



Trade Union Reform and Employment Rights Act 1993

1993 CHAPTER 19

PART II

EMPLOYMENT RIGHTS

Transfer and redundancy rights

33 Amendments of transfer of undertakings regulations

- (1) The Transfer of Undertakings (Protection of Employment) Regulations 1981 shall be amended as follows.
- (2) In Regulation 2(1), in the definition of “undertaking” (which excludes from the Regulations undertakings, and parts of undertakings, not in the nature of a commercial venture), the words from “but does not” to the end shall cease to have effect.
- (3) In Regulation 3(4) (transfers to which the Regulations apply), for the words from “one” to the end there shall be substituted the words “one—
 - (a) may be effected by a series of two or more transactions; and
 - (b) may take place whether or not any property is transferred to the transferee by the transferor.”.
- (4) In Regulation 5 (effect of relevant transfer on contracts of employment, etc)—
 - (a) in paragraph (1), at the beginning, there shall be inserted the words “Except where objection is made under paragraph (4A) below,”;
 - (b) in paragraph (2) after the words “paragraph (1) above” there shall be inserted the words “but subject to paragraph (4A) below,”;
 - (c) after paragraph (4), there shall be inserted—

“(4A) Paragraphs (1) and (2) above shall not operate to transfer his contract of employment and the rights, powers, duties and liabilities under or

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in connection with it if the employee informs the transferor or the transferee that he objects to becoming employed by the transferee.

- (4B) Where an employee so objects the transfer of the undertaking or part in which he is employed shall operate so as to terminate his contract of employment with the transferor but he shall not be treated, for any purpose, as having been dismissed by the transferor.”; and
- (d) in paragraph (5), for the words “Paragraph (1) above is” there shall be substituted the words “Paragraphs (1) and (4A) above are”.
- (5) Regulation 7 (exclusion of occupational pension schemes) shall be re-numbered as paragraph (1) of that Regulation and after that provision as so re-numbered there shall be inserted—
- “(2) For the purposes of paragraph (1) above any provisions of an occupational pension scheme which do not relate to benefits for old age, invalidity or survivors shall be treated as not being part of the scheme.”.
- (6) At the end of Regulation 10(5) (duty to consult) there shall be added the words “with a view to seeking their agreement to measures to be taken.”.
- (7) In Regulation 11 (remedies for failure to inform or consult)—
- (a) paragraph (7) (deduction from compensation of any payments relating to failure to consult on redundancy) shall cease to have effect, and
- (b) in paragraph (11) (compensation subject to maximum of two weeks' pay for employee in question), for the words “two weeks' pay” there shall be substituted the words “four weeks' pay”.

34 Redundancy consultation procedures

- (1) Chapter II of Part IV of the 1992 Act (procedure for handling redundancies) shall be amended in accordance with subsections (2) to (5) below.
- (2) In section 188 (duty of employer to consult trade union representatives)—
- (a) in subsection (4) (information to be disclosed to representatives), after paragraph (e) there shall be inserted “and
- (f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by or by virtue of any enactment) to employees who may be dismissed.”,
- (b) for subsection (6) there shall be substituted—
- “(6) The consultation required by this section shall include consultation about ways of—
- (a) avoiding the dismissals,
- (b) reducing the numbers of employees to be dismissed, and
- (c) mitigating the consequences of the dismissals,
- and shall be undertaken by the employer with a view to reaching agreement with the trade union representatives.”, and
- (c) at the end of subsection (7) (exception from requirements in special circumstances) there shall be inserted—

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“Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement.”.

- (3) In section 190 (entitlement under protective award), subsection (3) (avoidance of double payments) shall cease to have effect.
- (4) In section 193 (duty of employer to notify Secretary of State of certain redundancies), at the end of subsection (7) (exception from requirements in special circumstances) there shall be inserted—

“Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with any of those requirements.”.

- (5) For section 195 there shall be substituted—

“195 Construction of references to dismissal as redundant etc

- (1) In this Chapter references to dismissal as redundant are references to dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related.
- (2) For the purposes of any proceedings under this Chapter, where an employee is or is proposed to be dismissed it shall be presumed, unless the contrary is proved, that he is or is proposed to be dismissed as redundant.”.
- (6) Section 283 of the 1992 Act (which excepts employment as a merchant seaman from the provisions of Chapter II of Part IV) shall cease to have effect.