
STATUTORY INSTRUMENTS

2006 No. 2059

**The European Cooperative Society
(Involvement of Employees) Regulations 2006**

PART 2

**PARTICIPATING INDIVIDUALS AND LEGAL
ENTITIES AND THE SPECIAL NEGOTIATING BODY**

Circumstances in which different regulations apply

4.—(1) This regulation is subject to regulation 5.

(2) These Regulations shall apply where—

- (a) a participating individual or a participating legal entity intends to form an SCE whose registered office is to be in the UK; or
- (b) an SCE has its registered office in the UK.

(3) Where there are UK employees, without prejudice to paragraph (2), Part 3 (or, in relation to an SCE to which regulation 6(1) applies, Part 2 of Schedule 1) shall apply (election or appointment of UK members of the special negotiating body and representation of employees), regardless of where the registered office is, or is intended to be, situated, in relation to the election or appointment of UK members of the special negotiating body.

(4) Parts 6 to 9 shall apply, without prejudice to paragraph (2) regardless of where the registered office of the SCE is, or is intended to be situated, where—

- (a) a participating individual;
- (b) a participating legal entity, its concerned subsidiaries or concerned establishments;
- (c) a subsidiary of an SCE;
- (d) an establishment of an SCE; or
- (e) an employee or an employees' representative,

is resident, registered, or situated, as the case may be, in the UK.

Exempt formations and SCEs

5.—(1) These Regulations shall not apply where a participating individual intends to form an SCE and at the relevant time—

- (a) all or all but one of the other parties to its formation are participating individuals; and
- (b) the total workforce at the relevant time comprises employees employed to work in one EEA State only or numbers less than 50.

(2) These Regulations shall not apply where a participating legal entity intends to form an SCE where—

- (a) all of the other parties to its formation are participating individuals, and

(b) the total workforce at the relevant time comprises employees employed to work in one EEA State only or numbers less than 50.

(3) Subject to regulation 6, these Regulations shall not apply where an SCE has been registered and at the relevant time the circumstances in regulation 5(1) or 5(2) applied.

(4) Notwithstanding paragraphs (1) to (3), in the case of transfer from another EEA state to the UK of the registered office of an SCE governed by participation, at least the same level of employee participation rights shall continue to apply after that transfer.

Subsequent application of Regulations to a formerly exempt SCE

6.—(1) If a relevant condition is satisfied in respect of an SCE referred to in regulation 5(3), these Regulations, subject to paragraph (2), shall apply.

(2) The provisions in Schedule 1 shall have effect in substitution for regulations 7 to 21.

(3) In this regulation, “relevant condition” means—

(a) the total workforce is 50 or more and includes employees employed to work in at least two different EEA States; or

(b) a valid request is made to the effect that these Regulations be applied.

(4) A request pursuant to paragraph 3(b) is not a valid request unless

(a) it consists of—

(i) a single request made by at least one third of the total workforce; or

(ii) a series of separate requests made within a period of six months which when taken together mean that it is made by at least one third of the total workforce;

(b) the employees comprising such third include employees employed to work in at least two different EEA States; and

(c) the single request, or each separate request, of which it consists—

(i) is in writing;

(ii) is sent to the registered office, head office or principal place of business of the SCE or any subsidiary; and

(iii) specifies the names of the employees making it and the date on which it is made.

(5) If a relevant condition is satisfied but subsequently ceases to be satisfied, these Regulations (as modified by virtue of paragraph (2)), shall continue to apply.

Duty on participating individual and participating legal entity to provide information

7.—(1) When a participating individual or the competent organ of a participating legal entity decides to form an SCE, that individual or organ shall, as soon as possible after—

(a) in the case of an SCE to be formed by merger, publishing the draft terms of merger,

(b) in the case of an SCE to be formed by conversion, publishing the draft terms of conversion, or

(c) in the case of an SCE to be formed in any other way, agreeing a plan to form an SCE,

provide information to the employees' representatives of the participating individual or the participating legal entity, any concerned subsidiaries and concerned 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 individuals, participating legal entities, subsidiaries and establishments,

- (b) identifying the concerned subsidiaries and concerned establishments,
- (c) giving the number of employees employed by each participating individual, participating legal entity, subsidiary and at each establishment, and
- (d) 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 10, each participating individual and the competent organs of each participating legal entity must provide that body with such information as is necessary to keep it informed of the plan to establish and the progress of establishing the SCE up to the time the SCE has been registered.

Complaint of failure to provide information

8.—(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) a participating individual or the competent organ of a participating legal entity has failed to provide the information referred to in regulation 7; or
- (b) the information provided by the participating individual or the competent organ of a participating legal entity for the purpose of complying with regulation 7 is false or incomplete in a material particular.

(2) Where the CAC finds the complaint well-founded it shall make an order requiring the participating individual or 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 participating individual or the competent organ must disclose the information specified in the order.

Function of the special negotiating body

9. The special negotiating body and the participating individuals and competent organs of the participating legal entities shall have the task of reaching an employee involvement agreement.

Composition of the special negotiating body

10.—(1) The participating individuals and the competent organs of the participating legal entities shall make arrangements for the establishment of a special negotiating body, which body shall be constituted as soon as possible after the relevant time and in accordance with paragraphs (2) to (7) below. The method used to elect or appoint employee representatives to the special negotiating body should seek to promote gender balance.

(2) The total number of employees employed to work in each EEA State of the participating individuals, participating legal entities and concerned subsidiaries 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 SCE to be formed 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 cooperative, the employees of any relevant cooperative 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 relevant cooperative 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 relevant cooperatives in each EEA State that are not represented under paragraph (3) having the highest number of employees in descending order, starting with the relevant cooperative with the highest number, followed by those employed by the relevant cooperative in each EEA State that are not so represented having the second highest number of employees in descending order, starting with the relevant cooperative (among those relevant cooperatives) with the highest number.

(5) The participating individuals and the competent organs of the participating legal entities 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 any 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 individuals, participating legal entities, 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 materially 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 cooperative formed under the law of an 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 cooperative or a trade union representative; and
 - (ii) in the case of a relevant cooperative not formed under the law of such an EEA State, an employee of the relevant cooperative; and
- (b) “relevant cooperative” means a participating legal entity which has employees in the EEA State under whose law it is formed and which it is proposed will cease to exist on or following the registration of the SCE.

Complaint about establishment of special negotiating body

11.—(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 10.

(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 individual, participating legal entity or concerned subsidiary, an employee of that participating individual, participating legal entity or concerned subsidiary; or
- (c) a participating individual or the competent organ of a participating legal entity or concerned subsidiary.

(3) The CAC shall only consider an application made under paragraph (1) that a special negotiating body has not been properly constituted 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 individuals and participating legal entities complied or should have complied with the obligation to inform the employees under regulation 10(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 participating individuals and the competent organs of the participating legal entities continue to be under the obligation in regulation 10(1).