

1995 No. 417

INDUSTRIAL RELATIONS

**Collective Redundancies and Transfer of Undertakings
(Amendment) Regulations (Northern Ireland) 1995***Made* 3rd November 1995*Coming into operation* 3rd December 1995

The Department of Economic Development, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to dismissals or terminations of employment contracts where such dismissals or terminations are effected by an employer for one or more reasons not related to the individual workers concerned and in relation to rights and obligations relating to employers and employees on the transfer or merger of undertakings, businesses or parts of businesses(c), in exercise of the powers conferred on it by the said section 2(2), and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Collective Redundancies and Transfer of Undertakings (Amendment) Regulations (Northern Ireland) 1995 and shall come into operation on 3rd December 1995.

(2) Regulations 3 to 6 shall not apply in relation to dismissals taking effect before 1st March 1996; and, in determining whether any new requirement is imposed on an employer, any such dismissals shall be left out of account in ascertaining the number of employees whom the employer is proposing to dismiss within any period of 90 days or less.

In this paragraph “new requirement” means a requirement which—

- (a) arises under Article 49 or 50 of the No. 1 Order(d) as amended by these Regulations; but
- (b) would not so arise but for the amendments made by these Regulations.

Interpretation

2.—(1) In these Regulations—

“the No. 1 Order” means the Industrial Relations (Northern Ireland) Order 1976(e);

(a) See S.I. 1994/2791

(b) 1972 c. 68

(c) See S.I. 1977/1718

(d) As amended by S.I. 1993/2668 (N.I. 11) Article 12

(e) S.I. 1976/1043 (N.I. 16)

“the No. 2 Order” means the Industrial Relations (No. 2) (Northern Ireland) Order 1976(a);

“the 1993 Order” means the Industrial Relations (Northern Ireland) Order 1993(b).

(2) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Duty to consult representatives

3.—(1) Article 49 of the No. 1 Order shall be amended as provided by paragraphs (2) to (10).

(2) For paragraphs (1) to (4) there shall be substituted—

“(1) Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be so dismissed.

(2) The consultation shall begin in good time and in any event—

(a) where the employer is proposing to dismiss 100 or more employees as mentioned in paragraph (1), at least 90 days; and

(b) otherwise, at least 30 days,

before the first of the dismissals takes effect.

(3) For the purposes of this Article the appropriate representatives of any employees are—

(a) employee representatives elected by them; or

(b) if the employees are of a description in respect of which an independent trade union is recognised by the employer, representatives of the trade union,

or (in the case of employees who both elect employee representatives and are of such a description) either employee representatives elected by them or representatives of the trade union, as the employer chooses.

(3A) The consultation 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 appropriate representatives.

(4) In determining how many employees an employer is proposing to dismiss as redundant no account shall be taken of employees in respect of whose proposed dismissals consultation has already begun.”

(3) In paragraph (5), for the words “trade union” there shall be substituted the words “the appropriate”.

(a) S.I. 1976/2147 (N.I. 28)

(b) S.I. 1993/2668 (N.I. 11)

(c) 1954 c. 33 (N.I.)

(4) For paragraph (6) there shall be substituted—

“(6) The information which is to be given to each of the appropriate representatives under this Article shall be delivered to them, or sent by post to an address notified by them to the employer, or (in the case of representatives of a trade union) sent by post to the union at the address of its head or main office.”.

(5) After paragraph (6) there shall be inserted—

“(6A) The employer shall allow the appropriate representatives access to the employees whom it is proposed to dismiss as redundant and shall afford to those representatives such accommodation and other facilities as may be appropriate.”.

(6) Paragraph (7) shall cease to have effect.

(7) In paragraph (8) for the words “(3), (5) or (7)” there shall be substituted the words “(2), (3A) or (5)”.

(8) After paragraph (8) there shall be inserted—

“(8A) Where—

(a) the employer has invited any of the employees who may be dismissed to elect employee representatives; and

(b) the invitation was issued long enough before the time when the consultation is required by paragraph (2)(a) or (b) to begin to allow them to elect representatives by that time,

the employer shall be treated as complying with the requirements of this Article in relation to those employees if he complies with those requirements as soon as is reasonably practicable after the election of the representatives.”.

(9) In paragraph (9) after the words “a trade union” there shall be inserted the words “, a representative”.

(10) In the heading to the Article the words “trade union” shall be omitted.

(11) Article 12(2)(b) of the 1993 Order shall cease to have effect.

Duty of employer to notify Department of certain redundancies

4.—(1) Article 50 of the No. 1 Order shall be amended as provided by paragraphs (2) to (5).

(2) In paragraph (1)—

(a) for sub-paragraph (b) there shall be substituted—

“(b) 20 or more employees at one establishment within such a period;”;

(b) for the words from “and where the notice” to the end there shall be substituted—

“and where there are representatives to be consulted under Article 49, he shall give to each of them a copy of any notice given under this paragraph”.

(3) For paragraph (2) there shall be substituted—

“(2) In determining how many employees an employer is proposing to dismiss as redundant within the period mentioned in paragraph (1), no account shall be taken of employees in respect of whose proposed dismissals notice has already been given to the Department.”.

(4) In paragraph (3), for sub-paragraph (b) there shall be substituted—

“(b) where there are representatives to be consulted under Article 49, identify them and state the date when consultation with them under that Article began; and”

(5) For paragraph (4) there shall be substituted—

“(4) The copy of the notice under this Article which is to be given to representatives shall be delivered to them, or sent by post to an address notified by them to the employer or (in the case of representatives of a trade union) sent by post to the union at the address of its head or main office.”.

Complaints

5.—(1) Article 51 of the No. 1 Order shall be amended as provided by paragraphs (2) to (6).

(2) For paragraph (1) there shall be substituted—

“(1) Where an employer has failed to comply with any requirement of Article 49, a complaint may be presented to an industrial tribunal on that ground—

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

(3) In paragraph (5)—

(a) in sub-paragraph (a) for the words “Article 49(3)(a)” there shall be substituted the words “Article 49(2)(a)”;

(b) for sub-paragraphs (b) and (c) there shall be substituted—

“or

(b) in a case falling within Article 49(2)(b), 30 days.”.

(4) For paragraph (6) there shall be substituted—

“(6) An industrial tribunal shall not consider a complaint under this Article unless it is presented to the tribunal—

- (a) before the date on which the last of the dismissals to which the complaint relates takes effect; or
- (b) during the period of three months beginning with that date; or
- (c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented during the period of

three months, within which further period as it considers reasonable.”.

(5) Paragraph (7) shall cease to have effect.

(6) In the heading to the Article the words “by trade union” shall be omitted.

Supplementary provisions

6. In Article 56 of the No. 1 Order—

(a) in paragraph (4)—

(i) for “49(3)” where it first occurs there shall be substituted “49(1) and (2)” and for “49(3)” in the other place it occurs there shall be substituted “49(2)”; and

(ii) for “Article 51(5)(a) to (c) there shall be substituted “Article 51(5)(a) or (b)”;

(b) after paragraph (4) there shall be added—

“(5) For the purposes of this Part persons are employee representatives if—

(a) they have been elected by employees for the specific purpose of being consulted by their employer about dismissals proposed by him; or

(b) having been elected by employees (whether before or after dismissals have been proposed by their employer) otherwise than for that specific purpose, it is appropriate (having regard to the purposes for which they were elected) for the employer to consult them about dismissals proposed by him,

and (in either case) they are employed by the employer at the time when they are elected.

(6) References in this Part to representatives of a trade union, in relation to an employer, are to officials or other persons authorised by the trade union to carry on collective bargaining with the employer.”.

Right not to suffer detriment

7.—(1) After Article 13A of the No. 2 Order (a) there shall be inserted—

“Right of employee representatives not to suffer detriment

13AA.—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being—

(a) an employee representative for the purposes of Part IV of the No. 1 Order or regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981(b); or

(b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

(a) Article 13A was inserted by Article 6 of, and Part I of Schedule 3 to, S.I. 1993/2668 (N.I. 11)
 (b) S.I. 1981/1794

he performed, or proposed to perform, any functions or activities as such an employee representative or candidate.

(2) Except where an employee is dismissed in circumstances in which, by virtue of Article 25 of the No. 1 Order, Article 20 of that Order does not apply to the dismissal, this Article shall not apply where the detriment in question amounts to dismissal.”.

(2) In Article 13B(1) of the No. 2 Order(a), after the word “13A” there shall be inserted the words “or 13AA”.

(3) For Article 13D of the No. 2 Order(a) there shall be substituted—
“*Power to extend Article 13A*”

13D. The Department may by order provide that, subject to any such modifications and exceptions as may be prescribed in the order, Article 13A (and any other provisions in this Order or the No. 1 Order so far as relating to that Article) shall apply to such descriptions of persons other than employees as may be prescribed in the order as it applies to employees (but as if references to their employer were references to such person as may be so prescribed).”.

(4) In Article 56(2)(a)(b) of the No. 2 Order after the word “13A” there shall be inserted “, 13AA”.

Time off work

8.—(1) After Article 41A of the No. 2 Order(c) there shall be inserted—

“*Time off for employee representatives*

41AA.—(1) An employee who is—

- (a) an employee representative for the purposes of Part IV of the No. 1 Order, or regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981; or
- (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

shall be entitled to be allowed by his employer reasonable time off during the employee’s working hours in order to perform his functions as such an employee representative or candidate.

(2) Subject to paragraph (3), paragraphs (4) to (12) of Article 41A shall apply to an employee who is allowed time off in accordance with this Article as they apply to an employee who is permitted to take time off in accordance with paragraph (1) of that Article.

(3) In their application by virtue of paragraph (2), paragraphs (6) and (9) of Article 41A shall each have effect as if for the reference to the day of the appointment concerned there were substituted a reference to the

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- (a) Articles 13B and 13D were inserted by Article 6 of, and Part I of Schedule 3 to, S.I. 1993/2668 (N.I. 11)
 - (b) Article 56(2)(a) was amended by Article 23(1) of, and Schedule 2 to, S.I. 1982/528 (N.I. 8) and by Article 18(2) of, and Schedule 6 to, S.I. 1993/2668 (N.I. 11)
 - (c) Article 41A was inserted by Article 15 of S.I. 1982/528 (N.I. 8)

day on which it is alleged that time off should have been allowed or the day on which the time off was taken.”.

(2) In Article 42 of the No. 2 Order(a) for the word “41A” there shall be substituted the word “41AA”.

(3) In Article 56(2)(a) of the No. 2 Order after the word “41A” there shall be inserted “, 41AA”.

(4) In Article 59A(2)(c) of the No. 2 Order(b), for the words “Article 41A” there shall be substituted the words “Articles 41A and 41AA”.

Unfair dismissal

9.—(1) After Article 22B of the No. 1 Order(c) there shall be inserted—

“Dismissal of employee representatives

22BB. The dismissal of an employee by an employer shall be regarded for the purposes of this Part as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee, being—

(a) an employee representative for the purposes of Part IV of the No. 1 Order or regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981; or

(b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

performed, or proposed to perform, any functions or activities as such an employee representative or candidate.”.

(2) In Articles 22C(1)(b)(d), 23(2A), 23A(2)(e) and 24(3)(b) of the No. 1 Order, after the words “22B(1) (read with (2) and (3))” there shall be inserted the words “or 22BB” in each place.

(3) In Article 30(2) of the No. 1 Order(f), for the words “Article 22B or” there shall be substituted the words “Article 22B, 22BB or”.

(4) In Articles 32(2A)(b)(g), 33(2)(h), 34(6), 34(12), 39(1)(b)(i) and 39A(1)(b) of the No. 1 Order after the words “22B(1)(a) and (b)” there shall be inserted the words “or 22BB” in each place.

(5) In Article 78A(2)(a) of the No. 1 Order(j), for the words “Article 22B or” there shall be substituted the words “Article 22B, 22BB or”.

(6) In Article 9(5)(a)(i) of the 1993 Order for the words “Article 22B or” there shall be substituted the words “Article 22B, 22BB or”.

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- (a) Article 42 was amended by Article 23(1) of, and Schedule 2 to, S.I. 1982/528 (N.I. 8)
 (b) Article 59A was inserted by Article 18(1) of, and paragraph 3 of Schedule 5 to, S.I. 1993/2668 (N.I. 11)
 (c) Article 22B was inserted by Article 6 of, and Part II of, Schedule 3 to, S.I. 1993/2668 (N.I. 11)
 (d) Articles 22C, 23(2A) and 24 were amended by Article 18(2) of, and Schedule 6 to, S.I. 1993/2668 (N.I. 11)
 (e) Article 23A was inserted by Article 136(1) of S.I. 1995/1980 (N.I. 12)
 (f) Article 30(2) of the No. 1 Order was amended by Article 18(1) of, and paragraph 4 of Schedule 5 to, S.I. 1993/2668 (N.I. 11)
 (g) Article 32(2A) was inserted by Article 18(2) of, and Schedule 6 to, S.I. 1993/2668 (N.I. 11)
 (h) Articles 33 and 34 were substituted by Article 6 of, and Part III of Schedule 3 to, S.I. 1993/2668 (N.I. 11)
 (i) Articles 39 and 39A were inserted by Article 6 of, and Part IV of Schedule 3 to, S.I. 1993/2668 (N.I. 11)
 (j) Article 78A was inserted by Article 18(1) of, and paragraph 2 of Schedule 5 to, S.I. 1993/2668 (N.I. 11)

(7) In Article 10(1)(a)(i) of the 1993 Order, for the words "(except Article 22B)" there shall be substituted the words "(except Articles 22B and 22BB)".

Sealed with the Official Seal of the Department of Economic Development on 3rd November 1995.

(L.S.)

W. D. A. Haire

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations are made for the purpose of ensuring that the arrangements under legislation in Northern Ireland for consultation by the employer, where there are to be redundancies or a transfer of undertaking, comply with the requirements of Council Directives 77/187 (O.J. No. 1977 L61/26) and 75/129 (O.J. No. 1975 L48/29). This follows the judgement of the European Court of Justice in cases C382/92 and C383/92, *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*, ([1994] I.C.R. 664) in which the Court held that the United Kingdom had failed to comply with the requirements of the Directives by failing to provide for consultation of workers' representatives where there was no recognised trade union.

Regulation 3 extends the scope of the duty imposed on an employer by Article 49 of the Industrial Relations (Northern Ireland) Order 1976 ("the No. 1 Order") to consult, within a specified time, elected employee representatives where 20 or more redundancies are proposed.

Regulation 4 amends the scope of the duty imposed upon an employer by Article 50 of the No. 1 Order to notify the Department of Economic Development where certain redundancies are proposed.

Regulation 5 provides that specified persons may present a complaint to an industrial tribunal where an employer has failed to comply with a requirement to consult.

Regulation 7 provides that an employee representative may not be subjected to any detriment on the grounds of the performance of his functions or activities.

Regulation 8 confers on an employee representative the right to time off with pay to perform his duties and functions.

Regulation 9 provides that a dismissal is unfair if the principal reason for it was the performance by an employee representative of his duties and functions.