

EXPLANATORY MEMORANDUM TO

The Industrial Tribunals and Fair Employment Tribunal (Early Conciliation: Exemptions and Rules of Procedure) Regulations (Northern Ireland) 2020

S.R. 2020 No. 2

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 Articles 20A(7), (11) and (12) and 25(5) of the Industrial Tribunals (Northern Ireland) Order 1996 and Articles 88ZA(7), (10) and (11) 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 (Early Conciliation: Exemptions and Rules of Procedure) Regulations (Northern Ireland) 2020 establish the rules that will govern the operation of Early Conciliation in Northern Ireland. These Regulations also provide for a range of exemptions whereby a prospective claimant will be able to present a claim to an industrial tribunal or the Fair Employment Tribunal without first complying with the requirement for Early Conciliation.

3. Background

- 3.1. The Employment Act (Northern Ireland) 2016 (the 2016 Act) establishes a duty on the Labour Relations Agency (LRA) to deliver Early Conciliation. This is a service requiring potential tribunal claimants to contact the LRA in the first instance to consider the offer of conciliation as an alternative to formal litigation at an employment tribunal.
- 3.2. In most circumstances it will not be possible to lodge a claim with the Office of the Industrial Tribunals and the Fair Employment Tribunal unless a potential claimant has first notified the LRA of the potential claim and received from it an Early Conciliation certificate confirming that this approach has been made.
- 3.3. When a prospective claimant contacts the LRA, this triggers a ‘stop-the-clock’ mechanism in the limitation period running on their potential tribunal claim. This means that the prospective claimant’s limitation period (the time to lodge a tribunal claim) is put on hold, for up to one calendar month, with a provision for an extension of two weeks if the LRA believes that the prospective claim is close to settlement. This will allow enough time for conciliation to take place without the need for the claimant to take any legal steps to protect their rights. If the LRA concludes that a settlement is not possible, the pause on the limitation period will end on the day that the prospective claimant receives (or is treated as receiving) an Early Conciliation certificate from the LRA. However, aside from

provision for the ‘stop-the-clock’ mechanism , there is also a further extension of time provision, which means that a limitation period will not expire until one month after the prospective claimant receives (or is treated as receiving) the Early Conciliation certificate. The certificate demonstrates that they have complied with the Early Conciliation process. Prospective claimants will need the reference number from the certificate to complete the tribunal claim form.

4. Consultation

- 4.1. Early Conciliation came into force in Great Britain in May 2014. The Department for Employment and Learning (the functions of which have subsequently been transferred to the Department for the Economy) launched, in 2013, a wide ranging Employment Law Review consultation. This included, under the theme of early resolution of workplace disputes, proposals for Early Conciliation in Northern Ireland. Stakeholders expressed widespread support for the introduction of such a service. Relevant enabling provisions were subsequently included in the 2016 Act.

5. Equality Impact

- 5.1. An assessment of the equality impact of the implementation of Early Conciliation concluded that, of the nine equality categories set out under section 75 of the Northern Ireland Act 1998, there are anticipated to be minor positive impacts in relation to older workers, male and female employees, employees with dependants, different racial groups and persons with disabilities. No unmitigated negative impacts are foreseen.

6. Regulatory Impact

- 6.1. A Regulatory Impact Assessment, largely carried out on the basis of the corresponding exercise in Great Britain, has identified net annual benefits to employers of £1,305,000 and net annual benefits to claimants of £668,000. These are associated with a reduction in preparation costs, representation costs and the cost of time spent away from the workplace that are associated with the tribunal process.

7. Financial Implications

- 7.1. It is anticipated that the additional cost to deliver Early Conciliation will average £250,000 per annum, primarily comprising additional LRA staffing costs and other related administrative expenditure.

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 the introduction of Early Conciliation.
- 11.2. A data protection screening exercise has been completed by the Department and as is available on the Department's website at <https://www.economy-ni.gov.uk/consultations/employment-law-review>.