



Office of the

**First Minister and
Deputy First Minister**

www.ofmdfmi.gov.uk

Equal Pay Act 1970 (Amendment) Regulations (Northern Ireland) 2005

Equality Impact Assessment

The attached final Equality Impact Assessment was completed by the Department for Employment and Learning (DEL) in respect of phase 2 of the industrial and fair employment tribunal reform process.

In tandem with this process, the Office of the First Minister and Deputy First Minister made the above-named Regulations, which come into operation on 3 April 2005. The OFMDFM Regulations alter the industrial tribunal procedure for equal value cases, and the DEL Equality Impact Assessment incorporates an assessment of the impact of the OFMDFM Regulations.

OFMDFM would like to acknowledge thanks to DEL for their co-operation in this matter.

INDUSTRIAL AND FAIR EMPLOYMENT TRIBUNAL REFORM (PHASE 2): FINAL EQUALITY IMPACT ASSESSMENT

EXECUTIVE SUMMARY

This paper is the final Equality Impact Assessment (EQIA) of Regulations implementing changes to the Rules of Procedure governing tribunals in Northern Ireland concerned with employment – the **Fair Employment Tribunal** (FET) for cases involving religious belief and political opinion, and the **industrial tribunals** (ITs) for all other cases. The tribunals are managed by the Office of Industrial Tribunals and the Fair Employment Tribunal (OITFET).

Consultation on the Regulations ended in October 2004 and the Department has published its response. This EQIA builds on the findings of the preliminary EQIA by assessing the equality impact of the Regulations in their final form.

Proposed Reforms

The consultation material provided full detail of the reforms that were envisaged, but in brief the reforms encapsulated in the Regulations are:

- an easier to understand and more logical process
- standard forms, garnering information early
- limits on time extensions and on conciliation periods to promote speed
- an early (at pre-acceptance stage) sifting out, and a striking out (at pre-hearing review) of claims unsuited to the process
- default judgements for uncontested claims
- the ability of the President of the tribunals to issue practice directions
- potential costs for preparation time, or for representatives on the basis of their conduct

and in equal value cases –

- specialists to speed up equal pay cases
- directions for greater consistency and user-friendliness
- greater emphasis on case management speeding decisions
- more effective use of independent experts
- reduction in time spent on adversarial treatment of those experts
- improved access to tribunal system

The finalised Regulations also make changes to the public Register maintained by OITFET.

Purpose

The purpose of an EQIA is to provide a basis on which equality issues can be identified and assessed, with the aims of ensuring that the Regulations do not carry the potential to discriminate against any group, and that they promote equality of opportunity to the greatest possible extent.

Findings

This EQIA finds that, by providing for speedier and more consistent resolution of tribunal processes, the Regulations are associated with fairness and equality.

It also finds that any potential for the Regulations to discriminate against particular groupings is largely offset by a series of safeguards that have been explicitly built into the Regulations, including:

- consideration of the **ability to pay** when determining cost awards
- **exemption of 'not for profit' representatives** from being subject to wasted costs
- **absence of time limits** on conciliation when considering discrimination cases
- provision of **forms** designed with disadvantaged users in mind
- **restrictions** on capabilities of Chairmen to strike out cases
- **appeals** on default judgements.

In turn, this contribution to fairness will promote equality of opportunity.

Two organisations queried aspects of the preliminary EQIA, particularly the absence of statistical basis for its conclusions. The Department is putting in place measures to enhance the statistical framework available, and this point is addressed in more detail at 2.1 below.

1 BACKGROUND

1.0 Policy Context

Rationale

The Department believes that good relations in the workplace promote economic and social progress, which are in turn central to the fostering of equality. This updating of the Rules governing the operation of the tribunals is part of a larger framework which encourages good relations in the workplace, followed successively by settlement in the workplace, conciliation or mediation and, only if necessary, a tribunal. The Rules will be implemented by Regulations.

The need for these Rules follows from implementation of the Employment (Northern Ireland) Order 2003, which also established minimum statutory

procedures to be followed by employers and employees in disputes in the workplace. The Regulations for the dispute resolution element of the 2003 Order will come into operation at the same time as the Tribunal Rules, on 3rd April 2005.

The consultation material provides full detail of the proposed changes.

Consultation overview

The policy basis for all the foregoing has been the subject of extensive public consultation, including the publication of *'Routes to Resolution'* in 2001 which invited views on a range of policy proposals aimed at creating an overarching framework for resolving employment disputes. For full detail, see the main consultation document.

These Regulations are the second phase of tribunal reform programme. The first phase of reforms, set out in S.R. 2004 No. 164 and S.R. 2004 No. 165, was concerned with deterring unmeritorious claims, improving case management and introducing provision for handling national security cases.

Consultation on the first phase of the reforms was held in 2003 and the outcome of that consultation process is detailed in the Departmental Response of March 2004. That response provides an explanation as to why the Regulations had to be updated in two stages.

1.1 An Equality Impact Assessment

An EQIA represents a thorough and systematic analysis of a policy with particular reference to nine equality categories defined in the Northern Ireland Act 1998. The equality categories are:

- Religious belief
- Political opinion
- Racial group
- Age
- Marital status
- Sexual orientation
- Gender
- Disability
- Dependency (those with dependent(s) and those without).

In addition each public authority should have, without prejudice to its obligation above, *'regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group'*.

1.2 Purpose of an EQIA

This EQIA has two objectives:

- To ensure that no grouping, particularly the equality categories identified in the Northern Ireland Act, will be disadvantaged by any

eventual introduction of changes to the Rules of Procedure for tribunals in Northern Ireland, and

- To ensure that, as far as possible, the eventual implementation of any changes promotes good relations and equality of opportunity.

1.3 General requirement for an EQIA

Section 75 of the Northern Ireland Act 1998 placed a requirement on each public authority, in this case the Department for Employment and Learning (“the Department”), to have due regard to the need to promote equality of opportunity. Schedule 9 to the Act sets out detailed provisions for the enforcement of these duties, including the key elements of an Equality Scheme, which is required to show ‘*how the public authority proposes to fulfil the duties imposed by section 75*’.

Paragraph 4(3) of Schedule 9 to the Act requires Equality Schemes to conform with the Equality Commission’s ‘*Guide to the Statutory Duties*’. This Guide outlines the principles of an Equality Impact Assessment and identifies seven separate elements of an EQIA.

The overall aim of an EQIA is to determine the extent of differential impact upon the relevant groups and, in the light of this assessment, to consider:

- measures which might be employed to mitigate adverse impact; and
- alternative policies which might better achieve the promotion of equality of opportunity.

The seven elements identified in the Equality Commission’s Guide are:

- Consideration of available data and research
- Assessment of impacts
- Consideration of measures – mitigating and alternative
- Formal consultation
- Decision by Public Authority
- Publication
- Monitoring

These elements are interlinked and not chronological. They are considered in the above order in the following sections.

1.4 Scope of this EQIA

From an equality standpoint the most significant aspect of the Regulations is that they are explicitly concerned with mechanisms and processes by which justice can be accessed, and hence by which fairness can be promoted.

The Regulations therefore have a *prima facie* contribution to equality, in that their purpose is to ensure greater fairness, both directly by determining tribunal hearings and indirectly by fostering an understanding of rights and responsibilities throughout the workplace by employees and employers alike.

The proposed new tribunal Regulations are therefore concerned, across all sectors of the economy, with:

- employees and former – particularly dismissed – employees with a grievance
- employees facing disciplinary measures
- employers, particularly those with employees in the above categories.

Others expected to be affected by the proposals include:

- the families of the affected employees and employers
- the remainder of the workforce, particularly those who share an attribute (such as gender or religious belief) that the employee contends is a factor in their treatment
- other members of the wider labour force that work in the same industry, members of the same union, or those in other firms that share the employee's attribute
- all employees generally
- other employers
- wider society.

It is intended that all those who can benefit from the changes should be able to do so in a consistent and even-handed way. Accordingly, this EQIA attempts to identify any potential sub-groupings whose needs differ significantly from those of the rest of the target group – that is, those who could be disadvantaged in the absence of specific tailoring of the scheme's implementation to suit their needs.

Given that the nature of the proposals is to promote fairness for all, the Department's intention is that no group will be excluded.

1.5 Policy implementation and interaction with other public bodies

DEL has responsibility for strategic policy in relation to employment rights in Northern Ireland.

The Department, which includes the Office of the Industrial Tribunals and the Fair Employment Tribunal, will continue to co-ordinate with and inform the wider public sector, notably the Equality Commission for Northern Ireland and the Labour Relations Agency.

No wider impact on public policy is expected.

1.6 Screening Exercise

The initial impetus for policy formulation in this area was not the initial screening of the Department's (or its agencies') policies for potential negative impact. Rather, the policy was motivated by the recognition that existing processes have led to increasing strain on OITFET and the LRA, and delays

for applicants in receiving justice. These concerns, in part, prompted the original discussion paper *'Routes to Resolution'*.

2 DATA COLLECTION AND CONSULTATION

2.1 Consideration of data and research

Statistics – a context

A preliminary EQIA was completed in respect of the public consultation paper issued on this second phase of tribunal reform. Approximately 400 organisations and individuals were invited to participate in this consultation exercise.

Two respondents to this consultation queried the statistical basis for the findings of the preliminary EQIA.

Ideally workplace disputes would be resolved in the workplace by dialogue, without the need for any external framework, such as mediation, conciliation, arbitration or tribunal hearing. It is believed that this is indeed the case for the vast majority of disputes, though with the caveat that many of the cases settled at work may be relatively minor.

In relation to these 'internally resolved' cases no statistics are available; nor should they be collected, as this would be overly onerous on employers and unlikely to provide any useful information.

However, and this is a key difficulty in considering equality in tribunal processes, we simply do not know whether or not the claims coming forward to the tribunals are reflective of the underlying extent of employment disputes. It may be that some groupings are less able to resolve their disputes without external assistance, or that some groupings are more determined to see their claim addressed. In either case this would lead to over-representation of that group in relation to the workload of the tribunals. Without surveying wider employees, however, we cannot know if any group is 'over-represented' in this way, or what may be the cause of that 'over-representation'.

Any statistical analysis of the tribunals in isolation is therefore not only weakened by excluding these external factors, but is also potentially misleading.

The Department takes the view, in this area as with other areas of employment, that what is important in equality terms is that every individual is provided with statutory rights (as well as obligations) to enable him or her to access fairness, preferably speedily and at low cost. The issue becomes one then that is qualitative, rather than quantitative i.e. the 'equality question' is not *'is one grouping more likely to use a particular mechanism than another?'* but *'is the mechanism itself fair to all, regardless of their equality category?'*

This is the approach adopted in this EQIA. It is explicitly concerned with exploring whether the measures are likely to provide a reasonable and fair route to justice for those who have a complaint; it does not seek to demonstrate uptake by particular groupings.

Notwithstanding the foregoing, the Department believes that it is important to provide more robust statistical information with regard to tribunals and has taken steps to facilitate this. A new management information system is set to 'go live' within OITFET in March 2005, which will provide detailed statistics. In the first place, this will provide fundamental management information such as registrations and promulgations of decisions for Industrial Tribunals and the Fair Employment Tribunal. Further enhancements will be considered as this beds in. In addition, it has been agreed that an annual report will be issued for 2005/06 and beyond which will make such information more readily accessible to the public. The aim is to develop the range of statistics available, in the area of tribunal operation including performance against service level standards, to inform future policy development.

The Department is keen to supplement this data by conducting research among tribunal users, as announced in the recent Departmental Research Agenda 2004. As part of this exercise, the Department invited organisations to propose research projects covering such issues as:

- “What are the perceptions of disputes resolution across a variety of representative groups in society? What are people’s expectations and experiences of the system? How accessible, helpful and comprehensible are the LRA and tribunal routes? Is there an understanding of rights and obligations?”
- How rising case loads and the protracted time needed to resolve cases impact on the interests of applicants and respondents?
- What is the effect on employers of bearing the heavy costs of defending weak tribunal claims? What are the effects on employees of the prospect of a pre-hearing deposit or a costs order being made against them?
- When cases go to tribunal, what are the factors motivating a ‘doorstep’ settlement?”

The closing date for receipt of proposals was in January 2005, and the Department is currently appraising projects submitted in response to this invitation. Decisions will be taken shortly on the optimum approach to gathering the information listed above. Consideration will be given to gathering equality information on a recurring basis, in order to allow the Department to identify the impact of the new tribunal procedures over time.

3 KEY FINDINGS

3.1 General Impact

The assessment of the existence and extent of any adverse impact on any grouping arising from this set of Regulations includes specific impact on each

of the nine equality categories identified in the Northern Ireland Act 1998. In advance of considering those equality categories individually, this EQIA considers the extent to which the Regulations make a commitment to equality more generally.

General contribution to equality

The introductory remarks noted that on *prima facie* grounds the Regulations contribute to greater fairness, through streamlining the resolution of tribunal cases. This promotes equality directly by:

- delivering justice more speedily to claimants within the tribunal process
- making the tribunal process less daunting to some, notably the vulnerable who cannot easily wait for a long time before their grievance is addressed.

3.2 Impact by Equality Grouping

Each of the nine equality categories outlined in the Northern Ireland Act 1998 is first tested for having the potential for a differential impact. The possible nature and scale of such an impact can then be examined in greater depth.

The table overleaf presents the results of the relevance testing of this policy area against the statutorily-required nine equality categories.

The table shows that, while the tribunal system is open to all, entry is based on experience in the workplace, and it is arising from that experience that (almost all of) the equality categories will see the potential for differential impact.

Potential Relevance Testing by Equality Category

Category	Potential relevance
Age	<p>Those affected by tribunal rules of procedure are mostly of employment age</p> <p>Age may itself be associated with a grievance, and hence a tribunal claim</p> <p>Examples of such claims can include pay or eligibility for a pension scheme</p>
Marital status	No relevance

Category	Potential relevance
<p>Gender / Men and Women generally</p>	<p>Women are more likely than men to be in vulnerable or low-paid employment, where procedures may not be clearly defined</p> <p>This may make it more likely that a grievance will be lodged with a tribunal</p> <p>In addition, both women and men have a statutory entitlement to apply to an industrial tribunal if they feel they are not being paid equally for work that is comparable to work carried out by a colleague of the opposite sex (an equal pay claim). Schedule 3 to the industrial tribunal Regulations, which forms part of the consultation, deals with this issue</p>
<p>Persons with a disability</p>	<p>Failure to comply with legislation protecting rights of the disabled can lead to a tribunal claim</p> <p>Disability may also inhibit participation in tribunal proceedings where special provision is not available for disabled users to access the system</p>
<p>Persons with dependants</p>	<p>Dependants may restrict an individual's ability to pursue the tribunal process, particularly if unrepresented, as for example care issues may reduce the time available to prepare a claim</p>

Category	Potential relevance
Political opinion	{ These groupings are each associated with areas of potential discrimination in the workplace Their treatment may directly give rise to a grievance; for example, the requirement to work certain hours / days / holidays may be contrary to a particular religious belief Membership of some of these equality categories – sexual orientation or political opinion in particular – may be considered by the individual to be a personal or private matter, such that the public nature of tribunal proceedings may be off-putting }
Racial group	
Religious belief	
Sexual orientation	

3.3 Implications of Impact by Equality Grouping

This EQIA therefore notes that the Regulations have a *prima facie* equality implication (positive or adverse) for the following 8 categories:

- Age
- Dependants
- Disability
- Gender
- Political opinion
- Racial group
- Religious belief
- Sexual orientation

In every case the same equality impact issues arise – *do the Regulations enable the grouping to protect or advance their rights more effectively?*

The rest of this section considers each of the reforms in turn to answer this question.

[Note that there are in addition a number of small miscellaneous revisions, such as permitting hearings to be held by telephone, and electronic communication of documents, listed in the main consultation paper at

paragraph 49. None of these is considered to give rise to any equality impact, and are therefore not considered further.]

(I) General Reforms

An easier to understand and more logical process

This is unambiguously positive in equality terms as a simpler, more consistent process benefits all users, but particularly those without access to sophisticated advice. This then erodes any differential between those with considerable resources and those without.

Standard forms, garnering information early

A number of the reforms are concerned with gathering information or making decisions at an earlier stage in the tribunal process. In general this is helpful, even for those who then see their claim struck out: it removes uncertainty and prevents the wasting of time on a claim which does not have any real prospect of success. The forms will be designed to elicit key information from applicants and respondents, and associated guidance should assist all parties in setting down the fundamental points of their case.

It can be argued there is the danger that requiring information at an early stage results in an applicant not fully developing his or her claim within the required time-scale and consequently seeing it struck out. When weighed against speedier handling of cases – which will benefit all groups – this argument, however, is weak.

In relation to the actual design of the final forms, care is being taken in the selection of font, size of text, layout and contrast between colours to assist partially sighted people and those with dyslexia. The forms will also be available in a number of other formats upon request to assist those with a disability, or whose first language is not English.

The development of the forms is clearly aligned with best practice in the promotion of equality. It standardises the information required from every party, helping them put forward their case in a structured and coherent way. The forms will be accompanied by clear guidance to assist claimants and respondents in providing the appropriate details.

The Industrial Tribunals Procedures and Fair Employment Procedures booklets provides details of organisations that can provide advice or help with an application for those who are unrepresented. The booklets also provide details of the assistance that can be provided to those tribunal users who may have special needs. In addition to the help which may be available through these organisations, it may be possible to provide a reader service for those tribunal users who have literacy problems.

If an applicant, or a person required to attend a tribunal, has problems communicating in English, OITFET will make arrangements for an interpreter

service at hearings and will also make provision for the translation of documents where these services are required and requested. There have been several cases where interpreters have been provided for the Portuguese language and a few cases where Cantonese was required. Additionally, there have been individual cases where Turkish and Nepalese interpreters have been provided. The Department is involved in an inter-Departmental working group considering the needs of migrant workers and will apply the learning from this exercise as appropriate.

Limits on time extensions and on conciliation periods to promote speed

Restricting to a clear timeframe the Labour Relations Agency's duty to offer its conciliation service is more likely to benefit than disadvantage parties who are genuinely seeking an agreed solution. The unambiguous deadline surrounding the process will help focus the minds of all those involved upon the fact that judicial proceedings are fast approaching.

A case that cannot be conciliated with the LRA's professional assistance within the timescales suggested is likely to be of the more intractable variety that is best dealt with by a tribunal hearing.

The exception to the restriction on the duty to conciliate is in the area of discrimination, where the complexity of cases is such that the issues may require a lengthy teasing out. The new provisions in these circumstances place no time limit upon the conciliation period. This exemption will apply to claims (or aspects thereof) related, for instance, to disability, race, gender, religious belief or political opinion, in recognition of the fact that these cases are often not straightforward.

An early (at pre-acceptance stage) sifting out, and a striking out (at pre-hearing review) of claims unsuited to the process

Under the proposed pre-acceptance procedure, a claim will not be accepted if it exhibits characteristics listed in rule 3(2) (e.g. out of time, insufficiently filled out, outwith the jurisdiction of the tribunal and so on).

In a pre-hearing review a Chairman, sitting alone, may strike out a claim or require a deposit (of up to £500).

These are considerable powers, but are to be exercised only in circumstances where proceedings have been conducted in an inappropriate manner or where the case has no reasonable prospect of success. This should not affect those with genuine complaints who present them in a reasonable way.

Default judgements for uncontested claims

The intention of this reform is two-fold; to bring claims to an earlier conclusion where the respondent will not participate in the process and, perhaps more importantly, to indicate the importance of full participation. It will enhance the ability of tribunals to process cases more speedily, which should benefit all users of the system.

The ability of the President of the Tribunals to issue practice directions

The equality implication of this reform will depend on the actual practice directions that are issued in the future. These cannot be identified now, and cannot therefore be assessed for their equality impact. However, the overriding objective of the new tribunal processes is justice, and any practice direction that is issued will have to be consistent with this. As a result, practice directions are not expected to conflict with the promotion of equality.

Costs

Preparation time awards extend the right to recover costs to parties not legally represented when the case is determined (those who are so represented can at present, and will continue to be able to, recover costs). The impact of this change is then to equalise treatment between these two groups. The proposals also provide for a wasted costs order (an order for costs against representatives who behave inappropriately).

Both of the above provisions are, however, tempered. No wasted costs order can be made against an unpaid (by the claimant) representative, i.e. one from the 'not for profit' sector. Preparation time awards are similarly constrained to situations where behaviour is unreasonable (see the Rules for a more precise definition).

Additionally the 2003 Order permits the Rules to enable tribunals to take into account a party's ability to pay. The draft Rules accordingly provide that a costs award will not be made before the party's ability to pay has been considered.

(II) Equal value cases (industrial tribunals only)

In all of the following it should be noted that the rationale for change is acceptance that the present system can be slow and complicated, and that problems around case management, operation of the Rules, use of experts and their evidence are all present.

Specialists to speed up equal pay cases

The consultation material noted the exceptionally long time (examples include five years) that an equal pay case may last, and this is clearly contrary to the intention of the legislation, and the interests of the applicants.

The use of tribunal panels with specialist knowledge offers the prospect of quicker processing of these cases, which can be highly complex.

Directions for greater consistency and user-friendliness

The complexity of this area requires specific procedures, which need to be standardised for consistency.

Greater emphasis on case management speeding decisions

Application of enhanced case management should facilitate the more swift resolution of lengthy equal pay cases. This is clearly in the interests of all parties.

More effective use of independent experts, and reduction in time spent on adversarial treatment of those experts

The role of independent experts has evolved in recent years, and there has been a tendency for their evidence to take a more central role in the proceedings, leading to a more adversarial approach as the case shifts focus towards contesting 'evidence'. In turn, this more central role has resulted in the expert driving (or, more often, failing to drive) the tribunal rather than the reverse.

Improved access to tribunal system

The removal of the "no reasonable grounds" defence in the Equal Pay Act (NI) 1970, which enables a tribunal to dismiss a claim on the grounds that it has no reasonable grounds for determining that work is of equal value by finding against the complainant, would mean that in an equal value case, the tribunal would either have to consider the claim itself or appoint an independent expert to consider it. This measure is about fairness, and aims to ensure that all applicants get a hearing.

(III) Public Register: Potential Equality Implications

The changes to the Register act to promote fairness for all tribunal applicants. The removal of address details from the Register will make it less likely that applicants will attract unwanted attention from 'ambulance chasers' who might be expected to target the vulnerable in particular. The omission of these details will also make it more difficult for unscrupulous employers to blacklist individuals who have taken a tribunal case, and thus will be of benefit to all employees.

Keeping case details off the public Register until the fixed conciliation period has ended, by maximising the chances of early settlement in many types of case, will reduce the exposure of the vulnerable to the potentially stressful tribunal environment.

Conclusion on equality impact of individual proposals for reform

The proposed reforms, while designed to make tribunal processes more efficient, in some cases carry an inherent potential to disadvantage the vulnerable. Actions of a tribunal in requiring a deposit, setting time limits for conciliation, emphasising form-filling, raising the prospect of costs being awarded against representatives, and so forth, could potentially all act to deter some claimants – particularly those considered vulnerable or ill-resourced – from progressing with a claim.

However in all cases the proposed powers have been constrained in a manner that protects the vulnerable. Thus, for example:

- time limits on LRA conciliation are not applied where cases are likely to be complex
- ‘not for profit’ representatives (who are likely in practice to represent the vulnerable) are exempt from being subject to a wasted costs order
- costs may be awarded to an unrepresented party for time spent preparing a case
- ability to pay is expressly recognised as a factor which tribunals may consider in making costs awards
- the forms will meet accessibility standards and will be accompanied by clear guidance (including details of where to get help).

Given, often as a result of these safeguards, that no adverse equality impact was detected within the consideration of any individual reform, it is concluded that none of the measures individually, or in aggregation, are directly or indirectly discriminatory by equality category.

3.4 Equality of Opportunity and Promotion of Good Relations

The proposals act to raise fairness and equality by strengthening the tribunal system’s ability to deal with cases justly and in a timely way. This will help to ensure that employers fully recognise and implement their responsibility to provide fairness in employment. It will also discourage weak or spurious cases by allowing these to be disposed of at an early stage, thus permitting tribunals to deal more quickly with deserving cases.

Fairness is closely associated with the promotion of good relations, and the Regulations – by strengthening the tribunal system – will help ensure that disputes, and hence bad workplace relations, are reduced.

3.5 Establishment of Scale of Impact

A Regulatory Impact Assessment (RIA) has been prepared for these proposals. The RIA forms **Annex C** to the consultation response.

4. CONSIDERATION OF MEASURES: MITIGATING AND EQUALITY PROMOTING

Various approaches to be adopted by the tribunal to ensure that the impact of the tribunal rules is fair are outlined at **3.3 Implications of Impact by Equality Grouping** above.

The preliminary Equality Impact Assessment identified sexual orientation as an area in which potential applicants might be put off the tribunal process because of the public nature of tribunal proceedings. The consultation process revealed concerns about this issue, and in particular the view that such applicants would be more unwilling to lodge a claim than those with

other types of complaint. In light of these concerns, the Department considered two possible strategies:

1. Make no alteration to the law. The argument for this option centred around the issue of press freedom and ensuring transparency within the tribunal system.
2. Amend the law to allow for restriction of publicity in sexual orientation cases. This option had the merit of protecting individuals who would not wish sensitive information about their private life to become public knowledge.

Legal advice obtained by the Department indicates that an amendment to primary legislation would be required to give the Department the necessary power to restrict publicity in sexual orientation cases. Currently, the Department only has power to provide for restricted reporting orders in relation to cases involving national security (Article 12 of the Industrial Tribunals (NI) Order 1996), sexual misconduct (Article 13), and disability (Article 14).

Representations favouring amendment of the primary legislation to cover sexual orientation will be considered when a suitable legislative vehicle has been identified. This proposal will, of course, be subject to the normal consultation process.

Overall, the Regulations are found to be equality promoting with no adverse implications or discrimination arising and hence further mitigating measures are not relevant.

4 FORMAL CONSULTATION

4.1 Consultation background

The Department's consultation document discusses the public consultation processes that have been followed in this policy area, and their context.

5 DECISION BY PUBLIC AUTHORITY

5.1 Responsible Public Authority

Implementation will be by the Department for Employment and Learning as described in the Department's response to the public consultation.

No new international obligations arise.

6 PUBLICATION

6.1 Publication and Publicity

The Department will make employers and employees aware of the change to tribunal procedures as part of a broader public awareness-raising campaign highlighting new statutory dispute resolution procedures. The Labour Relations Agency will play a key role in publicising the measures amongst employers, and the Department has been working with NI Citizens Advice Bureaux to ensure that they provide appropriate information to employees. Up-to-date information on the new regulations is held on the Department's website, www.delni.gov.uk/resolvingdisputes.

OITFET are updating their guidance materials and tribunal application and response forms and will send these out in bulk to main tribunal users, and individually to those who approach the tribunals (e.g. to make a tribunal application). Both the administrative staff of the tribunals and the judiciary will seek to point users of the tribunals to further information on the new rules.

7 MONITORING

7.1 Responsibility and Mechanism

Monitoring will be the responsibility of DEL. This is in line with its existing responsibilities and procedures already in place in relation to OITFET and the LRA.

DEL has already committed to improving the data gathering systems operated by the tribunals (see section 2.1 above). In light of that commitment, no special or differential monitoring techniques or tools are required.

The overall target of the new Rules is to ensure that tribunal processes are fair and easy to understand, and to support the overriding objective of the Rules to deal with a case justly, so far as practicable, by:

- ensuring that the parties are on an equal footing;
- saving expense;
- dealing with the case in ways which are proportionate to the complexity of the issues; and
- ensuring that it is dealt with expeditiously and fairly.

Successful attainment of this goal should result in the Department meeting the draft target to be included in its 2005-2008 Corporate Plan:

“To reduce waiting times in the discrimination jurisdictions, from tribunal application being received by the tribunals to the parties being offered a full hearing, by 10% year on year.”