

2018 No. 407

TERMS AND CONDITIONS OF EMPLOYMENT

**The Seafarers (Insolvency, Collective Redundancies and
Information and Consultation Miscellaneous Amendments)
Regulations 2018**

Made - - - - *22nd March 2018*

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by section 209(1)(c) of the Employment Rights Act 1996^(a), section 286(2) and (3) of the Trade Union and Labour Relations (Consolidation) Act 1992^(b) and section 42(1) of the Employment Relations Act 2004^(c), makes the following Regulations.

In accordance with section 236(3) of the Employment Rights Act 1996, section 286(4) of the Trade Union and Labour Relations (Consolidation) Act 1992 and section 42(8) of the Employment Relations Act 2004, a draft of these Regulations was laid before and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Seafarers (Insolvency, Collective Redundancies and Information and Consultation Miscellaneous Amendments) Regulations 2018 and come into force on the 22nd day after the day on which they are made.

(2) These Regulations extend to England and Wales and Scotland.

Amendment of the Employment Rights Act 1996

2.—(1) Section 199 of the Employment Rights Act 1996 (mariners) is amended as follows.

(2) In subsection (2) for “Parts X to XII” substitute “Part X”.

(3) In subsection (4) omit “and Part XII”.

(4) The amendment made by paragraph (2), insofar as it relates to Part XI of the Employment Rights Act 1996, only has effect in relation to employees who on or after the date on which these Regulations come into force—

(a) are dismissed by reason of redundancy, or

(b) become eligible for a redundancy payment by reason of being laid off or kept on short-time.

(a) 1996 c.18.
(b) 1992 c.52.
(c) 2004 c.24.

(5) The amendment made by paragraph (2), insofar as it relates to Part XII of the Employment Rights Act 1996, and the amendment made by paragraph (3) only have effect in relation to employees whose employer has become insolvent^(a) on or after the date on which these Regulations come into force.

Amendment of the Trade Union and Labour Relations (Consolidation) Act 1992

3.—(1) Section 284 of the Trade Union and Labour Relations (Consolidation) Act 1992 (share fishermen) is amended as follows.

(2) Omit—

“In Part IV, Chapter II (procedure for handling redundancies).”

(3) The amendment made by paragraph (2) only has effect in relation to dismissals^(b) which are first proposed by an employer on or after the date on which these Regulations come into force.

Amendment of the Information and Consultation of Employees Regulations 2004

4.—(1) The Information and Consultation of Employees Regulations 2004^(c) are amended as follows.

(2) Regulation 43 (exception for merchant navy) is omitted.

Review of Regulations

5.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in regulation 4, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before the end of the period of five years beginning with the date on which these Regulations come into force.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015^(d) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how Article 3(3) of Directive 2002/14/EC^(e), which is amended by Article 3 of Directive 2015/1794/EC^(f), is implemented in other member States.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

(a) See section 183 of the Employment Relations Act 1996 for the meaning of “employer has become insolvent”.

(b) See section 195 of the Trade Union and Labour Relations (Consolidation) Act 1992 for the meaning of “dismissals” in the context of redundancy.

(c) S.I. 2004/3426. There are amendments to this instrument but none is relevant.

(d) 2015 c.26. Section 30(3) was amended by the Enterprise Act 2016 (c.12), section 19.

(e) OJ No L 80, 23.2.2002, p 29.

(f) OJ No L 263, 8.10.2015, p 1.

Signed by authority of the Secretary of State

Nusrat Ghani
Parliamentary Under Secretary of State
Department for Transport

22nd March 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement certain requirements of Directive 2015/1794/EC (OJ No L 263, 8.10.2015, p 3) (“the Seafarers Directive”). The purpose of the Seafarers Directive is to place those employed at sea on an equal footing with land based employees and to remove unequal treatment across member States.

These Regulations amend the Employment Rights Act 1996, the Trade Union and Labour Relations (Consolidation) Act 1992 and the Information and Consultation of Employees Regulations 2004 (“the 2004 Regulations”).

Part XII of the Employment Rights Act 1996 (insolvency of employers) implements in Great Britain the provisions of Directive 2008/94/EC of the European Parliament and of the Council (OJ No L 283, 28.10.2008, p 36) (“the 2008 Directive”). Article 1 of the Seafarers Directive amends the 2008 Directive by ensuring that seafarers employed as share fishermen are brought within the scope of the 2008 Directive.

In order to reflect the amendment, regulation 2(2) amends section 199(2) of the Employment Rights Act 1996 by removing the exclusion relating to Part XII in relation to employed share fishermen. Regulation 2(3) amends section 199(4) of the Employment Rights Act 1996 in order to bring merchant seamen within the scope of Part XII, as provided for by the 2008 Directive.

Part XI of the Employment Rights Act 1996 (redundancy payments etc) provides protection for employees in the event of a redundancy which may arise in the context of the insolvency of an employer. Regulation 2(2) removes the exclusion relating to Part XI in relation to employed share fishermen but is not made for the purposes of implementing the amendment made by Article 1 of the Seafarers Directive to the 2008 Directive.

Part IV, Chapter II of the Trade Union and Labour Relations (Consolidation) Act 1992 (procedure for handling redundancies) implements in Great Britain the provisions of Directive 1998/59/EC of the Council of the European Union (OJ No L 225, 12.08.1998, p 16) (“the 1998 Directive”). Article 4 of the Seafarers Directive amends Article 1(2)(c) of the 1998 Directive by removing the derogation for the crews of seagoing vessels. Merchant seamen are within the scope of Part IV, Chapter II of the Trade Union and Labour Relations (Consolidation) Act 1992 but the amendment also brings employed share fishermen within the scope of Part IV, Chapter II.

In order to reflect the amendment, regulation 3(2) amends section 284 of the Trade Union and Labour Relations (Consolidation) Act 1992 by removing the exclusion relating to Part IV, Chapter II in relation to employed share fishermen.

The 2004 Regulations implemented in Great Britain Directive 2002/14/EC (“the 2002 Directive”) establishing a general framework for informing and consulting employees in the European Union. Article 3(3) of the 2002 Directive permitted member States to exclude from the scope of the application of the Directive the crews of vessels plying the high seas. Regulation 43 of the 2004 Regulations implemented the derogation and allowed an employer to exclude merchant navy crew engaged on voyages of 48 hours or more from being a negotiating representative or an information and consultation representative as defined by the 2004 Regulations.

The Seafarers Directive amends the 2002 Directive by removing Article 3(3) from the scope of the 2002 Directive. In order to reflect the amendment, regulation 4 amends the 2004 Regulations by omitting regulation 43.

Regulation 5 requires the Secretary of State to review the operation and effect of regulation 4 and publish a report before the fifth anniversary of the date these Regulations come into force and within every five years after that. Following a review, it will fall to the Secretary of State to consider whether regulation 4 should remain or be amended.

An impact assessment has not been prepared for these Regulations as no significant impact on individuals or businesses is foreseen.

An Explanatory Memorandum is published alongside these Regulations at www.legislation.gov.uk and is also available from the Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR.

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