
STATUTORY INSTRUMENTS

2009 No. 2402

The European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009

PART 6

COMPLIANCE AND ENFORCEMENT

Disputes about the operation of an employee involvement agreement or the standard rules on employee involvement

20.—(1) Where—

- (a) an employee involvement agreement has been agreed, or
- (b) the standard rules on employee involvement apply,

a complaint may be presented to the Industrial Court by a relevant applicant who considers that the competent organ of a participating company or of the SE has failed to comply with the terms of the employee involvement agreement or, as the case may be, one or more of the standard information and consultation provisions.

(2) A complaint brought under paragraph (1) must be brought within the period of 3 months commencing with—

- (a) the date of the alleged failure, or
- (b) where the failure takes place over a period, the last day of that period.

(3) In this regulation—

“failure” means an act or omission;

“relevant applicant” means—

- (a) in a case where a representative body has been appointed or elected, a member of that body;
- (b) in a case where no representative body has been elected or appointed, an information and consultation representative or an employee of the SE.

(4) Where it finds the complaint well-founded, the Industrial Court—

- (a) must make a declaration to that effect, and
- (b) may make an order requiring the SE to take such steps as are necessary to comply with the terms of the employee involvement agreement or, as the case may be, the standard rules on employee involvement.

(5) An order made under paragraph (4) must specify—

- (a) the steps which the SE is required to take;
- (b) the date of the failure;
- (c) the period within which the order must be complied with.

(6) If the Industrial Court makes a declaration under paragraph (4), the relevant applicant may, within the period of three months beginning with the day on which the decision is made, make an application to the High Court for a penalty notice to be issued.

(7) Where such an application is made, the High Court must issue a written penalty notice to the SE requiring it to pay a penalty to the Department for Employment and Learning in respect of the failure, unless the High Court is satisfied, on hearing representations from the SE,—

- (a) that the failure resulted from a reason beyond its control, or
- (b) that it has some other reasonable excuse for its failure.

(8) Regulation 21 applies in respect of a penalty notice issued under this regulation.

(9) No order of the Industrial Court under this regulation has the effect of suspending or altering the effect of any act done or of any agreement made by the participating company or the SE.

Penalties

21.—(1) A penalty notice issued under regulation 20 must specify—

- (a) the amount of the penalty which is payable;
- (b) the date before which the penalty must be paid;
- (c) the failure and period to which the penalty relates.

(2) No penalty set by the High Court under this regulation may exceed £75,000.

(3) When setting the amount of the penalty, the High Court must take into account—

- (a) the gravity of the failure;
- (b) the period of time over which the failure occurred;
- (c) the reason for the failure;
- (d) the number of employees affected by the failure;
- (e) the number of employees employed by the undertaking.

(4) The date specified under paragraph (1)(b) must not be earlier than the end of the period within which an appeal against a decision or order made by the Industrial Court under regulation 20 may be made.

(5) If the specified date in a penalty notice has passed and —

- (a) the period during which an appeal may be made has expired without an appeal having been made, or
- (b) such an appeal has been made and determined,

the Department for Employment and Learning may recover from the SE, as a civil debt due to it, any amount payable under the penalty notice which remains outstanding.

(6) The making of an appeal suspends the effect of the penalty notice.

(7) Any sums received by the Department for Employment and Learning under regulation 20 or this regulation must be paid into the Consolidated Fund.

Misuse of procedures

22.—(1) If an employees' representative, or an employee for whom there is no such representative, believes that a participating company or an SE is misusing or intending to misuse the SE or the powers in these Regulations for the purpose of—

(a) depriving the employees of that participating company or of any of its concerned subsidiaries or, as the case may be, of the SE or of any of its subsidiaries of their rights to employee involvement, or
(b) withholding rights from any of the employees referred to in sub-paragraph (a),
the representative or, as the case may be, the employee may make a complaint to the Industrial Court.

(2) Where a complaint is made to the Industrial Court under paragraph (1)—

(a) before registration of the SE, or

(b) within the period of 12 months following the date of its registration,

the Industrial Court must uphold the complaint unless the respondent proves that it did not misuse or intend to misuse the SE or the powers in these Regulations for a purpose specified in sub-paragraph (a) or (b) of paragraph (1).

(3) If it finds the complaint to be well founded, the Industrial Court—

(a) must make a declaration to that effect, and

(b) may make an order requiring the participating company or the SE, as the case may be, to take such action as is specified in the order to ensure that the employees referred to in paragraph (1)(a) are not deprived of their rights to employee involvement or that such rights are not withheld from them,

and the provisions of regulations 20(6) to (9) and 21 apply where the Industrial Court makes a declaration or order under this paragraph as they apply where it makes a declaration or order under regulation 20(4).

Exclusivity of remedy

23. The remedy for infringement of the rights conferred by these Regulations is by way of complaint to the Industrial Court in accordance with these Regulations and not otherwise.