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STATUTORY INSTRUMENTS

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**1995 No. 2587**

**TERMS AND CONDITIONS OF EMPLOYMENT**

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

<i>Made</i>	- - - -	<i>2nd October 1995</i>
<i>Laid before Parliament</i>		<i>5th October 1995</i>
<i>Coming into force</i>	- -	<i>26th October 1995</i>

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities 1972<sup>(1)</sup> 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<sup>(2)</sup> and in relation to rights and obligations relating to employers and employees on the transfer or merger of undertakings, businesses or parts of businesses<sup>(3)</sup>, in exercise of the powers conferred on him by that provision hereby makes the following Regulations—

*Introductory*

**Citation, extent and interpretation**

1.—(1) These Regulations may be cited as the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1995.

(2) This regulation, regulation 2 and regulations 8 to 11 extend to Northern Ireland.

(3) In these Regulations—

“the 1978 Act” means the Employment Protection (Consolidation) Act 1978<sup>(4)</sup>;

“the 1981 Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981<sup>(5)</sup>; and

“the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(6)</sup>.

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(1) 1972 c. 68.

(2) The European Communities (Designation) (No. 4) Order 1994 (S.I. 1994/2791).

(3) The European Communities (Designation) (No. 2) Order 1977 (S.I. 1977/1718).

(4) 1978 c. 44.

(5) S.I. 1981/1794.

(6) 1992 c. 52.

## **Commencement**

2.—(1) These Regulations shall come into force on 26th October 1995.

(2) Regulations 3 to 7 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 section 188 or 193 of the 1992 Act as amended by these regulations, but
- (b) would not so arise but for the amendments made by these regulations.

(3) Regulations 9 to 11 shall not apply in relation to transfers of undertakings taking place before 1st March 1996.

## *Collective Redundancies*

### **Duty to consult representatives**

3.—(1) Section 188 of the 1992 Act shall be amended as follows.

(2) For subsections (1) and (2) substitute—

“(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.

(1A) 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 subsection (1), at least 90 days, and
- (b) otherwise, at least 30 days,

before the first of the dismissals takes effect.

(1B) For the purposes of this section 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.

(2) 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.”

(3) In subsection (4), for “trade union” substitute “appropriate”.

(4) In subsection (5)—

- (a) for “delivered to the trade union representatives” substitute “given to each of the appropriate representatives by being delivered to them”; and
  - (b) after “employer, or” insert “(in the case of representatives of a trade union)”.
- (5) After that subsection insert—
- “(5A) 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) Omit subsection (6).
- (7) In subsection (7), in the first sentence, for “(2), (4) or (6)” substitute “(1A), (2) or (4)”.
- (8) After that subsection insert—
- “(7A) 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 subsection (1A)(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 section 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 subsection (8), after “a trade union” insert “, a representative”.
- (10) In the sidenote to section 188, and in the heading immediately preceding it, omit “trade union”.
- (11) In consequence of the amendments made by this regulation, in section 34 of the Trade Union Reform and Employment Rights Act 1993(7), omit subsection (2)(b).

### **Complaints.**

- 4.—(1) Section 189 of the 1992 Act shall be amended as follows.
- (2) For subsection (1) substitute—
- “(1) Where an employer has failed to comply with any requirement of section 188, 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 subsection (4), for the words from “section 188(2)(a)” to the end substitute “paragraph (a) of subsection (1A) of section 188 or 30 days in a case falling within paragraph (b) of that subsection.”
- (4) In subsection (5)—
- (a) in paragraph (a), for “proposed dismissal” substitute “date on which the last of the dismissals to which the complaint relates”;
  - (b) in paragraph (b)—

- (i) for “before the end of” substitute “during”; and
  - (ii) for “the date on which the dismissal takes effect” substitute “that date”; and
  - (c) in paragraph (c), for “within the” substitute “during the”.
- (5) In the sidenote, omit “by trade union”.

**Duty to notify Secretary of State.**

- 5.—(1) Section 193 of the 1992 Act shall be amended as follows.
- (2) In subsection (2)—
    - (a) for “10” substitute “20”; and
    - (b) for “a period of 30 days or less” substitute “such a period”.
  - (3) In subsection (4), for paragraph (b) substitute—
    - “(b) where there are representatives to be consulted under section 188, identify them and state the date when consultation with them under that section began.”.
  - (4) In subsection (6)—
    - (a) for the first sentence substitute—
      - “Where there are representatives to be consulted under section 188 the employer shall give to each of them a copy of any notice given under subsection (1) or (2).”;
      - and
    - (b) in the second sentence, after “employer, or” insert “(in the case of representatives of a trade union)”.

**Construction of references to representatives.**

6. For section 196 of the 1992 Act substitute—

**“196 Construction of references to representatives.**

- (1) For the purposes of this Chapter 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.
- (2) References in this Chapter 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.”

**Defined expressions**

- 7.—(1) Section 299 of the 1992 Act shall be amended as follows.
- (2) After the entries relating to “employee” insert—

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“employee representatives (in Part IV, Chapter II) section 196(1).”

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(3) For the entry relating to “representative (of trade union)” substitute—

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“representatives of a trade union (in Part IV, section 196(2).”  
Chapter II)

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### *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.”

#### *Employment rights of employee representatives*

### **Right not to suffer detriment.**

**12.—**(1) After section 22A of the 1978 Act insert—

#### **“Right of employee representatives not to suffer detriment.**

**22AA.—**(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 Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 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,

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 section 142, section 54 does not apply to the dismissal, this section shall not apply where the detriment in question amounts to dismissal.”

- (2) In section 22B(1) of the 1978 Act, after “22A” insert “or 22AA”.
- (3) In section 133(1)(a) of the 1978 Act, after “22A,” insert “22AA,”.
- (4) In section 149(2A) of the 1978 Act—
  - (a) for “sections 22A to 22C” substitute “section 22A”,
  - (b) for “those sections” substitute “that section”, and
  - (c) for “they apply” substitute “it applies”.

### **Time off work**

**13.**—(1) After section 31A of the 1978 Act insert—

#### **“Time off for employee representatives.**

**31AA.**—(1) An employee who is—

- (a) an employee representative for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 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 subsection (3), subsections (4) to (10) of section 31A shall apply to an employee who is allowed time off in accordance with this section as they apply to an employee who is permitted to take time off in accordance with subsection (1) of that section.

(3) In its application by virtue of subsection (2)—

- (a) subsection (4) of section 31A shall have effect as if for the reference to the period of absence there were substituted a reference to the time taken off, and
- (b) subsection (7) of that section shall have effect as if for the reference to the day of the appointment concerned there were substituted a reference to the day on which it is alleged that the time off should have been allowed or the day on which the time off was taken.”

- (2) In section 32 of the 1978 Act, for “31A” substitute “31AA”.
- (3) In section 133(1)(a) of the 1978 Act, after “31A,” insert “31AA,”.
- (4) In section 138(4) of the 1978 Act, for “and 31A” substitute “, 31A and 31AA”.
- (5) In section 146A(2)(b) of the 1978 Act, for “and section 31A” substitute “, 31A and 31AA”.

- (6) In paragraph 7(1) of Schedule 14 to the 1978 Act, after paragraph (cc) insert—
- “(ccc) where the calculation is for the purposes of section 31A as it applies by virtue of section 31AA, the day on which it is alleged that the time off should have been allowed or the day on which the time off was taken;”.

### **Unfair dismissal**

- 14.—(1) After section 57A of the 1978 Act insert—

#### **“Dismissal of employee representatives.**

**57AA.** 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 Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 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 sections 59(2) and 64(4) of the 1978 Act, after “57A(1) (read with (2) and (3)),” insert “57AA,”.

- (3) In sections 71(2B), 72(3), 73(6B), 77(1) and 77A(1) of the 1978 Act, after “section 57A(1) (a) and (b)” insert “or section 57AA”.

- (4) In sections 138(4) and 146A(2)(e) of, and paragraph 2(2) of Schedule 9 to, the 1978 Act, after “section 57A,” insert “57AA,”.

- (5) In section 138A(1) of the 1978 Act, after “sections 57A” insert “, 57AA”.

- (6) In section 149(2) of the 1978 Act, after “57A,” insert “57AA,”.

- (7) In sections 237(1A) and 238(2A) of the 1992 Act—

- (a) after “57A” insert “, 57AA”, and
- (b) after “safety cases” insert “, employee representative cases”.

Signed by order of the Secretary of State

2nd October 1995

*Jonathan Evans,*  
Parliamentary Under Secretary of State,  
Department of Trade and Industry

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations (apart from regulation 8) are made in consequence of the judgment 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 Directives 77/187 (OJNo. 1977 L61/26) and 75/129 (OJ No. 1975 L48/29) by failing to provide for consultation of workers' representatives where there was no recognised trade union. The Regulations require the employer to consult either elected representatives of the employees or representatives of a recognised trade union where there are to be redundancies or a transfer of an undertaking. They also limit the requirement to consult about redundancies to cases where at least 20 redundancies are proposed. The Regulations also provide protection for elected representatives against dismissal and against being subjected to any other detriment and confer on them a right to time off with pay to carry out their functions. Trade union representatives already have such protection, and such a right, under the Trade Union and Labour Relations (Consolidation) Act 1992.

Regulation 8 amends the Transfer of Undertakings (Protection of Employment) Regulations 1981 to make it clear that the right to complain about a dismissal occurring because of a transfer of an undertaking (which, under those Regulations, is automatically unfair) does not apply where the employee does not meet the normal qualifying conditions.