STATUTORY INSTRUMENTS

2004 No. 2326

The European Public Limited-Liability Company Regulations 2004

PART 1

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the European Public Limited-Liability Company Regulations 2004.

(2) These Regulations come into force on 8th October 2004.

(3) These Regulations extend to Great Britain.

EC Directive and EC Regulation

2. In these Regulations—

"the EC Directive" means Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European Company with regard to the involvement of employees(**1**);

"the EC Regulation" means Council Regulation 2157/2001/EC of 8 October 2001 on the Statute for a European Company(**2**);

and references to numbered Articles are, unless otherwise specified, references to Articles in the EC Regulation.

Interpretation

3.—(1) In these Regulations—

the "1985 Act" mean the Companies Act 1985(**3**);

the "1996 Act" means the Employment Rights Act 1996(**4**);

"SE" means a European Public Limited-Liability Company (or Societas Europaea) within the meaning of the EC Regulation and, except as provided in these Regulations, means an SE which is to be, or is, registered in Great Britain.

(2) Except as otherwise provided in these Regulations, words and expressions listed in the index of defined expressions in section 744A of the 1985 Act have the same meaning as they have in that Act.

(**1**) OJ L 294, 10.11.2001, p. 22.
(**2**) OJ L 294, 10.11.2001, p. 1.
(**3**) 1985 c. 6.
(**4**) 1996 c. 18.

(3) Except as otherwise provided in these Regulations, words and expressions which are used in the EC Regulation or the EC Directive have the same meaning as they have in that Regulation or Directive.

(4) Where a word or expression is both listed in the index of defined expressions referred to in paragraph (2) and used in the EC Regulation or the EC Directive, it has the meaning it has in that Regulation or Directive except as otherwise provided in these Regulations.

PART 2

REGISTRATION OF SEs AND THE REGISTRAR ETC.

The registrar

4. The registrar has the functions conferred by this Part in relation to the registration, or the deletion of the registration, of an SE.

Registration of an SE formed by merger in accordance with Article 2(1)

5. Where it is proposed to register an SE formed by merger in accordance with Article 2(1) there shall be delivered to the registrar a registration form in Form SE5, and, if applicable, Form SE(SR) set out in Schedule 1 together with the documents specified in respect of each Form.

Registration of the formation of a holding SE in accordance with Article 2(2)

6. Where it is proposed to register a holding SE formed in accordance with Article 2(2) there shall be delivered to the registrar a registration form in Form SE6, and, if applicable, Form SE(SR), set out in Schedule 1 together with the documents specified in respect of each Form.

Registration of the formation of a subsidiary SE in accordance with Article 2(3)

7. Where it is proposed to register a subsidiary SE formed in accordance with Article 2(3) there shall be delivered to the registrar a registration form in Form SE7, and, if applicable, Form SE(SR), set out in Schedule 1 together with the documents specified in respect of each Form.

Registration of an SE by the transformation of a public company in accordance with Article 2(4)

8. Where it is proposed to register an SE by the transformation of a public company in accordance with Article 2(4) there shall be delivered to the registrar a registration form in Form SE8, and, if applicable, Form SE(SR) set out in Schedule 1 together with the documents specified in respect of each Form.

Registration of an SE formed as the subsidiary of an SE in accordance with Article 3(2)

9.—(1) Where it is proposed to register an SE formed as the subsidiary of an SE in accordance with Article 3(2) there shall be delivered to the registrar a registration form in Form SE9(1), and, if applicable, Form SE(SR), set out in Schedule 1 together with the documents specified in respect of each Form.

(2) The reference to an SE, a subsidiary of which is to be registered under this regulation, includes a reference to an SE whose registered office is in another Member State.

Registration of an SE on the transfer of its registered office to Great Britain in accordance with Article 8

10. Where it is proposed to transfer to Great Britain the registered office of an SE whose registered office is situated in another Member State there shall be delivered to the registrar a registration form in respect of that SE in Form SE10, and, if applicable, Form SE(SR), set out in Schedule 1 together with the documents specified in respect of each Form.

Certificate of the competent authority under Article 8(8)

11. Where it is proposed to transfer the registered office of an SE from Great Britain to another Member State there shall be delivered to the Secretary of State for the purposes of applying for the issue of a certificate under Article 8(8), a transfer form in Form SE11 set out in Schedule 1 together with the documents specified in that Form.

Registration of an SE

12. The registrar shall register an SE formed or transformed under the provisions of Articles 2 and 3 or an SE whose registered office is transferred to Great Britain under Article 8 where she is satisfied that all the requirements of these Regulations and the EC Regulation in respect of such formation, transformation or transfer of an SE, as the case may be, have been complied with in respect of that SE.

Documents sent to the registrar

13.—(1) The registrar shall retain any document delivered to her under any provision of these Regulations or the EC Regulation and such documents shall be treated as records kept by the registrar for the purposes of the 1985 Act in respect of the SE or the company to which they relate.

(2) For the purposes of this regulation documents delivered to the Secretary of State under regulation 11 shall be treated as documents delivered to the registrar on the deletion of the registration of the SE making the application under the regulation and the provisions of regulation 14 will apply accordingly.

Application of the 1985 Act to the registration of SEs

14. The provisions of the 1985 Act specified in Schedule 2 to these Regulations shall apply in respect of

(a) the registration or the deletion of registration of SEs under these Regulations and the EC Regulation;

(b) the functions of the registrar in respect of such registrations or deletions.

Those provisions shall apply under this regulation subject to any limitations or qualifications specified in relation to each such provision in that Schedule.

False statements in documents sent to the registrar or the Secretary of State

15. Any person who makes a false statement:

(a) in any registration form sent to the registrar under regulations 5 to 10 and regulation 85,

(b) in any transfer form sent to the Secretary of State under regulation 11,

(c) in any document, specified in such a form, or

(d) in any other document required to be sent to the registrar under these Regulations,

which he knows to be false or does not believe to be true is liable, on conviction on indictment to imprisonment not exceeding two years, or to a fine, or to both, and on summary conviction to imprisonment not exceeding three months, or to a fine not exceeding the statutory maximum or to both.

PART 3

EMPLOYEE INVOLVEMENT

CHAPTER 1

INTERPRETATION OF PART 3

Interpretation of Part 3

16.—(1) In this Part—

"absolute majority vote" means a vote passed by a majority of the total membership of the special negotiating body where the members voting with that majority represent the majority of the employees of the participating companies and their concerned subsidiaries and establishments employed in the Member States;

"Appeal Tribunal" means the Employment Appeal Tribunal;

"CAC" means the Central Arbitration Committee;

"dismissed" and "dismissal", in relation to an employee, shall be construed in accordance with Part 10 of the 1996 Act;

"EEA state" means a Member State, Norway, Iceland and Lichtenstein;

"employee" means an individual who has entered into or works under a contract of employment and includes, where the employment has ceased, an individual who worked under a contract of employment;

"employee involvement agreement" means an agreement reached between the special negotiating body and the competent organs of the participating companies governing the arrangements for the involvement of employees within the SE;

"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 employees of their employer who are elected or appointed as employee representatives 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;

"information and consultation representative" has the meaning given to it in regulation 27(5);

"participation" means the influence of the representative body and the employees' representatives in the SE or a participating company by way of the right to—

(a) elect or appoint some of the members of the SE's or the participating company's supervisory or administrative organ; or

(b) recommend and/or oppose the appointment of some or all of the members of the SE's or the participating company's supervisory or administrative organ;

"representative body" means the persons elected or appointed under the employee involvement agreement or under the standard rules on employee involvement;

"SE established by merger" means an SE established in accordance with Article 2(1);

"SE established by formation of a holding company or subsidiary company" means an SE established in accordance with Article 2(2) or 2(3), as the case may be;

"SE established by transformation" means an SE established in accordance with Article 2(4);

"standard rules on employee involvement" means the rules in Schedule 3;

"two thirds majority vote" means a vote passed by a majority of at least two thirds of the total membership of the special negotiating body where the members voting with that majority—

(a) represent at least two thirds of the employees of the participating companies and their concerned subsidiaries and establishments employed in the Member States; and

(b) include members representing employees employed in at least two Member States;

"UK employee" means an employee employed to work in the United Kingdom; and

"UK members of the special negotiating body" means members of the special negotiating body elected or appointed by UK employees.

(2) In this Part, the following terms have the meaning given by Article 2 of the EC Directive—

"participating companies"

"subsidiary"

"special negotiating body"

"involvement of employees"

"information"

"consultation"

and references to a "concerned subsidiary" or a "concerned establishment" shall be construed in accordance with the definition of "concerned subsidiary or establishment" in the EC Directive.

CHAPTER 2

PARTICIPATING COMPANIES AND THE SPECIAL NEGOTIATING BODY

Circumstances in which certain provisions of Part 3 apply

17.—(1) Subject to paragraphs (2) and (3), this Part shall apply where—

(a) a participating company intends to establish an SE whose registered office is to be in Great Britain; or

(b) an SE has its registered office in Great Britain.

(2) Where there are UK employees, Chapter 2 (election or appointment of members of special negotiating body and representation of employees) shall apply, regardless of where the registered office is to be situated, in relation to the election or appointment of UK members of the special negotiating body unless the majority of those employees is employed to work in Northern Ireland.

(3) Chapters 6 to 9 shall apply, regardless of where the registered office of the SE is, or is intended to be situated, where—

(a) a participating company, its concerned subsidiaries or establishments;

(b) a subsidiary of an SE;

(c) an establishment of an SE; or

(d) an employee or an employees' representative,

is registered or situated, as the case may be, in Great Britain.

Duty on participating company to provide information

18.—(1) When the competent organ of a participating company decides to form an SE, that organ shall, as soon as possible after—

(a) publishing the draft terms of merger,

(b) creating a holding company, or

(c) agreeing a plan to form a subsidiary or to transform into an SE,

provide information to the employees' representatives of the participating company, its concerned subsidiaries and establishments or, if no such representatives exist, the employees themselves.

(2) The information referred to in paragraph (1) must include, as a minimum, information—

(a) identifying the participating companies, concerned subsidiaries and establishments,

(b) giving the number of employees employed by each participating company and concerned subsidiary and at each concerned establishment, and

(c) giving the number of employees employed to work in each EEA State.

(3) When a special negotiating body has been formed in accordance with regulation 20, the competent organs of each participating company must provide that body with such information as is necessary to keep it informed of the plan and progress of establishing the SE up to the time the SE has been registered.

Complaint of failure to provide information

19.—(1) An employees' representative or, where there is no such representative for an employee, the employee may present a complaint to the CAC that—

(a) the competent organ of a participating company has failed to provide the information referred to in regulation 18; or

(b) the information provided by the competent organ of a participating company for the purpose of complying with regulation 18 is false or incomplete in a material particular.

(2) Where the CAC finds the complaint well-founded it shall make an order requiring the competent organ to disclose information to the complainant which order shall specify—

(a) the information in respect of which the CAC finds that the complaint is well-founded and which is to be disclosed to the complainant; and

(b) a date (not being less than one week from the date of the order) by which the competent organ must disclose the information specified in the order.

Function of the special negotiating body

20. The special negotiating body and the competent organs of the participating companies shall have the task of reaching an employee involvement agreement.

Composition of the special negotiating body

21.—(1) The competent organs of the participating companies shall make arrangements for the establishment of a special negotiating body which shall be constituted in accordance with paragraphs (2) to (7) below.

(2) In each EEA state in which employees of a participating company or concerned subsidiary are employed to work, those employees shall be given an entitlement to elect or appoint one member of the special negotiating body for each 10% or fraction thereof which those employees represent of the total workforce. These members shall be the `ordinary members'.

(3) If, in the case of an SE to be established by merger, following an election or appointment under paragraph (2), the members elected or appointed to the special negotiating body do not include at least one eligible member in respect of each relevant company the employees of any relevant company in respect of which there is no eligible member shall be given an entitlement, subject to paragraph (4), to elect or appoint an additional member to the special negotiating body.

(4) The number of additional members which the employees are entitled to elect or appoint under paragraph (3) shall not exceed 20% of the number of ordinary members elected or appointed under paragraph (2) and if the number of additional members under paragraph (3) would exceed that percentage the employees who are entitled to appoint or elect the additional members shall be:

(a) if one additional member is to be appointed or elected, those employed by the company not represented under paragraph (3) having the highest number of employees; and

(b) if more than one additional member is to be appointed or elected, those employed by the companies in each EEA state that are not represented under paragraph (3) having the highest number of employees in descending order, starting with the company with the highest number, followed by those employed by the companies in each EEA state that are not so represented having the second highest number of employees in descending order, starting with the company (among those companies) with the highest number.

(5) The competent organs of the participating companies shall, as soon as reasonably practicable and in any event no later than one month after the establishment of the special negotiating body, inform their employees and those of their concerned subsidiaries of the identity of the members of the special negotiating body.

(6) If, following the appointment or election of members to the special negotiating body in accordance with this regulation,

(a) changes to the participating companies, concerned subsidiaries or concerned establishments result in the number of ordinary or additional members which employees would be entitled to elect or appoint under this regulation either increasing or decreasing, the original appointment or election of members of the special negotiating body shall cease to have effect and those employees shall be entitled to elect or appoint the new number of members in accordance with the provisions of these Regulations; and

(b) a member of the special negotiating body is no longer willing or able to continue serving as such a member, the employees whom he represents shall be entitled to elect or appoint a new member in his place.

(7) In this regulation—

(a) "eligible member" means a person who is—

(i) in the case of a relevant company registered in a EEA state whose legislation allows representatives of trade unions who are not employees to be elected to the special negotiating body, an employee of the relevant company or a trade union representative; and

(ii) in the case of a relevant company not registered in such a EEA state, an employee of the relevant company.

(b) "relevant company" means a participating company which has employees in the EEA state in which it is registered and which it is proposed will cease to exist on or following the registration of the SE; and

(c) "the total workforce" means the total number of employees employed by all participating companies and concerned subsidiaries throughout all EEA states.

Complaint about establishment of special negotiating body

22.—(1) An application may be presented to the CAC for a declaration that the special negotiating body has not been established at all or has not been established properly in accordance with regulation 21.

(2) An application may be presented under this regulation by—

(a) a person elected or appointed to be a member of the special negotiating body;

(b) an employees' representative or, where no such representative exists in respect of a participating company or concerned subsidiary, an employee of that participating company or concerned subsidiary; or

(c) the competent organ of a participating company or concerned subsidiary.

(3) The CAC shall only consider an application made under paragraph (1) if it is made within a period of one month from the date or, if more than one, the last date on which the participating companies complied or should have complied with the obligation to inform their employees under regulation 21(5).

(4) Where the CAC finds the application well-founded it shall make a declaration that the special negotiating body has not been established at all or has not been established properly and the competent organs of the participating companies continue to be under the obligation in regulation 21(1).

CHAPTER 3

ELECTION OR APPOINTMENT OF UK MEMBERS OF THE SPECIAL NEGOTIATING BODY

Ballot arrangements

23.—(1) Subject to regulation 24, the UK members of the special negotiating body shall be elected by balloting the UK employees.

(2) The management of the participating companies that employ UK employees ("the management") must arrange for the holding of a ballot or ballots of those employees in accordance with the requirements of paragraph (3).

(3) The requirements referred to in paragraph (2) are—

(a) in relation to the election of ordinary members under regulation 21(2), that—

(i) if the number of members which UK employees are entitled to elect to the special negotiating body is equal to the number of participating companies which have UK employees, there shall be separate ballots of the UK employees in each participating company;

(ii) if the number of members which the UK employees are entitled to elect to the special negotiating body is greater than the number of participating companies which have UK employees, there shall be separate ballots of the UK employees in each participating company and the management shall ensure, as far as practicable, that at least one member representing each such participating company is elected to the

special negotiating body and that the number of members representing each company is proportionate to the number of employees in that company;

(iii) if the number of members which the UK employees are entitled to elect to the special negotiating body is smaller than the number of participating companies which have employees in the UK,—

(aa) the number of ballots held shall be equivalent to the number of members to be elected;

(bb) a separate ballot shall be held in respect of each of the participating companies with the higher or highest number of employees; and

(cc) it shall be ensured that any employees of a participating company in respect of which a ballot does not have to be held are entitled to vote in a ballot held in respect of one of the other participating companies; and

(iv) if there are any UK employees employed by a concerned subsidiary or establishment of non-UK participating companies, the management shall ensure that those employees are entitled to vote in a ballot held pursuant to this regulation.

(b) that in relation to the ballot of additional members under regulation 21(3) the management shall hold a separate ballot in respect of each participating company entitled to elect an additional member.

(c) that in a ballot in respect of a particular participating company, all UK employees employed by that participating company or by its concerned subsidiaries or at its concerned establishments are entitled to vote;

(d) that in a ballot in respect of a particular participating company, any person who is immediately before the latest time at which a person may become a candidate—

(i) a UK employee employed by that participating company, by any of its concerned subsidiaries or at any of its concerned establishments; or

(ii) if the management of that participating company so permits, a representative of a trade union who is not an employee of that participating company or any of its concerned subsidiaries, is entitled to stand as a candidate for election as a member of the special negotiating body in that ballot.

(e) that the management must, in accordance with paragraph (7), appoint an independent ballot supervisor to supervise the conduct of the ballot of UK employees but may instead, where there is to be more than one ballot, appoint more than one independent ballot supervisor in accordance with that paragraph, each of whom is to supervise such of the separate ballots as the management may determine, provided that each separate ballot is supervised by a supervisor;

(f) that after the management has formulated proposals as to the arrangements for the ballot of UK employees and before it has published the final arrangements under sub-paragraph (g) it must, so far as reasonably practicable, consult with the UK employees' representatives on the proposed arrangements for the ballot of UK employees; and

(g) that the management must publish the final arrangements for the ballot of UK employees in such manner as to bring them to the attention of, so far as reasonably practicable, all UK employees and the UK employees' representatives.

(4) Any UK employee or UK employees' representative who believes that the arrangements for the ballot of the UK employees do not comply with the requirements of paragraph (3) may, within a period of 21 days beginning on the date on which the management published the final arrangements under sub-paragraph (g), present a complaint to the CAC.

(5) Where the CAC finds the complaint well-founded it shall make a declaration to that effect and may make an order requiring the management to modify the arrangements it has made for the ballot of UK employees or to satisfy the requirements in sub-paragraph (f) or (g) of paragraph (3).

(6) An order under paragraph (5) shall specify the modifications to the arrangements which the management is required to make and the requirements it must satisfy.

(7) A person is an independent ballot supervisor for the purposes of paragraph (3)(e) if the management reasonably believes that he will carry out any functions conferred on him in relation to the ballot competently and has no reasonable grounds for believing that his independence in relation to the ballot might reasonably be called into question.

Conduct of the ballot

24.—(1) The management must—

(a) ensure that a ballot supervisor appointed under regulation 23(3)(e) carries out his functions under this regulation and that there is no interference with his carrying out of those functions from the management; and

(b) comply with all reasonable requests made by a ballot supervisor for the purposes of, or in connection with, the carrying out of those functions.

(2) A ballot supervisor's appointment shall require that he—

(a) supervises the conduct of the ballot, or the separate ballots he is being appointed to supervise, in accordance with the arrangements for the ballot of UK employees published by the management under regulation 23(3)(g) or, where appropriate, in accordance with the arrangements as required to be modified by an order made as a result of a complaint presented under regulation 23(4);

(b) does not conduct the ballot or any of the separate ballots before the UK management has satisfied the requirement specified in regulation 23(3)(g) and—

(i) where no complaint has been presented under regulation 23(4), before the expiry of a period of 21 days beginning on the date on which the management published its arrangements under regulation 23(3)(g); or

(ii) where a complaint has been presented under regulation 23(4), before the complaint has been determined and, where appropriate, the arrangements have been modified as required by an order made as a result of that complaint;

(c) conducts the ballot, or each separate ballot so as to secure that—

(i) so far as reasonably practicable, those entitled to vote are given the opportunity to vote;

(ii) so far as reasonably practicable, those entitled to stand as candidates are given the opportunity to stand;

(iii) so far as reasonably practicable, those voting are able to do so in secret, and

(iv) the votes given in the ballot are fairly and accurately counted.

(3) As soon as reasonably practicable after the holding of the ballot, the ballot supervisor must publish the results of the ballot in such manner as to make them available to the management and, so far as reasonably practicable, the UK employees entitled to vote in the ballot and the persons who stood as candidates.

(4) A ballot supervisor shall publish a report ("an ineffective ballot report") where he considers (whether on the basis of representations made to him by another person or otherwise) that—

(a) any of the requirements referred to in paragraph (2) was not satisfied with the result that the outcome of the ballot would have been different; or

(b) there was an interference with the carrying out of his functions or a failure by management to comply with all reasonable requests made by him with the result that he was unable to form a proper judgement as to whether each of the requirements referred to in paragraph (2) was satisfied in the ballot.

(5) Where a ballot supervisor publishes an ineffective ballot report the report must be published within a period of one month commencing on the date on which the ballot supervisor publishes the results of the ballot under paragraph (3).

(6) A ballot supervisor shall publish an ineffective ballot report in such manner as to make it available to the management and, so far as reasonably practicable, the UK employees entitled to vote in the ballot and the persons who stood as candidates in the ballot.

(7) Where a ballot supervisor publishes an ineffective ballot report then—

(a) if there has been a single ballot or an ineffective ballot report has been published in respect of every separate ballot, the outcome of the ballot or ballots shall have no effect and the UK management shall again be under the obligation in regulation 23(2).

(b) If there have been separate ballots and sub-paragraph (a) does not apply—

(i) the management shall arrange for the separate ballot or ballots in respect of which an ineffective ballot report was published to be re-held in accordance with regulation 23 and this regulation; and

(ii) no such ballot shall have effect until it has been re-held and no ineffective ballot report has been published in respect of it.

(8) All costs relating to the holding of a ballot, including payments made to a ballot supervisor for supervising the conduct of the ballot, shall be borne by the management (whether or not an ineffective ballot report has been published).

Appointment of UK members by a consultative committee

25.—(1) This regulation applies where—

(a) regulation 23(3)(a)(i) or (ii) or (b) would require a ballot to be held; and

(b) there exists in the participating company in respect of which a ballot would be held under regulation 23, a consultative committee.

(a) (2) (a) Where this regulation applies, the election provided for in regulation 23 shall not take place but the consultative committee shall be entitled to appoint the UK member or members of the special negotiating body who would otherwise be elected pursuant to regulation 22 provided that the consultative committee's appointment complied with sub-paragraph (b).

(b) The consultative committee is entitled to appoint as a member of the special negotiating body:

(i) one of their number; or

(ii) if the management of the participating company in respect of which the consultative committee exists so permits, a trade union representative who is not an employee of that company.

(3) In this regulation, "a consultative committee" means a body of persons—

(a) whose normal functions include or comprise the carrying out of an information and consultation function;

(b) which is able to carry out its information and consultation function without interference from the management of the participating company;

(c) which, in carrying out its information and consultation function, represents all the employees of the participating company; and

(d) which consists wholly of persons who are employees of the participating company or its concerned subsidiaries.

(4) In paragraph (3) "information and consultation function" means the function of—

(a) receiving, on behalf of all the employees of the participating company, information which may significantly affect the interests of the employees of that company, but excluding information which is relevant only to a specific aspect of the interests of the employees, such as health and safety or collective redundancies; and

(b) being consulted by the management of the participating company on the information referred to in sub-paragraph (a) above.

(5) The consultative committee must publish the names of the persons whom it has appointed to be members of the special negotiating body in such a manner as to bring them to the attention of the management of the participating company and, so far as reasonably practicable, the employees and the employees' representatives of that company and its concerned subsidiaries.

(6) Where the management of the participating company, an employee or an employees' representative believes that—

(a) the consultative committee does not satisfy the requirements in paragraph (3) above; or

(b) any of the persons appointed by the consultative committee is not entitled to be appointed,

it, or as the case may be, he may, within a period of 21 days beginning on the date on which the consultative committee published under paragraph (5) the names of the persons appointed, present a complaint to the CAC.

(7) Where the CAC finds the complaint well-founded it shall make a declaration to that effect.

(8) Where the CAC has made a declaration under paragraph (7)—

(a) no appointment made by the consultative committee shall have effect; and

(b) the members of the special negotiating body shall be elected by a ballot of the employees in accordance with regulation 23.

(9) Where the consultative committee appoints any person to be a member of the special negotiating body, that appointment shall have effect—

(a) where no complaint has been presented under paragraph (6), after the expiry of a period of 21 days beginning on the date on which the consultative committee published under paragraph (5) the names of the persons nominated; or

(b) where a complaint has been presented under paragraph (6), as from the day on which the complaint has been determined without a declaration under paragraph (7) being made.

Representation of employees

26.—(1) Subject to paragraphs (2) and (3) below, a member elected in a ballot in accordance with regulation 21(2), shall be treated as representing the employees for the time being of the participating company and of any concerned subsidiary or establishment whose employees were entitled to vote in the ballot in which he was elected.

(2) If an additional member is elected in accordance with regulation 21(3) and (4), he, and not any member elected in accordance with regulation 21(2), shall be treated as representing the employees for the time being of the participating company and of any concerned subsidiary or establishment whose employees were entitled to vote in the ballot in which he was elected.

(3) When a member of the special negotiating body is appointed by a consultative committee in accordance with regulation 25, the employees whom the consultative committee represents and

the employees of any concerned subsidiary shall be treated as being represented by the member so appointed.

CHAPTER 4

NEGOTIATION OF THE EMPLOYEE INVOLVEMENT AGREEMENT

Negotiations to reach an employee involvement agreement

27.—(1) In this regulation and in regulation 28 the competent organs of the participating companies and the special negotiating body are referred to as "the parties".

(2) The parties are under a duty to negotiate in a spirit of cooperation with a view to reaching an employee involvement agreement.

(3) The duty referred to in paragraph (2) commences one month after the date or, if more than one, the last date on which the members of the special negotiating body were elected or appointed and applies—

(a) for the period of six months starting with the day on which the duty commenced or, where an employee involvement agreement is successfully negotiated within that period, until the completion of the negotiations;

(b) where the parties agree before the end of that six month period that it is to be extended, for the period of twelve months starting with the day on which the duty commenced or, where an employee involvement agreement is successfully negotiated within the twelve month period, until the completion of the negotiations.

The employee involvement agreement

28.—(1) The employee involvement agreement must be in writing.

(2) Without prejudice to the autonomy of the parties and subject to paragraph (4), the employee involvement agreement shall specify:

(a) the scope of the agreement;

(b) the composition, number of members and allocation of seats on the representative body;

(c) the functions and the procedure for the information and consultation of the representative body;

(d) the frequency of meetings of the representative body;

(e) the financial and material resources to be allocated to the representative body;

(f) if, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;

(g) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SE's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights; and

(h) the date of entry into force of the agreement and its duration, the circumstances, if any in which the agreement is required to be re-negotiated and the procedure for its re-negotiation.

(3) The employee involvement agreement shall not be subject to the standard rules on employee involvement, unless it contains a provision to the contrary.

(4) In relation to an SE to be established by way of transformation, the employee involvement agreement shall provide for the elements of employee involvement at all levels to be at least as favourable as those which exist in the company to be transformed into an SE.

(5) If the parties decide, in accordance with paragraph (2)(f), to establish one or more information and consultation procedures instead of a representative body and if those procedures include a provision for representatives to be elected or appointed to act in relation to information and consultation, those representatives shall be "information and consultation representatives".

Decisions of the special negotiating body

29.—(1) Each member of the special negotiating body shall have one vote.

(2) Subject to paragraph (3) and regulation 30, the special negotiating body shall take decisions by an absolute majority vote.

(3) In the following circumstances any decision which would result in a reduction of participation rights must be taken by a two thirds majority vote:

(a) where an SE is to be established by merger and at least 25% of the employees employed to work in the EEA states by the participating companies which are due to merge have participation rights; and

(b) where an SE is to be established by formation of a holding company or of a subsidiary company and at least 50% of the total number of employees employed to work in the EEA states by the participating companies have participation rights, and

in this paragraph, reduction of participation rights means that the body representative of the employees has participation rights in relation to a smaller proportion of members of the supervisory or administrative organs of the SE than the employees' representatives had in the participating company which gave participation rights in relation to the highest proportion of such members in that company.

(4) The special negotiating body must publish the details of any decision taken under this regulation or under regulation 30 in such a manner as to bring the decision, so far as reasonably practicable, to the attention of the employees whom they represent and such publication shall take place as soon as reasonably practicable and, in any event no later than 14 days after the decision has been taken.

(5) For the purpose of negotiations, the special negotiating body may be assisted by experts of its choice.

(6) The participating company or companies shall pay for any reasonable expenses of the functioning of the special negotiating body and any reasonable expenses relating to the negotiations that are necessary to enable the special negotiating body to carry out its functions in an appropriate manner; but where the special negotiating body is assisted by more than one expert the participating company is not required to pay such expenses in respect of more than one of them.

Decision not to open or to terminate negotiations

30.—(1) Subject to paragraph (2), the special negotiating body may decide, by a two thirds majority vote, not to open negotiations with the competent organs of the participating companies or to terminate any such negotiations.

(2) The special negotiating body cannot take the decision referred to in paragraph (1) in relation to an SE to be established by transformation if any employees of the company to be transformed have participation rights.

(3) Any decision made under paragraph (1) shall have the following effects—

(a) the duty in regulation 27(2) to negotiate with a view to reaching an employee involvement agreement shall cease as from the date of the decision;

(b) any rules relating to the information and consultation of employees in a EEA state in which employees of the SE are employed shall apply to the employees of the SE in that EEA state; and

(c) the special negotiating body shall be reconvened only if a valid request in accordance with paragraph (4) is made by employees or employees' representatives.

(4) To amount to a valid request, the request referred to in paragraph (3)(c) must—

(a) be in writing;

(b) be made by at least 10% of the employees of, or by employees' representatives representing at least 10% of the total number of employees employed by—

(i) the participating companies and its concerned subsidiaries, or

(ii) where the SE has been registered, the SE and it subsidiaries; and

(c) be made no earlier than two years after the decision made under paragraph (1) was or should have been published in accordance with regulation 29(4) unless the special negotiating body and the competent organs of every participating company or, where the SE has been registered, the SE agree to the special negotiating body being reconvened earlier.

Complaint about decisions of special negotiating body

31.—(1) If a member of the special negotiating body, an employees' representative, or where there is no such representative in respect of an employee, that employee believes that the special negotiating body has taken a decision referred to in regulation 29 or 30 and—

(a) that the decision was not taken by the majority required by regulation 29 or 30, as the case may be; or

(b) the special negotiating body failed to publish the decision in accordance with regulation 29(4),

he may present a complaint to the CAC within 21 days of the date the special negotiating body did or should have published their decision in accordance with regulation 29(4).

(2) Where the CAC finds the complaint well-founded it shall make a declaration that the decision was not taken properly and that it shall have no effect.

CHAPTER 5

STANDARD RULES ON EMPLOYEE INVOLVEMENT

Standard rules on employee involvement

32.—(1) Without prejudice to paragraph (3), where this regulation applies, the competent organ of the SE and its subsidiaries and establishments shall make arrangements for the involvement of employees of the SE and its subsidiaries and establishments in accordance with the standard rules on employee involvement.

(2) This regulation applies in the following circumstances:

(a) where the parties agree that the standard rules on employee involvement shall apply; or

(b) where the period specified in regulation 27(3)(a) or, where applicable, (b) has expired without the parties reaching an employee involvement agreement and—

(i) the competent organs of each of the participating companies agree that the standard rules on employee involvement shall apply and so continue with the registration of the SE; and

(ii) the special negotiating body has not taken any decision under regulation 30(1) either not to open or to terminate the negotiations referred to in that regulation.

(3) The standard rules set out in Part 3 of Schedule 3 to these Regulations (standard rules on participation) only apply in the following circumstances—

(a) in the case of an SE established by merger if, before registration of the SE, one or more forms of participation existed in at least one of the participating companies and either—

(i) that participation applied to at least 25% of the total number of employees of the participating companies employed in the EEA states, or

(ii) that participation applied to less than 25% of the total number of employees of the participating companies employed in the EEA states but the special negotiating body has decided that the standard rules of participation will apply to the employees of the SE; or

(b) in the case of an SE established by formation of a holding company or subsidiary company if, before registration of the SE, one or more forms of employee participation existed in at least one of the participating companies and either:

(i) that participation applied to at least 50% of the total number of employees of the participating companies employed in the EEA states; or

(ii) that participation applied to less than 50% of the total number of employees of the participating companies employed in the EEA states but the special negotiating body has decided that the standard rules of participation will apply to the employees of the SE.

(4) Where the standard rules on participation apply and more than one form of employee participation exist in the participating companies, the special negotiating body shall decide which of the existing forms of participation shall exist in the SE and shall inform the competent organs of the participating companies accordingly.

CHAPTER 6

COMPLIANCE AND ENFORCEMENT

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

33.—(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 CAC 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 a period of 3 months commencing with the date of the alleged failure or 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; or

(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 the CAC finds the complaint well-founded it shall make a declaration to that effect and 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) shall specify—

(a) the steps which the SE is required to take;

(b) the date of the failure; and

(c) the period within which the order must be complied with.

(6) If the CAC 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 Appeal Tribunal for a penalty notice to be issued.

(7) Where such an application is made, the Appeal Tribunal shall issue a written penalty notice to the SE requiring it to pay a penalty to the Secretary of State in respect of the failure unless satisfied, on hearing representations from the SE, that the failure resulted from a reason beyond the its control or that he has some other reasonable excuse for its failure.

(8) Regulation 33 shall apply in respect of a penalty notice issued under this regulation.

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

Penalties

34.—(1) A penalty notice issued under regulation 33 shall specify—

(a) the amount of the penalty which is payable;

(b) the date before which the penalty must be paid; and

(c) the failure and period to which the penalty relates.

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

(3) When setting the amount of the penalty, the Appeal Tribunal shall 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; and

(e) the number of employees employed by the undertaking.

(4) The date specified under paragraph (1)(b) above must not be earlier than the end of the period within which an appeal against a decision or order made by the CAC under regulation 33 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 Secretary of State may recover from the SE, as a civil debt due to him, 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 Secretary of State under regulation 33 or this regulation shall be paid into the Consolidated Fund.

Misuse of procedures

35.—(1) If an employees' representative or where there is no such representative in relation to an employee, the employee, 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 its subsidiaries of their rights to employee involvement; or

(b) withholding rights from any of the people referred to in sub-paragraph (a),

he may make present a complaint to the CAC.

(2) Where a complaint is made to the CAC under paragraph (1) before registration or within a period of 12 months of the date of the registration of the SE, the CAC shall 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 either of the purposes set out in sub-paragraphs (a) or (b) of paragraph (1).

(3) If the CAC finds the complaint to be well founded—

(a) it shall make a declaration to that effect and may make an order requiring the participating company or of 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

(b) the provisions in regulations 33(6) to (9) and 34 shall apply to the complaint.

Exclusivity of remedy

36. The remedy for infringement of the rights conferred by these Regulations is by way of complaint to the CAC in accordance with Chapters 1 to 5 of this Part and not otherwise.

CHAPTER 7

CONFIDENTIAL INFORMATION

Breach of statutory duty

37.—(1) Where an SE, a subsidiary of an SE, a participating company or any concerned subsidiary entrusts a person, pursuant to the provisions of this Part of these Regulations, with any information or document on terms requiring it to be held in confidence, the person shall not disclose that information or document except in accordance with the terms on which it was disclosed to him.

(2) In this regulation a person referred to in paragraph (1) to whom information or a document is entrusted is referred to as a "recipient".

(3) The obligation to comply with paragraph (1) is a duty owed to the company that disclosed the information to the person and a breach of the duty is actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).

(4) Paragraph (3) does not affect any legal liability which any person may incur by disclosing the information, or any right which any person may have in relation to such disclosure otherwise than under this Regulation.

(5) No action shall lie under paragraph (3) where the recipient reasonably believed the disclosure to be a "protected disclosure" within the meaning given to that expression by section 43A of the 1996 Act(**5**).

(6) A recipient to whom a company has entrusted any information or document on terms requiring it to be held in confidence may apply to the CAC for a declaration as to whether it was reasonable for the company to require the recipient to hold the information or document in confidence.

(7) If the CAC considers that the disclosure of the information or the document by the recipient would not, or would not be likely to, harm the legitimate interests of the undertaking, it shall make a declaration that it was not reasonable for the competent organ to require the recipient to hold the information or document in confidence.

(8) If a declaration is made under paragraph (7), the information or document shall not at any time thereafter be regarded as having been entrusted to the recipient who made the application under paragraph (6), or to any other recipient, on terms requiring it to be held in confidence.

Withholding of information by the competent organ

38.—(1) Neither an SE registered in Great Britain nor a participating company registered in Great Britain is required to disclose any information or document to a person for the purposes of this Part of these Regulations where the nature of the information or document is such that, according to objective criteria, the disclosure of the information or document would seriously harm the functioning of, or would be prejudicial to the SE or any subsidiary or establishment of the SE or, as the case may be, to the participating company or any subsidiary or establishment of the participating company.

(2) Where there is a dispute between the SE or participating company and—

(a) where a representative body has been appointed or elected, a member of that body; or

(b) where no representative body has been elected or appointed, an information and consultation representative or an employee,

as to whether the nature of the information or document which the SE or the participating company has failed to provide is such as is described in paragraph (1), the SE or participating company or a person referred to in sub-paragraph (a) or (b) may apply to the CAC for a declaration as to whether the information or document is of such a nature.

(3) If the CAC makes a declaration that the disclosure of the information or document in question would not, according to objective criteria, be seriously harmful or prejudicial as mentioned in paragraph (1), the CAC shall order the competent organ to disclose the information or document.

(4) An order under paragraph (3) shall specify—

(a) the information or document to be disclosed;

(b) the person or persons to whom the information or document is to be disclosed;

(c) any terms on which the information or document is to be disclosed; and

(d) the date before which the information or document is to be disclosed.

(**5**) Section 43A of the 1996 Act was inserted by the Public Interest Disclosure Act 1998 (c. 23), section 1.

CHAPTER 8

PROTECTION FOR MEMBERS OF SPECIAL NEGOTIATING BODY, ETC.

Right to time off for members of special negotiating body, etc.

39.—(1) An employee who is—

(a) a member of a special negotiating body;

(b) a member of a representative body;

(c) an information and consultation representative;

(d) an employee member on a supervisory or administrative organ; or

(e) a candidate in an election in which any person elected will, on being elected, be such a member or a representative,

is entitled to be permitted by his employer to take reasonable time off during the employee's working hours in order to perform his functions as such a member, representative or candidate.

(2) For the purpose of this regulation the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

Right to remuneration for time off under regulation 39

40.—(1) An employee who is permitted to take time off under regulation 39 is entitled to be paid remuneration by his employer for the time taken off at the appropriate hourly rate.

(2) Chapter II of Part XIV of the 1996 Act (a week's pay) shall apply in relation to this regulation as it applies in relation to section 62 of the 1996 Act.

(3) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time is taken.

(4) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—

(a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken; or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in paragraph (5) as are appropriate in the circumstances.

(5) The considerations referred to in paragraph (4)(b) are—

(a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract; and

(b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(6) A right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under his contract of employment.

(7) Any contractual remuneration paid to an employee in respect of a period of time off under regulation 39 goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period, and conversely, any payment of remuneration under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Right to time off: complaints to tribunals

41.—(1) An employee may present a complaint to an employment tribunal that his employer—

(a) has unreasonably refused to permit him to take time off as required under regulation 39; or

(b) has failed to pay the whole or any part of any amount to which the employee is entitled under regulation 40.

(2) A tribunal shall not consider a complaint under this regulation unless it is presented—

(a) before the end of the period of three months beginning with the day on which the time off was taken or on which it is alleged the time off should have been permitted; or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where a tribunal finds a complaint under this regulation well-founded, the tribunal shall make a declaration to that effect.

(4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer to pay to the employee an amount equal to the remuneration to which he would have been entitled under regulation 40 if the employer had not refused.

(5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which he is entitled under regulation 40, the tribunal shall also order him to pay to the employee the amount which it finds is due to him.

Unfair dismissal

42.—(1) An employee who is dismissed and to whom paragraph (2) or (5) applies shall be regarded, if the reason (or, if more than one, the principal reason) for the dismissal is a reason specified in, respectively, paragraph (3) or (6), as unfairly dismissed for the purposes of Part 10 of the 1996 Act.

(2) This paragraph applies to an employee who is—

(a) a member of a special negotiating body;

(b) a member of a representative body;

(c) an information and consultation representative;

(d) an employee member in a supervisory or administrative organ; or

(e) a candidate in an election in which any person elected will, on being elected, be such a member or a representative.

(3) The reason is that—

(a) the employee performed or proposed to perform any functions or activities as such a member, representative or candidate; or

(b) the employee or a person acting on his behalf made or proposed to make a request to exercise an entitlement conferred on the employee by regulation 39 or 40.

(4) Paragraph (1) does not apply in the circumstances set out in paragraph (3)(a) where the reason (or principal reason) for the dismissal is that in the performance, or purported performance, of the employee's functions or activities he has disclosed any information or document in breach of the duty in regulation 37, unless the employee reasonably believed the disclosure to be a `protected disclosure' within the meaning given to that expression by section 43A of the 1996 Act.

(5) This paragraph applies to any employee whether or not he is an employee to whom paragraph (2) applies.

(6) The reasons are that the employee—

(a) took, or proposed to take, any proceedings before an employment tribunal to enforce any right conferred on him by these Regulations;

(b) exercised, or proposed to exercise, any entitlement to apply or complain to the CAC or the Appeal Tribunal conferred by these Regulations or to exercise the right to appeal in connection with any rights conferred by these Regulations;

(c) acted with a view to securing that a special negotiating body, a representative body or an information and consultation procedure did or did not come into existence;

(d) indicated that he did or did not support the coming into existence of a special negotiating body, a representative body or an information and consultation procedure;

(e) stood as a candidate in an election in which any person elected would, on being elected, be a member of a special negotiating body, a representative body, an employee member on a supervisory or administrative organ or be an information and consultation representative;

(f) influenced or sought to influence by lawful means the way in which votes were to be cast by other employees in a ballot arranged under these Regulations;

(g) voted in such a ballot;

(h) expressed doubts, whether to a ballot supervisor or otherwise, as to whether such a ballot had been properly conducted; or

(i) proposed to do, failed to do, or proposed to decline to do, any of the things mentioned in sub-paragraphs (d) to (h).

(7) It is immaterial for the purposes of paragraph (6)(a)—

(a) whether or not the employee has the right or entitlement; or

(b) whether or not the right has been infringed,

but for that sub-paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

Subsidiary provisions relating to unfair dismissal

43.—(1) In section 105 of the 1996 Act (redundancy as unfair dismissal) in subsection (1)(c) (which requires one of a specified group of subsections to apply for a person to be treated as unfairly dismissed)(**6**)—

(a) for ", (7E) and (7F)" substitute "or subsection (7E), (7F) or (7G)", and

(b) after subsection (7F) insert—

"(7G) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 42 of the European Public Limited-Liability Company Regulations 2004 (read with paragraphs (4) and (7) of that regulation)."

(2) In section 108(**7**) of the 1996 Act (exclusion of right: qualifying period of employment) in subsection (3) (cases where no qualifying period of employment is required)(**8**)—

(a) omit the word "or" at the end of paragraph (i); and

(b) after paragraph (j) insert—

(**6**) Section 105 has been amended on a number of occasions to specify additional circumstances in which an employee dismissed by reason of redundancy is to be regarded as unfairly dismissed.
(**7**) Section 108(1) was amended by S.I.1999/1436, Article 3.
(**8**) Section 108(3) has been amended on a number of occasions to specify additional cases in which no qualifying period of employment is required.

"or

(k) paragraph (3) or (6) of regulation 42 of the European Public Limited-Liability Company Regulations 2004 applies.".

(3) In section 109 of the 1996 Act (exclusion of right: upper age limit) in subsection (2) (cases where the upper age limit does not apply)(**9**)—

(a) omit the word "or" at the end of paragraph (i); and

(b) after paragraph (j) insert—

"or

(k) paragraph (3) or (6) of regulation 42 of the European Public Limited-Liability Company Regulations 2004 applies.".

Detriment

44.—(1) An employee to whom paragraph (2) or (5) applies has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer, done on a ground specified in, respectively, paragraph (3) or (6).

(2) This paragraph applies to an employee who is—

(a) a member of a special negotiating body;

(b) a member of a representative body;

(c) an information and consultation representative;

(d) an employee member on a supervisory or administrative organ; or

(e) a candidate in an election in which any person elected will, on being elected, be such a member or a representative.

(3) The ground is that—

(a) the employee performed or proposed to perform any functions or activities as such a member, representative or candidate; or

(b) the employee or person acting on his behalf made or proposed to make a request to exercise an entitlement conferred on the employee by regulation 39 or 40.

(4) Paragraph (1) does not apply in the circumstances set out in paragraph (3)(a) where the ground for the subjection to detriment is that in the performance, or purported performance, of the employee's functions or activities he has disclosed any information or document in breach of the duty in regulation 37, unless the employee reasonably believed the disclosure to be a "protected disclosure" within the meaning given to that expression by section 43A of the 1996 Act.

(5) This paragraph applies to any employee, whether or not he is an employee to whom paragraph (2) applies.

(6) The grounds are that the employee—

(a) took, or proposed to take, any proceedings before an employment tribunal to enforce any right conferred on him by these Regulations;

(b) exercised, or proposed to exercise, any entitlement to apply or complain to the CAC or the Appeal Tribunal conferred by these Regulations or to exercise the right to appeal in connection with any rights conferred by these Regulations;

(**9**) Section 109(2) has been amended on a number of occasions to specify additional cases where the upper age limit does not apply.

(c) acted with a view to securing that a special negotiating body, a representative body or an information and consultation procedure did or did not come into existence;

(d) indicated that he did or did not support the coming into existence of a special negotiating body, a representative body or an information and consultation procedure;

(e) stood as a candidate in an election in which any person elected would, on being elected, be a member of a special negotiating body, a representative body, an employee member on a supervisory or administrative organ or be an information and consultation representative;

(f) influenced or sought to influence by lawful means the way in which votes were to be cast by other employees in a ballot arranged under these Regulations;

(g) voted in such a ballot;

(h) expressed doubts, whether to a ballot supervisor or otherwise, as to whether such a ballot had been properly conducted; or

(i) proposed to do, failed to do, or proposed to decline to do, any of the things mentioned in sub-paragraphs (d) to (h).

(7) It is immaterial for the purposes of paragraph (6)(a)—

(a) whether or not the employee has the right or entitlement; or

(b) whether or not the right has been infringed,

but for that sub-paragraph to apply, the claim to the right and, if applicable, the claim that has been infringed must be made in good faith.

(8) This regulation does not apply where the detriment in question amounts to dismissal.

Detriment: enforcement and subsidiary provisions

45.—(1) An employee may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of regulation 44.

(2) The provisions of sections 48(2) to (4) of the 1996 Act (complaints to employment tribunals and remedies) shall apply in relation to a complaint under this regulation as they apply in relation to a complaint under section 48 of that Act but taking references in those provisions to the employer as references to the employer within the meaning of regulation 44(1) above.

(3) The provisions of section 49(1) to (5) of the 1996 Act shall apply in relation to a complaint under this regulation.

Conciliation

46. In section 18 of the Employment Tribunals Act 1996 (conciliation), in subsection (1) (which specifies the proceedings and claims to which the section applies)(**10**) after paragraph (m), insert—

> "or (n) under regulation 41 or 45 of the European Public Limited-Liability Company Regulations 2004.".

(**10**) 1996 c. 17. Section 18(1) has been amended on a number of occasions to specify additional proceedings and claims to which the section applies.

CHAPTER 9

MISCELLANEOUS

CAC proceedings

47.—(1) Where under these Regulations a person presents a complaint or makes an application to the CAC the complaint or application must be in writing and in such form as the CAC may require.

(2) In its consideration of a complaint or application under these Regulations, the CAC shall make such enquiries as it sees fit and give any person whom it considers has a proper interest in the complaint or application an opportunity to be heard.

(3) Where the participating company, concerned subsidiary or establishment or the SE has its registered office in England and Wales—

(a) a declaration made by the CAC under these Regulations may be relied on as if it were a declaration or order made by the High Court in England and Wales; and

(b) an order made by the CAC under these Regulations may be enforced in the same way as an order of the High Court in England and Wales.

(4) Where a participating company or concerned subsidiary or an SE has its registered office in Scotland—

(a) a declaration or order made by the CAC under these Regulations may be relied on as if it were a declaration or order made by the Court of Session; and

(b) an order made by the CAC under these Regulations may be enforced in the same way as an order of the Court of Session.

(5) A declaration or order made by the CAC under these Regulations must be in writing and state the reasons for the CAC's findings.

(6) An appeal lies to the Appeal Tribunal on any question of law arising from any declaration or order of, or arising in any proceedings before, the CAC under these Regulations.

Appeal Tribunal: location of certain proceedings under these Regulations

48.—(1) Any proceedings before the Appeal Tribunal under these Regulations, other than appeals under paragraph (o) of section 21(1) of the Employment Tribunals Act 1996(**11**) (appeals from employment tribunals on questions of law), shall—

(a) where the registered office of the participating company, concerned subsidiary or the SE is situated in England and Wales, be held in England and Wales; and

(b) where the registered office of the participating company, concerned subsidiary or the SE is situated in Scotland, be held in Scotland.

(2) In section 20(4) of the Employment Tribunals Act 1996 (the Appeal Tribunal), after "1999" there shall be inserted "and regulation 46(1) of the European Public Limited-Liability Company Regulations 2004.".

Appeal Tribunal: appeals from employment tribunals

49. In section 21(1) of the Employment Tribunals Act 1996 (circumstances in which an appeal lies to the Appeal Tribunal from an employment tribunal) after paragraph (n), insert—

"or (o) the European Public Limited-Liability Company Regulations 2004.".

(**11**) Section 21(1) has been amended on a number of occasions to specify additional proceedings and claims to which the section applies.

ACAS

50.—(1) If on receipt of an application or complaint under these Regulations the CAC is of the opinion that it is reasonably likely to be settled by conciliation, it shall refer the application or complaint to the Advisory, Conciliation and Arbitration Service ("ACAS") and shall notify the applicant or complainant and any persons whom it considers have a proper interest in the application or complaint accordingly, whereupon ACAS shall seek to promote a settlement of the matter.

(2) If an application or complaint so referred is not settled or withdrawn and ACAS is of the opinion that further attempts at conciliation are unlikely to result in a settlement, it shall inform the CAC of its opinion.

(3) If the application or complaint is not referred to ACAS or if it is so referred, on ACAS informing the CAC of its opinion that further attempts at conciliation are unlikely to result in a settlement, the CAC shall proceed to hear and determine the application or complaint.

Restrictions on contracting out: general

51.—(1) Any provision in any agreement (whether an employee's contract or not) is void in so far as it purports—

(a) to exclude or limit the operation of any provision of this Part of these Regulations other than a provision of Chapter 8 of this Part; or

(b) to preclude a person from bringing any proceedings before the CAC, under any provision of this Part of these Regulations other than a provision of that Chapter.

(2) Paragraph (1) does not apply to any agreement to refrain from continuing any proceedings referred to in sub-paragraph (b) of that paragraph made after the proceedings have been instituted.

Restrictions on contracting out: Chapter 8 of this Part

52.—(1) Any provision in any agreement (whether an employee's contract or not) is void in so far as it purports—

(a) to exclude or limit the operation of any provision of Chapter 8 of this Part of these Regulations; or

(b) to preclude a person from bringing any proceedings before an employment tribunal under that Chapter.

(2) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing proceedings before an employment tribunal where a conciliation officer has taken action under section 18 of the Employment Tribunals Act 1996 (conciliation).

(3) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing before an employment tribunal proceedings within section 18(1)(k) of the Employment Tribunals Act 1996 (proceedings under these Regulations where conciliation is available) if the conditions regulating compromise agreements under these Regulations are satisfied in relation to the agreement.

(4) For the purposes of paragraph (3) the conditions regulating compromise agreements are that—

(a) the agreement must be in writing;

(b) the agreement must relate to the particular proceedings;

(c) the employee must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an employment tribunal;

(d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the employee in respect of loss arising in consequence of the advice;

(e) the agreement must identify the adviser; and

(f) the agreement must state that the conditions in sub-paragraphs (a) to (e) are satisfied.

(5) A person is a relevant independent adviser for the purposes of paragraph (4)(c)—

(a) if he is a qualified lawyer;

(b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and authorised to do so on behalf of the trade union; or

(c) if he works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and authorised to do so on behalf of the centre.

(6) But a person is not a relevant independent adviser for the purposes of paragraph (4)(c) in relation to the employee—

(a) if he is, is employed by or is acting in the matter for the employer or an associated employer;

(b) in the case of a person within paragraph (5)(b) or (c), if the trade union or advice centre is the employer or an associated employer; or

(c) in the case of a person within paragraph (5)(c), if the employee makes a payment for the advice received by him.

(7) In paragraph (5)(a), a "qualified lawyer" means—

(a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practicing certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990(**12**)); and

(b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.

(8) For the purposes of paragraph (6) any two employers shall be treated as associated if—

(a) one is a company of which the other (directly or indirectly) has control; or

(b) both are companies of which a third person (directly or indirectly) has control;

and "associated employer" shall be construed accordingly.

Amendment of the Transnational Information and Consultation of Employees Regulations 1999

53. In the Transnational Information and Consultation of Employees Regulations 1999, after regulation 46 insert—

"**46A.**—(1) These regulations do not apply to an SE that is—

(a) a Community-scale undertaking, or

(b) a controlling undertaking of a Community-scale group of undertakings,

except where the special negotiating body has taken the decision referred to in regulation 29 of the European Public Limited-Liability Company Regulations 2004 (decision not to open, or to terminate, negotiations).

(2) In this regulation an "SE" means a company established in accordance with the European Public Limited-Liability Company Regulations 2004.".

(**12**) 1990 c. 41.

Existing employee involvement rights

54.—(1) Subject to paragraph (2), nothing in these Regulations shall affect involvement rights of employees of an SE, its subsidiaries or establishments provided for by law or practice in the EEA state in which they were employed immediately prior to the registration of the SE.

(2) Paragraph (1) does not apply to rights to participation.

PART 4

EXERCISE OF MEMBER STATES OPTIONS UNDER THE EC REGULATION

Participation in the formation of an SE by a company formed under the law of a Member State whose head office is not in the Community (Article 2(5))

55. A company, formed under the law of a Member State, the head office of which is not in the Community, may participate in the formation of an SE where the company's registered office is in that Member State and it has a real and continuous link with a Member State's economy.

Additional forms of publication of transfer proposal (Article 8(2))

56.—(1) The SE shall notify in writing its shareholders, and every creditor of whose claim and address it is aware, of the right to examine the transfer proposal and the report drawn up under Article 8(3), at its registered office and, on request, to obtain copies of those documents free of charge, not later than one month before the general meeting called to decide on the transfer.

(2) Every invoice, order for goods or business letter, which, at any time between the date on which the transfer proposal and report become available for inspection at the registered office of the SE and the deletion of its registration on transfer, is issued by or on behalf of the SE, shall contain a statement that the SE is proposing to transfer its registered office to another Member State under Article 8 and identifying that Member State.

(3) If default is made in complying with paragraphs (1) or (2) above the SE is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Extension of protection given by Article 8(7) to liabilities incurred prior to transfer (Article 8(7))

57. The first sub-paragraph of Article 8(7) shall apply to liabilities that arise (or may arise) prior to the transfer.

Power of the competent authorities of a Member State to oppose a transfer on public interest grounds (Article 8(14))

58. If a transfer of a registered office of an SE would result in a change in the law applicable to the SE, the competent authorities may, within the two month period referred to within Article 8(6), oppose the transfer, on public interest grounds.

Power of the management or administrative organ of an SE to amend statutes where in conflict with employee involvement arrangements (Article 12(4))

59. Where there is a conflict between the arrangements for employee involvement and the existing statutes the management or administrative organ of the SE may amend the statutes to the extent necessary to resolve the conflict without any further decision from the general shareholders meeting.

Power of the competent authorities of a Member State to oppose the participation of a merging company governed by its law on public interest grounds (Article 19)

60. A company of a type specified in relation to the United Kingdom in Annex 1 to the EC Regulation may not take part in the formation of an SE, whether or not it is to be registered in Great Britain, by merger if any of the competent authorities oppose it before the issue of the certificate referred to in Article 25(2) on public interest grounds.

Minimum number of members of the management organ (Article 39(4))

61. The minimum number of the members of the management organ of an SE is two.

Minimum number of members of the supervisory organ (Article 40(3))

62. The minimum number of the members of the supervisory organ of an SE is two.

Members of the supervisory organ to be entitled to require the management organ to provide certain information (Article 41(3))

63. Each member of the supervisory organ is entitled to require the management organ to provide to that member information of a kind which the supervisory organ needs to exercise supervision in accordance with Article 40(1).

Minimum number of members of an administrative organ (Article 43(2))

64. The minimum number of the members of the administrative organ of an SE is two.

Timing of the first general meeting of an SE (Article 54(1))

65. The first general meeting of an SE may be held at any time in the 18 months following an SE's incorporation.

Proportion of shareholders of an SE who may require one or more additional items to be put on the agenda of any general meeting (Article 56)

66. The proportion of the shareholders of an SE who may require one or more additional items put on the agenda of any general meeting is to be the holders of at least 5% of the SE's subscribed capital.

SEs subject to law on public limited liability companies as regard the expression of their capital (Article 67(1))

67. An SE shall be subject to the provisions of the enactments and rules of law applying to a public company as regards the expression of its capital.

PART 5

PROVISIONS REQUIRED BY THE EC REGULATION

Publication of terms of transfer, formation and conversion (Articles 8(2), 32(3) and 37(5))

68.—(1) Where a transfer proposal is drawn up under Article 8(2)—

(a) a copy of the proposal shall be delivered to the registrar together with Form SE68(1)(a), and

(b) the registrar shall cause notice of the receipt of the copy of the proposal to be published in the Gazette.

(2) Where draft terms for the formation of a holding SE, whether or not its registered office is to be in Great Britain, are drawn up under Article 32(2)—

(a) a copy of the draft terms shall be delivered to the registrar together with Form SE68(2)(a), and

(b) the registrar shall cause notice of the receipt of the copy of the draft terms to be published in the Gazette.

(3) Where draft terms for the conversion of a public limited-liability company into an SE are drawn up under Article 37(4)—

(a) a copy of the draft terms shall be delivered to the registrar together with Form SE68(3)(a), and

(b) the registrar shall cause notice of the receipt of the copy of the draft terms to be published in the Gazette.

(4) The Forms referred to in paragraphs (1) to (3) are those set out in Schedule 1.

Publication of completion of merger (Article 28)

69. Where an SE is formed by merger, whether its registered office is in Great Britain or not, and a public company has taken part in that procedure, the registrar shall cause to be published in the Gazette notice that the merger has been completed.

Publication of fulfilment of conditions for the formation of a holding SE (Article 33(3))

70.—(1) Where, in respect of a company of a type specified in relation to the United Kingdom in Annex II to the EC Regulation, the conditions for the formation of a holding SE, whether or not it is to be registered in Great Britain, are fulfilled, the company shall deliver to the registrar within 14 days of such fulfilment notice of that event in the Form SE70(1) set out in Schedule 1 and the registrar shall cause to be published in the Gazette notice that these conditions have been fulfilled.

(2) If default is made in complying with paragraph (1), the company is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Publication of other documents or information (Articles 8(12), 15(2), 59(3) and 65)

71.—(1) Where, under the Articles of the EC Regulation listed in paragraph (2), the occurrence of an event is required to be publicised, the registrar shall cause to be published in the Gazette notice of receipt of the particulars of that event described in those Articles.

(2) The Articles referred to in paragraph (1) above are:

Article 59(3)

Article 65.

(3) Where, under the Articles listed in paragraph (4), the registration of an SE, whether on formation under Title II of the EC Regulation, or on the transfer of the registered office of an SE under Article 8 or the deletion of a registration under that Article is required to be publicised, the registrar shall cause to be published in the Gazette notice of that registration or the deletion of that registration and of the receipt of the documents and particulars related to that registration or deletion required to be delivered to the registrar by the EC Regulation or these Regulations.

(4) The Articles referred to in paragraph (3) are:

Article 8(12)

Article 15(2).

Protection of creditors and others on a transfer (Article 8(7))

72.—(1) Where an SE proposes to transfer its registered office to another Member State under Article 8 the SE shall satisfy the Secretary of State that the interests of creditors and holders of other rights in respect of the SE (including those of public bodies) have been adequately protected in respect of any liabilities arising (or that may arise) prior to the transfer by the making of a statement of solvency in the terms set out in paragraphs (4) and (5).

(2) The statement of solvency must be made by all the members of the administrative organ in the case of an SE within the one-tier system and by all the members of the management organ in the case of an SE within the two-tier system.

(3) In the case of an SE within the two-tier system the statement of solvency may not be made unless authorised by the supervisory organ.

(4) The statement shall state that the members of the administrative or management organ, as the case may be, have formed the opinion—

(a) as regards its financial situation immediately following the date on which the transfer is proposed to be made, that there will be no grounds on which the SE could then be found to be unable to pay its debts, and

(b) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the SE's business during that year and to the amount and character of the financial resources which will in their view be available to the SE during that year, the SE will be able to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due throughout that year).

(5) In forming their opinion for the purposes of paragraph (4)(a), the members of the administrative or the management organ, as the case may be, shall take into account the same liabilities (including prospective and contingent liabilities) as would be relevant under section 122 of the Insolvency Act 1986(**13**) (winding up by the court) to the question whether a company is unable to pay its debts.

(6) The statement required by this regulation shall be in the Form SE72(6) set out in Schedule 1.

(7) A member of an administrative or management organ who makes a statement under this regulation without having reasonable grounds for the opinion expressed in the statement is liable, on conviction on indictment, to imprisonment not exceeding two years, or to a fine, or to both, and on summary conviction to imprisonment not exceeding three months, or to a fine not exceeding the statutory maximum, or to both.

Power of Secretary of State where an SE no longer complies with the requirements of Article 7

73.—(1) If it appears that an SE no longer complies with the requirements laid down in Article 7, the Secretary of State may direct the SE to regularise its position in accordance with Article 64(1)(a) or (b) within such period as may be specified in the direction.

(2) A direction under paragraph (1) is enforceable by the Secretary of State—

(a) in the case of an SE whose registered office is in England and Wales, by an application to the High Court for an injunction; or

(**13**) 1986 c. 45.

(b) in the case of an SE whose registered office is in Scotland, by an application to the Court of Session for an order under section 45 of the Court of Session Act 1988(**14**).

(3) After section 124A of the Insolvency Act 1986 insert—

"**Petition for winding up of SE**

124B.—(1) Where—

(a) an SE whose registered office is in Great Britain is not in compliance with Article 7 of Council Regulation (EC) No 2157/2001 on the Statute for a European company (the "EC Regulation") (location of head office and registered office), and

(b) it appears to the Secretary of State that the SE should be wound up, he may present a petition for it to be wound up if the court thinks it is just and equitable for it to be so.

(2) This section does not apply if the SE is already being wound up by the court.

(3) In this section "SE" has the same meaning as in the EC Regulation."

(4) The Insolvency Act 1986 is consequentially amended as follows—

(a) in section 124 (application for winding up), in subsection (4)(b) after "124A" insert "or 124B";

(b) in Schedule A1 (moratorium where directors propose voluntary arrangement), in paragraph 12(5)(a), after "124A" insert "or 124B";

(c) in Schedule B1 (administration), in paragraphs 40(2)(a), 42(4)(a) and 82(1)(a) after "124A (public interest)," insert

"(aa) section 124B (SEs),".

Review of decisions of a competent authority (Articles 8(14) and 19)

74.—(1) Where any competent authority or competent authorities oppose—

(a) the transfer of the registered office of an SE under Article 8(14); or

(b) the taking part by a company of the type specified in relation to the United Kingdom in Annex 1 to the EC Regulation in the formation of an SE by merger under Article 19 whether or not its registered office is to be in Great Britain,

the provisions of paragraphs (2) to (5) shall apply.

(2) An SE, the transfer of whose registered office is opposed by a competent authority or authorities under Article 8(14) or a company whose taking part in the formation of an SE by merger, whether or not its registered office is to be in Great Britain, is opposed by a competent authority or competent authorities under Article 19, may appeal to the relevant court on the grounds that the opposition:

(a) is unlawful; or

(b) is irrational or unreasonable; or

(c) has been made on the basis of a procedural impropriety or otherwise contravenes the rules of natural justice.

(3) For the purposes of this regulation the "relevant court" is in the case of—

(a) an SE, or a company, whose registered office is in England or Wales, the High Court; and

(b) an SE, or a company, whose registered office is in Scotland, the Court of Session.

(4) An appeal may only be brought under this regulation with the permission of the court.

(**14**) 1988 c. 36.

(5) The court determining an appeal may—

(a) dismiss the appeal; or

(b) quash the opposition, and where the court quashes an opposition it may refer the matter to the opposing competent authority or authorities with a direction to reconsider it and to make a determination in accordance with the findings of the court.

PART 6

PROVISIONS RELATING TO THE EFFECTIVE APPLICATION OF THE EC REGULATION

Competent authorities

75. The competent authorities designated under Article 68(2) are—

(a) in respect of Articles 8, 54, 55 and 64, the Secretary of State;

(b) in respect of Article 25, the High Court in relation to a public company whose registered office is in England and Wales, and, in relation to a public company whose registered office is in Scotland, the Court of Session; and

(c) in respect of Article 26, the High Court in relation to an SE where the registered office is proposed to be in England and Wales, and, in relation to an SE where the registered office is proposed to be in Scotland, the Court of Session.

Enforcement of obligation to amend Statutes in conflict with Arrangements for Employee Involvement

76.—(1) If it appears to the Secretary of State that—

(a) the statutes of an SE are in conflict with the arrangements for employee involvement determined in accordance with Part 3 of these Regulations; and

(b) the statutes have not, to the necessary extent, been amended she may direct the SE to amend the statutes to that extent within such period as she may specify in the direction.

(2) A direction under this regulation is enforceable on the application of the Secretary of State—

(a) in respect of an SE with its registered office in England and Wales, to the High Court by injunction; and

(b) in respect of an SE with its registered office in Scotland, to the Court of Session by an order under section 45 of the Court of Session Act 1988.

Records of an SE transferred under Article 8(11) or a public company ceasing to exist under Article 29(1) and (2)

77.—(1) Where—

(a) the registration of an SE is deleted under Article 8(11) pursuant to a transfer of its registered office to another Member State; or

(b) a public company ceases to exist under Article 29(1)(c) or (2)(c), the records of that SE or public company, as the case may be, kept by the registrar shall continue to be kept by her for a period of twenty years following such a deletion or cessation of existence.

(2) Where the registration of an SE is deleted, the Form, and the documents accompanying it, delivered to the Secretary of State under regulation 11, together with a copy of the certificate issued

under Article 8(8) shall be deemed to be documents to be retained by the registrar under regulation 13 and the provisions of these Regulations apply accordingly.

Application of enactments to members of supervisory, management and administrative organs

78.—(1) This regulation applies to enactments relating to public companies to the extent that they are required, by the EC Regulation, in the manner described in paragraph 2, to be applied in relation to SEs.

(2) Enactments are required to be applied for the purposes of paragraph (1) where—

(a) any provision of the EC Regulation, other than Article 9, requires the application of any enactment relating to public companies to determine any question or matter; or

(b) in the case of any matter not regulated by the EC Regulation or, where matters are partly regulated by it, of those aspects not covered by it, Article 9 requires the application of any enactment relating to public companies.

(3) Subject to paragraphs (4), (5) and (6) references to "directors" or "board of directors" in any enactment to which this regulation applies shall have effect as if they were references—

(a) in a one-tier system, to the members of the administrative organ; and

(b) in a two-tier system, to the members of the supervisory and management organs.

(4) Any enactment so applied in relation to a two-tier system shall be applied separately in respect of the members of the supervisory organ and the members of the management organ in relation to the functions of the organ, and in respect of the acts and omissions of the members of those organs.

(5) Where, in a two-tier system, any function relates to the management of the SE and, by virtue of Articles 39(1) or 40(1), is a function that cannot be carried out by the supervisory organ, nothing in paragraph (3) has the effect of permitting or requiring the members of the supervisory organ to carry out any such functions.

(6) Where, by virtue of any provision in the EC Regulation or in the statutes, any transaction or function carried out by the management organ in a two-tier system requires the authorisation of the supervisory organ, nothing in paragraph (3) affects, or removes, the requirement for such authorisation.

Register of members of supervisory organ

79.—(1) Every SE which has adopted the form of a two-tier system in its statutes shall keep at its registered office a register of the members of its supervisory organ ("the members"); and the register shall, with respect to the particulars to be contained in it of those persons, comply with the paragraphs below.

(2) The SE shall, within the period of 14 days from the occurrence of—

(a) any change among the members, or

(b) any change in the particulars contained in the register,

send to the registrar a notification in the Form SE79A, SE79B or SE79C, as may be appropriate, and, if applicable, Form SE(SR) or Form SE(SR) change, set out in Schedule 1, of the change and of the date on which it occurred; and a notification of a person having become a member shall contain a consent, signed by that person, to act in the relevant capacity.

(3) The register shall be open to the inspection of any shareholder of the SE without charge and of any other person on payment of a fee of £2.50 for each hour or part of an hour during which the right of inspection is exercised.

(4) If an inspection required under this section is refused, or if default is made in complying with paragraph (1) or (2), the SE is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In the case of a refusal of inspection of the register, the court may by order compel an immediate inspection of it.

(6) Where a confidentiality order, made under section 723B of the 1985 Act, or under that section to the extent that that enactment is applied by any provision of the EC Regulation, is in force in respect of a member, subsections (3) and (5) of that section shall not apply in relation to that part of the register of the SE as contains particulars of the usual residential address of that individual.

(7) For purposes of this and the next regulation, where, to the extent that the application of section 741(2) of the 1985 Act under any provision of the EC Regulation requires it, a shadow director of an SE, by virtue of the members of the supervisory organ acting in accordance with his directions or instructions, is deemed a member of that organ.

(8) Where an SE is required to keep a register of members of the supervisory organ by this regulation, the application of regulation 78 to that SE shall not require that particulars of members of the supervisory organ to be kept on any register required be kept under section 288 of the 1985 Act.

Particulars of members to be registered under regulation 79

80.—(1) Subject to the provisions of this regulation, the register kept by an SE under regulation 79 shall contain the following particulars with respect to each member—

(a) in the case of an individual—

(i) his present name,

(ii) any former name,

(iii) his usual residential address,

(iv) his nationality,

(v) his business occupation (if any),

(vi) particulars of any other directorships held by him or which have been held by him, and

(vii) the date of his birth;

(b) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.

(2) Where a confidentiality order made under section 723B of the 1985 Act or under that section to the extent that is applicable by any provision of the EC Regulation is in force in respect of a member, the register shall contain, in addition to the particulars specified in paragraph (1)(a), such address as is for the time being notified by the member to the company under regulations made under sections 723B to 723F of the 1985 Act.

(3) In paragraph (1)(a)—

(a) "name" means a person's Christian name (or other forenames) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname, or in addition to either or both of them; and

(b) the reference to a former name does not include—

(i) in the case of a peer, or an individual normally known by a British title, the name by which he was known previous to the adoption of or succession to the title, or

(ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more, or

(iii) in the case of a married woman, the name by which she was known previous to the marriage.

(4) It is not necessary for the register to contain on any day particulars of a directorship of a company—

(a) which has not been held by a director at any time during the 5 years preceding that day,

(b) which is held by a director in a company which—

(i) is dormant or grouped with the SE keeping the register, and

(ii) if he also held that directorship for any period during those 5 years, was for the whole of that period either dormant or so grouped,

(c) which was held by a member for any period during those 5 years in a company which for the whole of that period was either dormant or grouped with the SE keeping the register.

(5) For purposes of paragraph (4), "company" has the meaning given it in section 735(1) of the 1985 Act and includes any body corporate incorporated in Great Britain; and—

(a) section 249AA(3) of the 1985 Act applies as regards whether and when a company is or has been dormant,

(b) section 249AA(3) of the 1985 Act, to the extent that enactment is applied by any provision of the EC Regulation, applies as regards whether and when an SE is or has been dormant, and

(c) a company or SE is to be regarded as being, or having been, grouped with another at any time if at that time it is or was a company or SE of which the other is or was a wholly-owned subsidiary, or if it is or was a wholly-owned subsidiary of the other or of another company or SE of which that other is or was a wholly-owned subsidiary.

The SE as a body corporate

81.—(1) Where—

(a) any enactment is applied in the manner described in regulation 78(2); or

(b) any enactment applies to an SE otherwise than in the manner described in regulation 78(2)

and those enactments are expressed to apply to, or in respect of, a body corporate, an SE, whether or not registered in Great Britain, shall be treated for the purposes of the application of those enactments as if it were a body corporate.

(2) Nothing in this regulation has the effect of constituting an SE as a body corporate incorporated in, or formed under the law of, Great Britain.

Notification of Amendments to Statutes and Insolvency Events (Articles 59(3) and 65)

82.—(1) Where, under Articles 59(3) and 65, publication by the registrar in the Gazette of the events described in those Articles is required by regulation 71(1)—

(a) in the case of Article 59(3), the amendments to the statutes shall be delivered to the registrar by the SE accompanied by Form SE82(1)(a) in Schedule 1 within 14 days of the adoption of those amendments; and

(b) in the case of Article 65, notice of the relevant event set out in Form SE82(1)(b) in Schedule 1 shall be delivered to the registrar by the SE within 14 days of the occurrence of the event.

(2) If default is made in complying with paragraph (1)(a) or (b) the SE is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Accounting Reference Period and Financial Year of Transferring SE

83.—(1) Where an SE transfers its registered office to Great Britain under Article 8—

(a) its first accounting reference period, for the purposes of section 224 of the 1985 Act, is the period of twelve months beginning with its last balance sheet date before the registration of the transfer and the date on which that period ends is its accounting reference date for those purposes; and

(b) its first financial year for the purposes of section 223 of the 1985 Act begins with the first day of its first accounting reference period and ends with the last day of that period or such other date, not more than seven days before or after the end of that period as the SE may determine.

(2) For purposes of this regulation "the last balance sheet date" is the date as at which the balance sheet of the transferring SE was required to be drawn up under the provisions of the law of the Member State in which it had its registered office, where the balance sheet was the last one required to be drawn up before the registration of the transfer in Great Britain.

(3) Where the transferring SE has not been required to draw up a balance sheet under the provisions of the law of the Member State where it had its registered office, or, if different, of the Member State where it was first registered, before the registration of the transfer in Great Britain, its accounting reference date for the purposes of section 224 of the 1985 Act is the last day of the month in which the anniversary of its registration on formation falls and its first accounting reference period is the period beginning with its date of registration on formation and ending with its accounting reference date; and paragraph (1)(b) above applies in respect of its first financial year accordingly.

Penalties for Breach of Article 11 (use of SE in name)

84. Where:

(a) an SE fails to comply with Article 11(1); or

(b) any person fails to comply with Article 11(2)

the SE or that person is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART 7

PROVISIONS RELATING TO THE CONVERSION OF AN SE TO A PUBLIC COMPANY IN ACCORDANCE WITH ARTICLE 66 OF THE EC REGULATION

Registration of a public company by the conversion of an SE

85. Where it is proposed to convert an SE to a public company in accordance with Article 66 there shall be delivered to the registrar a registration form in Form SE85 set out in Schedule 1 together with the documents specified in that Form; and, for the purposes of registering the SE, (in this Part referred to as the "converting SE"), as a public company under the provisions of the 1985 Act, the provisions of that Act shall have effect with the modifications set out in paragraph 1 of Schedule 4 to these Regulations and subject to the provisions of this Part.

Publication of draft terms of conversion

86. Where under Article 66(4) draft terms of conversion are required to be publicised there shall be delivered to the registrar a copy of such draft terms accompanied by Form SE86 set out in Schedule 1 and the registrar shall cause to be published in the Gazette notice of the receipt by her of the copy of the draft terms.

Registration under the 1985 Act

87.—(1) On and after the day on which Form SE85 is delivered to the registrar section 12(2) of the 1985 Act (duty of the registrar) shall apply in relation to the memorandum and articles of association of the converting SE delivered with Form SE85 as if—

(a) they have been delivered under section 10 of the 1985 Act (documents to be delivered to the registrar), and

(b) the requirements of that Act in respect of registration and of matters precedent and incidental to it had been complied with.

(2) The registrar shall carry out her duty under section 12 of the 1985 Act to register the memorandum and articles of the converting SE.

(3) On registration of the memorandum and articles of association of the converting SE the registrar shall give a certificate—

(a) that the converting SE is incorporated and retains the legal personality it had when an SE;

(b) that its memorandum and articles of association are registered under the 1985 Act; and

(c) that it is a public company limited by shares.

(4) The certificate is conclusive evidence—

(a) that the requirements of the 1985 Act in respect of registration and of matters precedent and incidental to it have been complied with, and

(b) that on and after the registration the converting SE is a public company limited by shares.

Effect of registration

88.—(1) In its application to a converting SE on or after registration the 1985 Act shall have effect with the modifications set out in paragraphs 2 to 10 of Schedule 4 to these Regulations.

(2) On and after registration a converting SE shall be known by the name contained in its memorandum (subject to section 28 of the 1985 Act).

(3) The persons named in Form SE85 shall be deemed to have been appointed as the first directors or secretaries of a converting SE on registration.

Records of a converting SE

89. The records of a converting SE, when the converting SE has been registered as a public company limited by shares under the provisions of this Part, relating to any period before its registration as a public company shall be treated for the purposes of the 1985 Act as if they were records of that public company.

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6th September 2004 Department of Trade and Industry