

**A LAW TO PROVIDE FOR THE SAFEGUARDING AND
PROTECTION OF EMPLOYEES RIGHTS IN THE EVENT OF THE
TRANSFER OF UNDERTAKINGS, BUSINESSES OR PARTS THEREOF.**

1. This Law may be cited as the Safeguarding and Protection of Employees Rights in the Event of the Transfer of Undertakings, Businesses or Parts Thereof, of 2000.

2. In this Law, unless the context otherwise requires –

"employee" means any person who works for another person under a contract of employment, or apprenticeship or under such conditions that an employment relationship between employer and employee can be established;

"transferee" means any natural or legal person who, by reason of a transfer within the meaning of subsections (1), (2) and (3) of section (3) below, becomes the employer in respect of the undertaking, business or part of the undertaking or business;

"transferor" means any natural or legal person who, by reason of a transfer within the meaning of subsections (1), (2) and (3) of section (3) above, ceases to be the employer in respect of the undertaking, business or part of the undertaking and business;

"workers' representatives" means the representatives of the employees provided by Law or practice;

3.- (1) This Law shall apply to any transfer of undertakings or businesses or parts of undertakings or businesses to another employer by reason of a legal transfer or a merger.

(2) Subject to the provisions of subsection (1) above and the following provisions of this section, there will be a transfer, within the meaning of the Law, where the economic entity retains its identity as an identifiable grouping of resources pursuing an economic venture or activity, whether or not that venture or activity is the main, or an ancillary.

(3) This Law shall apply to public and private undertakings engaged in economic activities whether or not they are for profit or non-profit purposes:

Provided that an administrative reorganisation of public authorities or the transfer of administrative functions within public authorities shall not be deemed to be a transfer for the purposes of this Law.

(4) This Law shall not apply to sea-going vessels.

4.-(1) The transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee:

Provided that the transferor and transferee may agree that after the date of transfer, they shall continue to be jointly and severally liable in respect to obligations created before the transfer and which arise from a contract of employment or employment relationship in force at the time of the transfer.

(2) Following the transfer, the transferee shall continue to observe the agreed terms and conditions of any collective agreement on the same terms applicable to the transferor under that agreement, or practice, until the date of the termination, or expiry of the collective agreement, or until the entry into force, or application of another collective agreement. The existing agreed terms and conditions of employment shall be preserved for a minimum period of one year.

(3) (a) The provisions of subsections (1) and (2) above shall not apply in relation to employees' rights to old-age, invalidity or survivors' benefits, under supplementary company or inter-company pension schemes, other than those provided by the Social Insurance legislation.

(b) Employees who at the time of the transfer are no longer employed by the transferor, shall retain their entitlements to such immediate and prospective rights and benefits, including old-age and invalidity schemes, survivors' benefits under supplementary company or inter-company pension schemes.

5.- (1) The transfer of an undertaking, business or part of undertakings or business shall not of itself constitute grounds for the dismissal of an employee by the transferor or the transferee:

Provided that this provision shall not prejudice the right of dismissals, which are made for economic, technical or organisational reasons which, require changes in the level of employment.

(2) If the contract of employment, or employment relationship, are terminated due to the fact that the transfer involves a substantial change in the terms of employment to the detriment of the employee, the employer shall be deemed to have been responsible for the termination of the contract of employment, or employment relationship.

6. Sections 4 and 5 shall not apply to a transfer of an undertaking, business or part of an undertaking or business when the transferor is the subject of bankruptcy, liquidation or other similar insolvency proceedings instituted for the purpose of liquidating the assets of the transferor under the supervision of a competent legal authority.

7.-(1)(a) If, on transfer, an undertaking, business or part of an undertaking or business retains its autonomy, the status, representation and function of the representatives or of the representation of the employees affected by the transfer shall be preserved on

the same terms and subject to the same conditions as existed before the date of the transfer by virtue of law, regulations, administrative provisions, collective agreement or practice.

(b) The provisions of paragraph (a) above shall not apply if the conditions necessary for the reappointment of the workers' representatives or for the reconstitution of the representation of the employees are fulfilled, under existing laws, regulations, administrative provisions, collective agreements, or practice, or by agreement with the workers' representatives,.

(c) Where the undertaking, business or part of an undertaking or business does not retain its autonomy, the transferor and the transferee shall take all the necessary measures to ensure that the employees transferred will continue to be properly represented during the period necessary for the reconstitution or reappointment of the representation of employees in accordance with the Law or practice.

(2) If the terms of office of the workers' representatives affected by the transfer expires as a result of the transfer, the representatives shall continue to enjoy the protection provided for by Laws, Regulations, collective agreements or practice.

8.-(1) (a) The transferor and transferee shall be obliged to inform the employees or their workers' representatives affected by a transfer, of the following:

- (i) The date of the proposed date of transfer;
- (ii) the reasons of the transfer;
- (iii) the legal, financial and social implications of the transfer with respect to the employees; and
- (iv) the anticipated measures to be taken in relation to the employees.

(b) The transferor shall notify the employees or their workers' representatives of the information referred to in paragraph (a) in good time before the transfer is effected;

(c) the transferee shall give the information referred to in paragraph (a) above to the employees or the workers' representatives, in good time, and in any event before the employees are directly affected by the transfer with regards to employment and working conditions.

(d) The obligations provided by this section shall apply irrespective of whether the decision resulting in the transfer had been taken by the employer or by an undertaking controlling the employer.

(2) In considering alleged breaches of information and consultation obligations provided by this Law, the argument which is based on the fact that the information was not provided by the undertaking controlling the employer shall not be accepted as

an excuse.

(3) When the transferor or the transferee intend to alter the employment status of their employees, they are obliged to enter into consultation with the employees or the workers' representatives for these alterations in good time and with purpose to reaching an agreement.

(4) The information and consultation shall cover at least the measures envisaged in relation to the employees and they shall take place in good time before the transfer.

(5) In the case where in an undertaking, business or part of undertaking or business there are no workers' representatives for reasons beyond their control, the information referred to in subsection 1(a) above shall be given, in good time to the individual employees.

9.-(1) Without prejudice to the employees' rights to damages, an employer who resorts to insolvency proceedings for the purpose of defeating the rights of his employees under this Law, shall be guilty of an offence and on conviction shall be liable to a fine not exceeding one thousand pounds.

(2) An employer who contravenes the provisions of section 8 with respect to information and consultation shall be guilty of an offence and, on conviction, he/she shall be liable to a fine not exceeding five hundred pounds.

10.-(1) In the case where the transferor or transferee terminates the employment relationship due to the transfer of the undertaking and not due to financial, technical or organisational reasons which, require changes in the level of employment, the termination is illegal and the employee is entitled to damages which shall be calculated according to the years of service and the remaining terms of employment at the transferor's undertaking and in accordance with the Termination of Employment Laws of 1967 to 1994.

(2) Any dismissal made due to a transfer and before the transfer is effected is illegal and it will be considered as dismissal by reason of the transfer.

(3) In the case where the employer terminates the employment relationship for financial, technical or organisational reasons before or after a transfer, he/she is obliged to compensate the employee in accordance with the Employment Termination Laws of 1967 to 1994.