
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.