

## **EXPLANATORY MEMORANDUM TO**

### **The Transfer of Undertakings and Service Provision Change (Protection of Employment) (Amendment) Regulations (Northern Ireland) 2020**

**S.R. 2020 No. 15**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department for the Economy 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 Article 37(2) of the Employment Relations (Northern Ireland) Order 1999 and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. These 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.
- 2.2. They also make related amendments to the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (“the SPC Regulations”). The SPC Regulations apply only to Northern Ireland.
- 2.3. The effect of the amendments to the TUPE Regulations and the SPC Regulations is to provide for the extension of the limitation periods which apply for bringing a case to an industrial tribunal under the jurisdictions appearing in those Regulations. The amendments to those limitation periods are needed as a result of the introduction of Early Conciliation. The Regulations also make consequential amendments to cross-references to new conciliation provisions set out in Articles 20A to 20C of the Industrial Tribunals (Northern Ireland) Order 1996.

#### **3. Background**

- 3.1. The Employment Act (Northern Ireland) 2016 (“the 2016 Act”) establishes a duty on the LRA to deliver Early Conciliation. This is a service requiring potential tribunal claimants to contact the LRA in the first instance to consider the offer of conciliation as an alternative to formal litigation at an employment tribunal.
- 3.2. In most circumstances it will not be possible to lodge a claim with the Office of the Industrial Tribunals and the Fair Employment Tribunal unless a potential claimant has first notified the LRA of the potential claim and received from it an Early Conciliation certificate confirming that this approach has been made.
- 3.3. When a prospective claimant contacts the LRA, this triggers a ‘stop-the-clock’ mechanism in the limitation period running on their potential tribunal claim. This means that the prospective claimant’s limitation period (the time to lodge a tribunal claim) is put on hold, for up to one calendar

month, with a further provision for an extension of two weeks if the LRA believes that the prospective claim is close to settlement. This will allow enough time for conciliation to take place without the need for the claimant to take any legal steps to protect their rights. If the LRA concludes that a settlement is not possible, the pause on the limitation period will end on the day that the prospective claimant receives (or is treated as receiving) an Early Conciliation certificate from the LRA. However, aside from provision for the 'stop-the-clock' mechanism, there is also a further extension of time provision, which means that a limitation period will not expire until one month after the prospective claimant receives (or is treated as receiving) the Early Conciliation certificate. The certificate demonstrates that they have complied with the Early Conciliation process. Prospective claimants will need the reference number from the certificate to complete the tribunal claim form.

#### **4. Consultation**

- 4.1. Early Conciliation came into force in Great Britain in May 2014. The Department for Employment and Learning (the functions of which have subsequently been transferred to the Department for the Economy) launched, in 2013, a wide ranging Employment Law Review consultation. This included, under the theme of early resolution of workplace disputes, proposals for Early Conciliation in Northern Ireland. Stakeholders expressed widespread support for the introduction of such a service. Relevant enabling provisions were subsequently included in the 2016 Act.

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

- 5.1. An assessment of the equality impact of the implementation of Early Conciliation concluded that, of the nine equality categories set out under section 75 of the Northern Ireland Act 1998, there are anticipated to be minor positive impacts in relation to older workers, male and female employees, employees with dependants, different racial groups and persons with disabilities. No unmitigated negative impacts are foreseen.

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

- 6.1. A Regulatory Impact Assessment, largely carried out on the basis of the corresponding exercise in Great Britain, has identified net annual benefits to employers of £1,305,000 and net annual benefits to claimants of £668,000. These are associated with a reduction in preparation costs, representation costs and the cost of time spent away from the workplace that are associated with the tribunal process.

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

- 7.1. It is anticipated that the additional cost to deliver Early Conciliation will average £250,000 per annum, primarily comprising additional LRA staffing costs and other related administrative expenditure.

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

- 8.1. This Statutory Rule complies with the provisions of Section 24 of the Northern Ireland Act 1998.

## **9. EU Implications**

- 9.1. Not applicable.

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

- 10.1. The Statutory Rule applies only to Northern Ireland.

## **11. Non-compliance with 21 Day Rule**

- 11.1. The Department regrets these Regulations are made and laid in breach of the 21 day rule. Legislation has already been made to bring Early Conciliation into operation on 27th January 2020. In order to avoid potential prejudice to persons seeking to bring claims under the TUPE Regulations or the SPC Regulations, these Regulations will, from 27th January 2020, allow for an extension of the limitation period to apply to a relevant tribunal claim in conjunction with the Early Conciliation process.

## **12. Additional Information**

- 12.1. In accordance with Article 36(4) of the General Data Protection Regulation, the Information Commissioner's Office has been consulted on the introduction of Early Conciliation.
- 12.2. A data protection screening exercise has been completed by the Department and is available on the Department's website at <https://www.economy-ni.gov.uk/consultations/employment-law-review>.