1995 No. 417

INDUSTRIAL RELATIONS

Collective Redundancies and Transfer of Undertakings (Amendment) Regulations (Northern Ireland) 1995

Made	*3rd November 1995*
Coming into operation . .	*3rd December 1995*

The Department of Economic Development, being a Department designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) 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 and in relation to rights and obligations relating to employers and employees on the transfer or merger of undertakings, businesses or parts of businesses(**c**), 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 commencement

1.—(1) These Regulations may be cited as the Collective Redundancies and Transfer of Undertakings (Amendment) Regulations (Northern Ireland) 1995 and shall come into operation on 3rd December 1995.

(2) Regulations 3 to 6 shall not apply in relation to dismissals taking effect before 1st March 1996; and, in determining whether any new requirement is imposed on an employer, any such dismissals shall be left out of account in ascertaining the number of employees whom the employer is proposing to dismiss within any period of 90 days or less.

In this paragraph "new requirement" means a requirement which—

(*a*) arises under Article 49 or 50 of the No. 1 Order(**d**) as amended by these Regulations; but

(*b*) would not so arise but for the amendments made by these Regulations.

Interpretation

2.—(1) In these Regulations—

"the No. 1 Order" means the Industrial Relations (Northern Ireland) Order 1976(**e**);

(**a**) *See* S.I. 1994/2791
(**b**) 1972 c. 68
(**c**) *See* S.I. 1977/1718
(**d**) As amended by S.I. 1993/2668 (N.I. 11) Article 12
(**e**) S.I. 1976/1043 (N.I. 16)

"the No. 2 Order" means the Industrial Relations (No. 2) (Northern Ireland) Order 1976(**a**);

"the 1993 Order" means the Industrial Relations (Northern Ireland) Order 1993(**b**).

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

Duty to consult representatives

3.—(1) Article 49 of the No. 1 Order shall be amended as provided by paragraphs (2) to (10).

(2) For paragraphs (1) to (4) there shall be substituted—

"(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 so dismissed.

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

(*a*) where the employer is proposing to dismiss 100 or more employees as mentioned in paragraph (1), at least 90 days; and

(*b*) otherwise, at least 30 days,

before the first of the dismissals takes effect.

(3) For the purposes of this Article the appropriate representatives of any employees are—

(*a*) employee representatives elected by them; or

(*b*) if the employees are of a description in respect of which an independent trade union is recognised by the employer, representatives of the trade union,

or (in the case of employees who both elect employee representatives and are of such a description) either employee representatives elected by them or representatives of the trade union, as the employer chooses.

(3A) 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.

(4) 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.".

(3) In paragraph (5), for the words "trade union" there shall be substituted the words "the appropriate".

(**a**) S.I. 1976/2147 (N.I. 28)
(**b**) S.I. 1993/2668 (N.I. 11)
(**c**) 1954 c. 33 (N.I.)

(4) For paragraph (6) there shall be substituted—

"(6) The information which is to be given to each of the appropriate representatives under this Article shall be delivered to them, or sent by post to an address notified by them to the employer, or (in the case of representatives of a trade union) sent by post to the union at the address of its head or main office.".

(5) After paragraph (6) there shall be inserted—

"(6A) The employer shall allow the appropriate representatives access to the employees whom it is proposed to dismiss as redundant and shall afford to those representatives such accommodation and other facilities as may be appropriate.".

(6) Paragraph (7) shall cease to have effect.

(7) In paragraph (8) for the words "(3), (5) or (7)" there shall be substituted the words "(2), (3A) or (5)".

(8) After paragraph (8) there shall be inserted—

"(8A) Where—

(*a*) the employer has invited any of the employees who may be dismissed to elect employee representatives; and

(*b*) the invitation was issued long enough before the time when the consultation is required by paragraph (2)(*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 Article in relation to those employees if he complies with those requirements as soon as is reasonably practicable after the election of the representatives.".

(9) In paragraph (9) after the words "a trade union" there shall be inserted the words ", a representative".

(10) In the heading to the Article the words "trade union" shall be omitted.

(11) Article 12(2)(*b*) of the 1993 Order shall cease to have effect.

Duty of employer to notify Department of certain redundancies

4.—(1) Article 50 of the No. 1 Order shall be amended as provided by paragraphs (2) to (5).

(2) In paragraph (1)—

(*a*) for sub-paragraph (*b*) there shall be substituted—

"(*b*) 20 or more employees at one establishment within such a period,";

(*b*) for the words from "and where the notice" to the end there shall be substituted—

"and where there are representatives to be consulted under Article 49, he shall give to each of them a copy of any notice given under this paragraph".

(3) For paragraph (2) there shall be substituted—

"(2) In determining how many employees an employer is proposing to dismiss as redundant within the period mentioned in paragraph (1), no account shall be taken of employees in respect of whose proposed dismissals notice has already been given to the Department.".

(4) In paragraph (3), for sub-paragraph (*b*) there shall be substituted—

"(*b*) where there are representatives to be consulted under Article 49, identify them and state the date when consultation with them under that Article began; and"

(5) For paragraph (4) there shall be substituted—

"(4) The copy of the notice under this Article which is to be given to representatives shall be delivered to them, or sent by post to an address notified by them to the employer or (in the case of representatives of a trade union) sent by post to the union at the address of its head or main office.".

Complaints

5.—(1) Article 51 of the No. 1 Order shall be amended as provided by paragraphs (2) to (6).

(2) For paragraph (1) there shall be substituted—

"(1) Where an employer has failed to comply with any requirement of Article 49, a complaint may be presented to an industrial tribunal on that ground—

(*a*) in the case of a failure relating to employee representatives, by any of the employee representatives to whom the failure related;

(*b*) in the case of a failure relating to representatives of a trade union, by the trade union; and

(*c*) in any other case, by any of the employees who have been or may be dismissed as redundant.".

(3) In paragraph (5)—

(*a*) in sub-paragraph (*a*) for the words "Article 49(3)(*a*)" there shall be substituted the words "Article 49(2)(*a*)";

(*b*) for sub-paragraphs (*b*) and (*c*) there shall be substituted—

"or

(*b*) in a case falling within Article 49(2)(*b*), 30 days.".

(4) For paragraph (6) there shall be substituted—

"(6) An industrial tribunal shall not consider a complaint under this Article unless it is presented to the tribunal—

(*a*) before the date on which the last of the dismissals to which the complaint relates takes effect; or

(*b*) during the period of three months beginning with that date; or

(*c*) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented during the period of