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STATUTORY INSTRUMENTS

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**1999 No. 1925**

**TERMS AND CONDITIONS OF EMPLOYMENT**

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

<i>Made</i>	- - - -	<i>7th July 1999</i>
<i>Laid before Parliament</i>		<i>7th July 1999</i>
<i>Coming into force</i>	- -	<i>28th July 1999</i>

The Secretary of State, being a Minister 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 him by that provision hereby makes the following Regulations—

*Introductory*

**Citation, extent and interpretation**

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

(2) This Regulation, Regulation 2 and Regulations 8 to 11 extend to Northern Ireland.

(3) In these Regulations—

“the 1981 Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981<sup>(4)</sup>;

“the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(5)</sup>; and

“the 1996 Act” means the Employment Rights Act 1996<sup>(6)</sup>.

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(1) 1972 c. 68.

(2) S.I.1994/2791.

(3) S.I. 1977/1718.

(4) S.I. 1981/1794 amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1995 S.I. 1995/2587.

(5) 1992 c. 52; sections 188, 189 and 196 were amended by S.I. 1995/2587.

(6) 1996 c. 18.

## **Commencement**

- 2.—(1) These Regulations shall come into force on 28th July 1999.
- (2) Regulations 3 to 7 shall not apply in relation to dismissals taking effect before 1st November 1999.
- (3) Regulations 8 to 11 shall not apply to transfers of undertakings completed before 1st November 1999.

## *Collective redundancies*

### **Duty to consult representatives**

- 3.—(1) Section 188 of the 1992 Act shall be amended as follows.
- (2) In subsection (1) for “so dismissed” substitute “affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals.”
- (3) For subsection (1B) substitute—
  - “(1B) For the purposes of this section 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 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).”
- (4) In subsection (5A) for “the employees whom it is proposed to dismiss as redundant” substitute “the affected employees”.
- (5) For subsection (7A)(a) substitute—
  - “(a) the employer has invited any of the affected employees to elect employee representatives, and”
- (6) After subsection (7A) insert—
  - “(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).”

### **Election of employee representatives**

4. After section 188 insert—
  - “**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 another representative by an election satisfying the requirements of subsection (1)(a), (e), (f) and (i).”

## **Complaints**

5.—(1) Section 189 of the 1992 Act shall be amended as follows.

(2) For subsection (1) substitute—

“(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.”

(3) After that subsection insert—

“(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.

(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.”

(4) In subsection (4) omit “in a case falling within paragraph (a)” to the end.

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

6.—(1) Section 196 of the 1992 Act shall be amended as follows.

(2) In subsection (1)(b) after “having been elected” insert “or appointed”.

(3) At the end of subsection (1) add “or appointed”.

(4) After subsection (2) insert—

“(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.”

#### **Defined expressions**

7. In section 299 of the 1992 Act after the entry relating to “advertisement” insert—

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“affected employees (in Part IV, Chapter II) section 196(3)”.

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### *Transfer of Undertakings*

#### **Duty to inform and consult representatives**

8.—(1) Regulation 10 of the 1981 Regulations shall be amended as follows.

(2) For paragraph (2A) substitute—

“(2A) For the purposes of this Regulation the appropriate representatives of any 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 Regulation, 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 them, for the purposes of this Regulation, in an election satisfying the requirements of Regulation 10A(1).”

(3) After paragraph (8) insert—

“(8A) If, after the employer has invited affected employees to elect representatives, they fail to do so within a reasonable time, he shall give to each affected employee the information set out in paragraph (2).”

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

9. After Regulation 10 insert—

**“10A**

(1) The requirements for the election of employee representatives under Regulation 10(2A) 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 Regulation 10 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, those employees shall elect another representative by an election satisfying the requirements of paragraph (1)(a), (e), (f) and (i).”

**Complaints**

**10.**—(1) Regulation 11 of the 1981 Regulations shall be amended as follows.

(2) For paragraph (1) substitute—

“(1) Where an employer has failed to comply with a requirement of Regulation 10 or Regulation 10A, 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 his employees who are affected employees;
- (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 his employees who are affected employees.”

(3) After paragraph (2) insert—

“(2A) 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 Regulation 10, it shall be for the employer to show that the employee representative had the necessary authority to represent the affected employees.

(2B) On a complaint under sub-paragraph (1)(a) it shall be for the employer to show that the requirements in Regulation 10A have been satisfied.”

(4) In paragraph (11) for “four weeks' pay” substitute “thirteen weeks' pay”.

### **Construction of references to employee representatives**

11.—(1) Regulation 11A shall be amended as follows.

(2) In paragraph (b) after “having been elected” insert “or appointed”.

(3) Add “or appointed” at the end of the Regulation.

#### *Employment rights of employee representatives and their electors*

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

12. In section 47 of the 1996 Act after subsection (1) insert—

“(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 Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981.”

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

13. At the beginning of section 103 of the 1996 Act insert “(1)” and at the end of that section insert—

“(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 Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981.”

### **Right to time off**

14. At the end of paragraph (b) of section 168(1) of the 1992 Act insert—

“, or

(c) receipt of information from the employer and consultation by the employer under section 188 (redundancies) or under the Transfer of Undertakings (Protection of Employment) Regulations 1981.”

15. In section 61 of the 1996 Act at the end of subsection (1) insert “or in order to undergo training to perform such functions.”

7th July 1999

*Michael Wills*  
Parliamentary Under Secretary of State for Small  
Firms, Trade and Industry,  
Department of Trade and Industry

**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 [75/129/EEC](#) (O.J. No. 1975 L48, 22.2.75, p. 29) as amended by Council Directive [92/56/EEC](#) (O.J. No. 1992 L245, 26.8.92, p. 3) on collective redundancies and Council Directive [77/187/EEC](#) (O.J. No. 1977 L61, 5.3.77) on the safeguarding of employee's rights in the event of transfers of undertakings.

The Regulations amend the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 relating to information and consultation on redundancies and the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 1981 relating to information and consultation. In relation to 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. For both redundancies and transfers 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 an employer's failure to consult has been increased in some cases so that in all cases involving redundancies it is 90 days' pay and in cases involving transfers it is 13 weeks' pay.

The Regulations amend the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 and the Employment Rights Act 1996 relating to the right to time off so as to give employee representatives time off for training. The provisions of the Employment Rights Act 1996 relating to the right of employee representatives not to be dismissed or suffer detriment are extended to employees who participate in an election of employee representatives.

A regulatory impact assessment of the effect that this instrument would have on business is available from Employment Relations Directorate 2, Room 143, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET.