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Department for
**Employment
and Learning**
www.delni.gov.uk

ER4 Redundancy consultation and notification



May 2011

Introduction

This booklet gives general information about the statutory redundancy consultation and notification provisions contained in Part XIII of the Employment Rights (Northern Ireland) Order 1996 and Regulations 8-11 of The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1999. It also explains how these obligations fit with duties under The Information and Consultation of Employees Regulations (Northern Ireland) 2005 (S.R. 2005 No. 47) and the Collective Redundancies (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006 No. 369). Those provisions implement the EC Collective Redundancies Directive (98/59/EC) and the decision of the European Court of Justice Case C-188/03 Irmtraud Junk –v– Wolfgang Kühnel. Please note that this booklet gives **general guidance only** and should not be regarded as a complete or authoritative statement of the law. Authoritative interpretations of the law can only be given by the courts. Readers should be alert to the possibility of developments in case law that may affect the rights described. Further information can be obtained from the Labour Relations Agency (LRA) - for the addresses of its two offices see Appendix 2. The contents of this booklet apply equally to men and women. For simplicity, however, the masculine pronoun is used throughout. Any reference throughout this booklet to Jobs and Benefits offices includes JobCentres.

This booklet, others in the series and related publications are free to download from the Departmental website www.delni.gov.uk under Employment Rights – publications. Alternatively they may be obtained upon request from your local Jobs and Benefits offices. For information on Jobs and Benefits offices: **FREEPHONE 0800 353530**.

For employees seeking advice there is the employee section of the NIDirect website: www.nidirect.gov.uk/index/employment which provides a single comprehensive source of information for employees about their rights and responsibilities. Upon request, consideration may be given to making this booklet available in alternative formats and in other languages, for people who are not proficient in English. The Employment Rights series of booklets is updated on a regular basis. As part of this updating process, the Department would welcome any comment/s from members of the public regarding the content of these booklets.

All comments should be addressed to:

Department for Employment and Learning
Employment Relations Policy and Legislation Branch
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Alternatively, comments may be sent via e-mail to: erbooklets@delni.gov.uk

This booklet was last updated: **May 2011**

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Outline of provisions

An employer proposing to make collective redundancies is required to consult in advance with representatives of the affected employees, and to notify the projected redundancies to the Department for Employment and Learning. A collective redundancy situation arises where twenty or more employees are to be made redundant at one establishment within a period of ninety days or less. Consultation must be completed before any notices of dismissal are issued to employees. A claim of failure to consult may be made to an Industrial Tribunal, and must normally be brought within three months of the last of the dismissals. Where a claim is upheld, the Industrial Tribunal may make a protective award to employees of up to ninety days' pay. In addition the Department has changed the legislation to make clear that notification must be made to the Department for Employment and Learning before any redundancy notices are sent to the affected employees.

Who is covered by the provisions

The provisions apply to all employers and employees except those described below. They apply regardless of how long employees have worked for their employer or for how many hours a week they are employed.

Who is not covered by the provisions

The provisions do not cover:

- anyone who is not an employee - for example, an independent contractor or freelance agent;
- members of the police service and armed forces;
- masters and crew members engaged in share fishing who are paid solely by a share in the profits or gross earnings of a fishing vessel;
- Crown servants; and
- employees employed for a fixed term of three months or less, or engaged for a specific task, which is not expected to last more than three months, unless in either case the job actually lasts for more than three months.

What is a collective redundancy situation

A collective redundancy situation arises where an employer proposes to dismiss as redundant twenty or more employees at one establishment within a ninety-day period. For these purposes, the definition of 'redundancy' differs slightly from the one used to establish entitlement to statutory redundancy payments. It means a dismissal for a reason unrelated to the individual employee concerned. This might occur, for example, where a business or plant closes down, or where an employer no longer needs as many employees to carry out a particular task. It might also occur where dismissals

to take place in a re-organisation or re-allocation of work, but where there is no overall reduction in the number employed because the employer is taking on new recruits.

The obligations may apply even when an employer intends to offer alternative employment on different terms and conditions to some or all of the employees, with the result that the number actually dismissed is less than twenty; this will be the case if employees are to be re-deployed on such radically different terms and conditions that accepting the new posts amounts to dismissal and re-engagement.

The obligations apply to compulsory redundancies, but in some circumstances may also apply to 'voluntary' redundancies if an employee has no real choice whether to stay or to leave. If the employer is contemplating twenty or more redundancies and is not sure whether there will be sufficient volunteers, or whether some of the redundancies can be avoided then the statutory obligation to consult employees and to notify the Department for Employment and Learning must apply.

Employers are under no specific legal obligation to consult employee representatives or notify the Department for Employment and Learning in cases falling below the twenty redundancies threshold. However, they may be at risk of successful unfair dismissal claims if they fail to warn and consult individual employees who are to be dismissed in such cases, fail to apply dispute resolution procedures when required, or fail to adopt a fair basis for selection or to take reasonable steps to re-deploy such employees. Employers may therefore also wish to see the booklets '**Unfairly dismissed?**' ER13 and '**Dismissal: fair and unfair - a guide for employers**' ER18.

Resolving Disputes in the Workplace

Where there is a dispute about a workplace issue involving rights and responsibilities those involved should try to sort out the matter between themselves. Whether the employee is complaining (raising a grievance) about something the employer has done or the employer has concerns about the employee's work or behaviour (a disciplinary matter) it is generally a good idea to talk the matter over informally and try to get it resolved as soon as possible.

If this approach fails it is normal to involve line management and a trade union representative (where there is one) to explore potential solutions. If the dispute goes beyond this point without being resolved, employers and employees should engage in a formal process to ensure that the workplace dispute is properly discussed. Even at this stage it can be useful to seek outside assistance or advice from the Labour Relations Agency (LRA). The LRA may be able to help resolve the dispute.

If the dispute continues and the employee or the employer fails to follow the process this could influence the outcome of a subsequent claim to an Industrial Tribunal or a Fair Employment Tribunal. However, where a dispute is likely to result in a claim being made to an Industrial Tribunal, parties to a

dispute should note that the LRA offers a free and impartial Pre-claim Conciliation Service that is independent of the Tribunal process.

Advice about employment rights and what to do in the event of a dispute can be obtained from the LRA by contacting their helpline: **028 9032 1442**.

The Labour Relations Agency (LRA) Arbitration Scheme

The LRA Arbitration Scheme provides an entirely voluntary alternative to an Industrial Tribunal hearing in cases of unfair dismissal or flexible working. Arbitration is an effective method of resolving a dispute in which an independent arbitrator's decision is binding as a matter of law and has the same effect as a court judgement. The scheme is confidential, relatively fast, cost efficient, non-legalistic and informal. Detailed guidance on using LRA Arbitration for Unfair Dismissal or Flexible Working applications can be obtained on the LRA website or by ringing the LRA Arbitration Scheme section on: 028 9032 1442 - see Appendix 2.

Who must be informed and consulted

An employer proposing to make collective redundancies must first consult appropriate representatives of any employees who may be affected by the dismissals (or by measures taken in connection with them). Where those affected are represented by an independent trade union recognised for collective bargaining purposes, the employer *must* inform and consult an authorised official of that union. This may be a shop steward or a district union official or, if appropriate, a national or regional official. The employer is not required to inform and consult any other employee representatives in such circumstances, but may do so voluntarily if desired. A trade union may be recognised for one group of employees in a company, but not for another.

Where employees who may be affected by the proposed dismissals, or by measures taken in connection with them, are not represented by a trade union as described above, the employer must inform and consult other appropriate representatives of those employees. These may be either existing representatives or new ones specially elected for the purpose. It is the employer's responsibility to ensure that consultation is offered to appropriate representatives. If they are to be existing representatives, their remit and method of election or appointment must give them suitable authority from the employees concerned. For example, where redundancies are to take place among, say, sales staff it would clearly not be sufficient for the employer to inform and consult a committee of managers set up to consider the operation of a staff canteen but it would be appropriate to inform and consult representatives elected or appointed as a result of The Information and Consultation of Employees Regulations (Northern Ireland) 2005. It may also be appropriate to inform and consult a committee of employees, such as a works council or staff forum that is regularly informed or consulted more generally about the business's financial position and/or personnel matters. If the representatives are to be specially elected ones, certain election conditions must be met. These are described below. In non-union cases,

where affected employees fail to elect representatives, having had a genuine opportunity to do so, the employers concerned may fulfil their obligations by providing relevant information to those employees directly.

Employees may be affected by the proposed dismissals, or by measures taken in connection with them, even though they themselves are not to be dismissed. In the event of a dispute, whether or not any particular employee or class of employees was affected would be for an Industrial Tribunal to decide. For further details see both sections - 'Redress in cases where employers have failed to meet their information and consultation obligations' and 'Claims to Industrial Tribunals'.

What are the election rules applying in cases where employee representatives are to be specially elected

The rules are as follows:

- 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 relevant information to be given and consultations 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, for as many candidates as there are representatives to be elected to represent their particular class of employee; and
- i) the election is conducted so as to secure that –

- so far as is reasonably practicable, those voting do so in secret; and

- the votes given at the election are accurately counted.

Where an employee representative is elected in accordance with these rules but subsequently ceases to act as such and, in consequence, certain employees are no longer represented, another election should be held satisfying the rules set out at **(a), (e), (f) and (i)** above.

Is there any minimum period for consultation

The employer must begin the process of consultation in good time **and complete the process before any redundancy notices are issued.**

In addition, consultation must begin at least:

- thirty days before the first of the dismissals takes effect (that is, when the employment contract is terminated) in a case where between 20 and 99 redundancy dismissals are proposed at one establishment within a period of ninety days or less;
- ninety days before the first of the dismissals takes effect (that is, when the employment contract is terminated) in a case where 100 or more redundancy dismissals are proposed at one establishment within a period of ninety days or less.

An employer who has already begun consultations about one group of proposed redundancy dismissals and later finds it necessary to make a further group redundant does not have to add the numbers of employees together to calculate the minimum period for either group.

In a case where employee representatives are to be specially elected, the employer will need to ensure that the election is completed and the representatives are in place (having had an opportunity for appropriate training if necessary) in time to allow the consultation process to be completed before any redundancy notices are issued.

Individual periods of notice

Individual notices of dismissal may not normally be issued to employees in a collective redundancy situation until the consultation process has been completed in accordance with these statutory requirements but see the section on 'Special circumstances'. The required notice period will depend on what an individual's contract of employment provides for, subject to the minimum periods set out in Article 118 of the Employment Rights (Northern Ireland) Order 1996 (at least one week's notice if employed for between one month and two years, one week's notice for each year if employed for between two and twelve years, and twelve weeks' notice if employed for twelve years or more).

What information must be disclosed

The employee representatives will need enough information about the employer's proposals to be able to take a useful and constructive role in the process of consultation. An employer must therefore disclose certain information *in writing*.

This must be:

- handed to each of the appropriate representatives; or
- sent by post to an address notified to the employer, or in the case of a trade union, to the address of the union's head or main office.

The employer must disclose:

- the reasons for the proposals;
- the numbers and descriptions of employees it is proposed to dismiss as redundant;
- the total number of employees of any such description employed by the employer at the establishment in question;
- the proposed method of selecting the employees who may be dismissed;
- the proposed method of carrying out the dismissals, taking account of any agreed procedure, including the period over which the dismissals are to take effect; and
- the proposed method of calculating any redundancy payments, other than those required by statute, that the employer proposes to make.

Scope of consultation

The consultation is to include ways of avoiding the redundancy situation or dismissals, of reducing the number of dismissals involved and mitigating the effects of the dismissals. Consultation should be genuine and must be undertaken with a view to reaching agreement with the employees' representatives. Employers and employee representatives should work together to try to find common solutions.

Special circumstances (Consultation)

There may be special circumstances where it is not reasonably practicable for an employer to meet fully the requirements for minimum consultation periods or disclosure of information. In such circumstances, employers must do all that is reasonably practicable toward meeting the requirements.

It does *not* count as 'special circumstances' for these purposes if the decision leading to the redundancies was taken by a controlling body (e.g. a head

office or parent company) that had not supplied the necessary information or had not supplied it in time.

Stock Exchange rules

Stock Exchange rules do *not* preclude employee representatives being informed and consulted in advance where collective redundancies are planned in connection with a re-structuring (e.g. a plant closure or a takeover) which may involve price-sensitive information. Provision can be made for employee representatives to be subject to confidentiality constraints for a specified period, but at the same time be sufficiently informed to hold meaningful consultations with the employer.

Relationship with The Information and Consultation of Employees Regulations (Northern Ireland) 2005

The Information and Consultation of Employees Regulations (Northern Ireland) 2005 give employees in larger firms rights to be informed and consulted on an on-going basis about issues in the business in which they work. This includes decisions on collective redundancies. The rights given by The Information and Consultation Regulations are in addition to the consultation rights that are the subject of this guidance. An employer proposing to make collective redundancies must comply with the requirements described in this guidance, even if they have established separate consultation arrangements as a result of The Information and Consultation Regulations. For example, if a trade union is recognised in respect of employees affected by proposed collective redundancies, the employer must consult representatives of that union, even if there is a separate group of employees' representatives set up as a result of The Information and Consultation Regulations. Where there is a separate group of employees' representatives set up as a result of The Information and Consultation Regulations, the employer would only have to consult that group if he had agreed to do so as part of a 'negotiated agreement' made under The Information and Consultation Regulations. An employer who is subject to the standard information and consultation provisions in The Information and Consultation Regulations need not consult employees' representatives under those provisions if he notifies those representatives in writing on each occasion that the Employment Rights (Northern Ireland) Order 1996 consultation duties are triggered and that he will be consulting under those Regulations.

What does the consultation process mean in practice

When should consultation begin

Consultation with employee representatives must begin in good time and at least 30 or 90 days before the redundancy notices take effect i.e. the day on which employees actually leave their posts (see below). Consultation must begin when the employer is “proposing” the redundancies. In other words, he should not have come to a definite decision to make employees redundant and the employee representatives should still be able to influence the outcome. Where the employer is proposing to dismiss between 20 and 99 employees, consultation must begin at least 30 days before the redundancy notices take effect. Where the employer is proposing 100 or more redundancies, the consultation must begin at least 90 days before the redundancy notices take effect. Where there are no employee representatives, the employer should begin the process of electing employee representatives as quickly as possible.

When does consultation end

Statute does not specify a time-limit within which consultations must be completed. This will always depend on the circumstances of each case. Whilst consultation must start at least 30 or 90 days before the redundancy notices take effect, it is not necessary that consultation should last for all of that time. Further, where consultation has not been completed by the end of the 30 or 90 day period, employers should continue the consultation beyond the 30 or 90 day period. However, it is not necessary for the parties to have reached agreement for the consultation to be complete, although it is necessary for both parties to have undertaken genuine consultation “*with a view to reaching agreement*”. This means that the employer should be willing to engage actively with the employee representatives when discussing alternative options. Consultation would normally be expected to cover ways of reducing the redundancies, or of mitigating their effects.

For example consultation may cover alternative work patterns, job share proposals etc. The consultative process should continue until the issues have been aired and parties have had a reasonable amount of time to comment on information provided and the proposals or counter-proposals which have been made. It is important for the employer and employee representatives to show that they have acted reasonably throughout their dealings and it is a good practice for parties to keep signed copies of any meeting minutes. In addition, the speed of the consultative process is likely to depend, among other things, on the amount of resource devoted to it. For example, employee representatives should be able to work more quickly, where they have access to good facilities to undertake their work and communicate smoothly with other employees.

When should redundancy notices be issued

Redundancy notices can be issued only when the consultation has been *completed*. In other words, the consultation has either resulted in agreement with employee representatives, or has otherwise reached its conclusion. If consultation has been completed within the 30 or 90 day period, the employer may issue the notices at that point. As referred to above, employers should consult beyond the 30 or 90 day minimum where the consultations are not yet complete.

When do the redundancy notices take effect

Redundancy notices take effect at the end of the employee's contractual or statutory notice period (whichever is the greater). The redundancy notices do not take effect at the time that they have been served upon the employee. Therefore, the date from the beginning of the consultation to when the employee is actually made redundant (if appropriate) must be *at least* 30 or 90 days, but in some cases it could be longer where the combination of the consultation and the notice exceeds the period. This timetable can be shortened where an employee might have decided to leave early or take voluntary redundancy. For example, employment can be terminated before the end of the statutory or contractual notice period where an employee has agreed to take a payment in lieu of notice.

Hypothetical examples of the consultation timetable

Example 1

An employer is proposing to make 25 employees redundant, at one establishment over a period of 90 days. The minimum period between when consultation must begin and when the redundancies take effect is therefore 30 days. Although both parties undertake meaningful consultation, it is not complete until day 45. At this point, the employer may issue employees with their notices of dismissal. The actual period for the redundancies to take effect would vary according to the circumstances of individual employees. Employee A has been with the business for just 2 months and his contract of employment does not refer to a notice period. However the statutory minimum notice period is one week, which means that the minimum period before the redundancy can take effect, is 52 days (45 days consultation plus 7 days notice). Employee B has been with the company for 13 years and his contract of employment contains a 28 day notice period. However, the minimum statutory notice period for an employee with at least 12 years' continuous employment is 12 weeks (84 days). This means that the minimum period before the redundancy can take effect is 129 days (45 days plus 84 days).

Example 2

An employer is proposing to make 125 employees redundant, at one establishment over a period of 90 days. The minimum period between when consultation must begin and when any of the redundancies take effect is

therefore 90 days. The consultations are concluded after 65 days with an agreement to reduce the number of redundancies to 100. The employer may then issue the notices of dismissal. Again, the actual period for the redundancies to take effect would vary according to the circumstances of individual employees.

Employee A has been with the business for 5 years, but his contractual notice of employment is 6 weeks (42 days). In this case, the minimum period before the redundancy notice can take effect will be 107 days (65 days plus 42 days). In practice, the employer and employee may agree to terminate the relationship earlier than this.

Employee B has worked with the business for 10 years and also has a 6 weeks contractual notice period (42 days). However, because he has worked for 10 years, his statutory notice period of 70 days is greater than his individual notice period. Therefore, the earliest period the redundancy can take effect is 135 days (65 days plus 70 days).

Rights of employees and their representatives

Employees and their representatives have certain rights and protections to enable them to participate fully, effectively and without fear of victimisation in the process of consultation. These are described below.

Protection against unfair dismissal and other detrimental treatment

It is automatically unfair for the employer to dismiss any employees wholly or mainly because of their:

- participation as a candidate in an election; or
- status or activities as representatives.

It is also unlawful for the employer to take other detrimental action, short of dismissal, against any employees on these grounds.

Access and facilities

The employer is required to allow employee representatives reasonable access to their constituent employees and to such accommodation and other facilities. What is appropriate will vary according to the circumstances but it is important for employers to recognise that communication systems vary from workplace to workplace, and it might be appropriate for an employer to provide the representative with workspace, access to telephone and email etc in order to carry out their consultation duties.

Right to reasonable time off with pay

Employee representatives - whether trade union or not - have a statutory right to reasonable time off with pay during their normal working hours to perform

their functions, and also to undergo appropriate training to enable them to do so. The legislation does not specify the amount of time off that it is reasonable to allow since this will vary according to the circumstances. Payment should be at the appropriate hourly rate for the period of absence from work. This is normally arrived at by dividing the amount of a week's pay by the number of normal working hours in the week.

Representatives or candidates who are dismissed or subjected to a detriment as a result of their activities may make a claim to an Industrial Tribunal (see section 'Claims to Industrial Tribunals' for further details). A claim will not normally be considered unless it is made within three months of the date when the alleged infringement occurred (although in exceptional cases where the Industrial Tribunal considers that it was not reasonably practicable for a claim to be made in time it can allow a longer period).

Redress where rights of employee representatives are infringed

If the Industrial Tribunal finds that a dismissal was unfair, it may order the employer to reinstate or re-engage the employee or make an appropriate award of compensation. Employers may therefore also wish to see the booklets '**Unfairly dismissed?**' ER13 and '**Dismissal: fair and unfair – a guide for employers**' ER18. If it finds that other unlawful detrimental treatment occurred, it may order that compensation be paid. If the Industrial Tribunal finds that the employer has failed to allow employee representatives reasonable access or appropriate facilities, it shall make a declaration to that effect and may make a 'protective award' of compensation - see section 'Redress in cases where employers have failed to meet their information and consultation obligations' for further details. If the Industrial Tribunal finds that a representative was unreasonably refused time off, it shall make a declaration to that effect and award to the representative an amount equal to the pay to which he would have been entitled if time off had not been refused. If the Industrial Tribunal finds that a representative did not receive appropriate pay for time off, it shall order the employer to pay the amount due.

Redress in cases where employers have failed to meet their information and consultation obligations

An employee may make a claim to an Industrial Tribunal that an employer has failed to meet the requirements under the Employment Rights (Northern Ireland) Order 1996 - to inform and consult - see section 'Claims to Industrial Tribunals' for further details. A claim about a failure relating to the election of employee representatives may be made by any of the affected employees or by any of the employees who have been dismissed as redundant. A claim about any other failure relating to employee representatives may be made by any of the representatives to whom the failure related. A claim about a failure relating to trade union representatives may be made by the trade union. In any other case, a claim may be made by any of the affected employees or by any of the employees who have been dismissed as redundant. A claim will not normally be considered unless it is made within three months of the date on

which the last of the dismissals takes effect (although in exceptional cases where the Industrial Tribunal considers that it was not reasonably practicable for a claim to be made in time it can allow a longer period).

Where the Industrial Tribunal finds a claim justified it will make a declaration to that effect. In appropriate cases, whether or not the employees are still employed, the Industrial Tribunal may take steps to safeguard the employees' remuneration by making a 'protective award'. It can do this at the same time as it makes the declaration or later, after a further application to the Industrial Tribunal.

Protective award

The employer is required to pay employees covered by a protective award their normal week's pay for each week of a specified period, known as the protected period, regardless of whether or not they are still working. To be covered by an award, they must be employees whom the employer plans to dismiss or has already dismissed as redundant and they must be employees in whose case the employer has failed to comply with the consultation requirements under the Employment Rights (Northern Ireland) Order 1996. The protected period will begin with the date on which the first dismissal takes effect or the date of the tribunal award - whichever is earlier. The length of the period will be determined by the Industrial Tribunal, taking into account the extent of the employer's failure to consult and any extenuating circumstances. It is however subject to an upper limit of ninety days in all cases.

How is 'a week's pay' calculated for these purposes

A week's pay is calculated by reference to a certain date which is known as the 'calculation date'.

The calculation date for computing payments under a protective award is where the employee is:

- dismissed before the date of the award - the same date as the calculation date for computing a redundancy payment, whether or not the employee is entitled to a redundancy payment; or
- still in employment - the date on which the award was made.

The method of calculation is similar to that used for the purposes of statutory redundancy payments. Further details may be found in the booklet '**Redundancy Entitlement – Statutory Rights**' ER3. The payment under the protective award is in addition to any payment that an employee is entitled to under a contract of employment (or as damages for breach of that contract) for any part of the protected period.

Cases where employee has received Jobseeker's Allowance or Income Support

The employer must deduct from the award and repay to the Department for Social Development an amount equivalent to any Jobseeker's Allowance or Income Support that the employee has received for any part of the protected period. The tribunal, when it makes the protective award, will advise the employer that certain information should be sent to the nearest Jobs and Benefits office within a specified period. On receipt of this information the Jobs and Benefits office will advise the employer on a document called a 'recoupment notice' of the amount of benefit that has been paid. A copy of this notice will be given to the employee. Only after the employer has received this notice or a letter stating that recoupment is not appropriate, can any part of the award be paid to the employee.

Conditions of entitlement

Employees who are still employed will be paid under a protective award only when they would be entitled to be paid under their contract of employment or under their statutory rights during a period of notice. For this purpose the whole remaining part of their employment is treated as if it were a statutory period of notice. This means that employees who go on strike, or are absent from work without good reason, or are granted unpaid leave at their own request, or have time off from work under certain provisions of the Employment Rights (Northern Ireland) Order 1996, will not be entitled to payment. But employees who are absent under contractual holiday arrangements, or because they are ill, because of pregnancy or childbirth, or because of adoption, parental or paternity leave will be entitled to payment. They will also be entitled to payment during any period where the employer has no work available for them.

Employees who are fairly dismissed for a reason other than redundancy, or who give up their job during the protected period without good reason will, however, lose their right to payment for the rest of the protected period.

Offer of renewed or new employment

An employer may offer an employee re-engagement, either in the old job or in different but apparently suitable work, before the end of the protected period. An employee who refuses such an offer without good reason will lose the right to payment for the rest of the protected period.

Right to a trial period

An employee who accepts an offer of alternative work is allowed a trial period to see if the work is really suitable. For the purposes of calculating continuity of employment this trial period is regarded as starting from when the employee's old job ends even where there is in fact a gap between jobs. The trial period will normally continue for four weeks after the employee starts work but may be extended by agreement between employer and employee in order to retrain the employee for the new work. Employees who leave their

work with good reason or who are dismissed (for example because they are unable to carry out the duties of the new work or the training) during the trial period retain their rights to payment under the protective award. If, however, they give up the work or training without adequate reason or the employer dismisses them fairly for reasons unconnected with the changed terms of employment - misconduct, for example - they will lose their right to payment for the rest of the protected period.

Extension of trial period for retraining

The trial period may be extended to retrain the employee for the new work, by agreement between the employer and the employee. Such agreements must be made before the employee starts the new work; must be in writing; and must specify the date that the trial period ends and terms and conditions of employment that will apply after that date.

Employees have a right to a trial period if they start a different job with their employer at any time during the protected period and it makes no difference whether the employer offers them work before or after the end of the old job.

What redress is available if an employer fails to pay money due under a protective award

If an employer fails to pay money due to an employee under a protective award, the employee has a right to make a claim to an Industrial Tribunal - see section 'Claims to Industrial Tribunals'. A claim must normally be made within three months of the last day for which there has been an alleged failure to pay (although in exceptional cases where the Industrial Tribunal considers that it was not reasonably practicable for a claim to be made in time it can allow a longer period). If the Industrial Tribunal is satisfied that the claim is justified it will order the employer to pay the employee or employees concerned the money due to them under the award.

Notification to the Department for Employment and Learning

An employer who proposes to dismiss twenty or more employees as redundant at one establishment within a period of ninety days or less has a statutory duty to notify the Department for Employment and Learning (at the address on page 16), **before any of the redundancies are made**. This is so that Government departments and agencies and the Jobs and Benefits offices can be alerted and prepared to take any appropriate measures to assist or retrain the employees in question. The same definition of a collective redundancy situation applies as for the consultation obligations - see section 'What is a collective redundancy situation'.

Is there any minimum period for notification

A notification must be made a specified minimum time before the first dismissal takes effect. In addition from 8 October 2006 the Department has changed the legislation to make clear that notification must be made to the

Department for Employment and Learning before any redundancy notices are sent to the affected employees. The date of notification is the date on which it is received by the Department for Employment and Learning.

The minimum times are:

- if between twenty and ninety-nine employees may be dismissed as redundant at one establishment within a period of ninety days or less - at least thirty days and in any event, before giving notice to terminate an employees contract; or
- if one hundred or more employees may be dismissed as redundant at one establishment within a period of ninety days or less - at least ninety days and in any event, before giving notice to terminate an employees contract.

These periods are the same as the minimum periods permitted for consultation with employee representatives. An employer who has already notified one group of proposed redundancy dismissals and later finds it necessary to make a further group does not have to add the numbers of employees together to calculate the minimum period for either group. There is no obligation to notify redundancies of fewer than twenty employees within a period of ninety days or less, but employers may nevertheless wish to consider doing so in borderline cases - particularly if the numbers involved are uncertain.

What information must be disclosed in the notification

The Department requires information ***in writing*** about the employer's proposals **prior to any redundancies being made.**

This should be sent to:

Department for Employment and Learning
Redundancy Statistics Section
Statistics Research Branch (DETI)
Room 115
Netherleigh
Massey Avenue
Belfast
BT4 2JP
Tel: 028 9052 9311
e-mail: redundancies@detini.gov.uk

or by form HR1 – the redundancy notification form which can be downloaded from: <http://www.detini.gov.uk>

Alternatively, the form can be obtained from the address given above. The information required is similar to that which the employer must disclose to employee representatives for consultation purposes - see section 'Employers' information and consultation obligations'. In addition, the notification must

state when and with whom such consultation began. The notification should be sent by post or delivered by hand to the office indicated on form HR1. If the employer's proposals change significantly after the notification has been given - for example, if the numbers to be dismissed increase by twenty or more or if the dismissal dates are to be brought forward or delayed - the Department must be informed. Employers must give or send a copy of the notification to the representatives with whom they are required to consult about the proposed redundancies. The Department has powers to obtain further information if necessary. When notification has been received in the form required, a formal acknowledgement will be sent to the employer.

Special circumstances (Notification)

There may be special circumstances where it is not reasonably practicable for the employer to meet fully the requirements for minimum notification periods. In such circumstances, the employer must take all reasonably practicable steps towards meeting the requirements and explain why they cannot be met in full. However, it is not sufficient simply to state that it was not possible to comply because a controlling body (e.g. a head office or a parent company) had not supplied the necessary information or had not supplied it in time.

Penalty for non-compliance

If an employer fails to give the required notification to the Department about any employees that have been dismissed, or it is proposed to dismiss, as redundant, proceedings may be instituted which could lead on summary conviction, to a fine up to level 5 on the standard scale.

Claims to Industrial Tribunals

Application forms (ET1) and explanatory leaflets for making Industrial Tribunal claims may be obtained from any local Jobs and Benefits office or from the Office of the Industrial Tribunals and the Fair Employment Tribunal - advice may also be obtained from the Labour Relations Agency (LRA) - see Appendix 2. When the Industrial Tribunal receives the completed ET1 application form it will send a copy of it to an LRA conciliation officer who, if conciliation is possible, will attempt to get both sides to reach a settlement. Information given to a conciliation officer in the course of his duties is treated as confidential. It may not be divulged to the Industrial Tribunal without the consent of the person who gave it. If no settlement is reached, the Industrial Tribunal will hear the case. Hearings are conducted informally. The parties may claim travelling and other expenses, including loss of earnings, within certain limits. They have the option to be represented by a solicitor or by any other person of their choosing, such as an official of a trade union or an employers' association. Such representation is not required however.

Appendix 1: Booklets in this series

Booklets in this series are available online from www.delni.gov.uk/erbooklets or can be obtained by contacting the Department.

ER 1	Individual rights and responsibilities of employees
ER 2	Written statement of employment particulars
ER 3	Redundancy entitlement statutory rights
ER 4	Redundancy consultation and notification
ER 5	Your rights if your employer is insolvent
ER 6	Unjustifiable discipline by a trade union
ER 7	Time off for public duties
ER 8	Continuous employment and a week's pay
ER 10	Suspension from work on medical or maternity grounds
ER 12	Pay statements: what they must itemise
ER 13	Unfairly dismissed?
ER 14	Guarantee payments
ER 15	Rights to notice and reasons for dismissal
ER 16	Maternity rights: a guide for employers and employees
ER 17	Help with meeting redundancy costs for employers in financial difficulty
ER 18	Dismissal: fair and unfair - a guide for employers
ER 19	Limits on payments and awards
ER 21	Contracts of employment: changes, breach of contract and deductions from wages
ER 22	Criminal records and employment
ER 23	Payment of union subscriptions through "check off"
ER 24	Time off for dependants
ER 25	Parental leave: a guide for employers and employees
ER 26	Time off for study or training

ER 27	Industrial action and the law: a guide for employees
ER 28	Trade union executive elections
ER 29	Industrial action and the law: a guide for employers
ER 30	Industrial action and the law: a guide for individuals whose supply of goods or services is affected by unlawful industrial action
ER 31	Union membership: rights of members and non-members
ER 33	Trade union political funds
ER 34	Rights to paternity leave and pay
ER 35	Adoptive parents: a guide for employers and employees
ER 36	Flexible working: a guide for employers and employees

Additional employment rights publications, covering a range of other issues, can be found online at www.delni.gov.uk/erpublications or can be obtained from the Department.

Appendix 2: Useful addresses

Certification Officer for Northern Ireland

10-12 Gordon Street
Belfast
BT1 2LG

Tel: 028 9023 7773
Fax: 028 9023 2271
Textphone: 028 9023 8411
Website: www.nicertoffice.com
E-mail: info@nicertoffice.com

Department for Employment and Learning

Redundancy Payments Service
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7956
Freephone: 080 0585 811
Fax: 028 9025 7555
Website: www.redundancyni.gov.uk
E-mail: rpsquery@delni.gov.uk

The Health and Safety Executive for Northern Ireland

83 Ladas Drive
Belfast
BT6 9FR

Tel: 028 9024 3249
Fax: 028 9023 5383
Textphone: 028 9054 6896
Freephone Helpline: 080 0032 0121
Website: www.hseni.gov.uk

Department for Employment and Learning

Employment Relations Policy and Legislation Branch
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7580
Website: www.delni.gov.uk/er
E-mail: erbooklets@delni.gov.uk

The Equality Commission for Northern Ireland

Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

Tel: 028 9050 0600
Fax: 028 9033 1544
Textphone: 028 9050 0589
Website: www.equalityni.org
E-mail: information@equalityni.org

Industrial Court

Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7599
Fax: 028 9025 7555
Website: www.industrialcourt.gov.uk
E-mail: enquiries@industrialcourt.gov.uk

Labour Relations Agency

Head Office
2-8 Gordon Street
Belfast
BT1 2LG

Tel: 028 9032 1442

Fax: 028 9033 0827

Textphone: 028 9023 8411

Website: www.lra.org.uk

E-mail: info@lra.org.uk

NIBusiness Info

(website giving information on a wide range of issues for employers)

Website: www.nibusinessinfo.co.uk

Labour Relations Agency

Regional Office
1-3 Guildhall Street
Londonderry
BT48 6BJ

Tel: 028 7126 9639

Fax: 028 7126 7729

Textphone: 028 9023 8411

Website: www.lra.org.uk

E-mail: info@lra.org.uk

Office of the Industrial Tribunals and the Fair Employment Tribunal

Killymeal House
2 Cromac Quay
Ormeau Road
Belfast
BT7 2JD

Tel: 028 9032 7666

Fax: 028 90250100

Website: www.employmenttribunalsni.org

people:skills:jobs:



Department for
**Employment
and Learning**
www.delni.gov.uk



INVESTOR IN PEOPLE

THE DEPARTMENT:

Our aim is to promote learning and skills, to prepare people for work and to support the economy.

This document is available in other formats upon request.

Further information:

Telephone: 028 9025 7580

E-mail: employment.rights@delni.gov.uk

Website: www.delni.gov.uk