

2011 No. 163

EMPLOYMENT

**The Transfer of Undertakings and Service Provision Change
(Protection of Employment) (Amendment) Regulations
(Northern Ireland) 2011**

Made - - - - *24th March 2011*

Coming into operation - *3rd April 2011*

The Department for Employment and Learning(a) makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(b) (being a Department designated for the purposes of that section in relation to rights and obligations relating to employers and employees on the transfer or merger of undertakings, businesses or parts of businesses(c) and Articles 37(2) and 39(3) of the Employment Relations (Northern Ireland) Order 1999(d), and now vested in it(e).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Transfer of Undertakings and Service Provision Change (Protection of Employment) (Amendment) Regulations (Northern Ireland) 2011.

(2) These Regulations shall come into operation on 3rd April 2011.

(3) The Interpretation Act (Northern Ireland) 1954(f) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Amendment of the Transfer of Undertakings (Protection of Employment) Regulations 2006

2. In Schedule 1 to the Transfer of Undertakings (Protection of Employment) Regulations 2006(g), for paragraph 10(2) substitute—

“(2) In regulation 11 for paragraph (2)(c) there is substituted—

“(c) information of any—

(i) disciplinary procedure taken against an employee in circumstances where the Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations (Northern Ireland) 2004(h) apply,

(a) Formerly the Department of Higher and Further Education, Training and Employment; *see* 2001 c. 15 (N.I.).

(b) 1972 c. 68.

(c) *See* the European Communities (Designation) (No. 2) Order 1977 (S.I. 1977/1718).

(d) S.I. 1999/2790 (N.I. 9).

(e) *See* S.R. 1999 No. 481, Schedule 2, Part 2, which transferred certain functions of the former Department of Economic Development.

(f) 1954 c. 33 (N.I.).

(g) S.I. 2006/246.

(h) S.R. 2004 No. 521.

- (ii) grievance procedure taken by an employee where a Code of Practice issued under Part XI of the Industrial Relations (Northern Ireland) Order 1992^(a) which relates exclusively or primarily to the resolution of disputes applies,

where such procedure was taken within the previous two years;”.

Amendment of the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006

3. For regulation 11(2)(c) of the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006^(b) substitute—

“(c) information of any—

- (i) disciplinary procedure taken against an employee in circumstances where the Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations (Northern Ireland) 2004 apply,
- (ii) grievance procedure taken by an employee where a Code of Practice issued under Part XI of the Industrial Relations (Northern Ireland) Order 1992 which relates exclusively or primarily to the resolution of disputes applies,

where such procedure was taken within the previous two years;”.

Sealed with the Official Seal of the Department for Employment and Learning on 24th March 2011.



Danny Kennedy
Minister for Employment and Learning

^(a) S.I. 1992/807 (N.I. 5). Relevant amendments were made by the Employment Act (Northern Ireland) 2011 (c. 13 (N.I.)).
^(b) S.R. 2006 No. 177.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“the TUPE Regulations”), insofar as those Regulations apply to Northern Ireland, to take account of changes made by the Employment Act (Northern Ireland) 2011 (c. 13 (N.I.)). These Regulations also make corresponding amendments to the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (“the Service Provision Change Regulations”).

The Employment Act (Northern Ireland) 2011 makes changes to the statutory arrangements concerning the resolution of disputes arising in the workplace. The Act repeals the statutory procedure for resolving disputes insofar as it applied to grievances, providing instead for the Labour Relations Agency to issue a Code of Practice relating exclusively or primarily to procedure for the resolution of disputes. Arrangements in respect of disciplinary processes remain substantively unchanged.

Regulation 11 of the TUPE Regulations, as modified for the purposes of application to Northern Ireland by paragraph 10(2) of Schedule 1 to those regulations, requires the notification of disciplinary or grievance procedures taken against or by an employee in circumstances where the statutory dispute resolution procedures apply. Regulation 11 of the Service Provision Change Regulations sets out a like requirement.

Regulation 2 of these regulations amends paragraph 10(2) of Schedule 1 to the TUPE Regulations so that, insofar as they apply to Northern Ireland, they reflect the new arrangements relating to grievances where a relevant Code of Practice applies. The amendment also provides for the continuation of existing arrangements with respect to disciplinary situations. Regulation 3 amends regulation 11 of the Service Provision Change Regulations to the same effect. The Service Provision Change Regulations apply only to Northern Ireland.

A full regulatory impact assessment has not been produced for this Statutory Rule as it is consequential upon changes made by the Employment Act (Northern Ireland) 2011. A regulatory impact assessment concerning the policy set out in the Act is available from the Department for Employment and Learning’s website www.delni.gov.uk or by contacting the Department directly.

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