
STATUTORY INSTRUMENTS

2006 No. 246

**The Transfer of Undertakings (Protection
of Employment) Regulations 2006**

Variations of contract where transferors are subject to relevant insolvency proceedings

9.—(1) If at the time of a relevant transfer the transferor is subject to relevant insolvency proceedings these Regulations shall not prevent the transferor or transferee (or an insolvency practitioner) and appropriate representatives of assigned employees agreeing to permitted variations.

(2) For the purposes of this regulation “appropriate representatives” 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 assigned employees (whether they make the appointment or election alone or with others) otherwise than for the purposes of this regulation, who (having regard to the purposes for, and the method by which they were appointed or elected) have authority from those employees to agree permitted variations to contracts of employment on their behalf;

- (ii) employee representatives elected by assigned employees (whether they make the appointment or election alone or with others) for these particular purposes, in an election satisfying requirements identical to those contained in regulation 14 except those in regulation 14(1)(d).

(3) An individual may be an appropriate representative for the purposes of both this regulation and regulation 13 provided that where the representative is not a trade union representative he is either elected by or has authority from assigned employees (within the meaning of this regulation) and affected employees (as described in regulation 13(1)).

(4) In section 168 of the 1992 Act (time off for carrying out trade union duties) in subsection (1), after paragraph (c) there is inserted—

“, or

- (d) negotiations with a view to entering into an agreement under regulation 9 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer, or

- (e) the performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under that regulation.”.

(5) Where assigned employees are represented by non-trade union representatives—

- (a) the agreement recording a permitted variation must be in writing and signed by each of the representatives who have made it or, where that is not reasonably practicable, by a duly authorised agent of that representative; and

- (b) the employer must, before the agreement is made available for signature, provide all employees to whom it is intended to apply on the date on which it is to come into effect

with copies of the text of the agreement and such guidance as those employees might reasonably require in order to understand it fully.

(6) A permitted variation shall take effect as a term or condition of the assigned employee's contract of employment in place, where relevant, of any term or condition which it varies.

(7) In this regulation—

“assigned employees” means those employees assigned to the organised grouping of resources or employees that is the subject of a relevant transfer;

“permitted variation” is a variation to the contract of employment of an assigned employee where—

- (a) the sole or principal reason for it is the transfer itself or a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce; and
- (b) it is designed to safeguard employment opportunities by ensuring the survival of the undertaking, business or part of the undertaking or business that is the subject of the relevant transfer;

“relevant insolvency proceedings” has the meaning given to the expression by regulation 8(6).