
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations relate to the implementation of Council [Directive 1998/59/EC\(1\)](#) on the approximation of the laws of the Member States relating to collective redundancies. They insert new sections into the provisions relating to collective redundancies in the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”).

They also relate to the implementation of Council [Directive 2001/23/EC\(2\)](#) (“the 2001 Directive”) on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. The 2001 Directive is implemented in the United Kingdom by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“the 2006 Regulations”). These Regulations amend the 2006 Regulations in their application in Great Britain. To the extent that they relate to the 2001 Directive they are made under section 2(2) of the European Communities Act 1972. To the extent that they relate to the treatment of employees, and related matters, in relation to a service provision change (in circumstances other than those to which the Directive applies), they are made under section 38 of the Employment Relations Act 1999.

These Regulations extend to Great Britain and not Northern Ireland.

Regulation 3 inserts new sections into the 1992 Act. These sections make provision for a transferee to elect to consult, or start to consult, representatives of affected transferring individuals about the transferee’s proposed dismissals before the transfer takes place and set out how sections 188 to 198 of the 1992 Act apply in cases where the transferee has made such an election.

Regulation 5 inserts a new paragraph into regulation 3 of the 2006 Regulations, dealing with the references to “activities” in the definition of a service provision change in regulation 3(1)(b).

Regulation 6 amends the provisions in regulation 4 of the 2006 Regulations concerned with variations to contracts in a situation involving a relevant transfer. Any purported variation of a contract of employment that will be transferred under regulation 4(1) of the 2006 Regulations will be void if the sole or principal reason for the variation is the transfer. However, in certain situations, dealt with in the new paragraphs (5) to (5B), a variation of contract may not be void, though the general rules as to whether a contract is effectively varied continue to apply. Regulation 9 makes a related amendment to the definition of “permitted variation” in regulation 9 of the 2006 Regulations.

Regulation 7 inserts regulation 4A into the 2006 Regulations, to deal with the effect of a relevant transfer on contracts of employment which incorporate provisions of collective agreements as may be agreed from time to time.

Regulation 8 amends regulation 7 of the 2006 Regulations on the protection against dismissal in situations involving a relevant transfer. If the sole or principal reason for the dismissal of an employee is the transfer, the dismissal is treated as unfair for the purposes of Part 10 of the Employment Rights Act 1996 (unfair dismissal). This does not apply if the sole or principal reason for the dismissal is an economic, technical or organisational reason entailing changes in the workforce of either the transferor or transferee before or after a relevant transfer.

(1) OJ L 225, 12.8.1998, p. 16–21 and a corrigendum was published at OJ L 59, 27.2.2007, p. 84.

(2) OJ L 82, 22.3.2001, p. 16–20.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Regulation 10 amends regulation 11 of the 2006 Regulations so that the usual deadline for notification of employee liability information under that regulation is increased from not less than 14 days before the transfer to not less than 28 days before the transfer.

Regulations 11 makes amendments to regulations 13 to 15 of the 2006 Regulations on information and consultation so that a micro-business can inform and consult directly with all the affected employees in cases where there are no existing appropriate representatives.

An impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector and a Transposition Note have been prepared. They are attached to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk. Copies of these documents have also been placed in the Libraries of both Houses of Parliament.