



**Guidance on the Employment Act
2002 (Dispute Resolution) Regulations
2004 and associated provisions in the
Employment Act 2002**

May 2004

CONTENTS

Chapter 1 - Introduction.....	1
Chapter 2 - Dismissal and disciplinary procedures	2
Standard Dismissal and Disciplinary Procedure	2
Retirement dismissals	3
Fixed term contract dismissals	3
Modified dismissal procedure	4
Requirement to act reasonably.....	5
General requirements which apply to the procedures.....	6
Preservation of continuity.....	6
General exemptions for the dismissal and disciplinary procedures	7
Dismissals where the procedures do not apply	7
Dismissals where the parties are treated as complying with the dismissal and disciplinary procedures.....	10
Chapter 3 - Grievance procedures	12
What is a grievance?	12
Standard (three-step) grievance procedure	12
Modified (two-step) grievance procedure.....	13
General requirements which apply to the procedures.....	14
Questions to obtain information will not constitute a Step One grievance letter	14
General exemptions for the grievance procedures.....	15
Grievances where the procedures do not apply	15
Grievances where the parties are treated as complying with the statutory procedures.....	16
Chapter 4 - General requirements that apply to both procedures	18
Chapter 5 - Exemptions which apply to all statutory procedures .	18
Significant threat, harassment or not practical within a reasonable period.	19
Significant threat.....	19
Harassment	20
Starting or completing any procedure within a reasonable period	20
Where procedures have not started	20
Where procedures have started but not completed	21
National security.....	21
Rearranging meetings	21
Chapter 6 - Dealing with “overlapping” disputes	22

Chapter 7 - Requirement for employers to communicate dispute resolution procedures.....	24
Chapter 8 - Impact on tribunal applications	25
Admissibility	25
Time limit extensions	25
Dismissal and disciplinary procedures	25
Grievance procedures.....	26
Adjustment of awards	27
Dismissal and disciplinary procedures	27
Grievance procedures.....	28
Changes in the way that unfair dismissal cases are judged – “Polkey reversal”	29
Link with exemptions	29
Discrimination questionnaires	30
Additional award for non-existent, incomplete or inaccurate written statement of employment particulars	30
Amendments to secondary legislation	31
Transitional arrangements	31
Chapter 10 - Other sources of advice	33
Where to go for help	33
Practical guidance.....	33
Legislation	33

Chapter 1 - Introduction

1. Part 3 of the Employment Act 2002 (referred to in this Guidance as 'the Act') established a framework for promoting the resolution of employment disputes in the workplace¹. The detail of how the procedures would operate in practice was set out in secondary legislation, the Employment Act 2002 (Dispute Resolution) Regulations 2004 (referred to in this Guidance as 'the Regulations') which were made on 12th March 2004². Both the remaining provisions of Part 3 of the Act and the Regulations will come into force on 1 October 2004.
2. This document provides detailed advice and guidance on both the provisions of the Act and the Regulations. It describes the position that applies in England, Wales and Scotland. Northern Ireland has separate legislation that mirrors legislation in Britain.
3. This document gives general guidance only. It has no legal force and cannot cover every point and situation. If you would like advice on your particular situation, please turn to page 33 which gives further contact details.
4. This publication will be useful for lawyers and human resources specialists. It is not intended for individual employers and employees – user-friendly guidance for individuals will be available from 1 June 2004.

Employment legislation

The Department of Trade and Industry has responsibility for employment legislation.

The latest version of this booklet is published on the Internet at.
http://www.dti.gov.uk/employment/Resolving_disputes/index.html

For further information on employment relations issues, see
<http://www.dti.gov.uk/employment/index.html>

May 2004

¹ For further information on the Employment Act 2002 see <http://www.dti.gov.uk/employment/index.html> .

² For further information on the Regulations see http://www.dti.gov.uk/employment/Resolving_disputes/index.html.

Chapter 2 - Dismissal and disciplinary procedures

Standard Dismissal and Disciplinary Procedure

5. The Act established the following statutory procedure that must be followed in the circumstances set out in the Regulations.

Standard (three-step) dismissal and disciplinary procedure	
Step One	The employer must set down in writing the nature of the employee's conduct, capability or other circumstances that may result in dismissal or disciplinary action, and sends a copy of this statement to the employee. The employer must inform the employee of the basis for his/her complaint.
Step Two	The employer must invite the employee to a hearing at a reasonable time and place where the issue can be discussed. The employee must take all reasonable steps to attend. After the meeting, the employer must inform the employee about any decision, and offer the employee the right of appeal.
Step Three	If the employee wishes to appeal, he/she must inform the employer. The employer must invite the employee to attend a further hearing to appeal against the employer's decision, and the final decision must be communicated to the employee. Where possible, a more senior manager should attend the appeal hearing.

6. The standard dismissal and disciplinary procedure will apply when the employer is contemplating dismissal (including dismissal on grounds of capability, conduct, redundancy, non-renewal of a fixed term contract and retirement). Failure to follow the procedure when it applies will make any dismissal automatically unfair.

7. The procedure will also apply when the employer is contemplating any disciplinary actions short of dismissal in relation to an employee, wholly or mainly by reason of the employee's conduct or capability. However, it will *not* apply to actions which are themselves part of a workplace procedure, i.e. warnings (oral or written) and suspension on full pay.

8. Disciplinary suspension, where the employee is suspended without pay or on reduced pay, *will* attract the application of the standard dismissal

and disciplinary procedure. This is because the withholding or reduction of pay is a conduct- or capability-related action additional to the suspension itself. Investigatory suspension on full pay will not trigger the application of this procedure. However, if the employee is dissatisfied with this, he/she can initiate the standard grievance procedure (see the following chapter for details on the grievance procedures).

9. When the modified dismissal procedure applies, there will be no requirement to go through the standard dismissal and disciplinary procedure (see paragraphs 15 to 20 for further details).

10. The application of this procedure is expressly subject to regulation 4, which lists dismissals where neither the standard nor the modified procedure applies. See paragraphs 30 to 46 for more details.

Retirement dismissals

11. As mentioned above, the standard (three-step) dismissal and disciplinary procedure applies to all dismissals, including compulsory retirement. Where an employer seeks to dismiss an employee compulsorily on grounds of age in circumstances where the employee could claim unfair dismissal – i.e. before the normal retirement age for the job, or before age 65 where there is no such normal retirement age – then the standard dismissal procedure must be followed.

12. Where retirement is by mutual consent, there is no need to follow the procedures. Furthermore, there will be no need for the employer to go through the procedure where the employee could not in any event make an unfair dismissal complaint about his/her retirement i.e. under the current unfair dismissal legislation, where the dismissal is at the normal retirement age for the job or, in the absence of such an age, age 65. This is because no legal consequences flow from failing to follow the procedure in a case where the employee could not make a tribunal complaint about the dismissal in any event.

Fixed term contract dismissals

13. The standard (three-step) dismissal and disciplinary procedure must be used when dismissal consists of the non-renewal of a fixed term contract.

14. Fixed-term and permanent employees must be treated equally, as required by the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, unless differences in treatment can be objectively justified. Therefore, the statutory procedures will apply to both fixed term and permanent employees. In the case of fixed-term contracts of less than one year's duration, however, an employee will normally have no

right to claim unfair dismissal if the contract is not renewed, as the one year qualifying period will continue to apply.

Modified dismissal procedure

15. *It is almost always unfair to dismiss an employee instantly, without first going through some form of procedure or carrying out some form of investigation, even in a case of apparently obvious gross misconduct.* However, tribunals have occasionally found such dismissals to be fair. The Regulations will allow this possibility to continue for a small minority of gross misconduct dismissals, but even in these cases the employer will be required to use the modified (two-step) dismissal procedure after dismissing.

16. The modified dismissal procedure is set out in the Act.

Modified (two-step) dismissal procedure	
Step One	The employer must set down in writing the nature of the alleged misconduct that has led to the dismissal, the evidence for this decision, and the right to appeal against the decision, and send a copy of this to the employee.
Step Two	If the employee wishes to appeal, he/she must inform the employer. The employer must invite the employee to attend a hearing to appeal against the employer's decision, and the final decision must be communicated to the employee.

17. The modified dismissal procedure may be used only when the following conditions apply:

- ❑ The employer dismissed the employee without notice on the basis of his or her conduct;
- ❑ The dismissal took place at the time the employer became aware of the gross misconduct (or immediately after);
- ❑ The employer was entitled to dismiss for gross misconduct without notice or payment in lieu of notice; and
- ❑ It was reasonable for the employer to dismiss without investigating the circumstances.

18. The modified dismissal procedure must then be completed in full. Failure to do so may result in any dismissal being found automatically unfair.

19. The application of this procedure is expressly subject to regulation 4, which lists dismissals to which neither the standard nor the modified procedure applies. See paragraphs 30 to 49 for more details.

20. Please note that the modified procedure does not apply if the employee presents his complaint to an employment tribunal before the employer has written to the employee setting out the employee's alleged misconduct that gave rise to the dismissal. See paragraphs 47 to 49 for further details.

Requirement to act reasonably

21. It is critical to note that a tribunal can rule that a dismissal is unfair even if the employer has stuck to the letter of the procedures. This is because the tribunal will look at whether or not the employer had a fair reason for dismissal and behaved reasonably in the way he or she went about the dismissal. The tribunal will refer to the Acas Code of Practice on Disciplinary and Grievance Procedures to determine if the employer behaved in a reasonable manner (see page 34 for how to obtain this document).

22. Please note that the Department of Trade and Industry publishes a range of detailed guidance on unfair dismissal (see page 34 for further details). The following paragraphs give an overview of key issues.

23. In general, if disciplinary action could result in the dismissal of the employee, the employer must ensure the dismissal is fair. This condition applies even if it is not necessary to follow the statutory procedures or parties are treated as complying with the statutory procedures.

24. Fairness involves two key points:

- The reason for the dismissal must be one allowed by the law, that is
 - Capability or qualifications of the employee
 - Conduct of the employee
 - Redundancy
 - Contravention of a duty or restriction or
 - Some other substantial reason

- The employer must act fairly.

25. Acting fairly can be summarised in the following key principles of reasonable behaviour:

- Procedures should be used to encourage employees to improve, where possible, rather than just as a way of imposing a punishment
- The employer must inform the employee about the complaint against him or her; the employee should be given an opportunity to state his or her case before decisions are reached
- The employee is entitled to be accompanied at disciplinary and grievance meetings
- The employer should not take disciplinary action until the facts of the case have been established
- The employer should never dismiss an employee for a first disciplinary offence, unless it is a case of gross misconduct
- The employer should always give the employee an explanation for any disciplinary action taken and make sure the employee knows what improvement is expected
- The employer must give the employee an opportunity to appeal
- The employer should act consistently

26. Note that an employee cannot normally take a case of unfair dismissal until he or she has been employed for a year or more. There are some important exceptions to this rule. Some dismissals are automatically unfair whenever they occur. For example, dismissing a woman for becoming pregnant, or a trade union official or health and safety officer for carrying out legitimate duties, can never be fair.

General requirements which apply to the procedures

27. A number of general requirements must be followed when using the procedures. These are set out in more detail in chapter 4.

28. If the procedures are not started, or started but not completed satisfactorily, this will impact any subsequent tribunal case. For further details see paragraphs 129 to 132.

Preservation of continuity

29. It may be possible that an employee is dismissed during the standard dismissal and disciplinary procedure (or before the modified dismissal procedure starts), but this decision is then reversed on appeal. The employee

would then be either re-employed or re-instated. In these circumstances, the employee's continuity of employment would be preserved (see regulation 17(e) for more details).

General exemptions for the dismissal and disciplinary procedures

30. A number of exemptions exist for all the statutory procedures (see chapter 5). In addition, there are a number of exemptions that apply only to the dismissal and disciplinary procedures.

Dismissals where the procedures do not apply

31. The Regulations set out certain categories of dismissal to which the procedures do not apply at all (see regulation 4). These are dismissals in which the individual characteristics of the employee will play no or no real role in the decision to dismiss; they are often collective dismissals. In those circumstances it would not be right, in the context of setting a minimum legal standard, to require the parties to go through the procedures (notwithstanding that it will often be good practice for the employer to discuss such dismissals with the employees at an individual level as well as a collective one, and failure to do so may render the dismissal unfair).

32. It is important to note that as the procedures do not apply, any subsequent tribunal claim must be made within the normal time limit for that jurisdiction, that is, the time limit will *not* be extended as it would if the procedures applied (see paragraphs 137 to 140 for details).

The circumstances in which the procedures will not apply are as follows:

- o some collective redundancies;
- o dismissal then re-engagement in certain circumstances;
- o industrial action dismissals;
- o constructive dismissals;
- o some dismissals where the employer's business suddenly ceases to function and all employees are dismissed;
- o dismissals where continued employment of the employee would contravene a legal duty or restriction; and
- o at the time of dismissal, the employee is covered by a dismissal procedures agreement

33. The modified dismissal procedure may not apply in certain circumstances where the employee submits a tribunal application before the Step One letter is sent by the employer.

34. It should be noted, however, that just because a dismissal falls within an exemption from the statutory procedures, that does not mean it will necessarily be fair. The normal unfair dismissal rules will continue to apply.

Some collective redundancies

35. When an employer wishes to make 20 or more employees at the same establishment redundant within a 90-day period, he or she is under a statutory obligation to consult representatives of the affected employees (section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992). This particular obligation will not be cut across by the statutory dispute resolution procedures – in other words, there will be no requirement to follow the statutory procedures as well.

36. However, it should be noted that for redundancies affecting fewer than 20 employees, or where the redundancies will take effect in a period longer than 90 days, the statutory procedures will apply as usual.

Dismissal then re-engagement

37. Dismissal and re-engagement is a widely used mechanism for reissuing contracts or changing terms and conditions of employment. It will not be necessary to go through the statutory procedures before the employer seeks to dismiss all the employees of a description or a category, provided that re-engagement is offered before or on termination of the existing contract. However, the dismissals may still be unfair under the normal unfair dismissal rules, if there was no fair reason for them or the employer acted unreasonably.

Industrial action dismissals

38. In most circumstances, most dismissals of employees engaged in industrial action will not be covered by these statutory procedures.

39. Where an employer seeks to dismiss employees engaged in *lawfully organised* industrial action, the statutory procedures do not apply. Instead, the employer should follow the different statutory requirements set out in the Employment Relations Act 1999. The 1999 Act provides that the employer should take reasonable steps to promote the settlement of the dispute before the employer can fairly dismiss strikers taking lawfully organised industrial action. Furthermore, it is proposed that these provisions be enhanced by the Employment Relations Bill that is currently before Parliament that sets out the minimum requirements that the parties must

take when they agree to conciliation or mediation to try and resolve the dispute. It would be confusing and inappropriate for the statutory dispute resolution procedures to cut across the operation of other legislative requirements. The exception to this rule is where the employer makes selective dismissals amongst the strikers, in circumstances where those dismissed could bring an unfair dismissal claim. In these exceptional circumstances, the statutory procedures would apply.

40. However, in the case of other *unofficial or non-protected* strikes or other industrial action, the employer is *not* required to follow either the statutory dispute resolution procedures or any other statutory requirements before dismissing or taking other disciplinary action (subject to section 237 (1) (a) and section 238 of the Employment Relations Act 1996).

Constructive dismissals

41. Constructive dismissals are not covered by the dismissal and disciplinary procedures. Instead, the employee will need to follow either the standard or modified grievance procedure (see the following chapter for more details), if he or she wishes to make a tribunal claim relating to the constructive dismissal.

The employer's business suddenly and unexpectedly ceases to function

42. It may be possible that the employer's business suddenly and unexpectedly ceases to function. For example, the premises may burn down. It may then become impractical to employ any employees. In these circumstances, there is no requirement for the employer to go through the dismissal and disciplinary procedures before dismissing the employees – although, as in other circumstances, the normal unfair dismissal rules will still apply.

Contravening a duty or restriction

43. In certain circumstances, it may be possible that an employee cannot continue to work, in the position that he or she held, without contravention (by either party) of a legal duty or restriction (sometimes known as a statutory ban). This may necessitate the employee's dismissal. For example, it is unlawful to employ someone with certain medical conditions in a number of industries; or a valid driving licence may be an essential qualification for a certain position. If a statutory ban applies, any dismissal would not be covered by the statutory procedures.

44. However, it should be noted that whilst the procedures will not apply, a tribunal might find a statutory ban dismissal to be unfair. For example, the employer should try to find an alternative role for the affected employee. However, this may not be possible – if, for instance, the employee is

engaged as a driver in a small firm and, following a motoring offence, loses his/ her driving licence and no alternative role exists within the firm.

Dismissal procedures agreement

45. Section 110 of the Employment Rights Act 1996 sets out the provisions relating to dismissal procedures agreements. If the employee is covered by such an agreement, the statutory disciplinary procedures will not apply.

Exemption for modified dismissal procedure only

46. An employee who wishes to challenge his/her dismissal in circumstances where the **modified dismissal procedure** would otherwise apply will be free to present a tribunal application (e.g. an unfair dismissal complaint, if he/she has the necessary qualifying service) straight away, as the Act imposes no admissibility conditions in this regard. If he/she presents the application before the employer sends the Step One letter, this will effectively forestall the carrying out of the procedure and in those circumstances no award adjustment will be made. (See paragraphs 129 to 132 for an explanation of award adjustment).

47. This provision is included because it would be unfair to leave open the possibility that the employee might be held at fault for failure to complete the statutory procedure if he presented a tribunal complaint before the employer had so written, given that the employer might delay writing for some considerable time, or might ultimately fail to write at all.

48. If, however, the employer sends the Step One letter to the employee before the employee has presented a tribunal complaint, the procedure should be gone through, that is, this exemption will not apply. Therefore, if the employee subsequently presents a complaint before the procedure has been completed, either party may be subject to award adjustment.

Dismissals where the parties are treated as complying with the dismissal and disciplinary procedures

49. There are a number of circumstances in which the parties are treated as having complied with the relevant dismissal and disciplinary procedure even though in fact they have not so complied (as set out in regulation 5).

50. It is important to note that as the procedures apply, any subsequent tribunal application may benefit from extended time limits. If the applicant has reasonable grounds for believing a statutory or workplace disciplinary procedure in relation to a particular is still ongoing at the point where the normal time limit expires, then the time limit for making a tribunal claim about

that matter will be extended by three months (see paragraphs 126 and 127 for further details).

Interim relief

51. Under section 128 of the Employment Rights Act 1996, an employee can, when claiming that he or she was dismissed unfairly for certain reasons (trade union membership or activities, health and safety, occupation pension trustee, business transfer or redundancy representation, working time, protected disclosure, or right to be accompanied), make a claim for interim relief. If the tribunal considers it likely that at the full hearing it will uphold the complaint for any of those reasons, the tribunal will either order reinstatement, re-engagement or will make an order for the temporary continuation of the contract of employment. Since an application for interim relief has to be made within 7 days of dismissal, both parties are treated as having complied with the appeal stage of the standard or modified dismissal and disciplinary procedure, if such an application has been made.

“Appropriate procedure”

52. In many industries, employers and trade unions have jointly developed sophisticated dispute resolution procedures. Typically, these schemes allow the appeal stage in dismissal cases to be heard by a panel of employer and union representatives.

53. If the procedure has been agreed by two or more employers or an employers' association and at least one independent trade union, and this kind of external appeals panel exists, and if an employee appeals to this body against a dismissal, then the parties will be treated as having complied with the appeal stage in the statutory disciplinary procedures (i.e. paragraphs 3 or 5 of Schedule 2 to the Act).

54. It should be noted that this exemption applies *only* to the appeal stage of the statutory dismissal and disciplinary procedures – it will be necessary to follow the earlier steps in full.

Chapter 3 - Grievance procedures

What is a grievance?

55. The Regulations define a grievance as “a complaint by an employee about action which his employer has taken or is contemplating taking in relation to him”. This definition will also cover the actions of a third party (e.g. a colleague) in cases where the employer could be vicariously liable for those actions. Regulation 6 then provides that the grievance procedures apply in relation to any grievance about action by the employer that could form the basis of a tribunal claim under one of the jurisdictions set out in Schedules 3 or 4 to the Act.

56. It should be noted that this will not affect the position, established in the Act, that the statutory grievance procedures do not apply where an employee makes a protected disclosure within the meaning of the Public Interest Disclosure Act 1998, unless the employee actually intended the making of the disclosure to constitute the raising of a grievance. The provisions in PIDA will always take precedence. This effectively gives the employee the right to choose whether to raise a concern as a grievance or as a protected disclosure.

Standard (three-step) grievance procedure

57. It is important to note that the Acas Code of Practice on Disciplinary and Grievance Procedures recommends that employees should aim to settle most grievances informally with their line manager. If the grievance cannot be settled informally, then the employee should normally turn to the statutory procedure to raise a formal grievance.

58. The standard grievance procedure will be initiated by the employee writing a letter to the employer. In response, the employer will be required to arrange a meeting to discuss the issue, and to provide an opportunity for the employee to appeal if the meeting fails to resolve the matter.

Standard (three-step) grievance procedure	
Step One	The employee must set down in writing the nature of the alleged grievance and send the written complaint to the employer.

Step Two	The employer must invite the employee to at least one hearing at a reasonable time and place at which the alleged grievance can be discussed. The employee must inform the employer what the basis for the grievance is. The employee must take all reasonable steps to attend. After the meeting, the employer must inform the employee about any decision, and offer the employee the right of appeal.
Step Three	If the employee considers that the grievance has not been satisfactorily resolved, he/she must inform the employer that he wishes to appeal against the employer's decision or failure to make a decision. Where possible, a more senior manager should attend the appeal hearing. After the meeting, the employer's final decision must be communicated to the employee.

59. The Regulations provide that the standard grievance procedure (set out in Chapter 1 of Part 2 of Schedule 2 to the Act) will apply in cases where an employee is aggrieved about an action taken by an employer in relation to him/her, and where the employee asserts that the action was taken wholly or mainly by reason of **something other than his/her conduct or capability** (see paragraphs 6 to 8 for further information). The types of action in question will **include** warnings (written and oral), investigatory suspensions and those actions giving rise to constructive dismissals, but **exclude** other dismissals (see paragraphs 72 and 73) and "collective" actions (see paragraphs 80 to 82). It will also apply when an employee wishes to complain about actions taken by colleagues - should the employer fail to address the issue, then the employee should initiate the standard grievance procedure.

60. The standard (three-step) procedure will apply in *all* cases where the employee is still in the employer's employment. It will also apply in *most* cases where the employee is no longer in the employer's employment (see paragraphs 63 and 64 for further details). There are however some exemptions, detailed below.

Modified (two-step) grievance procedure

61. The modified grievance procedure is as follows.

Modified (two-step) grievance procedure

Step One	The employee must set down in writing the nature of the alleged grievance and send the written complaint to the employer.
Step Two	The employer must set out his or her response in writing and send it to the employee.

62. The modified (two-step) grievance procedure will apply in circumstances where the standard grievance procedure would otherwise apply but where the employment has ended and *either*:

- the employer was not aware of the grievance before the employment ended; or
- if the employer was so aware, the standard grievance procedure had not started or had not been completed by the time the employment ended;

and

- the parties must have agreed in writing that the modified, rather than the standard, grievance procedure shall apply.

63. The modified procedure is applicable in such cases as it would be unreasonable to oblige the parties to follow the standard procedure, including attending meetings, where there is no ongoing employment relationship and the parties have no interest in following the procedures, and where they are in mutual agreement on this point.

General requirements which apply to the procedures

64. A number of general requirements must be followed when using the procedures. These are set out in more detail in chapter 4.

65. If the procedures are not started, or are started but not completed satisfactorily, this will have an impact on the outcome of any subsequent tribunal case. For further details see paragraphs 129, 130 and 133.

Questions to obtain information will not constitute a Step One grievance letter

66. Discrimination legislation provides for the use of questionnaires by employees to gather evidence from their employers about potential discrimination claims. The proposed changes to time limits for submitting tribunal claims will also impact these questionnaires, the validity of which is

time-limited.

67. The Regulations establish that that issuing a questionnaire of this kind will not count as a Step One grievance letter. Using one document for both purposes would be confusing for employers.

General exemptions for the grievance procedures

68. A number of exemptions exist for all the statutory procedures (see chapter 5 for further details). In addition, there are a number of exemptions that apply only to the grievance procedures.

Grievances where the procedures do not apply

69. In the following circumstances, it is important to note that as the procedures do not apply, any subsequent tribunal claim must be made within the normal time limit for that jurisdiction, that is, the time limit will *not* be extended. In addition, the admissibility requirements as set out in section 32 of the Act will not apply. See paragraphs 137 to 140 for details. Not reasonably practical after the end of employment

70. The grievance procedures will not apply if:

- Employment has ended;
- Neither of the grievance procedures has been commenced by that point; and
- Since the end of employment, it has become not reasonably practicable for the employee to send the Step One letter to initiate either of the procedures.

Dismissal and disciplinary procedures apply

71. There will be no requirement for the employee to raise a grievance if the employer has dismissed or is contemplating dismissing the employee. Furthermore, there is no requirement to follow the grievance procedure if the employer has taken or contemplates taking disciplinary action on the basis on conduct or capability. These cases will instead be covered by the dismissal and disciplinary procedures (see chapter 2 for further details).

72. However, the grievance procedures *will* generally apply if the employer has taken or contemplates taking conduct or capability related disciplinary action, and the employee feels either that it is, or would be, unlawfully discriminatory basis *or* that, contrary to the employer's assertion, it is not being taken on conduct or capability grounds. For example, the employee

might feel the disciplinary action is being taken because a personality clash with the line manager, rather than his or her ability to do the job. (But in certain circumstances, the parties may be *treated* as having complied with the procedures - see paragraphs 74 to 85 for more details).

Grievances where the parties are treated as complying with the statutory procedures

73. There are a number of circumstances where both parties will be treated as having complied with the grievance procedures, including the admissibility requirements. In these situations, it is important to note that any subsequent tribunal claim may benefit from an extension to the normal time limit for making an application (see paragraph 128 for details).

74. The parties will be treated as having complied where:

- The grievance is raised in writing during a dismissal and disciplinary procedure;
- The grievance procedure is not completed because it is not reasonably practicable;
- The grievance has been raised collectively; or
- An alternative, collectively agreed dispute resolution procedure exists, and the employee has raised his or her grievance using that procedure.

The grievance is raised in writing during a dismissal and disciplinary procedure

75. As mentioned previously, the grievance procedures *will* generally apply if the employer has taken or contemplates taking action that he or she asserts is on conduct or capability grounds, but the employee feels either that it is, or would be, unlawfully discriminatory *or* that it really being contemplated or taken for reasons other than the employer has asserted.

76. However, regulation 7 provides that the parties are treated as having complied with the grievance procedure in full as long as the employee writes to the employer setting out his grievance before the appeal meeting under the applicable dismissal and disciplinary procedure. This is to give the parties a chance to address this new element in the context of the dismissal and disciplinary procedure.

77. If the employee fails to write to the employer before the appeal meeting under the dismissal and disciplinary procedure, he or she will have to raise the grievance separately under the applicable grievance procedure

before being entitled to complain to an employment tribunal under a Schedule 4 jurisdiction. See chapter 6 for details.

Grievance procedure not completed because it is not reasonably practical

78. The parties shall be treated as having complied with the grievance procedure where the standard procedure would normally apply, but subsequently employment has ended and, since the end of employment, it has ceased to be reasonably practicable for one or both of the parties to comply with the remainder of the procedure (see regulation 8). In this case, if the parties have had the first meeting, the employer has to inform the employee in writing of his or her decision.

Collective grievances

79. The parties will be treated as having complied with the relevant grievance procedure if the grievance is raised in writing on behalf of at least two employees (including the complaining employee) by an "appropriate representative".

80. The "appropriate representative" is defined as an official of an independent trade union recognised by the employer for the purpose of collective bargaining or an employee of that employer who was elected or appointed to represent employees and has authority to do so under an established procedure to resolve grievances.

81. This provision will allow grievances to be dealt with collectively where more than one employee has the same grievance. This will save the time and resources of both employer and employees.

Alternative collectively agreed dispute resolution procedure

82. In many industries, employers and trade unions have jointly developed sophisticated dispute resolution procedures. These schemes may allow the employee to raise a grievance with this joint body.

83. If the procedure has been agreed by two or more employers or an employers' association and at least one independent trade union, and the employee is entitled to raise his or her grievance with this body and does so, then the parties will be treated as complying with statutory procedures.

84. This is to avoid a situation in which existing industry-level procedures can no longer be used because the parties have to comply with the statutory procedures.

Chapter 4 - General requirements that apply to both procedures

85. The following general requirements are established in the Act (in Part 3 of Schedule 2). They apply to all statutory dispute resolution procedures.

- Each step and action of the procedures must be taken without unreasonable delay.
- The timing and location of meetings must be reasonable.
- Meetings must allow both the employer and the employee to explain their cases.
- In the case of appeal meetings, the employer should, as far as reasonably practicable, be represented by a more senior manager than attended the first meeting.
- The employee can choose to be accompanied to the Step Two meeting and/ or the Step Three appeal by either a colleague or a trade union representative.

86. When a disabled employee is involved in a statutory dispute resolution procedure, the employer will be required to make "reasonable adjustments" so that the employee is not disadvantaged in any way³.

87. If the procedures are not started or completed satisfactorily, this will have an impact on the outcome of any subsequent tribunal cases. For further details see paragraphs 129 to 133.

Chapter 5 - Exemptions which apply to all statutory procedures

88. The following exemptions may apply to all statutory procedures:

- If one party reasonably believes there is a significant threat, harassment or it is not practical to go through the procedures within a reasonable period; and
- there are issues of national security involved.

³ This requirement is established by section 6 of the Disability Discrimination Act 1995 (and associated Regulations).

89. Furthermore, the Regulations contain provisions designed to cater for short-term situations where the parties cannot meet some procedural requirements.

90. In addition, it is important to note that there are a number of other exemptions that specifically apply to *either* the dismissal and disciplinary procedures *or* the grievance procedures (see paragraphs 31 to 49 and paragraphs 75 to 85 for details).

91. Note however that whether there is a complete exemption from the procedures, or the procedures apply but are regarded as having been complied with (except in cases where national security issues are involved), will depend on the circumstances – see below. The significance of this is that where the procedures apply but are regarded as having been complied with, there are time limit extensions for tribunal claims and, if a grievance is involved, the statutory admissibility conditions must be met.

Significant threat, harassment or not practical within a reasonable period

92. There will be no requirement to start or complete any statutory procedure if one or more of the following situations applies (as set out in regulation 10):

- One party has reasonable grounds to believe that starting or completing the procedure would result in a significant threat to any person (including that party) or any person's property;
- One party has been subject to harassment and has reasonable grounds to believe that starting completing the procedure would result in further harassment; or
- Factors beyond the control of either party make it effectively impossible for the procedure to be started or completed within a reasonable period.

Significant threat

93. This definition is intended to cover both violence and threats of violence to either the party or the party's property, or any other person or any other person's property.

94. In any subsequent tribunal case, if the tribunal finds that one party is responsible for the procedures not being started or completed because of significant threat, the party at fault would be liable to an adverse adjustment of any award made by the tribunal. In a dismissal case where the employer

was at fault, the tribunal would find such a dismissal to be automatically unfair.

Harassment

95. Harassment is defined as creating an intimidating, hostile, degrading, humiliating environment, for instance where there is harassment related to gender, race or disability. Such circumstances make the constructive discussion of workplace disputes impossible. However, it is important to note that stress or anxiety on the party of one of the parties will not usually be sufficient to cause any exemption to apply.

96. The provision will protect a party that has been subject to such harassment, and reasonably believes that either starting or continuing with any procedure would result in further harassment.

97. In any subsequent tribunal case, when deciding if a party has been harassed, the tribunal will consider all the circumstances, including the perception of the affected party. If the tribunal finds that one party is responsible for the procedures not being started or completed because of harassment, the party at fault would be liable to an adverse adjustment of any award made by the tribunal. In a dismissal case where the employer was at fault, the tribunal would find such a dismissal to be automatically unfair.

Starting or completing any procedure within a reasonable period

98. This provision will be used in circumstances where there are long-term barriers to either starting or completing the procedures. These issues might include illness, incapacity, cessation of the employer's business and so on.

99. If it was not practical to either start or complete the procedures within a reasonable period, then neither party will be held at fault for the procedure's failure, and so award adjustment will not apply. However, if any subsequent dismissal has failed to follow the basic principles of reasonableness, then a tribunal may still find this dismissal to be unfair.

Where procedures have not started

100. If the relevant procedure has not been started for reasons of significant threat, harassment or not being practical within a reasonable period, then the procedure will not apply. Therefore, in any subsequent tribunal applications, the normal time limits will apply, and, in the case of grievance claims, the admissibility requirements will not apply. So, the

employee may submit a tribunal claim within the normal time limit and is not required to write a Step One grievance letter then allow 28 days.

Where procedures have started but not completed

101. If the relevant procedure has been started but not subsequently completed for reasons of significant threat, harassment or not being practical within a reasonable period, the procedure will apply but the parties are treated as having complied with that procedure *without having to go through the remaining stages*. So, for example, if during a Step Two meeting, one party becomes violent, there will be no requirement to continue either the meeting or the rest of the procedures.

102. In any subsequent tribunal applications, the time limit for making an application may be extended, provided the conditions set out in paragraph 128 apply. In the case of grievances, the employee will have already sent the Step One letter so, provided he or she has then allowed 28 days before submitting a tribunal claim, the admissibility requirements will have been met.

National security

103. If complying with the statutory dispute resolution procedures would require the disclosure of information which would be contrary to the interests of national security, neither party will be required to go through the statutory procedures (see regulation 16).

104. This provision may impact upon time limits and admissibility. In relation to a grievance, the employee will normally have sent his Step One letter before the national security issue arises and so admissibility will have been secured and the time limit will be extended. However, if national security issue arises earlier (i.e. before the grievance is raised), then the procedure might never start and there would, therefore, be no need for Step One letter or time limit extension.

Rearranging meetings

105. If the employer, the employee or the employee's companion⁴ cannot reasonably attend a Step Two or Step Three meeting for a reason that was not reasonably foreseeable at the time the meeting was arranged, the meeting must be rearranged. For example, one of the parties may be ill, or his/her car may break down on the way to the meeting.

106. However, if either party did not attend the meeting and the failure could be reasonably foreseen, then neither party will be under any further

⁴ See section 10 of the Employment Rights Act 1999 for further detail on these requirements.

obligation under the statutory procedures. The tribunal may choose to attribute responsibility for failure, with the commensurate impact on award adjustment.

107. If the employee's companion cannot reasonably attend the meeting, the provisions of section 10 of the Employment Relations Act 1999 apply. This provides that the employee must propose an alternative date within 5 days. If acceptable, the employer must then invite all parties to attend at this new time.

108. The employer is obliged to rearrange the meeting once. However, if the meeting falls through a second time for unforeseeable reasons, neither party will be under any further obligation under the statutory procedures. In these circumstances, neither party will be held at fault for failure to complete the procedure, therefore award adjustment will not apply. Furthermore, both parties will be treated as having complied with the relevant statutory procedures so, if applicable, the normal time limit for making a tribunal application may be extended (see paragraphs 126 to 128 for details).

Chapter 6 - Dealing with "overlapping" disputes

109. The Act deals separately with disciplinary and grievance procedures, but it is often the case that there is no such clear distinction between the two matters in the workplace. Therefore the Regulations establish what is required to deal with such complex issues. The Regulations aim to ensure that the application of the statutory procedures is as clear and straightforward as possible, given the complexity of the situations that may arise in practice, and to avoid obliging the parties to go through any unnecessary repetition of procedures.

110. Some typical examples of "overlapping" disciplinary and grievance issues are:

- Where an employer takes disciplinary action against an employee, this may prompt the employee to raise a grievance, either about that action or about something else, or to resign and complain of constructive dismissal
- An employer may have multiple disciplinary issues to address with an employee
- An employee may have multiple grievances to raise with an employer

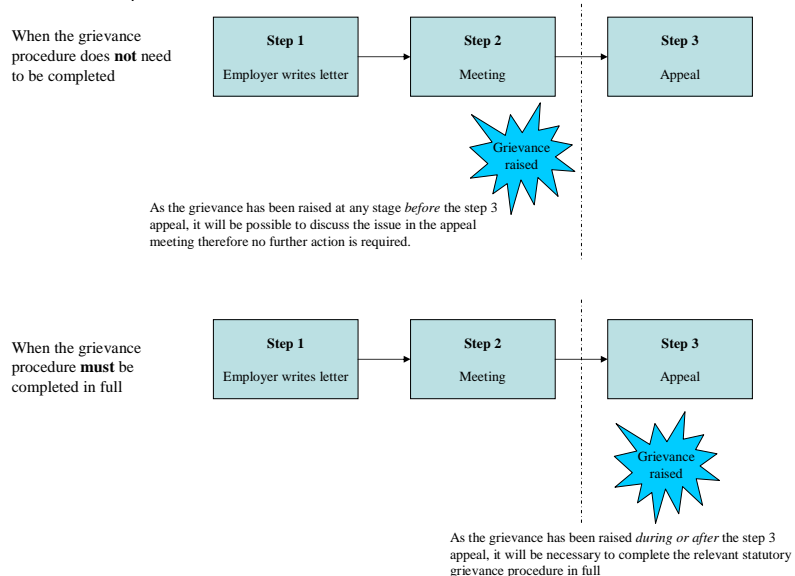
111. The Regulations set out that:

Where the action taken by the employer is *dismissal* (other than constructive dismissal), the matter does not fall under the statutory grievance procedure. The onus is on the employer to initiate workplace dialogue under the applicable dismissal and disciplinary procedure. The employer should realise that it is incumbent on him/ her to ensure that the dismissal is for a fair reason, and free of any taint of unlawful discrimination.

- If the action taken by the employer is *not* taken on the grounds of conduct or capability, then there is no need for the employer to initiate the dismissal and disciplinary procedures. Thus, if an employee is dissatisfied, he or she should start the grievance procedure.
- If the disciplinary action taken by the employer is asserted to be on the basis of conduct or capability, then the standard (three-step) dismissal and disciplinary procedure must be followed, and the statutory grievance procedures will not normally apply.
- However, the grievance procedures will apply if the employer has taken or contemplates taking conduct or capability related disciplinary action, and *either* the employee feels it is unlawfully discriminatory *or* the action is really being taken for reasons other than conduct or capability. For example, the employee might feel the disciplinary action is being taken because a personality clash with the line manager, rather than his or her ability to do the job.

112. However, if the employee raises this grievance in writing at any stage before the appeal stage of the dismissal and disciplinary procedure, he or she will be treated as having complied with the grievance procedure. In this way, the aims of the statutory procedures are fulfilled, as the problems will have been discussed in the workplace, and the risk of unnecessary duplication of procedures is avoided.

113. It should be noted that if both statutory procedures apply, but the employee raises the grievance only *after* the disciplinary procedure has finished, then it will be necessary for the grievance procedure to be completed in full.



114. Whilst many employers choose to disentangle related disciplinary and grievance matters in separate procedures, this will not be required for the statutory procedures. Indeed, the Regulations explicitly set out that both letters and meetings under the statutory

procedures can be multi-purpose. So, for instance, an employer writing to invite an employee to a Step Two meeting in relation to one disciplinary matter could use the same letter as the Step One letter in relation to another disciplinary matter.

Chapter 7 - Requirement for employers to communicate dispute resolution procedures

115. Subject to a qualifying period of one month's service, employers are required to give employees a written statement of employment particulars containing specified details, within the first two months of their employment (see section 1 to 7 of the Employment Rights Act 1996). The written statement is not itself a contract of employment, but can provide evidence of the terms and conditions of employment in the event of an employment tribunal.

116. Previously, the statement had to set out what the employee must do if he or she was dissatisfied with disciplinary action taken against him or her. However, the Act requires that the statement must set out all aspects of the dismissal and disciplinary procedure.

117. All employers, regardless of the number of staff they employ, must mention their disciplinary rules and the new minimum procedures in the written statement.

118. The employer will be given greater flexibility in communicating these particulars, through including them in the contract of employment or a letter to engagement given to the employee. This provision will reduce the need for employers to duplicate existing documents. It will also enable such documents to be given to the employee before his or her employment begins.

119. If an employee brings a tribunal claim under Schedule 5 of the Act, the tribunal may consider the nature of the employee's written statement. If there is no statement, or it is found to be incomplete or inaccurate, the tribunal is required to award compensation. If an award is made under the jurisdiction of the complaint, then that award can be increased by 2 or 4 weeks' pay. If compensation is not a remedy for the particular complaint, or it is not the remedy that the tribunal chooses, then it can make a stand-alone award of 2 or 4 weeks' pay. Whether to award 2 or 4 weeks' pay is a matter for the tribunal's discretion. No award need be made or increased if the tribunal considers that to do so would be unjust or inequitable.

Chapter 8 - Impact on tribunal applications

Admissibility

120. If an employee wishes to submit an employment tribunal claim based on a grievance, he/she **must** write the Step One letter and allow 28 days (unless otherwise exempt from going through the procedures) or the complaint **will not be admitted**. This will apply both to current employees and to employees who are no longer in the employer's employment. However, once this condition has been met, the employee will be able to bring a claim, as long as it is not out of time (see paragraphs 123 to 128 on time limit extensions). If the procedures as a whole have **not** been completed, then any award may be subject to adjustment.

121. In contrast, an employee is free to complain to an employment tribunal about any breach of his/her employment rights arising from an action where the statutory **dismissal and disciplinary procedure** applies. That is, there will no admissibility requirements for claims arising from dismissal and other disciplinary action (subject to the treatment of overlaps as set out in chapter 6).

Time limit extensions

122. An employee wishing to present an employment tribunal claim must normally do so within a specified time limit – typically three months from the date of the act complained of in most cases (although the position differs under some jurisdictions).

123. But the Regulations will, in certain circumstances, extend the normal time limit for submitting tribunal claims, to allow extra time for workplace discussions to continue, without obliging employees to submit premature applications in order to meet deadlines.

124. *It should be noted that the existing discretion of the tribunal to extend a time limit where it was not reasonably practicable for it to be met (or, under some jurisdictions, where it is just and equitable to extend it) is unaffected by these changes.*

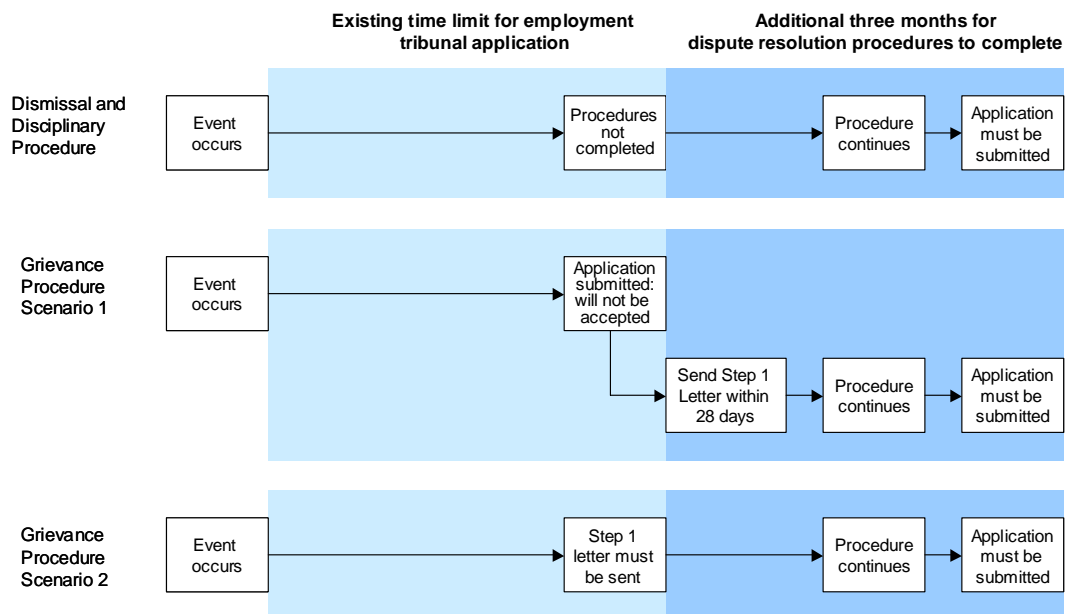
Dismissal and disciplinary procedures

125. Where the employee has reasonable grounds for believing a disciplinary procedure is still ongoing at the point where the normal time limit applies, the time limit will be extended by three months.

126. Note however that this is *not* intended to be a general extension, only for those cases where discussions are still continuing. Grievance procedures

127. The following general requirements are established in the Act (in Part 3 of Schedule 2): The Regulations will extend the normal time limit for making a tribunal claim in the following circumstances:

- If an employee attempts to present a tribunal application arising from a grievance within the normal time limit for doing so under the relevant jurisdiction, but he/she has not written the Step One letter under the procedure and allowed twenty-eight days, the tribunal will decline to register the application as the relevant admissibility conditions will not have been met (see paragraph 121 for details). This will however trigger an automatic three-month extension of the time limit from the date when it would otherwise have expired. In this event, the claimant must send the Step One letter by no later than 28 days after the date when the normal time limit would have expired. If he/she does so, there will still be an opportunity to present a valid tribunal claim under the jurisdiction in question, within the extended time limit. If not, however, he/she will be barred from doing so (subject to the normal discretion of the tribunal to extend a time limit where it was not reasonably practicable for it to be met, or in some cases where such an extension is just and equitable).
- If the employee sends the Step One letter to the employer under the grievance procedure, within the normal time limit for presenting a tribunal claim under a jurisdiction relevant to that grievance, this will trigger an automatic three month extension of the time limit from the date when it would otherwise have expired. It will not be necessary for either party to have contacted a tribunal in any way for this automatic extension to be triggered. It should be noted that if the employee has written to the employer setting out a grievance that relevant disciplinary action is unlawfully discriminatory, or a collective grievance has been raised in writing by an appropriate representative, then this time limit extension will also apply.



Adjustment of awards

128. The Act provides that failure to complete the statutory dispute resolution procedures will affect subsequent employment tribunal cases under certain specified jurisdictions (unless either party was otherwise exempt – see chapter 5). Section 31 requires employment tribunals to increase or decrease compensation by 10 per cent and allows them to do so by up to 50 per cent where the statutory procedures have not been completed and that failure is attributable to one of the parties. However, it should be noted that the duty to adjust the award does not apply where there are exceptional circumstances that would make such an adjustment unjust or inequitable; in those circumstances the tribunal can adjust by a lesser amount or make no adjustment at all.

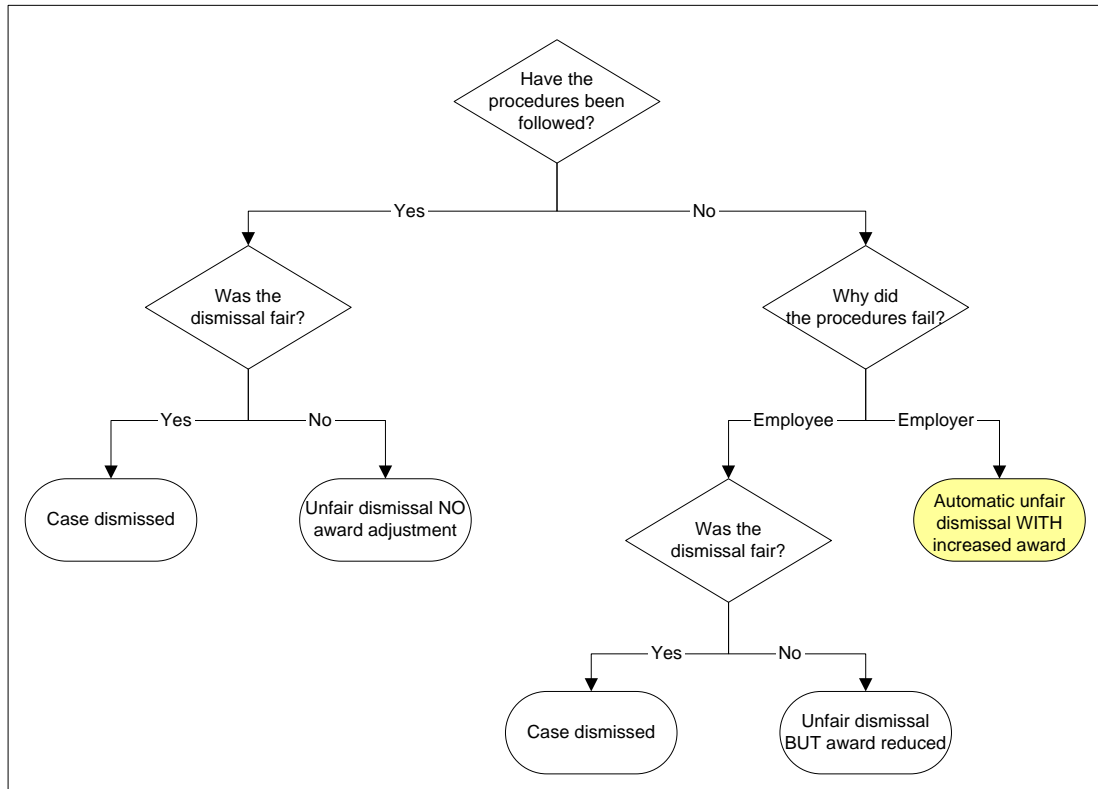
129. Regulation 12 sets out how a tribunal will attribute any failure to complete a procedure. If a party, 'A', fails to comply with any requirement of an applicable statutory procedure (unless he or she is treated as so complying), the non-completion of that procedure shall be attributable to him or her and neither party is under any obligation to comply with any further requirement of the procedure. However, where party A is treated as complying with a procedure because the behaviour of the other party, 'B', has led to reasonable grounds for believing there is a significant threat or party B has subjected him or her to harassment, the failure to complete the procedure is attributable to the behaviour of party B.

Dismissal and disciplinary procedures

130. The figure below sets out the key points that will determine how tribunal decisions and awards are made.

- If an employer dismisses an employee without completing the statutory dismissal and disciplinary procedure, and if the failure was wholly or mainly attributable to him or her, that dismissal is automatically unfair (subject to any qualifying conditions e.g. the 12 month qualifying period). The dismissed employee will in these circumstances receive at least four weeks' pay in compensation. The tribunal will only specifically award four weeks' pay if it orders reinstatement or re-engagement. If it awards compensation and the basic award is less than four weeks' pay it must increase it to four weeks'. If the award is already greater than four weeks' pay, no additional payment will be made for automatically unfair dismissal. Note that any additional compensation for the employee should be increased by 10 per cent and can be increased by up to 50 per cent. In exceptional circumstances compensation may be adjusted by less than 10 per cent.

- However, if an employment tribunal finds a dismissal to be unfair on its substantive merits, but the statutory procedures were completed satisfactorily, there will be no adjustment of awards.
- If the procedure is not completed, because the employee did not meet his/her obligations, any ensuing award will be *reduced* by between 10 per cent and 50 per cent. In exceptional circumstances compensation may be adjusted by less than 10 per cent.



131. The current limit for a compensatory award for ordinary unfair dismissal is £55,000 (as provided for in section 124 (1) of the Employment Rights Act 1996). The new Regulations will **not** affect this limit, and any adjustments will not breach it.

Grievance procedures

132. If an employer does not meet the requirements set out in the procedures, any award made to the employee by the tribunal, in a case under one of the specified jurisdictions, will be *increased* by 10 per cent and may be increased by up to 50 per cent. If the employee does not meet the requirements set out in the procedures, then any award made to him/her will be *reduced* by at least 10 per cent and may be reduced by up to 50 per cent. In exceptional circumstances compensation may be adjusted by less than 10 per cent.

Changes in the way that unfair dismissal cases are judged – “Polkey reversal”

133. As previously discussed, for a dismissal to be fair, the employer must show that it is for a potentially fair reason for dismissal (see sections 98(1) and (2) of the Employment Rights Act 1996). The dismissal itself must be reasonable in the circumstances. This second point has given rise to a large amount of complex and sometimes controversial case law around the question of whether or not the employer has to have followed internal disciplinary procedures in order to establish reasonableness. This culminated in a House of Lords decision (*Polkey vs A E Dayton Services*, 1988), which established, in effect, that if an employer failed to follow appropriate disciplinary procedures before dismissal, he or she cannot generally justify this on the basis that it would have made no difference to the decision to dismiss if that procedure had been followed in full. It has been argued that this judgment forced tribunals to put undue weight on questions of disciplinary procedure, rather than on the actual reasons for dismissal.

134. However, section 34 changes the position by inserting a new section 98A into the Employment Rights Act 1996. If an employer dismisses an employee without following the relevant dismissal and disciplinary procedure in full that dismissal is unfair. The employee will generally receive a minimum of four weeks' pay as compensation where he or she was found to have been unfairly dismissed and the relevant procedure has not been followed. However, the provision also establishes that tribunals are obliged to disregard failures by employers to take procedural actions outside the framework of the relevant dismissal and disciplinary procedure, provided that following such additional procedural actions would have no effect on the decision to dismiss.

135. It should be noted that even if the employer strictly follows either dismissal procedure, the dismissal may still be found to be unfair if, for example, the reason for dismissal is not potentially fair; the employer acted unreasonably in some other way (see paragraphs 23 to 25 for details on the principles of reasonable behaviour); or following the additional procedural actions would have affected the decision to dismiss.

Link with exemptions

136. Where parties are not required to go through the relevant statutory procedure the following conditions will apply:

- In relation to a grievance, the employee does *not* have to meet the admissibility conditions set out in section 32 of the Act; and

- The employee must submit a tribunal application *within the normal time limit* for doing so (i.e. the time limit extension will not apply).

137. For example, if an employee has a grievance but illness prevents him or her from sending a Step One grievance letter, a complete exemption will apply. Therefore, any tribunal claim would not be subject to either the admissibility conditions or the time limit extensions.

138. However, where the parties are *treated* as having complied with the statutory procedures (or, where procedures have already been commenced but not completed, with the remaining stages of them), the following conditions will apply:

- In relation to a grievance, the employee *must* meet the admissibility conditions set out in section 32 of the Act; and
- Time limit extensions may also be invoked, if the necessary conditions have been met (see paragraphs 123 to 128 for details).

139. Award adjustment will not generally apply in cases where the parties are not required to follow or are treated as having complied with the statutory procedures. However, if these exemptions apply because one party has subjected the other party to either significant threat or harassment, the tribunal may find that one party is responsible, and so would be liable to an adverse adjustment of any award made. In a dismissal case where the employer was at fault in this way, the tribunal would find such a dismissal to be automatically unfair.

Discrimination questionnaires

140. Discrimination legislation provides for the use of questionnaires by employees to gather evidence from their employers about potential discrimination claims. The proposed changes to time limits for submitting tribunal claims will also impact these questionnaires, whose validity is time-limited.

141. The Regulations ensure that the time limits for submitting both tribunal claims and discrimination questionnaires remain consistent, and that the information in these questionnaires will be admissible evidence in tribunals where time limit extensions apply.

Additional award for non-existent, incomplete or inaccurate written statement of employment particulars

142. If an employee brings a tribunal claim under Schedule 5 to the Act, the tribunal may consider the nature of the employee's written statement. If

there is no statement, or it is found to be incomplete or inaccurate, the tribunal is required to give compensation. If an award is made under the jurisdiction of the complaint, then that award can be increased by 2 or 4 weeks' pay. If compensation is not a remedy for the particular complaint, or it is not the remedy that the tribunal chooses, it can make an award of 2 or 4 weeks' pay. Whether to award 2 or 4 weeks' pay is a matter for the tribunal's discretion. No award need be made or increased if the tribunal considers that to do so would be unjust or inequitable.

Chapter 9 - Amendments to secondary legislation and transitional arrangements

Amendments to secondary legislation

143. Regulation 17 contains a number of consequential amendments to other secondary legislation. It includes amending the legislation under which discrimination questionnaires are sent to ensure that questions in the questionnaires are admissible as evidence where the questionnaire was served within the extended period for bringing proceedings (see paragraph 128 for details). Also, it sets out that continuity of employment will be preserved where an employee is re-employed or re-instated after following a statutory procedure (see paragraph 29 for details).

Transitional arrangements

144. The Regulations will apply in the following circumstances:

- Where the employer first contemplates taking disciplinary action against an employee or dismissing him on or after the date the Regulations come into force (i.e. 1 October 2004); or
- Where the grievance about which the employee complains occurs or continues on or after 1 October 2004.

145. The provisions in the Act will apply in the following circumstances:

- Section 29 (statutory procedures) – this provision will be commenced on 1 October 2004.
- Section 30 (implied contractual term) – *this provision will **not** be commenced on 1 October 2004, that is the statutory procedures will not become a contractual requirement at that time. Instead, the Government will consider the need to commence this provision in the light of evidence evaluating the impact of the Regulations. This review*

*will take place in 2006*⁵.

- Section 31 (award adjustment for non-completion of statutory procedures) – this provisions will in the same circumstances as the Regulations, that is
 - Where the employer first contemplates taking disciplinary action against an employee or dismissing him on or after the date the Regulations come into force (i.e. 1 October 2004); or
 - Where the grievance about which the employee complains occurs or continues on or after 1 October 2004.
- Section 32 (admissibility for tribunal complaints about grievances) – this provision will apply where the grievance about which the employee complains occurs or continues on or after 1 October 2004.
- Section 33 (adjustment to time limits) – this will apply in the same circumstances as the Regulations, that is
 - Where the employer first contemplates taking disciplinary action against an employee or dismissing him on or after the date the Regulations come into force (i.e. 1 October 2004); or
 - Where the grievance about which the employee complains occurs or continues on or after 1 October 2004.
- Section 34 (“Polkey reversal” and awards for automatically unfair dismissal) – this provision will apply where the employer first contemplates taking disciplinary action against an employee or dismissing him on or after the date the Regulations come into force (i.e. 1 October 2004).
- Sections 35 to 40 (disciplinary procedures in particulars of employment, removal of small firm exemption for disciplinary procedures in particulars of employment, alternative documents to give particulars, failure to give statement of employment particulars, adjustments to awards under sections 31 and 38 and definitions) – these provisions will apply from 1 October 2004.

⁵ See the Government’s response to consultation on the Regulations for further details – this can be downloaded from <http://www.dti.gov.uk/files/file11582.pdf>

Chapter 10 - Other sources of advice

Where to go for help

Acas offers a number of services to help you, from good practice advice on setting up procedures to looking for a resolution if your employee applies to a tribunal. See www.acas.org.uk or call 08457 474747.

For a general guide to the Dispute Resolution Regulations please see http://www.dti.gov.uk/employment/Resolving_disputes/index.html

Practical guidance

Small firm guidance will be published online by the Department of Trade and Industry on 1 June 2004. See http://www.dti.gov.uk/employment/Resolving_disputes/index.html for details.

Employee guidance will also be published on 1 June 2004. See http://www.dti.gov.uk/employment/Resolving_disputes/index.html for details.

Revised guidance on the written statement of employment particulars and unfair dismissal will be published on 1 July 2004. See http://www.dti.gov.uk/employment/Resolving_disputes/index.html for details.

Legislation

For further information on the Employment Act 2002 see <http://www.dti.gov.uk/employment/index.html>

The Employment Act 2002 can be downloaded from <http://www.legislation.hmso.gov.uk/acts/acts2002/20020022.htm>. A print version of the Regulations is published by The Stationery Office Limited as the Employment Act 2002, ISBN 0 10 542202 9. It can be purchased at bookshops, ordered from TSO Ltd (telephone order line 0870 600 5522, fax order line 0870 600 5533) or through the HMSO website <http://www.legislation.hmso.gov.uk>.

The Employment Act 2002 (Dispute Resolution) Regulations 2004 can be downloaded from

<http://www.legislation.hmso.gov.uk/si/si2004/20040752.htm>.

A print version of the Regulations is published by The Stationery Office Limited as the The Employment Act 2002 (Dispute Resolution) Regulations 2004, ISBN 0110489195. It can be purchased at bookshops, ordered from

TSO Ltd (telephone order line 0870 600 5522, fax order line 0870 600 5533) or through the HMSO website <http://www.legislation.hmso.gov.uk>.

A wide range of information on the Regulations is available on http://www.dti.gov.uk/employment/Resolving_disputes/index.html

The current version of the Acas Code of Practice on Disciplinary and Grievance Procedures can be downloaded from http://www.acas.org.uk/media/pdf/9/5/CP01_1.pdf
Telephone orderline is 0870 242 9090, fax 020 8867 3225 or write to Acas Publications, PO Box 235, Hayes, Middlesex, UB3 1DQ. Please note that this version of the Code of Practice is scheduled to be replaced on 1 October 2004. The draft revised version can be downloaded from http://www.acas.org.uk/media/pdf/9/5/CP01_1.pdf

The Employment Tribunals regulations and Rules of Procedures are still in draft form. For more information, the consultation document (complete with draft regulations) can be downloaded from <http://www.dti.gov.uk/consultations/page32528.html>

The prescribed forms that must be used by applicants and respondents are the subject of a public consultation. For more information, the consultation document (complete with draft forms) can be downloaded from *****.

The Employment Appeal Tribunals Rules of Procedure are the subject of a public consultation. For more information, the consultation document (complete with draft Rules) can be downloaded from <http://www.dti.gov.uk/files/file32591.pdf>

For Department of Trade and Industry's general guidance on unfair dismissal please see <http://www.dti.gov.uk/employment/employment-legislation/employment-guidance/page31082.html> or <http://www.dti.gov.uk/employment/employment-legislation/employment-guidance/page30887.html>. *Please note these publications will be updated on 1 July 2004 so do not include guidance on the new provisions contained in the Employment Act 2002.*

For Department of Trade and Industry's general guidance on the written statement of employment particulars please see <http://www.dti.gov.uk/employment/employment-legislation/employment-guidance/page16367.html> or <http://www.dti.gov.uk/employment/employment-legislation/employment-guidance/page16332.html>. *Please note these publications will be updated on 1 July 2004 so do not include guidance on the new provisions contained in the Employment Act 2002.*

Department of Trade and Industry
URN 04/1103