

TRANSPOSITION TABLE FOR IMPLEMENTATION OF AMENDMENTS TO DIRECTIVE 1998/59/EC, DIRECTIVE 2002/14/EC AND DIRECTIVE 2008/94/EC MADE BY DIRECTIVE (EU) 2015/1794 (THE SEAFARERS DIRECTIVE)

THE SEAFARERS (COLLECTIVE REDUNDANCIES, INFORMATION AND CONSULTATION AND INSOLVENCY MISCELLANEOUS AMENDMENTS) REGULATIONS NORTHERN IRELAND 2020

DIRECTIVE 1998/59/EC (COLLECTIVE REDUNDANCIES)	ARTICLE 4 OF DIRECTIVE (EU) 2015/1794 (SEAFARERS DIRECTIVE)	OBJECTIVE OF AMENDMENT	IMPLEMENTATION OF ARTICLE 1(2)(c) IN DIRECTIVE 1998/59/EC	IMPLEMENTATION OF AMENDMENT TO ARTICLE 1(2)(C) IN DIRECTIVE 1998/59/EC
<p>Article 1(2)(c)</p> <p>‘This Directive shall not apply to – (c) the crews of seagoing vessels.’</p>	<p>‘(1) in Article 1(2), point (c) is deleted.’</p>	<p>To remove the derogation in relation to seafarers to provide them with the same rights as land based employees.</p>	<p>Article 242 (2) of the Employment Rights Order 1996 excludes share fishermen from the scope of Parts XI to XIV of the Order, which implements the provisions of the Collective Redundancies Directive.</p> <p>The derogation was not applied in relation to merchant seamen (Article 242(4)) but was retained in relation to share fishermen (Article 242(2)):</p>	<p>Regulation 3 in the Seafarers (Collective Redundancies, Information and Consultation and Insolvency Miscellaneous Amendments) Regulations (Northern Ireland) 2020 amends the Employment Rights (Northern Ireland) Order 1996:</p> <p>(4) In Article 242 (Mariners)</p> <p>(a) in paragraph (2) for “Parts XI to XIV” substitute “Parts 11 and 12”;</p> <p>(b) in paragraph (4) omit “and Part XIV”.</p> <p>(5) The amendments made by paragraphs (2) and (3) and the amendments made by paragraph (4), so far as</p>

				<p>they relate to Part 13 of the Employment Rights (Northern Ireland) Order 1996, only have effect in relation to dismissals (within the meaning given by Article 223 of the Employment Rights (Northern Ireland) Order 1996) which are first proposed by an employer on or after the date on which these Regulations come into operation.</p> <p>(6) The amendments made by paragraph (4), so far as they relate to Part 14 of the Employment Rights (Northern Ireland) Order 1996, only have effect in relation to employees whose employer has become insolvent (within the meaning given by Article 228 of the Employment Rights (Northern Ireland) Order 1996) on or after the date on which these Regulations come into operation.</p>
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DIRECTIVE 1998/59/EC (COLLECTIVE REDUNDANCIES)	ARTICLE 4 OF DIRECTIVE (EU) 2015/1794 (SEAFARERS DIRECTIVE)	OBJECTIVE OF AMENDMENT	IMPLEMENTATION OF ARTICLE 3(1)	IMPLEMENTATION OF AMENDMENT TO DIRECTIVE 98/59/EC
<p>Article 3(1) [Procedure for collective redundancies – employers must notify the competent public authority in writing of any projected collective redundancies.]</p> <p>“1. Employers shall notify the competent public authority in writing of any projected redundancies.</p> <p>However, Member States may provide that in the case of planned collective redundancies arising from termination of the establishment’s activities as a result of a judicial decision, the employer shall be obliged to notify the competent public authority in writing only if the latter so requests.</p> <p>This notification shall contain all relevant information concerning the projected collective redundancies and the</p>	<p>In Article 3(1), the following subparagraph is inserted after the second subparagraph:</p> <p>‘Where the projected collective redundancy concerns members of the crew of a seagoing vessel, the employer shall notify the competent authority of the State of the flag which the vessel flies.’.</p>	<p>The notification provided for by Article 3(1) of the Directive should always be made to the competent authority of the State of the flag. This clarification is necessary because of the potential coexistence of employment contracts under different national laws (see Commission’s Explanatory Memorandum at p10).</p>	<p>Article 221 of the Employment Rights Order 1996</p>	<p>Regulation 3 in the Seafarers (Collective Redundancies, Information and Consultation and Insolvency Miscellaneous Amendments) Regulations (Northern Ireland) 2020 amends the Employment Rights (Northern Ireland) Order 1996.</p> <p>New Article 221A is inserted</p> <p>“221A. Duty of employer to notify competent authority of a vessel’s flag State of certain redundancies</p> <p>(1) Article 221 has effect subject to this Article if—</p> <p>(a) the duty under Article 221(1) or 221(2) applies to a proposal to dismiss employees as redundant, and</p>

<p>consultations with workers' representatives provided for in Article 2, and particularly the reasons for the redundancies, the number of workers to be made redundant, the number of workers normally employed and the period over which the redundancies are to be effected."</p>				<p>(b) the employees concerned are members of the crew of a seagoing vessel which is registered at a port outside Northern Ireland.</p> <p>(2) The employer must give the notification required by Article 221(1) or (2) to the competent authority of the State where the vessel is registered (instead of to the Department)."</p> <p>The requirement is in a separate Article rather than an amendment to Article 221 as Article 221 is drafted as an obligation to notify the Department. It would be difficult to modify this requirement to notify the flag State for foreign registered seagoing vessels. Breach of the Article 221 notice requirement also carries a penalty (Article 222). The duty to report projected collective redundancies to the</p>
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				<p>Department therefore remains (and this would cover the UK flag state as in Northern Ireland the duty is to report to the Department), but, separately, there is an obligation to notify the flag state of a foreign registered vessel.</p> <p>A further consequential change is needed to Article 239 (Employment outside Northern Ireland).</p> <p>3) In Article 239 (Employment outside Northern Ireland)—</p> <p>(a) in paragraph (2)(d) for “221 and 222” substitute “221 to 222”;</p> <p>(b) after paragraph (3) insert—</p> <p>“(4) For the purposes of paragraph (1) as it relates to Articles 221 to 222, employment on board a ship registered in the United Kingdom is to be treated as</p>
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<p>DIRECTIVE 2002/14/EC (INFORMATION AND CONSULTATION)</p> <p>Article 3(3)</p> <p>'Member States may derogate from this Directive through particular provisions applicable to the crews of vessels plying the high seas.'</p>	<p>ARTICLE 3 OF DIRECTIVE (EU) 2015/1794 (SEAFARERS DIRECTIVE)</p> <p>'Article 3(3) of Directive 2002/14/EC is deleted.'</p>	<p>OBJECTIVE OF AMENDMENT</p> <p>To remove the derogation for the merchant navy from Directive 2002/14/EC in order to put seafarers on an equal footing with land based employees in relation to information and consultation rights.</p>	<p>IMPLEMENTATION OF ARTICLE 3(3) IN DIRECTIVE 2002/14/EC</p> <p>The Information and Consultation of Employees Regulations (Northern Ireland) 2005 (S.R 2005 No. 47), Regulation 40</p> <p>Exception for merchant navy:</p> <p>40.—(1) Subject to paragraph (3), no long haul crew member shall be –</p> <p>(a) a negotiating representative; or</p> <p>(b) an information and consultation representative.</p> <p>(2) In paragraph (1), a “long haul crew member” means a person who is a member of a merchant navy crew other than –</p> <p>(a) a ferry worker; or</p> <p>(b) a person who normally works on voyages the</p>	<p>employment where under his contract a person ordinarily works in Northern Ireland.”.</p>	<p>IMPLEMENTATION OF AMENDMENT TO DIRECTIVE 2002/14/EC</p>	<p>Regulation 4 in the Seafarers (Collective Redundancies, Information and Consultation and Insolvency Miscellaneous Amendments) Regulations (Northern Ireland) 2020:</p> <p>4.—1 The Information and Consultation of Employees Regulations (Northern Ireland) 2005 are amended as follows.</p> <p>Regulation 40 (Exception for merchant navy) is omitted.</p>
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			<p>duration of which is less than 48 hours.</p> <p>(3) Paragraph (1) does not apply where the employer decides that the long haul crew member in question shall be permitted to be, as the case may be, a negotiating representative or an information and consultation representative.</p> <p>(4) Where paragraph (1) applies, no long haul crew member shall –</p> <p>(a) stand as a candidate for election as a negotiating representative or an information and consultation representative; or</p> <p>(b) be elected or appointed to be a negotiating representative or an information and consultation representative.</p>	
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DIRECTIVE 2008/94/EC (INSOLVENCY DIRECTIVE)	ARTICLE 1 OF DIRECTIVE (EU) 2015/1794 (SEAFARERS DIRECTIVE)	OBJECTIVE OF AMENDMENT	IMPLEMENTATION OF ARTICLE 1(3) IN RELATION TO EMPLOYMENT RIGHTS	IMPLEMENTATION OF AMENDMENT TO DIRECTIVE 2008/94/EC
<p>Article 1(3):</p> <p>‘Where such provision already applies in their national legislation, Member States may continue to exclude from the scope of this Directive: (a) domestic servants employed by a natural person; (b) share fishermen.’</p>	<p>Article 1(3) of Directive 2008/94/EC is replaced by the following:</p> <p>‘3. Where such provision already applies in their national legislation, Member States may continue to exclude domestic servants employed by a natural person from the scope of this Directive.’</p>	<p>To bring share fishermen within the scope of the Insolvency Directive but only where Member States treat them as employed.</p>	<p>Article 242 (2) of the Employment Rights Order 1996 excludes share fishermen from the scope of Parts XI to XIV of the Order, which implements the provisions of the Insolvency Directive.</p> <p>Article 242 (4) of the Employment Rights Order 1996 excludes merchant seamen from the scope of Part XIV of the Order (which implements the Insolvency Directive).</p>	<p>Regulation 3 in the Seafarers (Collective Redundancies, Information and Consultation and Insolvency Miscellaneous Amendments) Regulations (Northern Ireland) 2020:</p> <p>4. Article 242 (Mariners) of the Employment Rights (Northern Ireland) Order 1996 is amended as follows.</p> <p>1) In paragraph (2) for “Parts XI to XIV” substitute “Parts 11 and 12”.</p> <p>(b) In paragraph (4) omit “and Part XIV”.</p> <p>(5) The amendments made by paragraphs (2) and (3) and the amendments made by paragraph (4), so far as they relate to Part 13 of the Employment Rights (Northern Ireland) Order 1996, only have effect in relation to dismissals (within the meaning given by Article 223 of the Employment</p>

				<p>Rights (Northern Ireland) Order 1996) which are first proposed by an employer on or after the date on which these Regulations come into operation.</p> <p>(6) The amendment made by paragraph (4), so far as they relate to Part 14 of the Employment Rights (Northern Ireland) Order 1996, only have effect in relation to employees whose employer has become insolvent (within the meaning given by Article 228 of the Employment Rights (Northern Ireland) Order 1996 on or after the date on which these Regulations come into operation.</p>
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DIRECTIVE 2008/94/EC (INSOLVENCY DIRECTIVE)	ARTICLE 1 OF DIRECTIVE (EU) 2015/1794 (SEAFARERS DIRECTIVE)	OBJECTIVE OF AMENDMENT	IMPLEMENTATION OF ARTICLE 1(3) IN RELATION TO PENSION RIGHTS ON INSOLVENCY	IMPLEMENTATION OF AMENDMENT TO DIRECTIVE 2008/94/EC
<p>Article 1(3):</p> <p>‘Where such provision already applies in their national legislation, Member States may continue to exclude from the scope of this Directive: (a) domestic servants employed by a natural person; (b) share fishermen.’</p>	<p>Article 1(3) of Directive 2008/94/EC is replaced by the following:</p> <p>‘3. Where such provision already applies in their national legislation, Member States may continue to exclude domestic servants employed by a natural person from the scope of this Directive.’</p>	<p>To bring share fishermen within the scope of the Insolvency Directive but only where Member States treat them as employed.</p>	<p>Section 161 (6) and (7) Pension Schemes (Northern Ireland) Act 1993 (Application of certain provisions to cases with foreign element):</p> <p>(6) Chapter II of Part VII and section 153 do not apply—</p> <p>(a) to employment where under his contract of employment the employee ordinarily works outside the territory of the member States, or</p> <p>(b) to employment as master or as a member of the crew of a fishing vessel where the employee is remunerated only by a share in the profits or gross earnings of the vessel;</p> <p>and sections 120 and 121 do not apply to employment as a merchant seaman, but section 137 of the Employment Protection (Consolidation) Act 1978 (power to extend</p>	<p>Regulation 2 in the Seafarers (Collective Redundancies, Information and Consultation and Insolvency Miscellaneous Amendments) Regulations (Northern Ireland) 2020:</p> <p>2 – (1) Section 161 of the Pension Schemes (Northern Ireland) Act 1993 (Application of certain provisions to cases with foreign element) is amended as follows.</p> <p>(2) For subsection (6) substitute—</p> <p>“(6) Chapter 2 of Part 7 and section 153 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</p>

		<p>employment protection legislation) applies to Chapter II of Part VII and section 153 as it does to the legislation mentioned in section 137(1)(b) of that Act.</p> <p>(7) In this section —</p> <p>“continental shelf operations” means any activities which, if paragraphs (a) and (d) of subsection (6) of section 23 of the Oil and Gas (Enterprise) Act 1982 (application of civil law to certain off-shore activities) were omitted, would nevertheless fall within subsection (2) of that section;</p> <p>“employment as a merchant seaman” has the meaning given in Article 242(5) of the Employment Rights (Northern Ireland) Order 1996.</p> <p>“regulations” means regulations made by the Department or, as the case may be, the Secretary of</p>	<p>Employment Rights Act 1996 (power to extend employment protection legislation) applies to Chapter 2 of Part 7 and section 153 as it does to the provisions mentioned in that Act.”.</p> <p>(3) In subsection (7) omit the definition of “employment as a merchant seaman”.</p> <p>(4) In consequence of the amendment made by paragraph (3), omit the amendment to section 161(7) of the Pension Schemes (Northern Ireland) Act 1993 that is made by Schedule 1 to the Employment Rights (Northern Ireland) Order 1996.</p> <p>(5) The amendments made by paragraphs (2) to (4) only have effect in relation to employers who become insolvent (within the meaning</p>
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			<p>State and “prescribed” shall be construed accordingly.</p>	<p>given by section 119 of the Pension Schemes (Northern Ireland) Act 1993 on or after the date on which these Regulations come into operation.</p> <p>(6) The substitution made by paragraph (2) is without prejudice to the amendments made by regulation 2(6) of the Occupational and Personal Pension Schemes (Amendment etc.) (Northern Ireland) (EU Exit) Regulations 2019.</p>
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