Comment	From	Proposed response
EARLY CONCILIATION		
Failure to accept an EC recommendation should be associated with a costs risk.	Donnelly & Kinder	EC is intended to establish the offer of LRA conciliation as the first port of call when a dispute cannot be resolved by internal workplace efforts alone. However parties will be under no obligation to accept that offer. A legal remedy will remain available for those who want to pursue it, either because they do not want to engage in conciliation or because conciliation does not succeed. DEL has no intention of diluting continued access to the tribunal system by placing new preconditions on access to it and is of the view, based on stakeholder engagement to date, that such a proposition would not command necessary consensus.
Legal representation at the conciliation stage should not be permitted.	Donnelly & Kinder	Although conciliation itself is an informal and non-legalistic process, there are legal implications in arriving at a settlement using the process. Doing so involves agreement not to pursue the matter further through the tribunal system. Therefore, while it is not necessary to have legal representation during conciliation it is important that parties who want to engage a legal representative have the option to do so. If parties appoint a representative to act for them, it is envisaged that the LRA will conciliate through that representative rather than deal with the represented party directly. The representative will be able to agree a settlement on the party's behalf.

There should be a mechanism to refer some complex discrimination cases not suited to early conciliation to tribunal.	Donnelly & Kinder	Public consultation on the early conciliation proposal showed that there was general support for wide jurisdictional coverage for EC, including complaints relating to unlawful discrimination. While DEL freely acknowledges that some such cases are not readily resolved within the short time window for EC and in some cases there may be matters of legal principle at stake which mean that EC is not taken up, it is reasonable to offer EC and leave it to the parties to decide whether or not to accept the offer. DEL will work with the LRA to monitor the effectiveness of EC and is open to reviewing the list of jurisdictions to which it applies if feedback suggests that this is warranted.
The proposals for extending time limits to allow for EC need to be straightforward.	Donnelly & Kinder	The Department accepts this and will work with the Labour Relations Agency and the Office of Industrial Tribunals and the Fair Employment Tribunal to ensure that guidance is clear and consistent.

Early conciliation should not be unduly burdensome; should take into account the needs of vulnerable claimants in particular; and should use the same form as that used to start a tribunal claim to avoid problems arising from differences between two separate forms (Law Centre (NI)).	Law Centre (NI)	DEL accepts that the interface between EC and tribunals will need to be as straightforward as possible. The needs of vulnerable people will be considered in its development. DEL does not consider it appropriate for the EC form to deal with the detail of a complaint. The required information should only be that which is necessary to enable the LRA to make a timely EC offer. There will be nothing preventing the conciliation officer from obtaining, in conversations with the parties, more detail about the dispute. The existing LRA pre-claim conciliation arrangements, which do not require written details of a dispute, demonstrate that this approach can work. It is understood that a consequence of this approach may be that a prospective claimant may include on a subsequent tribunal claim form a matter not raised during EC. The tribunals, however, will not be required to check what has been discussed at EC; they will merely need confirmation that there has been compliance with EC requirements. DEL will work with the LRA and OITFET to monitor the implementation of EC and address any difficulties identified.
LRA RESOURCING		

The LRA was not provided with the initial impact assessment and has flagged up concern to DEL. The Agency will be submitting a business case for appropriate resourcing.	LRA	The initial impact assessment was based, *pro rata* , on the corresponding assessment in Great Britain of the potential cost of early conciliation. Now that the Employment Bill has been introduced and detailed discussions with the LRA are ongoing in relation to delivery of the proposed service, there is an opportunity for the Agency to set out very clearly how it envisages the service being delivered, based on the ACAS experience and the anticipated demands of Northern Ireland users. The Department is open to considering the provision of additional resource to support the service on the basis of a robust business case from the Agency which it expects to receive shortly.
The LRA needs to be appropriately resourced.	CBI EEF	As noted above, DEL will consider carefully the LRA's imminent business case for additional resourcing.
NEUTRAL ASSESSMENT		
The introduction of neutral assessment may be best considered in light of the development of early neutral evaluation within the tribunal system and the review of the LRA's statutory arbitration scheme.	LRA	Setting in place an effective early conciliation service will rightly be the LRA's first priority in the near future. The Department's intention has never been to require the implementation of a new system of neutral assessment without a full consideration of what the process should involve and how it relates to other dispute resolution options. The Department acknowledges that there is a need to take account of the forthcoming review of the Agency's statutory arbitration arrangements and learning from the early neutral evaluation initiative that has been successfully piloted by the tribunal service.
There is a need to consider how the system of NA will interact with the process of ENE operated by the tribunals. There is also a need to consider in the context of the proposed review of the arbitration scheme.	Law Centre (NI)	

Clauses 4 and 8 are not enabling powers but rather in themselves confer statutory authority on the LRA. There are potential implications for their legal interpretation. There is no detail on how the neutral assessment power would be exercised, in particular in relation to time limits; NA's legal standing; whether it is to be confidential; its relationship to tribunal proceedings; and any right of appeal (Council of Employment Judges).	CEJ	DEL's objective is to establish broad legislative authority to develop NA following the review of the LRA arbitration scheme, taking account of lessons from the system of early neutral evaluation that has been successfully piloted by the tribunals. This non-prescriptive approach is similar to that governing the LRA's conciliation service. The Department however does take onboard the points made and is considering whether there is merit in introducing an amendment to enable the Department to set out in subsequent regulations how NA should operate. To answer specific points, it is envisaged that NA would be in confidence and subject to the same legal admissibility tests as conciliation. An assessment would be an expert view with no legal standing and no implications for tribunal proceedings. A pause in tribunal time limits to allow for NA is not envisaged. As the process would have no legal standing and no implications for tribunal proceedings, a right of appeal against an assessment is not contemplated.
There is potential overlap with existing tribunal processes, at additional cost.	CEJ	NA is intended as a distinct and separate dispute resolution option for parties who agree to pursue it. It is not intended to replace or duplicate tribunal procedure and could in the Department's view run in parallel. However DEL accepts that there are judicial concerns and the Minister has agreed to meet the President of the Tribunals to explore these. The NA proposal is novel and DEL will seek urgently, whether through amendment of the Bill or otherwise, to address outstanding matters to ensure that the tribunal process is not compromised.
Neutral assessment could "do much to demystify common misconceptions that exists amongst parties regarding the level of awards that are available via the tribunal".	CBI	There is no clear evidence that there are widespread misapprehensions about the level of tribunal awards. However the Department does accept that if more can be done to address cases where misperceptions arise, then it should be done. It will work with OITFET to ensure that clearer information is provided on this issue.
UNFAIR DISMISSAL: MAXIMUM LEVEL OF AWARD		

It is disappointing that a cap is not being introduced on tribunal awards in unfair dismissal cases. The expectations of claimants and respondents are unrealistic. It is anomalous that the cap has grown by more than median earnings.	FSB	As part of the consultation on the employment law review, DEL sought views on the UK Government's introduction of a power to place a maximum limit equating to the value of 12 months' pay on the compensatory award that a tribunal may make in respect of a finding of unfair dismissal (current cap: £78,400). There was no clear consensus on whether a similar power should be introduced in Northern Ireland. Substantive evidence was not presented that claimants pursue unfair dismissal claims because they have unrealistic expectations about award levels. Few tribunal claims result in the maximum award being made; however, DEL does accept that if there is any possibility of false perceptions then that issue can be addressed through clearer information and guidance. Unfair dismissal is a breach of employment law with very serious socio-economic and health implications. Making a change of this kind without clear support would send out the wrong messages about the seriousness with which this issue should be taken.
UNFAIR DISMISSAL: QUALIFYING PERIOD		
DEL has missed an opportunity to extend the qualifying period for unfair dismissal to remain competitive with rest of the UK and RoI. This places NI at a competitive disadvantage with regard to foreign direct investment and recruitment. A two-year qualifying period would give employers more time to train and assess new employees.	CBI	There is no consensus on any potential changes in this respect. The Department was unable to establish any causal link beteween the unfair dismissal qualifying period and employment growth, inward investment and volumes of tribunal claims, but retained an open mind, seeking evidence from the consultation on the issue. A shift to the two-year qualifying period could realistically only be justified by convincing evidence that substantial improvements in each of these areas would be likely to be forthcoming. Benefits must be considered in light of the impacts that could arise from reducing the effectiveness of an important employment right. DEL

A longer qualifying period would allow better assessment of performance and suitability and ensure that there are sufficient resources to fund a given post in the longer term. DEL has ignored the view of small business owners that this would encourage recruitment.	FSB	impacts that could arise from reducing the effectiveness of an important employment right. DEL acknowledges that some employers and employer representatives believe that the qualifying period is an issue of perception and that increasing it to two years may have the potential to create a more business-friendly environment for employers to create jobs. This issue can be revisited in the future if a sufficient consensus fro changes was forthcoming.
COLLECTIVE REDUNDANCIES		
There has been a missed opportunity to reduce the collective redundancy consultaiton period from 90 to 45 (or fewer) days, in respect of consultations involving over 100 employees.	CBI EEF	DEL accepts that it is the quality rather than the length of consultation which is of most importance; and also appreciated that NI is not aligned either with practice in GB or RoI. However, as the Committee is aware, it had been the Department's intention to include a measure effecting this change within the Bill. However, inclusion of the measure was unable to command necessary political consensus and so the Bill takes no steps in relation to this issue. However, the Department will issue guidance on good practice in respect of collective redundancies and on the meaning of 'establishment' following the CJEI ruling on this issue
TRADE UNION LAW		

The employment law review did not consider burdens on trade union movement.	NIC ICTU	In its response to the employment law review NIC ICTU highlighted legislation dating back to the 1980s which, it was suggested, restricts unions' ability to perform functions and imposes significant costs, such as the requirement to use postal ballots, reforms to picketing and restrictions on closed shops. The Department did not review this legislation but the Minister has ruled out replicating further restrictions as contained in the GB Trade Union Bill. The Minister has subsequently engaged with members of the trade union movement to discuss their concerns.
ZERO HOURS CONTRACTS		
It is disappointing that the Bill does not address zero hours contracts. One option might be to include an enabling provision.	Law Centre (NI)	This is an issue on which it has been difficult to secure consensus. The Department is reviewing options around zero hours contracts and will let the Committee know as soon as any amendments, if developed and agreed, are forthcoming.
DISPUTE RESOLUTION: GENERAL		
There should be the option of adjudication for straightforward low value claims.	Law Centre (NI)	DEL is aware of this proposal from the Law Centre and is open to considering its potential as part of the proposed review of the LRA's arbitration scheme.
The non-payment of tribunal awards to parties who are owed them is a concern.	Law Centre (NI)	DEL is aware that some parties who are not paid tribunal awards which are owed to them find it problematic to secure payment via the present process of enforcement through the courts. Evidence on the matter was sought as part of DEL's consultation between July and September 2015 on developing more modern tribunal rules and procedures and responses are currently being considered. Longer term policy work on the extent of the problem and potential solutions will be required.
BETTER REGULATION		

Employment law is problematic for small businesses given that they are expected to meet the same requirements as large employers.	FSB	The Department accepts that it can be problematic for small businesses without dedicated HR support to grasp the requirements of employment law and is considering options to improve information for small employers. Already the nibusinessinfo.co.uk web portal is a useful online resource but DEL will consider how content can be strengthened and is happy to engage with SMEs on this. The Department continues to discuss these challenges with the LRA and is encouraged to note that the Agency is committed in its present business plan to developing a SME and micro employer support strategy.
Clear guidance is needed on 'difficult conversations'.	FSB	The Department intends to commission the development of guidance for employers on the handling of what are commonly referred to as 'difficult conversations'.
BUILDING BETTER EMPLOYMENT RELATIONS		
There are benefits to be realised from promoting effective employee engagement and facilitating better working relationships between trade unions and employers to promote best practice and skills.	NICES	DEL continues to pursue the promotion of skills as a key objective. The LRA Employment Relations Roundtable is a positive example of the kind of work that is being done to bring together trade unions and employers to focus on issues of common interest.