



Department
for Transport

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House of Commons
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From the Minister of State
The Rt. Hon. John Hayes MP

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Our Ref:

0 4 FEB 2015

Dear Richard

Part 1 of the Infrastructure Bill – changing the status of the Highways Agency

I said I would write to clarify the position on the amendment that we have made (amendment 116) to Schedule 3 of the Bill. Your particular concern was around the use of “constructive dismissal” in the amendment in paragraph 9(3) of Schedule 3.

To be clear, my intention in the drafting of this section is to reflect the position as it would be under TUPE.

Regulation 4(9) of TUPE provides that, where a transfer involves a substantial detrimental change to an employee’s working conditions, the employee is entitled to treat their contract of employment as having been terminated, and the employee is treated as having been dismissed. TUPE does not state expressly that this amounts to a “constructive dismissal” but that is both the intention and the effect of that wording. It is a constructive dismissal because it is the employee who takes the step that results in the termination of the contract. Under regulation 4(10) of TUPE no damages are

payable as a result of such a dismissal in respect of any unpaid wages relating to a notice period the employee has not worked.

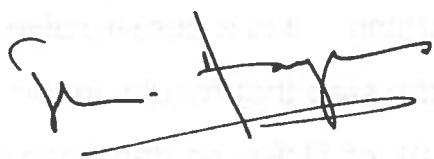
The amendment which inserts a new paragraph 9(3A) into Schedule 3 needs to be read together with the existing paragraph 9(3). Taken together they reflect regulation 4(9) and (10) of TUPE. The amendment makes clear, as TUPE intends, that it applies in relation to “a constructive dismissal occurring under sub-paragraph (3)” – that is a constructive dismissal occurring as a result of an employee’s decision to treat their employment contract as terminated due to a substantial detrimental change.

Whilst paragraph 9(3) does not state expressly that an employee’s decision to terminate their contract in accordance with that paragraph amounts to a dismissal, the reference to “constructive dismissal” in the inserted paragraph 9(3A) makes it clear that this is the case. Rather than leave the wording as slightly ambiguous, I have chosen to expressly state that this circumstance amounts to a constructive dismissal.

I must emphasise that this amendment does not otherwise affect any employee rights to claim constructive dismissal or other compensation rights.

I believe that we share the same outcome on what we are trying to achieve in the amendment and that this may just be a question over the wording we have chosen to use. I am very happy to meet and explain this further if you feel that would be helpful.

A copy of this letter has been placed in the House libraries.

A handwritten signature in black ink, appearing to be 'John Hayes', written over a horizontal line.

THE RT. HON. JOHN HAYES MP