



**EUROPEAN COMMUNITIES (SAFEGUARDING
OF EMPLOYEES' RIGHTS ON TRANSFER OF
UNDERTAKINGS) REGULATIONS, 1980 AND 2000**

Explanatory Booklet for Employers and Employees

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Issued by the
Department of Enterprise, Trade and Employment

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The purpose of this booklet is to provide information for employees and employers in non-legal language on the Regulations. It is important to note that this booklet is not a legal interpretation of the Regulations.

In cases of doubt or where further information is required, interested parties should refer to the Regulations or contact the Employment Rights Information Unit, Department of Enterprise, Trade and Employment, Davitt House, 65A Adelaide Road, Dublin 2.

Telephone (01) 6313131. Fax: 01- 6313267.

Lo-call phone number 1890 220222 ext. 3131.

Website:- www.entemp.ie

E-mail:- erinfo@entemp.ie

Other useful telephone numbers:

Department of Enterprise, Trade & Employment	(01) 631 2121	Lo-call 1890 220222
Employment Appeals Tribunal	(01) 6312121	Lo-call 1890 220 222
Labour Relations Commission	(01) 6609662	Lo-call 1890 220 227
Rights Commissioner Service	(01) 6609662	Lo-call 1890 220 227
Labour Court	(01) 6608444	Lo-call 1890 220 228

Note: The Lo-call numbers may be used by callers from outside the 01 area.

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1. Purpose of Regulations

The Regulations of 1980 (S.I. 306 of 1980), and the amending Regulations of 2000 (S.I. 487 of 2000) which came into operation on 3rd November, 1980 and 21st December, 2000, respectively, implement an EU Directive* aimed at safeguarding the rights of employees in the event of a transfer of an undertaking, business or part of a business to another employer as a result of a legal transfer or merger.

The new Regulations (effective from 21st December, 2000) amend the European Communities (Safeguarding of Employees' Rights on Transfer of Undertakings) Regulations, 1980 (S.I. 306 of 1980). Both sets of Regulations should be read together.

2. Protection of Employment

These regulations provide for the following:

- (1) the rights and obligations arising from an employment contract or relationship are transferred from the original employer to the new employer;
- (2) the new employer must continue to observe the terms and conditions of any collective agreement until it expires or is superseded;
- (3) the interests of employees and persons no longer employed in the original employer's business at the time of the transfer in respect of immediate or prospective rights to old-age, invalidity, or survivors' benefits, under supplementary company or inter-company pension schemes outside the Social Welfare Acts must be protected by the new employer;

**Council Directive No. 77/187/EEC of 14 February, 1977 OJ No. L 6 of 5.3.77 P.26-28.*

(4)(a) an employee may not be dismissed solely on the grounds of the transfer of an undertaking, business, or part of a business by either the new employer or the old employer; however, dismissals may take place for economic, technical or organisational reasons entailing changes in the work-force.

(b) if an employment is terminated because a transfer involves a substantial deterioration in the working conditions of the employee, the employer concerned shall be regarded as having been responsible for the termination.

(The qualifying time limits under the Redundancy Payments Acts and the Unfair Dismissals Acts, 1977 to 1993, apply to the termination of employment referred to at 4 (a) and (b) which may come within the provisions of these Acts.)

Note regarding Unfair Dismissals Acts

A number of cases in this country involving the application of the Regulations in the context of the Unfair Dismissals legislation have been heard by the Employment Appeals Tribunal. If, in the event of a transfer, the employees are not retained by the new employer, it is open to any of them to bring a case for unfair dismissal to a Rights Commissioner or the Employment Appeals Tribunal, provided they fulfil the eligibility criteria under the Unfair Dismissals legislation.

3 Information and Consultation

The original employer and the new employer must consult their respective employees, in good time (and in the case of the new employer, in any event, before his/her employees are directly affected by the transfer as regards their conditions of work and employment) concerning:

(i) the reasons for the transfer;

- (ii) the legal, economic and social implications of the transfer for the employees, and
- (iii) the measures envisaged in relation to the employees.

If the new or the old employer involved in a transfer, envisage measures in relation to their employees, they shall consult representatives of the employees in good time on such measures with a view to seeking agreement.

In the context of the Regulations, ‘representatives’ are defined therein as follows:-

“‘representatives’ in relation to employees employed in an undertaking, business or part of a business who are affected, or likely to be affected, by the transfer of that undertaking, business or part of a business means –

- (a) a trade union, staff association or excepted body with which it has been the practice of the employees’ employer to conduct collective bargaining negotiations; or
- (b) in the absence of such a trade union, staff association or excepted body, a person or persons chosen (under an arrangement put in place by the employer) by such employees from among their number to represent them in negotiations with the employer.”

Thus, the Regulations make provision, in the absence of representatives as defined at (a) for the putting in place by the employer of a mechanism whereby the employees choose a representative from among their number to represent them in negotiations with the employer.

Notwithstanding the above, if the employees have no representatives, the old employer and the new employer must give to each of their respective employees, in good time, a statement containing the particulars described at (i), (ii) and (iii) above, and display the notices containing these particulars in good time, where they can be read conveniently by the employees in the workplace before the transfer.

4 Complaints to a Rights Commissioner

An employee, or a trade union, staff association or excepted body, on behalf of an employee, may present a complaint to a Rights Commissioner that an employer has not complied with Regulation 7 in relation to information and consultation of employees (see para 3 above).

A complaint to a Rights Commissioner may be made by giving notice of it in writing. The Rights Commissioner Service is located in the Labour Relations Commission, Tom Johnson House, Haddington Road, Dublin 4 (phone 01 - 6609662, Lo-call 1890 220 227).

The Rights Commissioner, on receipt of a complaint, will send a copy of the notice of complaint to the employer. The Rights Commissioner will then give the parties an opportunity to be heard by him/her and to present any evidence relevant to the complaint. After hearing the parties, the Rights Commissioner will issue a written decision. Proceedings before a Rights Commissioner will be held in private.

5 Rights Commissioner's Decision

The decision of the Rights Commissioner shall do one or more of the following: -

- (a) declare that the complaint was or was not well-founded,
- (b) require the employer to comply with the principal Regulations and for that purpose to take a specific course of action,
- (c) order the employer to pay the employee compensation of a maximum of 4 weeks remuneration.

6 Time Limit for Bringing Complaints

The complaint to the Rights Commissioner must be presented within 6 months of the occurrence of the alleged contravention to which it relates, or where the Rights Commissioner is satisfied that exceptional circumstances existed which prevented the presentation of the complaint within that period, within a further 6 months.

7 Appeal to Employment Appeals Tribunal from Decision of Rights Commissioner

A party concerned may appeal to the Employment Appeals Tribunal from a decision of a Rights Commissioner. The appeal must be made within 6 weeks of the date on which the Rights Commissioner communicated the decision to the parties.

An appeal may be made by giving notice of the appeal in writing to the Employment Appeals Tribunal, Davitt House, 65A Adelaide Road, Dublin 2. The Tribunal will copy the notice to the other party concerned. Copies of a notice of appeal form may be obtained from the Employment Rights Information Unit, Department of Enterprise, Trade and Employment, Davitt House, 65A Adelaide Road, Dublin 2.

The Tribunal will give the parties an opportunity to be heard and to present any evidence relevant to the appeal. The Tribunal will then issue a written determination which may affirm, vary or set aside the decision of the Rights Commissioner.

8 Non-Implementation by Employer of Decision of Rights Commissioner

Where an employer has neither implemented nor appealed the Rights Commissioner's decision, the employee may complain to the Employment Appeals Tribunal. The employee must notify the Tribunal in writing of the complaint. In such circumstances, the Tribunal is empowered to issue a determination without rehearing the case and, if it upholds the complaint, will confirm the decision in its determination.

9 Non Co-operation with Employment Appeals Tribunal

Failure by a witness to appear before the Employment Appeals Tribunal where a subpoena is served and/or failure to produce documentation is an offence liable, on summary conviction, to a fine of up to € 1269.74 (£1,000).

10 Appeals to High Court

A party to proceedings before the Employment Appeals Tribunal may appeal to the High Court from a determination of the Employment Appeals Tribunal on a point of law.

11 Referrals by The Minister to High Court

The Minister, at the request of the Tribunal, may refer a question of law to the High Court for determination.

12 Enforcement of Determinations of Employment Appeals Tribunal

If an employer fails to carry out in accordance with its terms a determination of the Tribunal in relation to a complaint under the regulations within 6 weeks from the date on which the determination is communicated to the parties,(no appeal having been brought against the determination, or if so, it having been abandoned) the Circuit Court shall, on application to it in that behalf by-

- (i) the employee concerned,
- (ii) the employee's trade union,
- (iii) the Minister, if the Minister considers it appropriate to make the application having regard to all the circumstances,

without hearing the employer or any evidence (other than in relation to the matters aforesaid) make an order directing the employer to carry out the determination in accordance with its terms.

The Circuit Court may, if in all the circumstances it considers it appropriate to do so, where it makes an order in relation to the payment of compensation, direct the employer concerned to pay to the employee concerned, interest on the compensation, at the rate referred to in section 22 of the Courts Act, 1981, in respect of the whole, or any part of the period beginning 6 weeks after the date on which the determination of the Tribunal is communicated to the parties and ending on the date of the order.

13 Offences and Penalties

An Inspector of the Department investigating a possible infringement(s) of the Regulations may request the parties to an apparent transfer to make available to him/her any information, books or documents he/she may reasonably require, and he/she may enter at all reasonable times any place where such documents are kept;

- Penalties:**
- (a) A person who does not comply with a request by an Inspector in exercising the powers conferred on him/her by the Regulations is liable on summary conviction to a fine not exceeding € 1905 (£1,500).
 - (b) A person who contravenes any other provision of the Regulations is liable on summary conviction to a fine not exceeding € 1270 (£1,000).

