

2020 No. 12

EMPLOYMENT

The Seafarers (Collective Redundancies, Information and Consultation and Insolvency Miscellaneous Amendments) Regulations (Northern Ireland) 2020

Made - - - - *10th January 2020*

Coming into operation - *26th January 2020*

The Department for the Economy(**a**) makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**b**).

The Department for the Economy has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to the information and consultation of employees(**c**), in relation to measures relating to dismissals or terminations of employment contracts where such dismissals or terminations are effected by an employer for one or more reasons not related to the individual workers concerned(**d**), in relation to measures relating to employment rights and duties(**e**) and in relation to insolvency(**f**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Seafarers (Collective Redundancies, Information and Consultation and Insolvency Miscellaneous Amendments) Regulations (Northern Ireland) 2020 and come into operation on 26th January 2020.

(2) The Interpretation Act (Northern Ireland) 1954(**g**) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Pension Schemes (Northern Ireland) Act 1993

2.—(1) Section 161 of the Pension Schemes (Northern Ireland) Act 1993(**h**) (Application of certain provisions to cases with foreign element) is amended as follows.

-
- (a) Formerly the Department for Employment and Learning; see section 1(10) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.)).
- (b) 1972 c. 68; section 2 was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7), section 3(3).
- (c) S.I. 1999/2788.
- (d) S.I. 1994/2791.
- (e) S.I. 2000/738.
- (f) S.I. 2001/3495.
- (g) 1954 c. 33 (N.I.).
- (h) 1993 c. 49; section 161 was amended by Schedule 1 to the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)), by paragraph 72 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and by section 41 of the Pensions Act (Northern Ireland) 2015 (c.5). It is prospectively amended by regulation 2 of the Occupational and Personal Pension Schemes (Amendment etc.) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/193). There are other amendments which are not relevant.

(2) For subsection (6) substitute—

“(6) Chapter 2 of Part 7 and section 153 do not apply to employment where under his worker’s contract the worker ordinarily works outside the territory of the member States, but section 201 of the Employment Rights Act 1996 (power to extend employment protection legislation) applies to Chapter 2 of Part 7 and section 153 as it does to the provisions mentioned in that Act.”.

(3) In subsection (7) omit the definition of “employment as a merchant seaman”.

(4) In consequence of the amendment made by paragraph (3), omit the amendment to section 161(7) of the Pension Schemes (Northern Ireland) Act 1993 that is made by Schedule 1 to the Employment Rights (Northern Ireland) Order 1996(a).

(5) The amendments made by paragraphs (2) to (4) only have effect in relation to employers who become insolvent (within the meaning given by section 119 of the Pension Schemes (Northern Ireland) Act 1993(b)) on or after the date on which these Regulations come into operation.

(6) The substitution made by paragraph (2) is without prejudice to the amendments made by regulation 2(6) of the Occupational and Personal Pension Schemes (Amendment etc.) (Northern Ireland) (EU Exit) Regulations 2019(c).

Amendment of the Employment Rights (Northern Ireland) Order 1996

3.—(1) The Employment Rights (Northern Ireland) Order 1996 is amended as follows.

(2) After Article 221 (Duty of employer to notify Department of certain redundancies) insert—

“Duty of employer to notify competent authority of a vessel’s flag State of certain redundancies

221A.—(1) Article 221 has effect subject to this Article if—

- (a) the duty under Article 221(1) or (2) applies to a proposal to dismiss employees as redundant, and
- (b) the employees concerned are members of the crew of a seagoing vessel which is registered at a port outside Northern Ireland.

(2) The employer must give the notification required by Article 221(1) or (2) to the competent authority of the State where the vessel is registered (instead of to the Department).”.

(3) In Article 239(d) (Employment outside Northern Ireland)—

- (a) in paragraph (2)(d) for “221 and 222” substitute “221 to 222”;
- (b) after paragraph (3) insert—

“(4) For the purposes of paragraph (1) as it relates to Articles 221 to 222, employment on board a ship registered in the United Kingdom is to be treated as employment where under his contract a person ordinarily works in Northern Ireland.”.

(4) In Article 242(e) (Mariners)—

-
- (a) S.I. 1996/1919 (N.I. 16).
 - (b) 1993 c. 49; section 119 was amended by paragraph 53 of Schedule 2 to the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)) and paragraph 256 of the Schedule to the Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146). There are other amendments which are not relevant.
 - (c) S.I. 2019/193.
 - (d) S.I. 1996/1919 (N.I. 16); Article 239 was substituted by Article 31(1) of the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)) and amended by paragraph 18 of Schedule 2 to the Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)).
 - (e) S.I. 1996/1919 (N.I. 16); Article 242 was amended by paragraph 4 of Schedule 2 to the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)), partially revoked by paragraph 2 of Schedule 9 to the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)) and amended by paragraph 19 of Schedule 2 to the Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)). There are other amendments which are not relevant.

(a) in paragraph (2) for “Parts XI to XIV” substitute “Parts 11 and 12”;

(b) in paragraph (4) omit “and Part XIV”.

(5) The amendments made by paragraphs (2) and (3) and the amendments made by paragraph (4), so far as they relate to Part 13 of the Employment Rights (Northern Ireland) Order 1996, only have effect in relation to dismissals (within the meaning given by Article 223 of the Employment Rights (Northern Ireland) Order 1996) which are first proposed by an employer on or after the date on which these Regulations come into operation.

(6) The amendments made by paragraph (4), so far as they relate to Part 14 of the Employment Rights (Northern Ireland) Order 1996, only have effect in relation to employees whose employer has become insolvent (within the meaning given by Article 228 of the Employment Rights (Northern Ireland) Order 1996(a)) on or after the date on which these Regulations come into operation.

Amendment of the Information and Consultation of Employees Regulations (Northern Ireland) 2005

4.—(1) The Information and Consultation of Employees Regulations (Northern Ireland) 2005(b) are amended as follows.

(2) Regulation 40 (Exception for merchant navy) is omitted.

Sealed with the Official Seal of the Department for the Economy on 10th January 2020.



Colin Jack
A senior officer of the
Department for the Economy

(a) S.I. 1996/1919 (N.I. 16); Article 228 was amended by paragraph 14 of Schedule 4 to the Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004 No. 307), paragraph 54 of Schedule 2 to the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), paragraph 5 of the Schedule to the Debt Relief Act (Northern Ireland) 2010 (c. 16 (N.I.)) and paragraph 255 of the Schedule to the Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146).

(b) S.R. 2005 No. 47; there are amendments to these Regulations but none are relevant.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement certain requirements of Directive (EU) 2015/1794 (OJ No L 263, 8.10.2015, p 3) (“the Seafarers Directive”). The purpose of the Seafarers Directive is to place those employed at sea on an equal footing with land based employees and to remove unequal treatment across Member States.

These Regulations amend the Pension Schemes (Northern Ireland) Act 1993 (“the 1993 Act”), the Employment Rights (Northern Ireland) Order 1996 (“the 1996 Order”) and the Information and Consultation of Employees Regulations (Northern Ireland) 2005 (“the 2005 Regulations”).

Part VII (Insolvency of employers) of the 1993 Act and Part XIV (Insolvency of employers) of the 1996 Order implement in Northern Ireland certain provisions of Directive 2008/94/EC of the European Parliament and of the Council (OJ No L 283, 28.10.2008, p 36) (“the 2008 Directive”). Article 1 of the Seafarers Directive amends the 2008 Directive by ensuring that seafarers employed as share fishermen are brought within the scope of the 2008 Directive.

Section 161(6) of the 1993 Act excludes employed share fishermen from the scope of Part VII, Chapter II (Payment by the Department of unpaid scheme contributions) and from section 153 (Power of Department to obtain information in connection with applications under s.120). In order to reflect the amendment in the 2008 Directive, regulation 2(2) amends section 161(6) of the 1993 Act by removing the exclusion of employed share fishermen from the provisions of Part VII, Chapter II and from section 153 (pursuant to section 153(5), section 153 is to be construed as if it were in Part VII, Chapter II).

Section 161(6) of the 1993 Act also excludes merchant seamen from the provisions of section 120 (Duty of Department to pay unpaid contributions to schemes) and section 121 (Certification of amounts payable under s. 120 by insolvency officers). Regulations 2(2) and 2(3) amend sections 161(6) and 161(7) of the 1993 Act in order to bring merchant seamen within the scope of sections 120 and 121, as provided for by the 2008 Directive.

Section 242(2) of the 1996 Order excludes share fishermen from the scope of a number of provisions, including Part XIV. In order to reflect the amendment in the 2008 Directive, regulation 3(4) amends article 242(2) of the 1996 Order by removing the exclusion relating to Part XIV in relation to employed share fishermen and amends section 242(4) of the 1996 Order in order to bring merchant seamen within the scope of Part XIV, as provided for by the 2008 Directive.

Part XIII (Procedure for handling redundancies) of the 1996 Order implements in Northern Ireland the provisions of Directive 1998/59/EC of the Council of the European Union (OJ No L 225, 12.08.1998, p 16) (“the 1998 Directive”). Article 4 of the Seafarers Directive amends Article 1(2)(c) of the 1998 Directive by removing the derogation for the crews of seagoing vessels. Merchant seamen are within the scope of Part XIII of the 1996 Order but the amendment also brings employed share fishermen within the scope of Part XIII.

Article 4 of the Seafarers Directive also amends the 1998 Directive by inserting in Article 3(1) an obligation on an employer to notify the competent authority of a seagoing vessel’s flag state in the event of a collective redundancy involving the vessel’s crew. In order to reflect the amendment, regulation 3(2) inserts article 221A in the 1996 Order (Duty of employer to notify competent authority of a vessel’s flag State of certain redundancies).

The 2005 Regulations implemented in Northern Ireland Directive 2002/14/EC (“the 2002 Directive”) establishing a general framework for informing and consulting employees in the European Union. Article 3(3) of the 2002 Directive permitted member States to exclude from the scope of the application of the Directive the crews of vessels plying the high seas. Regulation 40 of the 2005 Regulations implemented the derogation and allowed an employer to exclude merchant navy crew engaged on voyages of 48 hours or more from being a negotiating representative or an information and consultation representative as defined by the 2005 Regulations.

The Seafarers Directive amends the 2002 Directive by removing Article 3(3) from the scope of the 2002 Directive. In order to reflect the amendment, regulation 4 amends the 2005 Regulations by omitting regulation 40.

An impact assessment has not been prepared for these Regulations as no significant impact on individuals or businesses is foreseen. A copy of the transposition note can be obtained from the Department for the Economy, Employment Relations Policy and Legislation Branch, Adelaide House, 39-49 Adelaide Street, Belfast, BT2 8FD. A copy of this document and the Explanatory Memorandum are available alongside these Regulations at www.legislation.gov.uk.

© Crown copyright 2020

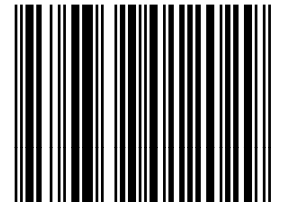
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print Acts of the Northern Ireland Assembly.

£4.90

NI202001131004 01/2020 19585

<http://www.legislation.gov.uk/id/nisr/2020/12>

ISBN 978-0-33-801202-9



9 780338 012029