

# Collective Redundancy Q&A

Business changes resulting in redundancy are inevitable from time to time. Where these involve 20 or more employees the business must carry out collective (as well as individual) consultation, following a set process and timescale.

This can be daunting for both employers and employees but ensuring compliance with the duty to collectively consult under section 188 of Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) is key.

## Overview of TULRCA

<b>When does the duty arise?</b>	Where the employer proposes to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less. (NB redundancy for this purpose includes dismissal and re-engagement on new contractual terms, i.e. changing terms and conditions of employment)
<b>Who must the employer inform and consult?</b>	'Appropriate representatives' of the affected employees (includes those affected by dismissals or measures in connection with dismissals). The Secretary of State must also be notified.
<b>Who are 'appropriate representatives'?</b>	Trade union representatives where a trade union is recognised in relation to affected employees. Otherwise, either: <ul style="list-style-type: none"><li>• representatives directly elected by the affected employees, or</li><li>• an appropriate standing body of representatives</li></ul>
<b>How does consultation begin?</b>	With the provision of statutory information on the proposals to the appropriate representatives. The Secretary of State must also be notified (usually using form HR1).
<b>What information must be provided?</b>	<ul style="list-style-type: none"><li>• The reasons for the proposed dismissals</li><li>• The numbers and descriptions of employees whom it is proposed to dismiss as redundant</li><li>• The total number of employees of any such description employed by the employer at the establishment in question</li><li>• The proposed method of selecting employees who may be dismissed</li><li>• The proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect</li><li>• The proposed method of calculating the amount of any redundancy payments to be made (over and above SRP)</li><li>• 'Suitable information' about the use of agency workers</li></ul>

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<p><b>When must consultation begin?</b></p>	<p>In good time, but at least:</p> <ul style="list-style-type: none"> <li>• 45 days before the first dismissal takes effect where 100 or more redundancies are proposed;</li> <li>• 30 days before the first dismissal takes effect where 20-99 redundancies are proposed</li> </ul>
<p><b>What must consultation cover?</b></p>	<p>As a minimum, consultation must be undertaken with a view to reaching agreement on:</p> <ul style="list-style-type: none"> <li>• ways and means of avoiding the dismissals;</li> <li>• reducing the number of dismissals; and</li> <li>• mitigating their consequences</li> </ul>
<p><b>What is the penalty for breach of the duty?</b></p>	<p>A protective award of up to 90 days' gross pay per dismissed employee (based on seriousness of employer's default, not loss of earnings). Failure to notify Secretary of State is a criminal offence - liable on summary conviction to an unlimited fine.</p>
<p><b>How does collective consultation tie in with individual consultation?</b></p>	<p>Individual consultation must still take place and may run concurrently with the collective consultation process. Consultation with affected employees on the reasons for the proposed redundancies, the selection criteria/their application to employees and alternative employment are key to establishing the fairness of any dismissal.</p>
<p><b>What are Outset's top ten tips for effective consultation?</b></p>	<ol style="list-style-type: none"> <li>1. Establish the business case</li> <li>2. Consider alternatives to redundancy</li> <li>3. Establish proposed numbers of affected employees and timescale</li> <li>4. Consider allocation of responsibilities for different aspects of the consultation</li> <li>5. Make arrangements for employee representatives to be elected if necessary</li> <li>6. Identify appropriate selection pools</li> <li>7. Identify the proposed selection criteria</li> <li>8. Establish redundancy terms</li> <li>9. Identify possible outplacement and other support to be provided</li> <li>10. Develop a proposed timetable for consultation.</li> </ol>