STATUTORY RULES OF NORTHERN IRELAND

1999 No. 432

EMPLOYMENT

Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations (Northern Ireland) 1999

Made - - - -	*25th October 1999*
Coming into operation	*5th December 1999*

The Department of Economic Development, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) 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(**2**) and in relation to rights and obligations relating to employers and employees on the transfer or merger of undertakings, businesses or parts of businesses(**3**) in exercise of the powers conferred on it by the said section 2(2) and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation and interpretation

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

(2) The Interpretation Act (Northern Ireland) 1954(**4**) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Commencement

2.—(1) These Regulations shall come into operation on 5th December 1999.

(2) Regulations 8 to 11 shall not apply in relation to dismissals taking effect before 12th March 2000.

(**1**) 1972 c. 68
(**2**) S.I. 1994/2791
(**3**) S.I. 1977/1718
(**4**) 1954 c. 33 (N.I.)

Amendment of the Employment Rights (Northern Ireland) Order 1996

3. The Employment Rights (Northern Ireland) Order 1996(**5**) shall be amended in accordance with regulations 4 to 11.

Right not to suffer detriment

4. In Article 70 after paragraph (1) there shall be inserted the following paragraph—

"(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 Part XIII of this Order or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981.".

Right to time off

5. In Article 89 at the end of paragraph (1) there shall be inserted the following words—

"or in order to undergo training to perform such functions.".

6. At the end of sub-paragraph (b) of Article 92(1) there shall be added—

", or

(c) receipt of information from the employer and consultation by the employer under Article 216 or under the Transfer of Undertakings (Protection of Employment) Regulations 1981.".

Right not to be unfairly dismissed

7. Article 134 shall be renumbered as paragraph (1) of that Article and at the end of that Article there shall be added the following paragraph—

"(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 Part XIII of this Order or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981.".

Duty to consult representatives

8. Article 216 shall be amended as follows—

(a) in paragraph (1) for the words "so dismissed" there shall be substituted the words "affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals";

(b) for paragraph (3) there shall be substituted the following paragraph—

"(3) For the purposes of this Article 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—

(**5**) S.I. 1996/1919 (N.I. 16)

(i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this Article, 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 Article, in an election satisfying the requirements of Article 216A(1).";

(c) in paragraph (8) for the words "the employees whom it is proposed to dismiss as redundant" there shall be substituted the words "the affected employees";

(d) in paragraph (11) for sub-paragraph (a) there shall be substituted the following sub-paragraph—

"(a) the employer has invited any of the affected employees to elect employee representatives, and";

(e) after paragraph (11) there shall be inserted the following paragraph—

"(11A) If, after the employer has invited affected employees to elect representatives, the affected employees have failed to do so within a reasonable time, he shall give to each affected employee the information set out in paragraph (6).".

Election of employee representatives

9. After Article 216 there shall be inserted the following Article—

"**Election of employee representatives**

216A.—(1) The requirements for the election of employee representatives under Article 216(3)(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 Article 216 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—