EXPLANATORY MEMORANDUM TO THE

STATUTORY MATERNITY PAY (GENERAL) AND STATUTORY PATERNITY PAY AND STATUTORY ADOPTION PAY (GENERAL)(AMENDMENT) REGULATIONS

2005 No. 358

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 The Regulations make amendments to the Statutory Maternity Pay (General) Regulations 1986 and the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 to ensure that where an employee is reinstated or re-engaged pursuant to a dispute resolution procedure, any break in the continuity of her employment between the dismissal and the reinstatement or re-engagement will be disregarded for the purposes of her entitlement to statutory maternity pay (SMP), statutory adoption pay (SAP) or statutory paternity pay (SPP).

3. Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 None

4. Legislative Background

4.1 Part 3 of The Employment Act 2002 provided for a statutory dispute resolution procedure set out in schedule 2 of that Act and provided that every contract of employment shall have effect to require the employer and employee to comply with the requirements of the procedure in respect of a claim under any of the jurisdictions listed in schedule 3 to the Act. The Employment Act 2002 (Dispute Resolution) Regulations 2004 (2004 No.752) made provisions for the application of the statutory dismissal and disciplinary and grievance procedures. At Regulation 17, they made consequential amendments to subordinate legislation to ensure amongst other things, continuity of employment under the Employment Protection (Continuity of Employment) Regulations 1996 No.3147 where an employee is reinstated or re-engaged pursuant to a statutory dispute resolution procedure. As an oversight, amendments to the Statutory Maternity Pay (General) Regulations 1986 (S.I. 1986/1960) and the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 (S.I. 2002/2822) were not included in that regulation. The Regulations now being laid before Parliament remedy that oversight and provide that continuity of employment is preserved for the purposes of entitlement to SMP, SPP and SAP where an employee is reinstated or re-engaged pursuant to a dispute resolution procedure.

5. Extent

5.1 In accordance with section 177 of the Act, these regulations apply to England, Wales and Scotland only.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy Background

7.1 An employee must complete a period of continuous service with their employer in order to qualify for paternity, adoption or additional maternity leave and SMP, SPP and SAP. The amendment made by regulation 17 of the Employment Act 2002 (Dispute Resolution) Regulations 2004 (2004 No.752) to the Employment Protection (Continuity of Employment) Regulations 1996 ensures that the service of employees who are reinstated or re-engaged following a dispute resolution process will be continuous for the purposes of employment rights, i.e. disregarding any interruption between the dismissal and the reinstatement/re-engagement. This means that an employee will be able to satisfy the continuous employment criteria to qualify for paternity, adoption or additional maternity leave. However, that amendment does not provide for continuous employment for the purposes of calculating eligibility for SMP, SPP and SAP. An employee who is dismissed during the continuous employment calculation period will fail to qualify for these statutory payments even if they are reinstated or re-engaged following a dispute resolution process since there is currently no provision which allows for their service to be deemed to be continuous.

The amendments contained in these Regulations should have been included in the Employment Act 2002 (Dispute Resolution) Regulations 2004 (2004 No. 752). Those Regulations were the subject of extensive discussions and in July 2003, the Government issued a consultation document, *Dispute Resolution: Consultation on Draft Regulations*. 203 responses were received and the Regulations were informed by the comments and detailed suggestions received in the consultation process.

8. Impact

8.1 The impact of these regulations is likely to be insignificant. Any impacts on business would have been accounted for in the Regulatory Impact Assessment prepared in respect of the Employment Act 2002 (Dispute Resolution) Regulations 2004. This is attached at Annex A.

9. Contact

Nicola Dissem at the Department of Trade and Industry (Tel: 020 7215 0389 or e-mail Nicola.Dissem@dti.gsi.gov.uk <mailto:Nicola.Dissem@dti.gsi.gov.uk>) can answer any queries regarding the instrument.

Full Regulatory Impact Assessment

Employment Relations Directorate

Statutory Dispute Resolution Procedures

January 2004

http://www.dti.gov.uk/er

Executive Summary

Policy Objectives

1. The statutory dispute resolution procedures should improve the resolution of workplace disputes. Many firms already have very good dispute resolution mechanisms in place, but others have inadequate or non-existent procedures. These Regulations aim to improve this situation by imposing new minimum standards.

2. By improving standards of dispute resolution in the workplace, these Regulations should provide means for problems to be raised and discussed in the workplace, which in turn can be expected to reduce the incidence of breakdown of the employment relationship due to workplace disputes, and in some cases remove the need to resort to Employment Tribunals. This implies significant benefits to employers, employees and the taxpayer.

Costs and benefits

3. The Regulations will involve significant costs to employers by requiring the introduction and use of the statutory procedures for both disciplinary actions and employee grievances. There will be also, however, significant benefits to employers through better employment relations, increased productivity, lower recruitment costs and fewer Employment Tribunal cases to defend.

4. The Regulations will affect the ability of employees to apply to an Employment Tribunal, by requiring them, in most circumstances, to participate in workplace dispute resolution first. However, in the event of violent, abusive or otherwise unacceptable behaviour of one party, or where it is not practical to comply, employees (and employers) are exempt from the requirement to follow the procedures. Employees should benefit from the increased likelihood both of maintaining the employment relationship and of avoiding the need for a Tribunal.

Equity and fairness

5. The Regulations may have a positive impact on diversity by encouraging quicker and more flexible solutions to discrimination disputes.

Small firms

6. The Regulations will disproportionately affect small firms, since small firms are more likely to have insufficient dispute resolution procedures in place, than larger firms. Consultation with small firms and small firms organisations was carried out with the aims of helping limiting the burden on small firms to what is reasonable and necessary to achieve the aims of the legislation and of finding ways to help them to set up (where necessary) the requisite procedures.

Enforcement/incentives

7. If employers do not go through the minimum steps required under the new Regulations, they face the increased chance of Employment Tribunal proceedings, with their associated risks and costs. Both sides also face adjustment of any award made by the Tribunal by 10%-50% (up for employers, down for employees), if they are held responsible for a failure to make reasonable attempts to follow the statutory procedures. Furthermore, if employers fail to follow the procedure for dismissing an employee, then there will be an automatic finding of unfair dismissal at a Tribunal. If employees do not raise grievances in the workplace, they may not make subsequent claims to Employment Tribunal.

Net effect

8. Summary tables for costs and benefits can be found in the Summary of costs and benefits section at the end of this Regulatory Impact Assessment.

9. The net present value over ten years of the quantified benefits outweighs that of the quantified costs under all compliance scenarios considered, which are: 60%, 80% and 100% initial compliance. Where initial compliance is lower than 100%, it is assumed to rise to 100% after five years. With 80% or 100% initial compliance, quantified benefits will outweigh quantified costs after three years and with 60% initial compliance, quantified benefits are likely to outweigh quantified costs after four years.

10. Once 100% compliance is achieved, quantified recurring annual benefits are estimated at £99-108 million and quantified recurring annual costs at £35-48 million.

11. The annual recurring benefits are made up of a £68-74 million saving to employers from having fewer Employment Tribunals claims to defend, and a £31-34 million saving to the taxpayer from administering fewer Employment Tribunal claims. The annual recurring policy cost is the £35-48 million cost to employers of using the statutory procedures.

12. There are unquantified benefits such as better employment relations, which will have a positive impact on productivity and retention of staff, implying lower recruitment costs. Benefits to individuals arise from solving employment disputes: this can lead to a better working environment, lower

stress and jobs retained that might have been lost; and further benefits to individuals arise from avoiding Employment Tribunals and the stress, cost and diminished employment prospects they entail.

13. There are also unquantified costs, such as the time cost of a companion where the right to be accompanied is used and the increased cost to the Employment Tribunal Service through extra time needed to sift cases.

Background and policy objective

1. **The statutory dispute resolution procedures should improve the resolution of workplace disputes. Whilst many employers use sophisticated dispute resolution mechanisms, a large number of firms have inadequate or non-existent procedures, or indeed do not use the procedures they have in place.**

2. **The statutory procedures will set a new minimum standard framework for resolving disciplinary and grievance issues in the workplace. Using internal procedures that conform to the defined minimum standards, disputes will be identified and discussed in the workplace. This approach improves the chance that flexible solutions can be found before the breakdown of the employment relationship (which leaves the employee out of work and the employer having to recruit new staff).**

3. **These Regulations will apply to all employers and employees. They will affect a wide range of employment rights disputes, including those about discrimination, unfair dismissal, working time and some collective rights (see Schedules 3, 4 and 5 of the 2002 Employment Act for more details).**

4. **The current system of dispute resolution often works very differently. Some employers do not have or do not consistently apply adequate disciplinary procedures, and many employees are unwilling to raise grievances in the workplace. Thus, an employee's only opportunity to raise a problem may be through an Employment Tribunal claim, and it is not uncommon for an employer to become aware of a workplace dispute only when summoned to appear before an Employment Tribunal. This is clearly an unsatisfactory solution for all parties concerned.**

Risk assessment

5. **The Regulations seek to mitigate risks both to employers and to employees:**

- the risk of employers being drawn into costly Employment Tribunals without any initial opportunity to attempt to resolve the dispute within the workplace: it is estimated that defending a Tribunal claim costs an average of £2000 to employers.[1]
- The risk of individuals being required to pursue Employment Tribunal cases (with the stresses and negative effect on future employment prospects associated therewith) over grievances that were not explored through formal procedures in the workplace, where they could perhaps have been resolved to the parties' mutual satisfaction.
- The risk of using the Employment Tribunal system as a place of first resort, rather than only as the last resort for disputes once it is clear they cannot be settled without litigation. Using it as a place of first resort

[1] Estimate bases on Survey of Employment Tribunal Applications (SETA) 1998

reduces the system's speed and efficiency to deal with problems that do require legal determination.

Options

6. **Given the main policy objective of producing a significant improvement in workplace dispute resolution, four options were considered at the time of the Employment Bill which became the Employment Act 2003:**

Option 1. Doing nothing.

Option 2. Advertising the existing Acas code of practice for workplace dispute resolution and raising awareness of the benefits of successful procedures.

Option 3. Introducing statutory minimum procedures for workplace dispute resolution requiring written statement(s) and meeting(s) between the disputing parties.

Option 4. Introducing statutory minimum procedures as in Option 3 with the addition of required mediation.

Options 1 and 2 were discounted, because they would be less likely to achieve the policy objective of significant improvement in workplace dispute resolution. The existing code of practice has already been widely disseminated; so further advertising could only have a marginal impact. Options 1 and 2 would perpetuate the situation where many workplaces are without disciplinary and grievance procedures. Option 4 was not pursued since mediation would impose additional costs, may not be suitable for all parties and could simply delay justice. Option 3 is expected to achieve the policy objective more effectively than Option 4. Option 3 was therefore decide upon and will be implemented through these Regulations.

Key assumptions

7. In order to analyse the costs and benefits of the Regulations, assumptions had to be made on:

1. The annual number of employment-related disputes with legal implications: 700,000 to 900,000 – see footnote 4.
2. The proportion of these disputes which will be exempt from the procedures and the proportion where no action is taken: 5% and 19% respectively - see footnotes 5 and 6.
3. The proportions of firms in different size categories which currently have satisfactory, unsatisfactory or no procedures: see Table 4 in Annex 2.
4. The management time required to introduce the procedures: see Table 6 in Annex 2.

5. The proportions of disputes going through the procedures, which will use the two-step and three-step procedures: 85% and 15% respectively – see footnote 47 in Annex 2.
6. The proportions of disputes coming from workplaces which currently have satisfactory, unsatisfactory or no procedures: 50%, 30% and 20% respectively.
7. The management and employee time required to use the procedures: see Tables 8 and 9 in Annex 2.
8. The likelihood of Tribunal claims when procedures are or are not in place: 10-13% and 18-23% respectively.
9. Of those disputes where action is taken, but an Employment Tribunal claim is not made, the proportion currently solved using workplace dispute resolution procedures: 50%.

8. These assumptions and their sources are all detailed below in the main text and the annexes. To summarise, assumptions for 1, 2, 5 and 8 were based on survey evidence. Assumptions for 3 for the larger firms were also based on survey evidence. For assumptions for 4, 6, 7 and 9, attempts have been made to make reasonable estimates, taking into account responses from consultation where appropriate. The assumptions were checked for internal consistency.

Numbers affected

9. **The Regulations will have the following effects:**

- All employers will have to ensure that a satisfactory three-step procedure is in place. This affects up to 1.2 million employers.[2]
- It is estimated that up to 7.2 million employees will be affected by these Regulations.[3]
- Those employers and employees who are involved in a dispute will, in most cases, have to follow the procedures. A 'justiciable event' is defined by Genn, *Paths to Justice*, 1998 as a matter experienced by a respondent which raised legal issues, whether or not it was recognised by the respondent as being 'legal' and whether or not any action taken by the respondent to deal with the event involved the use of any part of the civil justice system. These employment events can include: dismissal, changes to terms or conditions of employment, harassment or discrimination, unauthorised deductions from wages and non-payment of the National Minimum Wage.

[2] Small Business Service statistics (SBS) 2002: 1,226,070 businesses employed at least one person in 2002.
[3] Calculation based on SBS statistics 2001,2002 and assumptions in Table 4 in Annex 2: number of employees working for firms with inadequate or non-existent dispute resolution procedures.

- We estimate that there are between 700,000 and 900,000 employment-related 'justiciable events' each year.[4] These numbers will of course increase as new employment rights are introduced.
- In some instances, individuals with a potential dispute against their employer will decide not to take any action. It is estimated that this occurs in 19% of cases where disputes arise, [5] and that 5% of disputes will be exempt from following the procedures.[6] This means that the total population of disputes to which these Regulations apply is between 532,000 and 684,000 disputes. For the purposes of the RIA, we assume that the total number of disputes occurring each year is constant.

Equity and fairness

10. **The proposed Regulations are unlikely to have a significant impact on diversity. However, a number of positive and negative factors exist, which are explored below.**

All employees

11. **It should be noted that the admissibility provisions will affect the way employees' Employment Tribunal claims are dealt with, in that the admissibility of a claim, and award level at Tribunal if the claim is successful, will depend on their having followed the procedures. However, this will be balanced by the proviso that parties need not follow the procedures if to do so would lead one of them to suffer bullying, intimidation and other unacceptable conduct; this will provide additional protection for those being harassed. Also, extensions to existing time limits will apply to allow the completion of grievance procedures before Tribunal claims are lodged. Lack of awareness should hopefully not be a**

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[4] Based on the Legal Services Research Centre (LSRC) Periodic Survey, first findings published 2003, it is estimated that 2.94 million serious employment problems, which might have involved recourse to law, occurred in the three-and-a-half years from January 1998. Over this period, there were about 374,000 Employment Tribunal claims. Over this period, that equates to about 12.7% of disputes going to Tribunal. Over the last three years there were about 110,000 Tribunal claims per annum. Applying the same ratio would imply a slightly higher annual level (853,000 compared to 829,000) of justiciable disputes in the last three years. However, it is equally possible that the proportion of disputes going to Tribunal has increased since the study period with the number of justiciable disputes remaining broadly constant (in which case around 13.3% of disputes go to Tribunal). Genn, *Paths to Justice,* 1998, suggests about 14.6% of disputes going to Tribunal over the period 1992-7. Given these uncertainties, the current proportion of disputes going to Tribunal is taken to be 12-16%, which gives an annual number of disputes of 687,500-916,000, rounded to 700,000-900,000.

[5] Based on the LSRC Periodic Survey. 19% of people experiencing justiciable problems at work took no action to resolve the problem. The individual takes no action and procedures to resolve the dispute are not required.

[6] Analysis of evidence from *Paths to Justice* suggests a possible range of between 1% and 14%. We have opted for a conservative middle of the range of 5%. We use incidents of harassment at work as a proxy of circumstances that would lead to exemption. 14% represents those suffering employment-related problems who had experienced harassment at work. 1% represents the proportion of employees who experienced employment-related problems and did not do anything about it because they were too scared.

significant problem because of the initial guidance and advice campaign, and the ongoing guidance and advice of Acas.

Diversity and effects on particular groups of employees

12. **The Regulations may have a positive impact on diversity, in that the statutory dispute resolution procedures will encourage more flexible and timely solutions to discrimination grievances.**

13. **Evidence from Employment Tribunal claimants (see Table 1 below) shows that they are a good representation of the diversity existing in the working population, with regard to age and ethnicity, and fairly good with regard to sex.**

14. **2.8% of Employment Tribunal claims in the financial year 2002/3 were in disability jurisdictions as defined by the Disability Discrimination Act 1995, which is an indication (but an underestimate, because not all claims made by disabled people are about disability discrimination) of the proportion of claimants who are disabled. 11% of GB employees aged 16-plus are disabled by the definition of the aforementioned Act.[7] This evidence weakly suggests that the disabled are not over-represented, at least not substantially, in the population of Tribunal claimants. There is no available data yet on the sexual orientation and religion/belief of Tribunal claimants; these characteristics relate to new anti-discrimination regulations that came into force only on the 1st and 2nd December 2003. The evidence above and in Table 1 would imply that as a whole, the effect of the Regulations should be spread fairly evenly over the working population.**

Table 1: Demographic comparison between Employment Tribunal claimants and GB employees

	Employment Tribunal claimants	GB employees aged 16+
Age		
Median age	42	37
Mean age	41	38
Sex		
Men	60%	53%
Women	40%	47%
Race		
Asian	3%	2%
Black	2%	2%
White	93%	95%

Source: ET claimants: Survey of Employment Tribunal Applications (SETA) 1998. GB Employees: Labour Force Survey (LFS) - spring 1998.

15. **However, these Regulations will affect all those involved in employment-related disputes, not just Employment Tribunal claimants; so the above evidence is not conclusive as to their effects on particular groups of employees. There is weak indicative evidence that the 'marginalised' members of society (who are those more likely to be discriminated against), are more likely to face**

[7] Labour Force Survey, September to November 2002.

employment-related disputes [8]. This would suggest 'marginalised' groups will be disproportionately impacted upon by these Regulations. However, 'marginalised' people are perhaps more likely to be engaged as non-employee workers, rather than as employees, and the new procedures do not apply in respect of non-employee workers.

16. **Nevertheless, it is possible that the 'marginalised' members of society face a disproportionate number of the employment-related disputes *of employees*, in which case they will be disproportionately affected by the new Regulations.**

17. **In any case, there is no evidence to suggest that workplace dispute resolution procedures produce less favourable outcomes than Employment Tribunal cases for those groups of employees who tend to be discriminated against. Employees will still be able to take their grievances to Employment Tribunals if workplace procedures fail to resolve them, so these Regulations should not have a negative impact on such employees. To sum up, even if 'marginalised'/disadvantaged employees are going to be disproportionately affected, they should not be negatively affected by the Regulations.**

Sensitivity analysis

18. **In the following sections, benefits and costs of the introduction of this legislation are listed and measured (where possible). In order to come up with some estimates of these, certain levels of compliance with the legislation must be assumed. This Regulatory Impact Assessment estimates the costs and benefits based on three assumed initial compliance rates of 60%, 80% and 100%. When only partial initial compliance is assumed (i.e. 60% and 80%), we assume full compliance (100%) will be achieved after five years. If employers fail to comply with these requirements, the costs of implementing and using procedures will be reduced, as will the benefits from reduced Employment Tribunal claims to employers, individuals and taxpayers.**

Benefits

19. **More employment disputes should be solved, benefiting employers and employees alike, through lower stress, increased productivity and increased job satisfaction.**

Better employment relations and its impact on productivity

20. **Employment disputes can give rise to tensions at the workplace and damage wider management-employee relations. This may impact adversely on the productivity of the business.**

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[8] LSRC Periodic Survey included an institutional survey of people living in temporary accommodation (hence the more marginalised members of society). In this group around 15% suffered an employment-related justiciable problem, compared to around 6% in the main survey (a random sample of the general population).

21. **There is evidence of a positive relationship between having formal disciplinary and grievance procedures in place and having good workplace well-being measures, such as the number of dismissals and voluntary resignations[9]. Measures that improve workplace well-being may have beneficial effects on economic performance in the long term.**

22. **Furthermore, there is indirect evidence that points to a likely positive relationship between having formal disciplinary and grievance procedures and above-average labour productivity. Data shows that 62% of workplaces following a certain number of high commitment management practices (one of which is having formal grievance and disciplinary procedures in place), reported above-average labour productivity.[10]**

23. **Whilst the evidence mentioned above suggests a positive impact from better employment relations on productivity, the data is not conclusive on the potential size of the effect. For this reason we do not attempt to quantify this benefit.**

Less damage to individuals' employment prospects

24. **Making an Employment Tribunal claim can damage the future job prospects of the individual (as well as leading to increased stress). 44% of those making a Tribunal claim report lower status employment, 51% had lower paid employment and 24% are unemployed following a claim.[11]**

25. **Solving more disputes in the workplace should allow more employees to stay in post. Therefore, they will retain these higher paid, higher status jobs, and their employment prospects will not be damaged.**

Fewer Employment Tribunal claims

26. **The Regulations aim to improve dispute resolution within the workplace, through encouraging both parties to use formal procedures. This in turn reduces the likelihood of disputes reaching an Employment Tribunal. Significant numbers of Tribunal cases involve disputes that have not been first explored through workplace procedures. A reduction in Tribunal claims will bring benefits to those individuals who still go to Tribunal, by allowing their cases to be determined more quickly.**

27. **Employer survey evidence from 1998[11] showed that in about 37% of cases which went to Employment Tribunal there was no meeting between the parties, no use of a written procedure and no other attempt made to resolve the dispute. If an attempt is made to solve these disputes in the workplace first, some are of them are likely to be solved and hence the number of Tribunal claims should go down.**

28. **We assume a reduction of about 31-34% of the assumed annual number of claims of 110,000, which is 34,000 to 37,000 fewer Employment Tribunals per year. This gives a new annual number of claims of 73,000 to 76,000. See Annex 1 for details.**

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[9] Cully M., Woodland S., O'Reilly A. and Dix G., *Britain at Work,* Routledge 1999.
[10] Cully M., Woodland S., O'Reilly A. and Dix G, *Britain at Work*, Routledge 1999.
[11] SETA 1998.

29. **Assuming an initial compliance of 60% we would expect the initial number of Employment Tribunals to be around 97,000 (all else equal), a reduction of about 12%. The number would decrease gradually to 73-76,000 after five years (all else equal), as the level of compliance increases gradually to 100% over the same time period. See Annex 1 for details.**

30. **Finally, assuming initial compliance of 80%, the expected initial number of Employment Tribunals would be around 85,000-87,000, a reduction of around 21-23% gradually easing to 73,000-76,000 over five years (all else equal). It is expected that there would be a lag of perhaps a year from when the procedures are fully implemented. See Annex 1 for details.**

Reduced costs to employers of defending Employment Tribunal claims

31. **An Employment Tribunal claim costs an employer £2,000 on average in management time and legal fees[12]. The cost will vary substantially from firm to firm and upon the outcome and type of the case. Many claims that are settled or withdrawn at an early stage will cost the respondent very little. Some cases that go to a hearing are very expensive. This cost estimate does not include the cost of awards made to successful claimants. On this basis a reduction of 34,000-37,000 claims will produce annual cost savings of £68-74 million for employers.**

32. **This amount would be lower for the cases in which only partial compliance is assumed, until they achieve full compliance. When an initial 60% compliance is assumed (13,000 first-year reduction in the number of claims) savings to employers would amount to £26 million, increasing to £68-74 million after five years. If 80% initial compliance were assumed (23-25,000 first-year reduction in the number of claims), initial savings to employers would amount to £46-50 million.**

Lower recruitment costs

33. **Using the dispute resolution procedures in the workplace should reduce the number of cases where the employment relationship breaks down and the employee leaves the firm. The average saving to the employer per employee retained is £3,900.[13] The order of magnitude of these savings across all employers is likely to be in the tens of millions.[14]**

Savings to the taxpayer

34. **A reduction in Employment Tribunal claims reduces the costs of running the Employment Tribunal System. It is estimated that it costs on average £910 to process each claim.[15] A 34,000-37,000 annual reduction in the number of claims would save the taxpayer around £31-34 million per year.**

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[12] Estimate based on SETA 1998.

[13] Average derived from Chartered Institute of Personnel and Development (CIPD) Labour Turnover Surveys 2001,2002, 2003.

[14] SETA 1998 suggests just 3% of people taking a complaint to Employment Tribunal keep their job afterwards. If 20-30% keep there job following use of workplace dispute resolution procedures, this suggests an illustrative calculation of recruitment cost savings: [0.17 to 0.27] x £3900 x [34,000 to 37,000] = £23 to 39 million rounded to 2 significant figures.

[15] Sources: the ETS Annual Report and Accounts 2002/3 and Acas.

35. **Lower compliance rates will generate correspondingly lower cost savings. When an initial 60% compliance is assumed, savings to the taxpayer would amount to around £12 million for the first year, going up to £31-34 million after five years. If 80% initial compliance were assumed, savings to the taxpayer would amount to around £21-23 million for the first year.**

Costs

Costs of introducing statutory dispute resolution procedures

36. **The Regulations will involve** one-off 'adjustment' costs **to all businesses (implementation costs). Annex 2 provides further details on the cost calculations. The adjustment costs represent time taken for businesses to familiarise themselves with the basic procedures model and, for those who already have procedures, checking that their existing procedures comply. To estimate the costs we used two scenarios. Firms with satisfactory procedures already in place will, on average, spend 30 minutes to check whether the procedures meet the statutory standard. This will vary from a phone call between a manager and a personnel officer who knows about the procedures (especially in large firms) to cases where some time is spent on establishing compliance.**

37. **The differences between the high- and low-cost scenarios regard the amount of management time spent by firms with non-existent or inadequate procedures. Firms with existing procedures that fall short of the minimum level are assumed to spend on average one hour in the low-cost scenario, and two hours in the high-cost scenario on adjusting their procedures. We assume that managers in firms with no procedures will need an average of two hours in the low-cost scenario and four hours in the high-cost scenario to collect the relevant information and to set up procedures. The actual amount of time spent by individual employers may differ from these averages, although the assumptions are reasonable if the employer can access the standardised forms and support material that will be provided by the Department of Trade and Industry (DTI)/Acas. We consider the high-cost scenario to be more realistic than the low-cost scenario.**

38. **The cost for a firm with no procedures already in place is estimated at around £99, for a firm with unsatisfactory procedures at around £50 and for a firm with already satisfactory procedures at around £12. The total one-off implementation costs are estimated to be £39-73 million (see Annex 2 for details).**

39. **If only partial initial compliance is assumed (i.e. either 60% or 80%), the one-off cost would be spread over five years, until full compliance is achieved. The first-year cost would be £23-44 million in the event of 60% compliance and £31-58 million in the event of 80% compliance (see Annex 2 for details).**

40. A publicity campaign will be launched prior to the introduction of the Regulations. This will increase awareness among employers and employees so that procedures will be more widely adopted and therefore the associated benefits felt in a relatively short time. The publicity campaign will have a non-recurring cost of up to £2 million.

Costs of using statutory dispute resolution procedures

41. **Employers will face** recurring costs **in complying with the Regulations, through following the statutory procedures. Previously, these disputes were either not handled at all or were dealt with using sub-standard procedures. The cost of applying the procedures is associated with the absorption of management and employee time. Annex 2 discusses these calculations in more detail.**

42. **As before, we assume a low-cost and a high-cost scenario for those employers who do not already have procedures in place. The difference between the two is in the written stages of the procedures. Writing the complaint or response is assumed to take two hours in the high-cost scenario and one hour in the low-cost scenario. Table 8 in Annex 2 details the other assumptions on management and employee time required.**

43. **The average cost to employers who currently have no procedures in place, of using the three-step procedure is £199 in the high-cost scenario and £179 in the low-cost scenario. This compares with an average additional cost of £119 for a three-step procedure where some form of inadequate procedure is used at present.**

44. **The average cost of the two-step procedure is £72 and £104 in the low- and high- scenarios respectively for firms with no procedures currently in place. This compares with an average additional cost of £60 for the two-step where some form of insufficient procedure is used at present.**

45. **There will be no additional cost for firms with satisfactory procedures in place already for using either set of procedures. The total annual costs come to £35-48 million (see Annex 2 for more details).**

46. **If only partial initial compliance is assumed (i.e. either 60% or 80%), initial annual costs would be £21-29 million[16] and £28-38 million[17] respectively. These levels of initial costs would gradually increase up to £35-48 million per year after five years, and thereafter, when full compliance would be achieved.**

47. **There will be extra costs incurred when the employee chooses to use his or her right to be accompanied at the hearing(s) with the employer. If the companion works for the same employer, then the extra cost will be to the employer, but if the companion is employed by a Trade union, then the cost will be to the Trade union. These costs have not been quantified, because we have no basis for how often the right to be accompanied is used. The order of magnitude is expected to be £1-10 million.[18]**

48. **There may also be increased costs to the Employment Tribunal Service from extra time needed to sift cases. These costs are explored in the Regulatory Impact Assessment accompanying the Employment Tribunal procedures[19] that are due to come into force at the same time as the dispute resolution procedures (October 2004).**

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[16] Calculated as [£34.9-47.9 million] x 0.6 = £21-29 million rounded to nearest million.
[17] Calculated as [£34.9-47.9 million] x 0.8 = £28-38 million rounded to nearest million.
[18] For illustration, if we value companion time at £14.90 (New Earnings Survey (NES) 2003 average earnings: £11.46, multiplied by 1.3 to take account of non-wage costs), assume they spend an hour on each meeting and are used in 25% of the 266,000 to 342,000 disputes (see Annex 2) each involving two more meetings as a result of the new Regulations (the average will be less than two, but two used for simplicity), then the extra costs would amount to £2.0-2.5 million.
[19] Available at http://www.dti.gov.uk/er/individual/etregs_ria.pdf

Impact on small firms

49. **Small firms are likely to be over-represented in those affected by these new Regulations. It is estimated that small businesses (with 1-19 employees) represent 820,000, or 98% of the 840,000 companies which currently have sub-standard or no procedures at all (see Annex 2). They form 92% of the total number of firms (with at least one employee) in Great Britain[20]. Therefore the cost of adopting dispute resolution procedures will affect small firms disproportionately. The Small Firms Impact Test (see Annex 3) explores how the Regulations may impinge on this particular group and explores mitigation strategies for this group.**

50. **Many small businesses do not have a specialised personnel function and therefore lack staff who deal with human resources issues on a day-to-day basis. Businesses with small numbers of employees are also likely to see certain employment situations occur very infrequently (e.g. parental leave following an adoption). This combination of a lack of specialised personnel and infrequent exposure to employment rights issues may contribute to a greater incidence of disputes in small firms.**

51. **As discussed in the consultation document, DTI recognises the need for user-friendly guidance and standard forms to reduce the implementation costs, particularly for small firms.**

Competition assessment

52. **This legislation will apply to all firms. It is unlikely to affect the competitiveness of any particular sector. It is designed to reduce the cost of dealing with disputes in the workplace for both employers and employees. We believe it will also improve the workings of the labour market.**

53. **Individuals can face both short- and long-run costs from making Tribunal claims. A quarter of all Employment Tribunals claimants are unemployed subsequent to the case[21]. The introduction of statutory dispute resolution procedures, by reducing the number of Employment Tribunal claims, may have a positive impact on labour participation rates.**

54. **Employment disputes may lead to skilled-labour job resignations for reasons other than professional or career development. By improving dispute resolution within the workplace, this legislation may enhance the match between skills required at work and the skills workers have.**

Enforcement and sanctions

[20] Small Business Service 2002.
[21] SETA 1998.

55. **The Regulations will establish rights and responsibilities for both employers and employees in terms of how they resolve disputes at work.**

56. **Employers will need to consider the costs of introducing and using the statutory procedures – the cost of introducing the procedures is estimated to be £12-99 on average, and £179-199 each time it is involved in a standard (where the three-step procedure will apply) workplace dispute (see Annex 2). These figures will vary considerably between firms. These costs will need to be weighed up against the possible costs of defending a Tribunal case, estimated to be £2,000 on average.[22] Dismissals that do not use the statutory procedures will be automatically unfair. In addition, if the employer has not fully completed the statutory procedures, any awards to the claimant can be increased by 10%-50%. Taking the median award of around £3200 as an example, this would be increased by £320-1600.[23]**

57. **In most cases, it is probable that the employment relationship will break down irreparably when a dispute is handled via an Employment Tribunal as opposed to the use of workplace procedures. Replacing an employee is estimated to involve an average cost of £3,900, again with wide variation[24].**

58. **Equally, employees have an incentive to use the statutory procedures because this approach is more likely to solve the dispute and preserve the employment relationship. Not following the procedures may affect the admissibility of their case and, if it is admissible, level of award at Employment Tribunal: a £3200 award could be reduced by £320-1600. In addition, employees will avoid the stress and negative impact on future employment prospects associated with going to a Tribunal.**

Monitoring and review

59. The Employment Tribunal Service will be able to monitor the number of cases where failure to comply with the procedural requirements becomes an issue, including the number of cases where awards are adjusted because of procedural failings. The overall volume of Tribunal claims will also be an indicator of effectiveness.

60. The next Workplace Employment Relations Survey (WERS) will be in the field in 2004. This will look at the incidence of dispute resolution procedures at present and will act as a benchmark for the policy. The Survey of Employment

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[22] Estimate based on SETA 1998.

[23] The Employment Act 2002 established that in the event that either party in the dispute failed to use the statutory procedures, any subsequent award would be varied by between 10% - 50%, i.e. if an employer failed to use the statutory procedures, any subsequent award to the claimant could be increased by 10%-50%. The median award in cases with unfair dismissal jurisdictions was £3,225 in 2002/03 (Source: Employment Tribunal Service Annual Report). If procedures were not followed this would therefore increase the average costs of a Tribunal where the claimant is successful by up to about £1,600. This includes a possible increase in the award if the employer has not issued a written statement or the statement is incomplete or inaccurate.

[24] Chartered Institute of Personnel and Development, Labour Turnover Surveys, average of last three years, 2001-3: £3,899.

Tribunal Applications (SETA) 2003 will likewise give a pre-Regulations benchmark and includes questions on the demographics of Employment Tribunal claimants and their use of procedures. The DTI intends to carry out further WERS and SETAs, to which the findings of WERS 2004 and SETA 2003 can be compared.

Consultation

61. **These Regulations are based on the dispute resolution framework set out in Employment Act 2002. This legislation was developed after public consultation during 2001.**[25]

62. **The proposed Regulations have been developed with input from a wide range of external stakeholders. An Advisory Group was formed, with representation from small firms associations, trade organizations, trade unions and other key agencies. These groups participated in a pre-consultation phase – views received at that stage have been fully considered and taken into account in finalising the Regulations.**

63. **The DTI has consulted a number of other government organisations, including Acas, the Employment Tribunal Service and all Government Ministerial Departments.**

64. **The Government has, in addition, tested its policy plans at the 'grass-roots' level. Focus groups have been held with small firms, large businesses, trade union legal specialists, and Acas advisers and conciliators.**

65. **The DTI held a 16-week public consultation on the draft Regulations, between 9 July and 29 October 2003.**[26] **203 responses were received from respondents with a wide spectrum of viewpoints. More detail on this consultation can be found in the Government's Response to the Consultation, published on 20th January 2004.**

Summary of costs and benefits

66. **The table below summarises both quantified and unquantified costs and benefits (expressed in 2002/03 prices) once 100% compliance has been achieved. When quantifying benefits and costs we have also used different levels of initial compliance below 100% (i.e. 60% and 80%) in order to assess its impact on costs and benefits. A table with the results can be found in Annex 2.**

[25] See *Routes to Resolution*, 2001 consultation: http://www.dti.gov.uk/er/individual/resolution.pdf.
[26] See the consultation document: http://www.dti.gov.uk/er/individual/dis_res_consdoc.htm.

Table 2: Quantified and unquantified costs and benefits

	Annual benefits	Annual costs	One-off costs
To employers	• Better employment relations with positive impact on productivity • Keeping skilled staff • Lower recruitment costs • Reduced costs from 34,000-37,000 fewer Tribunal claims per annum = £68-74 million	• Annual recurring policy costs of using statutory procedures = £35-48 million, plus time cost of companion where right to be accompanied used (cost may sometimes be to a Trade union)	• Implementation costs = £39-£73 million
To individuals	• More employment disputes solved • Improved employment prospects • Reduced stress and costs from 34,000-37,000 fewer Tribunal claims per annum		
To the taxpayer	• Savings from fewer Tribunal claims = £31-34 million	• Increased costs to the Employment Tribunal Service for extra time needed to sift cases	• £2 million for a publicity campaign prior to the Regulations coming into force

All costs and benefits quoted to 2 significant figures

67. **It is likely that initial costs will outweigh initial benefits. Using net present value analysis, with 100% or 80% initial compliance total quantified benefits are likely to outweigh total quantified costs by the third year, and with 60% initial compliance, total quantified benefits are likely to outweigh total quantified costs by the fourth year.**

68. The table below shows the net present value (NPV)[27] of costs and benefits over 10 years, both recurring and one-off, in each compliance scenario. Where initial compliance is less than 100% it is assumed to rise to 100% after five years. The table below assumes the high-cost scenarios for both one-off implementation costs and recurring costs to employers.

[27] Net present value is a standard tool in economic appraisals to value future returns. It takes into account that future returns are worth less than returns today. This is captured in the discount rate applied to future returns. The above calculations are based on a discount rate suggested by the Treasury Green Book of 3.5%. See http://www.hm-treasury.gov.uk/economic_data_and_tools/greenbook/data_greenbook_index.cfm.

Table 3: Net present value of quantified costs and benefits with varying compliance rates over ten years

60% initial compliance		80% initial compliance		100% initial compliance	
NPV benefits	NPV costs	NPV benefits	NPV costs	NPV benefits	NPV costs
£697-754m	£355-436m	£751-838m	£379-460m	£847-922m	£405-485m

Using high-cost scenario

69. As can be seen from Table 3, over ten years quantified benefits outweigh quantified costs under any compliance scenario. This should be considered in conjunction with the unquantified costs and benefits shown in Table 2.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed: ***Gerry Sutcliffe***

Gerry Sutcliffe, Parliamentary Under-Secretary of State, Department of Trade and Industry

Date: **16th February 2005**

Contact point

70. **Any comments on this Regulatory Impact Assessment should be addressed to:**

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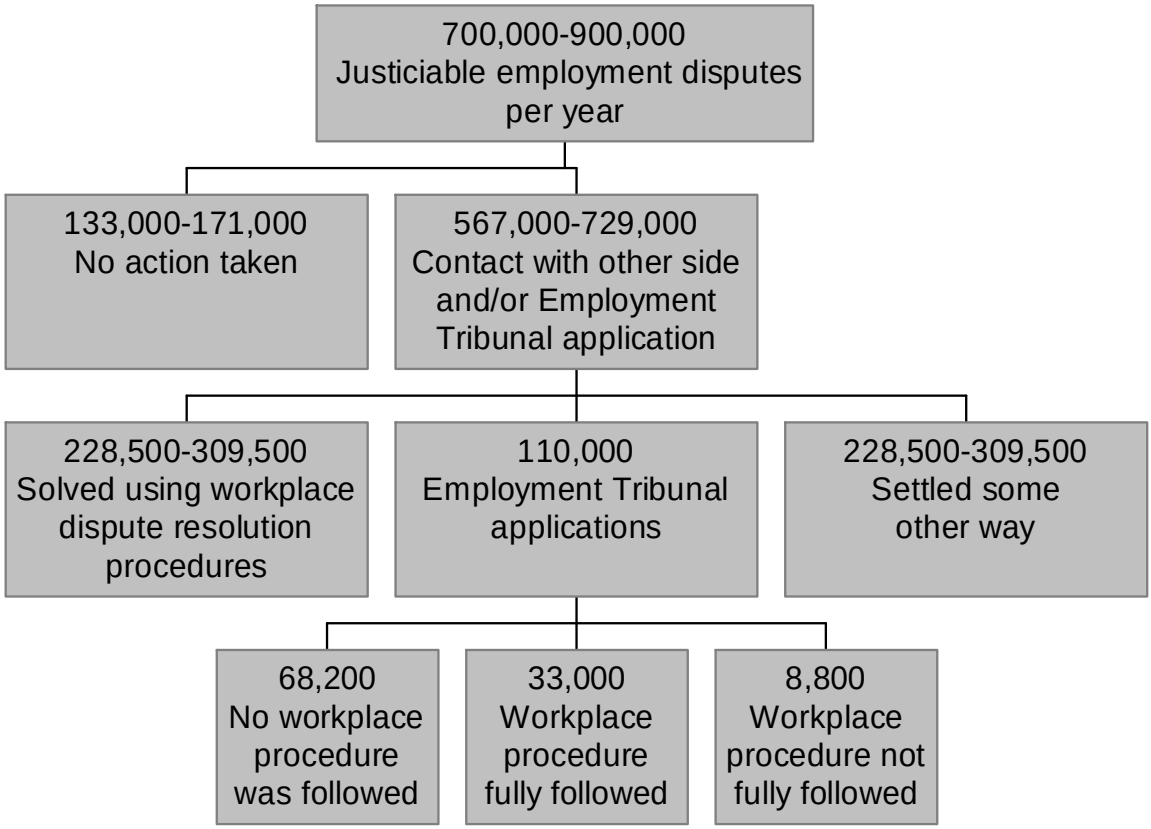
Annex 1:Estimating the effect on Employment Tribunal claims

Flowchart showing main assumptions on employment dispute and Tribunal numbers:



71. **Taking the underlying trend level of Employment Tribunal claims as 100,000 a year, and adding 10,000 for new jurisdictions (an average: initial 6,000 later rising to 14,000) gives us a basis of 110,000 claims a year. This implies that about 590,000 to 790,000[28] disputes were resolved in some other way, including those where the employee did not contact their employer or make a Tribunal claim (disputes where no action was taken are estimated to be about 133,000 to 171,000[29]).**

72. **Employer survey evidence from 1998[30] suggested that 48% of Employment Tribunal claims come from workplaces with no written procedures, 14% from workplaces with written procedures that had not been used and 7% from workplaces where written procedures had been only part used, leaving just 30% of claims where a written procedure had been followed all the way through. Among the Tribunal claims, it can be assumed that 30% (33,000) arose even with full procedures being followed, and that 62% (68,200) had followed no procedure**

[28] Calculated as (700,000 to 900,000) – 110,000.
[29] Calculated as 19% (see footnote 4) x [700,000 to 900,000] = 133,000 to 171,000.
[30] SETA 1998

at all (i.e. 48% with no written procedure plus 14% with written procedures that had not been followed).

73. **It is assumed that 50% of disputes where action was taken but there was no resort to an Employment Tribunal (i.e. there was contact with the other side only) were settled using workplace dispute resolution procedures.[31] This implies that 228,500 to 309,500 disputes[32] are solved in the workplace. This in turn implies that when action is taken and dispute resolution procedures are used, 10-13%[33] of these disputes will result in a Tribunal claim. However, when action is taken and procedures are** not **used, 18-23%[34] of disputes can be expected to lead to a Tribunal claim.**

74. **Assuming full compliance (100%), and five per cent of disputes being exempt from the procedures[35], we would expect approximately 10-13% of the 76%[36] of justiciable employment disputes which will go through the procedures, to lead to an Employment Tribunal. We would expect approximately 18-23% of the 5% of justiciable employment disputes that are exempt from the procedures to lead to a Tribunal. This implies the number of Tribunals will be around 74,000-75,000[37] (all else equal) from the year after the legislation comes into force. This is a reduction of 35,000-36,000. We assume a range of 73,000-76,000 Employment Tribunals per year; that is a reduction of about 31-34% of the assumed annual number of claims of 110,000.**

75. **Assuming an initial compliance of 60% we would expect the initial number of Employment Tribunals to be around 97,000[38] (all else equal), a reduction of about 12%. The number would decrease gradually to 73,000-76,000 after five years (all else equal), as the level of compliance increases gradually to 100% over the same time period.**

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[31] There is no direct evidence on this, but this assumption seems consistent with other assumptions based on WERS98.

[32] Calculated as ([590,000 to 790,000] – [133,000 to 171,000]) x 0.5 = 228,500 to 309,500.

[33] Calculated as 33,000 / ([228,500 to 309,500] + 33,000) = 9.64% to 12.62% rounded to two decimal places.

[34] Calculated as 68,200 / ([228,500 to 309,500] + 68,200) = 18.06% to 22.99% rounded to two decimal places.

[35] Analysis of evidence from *Paths to Justice* suggests a possible range of between 1% and 14%. We have opted for a conservative middle of the range of 5%. We use incidents of harassment at work as a proxy of circumstances that would lead to exemption. 14% represents those suffering employment-related problems who had experienced harassment at work. 1% represents the proportion of employees who experienced employment-related problems and did not do anything about it because they were too scared.

[36] Calculated as 100% minus 19% where no action taken minus 5% which are exempt from following procedures.

[37] Range derived as [9.64% x 76% x 900,000 + 18.06% x 5% x 900,000] to [12.62% x 76% x 700,000 + 22.99% x 5% x 700,000] ≅ 74,065 to 75,185 rounded to 74,000 to 75,000.

[38] Calculated as: [(9.64% x 0.6 + 18.06% x 0.4) x 76% x 900,000 + 5% x 18.06% x 900,000] to [(12.62% x 0.6 + 22.99% x 0.4) x 76% x 700,000 + 5% x 22.99% x 700,000] ≅ 97,102 to 97,252 for the initial year, rounded to 97,000. To be consistent with a final range of 73,000-76,000, a similar calculation was used, based on 607,000 to 1,225,000 disputes per year, to give 96,947-97,382 for the initial year, rounded to 97,000.

76. **Finally, assuming initial compliance of 80%, the expected initial number of Employment Tribunals would be around 85,000-87,000[39], a reduction of around 21-23% gradually easing to 73,000-76,000 over five years (all else equal).**

[39] Calculated as: [(9.64% x 0.8 + 18.06% x 0.2) x 76% x 900,000 + 5% x 18.06% x 900,000] to [(12.62% x 0.8 + 22.99% x 0.2) x 76% x 700,000 + 5% x 22.99% x 700,000] ≅ 85,583 to 86,219 for the initial year, rounded to 86,000. To be consistent with a final range of 73-76,000 a similar calculation was used, based on 607,000 to 1,225,000 disputes per year (the numbers of disputes which give a final range of 73,000 to 76,000 Tribunals), to give 84,974-86,692 for the initial year, rounded to 85-87,000.

Annex 2: Details of cost calculations

77. **The costs to employers of introducing and using the statutory procedures arise from the opportunity cost of the management and employee time the procedures require.**

Cost to employers of introducing procedures

78. **All employers will face adjustment costs. Once the firm has become familiar with and understood the procedures and implications of non-use, they will not face this cost again.**

79. **Table 4 shows the assumptions made about the existing (pre-legislation) use of procedures. The data for larger firms are based on WERS98 data.[40] It is assumed that small firms are less likely to have procedures at all or ones that meet the minimum requirement (labelled as 'sub-standard').**

Table 4: Proportions of firms with satisfactory and unsatisfactory procedures

Number of employees	Number of firms[1]	Satisfactory procedures	Sub-standard procedures	No procedures
1-4	797,000	25%	25%	50%
5-9	216,000	30%	30%	40%
10-19	119,000	40%	30%	30%
20-49	57,000	79%	9%	12%
50-99	19,000	79%	9%	12%
100-199	8,000	79%	9%	12%
200-249	2,000	79%	9%	12%
250-499	4,000	79%	9%	12%
500+	4,000	79%	9%	12%

[1] Source of employer numbers is Small Business Service, Statistical Bulletin, Small and Medium Enterprises, Statistics for Great Britain, 2002

Table 5 shows these expressed as numbers of firms.

[40] Cully M., Woodland S., O'Reilly A. and Dix G., *Britain at Work*, Routledge 1999.

Table 5: Numbers of firms with satisfactory and unsatisfactory procedures[41]

Number of employees	Satisfactory procedures	Sub-standard procedures	No procedures
1–4	199,000	199,000	398,000
5–9	65,000	65,000	86,000
10–19	48,000	36,000	36,000
20–49	45,000	5,000	7,000
50–99	15,000	2,000	2,000
100–199	7,000	1,000	1,000
200–249	1,000	200	200
250–499	3,000	300	400
500+	4,000	400	500
Total	386,000	308,000	532,000

All rounded to nearest 1,000

80. **Table 6 then lists the assumptions made about the amount of management time required to understand the new requirements and, if necessary, to improve procedures and make any necessary changes to written statements.**

Table 6: Introduction of procedures: time spent by managers (in hours)

	High-cost scenario			Low-cost scenario		
Number of employees	Satisfactory	Sub-standard	None	Satisfactory	Sub-standard	None
1-4	0.5	2	4	0.5	1	2
5-9	0.5	2	4	0.5	1	2
10-19	0.5	2	4	0.5	1	2
20-49	0.5	2	4	0.5	1	2
50-99	0.5	2	4	0.5	1	2
100-199	0.5	2	4	0.5	1	2
200-249	0.5	2	4	0.5	1	2
250-499	0.5	2	4	0.5	1	2
500+	0.5	2	4	0.5	1	2

81. **Multiplying the numbers of firms affected in Table 5 by the hour assumptions in Table 6 and valuing management time at £24.82 per hour[42], this implies total one-off adjustment costs of £39-73 million.[43]**

[41] Source of employer numbers is Small Business Service, Statistical Bulletin, Small and Medium Enterprises, Statistics for Great Britain, 2002.

[42] In 2002, the average hourly pay, excluding overtime, of a manager/senior official (1 digit SOC 2000) in Great Britain was £19.09. Source: New Earnings Survey (NES) 2003. The cost of a manager's time includes non-wage costs and overheads, estimated at 30% of wage costs. The hourly cost of a manager's time is, therefore, £19.09 x 1.3 = £24.82 rounded to nearest penny.

[43] Calculated as: [£24.82 x (0.5 x 386,000 + 2 x 308,000 + 4 x 532,000)] to [£24.82 x (0.5 x 386,000 + 308,000 + 2 x 532,000)] = £39-73 million rounded to 2 significant figures.

82. **If only partial initial compliance is assumed (i.e. either 60% or 80%), the above one-off cost would be spread over five years, until full compliance is achieved. This is shown in the table below.**

Table 7: One-off adjustment costs with varying compliance rates

		Year 1	Year 2	Year 3	Year 4	Year 5
60% compliance	Low cost	£23m	£4.0m	£4.0m	£4.0m	£4.0m
	High cost	£44m	£7.3m	£7.3m	£7.3m	£7.3m
80% complianc	Low cost	£31m	£2.0m	£2.0m	£2.0m	£2.0m
	High cost	£58m	£3.6m	£3.6m	£3.6m	£3.6m

Ã All to 2 significant figures

Cost to employers of using procedures

83. **In all cases where procedures are not currently used, or where those procedures do not meet the new minimum requirements, employers will incur additional costs from running these procedures.**

84. **There are estimated to be 700-900,000 disputes per year that could involve recourse to the law. It is further assumed that in 19% of these action is not taken and in a further five per cent parties to the dispute are exempt from following the procedures. This leaves 532-684,000 disputes where some form of action will be taken. It is assumed that, at present, procedures that meet the new minimum standard are used in 50% of all cases where action is taken (i.e. 266,000 to 342,000). It is further assumed that in 30% of cases (i.e. 159,600 to 205,200 cases) a procedure is used but it does not meet the minimum requirements. And in the remaining 20% of cases (106,400 to 136,800 cases), no procedure is followed at all.**

85. **Tables 8 and 9 set out the assumptions on the average amount of time that employers and employees need to spend using the three-step and two-step procedures, respectively. Assuming a 50-50 split on grievance and disciplinary procedures, both average employer (manager) time and employee time spent on the three-step procedure equal four-and-a-half hours in the low-cost scenario. They both equal five hours in the high-cost scenario. In the two-step procedure, the manager's time on average would amount to two and three hours in the low- and high-cost scenarios respectively, while the employee's time would amount to one-and-a-half and two hours in the low- and high-cost scenarios, again respectively.**

Table 8: Average company time used to complete the standard (three-step) grievance/ dismissal and disciplinary procedures

	Dismissal and disciplinary procedure				Grievance procedure			
	Manager time (hours)		Employee time (hours)		Manager time (hours)		Employee time (hours)	
	High cost	Low cost	High cost	Low cost	High cost	Low cost	High Cost	Low cost
Writing complaint	2	1	-	-	-	-	2	1
Hearing	2	2	2	2	2	2	2	2
Appeal hearing	2	2	2	2	2	2	2	2
Total	6	5	4	4	4	4	6	5

Table 9: Average company time used to complete the modified (two-step) grievance/ dismissal procedures

	Dismissal procedure				Grievance procedure			
	Manager time (hours)		Employee time (hours)		Manager time (hours)		Employee time (hours)	
	High cost	Low cost	High cost	Low cost	High cost	Low cost	High cost	Low cost
Writing complaint	2	1	-	-	-	-	2	1
Writing response	-	-	-	-	2	1	-	-
Appeal hearing	2	2	2	2	-	-	-	-
Total	4	3	2	2	2	1	2	1

86. **On the basis that management time costs £24.82 per hour and employee time costs £14.90 per hour[44], the average cost of using the three-step procedure is around £179-199[45] and the average cost of the two-step procedure is around £72-104[46], both to the nearest pound. These are the additional costs that will apply when no procedures at all are used at present. Where procedures are used, but need to be improved, the additional cost will be lower; here it is assumed to be three and one-and-a-half hours of both manager and employee time, for the three- and two-step procedures, respectively, which produces a unit cost of around £119 per case for the three-step procedure and around £60 for the two-step procedure, both to nearest pound. Where satisfactory procedures are already used, there will be no additional recurring cost from these Regulations.**

[44] This is calculated as the average gross hourly earnings of all employees on adult rates, excluding overtime all occupations, whose pay was not affected by absence. GB: £11.46. (Source New Earnings Survey 2003) Multiplied by a factor of 1.3 to take into account non-wage labour costs: £14.90 to nearest penny.

[45] Three-step procedure calculated as [4.5 x (£14.9+£24.82)] to [5 x (£14.9 + £24.82)] = £179-199 rounded to nearest pound.

[46] Two-step procedure calculated as [(2 x £24.82) + (1.5 x £14.9)] to [(3 x £24.82) + (2 x £14.9)] = £72-104 rounded to nearest pound .

87. **Multiplying these unit costs by the number of disputes where new or better procedures will be required, and assuming that the two-step procedure is used in fifteen per cent of the disputes where any action is taken,[47] and that there is full compliance with the new legislation, it produces a total recurring cost estimate of £35-48 million[48] (£35-45 million under the low-cost scenario, and £37-48 million under the high-cost scenario).**

88. **If only partial initial compliance is assumed (i.e. either 60% or 80%), initial annual costs would be around £21-29 million[49] and £28-38 million[50] respectively. These levels of initial costs would gradually increase up to £35-48 million per year after five years, and thereafter, when full compliance would be achieved. This is shown in table 10.**

Table 10: Annual costs with varying compliance rates

		Year 1	Year 2	Year 3	Year 4	Year 5
60% compliance	Low cost	£21-27m	£24-31m	£28-36m	£31-40m	£35-45m
	High cost	£22-29m	£26-33m	£30-38m	£33-43m	£37-48m
80% compliance	Low cost	£28-36m	£30-38m	£31-40m	£33-43m	£35-45m
	High cost	£30-38m	£32-41m	£33-43m	£35-45m	£37-48m

All figures quoted to 2 significant figures, ranges come from range of 700-900,000 justiciable disputes per year

[47] Provisional analysis of the SETA 2003 dataset suggests 38% of Employment Tribunal claimants ended their employment before submitting their application and were not suing for unfair dismissal. This is an indication of the proportion likely to go through the two-step procedures. However, the proportion should be quite a lot lower, since we would expect the employment relationship to be more likely to be still intact at the time of going through the procedures, and even when it has ended, in order to go through the two-step grievance procedures, both parties must agree in writing to not go through the three-step procedures, or it must be not reasonably practicable for one or other party to attend a meeting. We therefore assume 15% of applicable disputes will go through the two-step procedures, and 85% will go through the three-step procedures.

[48] [106,400 to 136,800] x ([£178.74 to £198.6] x 0.85 + [£71.99 to £104.26] x 0.15) [cases with no procedure] + [159,600 to 205,200] x (£119.16 x 0.85 +£59.58 x 0.15) [cases with sub-standard procedure] = £35-48 million rounded to 2 significant figures.

[49] Calculated as: [£34.9-47.9 million] x 0.6 = £21-29 million rounded to nearest million.

[50] Calculated as: [£34.9-47.9 million] x 0.8 = £28-38 million rounded to nearest million.

Annex 3: Small Firms Impact Test

Small Firms Impact Test – Stage One

89. **The first stage of the Small Firms Impact Test clearly indicated that the Regulations could have an impact on small firms. The Stage One Impact Test 'Sounding' involved a broad portfolio of stakeholder organisations. An advisory group was formed to act as a sounding board for policy, legal and guidance developments. Participants include the British Chambers of Commerce, the Small Business Council, the Forum for Private Business and the Federation of Small Business. Priority sectors, such as construction, hospitality and retail, were also represented by specialist groups – e.g. the British Retail Consortium, the Construction Confederation and the British Hospitality Association/ Restaurant Association. The advisory group has met a number of times (and will continue to meet to discuss the ongoing guidance campaign for these Regulations).**

90. **These stakeholder groups generally accepted that the statutory dispute resolution procedures could have a strong positive impact on solving workplace problems. The stakeholder groups were keen to ensure that the Regulations should be as pragmatic and straightforward as possible. They were concerned that overly complex requirements would be unworkable for small firms. The group also provided valuable input on developing a suitable communications and guidance programme.**

91. **The Small Business Service was consulted, and it agreed that these Regulations could have a significant impact on small businesses. As a result, it was necessary to carry out Stage Two.**

Small Firms Impact Test – Stage Two

92. **Stage Two of the Impact Test requires soundings to be taken with small firms. With that in mind, the Small Business Service organised two small firms focus groups on 15 and 16 April 2003.**

93. **Eleven organisations drawn from across the United Kingdom participated in the two events – an additional four were also invited but could not attend. There were seven small firms represented from a variety of sectors including construction, consultancy, training, and software; and four trade associations, from the hospitality, professional services and retail sectors. These firms were drawn from a database held by the Small Business Service – it is possible that the firms were not truly representative of the small business community as a whole, but they were intentionally drawn from those sectors considered likely to be most affected by the new requirements.**

94. **The focus group participants felt that the procedures could be adopted without too much difficulty. Most firms felt their existing procedures were largely in line with the proposed Regulations. There was no feeling that the modified dismissal procedure would encourage employers to dismiss summarily, as the standard procedures were not seen as being unduly onerous.**

95. **Successfully informing small firms about the new Regulations was seen as a particularly important challenge, and the participants' preferred approach to communicating these policies was discussed in some depth.**

Small Firms Impact Test - Conclusions

96. **Both stages of the Small Firms Impact Test confirmed that the proposed Regulations could potentially have a significant effect on small firms. However, the evidence gathered in focus groups suggested that there would be limited consequence to the many firms that already have dispute resolution procedures in place. Policy feedback from main stakeholder organisations has directly shaped the proposed Regulations to address the concerns of small firms.**