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STATUTORY RULES OF NORTHERN IRELAND

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**1999 No. 432**

**EMPLOYMENT**

**Collective Redundancies and Transfer of  
Undertakings (Protection of Employment)  
(Amendment) Regulations (Northern Ireland) 1999**

*Made* - - - - *25th October 1999*

*Coming into operation* *5th December 1999*

The Department of Economic Development, being a Department designated for the purposes of section 2(2) of the European Communities Act 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 it by the said section 2(2) and of every other power enabling it in that behalf, hereby makes the following Regulations:

**Citation and interpretation**

1.—(1) These Regulations may be cited as the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations (Northern Ireland) 1999.

(2) The Interpretation Act (Northern Ireland) 1954<sup>(4)</sup> shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

**Commencement**

2.—(1) These Regulations shall come into operation on 5th December 1999.

(2) Regulations 8 to 11 shall not apply in relation to dismissals taking effect before 12th March 2000.

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(1) 1972 c. 68  
(2) S.I. 1994/2791  
(3) S.I. 1977/1718  
(4) 1954 c. 33 (N.I.)

### **Amendment of the Employment Rights (Northern Ireland) Order 1996**

3. The Employment Rights (Northern Ireland) Order 1996(5) shall be amended in accordance with regulations 4 to 11.

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

4. In Article 70 after paragraph (1) there shall be inserted the following paragraph—

“(1A) An employee has the right not to be subjected to any detriment by any act, or by any deliberate failure to act, by his employer done on the ground of his participation in an election of employee representatives for the purposes of Part XIII of this Order or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981.”.

#### **Right to time off**

5. In Article 89 at the end of paragraph (1) there shall be inserted the following words—

“or in order to undergo training to perform such functions.”.

6. At the end of sub-paragraph (b) of Article 92(1) there shall be added—

“, or

(c) receipt of information from the employer and consultation by the employer under Article 216 or under the Transfer of Undertakings (Protection of Employment) Regulations 1981.”.

#### **Right not to be unfairly dismissed**

7. Article 134 shall be renumbered as paragraph (1) of that Article and at the end of that Article there shall be added the following paragraph—

“(2) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee took part in an election of employee representatives for the purposes of Part XIII of this Order or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981.”.

#### **Duty to consult representatives**

8. Article 216 shall be amended as follows—

(a) in paragraph (1) for the words “so dismissed” there shall be substituted the words “affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals”;

(b) for paragraph (3) there shall be substituted the following paragraph—

“(3) For the purposes of this Article the appropriate representatives of any affected employees are—

(a) if the employees are of a description in respect of which an independent trade union is recognised by their employer, representatives of the trade union, or

(b) in any other case, whichever of the following employee representatives the employer chooses—

- (i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this Article, who (having regard to the purposes for and the method by which they were appointed or elected) have authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf;
  - (ii) employee representatives elected by the affected employees, for the purposes of this Article, in an election satisfying the requirements of Article 216A(1).”;
- (c) in paragraph (8) for the words “the employees whom it is proposed to dismiss as redundant” there shall be substituted the words “the affected employees”;
- (d) in paragraph (11) for sub-paragraph (a) there shall be substituted the following sub-paragraph—
  - “(a) the employer has invited any of the affected employees to elect employee representatives, and”;
- (e) after paragraph (11) there shall be inserted the following paragraph—
  - “(11A) If, after the employer has invited affected employees to elect representatives, the affected employees have failed to do so within a reasonable time, he shall give to each affected employee the information set out in paragraph (6).”.

### **Election of employee representatives**

9. After Article 216 there shall be inserted the following Article—

#### **“Election of employee representatives**

**216A.**—(1) The requirements for the election of employee representatives under Article 216(3)(b)(ii) are that—

- (a) the employer shall make such arrangements as are reasonably practical to ensure that the election is fair;
- (b) the employer shall determine the number of representatives to be elected so that there are sufficient representatives to represent the interests of all the affected employees having regard to the number and classes of those employees;
- (c) the employer shall determine whether the affected employees should be represented either by representatives of all the affected employees or by representatives of particular classes of those employees;
- (d) before the election the employer shall determine the term of office as employee representatives so that it is of sufficient length to enable information to be given and consultations under Article 216 to be completed;
- (e) the candidates for election as employee representatives are affected employees on the date of the election;
- (f) no affected employee is unreasonably excluded from standing for election;
- (g) all affected employees on the date of the election are entitled to vote for employee representatives;
- (h) the employees entitled to vote may vote for as many candidates as there are representatives to be elected to represent them, or if there are to be representatives for particular classes of employees, may vote for as many candidates as there are representatives to be elected to represent their particular class of employee;
- (i) the election is conducted so as to secure that—

- (i) so far as is reasonably practicable, those voting do so in secret, and
  - (ii) the votes given at the election are accurately counted.
- (2) Where, after an election of employee representatives satisfying the requirements of paragraph (1) has been held, one of those elected ceases to act as an employee representative and any of those employees are no longer represented, they shall elect another representative by an election satisfying the requirements of paragraph (1)(a), (e), (f) and (i).”.

## **Complaints**

### **10. Article 217 shall be amended as follows—**

- (a) for paragraph (1) there shall be substituted the following paragraph—

“(1) Where an employer has failed to comply with a requirement of Article 216 or Article 216A, a complaint may be presented to an industrial tribunal on that ground—

  - (a) in the case of a failure relating to the election of employee representatives, by any of the affected employees or by any of the employees who have been dismissed as redundant,
  - (b) in the case of any other failure relating to employee representatives, by any of the employee representatives to whom the failure related,
  - (c) in the case of failure relating to representatives of a trade union, by the trade union, and
  - (d) in any other case, by any of the affected employees or by any of the employees who have been dismissed as redundant.”;
- (b) after that paragraph there shall be inserted the following paragraphs—

“(1A) If on a complaint under paragraph (1) a question arises as to whether or not any employee representative was an appropriate representative for the purposes of Article 216, it shall be for the employer to show that the employee representative had the authority to represent the affected employees.

(1B) On a complaint under paragraph (1)(a) it shall be for the employer to show that the requirements in Article 216A have been satisfied.”;
- (c) in paragraph (4) the words from “in a case falling within Article 216(2)(a)” to the end shall be omitted.

## **Construction of references to representatives and affected employees**

### **11. Article 224 shall be amended as follows—**

- (a) in paragraph (1)(b), after the words “having been elected” there shall be inserted the words “or appointed”;
- (b) at the end of paragraph (1) there shall be added the words “or appointed”;
- (c) after paragraph (2), there shall be added the following paragraph—

“(3) References in this Part to affected employees are to employees who may be affected by the proposed dismissals or who may be affected by measures taken in connection with such dismissals.”.

Sealed with the Official Seal of the Department of Economic Development on 25th October 1999.

L.S.

*R. B. Gamble*  
Assistant Secretary

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

These Regulations further implement the obligations to require employers to inform and consult their employees in Council Directive [98/59/EC](#) (O.J. No. 1998 L225, 12.8.98, p. 12) on collective redundancies and Council Directive [77/187/EEC](#) (O.J. No. 1997 L61, 5.3.97) on the safeguarding of employees' rights in the event of transfers of undertakings. Council Directive [98/59/EC](#) consolidated Council Directive [75/129/EEC](#), (O.J. 1975 No. L48, 22.2.75, p. 29) and Council Directive [92/56/EEC](#) (O.J. No. 1992 L245, 26.8.92 p. 3).

The Regulations amend the provisions of the Employment Rights (Northern Ireland) Order 1996 (“the Order”) relating to information and consultation on redundancies. They provide that representatives of employees who may be affected by the dismissals or by measures taken in connection with the dismissals must be consulted. In this regard they provide that employers must consult representatives of recognised trade unions but, if no trade union is recognised, then employers must consult either existing employee representatives or specially elected employee representatives. If elections are held for employee representatives they must be held in accordance with these Regulations. If employees fail to elect representatives after being invited to do so, the employer must give the employees concerned the information he would have had to give to their representatives. The maximum compensation which can be awarded in the event of the employer’s failure to consult has been increased so that in all cases it is 90 days' pay.

The Regulations amend the provisions of the Order relating to the right to time off so as to give employee representatives for the purposes of Part XIII of the Order (procedure for handling redundancies) or the Transfer of Undertakings (Protection of Employment) Regulations 1981, [S.I. 1981/1794](#), time off for training. The provisions in the Order relating to the right of such employee representatives not to be dismissed or suffer detriment are extended to employees who participate in an election of employee representatives.