

EXPLANATORY MEMORANDUM TO

The Seafarers (Collective Redundancies, Information and Consultation and Insolvency Miscellaneous Amendments) Regulations (Northern Ireland) 2020

S.R. 2020 No. 12

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for the Economy (“the Department”) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Statutory Rule implements in Northern Ireland certain requirements of Directive (EU) 2015/1794 which amends Directives 2008/94/EC, and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC, as regards seafarers (“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.
- 2.2. The Statutory Rule amends the Pension Schemes (Northern Ireland) Act 1993 (“the 1993 Act”), the Employment Rights (Northern Ireland) Order 1996 (“the 1996 Order”) and the Information and Consultation of Employees Regulations (Northern Ireland) 2005 (“the 2005 Regulations”).

3. Background

- 3.1. In its 2009 Communication (“Strategic goals and recommendations for the EU’s maritime transport policy until 2018”), the European Commission stressed the need to promote maritime employment and address current shortages of European seafarers. It established a Task Force to look at measures to strike the balance between the employment conditions of EU seafarers and the competitiveness of vessels registered within the European Union.
- 3.2. The Task Force submitted its findings in early July 2011. The Task Force identified a number of EU labour law Directives where the current exemption for seafarers should be repealed. It called for an EU network to improve maritime training and stressed a role for the Commission in collating information and data to support future policy developments
- 3.3. It subsequently identified five employment Directives that contained derogations for seafarers and therefore allowed land based workers greater employment rights than those at sea if member States chose to apply those derogations. The purpose of the Seafarers Directive is to remove the derogations and address an anomaly where land based workers may enjoy greater employment rights than those at sea. The five Directives amended by the Seafarers Directive are: Directive 2008/94/EC relating to the protection of employees in the event of the insolvency of their employer

("the Insolvency Directive"); Directive 2009/38/EC on the establishment of a European Works Council ("the EWC Directive"); Directive 2002/14/EC establishing a general framework for informing and consulting employees ("the Information and Consultation Directive"); Directive 98/59/EC on the approximation of the laws of the member States relating to collective redundancies ("the Collective Redundancies Directive"); and, Directive 2001/23/EC relating to the safeguarding of employees' rights in the event of transfers of undertakings ("the Transfer of Undertakings Directive").

- 3.4. This Statutory Rule implements certain requirements of the Seafarers Directive.
- 3.5. Part VII (Insolvency of employers) of the 1993 Act and Part XIV (Insolvency of employers) of the 1996 Order implement in Northern Ireland certain provisions of the Insolvency Directive. Article 1 of the Seafarers Directive amends the Insolvency Directive by ensuring that seafarers employed as share fishermen are brought within the scope of the Insolvency Directive.
- 3.6. Section 161(6) of the 1993 Act excludes employed share fishermen from the scope of Part VII, Chapter II (Payment by the Department of unpaid scheme contributions) and from section 153 (Power of Department to obtain information in connection with applications under s.120). In order to reflect the amendment in the Insolvency Directive, regulation 2(2) amends section 161(6) of the 1993 Act by removing the exclusion of employed share fishermen from the provisions of Part VII, Chapter II and from section 153 (pursuant to section 153(5), section 153 is to be construed as if it were in Part VII, Chapter II).
- 3.7. Section 161(6) of the 1993 Act also excludes merchant seamen from the provisions of section 120 (Duty of Department to pay unpaid contributions to schemes) and section 121 (Certification of amounts payable under s. 120 by insolvency officers). Regulations 2(2) and 2(3) amend sections 161(6) and 161(7) of the 1993 Act in order to bring merchant seamen within the scope of sections 120 and 121, as provided for by the Insolvency Directive.
- 3.8. Section 242(2) of the 1996 Order excludes share fishermen from the scope of a number of provisions, including Part XIV. In order to reflect the amendment in the Insolvency Directive, regulation 3(4) amends article 242(2) of the 1996 Order by removing the exclusion relating to Part XIV in relation to employed share fishermen and amends section 242(4) of the 1996 Order in order to bring merchant seamen within the scope of Part XIV, as provided for by the Insolvency Directive.
- 3.9. Part XIII (Procedure for handling redundancies) of the 1996 Order implements in Northern Ireland the provisions of the Collective Redundancies Directive. Article 4 of the Seafarers Directive amends Article 1(2)(c) of the Collective Redundancies Directive by removing the derogation for the crews of seagoing vessels. Merchant seamen are within the scope of Part XIII of the 1996 Order but the amendment also brings employed share fishermen within the scope of Part XIII.

- 3.10. Article 4 of the Seafarers Directive also amends the Collective Redundancies 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(2) inserts article 221A in the 1996 Order (Duty of employer to notify competent authority of a vessel's flag State of certain redundancies).
- 3.11. The 2005 Regulations implemented in Northern Ireland the Information and Consultation Directive establishing a general framework for informing and consulting employees in the European Union. Article 3(3) of the Information and Consultation Directive permitted member States to exclude from the scope of the application of the Directive the crews of vessels plying the high seas. Regulation 40 of the 2005 Regulations implemented the derogation and allowed an employer to exclude merchant navy crew engaged on voyages of 48 hours or more from being a negotiating representative or an information and consultation representative as defined by the 2005 Regulations.
- 3.12. The Seafarers Directive amends the Information and Consultation Directive by removing Article 3(3) from the scope of that Directive. In order to reflect the amendment, regulation 4 amends the 2005 Regulations by omitting regulation 40.

4. Consultation

- 4.1. A formal consultation was not undertaken. The UK Social Partners have been fully engaged with the UK Government since the European Commission first considered that action needed to be taken.

5. Equality Impact

- 5.1. Consideration has been given to compliance with section 75 of the Northern Ireland Act 1998. As the impact of this SR is believed to be small and is unlikely to have any negative impact on the nine equality categories set out in section 75, an equality screening assessment was not considered necessary.

6. Regulatory Impact

- 6.1. Removal of the exemption from the 2005 Regulations allows long haul crew members to be a negotiating representative or an information and consultation representative as defined by those Regulations. The exemption was not mandatory and employers could already choose to apply the Regulations in full to those employees.
- 6.2. Extension of certain employment rights to share fishermen "where employed" will have limited impact; the employment status of share fishermen is not being changed and the majority of share fishermen will have working practices that will define them as self-employed.
- 6.3. There is otherwise no impact on business and there is no impact on charities or voluntary bodies.
- 6.4. A regulatory impact assessment has not been prepared for this Statutory Rule.

7. Financial Implications

7.1. It is anticipated that the financial implications would be negligible.

8. Section 24 of the Northern Ireland Act 1998

8.1. This Statutory Rule complies with the provisions of Section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. The purpose of the Statutory Rule is to transpose into domestic law certain requirements of Directive (EU) 2015/1794. The deadline for transposition was 10 October 2017. The legislation does not exceed the minimum necessary to comply with the Directive.

10. Parity or Replicatory Measure

10.1. In Great Britain, the Seafarers Directive was transposed by two Statutory Instruments (SIs) by the Department for Transport (DfT) in liaison with the Department for Business, Energy and Industrial Strategy (BEIS). While employment law is devolved to Northern Ireland, some elements of the Seafarers Directive required amendments to certain pieces of UK wide legislation. As a result certain aspects of the Seafarers Directive have already been transposed on a UK wide basis by UK Government Departments. This Statutory Rule, however, applies only to Northern Ireland.

11. Additional Information

11.1. The Statutory Rule is transposing certain requirements of an EU Directive. As the transposition date has passed, it is therefore necessary to breach the 21 day rule to ensure compliance with EU obligations at the earliest opportunity.