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## STATUTORY INSTRUMENTS

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# 2009 No. 2401

## The European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009

### PART 9

#### MISCELLANEOUS

##### **CAC proceedings**

**34.**—(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 must—

- (a) make such enquiries as it sees fit, and
- (b) 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**

**35.**—(1) Any proceedings before the Appeal Tribunal under these Regulations, other than appeals under paragraph (w) of section 21(1) of the Employment Tribunals Act 1996 (appeals from employment tribunals on questions of law)<sup>M1</sup>, must—

- (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

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- (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) <sup>M2</sup>—
  - (a) for “2006 and” substitute “ 2006, ”;
  - (b) after “2007”, insert “ and regulation 33(1) of the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009(S.I. 2009/2401) ”.

#### Marginal Citations

- M1** Section 21(1) has been amended on a number of occasions to specify additional proceedings and claims to which the section applies.
- M2** Section 20(4) was inserted by regulation 35 of S.I. 1999/3323, and amended by regulations 36(2) and 48(2) of S.I. 2004/3426, **regulation 37(2)** of S.I. 2006/2059 and regulation 58(2) of S.I. 2007/2974.

#### Appeal Tribunal: appeals from employment tribunals

**36.** In section 21(1) of the Employment Tribunals Act 1996 (circumstances in which an appeal lies to the Appeal Tribunal from an employment tribunal) omit “or” immediately preceding paragraph (v) and after that paragraph insert—

“, or

- (w) the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009(S.I. 2009/2401).”.

#### ACAS

**37.—**(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 must—

- (a) refer the application or complaint to the Advisory, Conciliation and Arbitration Service (“ACAS”), and
- (b) notify the applicant or complainant and any persons whom it considers have a proper interest in the application or complaint accordingly,

and ACAS must seek to promote a settlement of the matter.

(2) If—

- (a) an application or complaint so referred is not settled or withdrawn, and
- (b) ACAS is of the opinion that further attempts at conciliation are unlikely to result in a settlement,

ACAS must inform the CAC of that opinion.

(3) If—

- (a) the application or complaint is not referred to ACAS, or
- (b) it is so referred, but ACAS informs the CAC of its opinion that further attempts at conciliation are unlikely to result in a settlement,

the CAC must proceed to hear and determine the application or complaint.

#### Restrictions on contracting out: general

**38.—**(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 these Regulations, other than a provision of Part 8, or
  - (b) to preclude a person from bringing any proceedings before the CAC under any provision of these Regulations other than a provision of that Part.
- (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: Part 8**

**39.**—(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 Part 8 of these Regulations, or
- (b) to preclude a person from bringing any proceedings before an employment tribunal under that Part.

(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 [<sup>F1</sup>any of sections 18A to 18C] 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 [<sup>F2</sup>section 18(1)(y)] of the Employment Tribunals Act 1996 (proceedings under these Regulations where conciliation is available) if the conditions regulating [<sup>F3</sup>settlement] agreements under these Regulations are satisfied in relation to the agreement.

(4) For the purposes of paragraph (3) the conditions regulating [<sup>F4</sup>settlement] agreements are as follows—

- (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 the ability of the employee to pursue the employee's 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;
- (f) the agreement must state that the conditions in sub-paragraphs (a) to (e) are satisfied.

(5) For the purposes of paragraph (4)(c) a “relevant independent adviser” is a person who is any of the following—

- (a) a qualified lawyer;
- (b) 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;
- (c) a person who 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;

but this is subject to paragraph (6).

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

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- (a) if the person 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;
  - (c) in the case of a person within paragraph (5)(c), if the employee makes a payment for the advice received.
- (7) In paragraph (5)(a) “qualified lawyer” means any of the following—
- (a) as respects England and Wales—
    - (i) a barrister (whether in practice as such or employed to give legal advice);
    - (ii) a solicitor who holds a practising certificate;
    - (iii) 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);
  - (b) as respects Scotland—
    - (i) an advocate (whether in practice as such or employed to give legal advice); or
    - (ii) a solicitor who holds a practising certificate.
- (8) For the purposes of paragraph (6) any two employers are “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” is to be construed accordingly.

<b>F1</b>	Words in <a href="#">reg. 39(2)</a> substituted (6.4.2014) by <a href="#">The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2014 (S.I. 2014/386)</a> , art. 1, <a href="#">Sch. para. 60</a>
<b>F2</b>	Words in <a href="#">reg. 39(3)</a> substituted (6.4.2014) by <a href="#">The Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2014 (S.I. 2014/431)</a> , art. 1, <a href="#">Sch. para. 38</a>
<b>F3</b>	Word in <a href="#">reg. 39(3)</a> substituted (30.8.2013) by <a href="#">The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2013 (S.I. 2013/1956)</a> , art. 1, <a href="#">Sch. para. 15</a>
<b>F4</b>	Word in <a href="#">reg. 39(4)</a> substituted (30.8.2013) by <a href="#">The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2013 (S.I. 2013/1956)</a> , art. 1, <a href="#">Sch. para. 15</a>

## The Transnational Information and Consultation of Employees Regulations 1999

**40.** In the Transnational Information and Consultation of Employees Regulations 1999 <sup>M3</sup>, for regulation 46A substitute—

“**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 17 of the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 (decision not to open, or to terminate, negotiations)(S.I. 2009/2401) or, as the case may be, regulation 17 of the European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I. 2009/2402).

(2) In this regulation an “SE” means a company established in accordance with the European Public Limited-Liability Company Regulations 2004(S.I. 2004/2326 <sup>M4</sup>).”.

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**Marginal Citations**

**M3** [S.I. 1999/3323](#). Regulation 46A was inserted by regulation 53 of [S.I. 2004/2326](#).

**M4** [S.I. 2004/2326](#) was amended by [S.I. 2009/2400](#).

**Existing employee involvement rights**

**41.**—(1) Nothing in these Regulations affects 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.

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**Changes and effects yet to be applied to :**

- Regulations applied by Regulation (EC) No. 2157/2001, Art. 1(4) (as substituted) by [S.I. 2018/1298 reg. 98\(c\)](#)
- Regulations applied by Regulation (EC) No. 2157/2001, Art. 12(4) (as amended) by [S.I. 2018/1298 reg. 107\(b\)](#)
- Regulations applied by Regulation (EC) No. 2157/2001, Art. 40(2) (as amended) by [S.I. 2018/1298 reg. 113\(b\)](#)
- Regulations applied by Regulation (EC) No. 2157/2001, Art. 43(2) (as amended) by [S.I. 2018/1298 reg. 115\(b\)\(iv\)](#)
- Regulations applied by Regulation (EC) No. 2157/2001, Art. 52(b) (as amended) by [S.I. 2018/1298 reg. 122\(a\)](#)
- Regulations applied by Regulation (EC) No. 2157/2001, Art. 9(1)(c)(i) (as substituted) by [S.I. 2018/1298 reg. 104\(a\)\(ii\)](#)
- Regulations applied by Regulation (EC) No. 2157/2001, Art.AA1 (as inserted) by [S.I. 2018/1298 reg. 97](#)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

- Blanket amendment words substituted by [S.I. 2011/1043 art. 3-68-10](#)

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 3(2A) inserted by [S.I. 2018/1298 reg. 49\(c\)](#)
- reg. 17(4)(d) inserted by [S.I. 2018/1298 reg. 52\(c\)\(iii\)](#)
- reg. 20(3)(b) words substituted by [S.I. 2018/1298 reg. 54\(b\)](#)
- reg. 24(1)(aa) inserted by [S.I. 2018/1298 reg. 57\(a\)](#)
- reg. 41(2A) inserted by [S.I. 2018/1298 reg. 64\(b\)](#)