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STATUTORY INSTRUMENTS

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**1995 No. 2587**

**The Collective Redundancies and Transfer of Undertakings  
(Protection of Employment) (Amendment) Regulations 1995**

*Transfer of undertakings*

**Unfair dismissal**

**8.** In Regulation 8 of the 1981 Regulations, after paragraph (4) insert—

“(5) Paragraph (1) above shall not apply in relation to a dismissal of an employee if—

- (a) the application of section 54 of the 1978 Act to the dismissal of the employee is excluded by or under any provision of Part V or sections 141 to 149 of the 1978 Act or of section 237 or 238 of the Trade Union and Labour Relations (Consolidation) Act 1992; or
- (b) the application of Article 20 of the 1976 Order to the dismissal of the employee is excluded by or under any provision of Part III or Article 76 of that Order.”

**Duty to inform and consult representatives**

**9.—**(1) Regulation 10 of the 1981 Regulations shall be amended as follows.

(2) In paragraph (1), for ““an affected employee” means, in relation to a relevant transfer, any employee” substitute “references to affected employees, in relation to a relevant transfer, are to any employees”.

(3) In paragraph (2), for the words from “consultations” to “union’s representatives,” substitute “the employer of any affected employees to consult all the persons who are appropriate representatives of any of those affected employees.”.

(4) After that paragraph insert—

“(2A) For the purposes of this Regulation 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.”

(5) In paragraph (4), for the words from “representatives” to “employer, or” substitute “appropriate representatives shall be given to each of them by being 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)”.

(6) In paragraph (5), for the words from “of a description” to “that union” substitute “he shall consult all the persons who are appropriate representatives of any of the affected employees in relation to whom he envisages taking measures”.

- (7) In paragraph (6), for “trade union” substitute “appropriate”.
- (8) After that paragraph insert—
  - “(6A) The employer 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.”
- (9) In paragraph (7), for “the foregoing paragraphs” substitute “paragraphs (2) to (6)”.
- (10) After that paragraph insert—
  - “(8) Where—
    - (a) the employer has invited any of the affected employees to elect employee representatives, and
    - (b) the invitation was issued long enough before the time when the employer is required to give information under paragraph (2) above to allow them to elect representatives by that time,the employer shall be treated as complying with the requirements of this Regulation in relation to those employees if he complies with those requirements as soon as is reasonably practicable after the election of the representatives.”
- (11) In the side-heading, omit “trade union”.

### **Complaints**

- 10.** In Regulation 11 of the 1981 Regulations, for paragraph (1) substitute—
  - “(1) Where an employer has failed to comply with any requirement of Regulation 10 above, 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; or
    - (c) in any other case, by any of his employees who are affected employees.”

### **Construction of references to employee representatives**

- 11.** After Regulation 11 of the 1981 Regulations insert—

#### **“Construction of references to employee representatives**

**11A.** For the purposes of Regulations 10 and 11 above persons are employee representatives if—

- (a) they have been elected by employees for the specific purpose of being given information and consulted by their employer under Regulation 10 above; or
- (b) having been elected by employees otherwise than for that specific purpose, it is appropriate (having regard to the purposes for which they were elected) for their employer to inform and consult them under that Regulation,

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