
STATUTORY INSTRUMENTS

1999 No. 1925

**The Collective Redundancies and Transfer of Undertakings
(Protection of Employment) (Amendment) Regulations 1999**

Collective redundancies

Duty to consult representatives

3.—(1) Section 188 of the 1992 Act shall be amended as follows.

(2) In subsection (1) for “so dismissed” substitute “affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals.”

(3) For subsection (1B) substitute—

“(1B) For the purposes of this section the appropriate representatives of any affected employees are—

- (a) if the employees are of a description in respect of which an independent trade union is recognised by their employer, representatives of the trade union, or
- (b) in any other case, whichever of the following employee representatives the employer chooses:—
 - (i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this section, who (having regard to the purposes for and the method by which they were appointed or elected) have authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf;
 - (ii) employee representatives elected by the affected employees, for the purposes of this section, in an election satisfying the requirements of section 188A(1).”

(4) In subsection (5A) for “the employees whom it is proposed to dismiss as redundant” substitute “the affected employees”.

(5) For subsection (7A)(a) substitute—

“(a) the employer has invited any of the affected employees to elect employee representatives, and”

(6) After subsection (7A) insert—

“(7B) If, after the employer has invited affected employees to elect representatives, the affected employees fail to do so within a reasonable time, he shall give to each affected employee the information set out in subsection (4).”

Election of employee representatives

4. After section 188 insert—

“**188A.**—(1) The requirements for the election of employee representatives under section 188(1B)(b)(ii) are that—

- (a) the employer shall make such arrangements as are reasonably practical to ensure that the election is fair;
 - (b) the employer shall determine the number of representatives to be elected so that there are sufficient representatives to represent the interests of all the affected employees having regard to the number and classes of those employees;
 - (c) the employer shall determine whether the affected employees should be represented either by representatives of all the affected employees or by representatives of particular classes of those employees;
 - (d) before the election the employer shall determine the term of office as employee representatives so that it is of sufficient length to enable information to be given and consultations under section 188 to be completed;
 - (e) the candidates for election as employee representatives are affected employees on the date of the election;
 - (f) no affected employee is unreasonably excluded from standing for election;
 - (g) all affected employees on the date of the election are entitled to vote for employee representatives;
 - (h) the employees entitled to vote may vote for as many candidates as there are representatives to be elected to represent them or, if there are to be representatives for particular classes of employees, may vote for as many candidates as there are representatives to be elected to represent their particular class of employee;
 - (i) the election is conducted so as to secure that—
 - (i) so far as is reasonably practicable, those voting do so in secret, and
 - (ii) the votes given at the election are accurately counted.
- (2) Where, after an election of employee representatives satisfying the requirements of subsection (1) has been held, one of those elected ceases to act as an employee representative and any of those employees are no longer represented, they shall elect another representative by an election satisfying the requirements of subsection (1)(a), (e), (f) and (i).”

Complaints

5.—(1) Section 189 of the 1992 Act shall be amended as follows.

(2) For subsection (1) substitute—

“(1) Where an employer has failed to comply with a requirement of section 188 or section 188A, a complaint may be presented to an employment tribunal on that ground—

- (a) in the case of a failure relating to the election of employee representatives, by any of the affected employees or by any of the employees who have been dismissed as redundant;
- (b) in the case of any other failure relating to employee representatives, by any of the employee representatives to whom the failure related,
- (c) in the case of failure relating to representatives of a trade union, by the trade union, and
- (d) in any other case, by any of the affected employees or by any of the employees who have been dismissed as redundant.”

(3) After that subsection insert—

“(1A) If on a complaint under subsection (1) a question arises as to whether or not any employee representative was an appropriate representative for the purposes of section 188,

it shall be for the employer to show that the employee representative had the authority to represent the affected employees.

(1B) On a complaint under subsection (1)(a) it shall be for the employer to show that the requirements in section 188A have been satisfied.”

(4) In subsection (4) omit “in a case falling within paragraph (a)” to the end.

Construction of references to representatives and affected employees

6.—(1) Section 196 of the 1992 Act shall be amended as follows.

(2) In subsection (1)(b) after “having been elected” insert “or appointed”.

(3) At the end of subsection (1) add “or appointed”.

(4) After subsection (2) insert—

“(3) References in this Chapter to affected employees are to employees who may be affected by the proposed dismissals or who may be affected by measures taken in connection with such dismissals.”

Defined expressions

7. In section 299 of the 1992 Act after the entry relating to “advertisement” insert—

“affected employees (in Part IV, Chapter II) section 196(3)”.
