



Trade Union and Labour Relations (Consolidation) Act 1992

1992 CHAPTER 52

PART IV

INDUSTRIAL RELATIONS

CHAPTER II

PROCEDURE FOR HANDLING REDUNDANCIES

Supplementary provisions

[^{F1}198B. Section 198A: supplementary

- (1) Where section 198A applies and the transferee elects to carry out pre-transfer consultation (and has not cancelled the election), the application under section 198A(4)(a) of sections 188 to 198 is (both before and after the transfer) subject to the following modifications—
 - (a) for section 188(1B)(a) substitute—
 - “(a) for transferring individuals of a description in respect of which an independent trade union is recognised by the transferor, representatives of that trade union,
 - (aa) for employees, other than transferring individuals, of a description in respect of which an independent trade union is recognised by the transferee, representatives of that trade union, or”;
 - (b) in section 188(5), for “the employer” substitute “the transferor or transferee”;
 - (c) in section 188(5A), for “shall allow the appropriate representatives access to the affected employees and shall afford to those representatives such accommodation and other facilities as may be appropriate” substitute “shall

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ensure that the appropriate representatives are allowed access to the affected transferring individuals and that such accommodation and other facilities as may be appropriate are afforded to those representatives”;

(d) in section 188(7), at the end insert—

“A failure on the part of the transferor to provide information or other assistance to the transferee does not constitute special circumstances rendering it not reasonably practicable for the transferee to comply with such a requirement.”;

(e) where an employment tribunal makes a protective award under section 189 ordering the transferee to pay remuneration for a protected period in respect of a transferring individual, then, so far as the protected period falls before the relevant transfer, the individual’s employer before the transfer is to be treated as the employer for the purpose of determining under sections 190(2) to (6) and 191 the period (if any) in respect of which, and the rate at which, the individual is entitled to be paid remuneration by the transferee under section 190(1);

(f) in section 189, at the end insert—

“(7) If on a complaint under this section a question arises whether the transferor agreed to an election or the transferee gave notice of an election as required under section 198A(3), it is for the transferee to show that the agreement or notice was given as required.”;

(g) in section 192, at the end insert—

“(5) If on a complaint under this section a question arises whether the transferor agreed to an election or the transferee gave notice of an election as required under section 198A(3), it is for the transferee to show that the agreement or notice was given as required.”;

(h) in section 193(6), for “the employer” the second time it appears substitute “the transferor or transferee”;

(i) in section 193(7), at the end insert—

“A failure on the part of the transferor to provide information or other assistance to the transferee does not constitute special circumstances rendering it not reasonably practicable for the transferee to comply with any of those requirements.”;

(j) in section 196(1), in the closing words, for “employed by the employer” substitute “employed by the transferor or transferee”;

(k) for section 196(2) substitute—

“(2) References in this Chapter to representatives of a trade union are to officials or other persons authorised by the trade union to carry on collective bargaining with the transferee.”.

(2) Where section 198A applies and the transferee elects to carry out pre-transfer consultation (and has not cancelled the election), both before and after the transfer section 168(1)(c) applies as follows in relation to an official of an independent trade union who, as such an official, is an affected transferring individual’s appropriate representative under section 188(1B)(a)—

(a) in relation to the official’s duties as such a representative, the reference in the opening words of section 168(1) to an independent trade union being

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recognised by the employer is to be read as a reference to an independent trade union being recognised by the transferor;

- (b) the references in section 168(1)(c) to the employer in relation to section 188 are to be read as references to the transferee.]

Textual Amendments

- F1** Ss. 198A, 198B inserted (31.1.2014) by [The Collective Redundancies and Transfer of Undertakings \(Protection of Employment\) \(Amendment\) Regulations 2014 \(S.I. 2014/16\)](#), regs. 1(2), **3(1)**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 212A(1)(zb) inserted by [2023 c. 46 Sch. para. 1](#)