



AMICUS RESPONSE TO THE DTI'S "EMPLOYERS' DUTY TO NOTIFY THE SECRETARY OF STATE" CONSULTATION DOCUMENT

1. Introduction

- 1.1. **Amicus is the UK's second largest trade union with 1.2 million members across the private and public sectors. Our members work in a range of industries including, manufacturing, energy, financial services, print, media, construction and not for profit sectors, local government, education and the NHS.**
- 1.2. Amicus has been involved in the front line negotiation with employers over redundancy issues for many years and therefore welcomes the opportunity to contribute to the consultation document.

2. The Consultation

- 2.1. In the consultation documentation it asks four key questions which we shall address below.

3. ***Do consultees agree that this change to the law is required, following the Junk judgment?***

- 3.1. It is the view of Amicus that although the case law now clarifies the position on consultation prior to redundancy, a clear direction from government in the form of a change in the law sets the principle in stone and makes the situation unambiguous.
- 3.2. It is clear that the view of the ECJ following the Junk -v- Kühnel decision is that the procedure in Germany that has been adopted and also thus far in the UK needs clarification. Not to implement a change in legislation would result in potential challenges to the Junk decision at ECJ level or challenges to the UK government for not correctly implementing the change to domestic law. It therefore would be remiss of government not to make such an alteration.

3.3 However, Amicus are of the opinion that the legislative changes do not go far enough and would urge the government to implement more extensive revisions to the legislation including a requirement for employers to notify recognised trade unions at the same time as the secretary of state of proposed redundancies and amending S.188 of the TULRCA 1992 to require employers to complete consultation with the recognised trade union or appropriate workforce representatives before redundancy notices are issued.

4. Do you have any comments on the detailed drafting of the proposed change to the law? If so, please specify.

4.1. It is noted that the notification prior to redundancy notices is directed towards the Secretary of State and not extended towards trade unions if there are any recognised or representatives of the workforce to enable negotiations on minimising the effects of redundancy to be instigated.

4.1.1. Paras 43 to 45 of the Junk Judgement states:-

43. *“It thus appears that Article 2 of the directive imposes an obligation to negotiate.*

44. *The effectiveness of such an obligation would be compromised if an employer was entitled to terminate contracts of employment during the course of the procedure or even at the beginning thereof. It would be significantly more difficult for workers’ representatives to achieve the withdrawal of a decision that has been taken than to secure the abandonment of a decision that is being contemplated.*

45. *A contract of employment may therefore be terminated only after the conclusion of the consultation procedure, that is to say, after the employer has complied with the obligations set out in Article 2 of the directive.”*

4.2. Clearly therefore, the implications of the Junk case are to ensure that following this decision employers should not only advise the Secretary of State but also the workforce representatives. Where a trade union has recognition they too should be informed. The draft proposed reform does not take this into account and only requires that the HR1 form or its replacement should be filed with the Secretary of State prior to any notifications being issued.

4.3. The employers should be under a duty to provide the recognised trade union or workforce representative with a copy of the HR1 notification at the same time as submitting the form to the Secretary of State. Amicus

believes that logically there has to be an amendment of S.188 which explicitly requires employers to complete consultation with Trade Unions or other workforce representatives before redundancy notices are issued.

4.4. This is an omission which could lead to confusion. The period of consultation to the government should be used to try and alleviate the effects of a redundancy situation rather than leaving the negotiations until after the Governments consultation period is over.

5. *Are there any other consequences of these Regulations, which the Government has not anticipated? Please specify.*

5.1. As outlined above if the government does not incorporate the above revised adjustment, it leaves the door open for litigation to close it again at a later date, with huge legal cost implications.

5.2. The inference of both the Junk decision and proposed amendments may be perceived as causing an extension of time before the employee can be made redundant, which clearly could be put to good use in not only reducing the impact but also assisting the effected parties in finding alternative employment and training if appropriate, rather than being just a paper exercise.

5.3. This would especially be true of liquidations when companies are either taken over or enter into financial difficulties.

6. *What will be the impact of these Regulations on employer costs or otherwise? Do you agree with the assessment of the costs and benefits made in the partial Regulatory Impact Assessment?*

If not, please specify your reasons and provide additional information to assist the assessment.

6.1. At present from bitter experience the practice of some employers and liquidators in particular in dealing with such situations is to announce redundancies, in some cases only minutes after notifying the employee's representatives and government, despite legislation and using the period of notice and consultation to run together. Clearly this is often caused by confusion over the legal impact of this legislation.

6.2. In the main it is true that most companies comply fully with the requirement to notify work place representatives / Trade Unions, from our experience. Some HR departments, however, have even told Amicus representatives that as they did not know who was and was not a union member and hence they didn't know how many members were affected by the redundancy. As a consequence they estimated the number to be

less than the lower limit and therefore they did not notify the union prior to the redundancy announcement.

- 6.3. This change could result in far reaching implications, especially with regard to liquidations and hence the estimated costs may well be far more than what has been anticipated.

7. Conclusion

- 7.1. **Amicus therefore call on the Government to amend the draft changes in legislation to incorporate the requirement to notify the workplace representatives (or trade union if recognised) in addition to the secretary of state to clear up any potential confusion.**
- 7.2. Amicus is happy to add to or clarify any aspect of this submission should you require further information.

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