



This guidance is a benefit of membership. Members are urged not to circulate it outside their organisations. They are encouraged however to circulate it to individuals within their organisations to whom it may be relevant.

GUIDANCE ON THE STATUTORY COLLECTIVE REDUNDANCY CONSULTATION PROCEDURE - SOLT/BECTU and UK Theatre/BECTU

This guidance is for members who are proposing to make 20 or more of their employees redundant where this number includes those employed under the SOLT or UK Theatre/BECTU agreement. This is guidance on the application of the statutory collective redundancy procedure to the BECTU employees who are at risk of redundancy.

This note is intended to provide general information only and should not be treated as a definitive guide or relied on as legal advice. As legal advice must be tailored to the specific circumstances of each case, the contents of this note are not intended to be a substitute for taking advice in person from a qualified lawyer on the requirements for your particular circumstances, which, given the complexities of the law in this area, we would advise you to take.

As many of you will know, the statutory collective redundancy consultation procedure applies where employers **propose to dismiss 20 or more employees as redundant** at one establishment within a period of 90 days. This involves consultation with the representatives of those employees, BECTU in this case. If BECTU is not the recognised trade union for other employees you are proposing to make redundant or if other employees are not at risk of redundancy, but may be affected by the proposed dismissals or measures taken in connection with the dismissals, you should seek legal advice as the obligation to consult will also apply to them.

Failure to follow the provisions can result in a **penalty of up to 90 days' gross pay per affected employee.**

You must submit a HR1 form

This is advance notification to the government of potential redundancies. Failure to file a [HR1 form](#) is a criminal offence and may result in criminal prosecution.

The form must be received by the government at least 30 or 45 days (whichever period is relevant – see “Timing” below) before the first dismissal.

You must also send a copy to BECTU.

Timing

Consultation must begin in “good time” before redundancies. If you are proposing to make 100 or more redundancies, you will need to start consultation at least **45 days** before the first dismissal, ie the date that employment ends. If there are 20-99 employees being made redundant, the period is at least **30 days** before the first dismissal. However, please see below in this paragraph if the UK Theatre/BECTU agreement applies to your employees.

Dismissals cannot take effect before the end of the minimum statutory 30 or 45-day period but the consultation process does not necessarily have to last for this period. It is possible to serve notice of dismissal before the end of the minimum statutory period as long as meaningful consultation has taken place with a view to reaching agreement, consultation has been completed and the notice does not take effect until the minimum statutory 30 or 45-day period has ended. Be aware that if notice is served before the end of the minimum statutory consultation period the consultation process may be more likely to be challenged on the basis that it was not meaningful or genuine.

Please note that under the UK Theatre/BECTU agreement, BECTU must be consulted at least **60 days prior to the first dismissal taking effect** so, in relation to employees employed under the UK Theatre/BECTU agreement, this 60-day period will apply for consultation purposes instead of the minimum statutory periods.

Write to BECTU

SOLT: Sofie Mason, Negotiations Officer, BECTU, 373-377 Clapham Road, London SW9 9BT, smason@bectu.org.uk

UK Theatre: Helen Ryan, Arts & Entertainment Assistant National Secretary, BECTU, 373-377 Clapham Road, London SW9 9BT, hryan@bectu.org.uk

You should write to BECTU to inform them that you are triggering the collective redundancy consultation procedure because you are proposing to make redundancies and invite BECTU to comment on your proposal, stating that you will take into account any comments put forward before taking action. It is best to keep control of the timeframe, which you could do by using this letter to invite BECTU to discuss their comments within a day or two of this letter. You must cover the following:

- Reasons for the proposed dismissals. This should be based on your particular circumstances. This may include, for example,
 - explaining that you utilised the government’s job retention scheme to place these employees on furlough leave, following consultation, as a means to avoid redundancies;
 - explaining that the recently announced changes to the job retention scheme, which will result in your organisation having to contribute to the salaries of those currently

furloughed from August, will have a significant impact on the financial position of your organisation because theatres remain closed with no revenue and there is no date for re-opening; and

- highlighting that staff costs represent the largest cost to your business.
- Number and description of employees at risk
 - List employees split by category, eg Automation – 3, Sound 4.
- Total number of employees of each description.
- If you are not proposing to dismiss all BECTU employees, the proposed method of selection for dismissal, eg the selection pools identified, objective selection criteria to be used, eg performance, attendance, disciplinary records – all of which should be evidenced by existing documentation. If applicable, this is a key area where issues could be raised, including claims based on protected characteristics, and we would advise you to take individual legal advice on proposed selection pools, affected individuals and selection criteria.
- The proposed method of carrying out the dismissals, including the period over which dismissals are to take effect. Again, we would recommend that you take legal advice on this aspect.
- State that statutory redundancy payments will be calculated in the usual way (unless you are proposing enhanced redundancy payments, in which case set out the proposed method of calculating the enhanced redundancy pay).
- The number of agency workers you have in your organisation, the parts of your organisation they work in and the type of work they do.
- State that BECTU is invited to comment on the proposals and you will consider their proposals with a view as to whether it is possible to establish whether to a) avoid the dismissals; b) reduce the number of employees to be dismissed; and c) mitigate the consequences of these dismissals.

Consultation

It is crucial that you present your plans as proposals rather than indicate that any decisions have already been made.

Whilst you do not have come to an agreement with BECTU, the consultation should be undertaken with a view to reaching agreement on:

- ways of avoiding the dismissals;
- reducing the number of employees to be dismissed; and
- mitigating the consequences of the dismissals, eg outplacement support.

If you are selecting employees, you should also consult BECTU on the selection criteria and its application to the employees.

Special circumstances

There is a limited “special circumstances” defence which it may be possible to rely on if it is not reasonably practicable to comply with certain obligations under the procedure, eg the timings, but it is of limited application and employers are still expected to take reasonable steps to comply, so legal advice on your particular situation should be sought if you are seeking to rely on this.

Prior consultation

If you used the collective redundancy consultation procedure to furlough the same employees and you wish to use that process to reduce your obligations under the collective procedure in relation to the proposed redundancies, you should seek specific legal advice on your circumstances given the penalties for non-compliance. For example, the position may depend on the content of your previous consultation and/or any ongoing correspondence with BECTU.

Individual consultation

To avoid a claim of unfair dismissal from those with 2 years’ service you will still need to consult with individuals in addition to collective consultation. This involves conducting individual consultation meetings to include (where applicable):

- informing them that they are “at risk” of redundancy, including the reasons for this and the process in relation to this;
- enabling them to comment on any selection criteria and selection pool;
- enabling them to challenge their selection;
- discussion of scoring processes;
- enabling them to suggest ways to avoid or mitigate their redundancy;
- the proposed terms of any redundancy;
- considering any suitable alternative employment; and
- considering any other relevant matters raised by them.

Whether you can run individual consultation alongside collective consultation, in order to finish the process before the change in the furlough scheme, will depend on your particular circumstances. There will be a need to ensure the collective process is not jeopardised by the individual process, so we advise you to take specific legal advice on this.

Marsha Bull

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