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STATUTORY INSTRUMENTS

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**2018 No. 26**

**TERMS AND CONDITIONS OF EMPLOYMENT**

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

<i>Made</i>	- - - -	<i>10th January 2018</i>
<i>Laid before Parliament</i>		<i>15th January 2018</i>
<i>Coming into force</i>	- -	<i>6th February 2018</i>

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

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<sup>(2)</sup>.

**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.

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(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—

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(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<sup>(5)</sup> 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<sup>(6)</sup> (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<sup>(7)</sup> 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<sup>(8)</sup> 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](#)<sup>(9)</sup>, which are amended by Article 2 of [Directive 2015/1794/EC](#)<sup>(10)</sup>, 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

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<sup>(5)</sup> See section 195 of the Trade Union and Labour Relations (Consolidation) Act 1992 for the meaning of “dismissals”.

<sup>(6)</sup> [1993 c.48](#).

<sup>(7)</sup> See section 123 of the Pension Schemes Act 1993 for the meaning of “employers who become insolvent”.

<sup>(8)</sup> [2015 c.26](#). Section 30(3) was amended by the Enterprise Act [2016 \(c.12\)](#), section 19.

<sup>(9)</sup> OJ No L 122, 16.5.2009, p 28.

<sup>(10)</sup> OJ No L 263, 8.10.2015, p 1.

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- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.
- (6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

10th January 2018

*Chris Grayling*  
Secretary of State  
Department for Transport

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement certain requirements of [Directive 2015/1794/EC](#) (OJ No L 263, 8.10.2015, p 3) (“the Seafarers Directive”). The purpose of the Seafarers Directive is to place those employed at sea on an equal footing with land based employees and to remove unequal treatment across member States.

These Regulations amend the Transnational Information and Consultation of Employees Regulations 1999 (“the 1999 Regulations”) which implemented in the United Kingdom [Directive 2009/38/EC](#) of the European Parliament and of the Council (“the 2009 Directive”) on the establishment of a European Works Council or, alternatively, information and consultation procedures in Community-scale undertakings and Community-scale groups of undertakings. [Directive 2009/38/EC](#) is a recast of Council [Directive 94/45/EC](#) (OJ No L 254, 30.09.1994), p 64).

Article 1(7) of the 2009 Directive permitted member States to exclude merchant navy crews from the scope of the application of the Directive. The 1999 Regulations applied this derogation (with certain exclusions) but retained a discretion for central management to permit a long haul crew member to be a member of a special negotiating body or of a European Works Council, or an information and consultation representative.

The Seafarers Directive amends the 2009 Directive by omitting Article 1(7). Specific provisions for crew members in relation to participation in a special negotiating body or in a European Works Council or an alternative information and consultation procedure established by virtue of the 2009 Directive, are created under Article 2(2) of the Seafarers Directive.

In order to reflect the amendment, regulation 2 amends the 1999 Regulations by removing (subject to certain conditions) the derogation in regulation 46 (merchant navy) and implements the provisions in Article 2 of the Seafarers Directive.

Part IV, Chapter II of the Trade Union and Labour Relations (Consolidation) Act 1992 (“TULRCA”) implements in Great Britain the provisions of [Directive 1998/59/EC](#) of the Council of the European Union (OJ No L 225, 12.08.1998, p 16) (“the 1998 Directive”). Article 4 of the Seafarers Directive amends the 1998 Directive by inserting in Article 3(1) an obligation on an employer to notify the competent authority of a seagoing vessel’s flag State in the event of a collective redundancy involving the vessel’s crew.

In order to reflect the amendment, regulation 3(1) inserts section 193A in TULRCA (duty of employer to notify competent authority of a vessel’s flag State of certain redundancies).

Part VII of the Pension Schemes Act 1993 (insolvency of employers) implements in Great Britain certain provisions of [Directive 2008/94/EC](#) of the European Parliament and of the Council (OJ No L 283, 28.10.2008, p 36) (“the 2008 Directive”). Section 165(7) of the Pension Schemes Act 1993 excludes employed share fishermen from the scope of Part VII, Chapter II (payment by Secretary of State of unpaid scheme contributions). Article 1 of the Seafarers Directive amends the 2008 Directive by ensuring that seafarers employed as share fishermen are brought within the scope of the 2008 Directive.

In order to reflect the amendment, regulation 4(2) amends section 165(7) of the Pension Schemes Act 1993 by removing the exclusion of employed share fishermen from the provisions of Part VII, Chapter II and from section 157 (power of Secretary of State to obtain information in connection with applications under section 124) (pursuant to section 157(5), section 157 is to be construed as if it were in Part VII, Chapter II).

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Section 165(7) of the Pension Schemes Act 1993 also excludes merchant seamen from the provisions of section 124 (duty of Secretary of State to pay unpaid contributions to schemes) and section 125 (certification of amounts payable under section 124 by insolvency officers). Regulations 4(2) and 4(3) amend sections 165(7) and 165(8) of the Pension Schemes Act 1993 in order to bring merchant seamen within the scope of sections 124 and 125, as provided for by the 2008 Directive.

Regulation 5 requires the Secretary of State to review the operation and effect of regulation 2 and publish a report before 6th February 2023 and within every five years after that. Following a review, it will fall to the Secretary of State to consider whether regulation 2 should remain as it is or be amended.

An impact assessment has not been prepared for these Regulations as no significant impact on individuals or businesses is foreseen.

An Explanatory Memorandum is published alongside these Regulations at [www.legislation.gov.uk](http://www.legislation.gov.uk) and is also available from the Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR.