reference, or an apology. And a reduction in the number of cases that go to tribunal could also benefit the Exchequer.

Policy Objective

1.9. This measure is intended to support and encourage parties to resolve disputes earlier thereby reducing the number of claims that reach an employment tribunal and minimising the costs involved for all parties.

1.10. In particular, with the introduction of EC we are looking to:

- Increase the number of cases where parties reach an agreed settlement.
- Ensure the claimant and respondent benefit from contact with LRA in terms of information and understanding, even where they do end up at employment tribunal.
- Improve overall satisfaction with the employment dispute resolution system.

1.11. The introduction of a requirement for all prospective claimants to contact LRA in the first instance will provide for a greater use of conciliation, and at an earlier stage. Successful conciliation between the parties will lead to an increase in the number of cases where parties reach an agreed settlement rather than relying on a third party to determine the outcome for them. Where early conciliation is unsuccessful the claimant (and in many cases, the respondent) will still have benefitted from contact with LRA in terms of receiving information about the employment tribunal (ET) process etc. Better-informed claimants and respondents will have more realistic expectations of the process and likely outcome which could, in turn, lead to improved satisfaction with the system.

1.12. Settlement of disputes outside of the tribunal and provision of information to enable informed choices about whether to proceed to ET in the absence of a settlement may offer net savings to the Exchequer.

1.13. It is important that the EC process operates in the most efficient or cost-effective way possible to maximise those benefits.

Options

Option 1 - Do nothing

1.14. Once the relevant provisions of the Employment Act are commenced and relevant regulations are brought into operation, the LRA will be under a duty to provide EC. However, this duty will not impact on claimants until we amend the Industrial Tribunal Rules of Procedure and Fair Employment Tribunal Rules of Procedure to require tribunals to reject claims where they are not accompanied by a certificate confirming

that the claimant has met the requirement to submit details of their claim to LRA in the first instance.

1.15. This is the point at which parties, particularly business, will have the opportunity to realise the savings that settling a dispute through early conciliation offers. While we could elect not to make the necessary rule changes to give effect to the LRA duty, we do not consider "Do Nothing" to be a realistic option and would be contrary to the strong cross party support this measure received at the Assembly.

1.16. If a decision was made not to implement EC, there would be no change to existing costs or benefits to employers. However, it is certainly possible to contend that this is a desirable outcome as the benefits of EC may not justify the significant change required to introduce the new system. Arguably, individuals are already afforded an opportunity to engage with conciliation through the present system, since tribunal claims are copied to the LRA, which then attempts to contact the parties with a view to providing conciliation. In this analysis, introducing EC would simply establish a new 'layer of bureaucracy' on the road to a tribunal. The Department did not wish to introduce new requirements if stakeholders did not believe that they would have a significant impact on the resolution of disputes. During the Employment Law Review Consultation the department sought stakeholder views on a range of aspects for EC including the 'stop the clock principle', content of the EC form, potential exemptions for EC, written acknowledgement, contact with claimants and respondents and content of an EC Certificate. Many of the respondents commented on each aspect of the EC process with the majority in favour of the stop the clock principle, majority in favour of the suggested exemptions, broad agreement that two attempts at contacting individuals via two different methods was appropriate and that an EC certificate should be issued. The majority of respondents were in support of the introduction of EC and the potential benefits it could bring. Respondents were in clear favour for the concept of EC and the general view was that EC could provide quicker, cheaper, and more efficient resolution of disputes without the need to engage with the Office of Industrial Tribunals and Fair Employment Tribunal. Only a small number of respondents did not support the proposals.

Option 3 - All prospective ET claims to be submitted to LRA in the first instance and offered early conciliation

1.17. Having considered the largely positive feedback in respect of early conciliation, enabling powers were included in the Employment Act (NI) 2016, with a view to EC being made available by the LRA.

1.18. The majority view was that it will be appropriate to pause the normal tribunal time limit (usually three months from submission of the claim) in order to provide parties with necessary 'breathing space' to explore resolution through EC. It is reasonable to set a maximum period for which the clock should stop, so that parties understand that they have a limited window to try to agree the way forward. That limited window is envisaged as one calendar month, with limited scope for extension by two weeks. Where it is clear that no progress is being made during that time, or that there is no interest in conciliation, the pause will be ended quickly to allow the parties to take the necessary steps in advance of tribunal.

1.19. In order to address concerns expressed by some that the process must not be allowed to become a 'tick box' exercise, constituting just another 'hurdle' on the road to the tribunal, EC is intended to be light touch. Those who do not wish to engage will be supplied with an EC certificate enabling them to lodge their claim with a tribunal.

1.20. The value in the proposed system will be to establish the offer of LRA conciliation as the first port of call when a dispute cannot be resolved by way of internal workplace efforts

alone. The requirement for a person to apply in most cases to the LRA in the first instance rather than to the tribunal will represent an important psychological shift, placing the services of the LRA front and centre and establishing the legal route as the secondary consideration. However it is important to be clear that a legal remedy will remain freely available for those who believe that it is appropriate to them. EC will not restrict access to the tribunals, but provide potential claimants and respondents with a very clear alternative once a dispute has left the workplace.

1.21. Turning to the content of the EC form, it is not considered necessary or desirable for that form to deal, in detail, with the specifics of a complaint. Information provided in the form should be only that which is necessary to enable the LRA to make an effective and timely EC offer. EC is not intended to be a complex or bureaucratic process, but an easily accessible opportunity to gain LRA assistance in resolving a dispute that has the potential to lead to a tribunal process.

1.22. It is acknowledged that LRA conciliation officers will not be able to enter into, or facilitate agreement on, settlement discussions with a prospective respondent without being able to explain to that prospective respondent what the prospective claimant considers the dispute to be about. However, there is nothing preventing the conciliation officer from being able to obtain, in conversations with the individual, the information that is needed. The existing pre-claim conciliation arrangements, which do not require claimants to provide written details of their dispute, demonstrate that the absence of written information is not a barrier to successful resolution.

1.23. It is understood that a consequence of this approach may be that a prospective claimant may include on a subsequent tribunal claim form a matter not raised during EC. However, it is anticipated that this will not be the norm. Moreover, to restrict an individual's tribunal claim to only those matters that have been raised with the LRA would be likely to lead to significant volumes of satellite litigation as to what has or has not been subject to EC. It is worth stating very clearly that the Department intends that the content of EC, including an application for it, should not prejudice a later tribunal process. The Department has worked closely with the LRA and OITFET on how best to achieve this objective in developing the detailed arrangements for EC.

1.24. There was general support for wide jurisdictional coverage for EC, including complaints relating to unlawful discrimination. While it is acknowledged that some such cases are not readily resolved within the short time window for EC and in some cases there may be matters of legal principle at stake which mean that EC is not taken up, it is reasonable to offer EC and leave it to the parties to decide whether or not to accept the offer. The Department will work with the LRA to monitor the effectiveness of EC and is open to reviewing the list of jurisdictions to which it applies if feedback suggests that this is warranted. The Employment Act (NI) 2016 contains provisions which require a formal review of EC after one year and then again after three years.

1.25. There was no strong consensus of opinion around exemptions, other than that they should apply in some form. As regards multiple cases, the Department considers that the proposed approach is proportionate; however the need for clear guidance setting out when exemptions apply and how parties should proceed in relation to e.g. multiple cases, is acknowledged. As such clear guidance on this point is being produced in advance of EC introduction.

1.26. The exemptions will apply where:

- a prospective claimant is part of a multiple claim, but someone else who is part of that claim has complied with the EC requirement;

- the prospective respondent has contacted the Agency and asked it to conciliate the dispute;

- the dispute relates to an issue concerning which the LRA has no power to conciliate.

1.27. The Department notes the support for written acknowledgment to be issued by the Agency to confirm receipt of an EC form and accepts that there is a need for certainty with regard to implications for tribunal time limits. The Department will engage with the LRA to develop arrangements for acknowledging receipt that give certainty in relation to dates whilst avoiding unnecessary bureaucracy.

1.28. It is clear that there are differing views on what might constitute "reasonable" attempts to make contact in respect of EC. Flexibility will be important in ensuring that EC is not a bureaucratic 'tick box' exercise employing a 'one size fits all' methodology and delaying potential tribunal claims unnecessarily. An adaptable approach is appropriate. To that end, LRA guidance will indicate generally how the Agency will approach contacting the parties and LRA conciliation staff will receive training to guide consistent but sufficiently flexible assessments of what is reasonable in the circumstances of each case.

1.29. The consultation sought views on whether it would be reasonable to issue an EC certificate in all cases and, having considered the arguments, the Department is satisfied that doing so will be appropriate in that it will provide certainty that EC requirements have been met.

1.30. Turning to the content of the EC certificate, the Department is clear that its purpose is to serve as evidence that EC has been offered, enabling OITFET to be assured that EC requirements have been met in relation to a claim. The Department shares the concerns expressed by some stakeholders that what has occurred during conciliation should not prejudice subsequent tribunal proceedings. Accordingly, it will work with the LRA and OITFET to ensure that the certificate is designed to require only the information that is essential for effective administration when OITFET receives a claim.

1.31. The Department accepts that there are differing views on the application of EC when it is initiated by a prospective respondent rather than a prospective claimant. As the 'stop the clock' facility can only be made available on one occasion and is most obviously of benefit to the claimant, who faces a time limit in applying to a tribunal, the Department does not intend to apply 'stop the clock' to respondent requests for EC. The LRA will be able to make prospective claimants aware that, in order to benefit from a pause in time limits, they must themselves make an EC request to trigger the pause. This will be made clear in guidance and in written communication to claimants.

1.32. The Department, however, considers it reasonable that first contact from a respondent may initially be via telephone or e-mail in much the same way as under the present pre-claim conciliation system. It will also be important that the LRA has discretion to capture information in writing.

1.33. Assumptions used in the impact assessment for Great Britain have been adapted for use here but with reference to Northern Ireland data where available. Opinions were sought, via a public consultation on whether the assumptions were reasonable and on whether, in fact, the *status quo* would be preferable.

Assumptions

Intentions to claim

1.34. To evaluate the potential costs and benefits of the EC proposal, it is necessary to estimate the number of EC forms likely to be lodged with the LRA. The estimate is a total consisting of the following.

- ***Single claims*** *that, in the absence of EC, would have been presented to OITFET in the first instance (2,200).*[2]
- ***Multiple claims****, classified by OITFET as consisting of five or more claims raising a common complaint against a common respondent. As a single EC form can set out the 'lead' case without the need for others complaining about the same issues to do make separate submissions, it is assumed that only one EC form per multiple claim will ordinarily be required.*[3] *The result is a figure of 86 lead intentions to claim.*
- ***Tribunal claims avoided as a result of the LRA's pre-claim conciliation service*** *(45).*[4]

1.35. On the basis of the above, it is assumed that LRA will receive annually in the region of 2,300 intentions to claim.[5]

Conciliations

1.36. Given that the process is about offering conciliation rather than requiring its use, the volume of intentions to claim will naturally be greater than the volume of cases which ultimately make it to conciliation. Based on an adapted version of the calculations used by the GB assessment, it is estimated that in the region of 1,800 additional conciliations will actually be attempted.[6]

Costs

Costs to claimants

1.37. Costs to claimants are calculated on the basis that it will take a claimant approximately 45 minutes to complete an 'intention to claim' form for submission to the LRA. As the

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[2] The average number of claims received by OITFET over the years 2008/09 to 2012/13 was 3,723; of these, an average of 1,523 were part of multiple claims. Therefore, single claims are calculated as 3,723 - 1,523 = 2,200. Source: OITFET statistics. Updated information on the breakdown of multiples is not available since this time. However the Secretary of the Tribunals has confirmed that excluding multiples, in which there has been an unprecedented spike due to specific case law in the period 2016-2018, the level of claims has remained static. As such it is determined that is appropriate to continue to use the average number of claims figures in the initial impact assessment conducted in 2014 to indicate potential savings in a steady state environment in 2018.

[3] To arrive at a figure for lead intentions to claim, the five year average number of multiple claims (1,523) was adjusted by removing the potentially distorting five year average for very large multiples (1,099) and dividing the result (424) by five (the minimum number that OITFET uses to classify a claim as a multiple). It would be a more satisfactory approach to divide by the median rather than the minimum number of claims in a multiple. However, this information is not readily available. To develop a figure for the average number of multiples that will translate into intentions to claim, we take the result (85) and add back in a figure representing the five year average for 'lead' claims representing the large multiples previously excluded from the calculation (1). The result is 86.

[4] 38 claims were avoided in 2011/12 and 51 in 2012/13, averaging out at 45 per annum.

[5] The actual figure for intentions to claim is calculated as follows: single claims (2,200) + 'lead' multiples (86) + claims avoided as a result of pre-claim conciliation (45) = 2,331. This is then rounded to the nearest hundred (2,300).

[6] Intentions to claim (2,300) - current estimate of pre-claim cases that can be dealt with using current resourcing (200) - cases reaching conciliators, without conciliation taking place (approximately one in six of that total i.e. 2,100/6=350) = 1,750. This is then rounded to the nearest hundred (1,800).

GB assessment acknowledges, it is probable that this is a high estimate and, as the process is intended to be simple, it may be that it will be less time consuming. This time commitment is then multiplied by the median hourly wage (£11),[7] producing a notional cost for preparing a form of approximately £8.25.[8]

1.38. The then department of Business, Innovation and Skills (BIS) estimated that individuals actually entering conciliation following completion of the EC form would spend, on average, 5.7 hours in preparing for and engaging in the process, resulting in a unit cost when applied to Northern Ireland of around £62.70.[9]

1.39. The total cost to claimants is therefore in the region of **£132,000** *per annum*, as set out in the table below.

Table 1: Costs to employees

	Figure
Unit cost of intention to claim	£8.25
Additional intentions to claim	2,300
Cost of additional intentions to claim	£18,975
Unit cost of engaging in conciliation	£62.70
Additional conciliations	1,800
Cost of additional conciliations	£112,860
TOTAL COST TO CLAIMANTS	£131,835

Costs to employers

1.40. Costs to employers arise from time spent by senior managers in dealing with the conciliation process. BIS estimates this at around 8 hours. Assuming an hourly labour cost of £21.15,[10] this means a total cost of £169.20. Add to this the average cost of advice and representation, estimated in GB as £327, and we arrive at an approximate cost to employers of £495 per case that reaches conciliation. The total cost to employers, as illustrated in the table below, is therefore in the region of **£895,000** *per annum*.

Table 2: Costs to employers

	Figure
Time spent by manger (hours)	8
Cost of management time per hour	£21.15
Total cost of management time	£169.20
Cost of advice and representation	£327
Total cost per EC case	£496.20
TOTAL COST FOR EMPLOYERS	£893,160

[7] 'Results from the Northern Ireland Annual Survey of Hours and Earnings 2017' www.nisra.gov.uk - https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/4xt-ashe-2017-headline-results.xlsx
[8] £11 x 0.75 = £8.25 approximately.
[9] £11 x 5.7 = £62.70 approximately.
[10] Figure for SOC2010 code 11, Corporate managers and directors – NI Annual Survey of Hours and Earnings 2017, provisional figures – ASHE 2017 (SOC2010 basis, provisional) by Occupation (4-digit SOC2010) (Table 2.2) https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/4xt-ASHE-2017-SOC4.xlsx

Costs to the Department

1.41. Detailed work has now been done to assess the potential cost to the Department for the Economy which funds the LRA to deliver services (Full economic appraisal completed for EC). It is anticipated that the additional cost to deliver Early Conciliation will cost on average £250,000 per annum comprising primarily staffing costs (1 x DP, 4 x SO & 1 x AO) and other related general admin expenditure.

Benefits

1.42. To calculate the benefits of successful early conciliation, it is necessary to establish the following.

- *The costs that would otherwise be incurred, on average, by entering a tribunal process. The BIS impact assessment suggests a figure of £1,579 for claimants and £4,399 for employers[11]. As no Northern Ireland figures are available, these figures have been applied.*

- *The number of tribunal claims avoided as a result of successful early conciliation. BIS envisages a reduction in the baseline figure[12] for claims of 24.8% which, when applied to Northern Ireland, equates to approximately 500 claims[13].*

1.43. Using these estimates, claimants will experience total savings of around **£800,000**[14] and respondents of some **£2,200,000**.[15]

1.44. The following table summarises estimated annually recurring costs and benefits associated with the implementation of EC.

Table 3: Summary of annual recurring costs and benefits to affected groups

	Costs (£m)	Benefits (£m)	Net Benefits (£m)
Claimants	£132,000	£800,000	**£668,000**
Employers	£895,000	£2,200,000	**£1,305,000**
Exchequer	£250,000	-	**-£250,000**
TOTAL	**£1,277,000**	**£3,000,000**	**£1,723,000**

1.45. Aside from the financial benefits outlined in the above table, benefits of early resolution which are not readily quantifiable include:

- *for employers, staff and skills retention as well as the avoidance of recruitment costs associated with filling a post vacated following a breakdown of the employment relationship;*

- *for employees, a greater possibility of preserving the employment relationship, thereby avoiding negative socio-economic consequences of job loss.*

Rationale and evidence that justify the level of analysis used in the RIA

[11] BIS impact assessment, pp 6-7, uprated in accordance with the Retail Price Index for each year until September 2017
[12] Single claims (2,200) + 'lead' multiples (86) - existing pre-claim conciliation capacity (200) = 2,086.
[13] 24.8% of 2,086 = 517, rounded to 500.
[14] 500 x £1,579 = £789,500 (rounded to £800,000).
[15] 500 x £4,399 = £2,199,500 (rounded to £2.2m).

1.46. Assumptions used in the impact assessment for Great Britain have been adapted for use here but with reference to Northern Ireland data where available. Opinions were sought, via a public consultation on whether the assumptions were reasonable and on whether, in fact, the *status quo* would be preferable.

Risks and assumptions

Risks

1.47. There is a risk that the benefits of EC may not justify the significant change required to introduce the new system. It has been argued individuals are already afforded an opportunity to engage with conciliation through the present system, since tribunal claims are copied to the LRA, which then attempts to contact the parties with a view to providing conciliation. In this analysis, introducing EC would simply establish a new 'layer of bureaucracy' on the road to a tribunal. The Department did not wish to introduce new requirements if stakeholders did not believe that they would have a significant impact on the resolution of disputes.

Assumptions

Intentions to claim

1.48. To evaluate the potential costs and benefits of the EC proposal, it is necessary to estimate the number of EC forms likely to be lodged with the LRA. The estimate is a total consisting of the following.

- ***Single claims*** *that, in the absence of EC, would have been presented to OITFET in the first instance (2,200).*[16]
- ***Multiple claims****, classified by OITFET as consisting of five or more claims raising a common complaint against a common respondent. As a single EC from can set out the 'lead' case without the need for others complaining about the same issues to do make separate submissions, it is assumed that only one EC form per multiple claim will ordinarily be required.*[17] *The result is a figure of 86 lead intentions to claim.*
- ***Tribunal claims avoided as a result of the LRA's pre-claim conciliation service*** *(45).*[18]

1.49. On the basis of the above, it is assumed that LRA will receive annually in the region of 2,300 intentions to claim.[19]

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[16] The average number of claims received by OITFET over the years 2008/09 to 2012/13 was 3,723; of these, an average of 1,523 were part of multiple claims. Therefore, single claims are calculated as 3,723 - 1,523 = 2,200. Source: OITFET statistics. Updated information on the breakdown of multiples is not available since this time. However the Secretary of the Tribunals has confirmed that excluding multiples, in which there has been an unprecedented spike due to specific case law in the period 2016-2018, the level of claims has remained static. As such it is determined that is appropriate to continue to use the average number of claims figures in the initial impact assessment conducted in 2014 to indicate potential savings in a steady state environment in 2018.

[17] To arrive at a figure for lead intentions to claim, the five year average number of multiple claims (1,523) was adjusted by removing the potentially distorting five year average for very large multiples (1,099) and dividing the result (424) by five (the minimum number that OITFET uses to classify a claim as a multiple). It would be a more satisfactory approach to divide by the median rather than the minimum number of claims in a multiple. However, this information is not readily available. To develop a figure for the average number of multiples that will translate into intentions to claim, we take the result (85) and add back in a figure representing the five year average for 'lead' claims representing the large multiples previously excluded from the calculation (1). The result is 86.

[18] 38 claims were avoided in 2011/12 and 51 in 2012/13, averaging out at 45 per annum.

Conciliations

1.50. Given that the process is about offering conciliation rather than requiring its use, the volume of intentions to claim will naturally be greater than the volume of cases which ultimately make it to conciliation. Based on an adapted version of the calculations used by the GB assessment, it is estimated that in the region of 1,800 additional conciliations will actually be attempted.[20]

Direct costs and benefits to business

1.51. EC will be applicable to prospective tribunal claims that could be made by individuals working for a business regardless of that firm's size or the sector of the economy in which it operates.

1.52. Any savings realised as a result of successful use of EC may particularly benefit the smallest businesses, which operate on limited budgets and stand to expend proportionately significant amounts in management time and expense during a legal process.

Wider impacts

1.53. The implementation of the EC has been considered in context of the Executive Office Effective Policy Making - Workbook Four - A Practical Guide to Impact Assessment. All other impact assessments have been screened out.

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[19] The actual figure for intentions to claim is calculated as follows: single claims (2,200) + 'lead' multiples (86) + claims avoided as a result of pre-claim conciliation (45) = 2,331. This is then rounded to the nearest hundred (2,300).

[20] Intentions to claim (2,300) - current estimate of pre-claim cases that can be dealt with using current resourcing (200) - cases reaching conciliators, without conciliation taking place (approximately one in six of that total i.e. 2,100/6=350) = 1,750. This is then rounded to the nearest hundred (1,800).