

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

DRAFT STATUTORY INSTRUMENTS

2004 No.

**EMPLOYMENT TRIBUNALS
TERMS AND CONDITIONS OF EMPLOYMENT**

The Employment Act 2002 (Dispute
Resolution) Regulations 2004

Made - - - - 2004
Coming into force - - 1st October 2004

Whereas a draft of these Regulations was laid before Parliament in accordance with section 51(4) of the Employment Act 2002(1) and approved by a resolution of each House of Parliament:

Now, therefore, the Secretary of State, in exercise of the powers conferred on her by sections 31(6), 32(7), 33 and 51(1)(a) and (b) of that Act, hereby makes the following Regulations:

Citation and Commencement

1. These Regulations may be cited as the Employment Act 2002 (Dispute Resolution) Regulations 2004 and shall come into force on 1st October 2004.

Interpretation

2.—(1) In these Regulations—

“the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992(2);

“the 1996 Act” means the Employment Rights Act 1996(3);

“the 1999 Act” means the Employment Relations Act 1999(4);

“the 2002 Act” means the Employment Act 2002;

“action” means any act or omission;

“applicable statutory procedure” means the statutory procedure that applies in relation to a particular case by virtue of these Regulations;

(1) 2002 c. 22.
(2) 1992 c. 52.
(3) 1996 c. 18.
(4) 1999 c. 26.

- “collective agreement” has the meaning given to it by section 178(1) of the 1992 Act;
- “dismissal and disciplinary procedures” means the statutory procedures set out in Part 1 of Schedule 2;
- “dismissed” has the meaning given to it in section 95(1)(a) and (b) of the 1996 Act;
- “employers' association” has the meaning given to it by section 122 of the 1992 Act;
- “grievance” means a complaint by an employee about action which his employer has taken or is contemplating taking in relation to him;
- “grievance procedures” means the statutory procedures set out in Part 2 of Schedule 2;
- “independent trade union” has the meaning given to it by section 5 of the 1992 Act;
- “modified dismissal procedure” means the procedure set out in Chapter 2 of Part 1 of Schedule 2;
- “modified grievance procedure” means the procedure set out in Chapter 2 of Part 2 of Schedule 2;
- “non-completion” of a statutory procedure includes non-commencement of such a procedure except where the term is used in relation to the non-completion of an identified requirement of a procedure or to circumstances where a procedure has already been commenced;
- “party” means the employer or the employee;
- “relevant disciplinary action” means action, short of dismissal, which the employer asserts to be based wholly or mainly on the employee’s conduct or capability, other than suspension on full pay or the issuing of warnings (whether oral or written);
- “standard dismissal and disciplinary procedure” means the procedure set out in Chapter 1 of Part 1 of Schedule 2;
- “standard grievance procedure” means the procedure set out in Chapter 1 of Part 2 of Schedule 2;

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

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

Application of dismissal and disciplinary procedures

3.—(1) Subject to paragraph (2) and regulation 4, the standard dismissal and disciplinary procedure applies when an employer contemplates dismissing or taking relevant disciplinary action against an employee.

(2) Subject to regulation 4, the modified dismissal procedure applies in relation to a dismissal where—

- (a) the employer dismissed the employee by reason of his conduct without notice,
- (b) the dismissal occurred at the time the employer became aware of the conduct or immediately thereafter,
- (c) the employer was entitled, in the circumstances, to dismiss the employee by reason of his conduct without notice or any payment in lieu of notice, and
- (d) it was reasonable for the employer, in the circumstances, to dismiss the employee before enquiring into the circumstances in which the conduct took place,

but neither of the dismissal and disciplinary procedures applies in relation to such a dismissal where the employee presents a complaint relating to the dismissal to an employment tribunal at a time when the employer has not complied with paragraph 4 of Schedule 2.

Dismissals to which the dismissal and disciplinary procedures do not apply

4.—(1) Neither of the dismissal and disciplinary procedures applies in relation to the dismissal of an employee where—

- (a) all the employees of a description or in a category to which the employee belongs are dismissed, provided that the employer offers to re-engage all the employees so dismissed either before or upon the termination of their contracts;
- (b) the dismissal is one of a number of dismissals in respect of which the duty in section 188 of the 1992 Act (duty of employer to consult representatives when proposing to dismiss as redundant a certain number of employees) applies;
- (c) at the time of the employee's dismissal he is taking part in—
 - (i) an unofficial strike or other unofficial industrial action, or
 - (ii) a strike or other industrial action (being neither unofficial industrial action nor protected industrial action), unless the circumstances of the dismissal are such that, by virtue of section 238(2) of the 1992 Act, an employment tribunal is entitled to determine whether the dismissal was fair or unfair;
- (d) the reason (or, if more than one, the principal reason) for the dismissal is that the employee took protected industrial action and the dismissal would be regarded, by virtue of section 238A(2) of the 1992 Act, as unfair for the purposes of Part 10 of the 1996 Act;
- (e) the employer's business suddenly ceases to function, because of an event unforeseen by the employer, with the result that it is impractical for him to employ any employees;
- (f) the reason (or, if more than one principal reason) for the dismissal is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under any enactment; or
- (g) the employee is one to whom a dismissal procedures agreement designated by an order under section 110 of the 1996 Act applies at the date of dismissal.

(2) For the purposes of paragraph (1)—

“unofficial” shall be construed in accordance with subsections (2) to (4) of section 237 of the 1992 Act;

“strike” has the meaning given to it by section 246 of the 1992 Act;

“protected industrial action” shall be construed in accordance with section 238A(1) of the 1992 Act;

and an employer shall be regarded as offering to re-engage an employee if that employer, a successor of that employer or an associated employer of that employer offers to re-engage the employee, either in the job which he held immediately before the date of dismissal or in a different job which would be suitable in his case.

Circumstances in which parties are treated as complying with the dismissal and disciplinary procedures

5.—(1) Where—

- (a) either of the dismissal and disciplinary procedures is the applicable statutory procedure in relation to a dismissal,

- (b) the employee presents an application for interim relief to an employment tribunal pursuant to section 128 of the 1996 Act (interim relief pending determination of complaint) in relation to his dismissal, and
- (c) at the time the application is presented, the requirements of paragraphs 1 and 2 or, as the case may be, paragraph 4 of Schedule 2 have been complied with but the requirements of paragraph 3 or 5 of Schedule 2 have not,

the parties shall be treated as having complied with the requirements of paragraph 3 or 5 of Schedule 2.

(2) Where either of the dismissal and disciplinary procedures is the applicable statutory procedure in relation to the dismissal of an employee or to relevant disciplinary action taken against an employee but—

- (a) at the time of the dismissal or the taking of the action an appropriate procedure exists,
- (b) the employee is entitled to appeal under that procedure against his dismissal or the relevant disciplinary action taken against him instead of appealing to his employer, and
- (c) the employee has appealed under that procedure,

the parties shall be treated as having complied with the requirements of paragraph 3 or 5 of Schedule 2.

(3) For the purposes of paragraph (2) a procedure is appropriate if it—

- (a) gives the employee an effective right of appeal against dismissal or disciplinary action taken against him, and
- (b) operates by virtue of a collective agreement made between two or more employers or an employers' association and one or more independent trade unions.

Application of the grievance procedures

6.—(1) The grievance procedures apply, in accordance with the paragraphs (2) to (7) of this regulation, in relation to any grievance about action by the employer that could form the basis of a complaint by an employee to an employment tribunal under a jurisdiction listed in Schedule 3 or 4, or could do so if the action took place.

(2) Subject to paragraphs (3) to (7), the standard grievance procedure applies in relation to any such grievance.

(3) Subject to paragraphs (4) to (7), the modified grievance procedure applies in relation to a grievance where—

- (a) the employee has ceased to be employed by the employer;
- (b) the employer—
 - (i) was unaware of the grievance before the employment ceased, or
 - (ii) was so aware but the standard grievance procedure was not commenced or was not completed before the last day of the employee's employment; and
- (c) the parties have agreed in writing in relation to the grievance, whether before, on or after that day, but after the employer became aware of the grievance, that the modified procedure should apply.

(4) Neither of the grievance procedures applies where—

- (a) the employee has ceased to be employed by the employer;
- (b) neither procedure has been commenced; and
- (c) since the employee ceased to be employed it has ceased to be reasonably practicable for him to comply with paragraph 6 or 9 of Schedule 2.

(5) Neither of the grievance procedures applies where the grievance is that the employer has dismissed or is contemplating dismissing the employee.

(6) Neither of the grievance procedures applies where the grievance is that the employer has taken or is contemplating taking relevant disciplinary action against the employee unless one of the reasons for the grievance is a reason mentioned in regulation 7(1).

(7) Neither of the grievance procedures applies where regulation 11(1) applies.

Circumstances in which parties are treated as complying with the grievance procedures

7.—(1) Where the grievance is that the employer has taken or is contemplating taking relevant disciplinary action against the employee and one of the reasons for the grievance is—

- (a) that the relevant disciplinary action amounted to or, if it took place, would amount to unlawful discrimination, or
- (b) that the grounds on which the employer took the action or is contemplating taking it were or are unrelated to the grounds on which he asserted that he took the action or is asserting that he is contemplating taking it,

the standard grievance procedure or, as the case may be, modified grievance procedure shall apply but the parties shall be treated as having complied with the applicable procedure if the employee complies with the requirement in paragraph (2).

(2) The requirement is that the employee must set out the grievance in a written statement and send the statement or a copy of it to the employer—

- (a) where either of the dismissal and disciplinary procedures is being followed, before the meeting referred to in paragraph 3 or 5 (appeals under the dismissal and disciplinary procedures) of Schedule 2, or
- (b) where neither of those procedures is being followed, before presenting any complaint arising out of the grievance to an employment tribunal.

(3) In paragraph (1)(a) “unlawful discrimination” means an act or omission in respect of which a right of complaint lies to an employment tribunal under any of the following tribunal jurisdictions (specified in Schedules 3 and 4)—

- section 2 of the Equal Pay Act 1970(5);
- section 63 of the Sex Discrimination Act 1975(6);
- section 54 of the Race Relations Act 1976(7);
- section 17A of the Disability Discrimination Act 1995(8);
- regulation 28 of the Employment Equality (Religion or Belief) Regulations 2003(9);
- regulation 28 of the Employment Equality (Sexual Orientation) Regulations 2003(10).

8.—(1) Where—

- (a) the standard grievance procedure is the applicable statutory procedure,
- (b) the employee has ceased to be employed by the employer,

(5) 1970 c. 41.

(6) 1975 c. 65.

(7) 1976 c. 74.

(8) 1995 c. 50. Section 17A was inserted by S.I.2003/1673, regulations 3(1) and 9(1); the new section replaced section 8 of the 1995 Act and contained amendments.

(9) S.I. 2003/1660.

(10) S.I. 2003/1661.

- (c) paragraph 6 of Schedule 2 has been complied with (whether before or after the end of his employment); and
- (d) since the end of his employment it has ceased to be reasonably practicable for the employee, or his employer, to comply with the requirements of paragraph 7 or 8 of Schedule 2,

the parties shall be treated, subject to paragraph (2), as having complied with such of those paragraphs of Schedule 2 as have not been complied with.

(2) In a case where paragraph (1) applies and the requirements of paragraphs 7(1) to (3) of Schedule 2 have been complied with but the requirement in paragraph 7(4) of Schedule 2 has not, the employer shall be treated as having failed to comply with paragraph 7(4) unless he informs the employee in writing of his decision as to his response to the grievance.

9.—(1) Where either of the grievance procedures is the applicable statutory procedure, the parties shall be treated as having complied with the requirements of the procedure if a person who is an appropriate representative of the employee having the grievance has—

- (a) written to the employer setting out the grievance; and
- (b) specified in writing to the employer (whether in setting out the grievance or otherwise) the names of at least two employees, of whom one is the employee having the grievance, as being the employees on behalf of whom he is raising the grievance.

(2) For the purposes of paragraph (1), a person is an appropriate representative if, at the time he writes to the employer setting out the grievance, he is—

- (a) an official of an independent trade union recognised by the employer for the purposes of collective bargaining in respect of a description of employees that includes the employee having the grievance, or
- (b) an employee of the employer who is an employee representative elected or appointed by employees consisting of or including employees of the same description as the employee having the grievance and who, having regard to the purposes for which and method by which he was elected or appointed, has the authority to represent employees of that description under an established procedure for resolving grievances agreed between employee representatives and the employer.

(3) For the purposes of paragraph (2)(a) the terms “official”, “recognised” and “collective bargaining” have the meanings given to them by, respectively, sections 119, 178(3) and 178(1) of the 1992 Act.

10. Where either of the grievance procedures is the applicable statutory procedure but—

- (a) at the time the employee raises his grievance there is a procedure in operation, under a collective agreement made between two or more employers or an employers' association and one or more independent trade unions, that provides for employees of the employer to raise grievances about the behaviour of the employer and have them considered, and
- (b) the employee is entitled to raise his grievance under that procedure and does so,

the parties shall be treated as having complied with the applicable statutory procedure.

General circumstances in which the statutory procedures do not apply or are treated as being complied with

11.—(1) Where the circumstances specified in paragraph (3) apply and in consequence the employer or employee does not commence the procedure that would otherwise be the applicable statutory procedure (by complying with paragraph 1, 4, 6 or 9 of Schedule 2), the procedure does not apply.

(2) Where the applicable statutory procedure has been commenced, but the circumstances specified in paragraph (3) apply and in consequence a party does not comply with a subsequent requirement of the procedure, the parties shall be treated as having complied with the procedure.

(3) The circumstances referred to in paragraphs (1) and (2) are that—

- (a) the party has reasonable grounds to believe that commencing the procedure or complying with the subsequent requirement would result in a significant threat to himself, his property, any other person or the property of any other person;
- (b) the party has been subjected to harassment and has reasonable grounds to believe that commencing the procedure or complying with the subsequent requirement would result in his being subjected to further harassment; or
- (c) it is not practicable for the party to commence the procedure or comply with the subsequent requirement within a reasonable period.

(4) In paragraph (3)(b), “harassment” means conduct which has the purpose or effect of—

- (a) violating the person’s dignity, or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him,

but conduct shall only be regarded as having that purpose or effect if, having regard to all the circumstances, including in particular the perception of the person who was the subject of the conduct, it should reasonably be considered as having that purpose or effect.

Failure to comply with the statutory procedures

12.—(1) If either party fails to comply with a requirement of an applicable statutory procedure, including a general requirement contained in Part 3 of Schedule 2, then, subject to paragraph (2), the non-completion of the procedure shall be attributable to that party and neither party shall be under any obligation to comply with any further requirement of the procedure.

(2) Except as mentioned in paragraph (4), where the parties are to be treated as complying with the applicable statutory procedure, or any requirement of it, there is no failure to comply with the procedure or requirement.

(3) Notwithstanding that if regulation 11(1) applies the procedure that would otherwise be the applicable statutory procedure does not apply, where that regulation applies because the circumstances in sub-paragraph (a) or (b) of regulation 11(3) apply and it was the behaviour of one of the parties that resulted in those circumstances applying, that party shall be treated as if—

- (a) the procedure had applied, and
- (b) there had been a failure to comply with a requirement of the procedure that was attributable to him.

(4) In a case where regulation 11(2) applies in relation to a requirement of the applicable statutory procedure because the circumstances in sub-paragraph (a) or (b) of regulation 11(3) apply, and it was the behaviour of one of the parties that resulted in those circumstances applying, the fact that the requirement was not complied with shall be treated as being a failure, attributable to that party, to comply with a requirement of the procedure.

Failure to attend a meeting

13.—(1) Without prejudice to regulation 11(2) and (3)(c), if it is not reasonably practicable for—

- (a) the employee, or, if he is exercising his right under section 10 of the 1999 Act (right to be accompanied), his companion; or
- (b) the employer,

to attend a meeting organised in accordance with the applicable statutory procedure for a reason which was not foreseeable when the meeting was arranged, the employee or, as the case may be, employer shall not be treated as having failed to comply with that requirement of the procedure.

(2) In the circumstances set out in paragraph (1), the employer shall continue to be under the duty in the applicable statutory procedure to invite the employee to attend a meeting and, where the employee is exercising his rights under section 10 of the 1999 Act and the employee proposes an alternative time under subsection (4) of that section, the employer shall be under a duty to invite the employee to attend a meeting at that time.

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

(4) Where the duty in paragraph (2) has ceased as a result of paragraph (3), the parties shall be treated as having complied with the applicable statutory procedure.

Questions to obtain information not to constitute statement of grievance

14.—(1) Where a person aggrieved questions a respondent under any of the provisions set out in paragraph (2), those questions shall not constitute a statement of grievance under paragraph 6 or 9 of Schedule 2.

(2) The provisions referred to in paragraph (1) are—

section 7B of the Equal Pay Act 1970⁽¹¹⁾;

section 74 of the Sex Discrimination Act 1975;

section 65 of the Race Relations Act 1976;

section 56 of the Disability Discrimination Act 1995;

regulation 33 of the Employment Equality (Religion or Belief) Regulations 2003;

regulation 33 of the Employment Equality (Sexual Orientation) Regulations 2003.

Extension of time limits

15.—(1) Where a complaint is presented to an employment tribunal under a jurisdiction listed in Schedule 3 or 4 and—

(a) either of the dismissal and disciplinary procedures is the applicable statutory procedure and the circumstances specified in paragraph (2) apply; or

(b) either of the grievance procedures is the applicable statutory procedure and the circumstances specified in paragraph (3) apply;

the normal time limit for presenting the complaint is extended for a period of three months beginning with the day after the day on which it would otherwise have expired.

(2) The circumstances referred to in paragraph (1)(a) are that the employee presents a complaint to the tribunal after the expiry of the normal time limit for presenting the complaint but had reasonable grounds for believing, when that time limit expired, that a dismissal or disciplinary procedure, whether statutory or otherwise (including an appropriate procedure for the purposes of regulation 5(2)), was being followed in respect of matters that consisted of or included the substance of the tribunal complaint.

(3) The circumstances referred to in paragraph (1)(b) are that the employee presents a complaint to the tribunal—

⁽¹¹⁾ Section 7B was inserted by section 42 of the Employment Act 2002.

- (a) within the normal time limit for presenting the complaint but in circumstances in which section 32(2) or (3) of the 2002 Act does not permit him to do so; or
 - (b) after the expiry of the normal time limit for presenting the complaint, having complied with paragraph 6 or 9 of Schedule 2 in relation to his grievance within that normal time limit.
- (4) For the purposes of paragraph (3) and section 32 of the 2002 Act the following acts shall be treated, in a case to which the specified regulation applies, as constituting compliance with paragraph 6 or 9 of Schedule 2—
- (a) in a case to which regulation 7(1) applies, compliance by the employee with the requirement in regulation 7(2);
 - (b) in a case to which regulation 9(1) applies, compliance by the appropriate representative with the requirement in sub-paragraph (a) or (b) of that regulation, whichever is the later; and
 - (c) in a case to which regulation 10 applies, the raising of his grievance by the employee in accordance with the procedure referred to in that regulation.
- (5) In this regulation “the normal time limit” means—
- (a) subject to sub-paragraph (b), the period within which a complaint under the relevant jurisdiction must be presented if there is to be no need for the tribunal, in order to be entitled to consider it to—
 - (i) exercise any discretion, or
 - (ii) make any determination as to whether it is required to consider the complaint, that the tribunal would have to exercise or make in order to consider a complaint presented outside that period; and
 - (b) in relation to claims brought under the Equal Pay Act 1970, the period ending on the date on or before which proceedings must be instituted in accordance with section 2(4) of that Act.

National security

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

Amendments to secondary legislation

17. The statutory instruments referred to in this regulation shall be amended as follows—

- (a) in the Sex Discrimination (Questions and Replies) Order 1975(**12**), for paragraph (a) of article 5 there shall be substituted—
 - “(a) where it was served before a complaint had been presented to a tribunal, if it was so served—
 - (i) within the period of three months beginning when the act complained of was done; or
 - (ii) where the period under section 76 of the Act within which proceedings must be brought is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, within that extended period;”;

- (b) in the Race Relations (Questions and Replies) Order 1977(**13**), for paragraph (a) of article 5 there shall be substituted—
- “(a) where it was served before a complaint had been presented to a tribunal, if it was so served—
- (i) within the period of three months beginning when the act complained of was done; or
- (ii) where the period under section 68 of the Act within which proceedings must be brought is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, within that extended period;”;
- (c) in article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994(**14**), after paragraph (b) there shall be inserted—
- “(ba) where the period within which a complaint must be presented in accordance with paragraph (a) or (b) is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (a) or (b).”;
- (d) in article 7 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994(**15**), after paragraph (b) there shall be inserted—
- “(ba) where the period within which a complaint must be presented in accordance with paragraph (a) or (b) is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (a) or (b).”;
- (e) in regulation (2) of the Employment Protection (Continuity of Employment) Regulations 1996(**16**), the word “or” at the end of paragraph (d) shall be omitted and after paragraph (e) there shall be inserted—
- “or
- (f) a decision taken arising out of the use of a statutory dispute resolution procedure contained in Schedule 2 to the Employment Act 2002 in a case where, in accordance with the Employment Act 2002 (Dispute Resolution) Regulations 2004, such a procedure applies.”;
- (f) in regulation 30(2)(b) of the Working Time Regulations 1998(**17**), after paragraph (2) there shall be inserted—
- “(2A) Where the period within which a complaint must be presented in accordance with paragraph (2) is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (2).”;
- (g) in the Employment Equality (Religion or Belief) Regulations 2003—
- (i) for regulation 33(4)(a) there shall be substituted—
- “where it was served before a complaint had been presented to a tribunal, if it was so served—

(13) S.I. 1977/842.

(14) S.I. 1994/1623.

(15) S.I. 1994/1624.

(16) S.I. 1996/3147.

(17) S.I. 1998/1833.

- (i) within the period of three months beginning when the act complained of was done; or
- (ii) where paragraph (1A) of regulation 34 applies, within the extended period;”;
- and
- (ii) in regulation 34, after paragraph (1) there shall be inserted—
 - “(1A) Where the period within which a complaint must be presented in accordance with paragraph (1) is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (1).”;
- (h) in the Employment Equality (Sexual Orientation) Regulations 2003—
 - (i) for regulation 33(4)(a) there shall be substituted—
 - “where it was served before a complaint had been presented to a tribunal, if it was so served—
 - (i) within the period of three months beginning when the act complained of was done; or
 - (ii) where paragraph (1A) of regulation 34 applies, within the extended period;”;
 - and
 - (ii) in regulation 34, after paragraph (1) there shall be inserted—
 - “(1A) Where the period within which a complaint must be presented in accordance with paragraph (1) is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (1).”.

Transitional Provisions

18. These Regulations shall apply—

- (a) in relation to dismissal and relevant disciplinary action, where the employer first contemplates dismissing or taking such action against the employee after these Regulations come into force; and
- (b) in relation to grievances, where the action about which the employee complains occurs or continues after these Regulations come into force,

but shall not apply in relation to a grievance where the action continues after these Regulations come into force if the employee has raised a grievance about the action with the employer before they come into force.

Signed by authority of the Secretary of State for Trade and Industry

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

2004

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, made under powers in sections 31, 32 and 33 of the Employment Act 2002, make provision for the application of the statutory dismissal and disciplinary and grievance procedures set out in Schedule 2 to that Act. In particular they make provision as to:

1. when the standard and modified dismissal procedures apply (regulation 3);
2. when those procedures do not apply (regulation 4);
3. the circumstances in which those procedures are treated as having been complied with (regulation 5);
4. when the standard and modified grievance procedures apply (regulation 6);
5. the circumstances in which those procedures are treated as having been complied with (regulations 7 to 10);
6. general circumstances in which the statutory procedures do not apply or are treated as having been complied with (regulation 11); and
7. the consequences of failing to comply with the statutory procedures (regulations 12 and 13);
8. the extension of the time limit for complaining to an employment tribunal in certain circumstances to allow time for the use of the statutory procedure that applies (regulation 15).

The Regulations also provide that the issuing of a discrimination questionnaire is not to constitute a statement of grievance (regulation 14) and for the situation when complying with the procedures would be contrary to the interests of national security (regulation 16).

Regulation 17 amends certain other subordinate legislation. Regulation 18 contains transitional provisions.

A full Regulatory Impact Assessment of the effect that this instrument will have on the costs of business has been prepared and placed in the library of each House. This document can be obtained from Department of Trade and Industry, Bay UG97, 1 Victoria Street, London SW1H 0ET. It can also be downloaded from <http://www.dti.gov.uk/access/ria/#employ>.