

**2007 No. 494**

**EMPLOYMENT**

**The Transfer of Undertakings and Service Provision Change  
(Protection of Employment) (Consequential Amendments etc.)  
Regulations (Northern Ireland) 2007**

*Made* - - - - *5th December 2007*

*Coming into operation* - *30th December 2007*

The Department for Employment and Learning(a), makes the following Regulations in exercise of the powers conferred by on it by section 2(2) of the European Communities Act 1972(b) (being a Department designated for the purposes of that section in relation to rights and obligations relating to employers and employees on the transfer or merger of undertakings, businesses or parts of businesses(c) and Article 37(2) of the Employment Relations (Northern Ireland) Order 1999(d), and now vested in it(e):

**Citation, commencement, interpretation and extent**

1.—(1) These Regulations may be cited as the Transfer of Undertakings and Service Provision Change (Protection of Employment) (Consequential Amendments etc.) Regulations (Northern Ireland) 2007 and shall come into operation on 30th December 2007.

(2) The Interpretation Act (Northern Ireland) 1954 (f) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(3) These Regulations extend to Northern Ireland only.

**Consequential amendments**

2.—(1) Article 234 of the Pensions (Northern Ireland) Order 2005(g) (conditions for pension protection) is amended as follows.

(2) In paragraph (1), for sub-paragraph (a) there shall be substituted—

“(a) there is a transfer of an undertaking, business or part of an undertaking or business for the purposes of regulation 3(1)(a) of the Transfer of Undertakings (Protection of Employment) Regulations 2006(h) or there is a service provision change within the meaning of the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006(i).”

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(a) Formerly the Department of Higher and Further Education, Training and Employment; *see* 2001 c. 15 (N.I.)  
(b) 1972 c. 68  
(c) *See* the European Communities (Designation) (No. 2) Order 1977 (S.I. 1977/1718)  
(d) S.I. 1999/2790 (N.I. 9)  
(e) *See* S.R. 1999 No. 481  
(f) 1954 c. 33 (N.I.)  
(g) S.I. 2005/255 (N.I. 1)  
(h) S.I. 2006/246  
(i) S.R. 2006 No. 177

(3) In paragraph (1)(b) after “by virtue of the transfer” there shall be inserted “or service provision change”.

(4) Paragraph (6) is omitted.

(5) For paragraph (8) there shall be substituted—

“(8) In this Article references to the transferor include any associate of the transferor, and Article 4 of the Insolvency Order applies for the purposes of this Article as it applies for the purposes of that Order.”.

**3.**—(1) Regulation 20 of the Information and Consultation of Employees Regulations (Northern Ireland) 2005(a) is amended as follows.

(2) In paragraph (1)(c)—

(a) the word “and” at the end of head (i) is omitted; and

(b) for head (ii) there shall be substituted—

“(ii) regulations 13 to 16 of the Transfer of Undertakings (Protection of Employment) Regulations 2006(b); and

(iii) regulations 13 to 16 of the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006(c).”.

(3) In paragraph (5)(b) for “regulation 10” there shall be substituted “regulation 13” and after “paragraph (1)(c)(ii)” there shall be inserted “or paragraph (1)(c)(iii)”.

**4.** Rule 22(5) of Schedule 1 to the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005(d) is amended by substituting for sub-paragraph (d)—

“(d) regulation 15(10) of the Transfer of Undertakings (Protection of Employment) Regulations 2006(e) (failure to pay compensation following failure to inform or consult);

(da) regulation 15(10) of the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006(f) (failure to pay compensation following failure to inform or consult);”.

**5.**—(1) Paragraph 126 of the Schedule to the Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2002(g) is amended as follows.

(2) In sub-paragraph (v)(a) for “regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981(b) (as amended from time to time)” there shall be substituted “regulations 13, 15 and 16 of the Transfer of Undertakings (Protection of Employment) Regulations 2006(h) (as amended from time to time) or regulations 13, 15 and 16 of the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006(i) (as so amended)”.

(3) In sub-paragraph (vi) for “regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended from time to time)” there shall be substituted “regulations 13, 15 and 16 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time) or regulations 13, 15 and 16 of the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as so amended)”.

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(a) S.R. 2005 No. 47; Regulation 20(5) was amended by regulation 5 of S.R. 2006 No. 86

(b) S.I. 2006/246

(c) S.R. 2006 No. 177

(d) S.R. 2005 No. 150; Rule 22(5) of Schedule 1 was amended by regulation 3(1) of S.R. 2005 No. 578

(e) S.I. 2006/246

(f) S.R. 2006 No. 177

(g) S.R. 2002 No. 120

(h) S.I. 2006/246

(i) S.R. 2006 No. 177

6. Regulations 2, 4 and 5 shall not apply where the Transfer of Undertakings (Protection of Employment) Regulations 1981(a) continue to have application by virtue of regulation 21 of the Transfer of Undertakings (Protection of Employment) Regulations 2006(b).

#### **Amendments to the Service Provision Change Regulations**

7.—(1) The Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006(c) are amended as follows.

(2) In regulation 17(1)(a) for “Employers’ ” there shall be substituted “Employer’s ”

(3) In paragraph 2 of Schedule 1 after “the Service Provision Change (Protection of Employment) Regulations” there shall be inserted “(Northern Ireland)”.

Sealed with the Official Seal of the Department for Employment and Learning on 5th December 2007.



*Sir Reg Empey*  
Minister for Employment and Learning

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(a) S.I. 1981/1794; The Transfer of Undertakings (Protection of Employment) Regulations 1981 were revoked by the Transfer of Undertakings (Protection of Employment) Regulations 2006 subject to certain transitional provisions and savings in regulation 21 of those Regulations  
(b) S.I. 2006/246  
(c) S.R. 2006 No. 177

## EXPLANATORY NOTE

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

These Regulations make amendments consequential to the coming into operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the “2006 TUPE Regulations”) and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (the “SPC Regulations”). These Regulations replace references to the Transfer of Undertakings (Protection of Employment) Regulations 1981 (the “1981 TUPE Regulations”) with the appropriate references to both the 2006 TUPE Regulations and the SPC Regulations in the Pensions (Northern Ireland) Order 2005, the Information and Consultation of Employees Regulations (Northern Ireland) 2005, the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005 and the Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2002.

The 2006 TUPE Regulations make provision, in respect of Great Britain and Northern Ireland, for the treatment of employees, and related matters on the transfer of a business or undertaking while the SPC Regulations make corresponding provision related to service provision change in Northern Ireland. The 2006 TUPE Regulations and the SPC Regulations replace the previous 1981 TUPE Regulations, and the SPC Regulations widen the scope to cover cases where services are outsourced, insourced or assigned by a client to a new contractor (described as “service provision changes”).

These Regulations apply to Northern Ireland only. To the extent that the Regulations implement Council Directive 2001/23/EC on the approximation of the law relating to business transfers (OJ L82, 22.03.2001, p.16), they are made under section 2(2) of the European Communities Act 1972. To the extent that they relate to the treatment of employees, and related matters, in relation to a service provision change (as defined in the SPC Regulations) in circumstances other than those to which the Directive applies, they are made under Article 37 of the Employment Relations (Northern Ireland) Order 1999.

These Regulations also correct two minor errors within the SPC Regulations.

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