EXPLANATORY MEMORANDUM TO

The Fair Employment Tribunal (Rules of Procedure) (Amendment) Regulations (Northern Ireland) 2011

S.R. 2011 No. 162

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 84(1), (2), (2A) (2B) and (3) of the Fair Employment and Treatment (Northern Ireland) Order 1998 and is subject to the negative resolution procedure.

2. Purpose

2.1. The Regulations amend the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005 ("the 2005 Regulations"). The 2005 Regulations set out the regulations and Rules of Procedure governing industrial tribunals.

2.2. The amendments to the 2005 Regulations have two purposes. The first is to take account of changes to primary legislation made by the Employment Act (Northern Ireland) 2011 ("the 2011 Act"). The second is to set in place efficiency measures and improvements agreed by the Standing Advisory Committee on the Tribunal Rules of Procedure ("Rules Committee").

2.3. Regulation 1 cites the name of the Regulations and the date on which they come into operation. Regulation 2 specifies that the subsequent amendments will be applied to Schedule 1 to the 2005 Regulations.

2.4. Regulation 2 contains the amendments to Schedule 1 to the 2005 Regulations. Paragraphs (2) and (4) make changes related to the repeal by the 2011 Act of the statutory grievance procedures for resolving workplace disputes, which until now have had implications for tribunal processes. Paragraph (3) makes a very minor change to wording to assist with reading.

2.5. Paragraphs (5), (6) and 8(a) make changes designed to address issues identified by the Rules Committee in relation to the provision of late responses to tribunal claims. Under the new process, it will be possible for the tribunal to accept a request for an extension to the time available for providing a response after the normal period for providing a response has ended, provided that a completed response form accompanies the request and that the tribunal chairman considers it just and equitable to accept the request. Where extension is agreed, the parties will be informed and will have seven days during which they may lodge an objection if they wish.

2.6. Paragraph (7) amends the procedure for issuing default judgements by making clear that a default judgement shall not be issued in situations where the tribunal lacks appropriate jurisdiction or has insufficient evidence, or where the parties have concluded a compromise agreement or conciliated settlement. A default judgement is a judgement arrived at in circumstances where a response to a claim has not been received, has not been accepted, or where a response has been received but the claim is not contested.

2.7. Paragraph (8)(b) amends the tribunals' general power to manage proceedings so that it will not be necessary to inform all parties when the tribunal orders attendance of a witness. Paragraph (9) makes similar amendments concerning the information that must be supplied by a party making an application to the tribunal and the relevant time limits, and includes provision consequential upon the changes made by paragraph (5).

2.8. Paragraphs (10) and (11) make changes to the 2005 Regulations concerning the withdrawal of proceedings. Paragraph (10) clarifies that a claimant cannot restart proceedings which have been dismissed unless there has been a successful review or appeal. Paragraph (11) provides for the automatic dismissal of claims which have been settled through the Labour Relations Agency.

2.9. Paragraph (12) amends the procedure for reviewing default judgements. The effect is to clarify existing provision; enable preliminary matters surrounding an application for a review to be dealt with by a chairman sitting alone; and allow for a review to take place in the absence of a hearing where the parties give their written consent.

2.10. Paragraphs (13) and (14) modify provisions in the 2005 Regulations relating to the communication of information in relation to proceedings. Paragraph (13) deals with requests for certain documents from the Attorney General for Northern Ireland. Paragraph (14) concerns the addresses to which particular notices should be sent.

2.11. Regulation 3 provides for transitional arrangements. Paragraph (1) harmonises arrangements for the repeal of aspects of the statutory dispute resolution procedures with related provisions in the Employment Act (Northern Ireland) 2011 (Commencement No. 1, Transitional Provisions and Savings) Order (Northern Ireland) 2011 (S.R. 2011 No. 000 (C. 00)). Paragraphs (2) to (4) provide for transitional arrangements in relation to default judgements, the automatic dismissal of proceedings where a Labour Relations Agency settlement has been reached, and the power of a chairman to review a default judgement on his own initiative.

3. Background

3.1. The amendments to the 2005 Regulations give effect to provisions of the 2011 Act concerning the repeal of the statutory grievance procedures for resolving workplace disputes. They also respond to a comprehensive two-year review of systems for resolving disputes which identified the need for a more

efficient and effective tribunal system. With that in mind, taking into account the views of the Rules Committee, the 2005 Regulations are amended to make a series of clarifications of and improvements to tribunal processes.

4. Consultation

4.1. The final package of amendments set out in the Regulations has been arrived at following a two-year fundamental review of systems for resolving disputes in the workplace. They make amendments consequential upon the repeal of the statutory grievance procedures by the 2011 Act and respond to the efficiency and effectiveness concerns highlighted by the review. There has been detailed consultation on the final content of the Regulations with the Rules Committee which consists of representation from the tribunal judiciary, tribunal users, the Department for Employment and Learning and the Northern Ireland Courts and Tribunals Service.

5. Equality Impact

5.1. The policy decisions arising from the review of systems for resolving disputes were subject to an Equality Impact Assessment which identified modest positive differential impacts for all of the section 75 groups. A more efficient and effective tribunal system will be associated with improved access to justice. Specifically, the repeal of the statutory grievance arrangements will reduce confusion around the time limits associated with lodging a tribunal claim and modest impacts can be expected from less complex tribunal forms. Particular benefits associated with the specific changes in the Regulations fall to those whose first language is not English (those of differing racial or religious background) and individuals with disabilities relating to mental health.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment was carried out in relation to policy proposals resulting from the dispute resolution review. It identified that businesses are likely to realise savings of around £1.5 million per annum as a direct result of the repeal of the statutory grievance procedures across all employment rights jurisdictions. These Regulations ensure that tribunal processes are in keeping with the repeal of the procedures.

7. Financial Implications

7.1. Repeal of the statutory grievance procedures across all employment rights jurisdictions will result in savings of around £25,000 per annum to the Office of Industrial Tribunals and the Fair Employment Tribunal as a result of the reduced complexity of claims and pre-acceptance procedures (source: Regulatory Impact Assessment referred to above).

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department has received legal clearance to the making of the Regulations. The provisions of the Regulations 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 Regulations introduce changes corresponding, in part, to amendments set out in S.I. 2008/3240 which were arrived at following a separate dispute resolution review in Great Britain. Only partial parallels can be drawn between the respective sets of Regulations given the differing outcome of the respective review processes, and given the fact that there is no direct equivalent to the Fair Employment Tribunal in Great Britain.

11. Additional Information

11.1. Not applicable.