EXPLANATORY MEMORANDUM TO

The Labour Relations Agency (Code of Practice on Disciplinary and Grievance Procedures) (Jurisdictions) Order (Northern Ireland) 2011

S.R. 2011 No.

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for Employment and Learning ("the Department") to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under Article 90AA(6) of the Industrial Relations (Northern Ireland) Order 1992 ("the 1992 Order") and is subject to the draft affirmative resolution procedure.

2. Purpose

2.1. The Labour Relations Agency (Code of Practice on Disciplinary and Grievance Procedures) (Jurisdictions) Order (Northern Ireland) 2011 corrects an omission from Schedule 4A to the 1992 Order. This amendment will enable an industrial tribunal to vary an award where there has been an unreasonable failure to comply with the Labour Relations Agency Code of Practice on Disciplinary and Grievance Procedures in respect of complaints brought under regulation 51 of the Companies (Cross-Border Mergers) Regulations 2007 ("the 2007 Regulations").

2.2. Article 1 cites the name of the Order.

2.3. Article 2 inserts a reference to regulation 51 of the 2007 Regulations into Schedule 4A to the 1992 Order.

3. Background

3.1. The Employment Act (Northern Ireland) 2011 ("the 2011 Act") made changes to the statutory arrangements concerning the resolution of disputes arising in the workplace. The Act repealed the statutory procedural requirements for resolving workplace disputes insofar as they applied to grievances, providing instead for the Labour Relations Agency (LRA) to issue a Code of Practice relating exclusively or primarily to procedure for the resolution of disputes.

3.2. The 2011 Act inserted a provision into the 1992 Order that permits a tribunal to vary an award by up to 50% where there has been an unreasonable failure to comply with good practices set out in the LRA Code of Practice on Disciplinary and Grievance Procedures. This was qualified by the insertion of a Schedule listing the tribunal jurisdictions to which the provision would apply. It is this Schedule - Schedule 4A of the 1992 Order - in which the omitted provision ought to have been included.

3.3. Regulation 51 of the 2007 Regulations enables certain employees and their representatives to make a complaint to an industrial tribunal where they have

been subject to detriment for exercising rights and entitlements in the context of a cross-border merger.

4. Consultation

4.1. No formal consultation has been undertaken in respect of the Order as it contributes to a policy programme that has already been the subject of a full public consultation process.

5. Equality Impact

5.1. This Order has not been subject to a separate equality impact assessment as it merely corrects an omission from legislation that has already been subject to a full assessment as part of the Department's review of dispute resolution procedures. That assessment identified modest positive differential impacts for all of the section 75 groups, given that the changes to dispute resolution procedures will open up opportunities for resolving workplace disputes in a more constructive and efficient manner.

6. Regulatory Impact

6.1. This Order has not been subject to a separate regulatory impact assessment for the reason given above; i.e. it merely corrects an omission from legislation that has already been subject to a full assessment..

7. Financial Implications

7.1. As the Order corrects a drafting omission, thereby complying with the original policy intent, it does not have any financial implications over and above those already identified as part of the assessment of the Department's review of dispute resolution procedures.

8. Section 24 of the Northern Ireland Act 1998

8.1. The provisions of the Order are not considered to be in breach of Section 24.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The Order applies only to Northern Ireland.

11. Additional Information

11.1. Not applicable.