STATUTORY INSTRUMENTS

2018 No. 26

TERMS AND CONDITIONS OF EMPLOYMENT

The Seafarers (Transnational Information and Consultation, Collective Redundancies and Insolvency Miscellaneous Amendments) Regulations 2018

Made - - - -	*10th January 2018*
Laid before Parliament	*15th January 2018*
Coming into force - -	*6th February 2018*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**).

The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to maritime transport, in relation to measures relating to the information and consultation of employees, in relation to measures relating to dismissals where such dismissals or terminations are effected by an employer for one or more reasons not related to the individual workers concerned and in relation to insolvency(**2**).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Seafarers (Transnational Information and Consultation, Collective Redundancies and Insolvency Miscellaneous Amendments) Regulations 2018 and come into force on 6th February 2018.

(2) Regulations 3 and 4 extend to England and Wales and Scotland.

(3) The other provisions of these Regulations extend to England and Wales, Scotland and Northern Ireland.

(**1**) 1972 c.68. Section 2 was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

(**2**) S.I. 1994/757 (maritime transport), S.I. 1999/2788 (information and consultation of employees), S.I. 1994/2791 (dismissals where such dismissals or terminations are effected by an employer for one or more reasons not related to the individual workers concerned) and S.I. 2001/3495 (insolvency).

Amendment of the Transnational Information and Consultation of Employees Regulations 1999

2.—(1) The Transnational Information and Consultation of Employees Regulations 1999(**3**) are amended as follows.

(2) For regulation 46 (merchant navy) substitute—

"**46.**—(1) Subject to paragraph (2), a member of a special negotiating body or of a European Works Council or an information and consultation representative, or an alternate of such member or representative, who is a member of the crew of a seagoing vessel, is entitled to participate in a meeting of the special negotiating body or of the European Works Council, or in any other meeting under any procedures established pursuant to regulation 17(3).

(2) A member or representative or alternate referred to in paragraph (1) may only participate in a meeting where that member, representative or alternate is not at sea or in a port in a country other than that in which the shipping company is domiciled, when the meeting takes place.

(3) Paragraph (2) does not apply to—

(a) a ferry worker, or

(b) a person who normally works on voyages the duration of which is less than 48 hours.

(4) The meetings must, where practicable, be scheduled to facilitate the participation of a member, representative or alternate referred to in paragraph (1).

(5) In cases where a member or a representative or alternate referred to in paragraph (1) is unable to attend a meeting, the use of information and communication technology to enable that person's participation in the meeting must be considered.".

Amendment of the Trade Union and Labour Relations (Consolidation) Act 1992

3.—(1) The Trade Union and Labour Relations (Consolidation) Act 1992(**4**) is amended as follows.

(2) After section 193 insert—

"**193A.** Duty of employer to notify competent authority of a vessel's flag State of certain redundancies

(1) Section 193 has effect subject to this section if—

(a) the duty under section 193(1) or 193(2) applies to a proposal to dismiss employees as redundant, and

(b) the employees concerned are members of the crew of a seagoing vessel which is registered at a port outside Great Britain.

(2) The employer shall give the notification required by section 193(1) or (2) to the competent authority of the state where the vessel is registered (instead of to the Secretary of State).".

(3) In section 285 (employment outside Great Britain)—

(a) in subsection (1) for "193 and 194" substitute "193 to 194";

(b) after subsection (1A) insert—

(**3**) S.I. 1999/3323, as amended by S.I. 2004/1079, S.I. 2004/2326 as substituted by S.I. 2009/2401, S.I. 2004/2518, S.I. 2006/2059 and S.I. 2010/1088.
(**4**) 1992 c.52.

"(1B) For the purposes of subsection (1) as it relates to sections 193 to 194, employment on board a ship registered in the United Kingdom shall be treated as employment where under his contract a person ordinarily works in Great Britain.";

(c) in subsection (2), for "purposes of subsections (1) and (1A)" substitute "other purposes of subsection (1) and the purposes of subsection (1A)".

(4) The amendments made by paragraphs (2) and (3) only have effect in relation to dismissals(**5**) which are first proposed by an employer on or after the date on which these Regulations come into force.

Amendment of the Pension Schemes Act 1993

4.—(1) Section 165 of the Pension Schemes Act 1993(**6**) (application of certain provisions to cases with foreign element) is amended as follows.

(2) For subsection (7) substitute—

"(7) Chapter II of Part VII and section 157 do not apply to employment where under his worker's contract the worker ordinarily works outside the territory of the member States, but section 201 of the Employment Rights Act 1996 (power to extend employment protection legislation) applies to Chapter II of Part VII and section 157 as it does to the provisions of that Act.".

(3) In subsection (8) omit the definition of "employment as a merchant seaman" and the "and" preceding it.

(4) The amendments made by paragraphs (2) and (3) only have effect in relation to employers who become insolvent(**7**) on or after the date on which these Regulations come into force.

Review of Regulations

5.—(1) The Secretary of State must from time to time—

(a) carry out a review of the regulatory provision contained in regulation 2, and

(b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 6th February 2023.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015(**8**) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how Articles 1 and 10(3) of Directive 2009/38/EC(**9**), which are amended by Article 2 of Directive 2015/1794/EC(**10**), are implemented in other member States.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

(a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),

(b) assess the extent to which those objectives are achieved,

(c) assess whether those objectives remain appropriate, and

(**5**) See section 195 of the Trade Union and Labour Relations (Consolidation) Act 1992 for the meaning of "dismissals".
(**6**) 1993 c.48.
(**7**) See section 123 of the Pension Schemes Act 1993 for the meaning of "employers who become insolvent".
(**8**) 2015 c.26. Section 30(3) was amended by the Enterprise Act 2016 (c.12), section 19.
(**9**) OJ No L 122, 16.5.2009, p 28.
(**10**) OJ No L 263, 8.10.2015, p 1.