

people:skills:jobs:



Department for
**Employment
and Learning**
www.delni.gov.uk

Dispute Resolution Review: Final Integrated Impact Assessment



TABLE OF CONTENTS

1	INTRODUCTION	2
2	MAINTAINING GOOD EMPLOYMENT RELATIONS/INFORMAL RESOLUTION	4
	Equality, social inclusion and human rights	4
	Human rights	6
	Health	5
	Environment	6
	Economic	6
	Regulatory	6
3	FORMAL PROCESSES FOR RESOLVING DISPUTES	9
	Equality and social inclusion	9
	Health	10
	Human rights	10
	Regulatory	10
4	ALTERNATIVE DISPUTE RESOLUTION	13
	Equality, health and social inclusion	13
	Human rights	15
	Regulatory	15
5	LEGAL REMEDY	18
	Equality and social inclusion	18
	Health	20
	Human rights	20
	Regulatory	20
6	APPEAL	23
	Equality and social inclusion	23
	Health	23
	Human rights	23
	Regulatory	24

1 Introduction

- 1.1 As was made clear in the Department for Employment and Learning's consultation document, *Disputes in the workplace: a systems review – public consultation*¹ the Department is under obligations, both statutory and good practice, to assess the likely impact of its policy proposals against a range of factors. To that end, a preliminary impact screening exercise was carried out in relation to the areas identified in the consultation and was included within the consultation document. At that time, because policy proposals remained to be finalised, only a general screening was possible. However, stakeholders' views were sought on the results of the screening exercise and on the full range of policy options presented within the body of the consultation.
- 1.2 There has been extensive and very constructive engagement between the Department and a range of representative stakeholders throughout the entirety of the dispute resolution review, and the Department has listened carefully to the insightful comments concerning potential impacts that it has received, and has factored these into the decision-making processes in developing the policy proposals presented in the separate response document².
- 1.3 By way of context, it is worth restating the purpose and underpinning principles established by the consultation steering group³ which has played a central role in this review.

PURPOSE

The purpose of the Northern Ireland employment dispute resolution system is to restore good employment relations through the effective, efficient and fair resolution of employment disputes. The arrangements are designed to provide a system of flexible governance and practice that enjoys the confidence of employers, employees, trades unions and third party stakeholders.

PRINCIPLES

The key principles applying to the dispute resolution system are:

- *promotion of good employment relations*

¹ *Disputes in the workplace: a systems review - public consultation* (Department for Employment and Learning (DEL), May 2009)

² *Disputes in the workplace: a systems review – policy response* (DEL, April 2010)

³ The group, appointed by the Minister for Employment and Learning, Sir Reg Empey, consisted of representation from CBI NI, the Federation of Small Businesses, the Northern Ireland Committee of the Irish Congress of Trade Unions, the Equality Commission for Northern Ireland and the Labour Relations Agency.

- *provision of strong employment rights*
- *effective mechanisms to prevent and resolve disputes*
- *resolution of workplace disputes close to their point of origin*
- *enhanced capability of all involved in the prevention and resolution of workplace disputes*
- *statutory bodies that provide effective prevention and dispute resolution services to all those involved in workplace disputes*
- *access to non-adversarial alternatives to the tribunal system*
- *an efficient and effective tribunal and appeal system.*

1.4 This document sets out an assessment of the impacts envisaged as a result of the Department's specific policy proposals. From a presentational point of view, for the purposes of this assessment it has been logical to group the proposals together for analysis under the 5 key areas within which they fall:

- *maintaining good employment relations/informal resolution;*
- *formal processes for resolving disputes;*
- *alternative dispute resolution;*
- *legal remedy;*
- *appeal.*

2 Maintaining good employment relations/informal resolution

- 2.1 **The Department is proposing to establish an inter-agency advice forum with a remit to develop a common approach to the provision of information and advice and to agree and help promote simple signposting guidance for those facing a dispute on what they can do and where they can go when facing a problem at work.**
- 2.2 The Department will also be seeking to encourage development of the capability of all those who have a role to play in dealing with workplace disputes including HR managers and employee representatives, line managers and employees. It will do this by piloting employment relations good practice arrangements which, if successful, will provide a model for other employers. It is also proposing to explore opportunities to utilise existing qualification frameworks and regulatory arrangements to upskill those involved in employment disputes. Finally, the Department will be taking steps to enhance support for small and medium-sized employers, given the importance of this sector to the Northern Ireland economy.

EQUALITY AND SOCIAL INCLUSION

- 2.3 The Department learned from the review that some individuals, particularly migrant workers whose first language is not English, simply are not aware of the options available to them when a workplace dispute occurs. In some instances they are not cognisant of or are confused about the support that is available from statutory and voluntary sector organisations (Labour Relations Agency, Equality Commission, Citizens Advice, and so on). If they are not aware of their rights and available support, and as a consequence do not have the confidence to seek a proper resolution of the issue they are facing, there are likely to be damaging psychological consequences for the individual, and similarly negative impacts on productivity and employment relations in the workplace. There is also the ultimate possibility of the employment relationship breaking down altogether, with resultant loss of employment.
- 2.4 Vulnerable groups likely to benefit particularly from the provision of properly publicised signposting information and a more co-ordinated approach amongst providers of support include those whose first language is not English (migrant workers, including ethnic minorities) and those with lower levels of educational attainment. Consistent, jointly-branded signposting information available from a range of different sources will clearly identify the steps that an individual facing an issue at work should take and the sources of help and advice that

are available. A co-ordinated approach to developing and promoting this guidance, agreed by representative employer bodies, trade unions and the statutory and voluntary sectors, will give users greater confidence in the authenticity and authority of the material and in making informed decisions about their next moves. Relevant bodies will also be encouraged to work more closely to promote each other's services, where appropriate.

- 2.5 The damaging psychological effects of escalating conflict are likely to be particularly pronounced for those already suffering from mental health conditions or disabilities, which can easily be exacerbated by the stress caused when a dispute arises and escalates. Measures which help prevent disputes from escalating are therefore of benefit to this group of disabled individuals.
- 2.6 Significant negative socio-economic and health impacts are also associated with failure to resolve a dispute and the possible termination of employment that can often result. These can affect less well-off groups including ethnic minorities, single parents (often women) and people with disabilities. Better publicity and information around employment rights, improved training for managers and employee representatives, provision of accessible advice, and better targeting of information will encourage higher quality engagement between employees and managers where there are difficulties, and assist with resolving the matter before relationships deteriorate. Signposting advice will also make clear the steps an employee needs to take where, for whatever reason, an issue cannot be resolved informally.
- 2.7 From an equality perspective, these measures are therefore likely to have a positive impact on migrant workers (religious belief and racial group under section 75), single parents and individuals with disabilities. Comparable positive impacts apply in respect of social inclusion, in that vulnerable groups more generally will be able to access better information about their rights and the options available to them and will be helped to avoid the consequences of termination of the employment relationship.

HEALTH

- 2.8 It is evident from the research literature, anecdotal accounts, and common-sense analysis, that protracted disputes have negative health impacts. Effects can be immediate, taking the form of stress associated with ongoing conflict, or long-term, with depression being triggered by dismissal, loss of status, failure to find alternative employment, damage to reputation and so on. As conflict drags on and becomes more serious, the negative health impacts are likely to increase in severity. Developing capability on all sides to address disputes early is key to preserving good employment relations and, therefore, preventing the deterioration or even ending of the

employment relationship, with all of the negative health (and socio-economic) consequences that can carry. A modest positive health impact will result where disputes are resolved earlier as a result of the proposals being put into action.

HUMAN RIGHTS

- 2.9 The development of agreed signposting guidance and better joint working between support organisations will facilitate improved access to justice, which is relevant to Article 6 of the European Convention on Human Rights (ECHR) (right to a fair hearing).

ENVIRONMENT

- 2.10 The Department will make use of the online citizen and business services, www.nidirect.gov.uk and www.nibusinessinfo.co.uk, to deliver key messages and guidance. Printed material will be provided only where it is deemed the most appropriate method of delivery.

ECONOMIC

- 2.11 The Department's focus on working to develop capability in dealing sensitively and constructively with disputes in the workplace is designed to address a skills gap that the review has identified. Too many individuals have not been equipped with the level of skills necessary to deal with disputes in the most effective way, and the Department is seeking to address this situation. To do so, it will be exploring creative ways of using existing qualification frameworks to equip key actors in disputes with the skills they need to have the sort of difficult conversations that, if mishandled, can seriously worsen a dispute but, if dealt with correctly, may draw it closer to resolution. Its internal employment relations pilot, if successful, will contribute to developing good practice in this area.
- 2.12 Enhancing these skills amongst members of Northern Ireland's workforce will carry undoubted economic benefits in terms of staff retention, will reduce lost productivity associated with disputes where they are averted, and will allow businesses to focus more on their core business activity.

REGULATORY

- 2.13 The measures are 'light touch' and as such the Department does not anticipate a significant regulatory impact. The Department will aim, insofar as is possible, to deliver information and assistance through existing channels, including the Government's citizen and business

channels online (www.nidirect.gov.uk and www.nibusinessinfo.co.uk) and will work with key statutory and voluntary sector bodies to co-ordinate efforts and encourage mutual awareness-raising.

- 2.14 The Department will explore with the small business sector whether there are cost-effective methods of delivering additional support that will assist in handling compliance issues without imposing new regulatory requirements. It is not intended to introduce new regulation but, where possible, steps will be taken to use existing regulatory frameworks in a smarter way to help employers understand their obligations.
- 2.15 Proposals for improved guidance in Great Britain were costed at approximately £500,000. A *pro rata* figure for Northern Ireland would be in the region of £12,500; however, this fails to take account of the economies of scale that can be achieved in producing guidance in a large jurisdiction such as Great Britain. Moreover, the Northern Ireland programme will be developed in a bespoke way to meet local needs, including those of SMEs, and does not bear direct comparison to the GB estimate.
- 2.16 With those issues in mind, the Department considers that developing and making available better guidance and information in Northern Ireland could cost in the region of £40,000-£50,000 in the first year, with much smaller recurring expenditure thereafter. It is anticipated that expenditure will be met from existing baselines.
- 2.17 The Department’s ambition to develop best practice within the public sector, starting with initial pilot exercises, will be achieved within existing resources.
- 2.18 Efforts to develop workforce capability in handling disputes by building on existing qualification frameworks, and possibly developing professional accreditation, will not be associated with significant costs, and whatever costs there are to employers in (voluntarily) training key members of staff are very likely to be offset by savings resulting from better handling of employment relations issues and of disputes themselves once they arise.

Table 1: Summary of impacts of proposals – maintaining good employment relations/informal resolution of workplace disputes

Category	Result of screening exercise
Crime	No impact.
Community Safety & Victims	No impact.
Equality (dependants / disability / gender / marital status / racial group / religious belief)	Migrant workers whose first language is not English are, in some cases, likely to be drawn from particular faith communities or ethnic groups. Individuals sharing these characteristics may benefit disproportionately from clearer, jointly branded signposting guidance and a more co-ordinated approach to the provision of information and advice.
	Individuals suffering from mental health disabilities which can be exacerbated by stress will benefit from clearer signposting towards help that may avert the negative impacts that can be associated with escalating conflict.

Category	Result of screening exercise
	<p>As less well-off groups, single parents (often women) and people with disabilities will also benefit from steps to preserve the employment relationship where possible, preventing the socio-economic consequences of job loss.</p> <p>There are no differential impacts on the remaining section 75 groups.</p>
Health	<p>Provision of better guidance and information, delivered in a consistent and joined-up manner, will be likely to have modest health impacts in reducing the negative consequences that can be associated with failure to resolve a dispute at an early stage.</p>
Human Rights	<p>Improved access to justice will be achieved through provision of better guidance (relevant to Article 6, ECHR)</p>
Rural	<p>No impact.</p>
Social inclusion	<p>Certain groups within the workforce, including individuals with low levels of educational attainment and ethnic minorities, will benefit from simplified, agreed guidance promoted by all the key players in the field of dispute resolution, setting out the steps that an individual should take in the event of facing a problem at work.</p> <p>Where disputes are resolved earlier as a result of the new measures being set in place, serious socio-economic consequences associated with loss of employment will also be prevented.</p>
Economic Appraisal	<p>Not relevant.</p>
Economic	<p>The Department's employment relations pilot and its work with stakeholders to develop the capability of those with a role in resolving disputes, including managers and trade union officials, will provide opportunities to develop better employment relations practices in Northern Ireland's workplaces. Individuals will have better opportunities to equip themselves to prevent disputes or resolve them at an earlier stage. Success will carry economic benefits in terms of staff retention, better productivity and reduced distractions from core business activity.</p>
Regulatory	<p>The measures proposed by the Department are designed to be 'light touch', helping employers to understand how to comply with existing requirements. Additional regulation will not be set in place. The Department will seek low-cost ways of achieving its objectives in this area and will seek to ensure that existing resources are deployed more effectively. The Department will aim in particular to develop better support for SMEs.</p> <p>Developing better guidance will cost in the region of £40,000-£50,000 which, it is anticipated, will be funded from existing Departmental baselines.</p> <p>There will be no additional costs associated with developing public sector good practice; this will be achieved within existing resources.</p> <p>Developing the capability of managers through improved training and support will not carry significant costs, and where there are costs these will be offset by the benefits resulting from the better handling of workplace problems.</p>
Legal Aid	<p>No impact.</p>
State Aid Compliance	<p>No impact.</p>
Environment	<p>Services will be delivered online via the citizen channel, www.nidirect.gov.uk, and the business channel, www.nibusinessinfo.co.uk, where possible.</p>
Strategic Environmental	<p>No impact.</p>

3 Formal processes for resolving disputes

- 3.1 **The Department will repeal the statutory minimum procedures currently required to be used in raising and dealing with a workplace grievance. The review found the procedures to be unduly complex, with a tendency to formalise disputes unnecessarily.**
- 3.2 By contrast, the review established that there is significant support for preserving the statutory disciplinary and dismissal procedure (DDP), and the Department will therefore retain it in both its standard (3 step) and modified (2 step) forms. The DDP is reasonably straightforward, ensures a level of protection for employees in those very serious disciplinary situations where dismissal is a possibility, and indeed protects employers from the consequences of unwittingly taking arbitrary action against employees. A tribunal will generally have regard to a failure to follow the DDP in determining the level of any award it makes in relation to a case.
- 3.3 A revised Labour Relations Agency Code of Practice will be set in place which will provide good practice guidance on approaching grievances and disciplinary/dismissal situations in the workplace. To encourage appropriate practice with regard to grievances, provision will be made giving a subsequent tribunal discretion to adjust an award upward or downward depending on the parties' compliance or otherwise with the Code. In relation to disciplinary and dismissal situations, because a statutory process will remain, and will continue to be associated with penalties for non-compliance, the Code will play a different role. It will offer guidance on good practice which will (as now) be admissible in evidence before a tribunal and may be taken into account in determining a question.

EQUALITY AND SOCIAL INCLUSION

- 3.4 The removal of a statutory grievance procedure which even the most legally knowledgeable professionals consider difficult to operate will benefit in particular those for whom English is not a first language and those with low educational attainment. Its replacement by a revised LRA Code of Practice will clarify approaches to grievance situations by setting out unambiguously the recommended steps that an employee (and an employer) should take in dealing with a grievance.
- 3.5 The initial screening in the consultation document pointed out that repealing the grievance procedure, by removing certain requirements from the employer, had the potential to encourage *ad hoc* and inconsistent treatment of employees, particularly those from vulnerable

groups. However, it went on to state, and this assessment agrees, that linking a revised LRA Code of Practice to a tribunal outcome and providing better guidance will do much to guard against unintended negative impacts. Ultimately, greater benefits will result from this simpler approach than one which, without exception, has been the subject of criticism from consultees.

- 3.6 Retaining the DDP preserves a legally mandated process for all employees, and particularly the most vulnerable who may be unaware of their rights in a disciplinary/dismissal situation. Requiring employers to follow a proper process – as a minimum – in considering the radical step of dismissal, is particularly important given the economic ill-effects that loss of employment in these circumstances can have on less well-off members of society including single parents (often women), persons with disabilities and migrant workers. Although the Department is *not* making a change to the statutory DDP, part of the rationale for this approach is to ensure that negative socio-economic and equality impacts are avoided.

HEALTH

- 3.7 A simplified and more flexible approach to grievances will improve understanding of the steps that should be taken in a situation which, inevitably, will prove a significant strain for those involved. There are therefore minor benefits in terms of reduced stress.
- 3.8 In addition, by retaining the DDP and ensuring that employers must legally undergo a proper process before taking the radical step of dismissing an individual, the Department hopes to continue to discourage arbitrary dismissals. Loss of employment through dismissal is well known to be associated with a range of powerful ill-effects including loss of self-esteem and depression, which themselves can lead to familial and relationship difficulties.

HUMAN RIGHTS

- 3.9 The removal of what stakeholders have told the Department is a complex grievance process and the introduction of clear guidance from the Labour Relations Agency in the form of a revised Code of Practice will reduce confusion and make more accessible a formal workplace process that could eventually lead to a legal determination. There are therefore minor positive outcomes in relation to Article 6 of the ECHR.

REGULATORY

- 3.10 The Department's measures in relation to grievances are deregulatory, replacing a legal requirement which has been perceived as imposing

significant burdens on employers with a good practice led approach underpinned by a statutory LRA Code of Practice. Employers will, of course, still need to operate a grievance procedure or face potential consequences at tribunal; however, there will be greater flexibility, with less focus on process and more on resolution itself. There may be some small savings for employers as a result.

- 3.11 The regulatory impact of maintaining a statutory minimum disciplinary and dismissal procedure is neutral, given that the procedure is fairly straightforward, should already be in place, and indeed protects employers (particularly SMEs, who usually lack professional HR support) from the potentially damaging consequences of having no established procedures.
- 3.12 Estimating the impact of the statutory grievance procedures' repeal is relatively straightforward if the initial Great Britain assumptions are applied to Northern Ireland, and the figures are halved to reflect the fact that in Northern Ireland, unlike in Great Britain, the statutory disciplinary and dismissal procedures are being retained. Figures are halved because the Department does not have information indicating the relative proportions of grievances and disciplinary actions taken forward in Northern Ireland's workplaces, so for the purposes of this assessment it has been assumed that half of the time taken up by the procedures at present relates to grievances and half relates to disciplinary or dismissal actions. It is further assumed that improving workforce skills in dealing with issues informally will produce an additional 5% saving. That being so, retention of only one of the procedures and repeal of the other, combined with simplification, would produce a saving to business of around £1.5m *per annum*.⁴ There would also be a one-off saving to Government of £25,000 *per annum* as a result of the reduced complexity of claims and pre-acceptance procedures.⁵

Table 2: Summary of impacts of proposals – formal processes for resolving disputes

Category	Result of screening exercise
Crime	No impact.
Community Safety & Victims	No impact.
Equality (dependants / disability / gender / marital status / racial group / religious belief)	Those whose first language is not English may be drawn from particular faith or ethnic backgrounds, and are likely to benefit disproportionately from the reduction in complexity delivered by repealing the statutory grievance procedures and developing a clearer LRA Code of Practice setting out the steps that are required

⁴ The Great Britain assumptions in this sub-section are drawn from 'Success at work: resolving disputes in the workplace – a consultation' (Department for Business, Enterprise and Regulatory Reform (BERR), March 2007). BERR is now known as the Department for Innovation, Universities and Skills (BIS). Calculations are on the standard one-fortieth basis that is often used in applying Great Britain estimates to Northern Ireland. $1/40 \times £114,800,000 = £2,870,000$. $£2,870,000 / 2 = £1,435,000$. $£1,435,000 + (5/100 \times £1,435,000) = £1,506,750$.

⁵ $1/40 \times £1,000,000 = £25,000$

Category	Result of screening exercise
Health	to deal with disciplinary and dismissal situations. The above groups, as well as single parents (who are most often women) and persons with disabilities, would be likely to suffer particularly from an end to the employment relationship given their relative economic status. Continuing to mandate a statutory process for disciplinary action and dismissals will underscore the need for employers to take steps to resolve the matter rather than arbitrary action to end an individual's employment.
	There are two positive albeit minor health impacts. The first relates to reduced stress as a result of removing some complexity from the grievance process. The second arises from maintaining a minimum standard set of procedures which must be gone through before a dismissal. This is intended to discourage arbitrary actions on the part of employers and, where dismissals do not occur as a result, prevent the lowered self-esteem and depression that can be associated with job loss.
Human Rights	Repealing what has been seen as an overly complex grievance procedure will mean that individuals are less likely to be deterred from engaging in formal processes which could eventually lead to tribunal (Article 6, ECHR).
Rural	No impact.
Social inclusion	Vulnerable groups including individuals with low levels of educational attainment, ethnic minority groups, single parents and persons with disabilities will benefit from the reduction in complexity inherent in these measures, not least where engaging in the process may prevent the ending of the employment relationship and associated negative socio-economic effects.
Economic Appraisal	Not relevant.
Economic	See 'Regulatory' below.
Regulatory	The Department's measures in relation to grievances are deregulatory, replacing a legal requirement which was perceived as imposing significant burdens with a good practice led approach underpinned by a statutory LRA Code of Practice. The regulatory impact of maintaining a statutory minimum disciplinary and dismissal procedure is neutral, given that the procedure is fairly straightforward, should already be in place, and indeed protects employers (SMEs in particular) against the potentially damaging consequences of having no established procedures.
	There will be savings to business of approximately £1.5m and to Government of £25,000 per year.
Legal Aid	No impact.
State Aid Compliance	No impact.
Environment	No impact.
Strategic Environmental	No impact.

4 Alternative dispute resolution

- 4.1 **The Department will be asking the Labour Relations Agency to refocus its services to facilitate earlier diagnosis and resolution of disputes brought to the Agency’s attention by way of its helpline. Efforts will be made to increase the rate of pre-claim conciliation i.e. resolution of disputes with the help of the Agency’s trained conciliators without the need for a claim to be lodged with the tribunals. The LRA’s duty to assist at the pre-claim stage will be converted to a power, to allow the Agency to focus its efforts in areas where they are likely to be of most benefit. Where a claim is lodged, the LRA will work more closely with the tribunals to identify cases where ADR may be appropriate and will offer its services accordingly.**
- 4.2 The LRA’s scope to provide a range of ADR services will also be strengthened, with legislative provision making clear that confidentiality is attached to the full range of ADR services provided by the Agency. This will facilitate the LRA in bringing to bear the form of ADR that is most suited to a given dispute. The possibility of professional accreditation in ADR will also be explored.
- 4.3 The Agency’s statutory arbitration scheme will be expanded so that, where the parties agree, an arbitrator will be able to deal with the full range of issues relevant to the case rather than only, as at present, unfair dismissal and flexible working. This significant expansion of the arbitration scheme’s remit will enable the Agency to promote arbitration as a genuinely credible, less formal, less legalistic and costly, yet quicker alternative to the tribunal system. The right of appeal from arbitration will remain limited to situations in which the arbitrator’s decision raises questions of EC or human rights law or issues around procedural matters. This will underscore the arbitration process as an alternative to rather than a stage in the tribunal process. Arbitration will remain an entirely voluntary process that cannot be undertaken without the parties’ consent.
- 4.4 Additional measures will include the abolition of time limits on the LRA’s duty to conciliate once a tribunal claim has been lodged and efforts to simplify the tribunal forms.

EQUALITY, HEALTH AND SOCIAL INCLUSION

- 4.5 The benefit of the more joined-up approach to the provision of information and advice referred to at [paragraph 2.1](#) will be increased co-ordination between the multiple bodies involved in dealing with workplace disputes. There will be positive effects on the LRA’s helpline, as a more co-ordinated approach will enable LRA staff to provide simplified signposting information to callers. Other statutory

bodies will likewise be able to refer to a single piece of signposting guidance, which might for example alert individuals to the services provided by the LRA, the Equality Commission or voluntary sector bodies. Addressing basic information needs in a coherent way will reduce confusion and, although the positive impact should not be exaggerated, there will be benefits for those who do not speak English as a first language as well as for individuals with lower levels of educational attainment. Modest benefits to these groups can also be expected if the tribunal forms can be simplified.

- 4.6 Increased emphasis on pre-claim diagnosis and the widening of the LRA's menu of ADR services, including the expanded arbitration scheme, will benefit those who do not have the time, resources or willingness to enter into a full legal process. Single parents (predominantly women), whose time and/or resources are limited by family commitments, may see ADR as a welcome alternative to a tribunal. The same is likely to be true of those suffering from a psychological disability or other health condition such as a stress-related illness or depression, who may find it difficult to cope with confrontational legal proceedings. ADR is a cheaper, less costly and less stressful option for those who wish to avail of it.
- 4.7 Those of limited means generally, often from poorer socio-economic backgrounds, may realise benefits from pre-claim conciliation. A recent study of Acas pre-claim activity in Great Britain has shown that users of the service are more likely to come from lower paid, less skilled occupations in small organisations with fewer than 50 staff in the private sector. Only a minority of the employers surveyed had an HR function, and under 20% had a trade union presence. Although 75-80% of conciliations involved employees who no longer worked for the employer with whom they had a dispute, the service did appear to provide an important resource to sectors of the economy least well equipped to resolve workplace disputes without external support.⁶
- 4.8 The same group may find that enhanced statutory arbitration provides a valid alternative forum for issues to be heard by an impartial employment relations expert and a decision on the matter to be made without the pressures, time and cost that can be associated with the tribunal process. That point made, it must be emphasised that the tribunal system will remain free and open to all at the point of entry and that unrepresented claimants will continue to be assisted by the tribunal to present their case in an appropriate manner.

⁶ 'Pre-claim conciliation pilot – evaluation summary report' (Acas research paper 02/09, 2009), pp 3, 6

HUMAN RIGHTS

- 4.9 The revised arbitration arrangements will offer a confidential process presided over by an employment relations expert that will be comparatively informal and speedy and (unless the parties themselves can be persuaded to reach a settlement of their own) will result in a final decision by which the parties will be bound. As previously stated, appeal will be permissible only where the arbitrator's decision is contrary to fundamental rights.
- 4.10 Arbitration is completely voluntary process. It cannot be undertaken in the absence of both parties' agreement. In order for it to proceed, both parties must waive their right to go to tribunal. Allowing parties to go to tribunal if they do not like the outcome of the arbitration would devalue arbitration, establishing it as a step on the way to rather than itself a final determination of the issues. Arbitration will be an alternative rather than an additional step in the existing process.
- 4.11 Case law has established that arbitration, voluntarily agreed to, is compatible with Article 6 of the ECHR. There are therefore no human rights implications arising from this proposal to extend what are in any event pre-existing arrangements.

REGULATORY

- 4.12 In Great Britain, it has been estimated that the net savings from pre-claim conciliation to Government, employees and employers amount to almost £1,000 per case in terms of time saved.⁷ To develop a Northern Ireland analysis, these figures are taken as an indicative baseline and it is assumed that cases resolved earlier as a result of better signposting and advice will save more money and cases resolved at a later stage, through ADR alternatives to the tribunal process, will save less (not least because some work will already have commenced on tribunal proceedings by the time agreement is reached). The following assumptions are used:
- *£1,000 will be saved per case settled as a result of pre-claim conciliation;*
 - *£1,500 will be saved per case resolved earlier through signposting and advice;*
 - *£500 will be saved per case resolved through ADR (including arbitration and better joint working between the LRA and OITFET) at the post-claim stage, cutting short the tribunal process;*

⁷ 'Pre-claim conciliation pilot', p. 9

- *In the absence of these changes, the tribunals would receive a total of 4,000 cases during 2009/10 (with totals thereafter difficult to predict, but assumed for the purposes of simplicity to be fairly consistent);⁸*
- *3% (120) of these 4,000 claims will be resolved by pre-claim conciliation;*
- *3% (120) will be resolved by better signposting and advice;*
- *3% (120) will be resolved through post-claim ADR intervention.*

4.13 Using the above assumptions, it can be estimated that there will be savings to Government of £34,200, to employees of £144,000 and to employers of £181,800 *per annum* (see [Table 3](#)).

Table 3: Savings as a result of pre-claim conciliation, signposting and post-claim ADR

Category	Savings per pre-claim conciliation (equivalent to Acas figures)	Savings per potential claim avoided by way of signposting (x 1.5)	Savings per successful post-claim ADR intervention (x 0.5)	Total savings – pre-claim conciliation	Total savings – signposting	Total savings – post-claim ADR	TOTAL
Taxpayer	£95 ⁹	£143	£48	£11,400	£17,100	£5,700	£34,200
Employee	£400	£600	£200	£48,000	£72,000	£24,000	£144,000
Employer	£505	£758	£253	£60,600	£90,900	£30,300	£181,800
TOTAL	£1,000	£1,500	£500	£120,000	£180,000	£60,000	£360,000

4.14 Additional savings to employers of £480,000 *per annum* can be expected as a result of a reduction in tribunal proceedings and, consequently, in the need to complete a tribunal response form (given that employers often use paid-for legal services to assist with the forms' completion).¹⁰ Some negligible savings may also be achieved through simplification of the tribunal forms where feasible.

4.15 In a tight budgetary climate, the Department is seeking to achieve the objectives outlined by better utilising existing resources. The new

⁸ It is historically difficult to project the number of tribunal cases going forward. It is difficult to predict circumstances leading to annual fluctuations in claim numbers. However, an average of claims over the most recent 3-year period for which figures are available (2006/07, 2007/08, 2008/09) is around 4,000 – see OITFET annual report, 2008/09 (OITFET, 2009). Perhaps as many as 5,000 claims may be expected during the year 2009/10, in part accounted for by the economic downturn (OITFET estimate). Assuming economic recovery, the figure is likely to fall by the year 2011/12, and the estimate of 4,000 claims is reasonable.

⁹ The actual figure given is £94.32 – 'Pre-claim conciliation pilot', p. 9

¹⁰ In Great Britain, it was estimated that it costs employers, on average, £2,000 to complete a response form, primarily as a result of the use of external paid-for legal assistance. See 'Employment Bill impact assessment: part 2: dispute resolution review', paragraph 44. In Northern Ireland, the assumption is that the use of response forms is avoided where signposting/advice or pre-claim conciliation prevent a tribunal claim from proceeding. Since the assumption is that 3% of cases will be avoided by each of these activities, the calculation is as follows: $((3/100 \times 4,000) \times 2) \times £2,000 = £480,000$

arrangements will be carefully monitored and resource allocation, as is normal good practice, will be kept under review.

Table 4: Summary of impacts of proposals – alternative dispute resolution

Category	Result of screening exercise
Crime	No impact.
Community Safety & Victims	No impact.
Equality (dependants / disability / gender / marital status / racial group / religious belief)	<p>More active signposting by way of the LRA helpline towards sources of advice and guidance will assist those whose first language is not English (affecting those drawn from particular ethnic minorities or having particular religious beliefs). Simplification of tribunal forms where possible will also marginally benefit these individuals.</p> <p>Single parents, often single mothers, who often have limited time and resources as a result of commitments to family, may benefit from expanded facilitative ADR processes in that they are less time-consuming and resource-intensive than taking a case to tribunal. The option of a tribunal will of course remain open as it does at present. This is of relevance for the marital status, gender and dependants section 75 groups.</p> <p>As regards disability, individuals with certain psychological conditions such as stress-related illness and depression will benefit from the greater emphasis on ADR services which will provide a less confrontational alternative to formal tribunal proceedings.</p>
Health	ADR is a less time-consuming, less costly and speedier alternative to the tribunal system and as such, if uptake is increased, is likely to reduce the stress associated with addressing a dispute.
Human Rights	It should be noted that parties, in agreeing to be bound by a decision of an arbitrator, also agree to forego their right to take the matter for adjudication before a tribunal. Arbitration is an alternative to the tribunal process rather than an additional stage on the way to a legal determination. Case law has established that arbitration, voluntarily agreed to, is compatible with Article 6 of the ECHR, in that parties agree not to take the matter to a public hearing. There are therefore no human rights implications arising from this proposal.
Rural	No impact.
Social inclusion	No impact.
Economic Appraisal	Not relevant.
Economic	See 'Regulatory' below.
Regulatory	<p>There will be savings to Government of £34,200, employees of £144,000 and employers of £181,800 <i>per annum</i> as a result of more disputes being resolved either before they reach tribunal or before they have progressed significantly through the tribunal system.</p> <p>There will be additional savings to employers of £480,000 <i>per annum</i> as a result of reduced demand for paid legal assistance.</p> <p>The Department will be seeking to redeploy existing resources and therefore does not foresee additional costs to Government or employers. The Department will, however, keep the arrangements under review to ensure that they are sufficiently resourced going forward.</p>
Legal Aid	No impact.
State Aid Compliance	No impact.
Environment	No impact.
Strategic Environmental	No impact.

5 Legal remedy

5.1 The Department will set in place a range of measures designed to enhance the effectiveness of industrial tribunals and the Fair Employment Tribunal. It will:

- *legislate for the determination of certain simple monetary cases without a hearing where the parties agree to this in writing;*
- *investigate means of encouraging employers to take remedial action where they are in breach of equal pay obligations;*
- *provide for the automatic registration of unpaid awards with the courts;*
- *investigate possible simplification of systems for dealing with rare but concerning cases of perjury and contempt;*
- *provide tribunals with an explicit discretionary power to restrict publicity where the prospect of a case being publicised could deter an individual from accessing the justice system.*

5.2 Although making no changes to the structure of the tribunal system, the Department will also legislate to allow cases involving fair employment and any other matter to be consolidated and heard by the same tribunal. Furthermore, the Department will work with the tribunals to consider whether changes can be made to procedures and practices to enhance efficiency.

EQUALITY AND SOCIAL INCLUSION

5.3 Currently, where a tribunal finds against an employer in an equal pay case, although a remedy may be ordered for the individual(s) concerned, the tribunal does not have power to order the employer to audit practices more widely with regard to equal pay, with the result that, if the employer is not inclined to act, systemic problems may remain within the firm. By encouraging employers to carry out equal pay audits where a finding against them has been reached in an equal pay case, steps can be taken to address systemic problems within an organisation relating to equal pay. Where a tribunal is able to promote action on the part of the employer, this will raise the profile of equal pay within the organisation and may have the wider effect of encouraging other employers to carry out their own voluntary audits. This proposal deals directly with the section 75 gender category and, if practical legislative or non-legislative solutions are agreed, its implementation will benefit men and women, but in particular woman, who disproportionately suffer the ill-effects of unequal pay situations. From the point of view of social inclusion, there are benefits for low-paid

women (and men) who are not receiving remuneration for work of equal value carried out by individuals of the opposite gender.

- 5.4 The Fair Employment Tribunal is normally empowered to hear only cases relating to discrimination on grounds of religious belief or political opinion. However, under Article 85 of the Fair Employment and Treatment (Northern Ireland) Order 1998, the President or Vice-President of the tribunals can direct that a case involving a range of other issues ('jurisdictions') can be consolidated so that matters normally within the remit of an industrial tribunal may be heard and determined alongside the fair employment complaint. This prevents two separate tribunal cases from having to be run, saving time, effort and expense. However, Article 85 only applies where the case, as well as fair employment elements, includes allegations of unfair dismissal or discrimination on grounds of sex, disability, race, sexual orientation and age.
- 5.5 The Department intends to modify Article 85 so that the President or Vice-President may consolidate cases which are not currently covered by Article 85, for example where there is a fair employment complaint for the Fair Employment Tribunal and an industrial tribunal complaint arising from the same set of facts relating, for example, to unlawful deductions from wages or unpaid holiday pay. This will extend the existing efficiency savings afforded under Article 85 to cover the full range of industrial tribunal jurisdictions, ensuring that those with a fair employment complaint do not have to undertake unnecessary additional work. As well as benefiting individuals bringing complaints of unlawful religious or political discrimination, the reduction in unnecessary proceedings may have small positive health impacts for a small number of individuals with disabilities of a psychological nature who will no longer have to undergo the stress associated with additional, largely duplicative hearings.
- 5.6 Tribunals already have formal powers to restrict publicity where sensitive issues relating to national security, sexual misconduct or disability arise during the course of proceedings. However, recent case law (see *JR5 v Department of Agriculture and Rural Development* [2007] NICA 19) has highlighted that tribunals do not have comparable powers in relation to other potentially sensitive issues. The Department has been made aware on several occasions that sexual orientation is one such area, in that individuals may be reluctant to become involved in proceedings for fear of their sexual orientation becoming public knowledge. Although it has been established that a tribunal has an implied power to act to restrict publicity in these cases, the Department believes that it is appropriate to clarify the legal position and takes the view that doing so will remove a possible impediment to access to justice where disclosure of particular facts would be detrimental to an individual's wellbeing.

HEALTH

- 5.7 Minor health benefits will be associated with administrative efficiency savings including the power for tribunals to consolidate more IT and FET cases and the removal of the requirement to first register unpaid tribunal awards with the courts in order to begin enforcement proceedings in the event that a tribunal award is not paid.

HUMAN RIGHTS

- 5.8 Amendments to Article 85 of the Fair Employment and Treatment (Northern Ireland) Order 1998 allowing for separate proceedings to be consolidated are designed to facilitate access to justice by removing administrative inefficiency and, as such, have positive implications for access to justice under Article 6 of the ECHR.
- 5.9 Article 6 is also relevant to the proposed clarification of the tribunal's discretionary power to restrict publicity in cases involving sensitive issues, as are Article 8 (right to respect for private and family life) and Article 10 (freedom of expression). Under Article 6, the right to a public hearing is restricted where the protection of private life is a concern; this acknowledges that the right to privacy (Article 8) does need to be balanced against the right for the press to report on the justice system (Article 10). Providing the tribunals with discretionary powers to restrict publicity will ensure that restriction will only take place once these rights have been carefully weighed against one another by the tribunal, with a decision being reached on the basis of the particular circumstances of the case. The Department's view is that the proposal meets relevant human rights obligations.
- 5.10 The automatic registration of awards with the courts will remove an unnecessary administrative hurdle from the justice system.

REGULATORY

- 5.11 Although the number of affected cases is estimated to be small,¹¹ administrative efficiencies will result from the revision of powers to consolidate tribunal proceedings under Article 85 of the Fair Employment and Treatment (Northern Ireland) Order 1998. The tribunal system itself, as well as the claimants and respondents who use it, will benefit from time and therefore cost savings, with reduced administrative and preparatory requirements for all concerned in each relevant case.

¹¹ The maximum population of claims is the number of fair employment cases (365, 297 and 192 in 2006/07, 2007/08 and 2008/09 respectively). However, given that it is already possible to consolidate some jurisdictions under Article 85, a reasonable estimate is that perhaps only half of these will be affected

- 5.12 Currently, registration of unpaid tribunal awards with the courts carries a small cost. Negligible savings to employees will therefore be achieved through the automatic registration of awards.
- 5.13 The new approach to simple monetary claims, involving determination without a hearing where the parties consent in writing, was assessed in Great Britain as likely to carry annual benefits to Government of £400,000 *per annum*, with yearly benefits to employers of £300,000 and employees of £200,000. It is intended to take corresponding measures forward here in Northern Ireland, and although a *pro rata* figure should be treated with caution given the differing profile of claims here, it is reasonable to suggest possible savings in the region of £10,000 *per annum* to Government, £7,500 to employers and £5,000 to employees.
- 5.14 Steps to encourage equal pay audits will have no differential regulatory impact as no new compliance requirement is introduced. Employers who pay their workforce on equal terms for work of equal value, regardless of gender, are complaint and therefore will experience no differential impacts. Employers generally may be encouraged to initiate their own voluntary equal pay audits to ensure that they are in compliance with the law; however, this does not represent an additional regulatory impact but rather sound practice in adhering to a pre-existing regulatory regime.

Table 5: Summary of impacts of proposals – legal remedy

Category	Result of screening exercise
Crime	No impact.
Community Safety & Victims	No impact.
Equality (disability / gender / political opinion / religious belief / sexual orientation)	Taking steps to encourage equal pay audits will benefit both men and women. However, women in particular will benefit as it is they who suffer most frequently from the effects of unequal pay situations.
	Individuals bringing a complaint of discrimination on grounds of religious belief or political opinion to the Fair Employment Tribunal will benefit where changes to Article 85 of the Fair Employment and Treatment (Northern Ireland) Order 1998 allow for the consolidation of what would previously have been two sets of proceedings into one, heard and determined by the same tribunal.
	Giving tribunals discretionary power to restrict publicity will benefit individuals who may previously have been reluctant to participate for fear of the consequences of their sexual orientation becoming public knowledge.
	A small number of individuals with disabilities related to mental health issues will benefit from the reduced stress in having to deal only with one set of proceedings rather than two as a result of the new power for tribunals to consolidate industrial and Fair Employment Tribunal proceedings across all jurisdictions.
Health	There will be minor benefits in terms of reduced stress as a result of administrative efficiencies including the consolidation of cases involving fair employment and other jurisdictions and the removal of the requirement to register unpaid tribunal awards.
Human Rights	Access to justice is enhanced by the removal of an unnecessary administrative barrier to the consolidation of Fair Employment Tribunal and industrial tribunal proceedings so that they may be heard together, as part of the same proceedings.
Rural	No impact.
Social inclusion	Steps to encourage compliance with equal pay legislation will benefit low-paid women (or indeed men) who are carrying out equal value work but who are not being appropriately remunerated.

Category	Result of screening exercise
Economic Appraisal	The power for tribunals to consolidate the range of industrial and Fair Employment Tribunal proceedings may facilitate socially marginalised individuals in bringing claims involving a range of issues as the need to deal separately with these will be removed.
Economic	Not relevant.
Economic	See 'Regulatory' below.
Regulatory	Small efficiencies and savings will be achieved for the tribunals and their users as a result of measures allowing fair employment proceedings to be consolidated with the full range of industrial tribunal proceedings and heard as a single case.
Regulatory	Negligible savings will be achieved for employees through removal of the requirement to register an unpaid tribunal award with the courts.
Regulatory	The new process allowing for determination of simple monetary issues without a hearing, with the written consent of the parties, will produce annual savings to Government of £10,000, to employers of £7,500 and to employees of £5,000.
Legal Aid	No impact.
State Aid Compliance	No impact.
Environment	No impact.
Strategic Environmental	No impact.

6 Appeal

- 6.1 The Department has decided to investigate further the practicalities of establishing an Employment Appeal Tribunal and an impact assessment will be developed in conjunction with other Government Departments with responsibilities in this area before a final decision is taken. As an initial step, however, work is being undertaken to simplify the appeals mechanism by replacing the existing ‘case stated’ process with a more straightforward approach.
- 6.2 ‘Case stated’ has attracted criticism from some of those with whom the Department has consulted, and this critical view has been amplified most notably in the recent House of Lords case of *SCA Packaging Ltd v Boyle* [2009] UKHL 37 and in the subsequent Court of Appeal case *Rogan v South Eastern Health And Social Care Trust* [2009] NICA 47. Industrial tribunals and the Fair Employment Tribunal already give detailed legal reasoning for their decisions; requiring a tribunal to state the legal points upon which it is asking the higher court to decide has therefore been deemed unnecessary and wasteful. The impacts of this change to the appeals process are set out below.

EQUALITY AND SOCIAL INCLUSION

- 6.3 From an equality perspective, steps to reduce the time taken to appeal a tribunal decision are positive but marginal. Individuals with limited resources may be more willing to pursue a more straightforward, less protracted appeal, and there may therefore be small positive impacts for the following section 75 categories: religious belief, racial group, marital status, gender, those with dependants, and people with disabilities. The impacts are set out in [Table 6](#).

HEALTH

- 6.4 A quicker appeals process may have a negligible but positive impact in reducing levels of stress and the associated damaging health effects.

HUMAN RIGHTS

- 6.5 Removal of the ‘case stated’ process will create a more straightforward appeal process which, in promoting more straightforward access to justice, will be a positive development from the point of view of Article 6 of the ECHR.

REGULATORY

- 6.6 Rationalisation will generate small savings in removing what has been deemed an unnecessary layer in the appeal process. Time will be saved for all parties, and the resources of the tribunal will no longer be diverted to the nugatory ‘case stated’ process which requires what is in essence a re-stating of the tribunal’s original written decision.

Table 6: Summary of impacts of proposals – appeal

Category	Result of screening exercise
Crime	No impact.
Community Safety & Victims	No impact.
Equality (dependants / disability / gender / marital status / racial group / religious belief)	<p>A marginal positive impact results from the fact that individuals from ethnic minority backgrounds or having particular religious beliefs are less likely than some other groups, generally speaking, to be resourced or equipped to pursue a lengthy appeals process. A more straightforward and speedy appeal therefore has advantages, though these should not be overstated.</p> <p>Insofar as single parents (predominantly women) may be less likely to have the resources (whether in terms of time or money) to pursue a protracted process, marginal benefits are associated with a speedier mechanism for appeals in respect of marital status, gender and dependant status.</p> <p>A small number of individuals with mental health disabilities and/or lacking in the resources of other groups may find it marginally easier to engage with a less protracted appeals process.</p>
Health	The changes will be likely to marginally reduce the stress that can be associated with a protracted legal process.
Human Rights	Removal of the ‘case stated’ process will allow for speedier access to appeals mechanisms and is thus a positive development from the point of view of Article 6 of ECHR.
Rural	No impact.
Social inclusion	A marginal positive impact results from the fact that socially marginalised groups are less likely to be resourced or equipped to pursue a lengthy appeals process. Shortening the process will have marginal benefits.
Economic Appraisal	Not relevant.
Economic	See ‘Regulatory’ below.
Regulatory	Small savings will result from the proposed streamlining of the appeals process, in that fewer resources will be needed to bring an appeal.
Legal Aid	No impact.
State Aid Compliance	No impact.
Environment	No impact.
Strategic Environmental	No impact.

people:skills:jobs:



Department for
**Employment
and Learning**
www.delni.gov.uk



INVESTOR IN PEOPLE

THE DEPARTMENT:

Our aim is to promote learning and skills, to prepare people for work and to support the economy.

This document is available in other formats upon request.

Further information:

telephone: 028 9025 7580

e-mail: employment.rights@delni.gov.uk

website: www.delni.gov.uk