
STATUTORY INSTRUMENTS

2010 No. 1088

TERMS AND CONDITIONS OF EMPLOYMENT

**The Transnational Information and Consultation
of Employees (Amendment) Regulations 2010**

Made - - - - 30th March 2010
Laid before Parliament 6th April 2010
Coming into force in accordance with regulation 1(1)

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾.

The Secretary of State has been designated for the purposes of that section in relation to measures relating to the information and consultation of employees⁽²⁾.

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Transnational Information and Consultation of Employees (Amendment) Regulations 2010 and shall come into force on 5th June 2011, save for the following which shall come into force on 1st October 2011—

- (a) regulation 3, in so far as it inserts the definitions of “agency worker”, “hirer”, “suitable information relating to the use of agency workers” and “temporary work agency” and paragraph (4C) into regulation 2 (interpretation) of the 1999 Regulations;
 - (b) regulation 5, in so far as it inserts paragraph (4) into regulation 7 (entitlement to information) of the 1999 Regulations;
 - (c) regulation 9, in so far as it inserts paragraph (9) into regulation 17 (content and scope of a European Works Council agreement and information and consultation procedure) of the 1999 Regulations;
 - (d) regulation 10, in so far as it inserts a new regulation 18A(8) into the 1999 Regulations;
 - (e) regulation 11, in so far as it inserts a new regulation 19F(7) into the 1999 Regulations; and
 - (f) regulation 28 (use of agency workers).
- (2) These Regulations extend to Northern Ireland.

(1) 1972 c.68.

(2) S.I. 1999/2788 as amended by S.I. 2002/1819 and S.I. 2005/1971.

(3) In these Regulations “the 1999 Regulations” means the Transnational Information and Consultation of Employees Regulations 1999⁽³⁾.

Amendment of the 1999 Regulations

2. The 1999 Regulations are amended as set out in regulations 3 to 30.

Amendment of regulation 2

3. In regulation 2 (interpretation)—

(a) in paragraph (1) after the definition of—

(i) “ACAS” insert—

““agency worker” has the meaning provided for in regulation 3 of the Agency Workers Regulations 2010⁽⁴⁾”;

(ii) “group undertaking” insert—

““hirer” has the meaning provided for in regulation 2 of the Agency Workers Regulations 2010”;

(iii) “Member State” insert—

““national employee representation body” means—

(a) where 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, that trade union, and

(b) a body which has not been established with information and consultation on transnational matters as its main purpose, to which any employee representatives are elected or appointed by employees, as a result of which they hold 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,

(including 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);

“relevant date” has the meaning given to it in regulation 6⁽⁴⁾”;

(iv) “special negotiating body” insert—

““suitable information relating to the use of agency workers” means—

(a) the number of agency workers working temporarily for and under the supervision and direction of the undertaking;

(b) the parts of the undertaking in which those agency workers are working; and

(c) the type of work those agency workers are carrying out;

⁽³⁾ S.I. 1999/3323 as amended by S.I. 2004/1079, S.I. 2004/2326, S.I. 2004/2518, S.I. 2006/2059, S.I. 2009/2401, and S.I. 2009/3348.

⁽⁴⁾ S.I. 2010/93.

“temporary work agency” has the meaning provided for in regulation 4 of the Agency Workers Regulations 2010;” and

(b) after paragraph (4) insert—

“(4A) In paragraph (1) in the definition of “national employee representation body” and in regulation 18A, matters are transnational where they concern—

- (a) the Community-scale undertaking or Community-scale group of undertakings as a whole, or
- (b) at least two undertakings or establishments of the Community-scale undertaking or Community-scale group of undertakings situated in two different Member States.

(4B) The arrangements to link information and consultation of a European Works Council with information and consultation of the national employee representation bodies—

- (a) in regulation 17(4)(c) may relate to any matters including, as the case may be—
 - (i) the content of the information, the time when, or manner in which it is given, or
 - (ii) the content of the consultation, the time when, or manner in which it takes place;
- (b) in regulations 17(4)(c) and 19E are subject to the limitation in regulation 18A(7); and
- (c) in regulations 17(4)(c) and 19E shall not affect the main purpose for which a national employee representation body was established.

(4C) An agency worker who has a contract within regulation 3(1)(b) of the Agency Workers Regulations 2010 (contract with the temporary work agency) with a temporary work agency which is a Community-scale undertaking or Community-scale group of undertakings at the relevant date, which is not a contract of employment, shall be treated as being employed by that agency for the duration of their assignment with a hirer for the purposes of—

- (a) calculating the number of employees within the definitions of “Community-scale undertaking” and “Community-scale group of undertakings” in this regulation; and
- (b) the means of calculating the number of employees in regulation 6.”.

Amendment of regulation 6

4. In regulation 6(4) (calculation of numbers of employees) for “regulations 7 to 10 and regulation 20” substitute “regulations 2(4C), 7 to 10, 19F and 20”.

Amendment of regulation 7

5. In regulation 7 (entitlement to information) for paragraph (3) substitute—

“(3) The recipient must obtain and provide the employee or employees’ representative who has made the request with information—

- (a) on the average number of employees employed by the undertaking, or as the case may be the group of undertakings, in the United Kingdom and in each of the other Member States in the last two years; and
- (b) relating to the structure of—

- (i) the undertaking, or as the case may be the group of undertakings, and
- (ii) its workforce,

in the United Kingdom and in each of the other Member States in the last two years.

(4) Where information disclosed under paragraph (3) includes information as to the employment situation in the undertaking, or as the case may be the group of undertakings, this shall include suitable information relating to the use of agency workers (if any).”.

Amendment of regulation 8

6. In regulation 8 (complaint of failure to provide information)—

(a) for paragraph (1)(a) substitute—

“(a) the recipient has failed to provide, or as the case may be obtain and provide, the information referred to in regulation 7(3); or”; and

(b) for paragraph (2) substitute—

“(2) Where the CAC finds the complaint well-founded it shall make an order requiring the recipient 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, or as the case may be obtained and disclosed, to the complainant;
- (b) the date (or if more than one, the earliest date) on which the recipient refused or failed to disclose, or as the case may be obtain and disclose, information, or disclosed false or incomplete information; and
- (c) a date (not less than one week from the date of the order) by which the recipient must disclose, or as the case may be obtain and disclose, the information specified in the order.”.

Amendment of regulation 12

7. For regulation 12 (composition of the special negotiating body) substitute—

“Composition of the special negotiating body

12.—(1) Subject to paragraph (3), the special negotiating body shall be constituted in accordance with paragraph (2).

(2) In each Member State in which employees of a Community-scale undertaking or Community-scale group of undertakings are employed to work, those employees shall elect or appoint one member of the special negotiating body for each 10% (or fraction of 10%) which those employees represent of the total number of employees of the Community-scale undertaking or Community-scale group of undertakings employed in those Member States.

(3) Paragraph (1) does not apply to a special negotiating body constituted before 5th June 2011.

(4) The special negotiating body shall inform the central management, local managements and the European social partner organisations of the composition of the special negotiating body and of the date they propose to start the negotiations.”.

Amendment of regulation 16

8. In regulation 16 (negotiation procedure)—

- (a) after paragraph (1) insert—

“(1A) Within a reasonable time both before and after any meeting with the central management, the members of the special negotiating body are entitled to meet without the central management or its representatives being present, using any means necessary for communication at those meetings.”; and

- (b) in paragraph (5) after “choice” insert—

“(which may include representatives of European trade union organisations) who may, at the request of the special negotiating body, attend in an advisory capacity any meeting convened in accordance with paragraph (1)”.

Amendment of regulation 17

9. In regulation 17 (content and scope of a European Works Council agreement and information and consultation procedure)—

- (a) in paragraph (4)(c) after “European Works Council” insert “and arrangements to link information and consultation of the European Works Council with information and consultation of national employee representation bodies;”;

- (b) after paragraph (4)(d) insert—

“(dd) where the parties decide that it is necessary to establish a select committee, the composition of the select committee, the procedure for appointing its members, the functions and the procedural rules;”;

- (c) for paragraph (4)(f) substitute—

“(f) the date of entry into force of the agreement and its duration, the arrangements for amending or terminating the agreement, the circumstances in which the agreement is to be renegotiated including where the structure of the Community-scale undertaking or Community-scale group of undertakings changes and the procedure for renegotiation of the agreement.”;

- (d) after paragraph (4) insert—

“(4A) In determining the allocation of seats under paragraph (4)(b), an agreement shall, so far as reasonably practicable, take into account the need for balanced representation of employees with regard to their role and gender and the sector in which they work.”;

- (e) for paragraph (5) substitute—

“(5) If the parties decide to establish an information and consultation procedure instead of a European Works Council, the agreement establishing the procedure must specify a method by which the information and consultation representatives are to enjoy the right to meet to discuss the information conveyed to them.”; and

- (f) after paragraph (8) insert—

“(9) Where information disclosed under a European Works Council agreement or an information and consultation procedure includes information as to the employment situation in the Community-scale undertaking or, as the case may be, the Community-scale group of undertakings, this shall include suitable information relating to the use of agency workers (if any).”.

Information and consultation

10. After regulation 18 (subsidiary requirements) insert—

“Information and consultation

18A.—(1) This regulation applies where—

- (a) a European Works Council or information and consultation procedure has been established under regulation 17; or
- (b) a European Works Council has been established by virtue of regulation 18.

(2) The central management, or any more appropriate level of management, shall give information to—

- (a) members of a European Works Council; or
- (b) information and consultation representatives,

as the case may be, in accordance with paragraph (3).

(3) The content of the information, the time when, and manner in which it is given, must be such as to enable the recipients to—

- (a) acquaint themselves with and examine its subject matter;
- (b) undertake a detailed assessment of its possible impact; and
- (c) where appropriate, prepare for consultation.

(4) The central management, or any more appropriate level of management, shall consult with—

- (a) members of a European Works Council; or
- (b) information and consultation representatives,

as the case may be, in accordance with paragraph (5).

(5) The content of the consultation, the time when, and manner in which it takes place, must be such as to enable a European Works Council or information and consultation representatives to express an opinion on the basis of the information provided to them.

(6) The opinion referred to in paragraph (5) shall be provided within a reasonable time after the information is provided to the European Works Council or the information and consultation representatives and, having regard to the responsibilities of management to take decisions effectively, may be taken into account by the central management or any more appropriate level of management.

(7) The information provided to the members of a European Works Council or information and consultation representatives, and the consultation of the members of a European Works Council or information and consultation representatives shall be limited to transnational matters.

(8) Where information as to the employment situation in the Community-scale undertaking or, as the case may be, the Community-scale group of undertakings, is disclosed by the central management or any more appropriate level of management, this shall include suitable information relating to the use of agency workers (if any).”.

Further provisions in relation to European Works Councils, etc

11. After regulation 19 (cooperation) insert—

“Means required

19A.—(1) Subject to paragraph (2), the central management shall provide the members of a European Works Council with the means required to fulfil their duty to represent collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings under these Regulations.

(2) The obligation on central management in paragraph (1) does not include an obligation to provide a member of a European Works Council with—

- (a) time off during working hours to perform functions as such a member, or remuneration for such time off (as required by regulations 25 and 26);
- (b) the means required to undertake training (as required by regulation 19B); or
- (c) time off during working hours to undertake training, or remuneration for such time off (as required by regulations 25 and 26).

Right to training for members of a European Works Council, etc

19B.—(1) Subject to paragraph (2), the central management shall provide an employee who is—

- (a) a member of a special negotiating body; or
- (b) a member of a European Works Council,

with the means required to undertaking training to the extent necessary for the exercise of the employee's representative duties.

(2) The obligation on central management referred to in paragraph (1) does not include an obligation to provide time off during working hours to undertaking training, or remuneration for such time off (as required by regulations 25 and 26).

European Works Council to inform, etc

19C. Subject to regulation 23, a European Works Council shall inform—

- (a) the employees' representatives in the establishments of a Community-scale undertaking or in the undertakings of a Community-scale group of undertakings; or
- (b) to the extent that any employees are not represented by employees' representatives, the employees themselves,

of the content and outcome of the information and consultation procedure carried out in accordance with these Regulations.

Complaint of failure to inform

19D.—(1) An employee or employees' representative may present a complaint to the CAC that—

- (a) the European Works Council has failed to inform them under regulation 19C of the content or outcome of the information and consultation procedure; or
- (b) the information which has been provided by the European Works Council is false or incomplete in a material particular.

(2) Where the CAC finds the complaint well-founded it shall make an order requiring the European Works Council 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;
- (b) the date (or if more than one, the earliest date) on which the European Works Council refused or failed to disclose information, or disclosed false or incomplete information; and

(c) a date (not less than one week from the date of the order) by which the European Works Council must disclose the information specified in the order.

(3) The CAC shall not find a complaint under this regulation well-founded where it considers that the failure to inform, or the provision of false or incomplete information, resulted from a failure by the central management to provide the members of the European Works Council with the means required to fulfil their duty to represent collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings (as required by regulation 19A).

(4) A complaint brought under paragraph (1) must be brought within a period of six months beginning with the date of the alleged failure to inform, or the provision of false or incomplete information.

Links between information and consultation of European Works Council and national employee representation bodies

19E.—(1) Paragraph (2) applies where—

- (a) no arrangements to link information and consultation of a European Works Council with information and consultation of national employee representation bodies have been made under regulation 17(4)(c), and
- (b) there are circumstances likely to lead to substantial changes in work organisation or contractual relations.

(2) Subject to regulation 2(4B), the—

- (a) management of every undertaking belonging to the Community-scale group of undertakings;
- (b) central management; or
- (c) representative agent or the management treated as the central management of the Community-scale undertaking or Community-scale group of undertakings within the meaning of regulation 5(2),

as the case may be, shall ensure that the procedures for informing and consulting the European Works Council and the national employee representation bodies in relation to the substantial changes in work organisation or contractual relations referred to in subparagraph (b) of paragraph (1) are linked so as to begin within a reasonable time of each other.

(3) The national employee representation bodies referred to in paragraph (2) are those bodies which are entitled, whether by law, agreement or custom and practice, to be informed and consulted on the substantial changes in work organisation or contractual relations referred to in subparagraph (b) of paragraph (1).

Adaptation

19F.—(1) The central management shall initiate negotiations for the establishment of a European Works Council or an information and consultation procedure where the structure of a Community-scale undertaking or Community-scale group of undertakings changes significantly and paragraphs (2) and (3) apply.

(2) This paragraph applies where there is—

- (a) one European Works Council agreement, or one agreement for an information and consultation procedure;
- (b) more than one European Works Council agreement;

- (c) more than one agreement for an information and consultation procedure;
- (d) at least one European Works Council agreement and at least one agreement for an information and consultation procedure,

in force and there are no provisions for the continuance of the European Works Council or information and consultation procedure, as the case may be, where there are significant changes in the structure of the Community-scale undertaking or Community-scale group of undertakings or there are such provisions, but there is a conflict between them.

(3) This paragraph applies where a valid request within the meaning of regulation 9(2) and (3) has been made by employees or employees' representatives and on the relevant date the undertaking is a Community-scale undertaking or the group of undertakings is a Community-scale group of undertakings.

(4) Notwithstanding paragraph (1), the central management may initiate the negotiations referred to in paragraph (1) on its own initiative.

(5) Where the central management has initiated negotiations under paragraph (1) or (4), there shall be on the special negotiating body at least three members of every existing European Works Council in addition to the members elected or appointed in accordance with regulation 12(2).

(6) Before the establishment of a European Works Council or an information and consultation procedure under paragraph (1) or (4), any agreement establishing an existing European Works Council or information and consultation procedure—

- (a) shall continue to operate in accordance with its terms, and
- (b) may be adapted by agreement between the members of the European Works Council and the central management, or the information and consultation representatives and the central management, as the case may be, as a result of the change in structured referred to in paragraph (1).

(7) Where information is to be disclosed under a European Works Council agreement or an information and consultation procedure which includes information as to the employment situation in the Community-scale undertaking or, as the case may be, the Community-scale group of undertakings, this shall include suitable information relating to the use of agency workers (if any).”.

Amendment of regulation 20

12. In regulation 20 (failure to establish European Works Council or information and consultation procedure)—

- (a) in paragraphs (1), (4), (5) and (10) for “Appeal Tribunal” substitute “CAC”;
- (b) for paragraph (7) substitute—

“(7) If the Appeal Tribunal makes a decision under paragraph (4) the relevant applicant may, within the period of three months beginning with the date on which the decision is made, make an application to the Appeal Tribunal for a penalty notice to be issued.”;

- (c) after paragraph (7) insert—

“(7A) Where such an application is made, the Appeal Tribunal shall issue a written penalty notice to the central management requiring it to pay a penalty to the Secretary of State in respect of the failure.”; and

- (d) in paragraph (8) for “(7)” substitute “(7A)”.

Amendment of regulation 21

13. In regulation 21 (disputes about operation of European Works Council or information and consultation procedure)—

(a) for paragraph (1) substitute—

“**21.**—(1) Where—

(a) a European Works Council or information and consultation procedure has been established under regulation 17; or

(b) a European Works Council has been established by virtue of regulation 18, a complaint may be presented to the CAC by a relevant applicant where paragraph (1A) applies.”;

(b) after paragraph (1) insert—

“(1A) This paragraph applies where a relevant applicant considers that, because of the failure of a defaulter—

(a) the terms of the agreement under regulation 17 or, as the case may be, the provisions of the Schedule, have not been complied with; or

(b) regulation 18A has not been complied with, or the information which has been provided by the management under regulation 18A is false or incomplete in a material particular.

(1B) A complaint brought under paragraph (1) must be brought within a period of six months beginning with the date of the alleged failure or non-compliance.”;

(c) in paragraphs (4) and (9) and in the first reference in paragraph (6) for “Appeal Tribunal” substitute “CAC”;

(d) in paragraph (6) omit the words after the first reference to “central management” and insert “the relevant applicant may, within the period of three months beginning with the date on which the decision is made, make an application to the Appeal Tribunal for a penalty notice to be issued.”;

(e) after paragraph (6) insert—

“(6A) Where such an application is made, the Appeal Tribunal shall issue a written penalty notice to the central management requiring it to pay a penalty to the Secretary of State in respect of the failure.”; and

(f) in paragraph (7) for “(6)” substitute “(6A)”.

Disputes about failures of management

14. After regulation 21 (disputes about operation of European Works Council or information and consultation procedure) insert—

“Disputes about failures of management

21A.—(1) A complaint may be presented to the CAC by a relevant applicant who considers that—

(a) because of the failure of a defaulter, the members of the special negotiating body have been unable to meet in accordance with regulation 16(1A);

(b) because of the failure of a defaulter, the members of the European Works Council have not been provided with the means required to fulfil their duty to represent

- collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings in accordance with regulation 19A;
- (c) because of the failure of a defaulter, a member of a special negotiating body or a member of the European Works Council has not been provided with the means required to undertake the training referred to in regulation 19B; or
 - (d) regulation 19E(2) applies and that, because of the failure of a defaulter, the European Works Council and the national employee representation bodies have not been informed and consulted in accordance with that regulation.
- (2) A complaint brought under paragraph (1) must be brought within a period of six months beginning with the date of the alleged failure.
- (3) Where the CAC finds the complaint well-founded it shall make a decision to that effect and may make an order requiring the defaulter to take such steps as are necessary to comply with regulation 16(1A), 19A, 19B or 19E(2), as the case may be.
- (4) An order made under paragraph (3) shall specify—
- (a) the steps which the defaulter is required to take;
 - (b) the date of the failure; and
 - (c) the period within which the order must be complied with.
- (5) If the CAC makes a decision under paragraph (3), the relevant applicant may, within the period of three months beginning with the date on which the decision is made, make an application to the Appeal Tribunal for a penalty notice to be issued.
- (6) Where such an application is made, the Appeal Tribunal shall issue a written penalty notice to the defaulter requiring it to pay a penalty to the Secretary of State in respect of the failure.
- (7) Paragraph (6) shall not apply if the Appeal Tribunal is satisfied, on hearing the representations of the defaulter, that the failure resulted from a reason beyond the defaulter's control or that it has some other reasonable excuse for its failure.
- (8) Regulation 22 shall apply to 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 central management or the local management.
- (10) In this regulation—
- (a) “defaulter” means, as the case may be—
 - (i) the management of any undertaking belonging to the Community-scale group of undertakings;
 - (ii) the central management; or
 - (iii) the representative agent or the management treated as the central management of the Community-scale undertaking or Community-scale group of undertakings within the meaning of regulation 5(2);
 - (b) “failure” means an act or omission and a failure by the local management shall be treated as a failure by the central management;
 - (c) “relevant applicant” means—
 - (i) for a complaint in relation to regulation 16(1A), a member of the special negotiating body;
 - (ii) for a complaint in relation to regulation 19A, a member of the European Works Council;

- (iii) for a complaint in relation to regulation 19B, a member of the special negotiating body or a member of the European Works Council;
- (iv) for a complaint in relation to regulation 19E(2), a member of the European Works Council, a national employee representation body, an employee, or an employees' representative.”.

Amendment of regulation 22

15. In regulation 22 (penalties)—

- (a) in paragraphs (1) and (4) for “regulation 20 or 21” substitute “regulation 20, 21 or 21A”;
- (b) in paragraph (2), for “£75,000” substitute “£100,000”;
- (c) in paragraph (4), for “Appeal Tribunal” substitute “CAC”; and
- (d) for paragraph (7) substitute—

“(7) Any sums received by the Secretary of State, or in Northern Ireland the Department for Employment and Learning, under regulation 20, 21 or 21A or this regulation shall be paid into, respectively, the Consolidated Fund or the Consolidated Fund of Northern Ireland.”.

Amendment of regulation 25

16. In regulation 25 (right to time off for members of a European Works Council, etc) after paragraph (1) insert—

“(1A) An employer shall permit an employee who is—

- (a) a member of a special negotiating body; or
- (b) a member of a European Works Council,

to take reasonable time off during the employee’s working hours in order to undertake the training referred to in regulation 19B.”.

Amendment of regulation 28

17. In regulation 28(6)(b) (unfair dismissal) after “Northern Ireland” insert “the High Court or”.

Amendment of regulation 31

18. In regulation 31(6)(b) (detriment) after “Northern Ireland” insert “the High Court or”.

Amendment of regulation 36

19. In regulation 36 (industrial court: jurisdiction) for paragraph (1) substitute—

“**36.**—(1) Where the central management is situated in Northern Ireland, any complaint under regulation 19D, 20, 21 or 21A shall be presented to the Industrial Court instead of to the CAC and references in those regulations and in regulation 22 to the CAC shall be read as references to the Industrial Court and references in regulations 20, 21, 21A and 22 to the Appeal Tribunal shall be read as references to the High Court in Northern Ireland.”.

Amendment of regulation 37

20. In regulation 37(4) (Industrial Court: proceedings) for “Court of Appeal” substitute “High Court”.

Amendment of regulation 39

21. In paragraphs (1), (2) and (3) of regulation 39 (ACAS and the Labour Relations Agency), after “CAC,” omit “the Appeal Tribunal.”

Amendment of regulation 40

22. In regulation 40(1)(b) (restrictions on contracting out: general) after “Northern Ireland” insert “the High Court or”.

Article 3 agreements, Article 13 agreements and agreements signed or revised on or after 5th June 2009 and before 5th June 2011

23. For regulation 44 (article 3 agreements) and regulation 45 (article 13 agreements) substitute—

“Article 3 agreements

44.—(1) Subject to paragraphs (4) and (5), none of the obligations in these Regulations, except those in regulation 19F, applies to a Community-scale undertaking or Community-scale group of undertakings where the conditions specified in Article 3 of the Extension Directive are satisfied.

(2) The conditions referred to in paragraph (1) are that—

(a) an agreement is in force which—

(i) was in force immediately before 16th December 1999;

(ii) covers the entire workforce in the Member States; and

(iii) provides for the transnational information and consultation of employees, and

(b) the obligation (whether arising under these Regulations or under the national law or practice of any other Member State) to initiate negotiations for the establishment of a European Works Council or information and consultation procedure would, but for this paragraph, have applied to the Community-scale undertaking or Community-scale group of undertakings solely as a result of the Extension Directive.

(3) If an agreement when taken together with one or more other agreements satisfies the requirements specified in paragraph (2)(a), that agreement, when taken together with such other agreements, shall be treated as an agreement for the purposes of that paragraph.

(4) Regulations 9 to 18 apply where the structure of a Community-scale undertaking or Community-scale group of undertakings changes significantly and there is—

(a) one European Works Council agreement, or one agreement for an information and consultation procedure;

(b) more than one European Works Council agreement;

(c) more than one agreement for an information and consultation procedure; or

(d) at least one European Works Council agreement and at least one agreement for an information and consultation procedure,

in force and there are no provisions for the continuance of the European Works Council or information and consultation procedure, as the case may be, where there are significant changes in the structure of the Community-scale undertaking or Community-scale group of undertakings or there are such provisions, but there is a conflict between them.

(5) Regulations 25(1) and (2), 26 to 28, 31 and 32 apply to an employee who is a member of a special negotiating body or a candidate in an election in which any person elected will, on being elected, be such a member, where the structure of a Community-scale undertaking or Community-scale group of undertakings changes significantly and paragraphs (6) and (7) apply.

(6) This paragraph applies where there is—

- (a) one European Works Council agreement, or one agreement for an information and consultation procedure;
- (b) more than one European Works Council agreement;
- (c) more than one agreement for an information and consultation procedure; or
- (d) at least one European Works Council agreement and at least one agreement for an information and consultation procedure,

in force and there are no provisions for the continuance of the European Works Council or information and consultation procedure, as the case may be, where there are significant changes in the structure of the Community-scale undertaking or Community-scale group of undertakings or there are such provisions, but there is a conflict between them.

(7) This paragraph applies where the central management has initiated negotiations for the establishment of a European Works Council or an information and consultation procedure under regulation 19F(1) or (3).

Article 13 agreements

45.—(1) Subject to paragraphs (4) and (5), none of the obligations in these Regulations, except those in regulation 19F, applies to a Community-scale undertaking or Community-scale group of undertakings where the conditions specified in Article 13 of the Transnational Information and Consultation Directive are satisfied.

(2) The conditions referred to in paragraph (1) are that an agreement is in force which—

- (a) was in force immediately before whichever is the earlier of 23rd September 1996 and the day after the date on which the national law or practice giving effect to the Transnational Information and Consultation Directive came into force in the Member State (other than the United Kingdom) whose national law governs the agreement;
- (b) covers the entire workforce in the Member States; and
- (c) provides for the transnational information and consultation of employees.

(3) If an agreement when taken together with one or more other agreements satisfies the requirements specified in paragraph (2), that agreement, when taken together with such other agreements, shall be treated as an agreement for the purposes of that paragraph.

(4) Regulations 9 to 18 apply where the structure of a Community-scale undertaking or Community-scale group of undertakings changes significantly and there is—

- (a) one European Works Council agreement or one agreement for an information and consultation procedure;
- (b) more than one European Works Council agreement;
- (c) more than one agreement for an information and consultation procedure; or
- (d) at least one European Works Council agreement and at least one agreement for an information and consultation procedure,

in force and there are no provisions for the continuance of the European Works Council or information and consultation procedure, as the case may be, where there are significant

changes in the structure of the Community-scale undertaking or Community-scale group of undertakings or there are such provisions, but there is a conflict between them.

(5) Regulations 25(1) and (2), 26 to 28, 31 and 32 apply to an employee who is a member of a special negotiating body or a candidate in an election in which any person elected will, on being elected, be such a member, where the structure of a Community-scale undertaking or Community-scale group of undertakings changes significantly and paragraphs (6) and (7) apply.

(6) This paragraph applies where there is—

- (a) one European Works Council agreement, or one agreement for an information and consultation procedure;
- (b) more than one European Works Council agreement;
- (c) more than one agreement for an information and consultation procedure; or
- (d) at least one European Works Council agreement and at least one agreement for an information and consultation procedure,

in force and there are no provisions for the continuance of the European Works Council or information and consultation procedure, as the case may be, where there are significant changes in the structure of the Community-scale undertaking or Community-scale group of undertakings or there are such provisions, but there is a conflict between them.

(7) This paragraph applies where the central management has initiated negotiations for the establishment of a European Works Council or an information and consultation procedure under regulation 19F(1) or (3).

Agreements signed or revised on or after 5th June 2009 and before 5th June 2011

45A.—(1) Subject to paragraph (4), where the conditions specified in paragraph (2) are satisfied, these Regulations shall apply to a Community-scale undertaking or Community-scale group of undertakings as if the amendments listed in paragraph (3) had not been made.

(2) The conditions referred to in paragraph (1) are that an agreement is in force which—

- (a) establishes a European Works Council or information and consultation procedure under regulation 17 of these Regulations; and
- (b) is signed or revised on or after 5th June 2009 and before 5th June 2011.

(3) The amendments referred to in paragraph (1) are those made by the following provisions of the 2010 Regulations—

- (a) regulation 3, in so far as it inserts the definition of “national employee representation bodies” and paragraphs (4A) and (4B) into regulation 2 of these Regulations;
- (b) regulations 5 to 10;
- (c) regulation 11, in so far as it inserts regulations 19A, 19B, 19C, 19D and 19E into these Regulations;
- (d) regulation 13, in so far as it inserts paragraph (1A)(b) into regulation 21 of these Regulations;
- (e) regulation 14, in so far as it inserts regulation 21A(1)(b), (c) and (d) into these Regulations and makes provision for the resolution of complaints in relation to regulations 19A, 19B and 19E(2);
- (f) regulation 16;
- (g) regulation 23, in so far as it amends regulations 44 and 45 of these Regulations; and

(h) regulations 24 to 29.

(4) Regulations 9 to 18 apply where the structure of a Community-scale undertaking or Community-scale group of undertakings changes significantly and there is—

- (a) one European Works Council agreement, or one agreement for an information and consultation procedure;
- (b) more than one European Works Council agreement;
- (c) more than one agreement for an information and consultation procedure; or
- (d) at least one European Works Council agreement and at least one agreement for an information and consultation procedure,

in force and there are no provisions for the continuance of the European Works Council or information and consultation procedure, as the case may be, where there are significant changes in the structure of the Community-scale undertaking or Community-scale group of undertakings or there are such provisions, but there is a conflict between them.

(5) In this regulation “the 2010 Regulations” means the Transnational Information and Consultation of Employees (Amendment) Regulations 2010(5).”.

Amendment of paragraph 2 of the Schedule

24. For paragraph 2 (composition of the European Works Council) of the Schedule substitute—

“Composition of the European Works Council

2.—(1) The European Works Council shall be constituted in accordance with sub-paragraph (2).

(2) In each Member State in which employees of a Community-scale undertaking or Community-scale group of undertakings are employed to work, those employees shall elect or appoint one member of the European Works Council for each 10% (or fraction of 10%) which those employees represent of the total number of employees of the Community-scale undertaking or Community-scale group of undertakings employed in those Member States.

(3) The European Works Council shall inform the central management and any more appropriate level of management of the composition of the European Works Council.

(4) To ensure that it can co-ordinate its activities, the European Works Council shall elect from among its members a select committee comprising no more than five members who are to act on behalf of the European Works Council.”.

Amendment of paragraph 6 of the Schedule

25. After sub-paragraph (2) of paragraph 6 (competence of the European Works Council) of the Schedule insert—

“(3) Information and consultation of employees shall take place between members of a European Works Council and the most appropriate level of management according to the matters under discussion.”.

Amendment of paragraph 7 of the Schedule

26. In paragraph 7 (information and consultation meetings) of the Schedule, for sub-paragraph (3) substitute—

“(3) The information provided to the European Works Council shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales of the Community-scale undertaking or Community-scale group of undertakings.

(4) The information and consultation meeting shall relate in particular to the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts of such undertakings or establishments, and collective redundancies.”.

Amendment of paragraph 8 of the Schedule

27. In paragraph 8 (exceptional information and consultation meetings) of the Schedule—
- (a) in sub-paragraph (1) omit “on measures significantly affecting employees’ interests”; and
 - (b) in sub-paragraph (2) for “measures” substitute “circumstances”.

Use of agency workers

28. After paragraph 8 (exceptional information and consultation meetings) of the Schedule insert—

“Use of agency workers

8A. Where information is to be disclosed under paragraph 7 or 8 which includes information as to the employment situation in the Community-scale undertaking or, as the case may be, the Community-scale group of undertakings, this shall include suitable information relating to the use of agency workers (if any).”.

Amendment of paragraph 9 of the Schedule

29. In paragraph 9 (procedures) of the Schedule—
- (a) in sub-paragraph (6) after the first reference to “European Works Council” insert “and its select committee”; and
 - (b) after sub-paragraph (6) insert—
 - “(7) The employer must ensure that the consultation referred to in paragraphs 7(1) and 8(1) is conducted in such a way that the members of the European Works Council can, if they so request—
 - (a) meet with the central management; and
 - (b) obtain a reasoned response from the central management to any opinion expressed by those representatives on the reports referred to in paragraphs 7(1) and 8(3).
 - (8) Information and consultation carried out in accordance with this Schedule shall be carried out subject to regulation 23.”.

The Employment Appeal Tribunal Rules

- 30.—(1) The Employment Appeal Tribunal Rules 1993(6) are amended as follows.
- (2) Omit rule 16A (complaints under regulations 20 and 21 of the 1999 Regulations).

(6) S.I. 1993/2854; relevant amending instruments are S.I. 2001/1128, S.I. 2004/2526, S.I. 2004/3426 and S.I. 2007/2974.

(3) In rule 16AA (applications under regulation 33(6) of the 2004 Regulations) after “or regulation 53(6) of the 2007 Regulations” insert “or regulation 20(7), 21(6) or 21A(5) of the 1999 Regulations” and after “or regulation 53(4) of the 2007 Regulations” insert “or the decision referred to in regulation 20(4), 21(4) or 21A(3) of the 1999 Regulations”.

(4) For regulation 16B (service of application under rule 16A) substitute—

“Service of application under rule 16AA

16B. On receipt of an application under rule 16AA, the Registrar shall seal it with the Appeal Tribunal’s seal and shall serve a sealed copy on the applicant and on the respondent.

(5) In rule 16C omit “16A or”.

(6) In rule 17 omit “, 16A”.

(7) In rule 26 for “regulation 20 or 21 of the 1999 Regulations” substitute “regulation 20, 21 or 21A of the 1999 Regulations”.

(8) In rule 31(1)(c) for “regulation 20 or 21 of the 1999 Regulations” substitute “regulation 20, 21 or 21A of the 1999 Regulations”.

(9) In the Schedule—

(a) omit Form 4A (application under regulation 20 or 21 of the Transnational Information and Consultation of Employees Regulations 1999);

(b) in the Heading of Form 4B, after “or regulation 53 of the Companies (Cross-Border Mergers) Regulations 2007” insert “or regulation 20, 21 or 21A of the 1999 Regulations”;

(c) in paragraph 5 of Form 4B after “declaration” insert “or decision (*delete which does not apply*)” and after “or regulation 53 of the Companies (Cross-Border Mergers) Regulations 2007” insert “or regulation 20, 21 or 21A of the Transnational Information and Consultation of Employees Regulations 1999”;

(d) in the Heading of Form 5A, for “Regulation 20 or 21 of the Transnational Information and Consultation of Employees Regulations 1999” substitute “Regulation 20, 21 or 21A of the Transnational Information and Consultation of Employees Regulations 1999 or Regulation 20(6) of the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 or Regulation 22(6) of the Information and Consultation of Employees Regulations 2004 or Regulation 53(6) of the Companies (Cross-Border Mergers) Regulations 2007”; and

(e) in the text below paragraph 3 of Form 5A, after “Transnational Information and Consultation of Employees Regulations 1999” insert “or European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 or Information and Consultation of Employees Regulations 2004 or Companies (Cross-Border Mergers) Regulations 2007”.

Lord Young of Norwood Green
Minister for Postal Affairs and Employment
Relations
Department for Business, Innovation & Skills

30th March 2010

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2(2) of the European Communities Act 1972 (c.68) and amend the Transnational Information and Consultation of Employees Regulations 1999 (SI 1999/3323) (as amended by SI 2004/1079, SI 2004/2326 as substituted by SI 2009/2401, SI 2004/2518 and SI 2006/2059) (the “1999 Regulations”). They implement Directive 2009/38/EC of the European Parliament and of the Council of 6th May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast) (OJ No L 122, 16.5.2009, p. 28); and Articles 7 and 8 of Directive 2008/104/EC of the European Parliament and of the Council of 19th November 2008 on temporary agency work (OJ No L327, 5.12.2008, p. 9) in so far as those Articles are relevant to the transnational information and consultation of employees.

Regulation 1 sets out the different coming into force dates for the agency worker-related provisions and the rest of the Regulations and makes it clear that the Regulations extend to Northern Ireland. Regulation 3 amends regulation 2 by providing definitions and setting out the circumstances in which matters or questions are transnational. It also clarifies how information and consultation of the European Works Council may be linked with the information and consultation of the national employee representation bodies; that such information and consultation is limited to transnational matters; and that the scope of the national employee representation bodies remains unaffected by any arrangements to link information and consultation.

Regulation 5 amends regulation 7 of the 1999 Regulations by specifying the information that management must provide to employees to enable them to determine whether an establishment or undertaking is (or is part of) a Community-scale undertaking or Community-scale group of undertakings. Regulation 6 amends regulation 8 of the 1999 Regulations so that there is a remedy available if management has failed to obtain information requested under regulation 7.

Regulation 7 amends regulation 12 of the 1999 Regulations to change the way in which the special negotiating body is constituted and to impose certain information requirements on it. Regulation 8 amends regulation 16 of the 1999 Regulations to give special negotiating body members the right to meet without central management.

Regulation 9 amends regulation 17 of the 1999 Regulations to insert new requirements in relation to the content of an agreement establishing a European Works Council. Regulation 10 inserts a new regulation 18A into the 1999 Regulations, setting out how European Works Council members and information and consultation representatives are to be informed and consulted.

Regulation 11 inserts new regulations 19A, 19B, 19C, 19D, 19E and 19F into the 1999 Regulations. Regulations 19A and 19B provide, respectively, that European Works Council members must have the means required to fulfil their duty under the Regulations and that special negotiating body members and European Works Council members are entitled to training.

Regulations 19C and 19D oblige the European Works Council to inform employees of the outcome of the information and consultation procedure, with a right to complain to the Central Arbitration Committee (“CAC”) for failure to do so.

Regulations 19E and 19F impose, respectively, a new obligation for information and consultation of the European Works Council to be linked to the information and consultation of the national employee representation bodies; and for the initiation of negotiations for the establishment of

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

a European Works Council or information and consultation procedure where the structure of a Community-scale undertaking or Community-scale group of undertakings changes significantly.

Regulations 12 and 13 mostly make procedural amendments to regulations 20 and 21 of the 1999 Regulations which relate to disputes. Regulation 14 inserts a new regulation 21A into the 1999 Regulations to provide a remedy for various failures of management. Regulation 15 makes procedural amendments to regulation 22 of the 1999 Regulations which relates to penalties.

Regulation 16 amends regulation 25 of the 1999 Regulations to give special negotiating body members and European Works Council members the right to time off for training.

Regulations 17 to 22 make procedural amendments which reflect that in Great Britain, the CAC will hear complaints and the Employment Appeal Tribunal will issue penalties, and in Northern Ireland, the Industrial Court will hear complaints and the High Court in Northern Ireland will issue penalties.

Regulation 23 amends regulations 44 and 45 of the 1999 Regulations so that where the structure of a Community-scale undertaking or Community-scale group of undertakings changes significantly, the provisions relating to renegotiation of the European Works Council or information and consultation procedure, as well as the provisions protecting special negotiating body members from detriment and unfair dismissal, apply. Regulation 26 also inserts a new regulation 45A into the 1999 Regulations, which provides that most of the amendments made to the 1999 Regulations by these Regulations do not apply to undertakings with existing agreements which are signed or revised on or after 5th June 2009 and before 5th June 2011. Those that apply include the provisions relating to renegotiation of the European Works Council or information and consultation procedure where the structure of a Community-scale undertaking or Community-scale group of undertakings changes significantly, as well as the agency worker-related amendments and certain procedural amendments.

Regulations 24 to 29 make amendments to the Schedule which contains subsidiary requirements. Regulation 30 makes consequential amendments to the Employment Appeal Tribunal Rules 1993.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector, together with a transposition note setting out how the Directive is being transposed into UK law, is available and copies can be obtained from the Department for Business, Innovation and Skills, Employment Relations Directorate, 1 Victoria Street, London SW1H 0ET or on www.bis.gov.uk. Copies of each have also been placed in the libraries of both Houses of Parliament.