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# Trade Union and Labour Relations (Consolidation) Act 1992

## 1992 CHAPTER 52

### PART IV

#### INDUSTRIAL RELATIONS

#### CHAPTER II

##### PROCEDURE FOR HANDLING REDUNDANCIES

###### Modifications etc. (not altering text)

- C1** Pt. IV Ch. II (ss. 188-198) modified (3.4.1995) by 1994 c. 19, s. 44(1)(b) (with ss. 54(5)(7), 55(5), Sch. 17 para. 22(1), 23(2)); S.I. 1995/852, art. 7, **Sch. 26**

##### *Duty of employer to consult<sup>F1</sup>. . . representatives*

###### Textual Amendments

- F1** Words in heading omitted (26.10.1995) by S.I. 1995/2587, **reg. 3(10)**

### **188** Duty of employer to consult<sup>F2</sup>. . . representatives.

[<sup>F3</sup>(1) Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be [<sup>F4</sup>affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals.]

(1A) The consultation shall begin in good time and in any event—

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- (a) where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least [<sup>F5</sup>45 days] , and
  - (b) otherwise, at least 30 days,
- before the first of the dismissals takes effect.

<sup>F6</sup>[ For the purposes of this section the appropriate representatives of any affected (1B) 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 section, 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 section, in an election satisfying the requirements of section 188A(1).]

(2) The consultation shall include consultation about ways of—

- (a) avoiding the dismissals,
- (b) reducing the numbers of employees to be dismissed, and
- (c) mitigating the consequences of the dismissals,

and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives.]

(3) In determining how many employees an employer is proposing to dismiss as redundant no account shall be taken of employees in respect of whose proposed dismissals consultation has already begun.

(4) For the purposes of the consultation the employer shall disclose in writing to the [<sup>F7</sup>appropriate] representatives—

- (a) the reasons for his proposals,
- (b) the numbers and descriptions of employees whom it is proposed to dismiss as redundant,
- (c) the total number of employees of any such description employed by the employer at the establishment in question,
- (d) the proposed method of selecting the employees who may be dismissed, <sup>F8</sup> . . .
- (e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect. <sup>F9</sup> [<sup>F10</sup> ...
- (f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by or by virtue of any enactment) to employees who may be dismissed.]

[<sup>F11</sup>(g) the number of agency workers working temporarily for and under the supervision and direction of the employer,

- (h) the parts of the employer's undertaking in which those agency workers are working, and
- (i) the type of work those agency workers are carrying out.]

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(5) That information shall be <sup>F12</sup>given to each of the appropriate representatives by being delivered to them], or sent by post to an address notified by them to the employer, or <sup>F13</sup>(in the case of representatives of a trade union)] sent by post to the union at the address of its head or main office.

<sup>F14</sup>(5A) The employer shall allow the appropriate representatives access to <sup>F15</sup>the affected employees] and shall afford to those representatives such accommodation and other facilities as may be appropriate.]

<sup>F16</sup>(6) .....

(7) If in any case there are special circumstances which render it not reasonably practicable for the employer to comply with a requirement of subsection <sup>F17</sup>(1A), (2) or (4)], the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances. <sup>F18</sup>Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement.]

<sup>F19</sup>(7A) Where—

- <sup>F20</sup>(a) [ the employer has invited any of the affected employees to elect employee representatives, and]
- (b) the invitation was issued long enough before the time when the consultation is required by subsection (1A)(a) or (b) to begin to allow them to elect representatives by that time,

the employer shall be treated as complying with the requirements of this section in relation to those employees if he complies with those requirements as soon as is reasonably practicable after the election of the representatives.]

<sup>F21</sup>(7B) If, after the employer has invited affected employees to elect representatives, the affected employees fail to do so within a reasonable time, he shall give to each affected employee the information set out in subsection (4).]

(8) This section does not confer any rights on a trade union <sup>F22</sup>, a representative] or an employee except as provided by sections 189 to 192 below.

#### Textual Amendments

- F2** Words in sidenote to s. 188 omitted (26.10.1995) by virtue of [S.I. 1995/2587](#), **reg. 3(10)**
- F3** S. 188(1)(1A)(1B)(2) substituted for s. 188(1)(2) (26.10.1995) by [S.I. 1995/2587](#), **reg. 3(2)**
- F4** Words in s. 188(1) substituted (28.7.1999 subject to reg. 2(2) of commencing S.I.) by 1999/1925, regs. 2(2), 3(1)(2)
- F5** Words in [s. 188\(1A\)\(a\)](#) substituted (with application in accordance with art. 2 of the amending S.I.) by [The Trade Union and Labour Relations \(Consolidation\) Act 1992 \(Amendment\) Order 2013 \(S.I. 2013/763\)](#), arts. 1, **3(2)**
- F6** S. 188(1B) substituted (28.7.1999 subject to reg. 2(2) of commencing S.I.) by 1999/1925, regs. 3(1)(3)
- F7** Word in s. 188(4) substituted (26.10.1995) by [S.I. 1995/2587](#), **reg. 3(3)**
- F8** Word in s. 188(4)(c) repealed (30.8.1993) by [1993 c. 19](#), s. 51, **Sch. 10**; [S.I. 1993/1908](#), art. 2(1), **Sch. 1**
- F9** Word in s. 188(4)(e) omitted (1.10.2011) by virtue of [The Agency Workers Regulations 2010 \(S.I. 2010/93\)](#), reg. 1(1), **Sch. 2 para. 4(2)**

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- F10** S. 188(4)(f) and word preceding it inserted (30.8.1993) by 1993 c. 19, s. 34(2)(a); S.I. 1993/1908, art. 2(1), **Sch. 1**
- F11** S. 188(4)(g)-(i) added (1.10.2011) by The Agency Workers Regulations 2010 (S.I. 2010/93), reg. 1(1), **Sch. 2 para. 4(3)**
- F12** Words in s. 188(5) substituted (26.10.1995) by S.I. 1995/2587, **reg. 3(4)(a)**
- F13** Words in s. 188(5) inserted (26.10.1995) by S.I. 1995/2587, **reg. 3(4)(b)**
- F14** S. 188(5A) inserted (26.10.1995) by S.I. 1995/2587, **reg. 3(5)**
- F15** Words in s. 188(5A) substituted (28.7.1999 subject to reg. 2(2) of commencing S.I.) by 1999/1925, regs. 2(2), 3(1)(4)
- F16** S. 188(6) omitted (26.10.1995) by virtue of S.I. 1995/2587, **reg. 3(6)**
- F17** Words in s. 188(7) substituted (26.10.1995) by S.I. 1995/2587, **reg. 3(7)**
- F18** Words in s. 188(7) inserted (30.8.1993) by 1993 c. 19, s. 34(2)(c); S.I. 1993/1908, art. 2(1), **Sch. 1**
- F19** S. 188(7A) inserted (26.10.1995) by S.I. 1995/2587, **reg. 3(8)**
- F20** S. 188(7A)(a) substituted (28.7.1999 subject to reg. 2(2) of commencing S.I.) by S.I. 1999/1925, **regs. 2(2), 3(1)(5)**
- F21** S. 188(7B) inserted (28.7.1999 subject to reg. 2(2) of commencing S.I.) by S.I. 1999/1925, **regs. 2(2), 3(1)(6)**
- F22** Words in s. 188(8) inserted (26.10.1995) by S.I. 1995/2587, **reg. 3(9)**

<sup>F23</sup> **188A**

- (1) The requirements for the election of employee representatives under section 188(1B) (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 section 188 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 subsection (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

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another representative by an election satisfying the requirements of subsection (1)(a), (e), (f) and (i).]

#### Textual Amendments

**F23** S. 188A inserted (28.7.1999 subject to reg 2(2) of the commencing S.I) by S.I. 1999/1925, regs. 2(2), 4

### 189 Complaint<sup>F24</sup> . . . and protective award.

[<sup>F25</sup>(1) Where an employer has failed to comply with a requirement of section 188 or section 188A, a complaint may be presented to an employment 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.]

[<sup>F26</sup>(1A) If on a complaint under subsection (1) a question arises as to whether or not any employee representative was an appropriate representative for the purposes of section 188, it shall be for the employer to show that the employee representative had the authority to represent the affected employees.

<sup>F26</sup>(1B) On a complaint under subsection (1)(a) it shall be for the employer to show that the requirements in section 188A have been satisfied.]

(2) If the tribunal finds the complaint well-founded it shall make a declaration to that effect and may also make a protective award.

(3) A protective award is an award in respect of one or more descriptions of employees—

- (a) who have been dismissed as redundant, or whom it is proposed to dismiss as redundant, and
- (b) in respect of whose dismissal or proposed dismissal the employer has failed to comply with a requirement of section 188,

ordering the employer to pay remuneration for the protected period.

(4) The protected period—

- (a) begins with the date on which the first of the dismissals to which the complaint relates takes effect, or the date of the award, whichever is the earlier, and
- (b) is of such length as the tribunal determines to be just and equitable in all the circumstances having regard to the seriousness of the employer's default in complying with any requirement of section 188;

but shall not exceed 90 days<sup>F27</sup> . . . .

(5) An industrial tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

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- (a) before the [<sup>F28</sup>date on which the last of the dismissals to which the complaint relates] takes effect, or
  - (b) [<sup>F29</sup>during] the period of three months beginning with [<sup>F30</sup>that date], or
  - (c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented [<sup>F31</sup>during the] period of three months, within such further period as it considers reasonable.
- (6) If on a complaint under this section a question arises—
- (a) whether there were special circumstances which rendered it not reasonably practicable for the employer to comply with any requirement of section 188, or
  - (b) whether he took all such steps towards compliance with that requirement as were reasonably practicable in those circumstances,
- it is for the employer to show that there were and that he did.

#### Textual Amendments

- F24** Words in sidenote to s. 189 omitted (26.10.1995) by virtue of S.I. 1995/2587, reg. 4(5)
- F25** S. 189(1) substituted (28.7.1999 subject to reg. 2(2) of the commencing S.I.) by S.I. 1999/1925, regs. 2(2), 5(1)(2)
- F26** S. 189(1A)(1B) inserted (28.7.1999 subject to reg. 2(2) of the commencing S.I.) by S.I. 1999/1925, regs. 2(2), 5(1)(3)
- F27** Words in s. 189(4) omitted (28.7.1999 subject to reg. 2(2) of commencing S.I.) by virtue of S.I. 1999/1925, regs. 2(2), 5(1)(4)
- F28** Words in s. 189(5)(a) substituted (26.10.1995) by S.I. 1995/2587, reg. 4(4)(a)
- F29** Word in s. 189(5)(b) substituted (26.10.1995) by S.I. 1995/2587, reg. 4(4)(b)(i)
- F30** Words in s. 189(5)(b) substituted (26.10.1995) by S.I. 1995/2587, reg. 4(4)(b)(ii)
- F31** Words in s. 189(5)(c) substituted (26.10.1995) by S.I. 1995/2587, reg. 4(4)(c)

## 190 Entitlement under protective award.

- (1) Where an [<sup>F32</sup>employment tribunal] has made a protective award, every employee of a description to which the award relates is entitled, subject to the following provisions and to section 191, to be paid remuneration by his employer for the protected period.
- (2) The rate of remuneration payable is a week's pay for each week of the period; and remuneration in respect of a period less than one week shall be calculated by reducing proportionately the amount of a week's pay.
- <sup>F33</sup>(3) . . . . .
- (4) An employee is not entitled to remuneration under a protective award in respect of a period during which he is employed by the employer unless he would be entitled to be paid by the employer in respect of that period—
  - (a) by virtue of his contract of employment, or
  - (b) by virtue of [<sup>F34</sup>sections 87 to 91 of the Employment Rights Act 1996] (rights of employee in period of notice),
 if that period fell within the period of notice required to be given by [<sup>F35</sup>section 86(1)] of that Act.
- (5) [<sup>F36</sup>Chapter II of Part XIV of the Employment Rights Act 1996] applies with respect to the calculation of a week's pay for the purposes of this section.

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The calculation date for the purposes of [F37that Chapter] is the date on which the protective award was made or, in the case of an employee who was dismissed before the date on which the protective award was made, the date which by virtue of [F38section 226(5)] is the calculation date for the purpose of computing the amount of a redundancy payment in relation to that dismissal (whether or not the employee concerned is entitled to any such payment).

- (6) If an employee of a description to which a protective award relates dies during the protected period, the award has effect in his case as if the protected period ended on his death.

#### Textual Amendments

- F32** Words in s. 190(1) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1
- F33** S. 190(3) repealed (30.8.1993) by 1993 c. 19, ss. 34(3), 51, Sch. 10
- F34** Words in s. 190(4) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 56(14)(a)(i) (with ss. 191-195, 202)
- F35** Words in s. 190(4) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 56(14)(a)(ii) (with ss. 191-195, 202)
- F36** Words in s. 190(5) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 56(b)(i) (with ss. 191-195, 202)
- F37** Words in s. 190(5) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 56(b)(ii) (with ss. 191-195, 202)
- F38** Words in s. 190(5) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 56(b)(iii) (with ss. 191-195, 202)

## 191 Termination of employment during protected period.

- (1) Where the employee is employed by the employer during the protected period and—
- he is fairly dismissed by his employer [F39otherwise than as redundant], or
  - he unreasonably terminates the contract of employment,
- then, subject to the following provisions, he is not entitled to remuneration under the protective award in respect of any period during which but for that dismissal or termination he would have been employed.
- (2) If an employer makes an employee an offer (whether in writing or not and whether before or after the ending of his employment under the previous contract) to renew his contract of employment, or to re-engage him under a new contract, so that the renewal or re-engagement would take effect before or during the protected period, and either—
- the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would not differ from the corresponding provisions of the previous contract, or
  - the offer constitutes an offer of suitable employment in relation to the employee,
- the following subsections have effect.
- (3) If the employee unreasonably refuses the offer, he is not entitled to remuneration under the protective award in respect of a period during which but for that refusal he would have been employed.



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- (4) If the employee's contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of such an offer as is referred to in subsection (2) (b), there shall be a trial period in relation to the contract as renewed, or the new contract (whether or not there has been a previous trial period under this section).
- (5) The trial period begins with the ending of his employment under the previous contract and ends with the expiration of the period of four weeks beginning with the date on which he starts work under the contract as renewed, or the new contract, or such longer period as may be agreed in accordance with subsection (6) for the purpose of retraining the employee for employment under that contract.
- (6) Any such agreement—
- (a) shall be made between the employer and the employee or his representative before the employee starts work under the contract as renewed or, as the case may be, the new contract,
  - (b) shall be in writing,
  - (c) shall specify the date of the end of the trial period, and
  - (d) shall specify the terms and conditions of employment which will apply in the employee's case after the end of that period.
- (7) If during the trial period—
- (a) the employee, for whatever reason, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated, or
  - (b) the employer, for a reason connected with or arising out of the change to the renewed, or new, employment, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated,
- the employee remains entitled under the protective award unless, in a case falling within paragraph (a), he acted unreasonably in terminating or giving notice to terminate the contract.

#### Textual Amendments

**F39** Words in s. 191(1)(a) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.70**; S.I. 1993/1908, art. 2(1), **Sch. 1**

### 192 Complaint by employee to <sup>F40</sup>employment tribunal].

- (1) An employee may present a complaint to an <sup>F40</sup>employment tribunal] on the ground that he is an employee of a description to which a protective award relates and that his employer has failed, wholly or in part, to pay him remuneration under the award.
- (2) An <sup>F40</sup>employment tribunal] shall not entertain a complaint under this section unless it is presented to the tribunal—
  - (a) before the end of the period of three months beginning with the day (or, if the complaint relates to more than one day, the last of the days) in respect of which the complaint is made of failure to pay remuneration, or
  - (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months, within such further period as it may consider reasonable.



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- (3) Where the tribunal finds a complaint under this section well-founded it shall order the employer to pay the complainant the amount of remuneration which it finds is due to him.
- (4) The remedy of an employee for infringement of his right to remuneration under a protective award is by way of complaint under this section, and not otherwise.

#### Textual Amendments

**F40** Words in s. 192 substituted (1.8.1998) by 1998 c. 8, s. 1(2) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

### *Duty of employer to notify Secretary of State*

#### **193 Duty of employer to notify Secretary of State of certain redundancies.**

- (1) An employer proposing to dismiss as redundant 100 or more employees at one establishment within a period of 90 days or less shall notify the Secretary of State, in writing, of his proposal
  - <sup>F41</sup>(a) before giving notice to terminate an employee's contract of employment in respect of any of those dismissals, and
  - (b) at least <sup>F42</sup>45 days] before the first of those dismissals takes effect.
- (2) An employer proposing to dismiss as redundant <sup>F43</sup>20] or more employees at one establishment within <sup>F44</sup>such a period] shall notify the Secretary of State, in writing, of his proposal
  - <sup>F41</sup>(a) before giving notice to terminate an employee's contract of employment in respect of any of those dismissals, and
  - (b) at least 30 days before the first of those dismissals takes effect.
- (3) In determining how many employees an employer is proposing to dismiss as redundant within the period mentioned in subsection (1) or (2), no account shall be taken of employees in respect of whose proposed dismissal notice has already been given to the Secretary of State.
- (4) A notice under this section shall—
  - (a) be given to the Secretary of State by delivery to him or by sending it by post to him, at such address as the Secretary of State may direct in relation to the establishment where the employees proposed to be dismissed are employed,
  - <sup>F45</sup>(b) where there are representatives to be consulted under section 188, identify them and state the date when consultation with them under that section began,]
  - (c) be in such form and contain such particulars, in addition to those required by paragraph (b), as the Secretary of State may direct.
- (5) After receiving a notice under this section from an employer the Secretary of State may by written notice require the employer to give him such further information as may be specified in the notice.
- (6) <sup>F46</sup>Where there are representatives to be consulted under section 188 the employer shall give to each of them a copy of any notice given under subsection (1) or (2).]

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The copy shall be delivered to them or sent by post to an address notified by them to the employer, or [<sup>F47</sup>(in the case of representatives of a trade union)] sent by post to the union at the address of its head or main office.

- (7) If in any case there are special circumstances rendering it not reasonably practicable for the employer to comply with any of the requirements of subsections (1) to (6), he shall take all such steps towards compliance with that requirement as are reasonably practicable in the circumstances [<sup>F48</sup>Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with any of those requirements.].

#### Textual Amendments

- F41** Words in s. 193(1)(2) inserted (1.10.2006) by [The Collective Redundancies \(Amendment\) Regulations 2006 \(S.I. 2006/2387\)](#), [art. 3\(2\)](#)
- F42** Words in s. 193(1)(b) substituted (with application in accordance with art. 2 of the amending S.I.) by [The Trade Union and Labour Relations \(Consolidation\) Act 1992 \(Amendment\) Order 2013 \(S.I. 2013/763\)](#), [arts. 1, 3\(3\)](#)
- F43** Word in s. 193(2) substituted (26.10.1995) by [S.I. 1995/2587](#), [reg. 5\(2\)\(a\)](#)
- F44** Words in s. 193(2) substituted (26.10.1995) by [S.I. 1995/2587](#), [reg. 5\(2\)\(b\)](#)
- F45** S. 193(4)(b) substituted (26.10.1995) by [S.I. 1995/2587](#), [reg. 5\(3\)](#)
- F46** Words in s. 193(6) substituted (26.10.1995) by [S.I. 1995/2587](#), [reg. 5\(4\)\(a\)](#)
- F47** Words in s. 193(6) substituted (26.10.1995) by [S.I. 1995/2587](#), [reg. 5\(4\)\(b\)](#)
- F48** Words in s. 193(7) inserted (30.8.1993) by [1993 c. 19, s. 34\(4\)](#); [S.I. 1993/1908](#), [art. 2\(1\)](#), [Sch. 1](#)

#### 194 Offence of failure to notify.

- (1) An employer who fails to give notice to the Secretary of State in accordance with section 193 commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) Proceedings in England or Wales for such an offence shall be instituted only by or with the consent of the Secretary of State or by an officer authorised for that purpose by special or general directions of the Secretary of State.

An officer so authorised may <sup>F49</sup>. . . prosecute or conduct proceedings for such an offence before a magistrates' court.

- (3) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) Where the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

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#### Textual Amendments

**F49** Words in s. 194(2) repealed (1.1.2010) by Legal Services Act 2007 (c. 29), ss. 208, 210, 211(2), Sch. 21 para. 105, Sch. 23 (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)(i)(ix) (with art. 9)

#### Supplementary provisions

#### [<sup>F50</sup>195 Construction of references to dismissal as redundant etc.

- (1) In this Chapter references to dismissal as redundant are references to dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related.
- (2) For the purposes of any proceedings under this Chapter, where an employee is or is proposed to be dismissed it shall be presumed, unless the contrary is proved, that he is or is proposed to be dismissed as redundant.]

#### Textual Amendments

**F50** S. 195 substituted (30.8.1993) by 1993 c. 19, s. 34(5); S.I. 1993/1908, art. 2(1), Sch.1

#### [<sup>F51</sup>196 Construction of references to representatives.

- (1) For the purposes of this Chapter persons are employee representatives if—
  - (a) they have been elected by employees for the specific purpose of being consulted by their employer about dismissals proposed by him, or
  - (b) having been elected [<sup>F52</sup>or appointed]by employees (whether before or after dismissals have been proposed by their employer) otherwise than for that specific purpose, it is appropriate (having regard to the purposes for which they were elected) for the employer to consult them about dismissals proposed by him,and (in either case) they are employed by the employer at the time when they are elected [<sup>F53</sup>or appointed].
- (2) References in this Chapter to representatives of a trade union, in relation to an employer, are to officials or other persons authorised by the trade union to carry on collective bargaining with the employer.]
- [<sup>F54</sup>(3) References in this Chapter 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.]

#### Textual Amendments

**F51** S. 196 substituted (26.10.1995) by S.I. 1995/2587, reg. 6

**F52** Words in s. 196(1) inserted (28.7.1999 subject to reg. 2(2) of commencing S.I.) by S.I. 1999/1925, regs. 2(2), 6(1)(2)

**F53** Words in s. 196(1) added (28.7.1999 subject to art. 2(2) of the commencing S.I.) by S.I. 1999/1925, regs. 2(2), 6(1)(3)

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**F54** S. 196(3) inserted (28.7.1999 subject to reg. 2(2) of commencing S.I.) by S.I. 1999/1925, **regs. 2(2), 6(1)(4)**

### **197 Power to vary provisions.**

- (1) The Secretary of State may by order made by statutory instrument vary—
  - (a) the provisions of sections 188(2) and 193(1) (requirements as to consultation and notification), and
  - (b) the periods referred to at the end of section 189(4) (maximum protected period);

but no such order shall be made which has the effect of reducing to less than 30 days the periods referred to in sections 188(2) and 193(1) as the periods which must elapse before the first of the dismissals takes effect.
- (2) No such order shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

### **198 Power to adapt provisions in case of collective agreement.**

- (1) This section applies where there is in force a collective agreement which establishes—
  - (a) arrangements for providing alternative employment for employees to whom the agreement relates if they are dismissed as redundant by an employer to whom it relates, or
  - (b) arrangements for [<sup>F55</sup>handling the dismissal of employees as redundant].
- (2) On the application of all the parties to the agreement the Secretary of State may, if he is satisfied having regard to the provisions of the agreement that the arrangements are on the whole at least as favourable to those employees as the foregoing provisions of this Chapter, by order made by statutory instrument adapt, modify or exclude any of those provisions both in their application to all or any of those employees and in their application to any other employees of any such employer.
- (3) The Secretary of State shall not make such an order unless the agreement—
  - (a) provides for procedures to be followed (whether by arbitration or otherwise) in cases where an employee to whom the agreement relates claims that any employer or other person to whom it relates has not complied with the provisions of the agreement, and
  - (b) provides that those procedures include a right to arbitration or adjudication by an independent referee or body in cases where (by reason of an equality of votes or otherwise) a decision cannot otherwise be reached,

or indicates that any such employee may present a complaint to an [<sup>F56</sup>employment tribunal] that any such employer or other person has not complied with those provisions.
- (4) An order under this section may confer on an industrial tribunal to whom a complaint is presented as mentioned in subsection (3) such powers and duties as the Secretary of State considers appropriate.
- (5) An order under this section may be varied or revoked by a subsequent order thereunder either in pursuance of an application made by all or any of the parties to the agreement in question or without any such application.

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#### Textual Amendments

- F55** Words in s. 198(1)(b) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 71**
- F56** Words in s. 198(3) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

#### [<sup>F57</sup> 198A] **Employees being transferred to the employer from another undertaking**

- (1) This section applies where the following conditions are met—
  - (a) there is to be, or is likely to be, a relevant transfer,
  - (b) the transferee is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, and
  - (c) the individuals who work for the transferor and who are to be (or are likely to be) transferred to the transferee's employment under the transfer ("transferring individuals") include one or more individuals who may be affected by the proposed dismissals or by measures taken in connection with the proposed dismissals.
- (2) Where this section applies, the transferee may elect to consult, or to start to consult, representatives of affected transferring individuals about the proposed dismissals before the transfer takes place ("pre-transfer consultation").
- (3) Any such election—
  - (a) may be made only if the transferor agrees to it, and
  - (b) must be made by way of written notice to the transferor.
- (4) If the transferee elects to carry out pre-transfer consultation—
  - (a) sections 188 to 198 apply from the time of the election (and continue to apply after the transfer) as if the transferee were already the transferring individuals' employer and as if any transferring individuals who may be affected by the proposed dismissals were already employed at the establishment mentioned in subsection (1)(b) (but this is subject to section 198B), and
  - (b) the transferor may provide information or other assistance to the transferee to help the transferee meet the requirements of this Chapter.
- (5) A transferee who elects to carry out pre-transfer consultation may cancel that election at any time by written notice to the transferor.
- (6) If the transferee cancels an election to carry out pre-transfer consultation—
  - (a) sections 188 to 198 no longer apply as mentioned in subsection (4)(a),
  - (b) anything done under those sections has no effect so far as it was done in reliance on the election,
  - (c) if the transferee notified an appropriate representative, a transferring individual or the Secretary of State of the election or the proposed dismissals, the transferee must notify him or her of the cancellation as soon as reasonably practicable, and
  - (d) the transferee may not make another election under subsection (2) in relation to the proposed dismissals.
- (7) For the purposes of this section and section 198B—

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“affected transferring individual” means a transferring individual who may be affected by the proposed dismissals or who may be affected by measures taken in connection with the proposed dismissals;

“pre-transfer consultation” has the meaning given in subsection (2);

“relevant transfer” means—

- (a) a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006,
- (b) anything else regarded, by virtue of an enactment, as a relevant transfer for the purposes of those Regulations, or
- (c) where an enactment provides a power to make provision which is the same as or similar to those Regulations, any other novation of a contract of employment effected in the exercise of that power,

and “transferor” and “transferee” are to be construed accordingly;

“transferring individual” has the meaning given in subsection (1)(c).

#### Textual Amendments

**F57** Ss. 198A, 198B inserted (31.1.2014) by [The Collective Redundancies and Transfer of Undertakings \(Protection of Employment\) \(Amendment\) Regulations 2014 \(S.I. 2014/16\)](#), regs. 1(2), 3(1)

#### 198B. Section 198A: supplementary

(1) Where section 198A applies and the transferee elects to carry out pre-transfer consultation (and has not cancelled the election), the application under section 198A(4)(a) of sections 188 to 198 is (both before and after the transfer) subject to the following modifications—

(a) for section 188(1B)(a) substitute—

“(a) for transferring individuals of a description in respect of which an independent trade union is recognised by the transferor, representatives of that trade union,

(aa) for employees, other than transferring individuals, of a description in respect of which an independent trade union is recognised by the transferee, representatives of that trade union, or”;

(b) in section 188(5), for “the employer” substitute “the transferor or transferee”;

(c) in section 188(5A), for “shall allow the appropriate representatives access to the affected employees and shall afford to those representatives such accommodation and other facilities as may be appropriate” substitute “shall ensure that the appropriate representatives are allowed access to the affected transferring individuals and that such accommodation and other facilities as may be appropriate are afforded to those representatives”;

(d) in section 188(7), at the end insert—

“A failure on the part of the transferor to provide information or other assistance to the transferee does not constitute special circumstances rendering it not reasonably practicable for the transferee to comply with such a requirement.”;

(e) where an employment tribunal makes a protective award under section 189 ordering the transferee to pay remuneration for a protected period in respect of a transferring individual, then, so far as the protected period falls before



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the relevant transfer, the individual's employer before the transfer is to be treated as the employer for the purpose of determining under sections 190(2) to (6) and 191 the period (if any) in respect of which, and the rate at which, the individual is entitled to be paid remuneration by the transferee under section 190(1);

(f) in section 189, at the end insert—

“(7) If on a complaint under this section a question arises whether the transferor agreed to an election or the transferee gave notice of an election as required under section 198A(3), it is for the transferee to show that the agreement or notice was given as required.”;

(g) in section 192, at the end insert—

“(5) If on a complaint under this section a question arises whether the transferor agreed to an election or the transferee gave notice of an election as required under section 198A(3), it is for the transferee to show that the agreement or notice was given as required.”;

(h) in section 193(6), for “the employer” the second time it appears substitute “the transferor or transferee”;

(i) in section 193(7), at the end insert—

“A failure on the part of the transferor to provide information or other assistance to the transferee does not constitute special circumstances rendering it not reasonably practicable for the transferee to comply with any of those requirements.”;

(j) in section 196(1), in the closing words, for “employed by the employer” substitute “employed by the transferor or transferee”;

(k) for section 196(2) substitute—

“(2) References in this Chapter to representatives of a trade union are to officials or other persons authorised by the trade union to carry on collective bargaining with the transferee.”.

(2) Where section 198A applies and the transferee elects to carry out pre-transfer consultation (and has not cancelled the election), both before and after the transfer section 168(1)(c) applies as follows in relation to an official of an independent trade union who, as such an official, is an affected transferring individual's appropriate representative under section 188(1B)(a)—

(a) in relation to the official's duties as such a representative, the reference in the opening words of section 168(1) to an independent trade union being recognised by the employer is to be read as a reference to an independent trade union being recognised by the transferor;

(b) the references in section 168(1)(c) to the employer in relation to section 188 are to be read as references to the transferee.]

#### Textual Amendments

**F57** Ss. 198A, 198B inserted (31.1.2014) by [The Collective Redundancies and Transfer of Undertakings \(Protection of Employment\) \(Amendment\) Regulations 2014 \(S.I. 2014/16\)](#), regs. 1(2), **3(1)**



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