

SCHEDULE

Employment rights and protections in connection with consultation

Protections against unfair dismissal

5.—(1) An employee who is dismissed and to whom sub-paragraph (2) or (4) applies shall be regarded, if the reason (or if more than one, the principal reason) for the dismissal is a reason specified in, respectively, sub-paragraph (3) or (5), as unfairly dismissed for the purposes of Part 10 of the 1996 Act (which makes provision as to rights and remedies relating to unfair dismissal).

(2) This sub-paragraph applies to an employee who is—

- (a) a consulted representative, or
- (b) a candidate in an election in which any person elected will, on being elected, be a representative of such description as is referred to in regulation 13(2).

(3) The reasons are that—

- (a) the employee performed or proposed to perform any functions or activities under these Regulations in his capacity as such a representative or candidate,
- (b) the employee exercised or proposed to exercise an entitlement conferred on the employee by paragraph 2 or 3, or
- (c) the employee (or a person acting on his behalf) made or proposed to make a request to exercise such an entitlement.

(4) This sub-paragraph applies to any employee who is an active or prospective member of an occupational or personal pension scheme, whether or not he is an employee to whom sub-paragraph (2) applies.

(5) The reasons are that the employee—

- (a) took, or proposed to take, any proceedings before an employment tribunal to enforce a right or secure an entitlement conferred on him by this Schedule,
- (b) complained or proposed to complain to the Regulator that any person falling within regulation 3(1)—
 - (i) has decided to make a listed change affecting an occupational or personal pension scheme in contravention of regulation 6(1), or
 - (ii) has failed to comply with the requirements of regulation 16(2) or (3),
- (c) complained or proposed to complain to the Regulator that any consultation required by these Regulations was not carried out in accordance with the requirements of these Regulations,
- (d) stood as a candidate in an election in which any person elected would, on being elected, be a representative of such description as is referred to in regulation 13(2),
- (e) influenced or sought to influence by lawful means the way in which votes were to be cast by other employees in an election arranged under regulation 14,
- (f) voted in such an election,
- (g) expressed doubts, whether to an election supervisor or otherwise, as to whether such an election had been properly conducted, or
- (h) proposed to do, failed to do, or proposed to decline to do any of the things mentioned in paragraphs (d) to (g).

(6) It is immaterial for the purpose of sub-paragraph (5)(a)—

- (a) whether or not the employee has the right or entitlement, or

Changes to legislation: There are currently no known outstanding effects for the *The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006, Protections against unfair dismissal.* (See end of Document for details)

(b) whether or not the right has been infringed,
but for that provision to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

6.—(1) In section 105 of the 1996 Act (redundancy as unfair dismissal)—

(a) for subsection (1)(c) substitute—

“(c) it is shown that any of subsections (2A) to (7I) apply.”; and

(b) after subsection (7H) insert—

“(7I) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (read with paragraph 5(6) of that Schedule).”.

(2) In section 108 of the 1996 Act (exclusion of right: qualifying period of employment), in subsection (3)—

(a) omit the word “or” at the end of paragraph (k); and

(b) after paragraph (l) insert—

“, or

(m) paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (read with paragraph 5(6) of that Schedule) applies.”.

(3) In section 109 of the 1996 Act (exclusion of right: upper age limit), in subsection (2)—

(a) omit the word “or” at the end of paragraph (k); and

(b) after paragraph (l) insert—

“, or

(m) paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (read with paragraph 5(6) of that Schedule) applies.”.

Changes to legislation:

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