
STATUTORY RULES OF NORTHERN IRELAND

2006 No. 177

The Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006

Effect of service provision change on contracts of employment

4.—(1) Except where objection is made under paragraph (7), a service provision change shall not operate so as to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the service provision change, which would otherwise be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee.

(2) Without prejudice to paragraph (1), but subject to paragraph (6), and regulations 8 and 15(9), on the completion of a service provision change—

- (a) all the transferor's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee; and
- (b) any act or omission before the transfer is completed, of or in relation to the transferor in respect of that contract or a person assigned to that organised grouping of resources or employees, shall be deemed to have been an act or omission of or in relation to the transferee.

(3) Any reference in paragraph (1) to a person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to a service provision change, is a reference to a person so employed immediately before the change, or who would have been so employed if he had not been dismissed in the circumstances described in regulation 7(1), including, where the change is effected by a series of two or more transactions, a person so employed and assigned or who would have been so employed and assigned immediately before any of those transactions.

(4) Subject to regulation 9, in respect of a contract of employment that is, or will be, transferred by paragraph (1), any purported variation of the contract shall be void if the sole or principal reason for the variation is—

- (a) the transfer itself; or
- (b) a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce.

(5) Paragraph (4) shall not prevent the employer and his employee, whose contract of employment is, or will be, transferred by paragraph (1), from agreeing a variation of that contract if the sole or principal reason for the variation is—

- (a) a reason connected with the transfer that is an economic, technical or organisational reason entailing changes in the workforce; or
- (b) a reason unconnected with the transfer.

(6) Paragraph (2) shall not transfer or otherwise affect the liability of any person to be prosecuted for, convicted of and sentenced for any offence.

(7) Paragraphs (1) and (2) shall not operate to transfer the contract of employment and the rights, powers, duties and liabilities under or in connection with it of an employee who informs the transferor or the transferee that he objects to becoming employed by the transferee.

(8) Subject to paragraphs (9) and (11), where an employee so objects, the service provision change shall operate so as to terminate his contract of employment with the transferor but he shall not be treated, for any purpose, as having been dismissed by the transferor.

(9) Subject to regulation 9, where a service provision change involves or would involve a substantial change in working conditions to the material detriment of a person whose contract of employment is or would be transferred under paragraph (1), such an employee may treat the contract of employment as having been terminated, and the employee shall be treated for any purpose as having been dismissed by the employer.

(10) No damages shall be payable by an employer as a result of a dismissal falling within paragraph (9) in respect of any failure by the employer to pay wages to an employee in respect of a notice period which the employee has failed to work.

(11) Paragraphs (1), (7), (8) and (9) are without prejudice to any right of an employee arising apart from these Regulations to terminate his contract of employment without notice in acceptance of a repudiatory breach of contract by his employer.