EXPLANATORY MEMORANDUM TO

The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020

S.R. 2020 No. 3

1. Introduction

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

1.2. The Statutory Rule is made under Article 26(1) of the Health and Safety at Work (Northern Ireland) Order 1978, Articles 3(1) and (3), 6(6) and (6A), 9(1), (3), (3ZA), (3A), (3AA), (3AB), (3B), (3C) and (5), 9A(1) and (2), 11(1), (2) and (4), 12(2), (5), (6) and (7), 12A(1), 13(1) and (1B), 14(2), 15, 15A, 21, 21A(9) and 25(5) of the Industrial Tribunals (Northern Ireland) Order 1996, and Articles 81, 82(5) and (7), 84(1), (2), (2A), (2B), (3) and (5), 84A, 84B(1) and (2), 85A, 85B, 88A(9) and 104(3) of the Fair Employment and Treatment (Northern Ireland) Order 1998 and is subject to the negative resolution procedure.

2. Purpose

2.1. The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020 (the 2020 Regulations) revoke and replace the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005 and the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005.

2.2. The 2020 Regulations provide a revised and consolidated text for the rules and procedures of the industrial tribunals and the Fair Employment Tribunal while simplifying language and structure, being consistent with better regulation principles. Through the 2020 Regulations the Department aims to deliver a more efficient dispute resolution service, better case management, improved user understanding and clearer expectations on the part of all parties to the tribunal process.

2.3. The 2020 Regulations also take account of the introduction of Early Conciliation; in particular setting out the implications arising from the adherence, or non-adherence, to the requirements of Early Conciliation.

3. Background

3.1. In 2012 the then Department for Business, Innovation and Skills launched a review of Employment Tribunal Rules in Great Britain, led by Mr Justice Underhill. That Department published its response in March 2013. The developments in GB and a public consultation by the then Department for Employment and Learning informed policy considerations in respect of the employment-related tribunal system in Northern Ireland.

3.2. Certain revisions to tribunal rules in Northern Ireland are contingent on the commencement of provisions within the Employment Act (Northern

Ireland) 2016 (the 2016 Act). These include Early Conciliation and the addressing of tribunal chairmen as employment judges. Provisions within the 2016 Act in respect of deposit orders and the assessment of matters relating to tribunal proceedings have not been commenced at this time.

4. Consultation

4.1. The Department for Employment and Learning (the functions of which have subsequently been transferred to the Department for the Economy) launched, in 2015, a public consultation titled "Developing Modern, Efficient, and Effective Employment Tribunals". A broad consensus among key stakeholders, dispute resolution user groups and employer/employee representative groups identified that the revised and consolidated tribunal rules would be a welcome development and the preparation of the Rules reflects stakeholder input.

5. Equality Impact

5.1. An assessment of the equality impact of the implementation of the revised tribunal rules concluded that, of the nine equality categories set out under section 75 of the Northern Ireland Act 1998 none would be negatively impacted. There are anticipated to be minor positive impacts in relation to male and female employees, different racial groups and persons with disabilities.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment determined that cost savings will be modest for the most part and cannot be quantified with the data available. Where effective case management leads to a case not proceeding to a final hearing, perhaps because it has been settled or withdrawn, it is logical to conclude that savings will be realised for claimants and respondents

7. Financial Implications

7.1. The cost of implementation by the Office of Industrial Tribunals and the Fair Employment Tribunal is considered to be negligible.

8. Section 24 of the Northern Ireland Act 1998

8.1. This Statutory Rule complies with the provisions of Section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The Statutory Rule applies only to Northern Ireland.

11. Additional Information

11.1. In accordance with Article 36(4) of the General Data Protection Regulation, the Information Commissioner's Office has been consulted on this Statutory Rule.