

## **EXPLANATORY MEMORANDUM TO**

### **The Transfer of Undertakings and Service Provision Change (Protection of Employment) (Amendment) Regulations (Northern Ireland) 2011**

**S.R. 2011 No. 163**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department for Employment and Learning ("the Department") to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and Articles 37(2) and 39(3) of the Employment Relations (Northern Ireland) Order 1999 and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. The Regulations amend the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the TUPE Regulations"), insofar as those United Kingdom wide Regulations apply to Northern Ireland, to take account of changes made by the Employment Act (Northern Ireland) 2011.
- 2.2. They also make corresponding amendments to the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 ("the Service Provision Change Regulations"). The Service Provision Change Regulations apply only to Northern Ireland.
- 2.3. Regulation 1 cites the name of the Regulations, the date on which they come into operation and specifies that the Regulations are to be interpreted in accordance with the Interpretation Act (Northern Ireland) 1954.
- 2.4. Regulation 2 amends paragraph 10(2) of Schedule 1 to the TUPE Regulations so that, insofar as they apply to Northern Ireland, they reflect the arrangements relating to grievances established under the Employment Act (Northern Ireland) 2011 where a relevant Code of Practice applies. The amendment also provides for the continuation of existing arrangements with respect to disciplinary situations.
- 2.5. Regulation 3 makes a corresponding amendment to the Service Provision Change Regulations. It does so by amending regulation 11 of those regulations.

#### **3. Background**

- 3.1. The Employment Act (Northern Ireland) 2011 makes changes to the statutory arrangements concerning the resolution of disputes arising in the workplace. The Act repeals the statutory procedure for resolving disputes insofar as it applies to grievances, providing instead for the Labour Relations Agency to issue a Code of Practice relating exclusively or primarily to procedure for the

resolution of disputes. Arrangements in respect of disciplinary processes remain substantively unchanged.

- 3.2. The purpose of the Regulations is to amend the TUPE Regulations and the Service Provision Change Regulations to reflect the new legal position.

#### **4. Consultation**

- 4.1. No formal consultation has been undertaken in respect of the Regulations as they are consequential upon changes to primary legislation which have themselves been the subject of a full public consultation process.

#### **5. Equality Impact**

- 5.1. An Equality Impact Assessment was carried out in relation to the changes brought about by the Employment Act (Northern Ireland) 2011 upon which these Regulations are consequential. It identified modest positive differential impacts for all of the section 75 groups, given that the changes to dispute resolution procedures will open up opportunities for resolving workplace disputes in a more constructive and efficient manner. That assessment is valid for the purposes of these Regulations.

#### **6. Regulatory Impact**

- 6.1. A Regulatory Impact Assessment was carried out in relation to the changes brought about by the Employment Act (Northern Ireland) 2011 upon which these Regulations are consequential. It identified that businesses are likely to realise savings of around £1.5 million per annum as a direct result of the repeal of the statutory grievance procedures across all employment rights jurisdictions. These Regulations ensure the realisation of proportionate savings in disputes involving TUPE and service provision change.
- 6.2. TUPE and service provision change have generally accounted for less than one per cent of industrial tribunal claims in recent years. If this figure is taken to represent the proportion of relevant workplace disputes occurring more widely, it can be concluded that savings achieved by the resolution of these matters under the new process will amount to a figure approaching £15,000 per annum.

#### **7. Financial Implications**

- 7.1. On the assumption referenced above, negligible savings to Government are likely as a result of the specific change brought about by these Regulations. Repeal of the statutory grievance procedures across all employment rights jurisdictions will result in savings of around £25,000 per annum to the Office of Industrial Tribunals and the Fair Employment Tribunal as a result of the reduced complexity of claims and pre-acceptance procedures (source: Regulatory Impact Assessment referred to above).

#### **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. The provisions of the Regulations are not considered to be in breach of Section 24.

## **9. EU Implications**

9.1. Not applicable.

## **10. Parity or Replicatory Measure**

10.1. The Regulations apply only to Northern Ireland and are consequential upon the changes brought about by the Employment Act (Northern Ireland) 2011. There is no directly corresponding provision in Great Britain, where the law governing workplace dispute resolution now differs somewhat from that in Northern Ireland.

10.2. The introduction of the Regulations has the effect of clarifying the law by updating relevant legislative provisions.

10.3. The alternative option, that no action be taken, was considered but was discounted as inappropriate.

## **11. Additional Information**

11.1. Not applicable.