
STATUTORY INSTRUMENTS

1999 No. 3323

**The Transnational Information and
Consultation of Employees Regulations 1999**

**PART I
GENERAL**

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Transnational Information and Consultation of Employees Regulations 1999 and shall come into force on 15th January 2000.

(2) These Regulations extend to Northern Ireland.

Interpretation

2.—(1) In these Regulations—

“the 1996 Act” means the Employment Rights Act 1996(1);

“the 1996 Order” means the Employment Rights (Northern Ireland) Order 1996(2)

“ACAS” means the Advisory, Conciliation and Arbitration Service;

“Appeal Tribunal” means the Employment Appeal Tribunal;

“CAC” means the Central Arbitration Committee;

“central management” means—

(a) the central management of a Community-scale undertaking, or

(b) in the case of a Community-scale group of undertakings, the central management of the controlling undertaking,

or, where appropriate, the central management of an undertaking or group of undertakings that could be or is claimed to be a Community-scale undertaking or Community-scale group of undertakings;

“Community-scale undertaking” means an undertaking with at least 1000 employees within the Member States and at least 150 employees in each of at least two Member States;

“Community-scale group of undertakings” means a group of undertakings which has—

(a) at least 1000 employees within the Member States,

(b) at least two group undertakings in different Member States, and

(c) at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State;

(1) 1996 c. 18.

(2) S.I.1996/1919 (N.I. 16).

“consultation” means the exchange of views and establishment of dialogue between members of a European Works Council in the context of a European Works Council, or information and consultation representatives in the context of an information and consultation procedure, and central management or any more appropriate level of management;

“contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

“controlled undertaking” has the meaning assigned to it by regulation 3;

“controlling undertaking” has the meaning assigned to it by regulation 3;

“employee” means an individual who has entered into or works under a contract of employment and in Part VII and regulation 41 includes, where the employment has ceased, an individual who worked under a contract of employment;

“employees' representatives” means—

- (a) if the employees are of a description in respect of which an independent trade union is recognised by their employer for the purpose of collective bargaining, representatives of the trade union who normally take part as negotiators in the collective bargaining process, and
- (b) any other employee representatives elected or appointed by employees to positions in which they are expected to receive, on behalf of the employees, information—
 - (i) which is relevant to the terms and conditions of employment of the employees, or
 - (ii) about the activities of the undertaking which may significantly affect the interests of the employees,

but excluding representatives who are expected to receive information relevant only to a specific aspect of the terms and conditions or interests of the employees, such as health and safety or collective redundancies;

“European Works Council” means the council, established under and in accordance with—

- (a) regulation 17, or regulation 18 and the provisions of the Schedule, or
- (b) where appropriate, the provisions of the law or practice of a Member State other than the United Kingdom which are designed to give effect to Article 6 of, or Article 7 of and the Annex to, the Transnational Information and Consultation Directive,

with the purpose of informing and consulting employees;

“Extension Directive” means Council Directive [97/74/EC](#) of 15 December 1997⁽³⁾ extending, to the United Kingdom, the Transnational Information and Consultation Directive;

“group of undertakings” means a controlling undertaking and its controlled undertakings;

“group undertaking” means an undertaking which is part of a Community-scale group of undertakings;

“independent trade union” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992⁽⁴⁾ or in Northern Ireland the 1996 Order;

“information and consultation procedure” means one or more information and consultation procedures agreed under—

- (a) regulation 17, or
- (b) where appropriate, the provisions of the law or practice of a Member State other than the United Kingdom which are designed to give effect to Article 6(3) of the Transnational Information and Consultation Directive;

⁽³⁾ OJ L 10, 16.1.98, p.22.

⁽⁴⁾ 1992 c. 52.

“information and consultation representative” means a person who represents employees in the context of an information and consultation procedure;

“local management” means the management of one or more establishments in a Community-scale undertaking or of one or more undertakings in a Community-scale group of undertakings which is not the central management;

“Member State” means a state which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993⁽⁵⁾;

“special negotiating body” means the body established for the purposes of negotiating with central management an agreement for a European Works Council or an information and consultation procedure;

“Transnational Information and Consultation Directive” means Council Directive 94/45/EC of 22 September 1994⁽⁶⁾ on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees;

“UK management” means the management which is, or would be, subject to the obligation in regulation 13(2) or paragraph 4(1) of the Schedule, being either the central management in the United Kingdom or the local management in the United Kingdom;

“UK member of the special negotiating body” means a member of the special negotiating body who represents UK employees for the purposes of negotiating with central management an agreement for a European Works Council or an information and consultation procedure.

(2) To the extent that the Transnational Information and Consultation Directive and the Extension Directive permit the establishment of more than one European Works Council in a Community-scale undertaking or Community-scale group of undertakings, these Regulations shall be construed accordingly.

(3) In paragraphs (1) and (4) of this regulation and in regulations 6, 13 to 15 and paragraphs 3 to 5 of the Schedule, references to “UK employees” are references to employees who are employed in the United Kingdom by a Community-scale undertaking or Community-scale group of undertakings.

(4) In regulations 13 and 15 and paragraphs 3 and 4 of the Schedule, references to “UK employees' representatives” are references to employees' representatives who represent UK employees.

(5) In the absence of a definition in these Regulations, words and expressions used in particular regulations and particular paragraphs of the Schedule to these Regulations which are also used in the provisions of the Transnational Information and Consultation Directive or the Extension Directive to which they are designed to give effect have the same meaning as they have in those provisions.

Controlled and Controlling Undertaking

3.—(1) In these Regulations “controlling undertaking” means an undertaking which can exercise a dominant influence over another undertaking by virtue, for example, of ownership, financial participation or the rules which govern it and “controlled undertaking” means an undertaking over which such a dominant influence can be exercised.

(2) The ability of an undertaking to exercise a dominant influence over another undertaking shall be presumed, unless the contrary is proved, when in relation to another undertaking it directly or indirectly—

(5) The application of the Transnational Information and Consultation Directive was extended to the EEA by virtue of Decision 55/95 of the EEA Joint Committee, 22 July 1995 (O.J. L 140 13.6.96, p.52). The application of the Extension Directive was extended to the EEA by virtue of Decision 95/98 of the EEA Joint Committee, 25 September 1998 (O.J. L 189 22.7.99, p.69). References to the Directives are in point 27 in Annex XVIII to the EEA Agreement.

(6) O.J. L 254, 30.9.94, p.64.

- (a) can appoint more than half of the members of that undertaking's administrative, management or supervisory body;
 - (b) controls a majority of the votes attached to that undertaking's issued share capital; or
 - (c) holds a majority of that undertaking's subscribed capital.
- (3) In applying the criteria in paragraph (2), a controlling undertaking's rights as regards voting and appointment shall include—
- (a) the rights of its other controlled undertakings; and
 - (b) the rights of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other of the controlling undertaking's controlled undertakings.
- (4) Notwithstanding paragraphs (1) and (2) above an undertaking shall not be a controlling undertaking of another undertaking in which it has holdings where the first undertaking is a company referred to in Article 3(5)(a) or (c) of Council Regulation (EEC) No. 4064/89 of 21 December 1989(7) on the control of concentrations between undertakings.
- (5) A dominant influence shall not be presumed to be exercised solely by virtue of the fact that an office holder is exercising functions, according to the law of a Member State, relating to liquidation, winding-up, insolvency, cessation of payments, compositions of creditors or analogous proceedings.
- (6) Where the law governing an undertaking is the law of a Member State, the law applicable in order to determine whether an undertaking is a controlling undertaking shall be the law of that Member State.
- (7) Where the law governing an undertaking is not that of a Member State the law applicable shall be the law of the Member State within whose territory—
- (a) the representative of the undertaking is situated; or
 - (b) in the absence of such a representative, the management of the group undertaking which employs the greatest number of employees is situated.
- (8) If two or more undertakings (whether situated in the same or in different Member States) meet one or more of the criteria in paragraph (2) in relation to another undertaking, the criteria shall be applied in the order listed in relation to each of the first-mentioned undertakings and that which meets the criterion that is highest in the order listed shall be presumed, unless the contrary is proved, to exercise a dominant influence over the undertaking in question.

Circumstances in which provisions of these Regulations apply

4.—(1) Subject to paragraph (2) the provisions of regulations 7 to 41 and of regulation 46 shall apply in relation to a Community-scale undertaking or Community-scale group of undertakings only where, in accordance with regulation 5, the central management is situated in the United Kingdom.

(2) The following regulations shall apply in relation to a Community-scale undertaking or Community-scale group of undertakings whether or not the central management is situated in the United Kingdom—

- (a) regulations 7 and 8(1), (2) and (4) (provision of information on employee numbers);
- (b) regulations 13 to 15 (UK members of the special negotiating body);
- (c) regulation 18 to the extent it applies paragraphs 3 to 5 of the Schedule (UK members of the European Works Council);
- (d) regulations 23(1) to (5) (breach of statutory duty);
- (e) regulations 25 to 33 (protections for members of a European Works Council, etc.);

(7) O.J. L 395, 30.12.89, p. 1.

- (f) regulations 34 to 39 (enforcement bodies) to the extent they relate to applications made or complaints presented under any of the other regulations referred to in this paragraph;
- (g) regulations 40 and 41 (restrictions on contracting out).

The central management

5.—(1) The central management shall be responsible for creating the conditions and means necessary for the setting up of a European Works Council or an information and consultation procedure in a Community-scale undertaking or Community-scale group of undertakings where—

- (a) the central management is situated in the United Kingdom;
- (b) the central management is not situated in a Member State and the representative agent of the central management (to be designated if necessary) is situated in the United Kingdom; or
- (c) neither the central management nor the representative agent (whether or not as a result of being designated) is situated in a Member State and—
 - (i) in the case of a Community-scale undertaking, there are employed in an establishment, which is situated in the United Kingdom, more employees than are employed in any other establishment which is situated in a Member State, or
 - (ii) in the case of a Community-scale group of undertakings, there are employed in a group undertaking, which is situated in the United Kingdom, more employees than are employed in any other group undertaking which is situated in a Member State, and the central management initiates, or by virtue of regulation 9(1) is required to initiate, negotiations for a European Works Council or information and consultation procedure.

(2) Where the circumstances described in paragraph (1)(b) or (1)(c) apply, the central management shall be treated, for the purposes of these Regulations, as being situated in the United Kingdom and—

- (a) the representative agent referred to in paragraph (1)(b); or
- (b) the management of the establishment referred to in paragraph (1)(c)(i) or of the group undertaking, referred to in paragraph (1)(c)(ii),

shall be treated, respectively, as being the central management.