



Trade Union and Labour Relations (Consolidation) Act 1992

1992 CHAPTER 52

PART IV

INDUSTRIAL RELATIONS

CHAPTER II

PROCEDURE FOR HANDLING REDUNDANCIES

Supplementary provisions

[^{F1}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

F1 S. 195 substituted (30.8.1993) by 1993 c. 19, s. 34(5); S.I. 1993/1908, art. 2(1), Sch.1

[^{F2}196 Construction of references to representatives.]

- (1) For the purposes of this Chapter persons are employee representatives if—

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- (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 [^{F3}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 [^{F4}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.]

- [^{F5}(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

F2 S. 196 substituted (26.10.1995) by [S.I. 1995/2587](#), [reg. 6](#)

F3 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\(1\)\(2\)](#)

F4 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\(1\)\(3\)](#)

F5 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 [^{F6}handling the dismissal of employees as redundant].

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- (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—
- 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
 - 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 [^{F7}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.

Textual Amendments

- F6** Words in s. 198(1)(b) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 71**
- F7** 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**

[^{F8}198A. Employees being transferred to the employer from another undertaking

- (1) This section applies where the following conditions are met—
- there is to be, or is likely to be, a relevant transfer,
 - the transferee is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, and
 - 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—
- may be made only if the transferor agrees to it, and

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- (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—
 - “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

F8 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

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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 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.”;

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- (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

F8 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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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 212A(1)(zb) inserted by [2023 c. 46 Sch. para. 1](#)