
STATUTORY INSTRUMENTS

2004 No. 2326

The European Public Limited-
Liability Company Regulations 2004

PART 3

EMPLOYEE INVOLVEMENT

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(1) (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.”.

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—

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

- (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(2)); 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.”

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.