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STATUTORY INSTRUMENTS

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**1999 No. 3323**

**The Transnational Information and  
Consultation of Employees Regulations 1999**

**PART III**

**SPECIAL NEGOTIATING BODY**

**Functions of the special negotiating body**

**11.** The special negotiating body shall have the task of determining, with the central management, by written agreement, the scope, composition, functions, and term of office of a European Works Council or the arrangements for implementing an information and consultation procedure.

**Composition of the special negotiating body**

**12.—**(1) The special negotiating body shall be constituted in accordance with paragraphs (2) and (3) below.

(2) There shall be on the special negotiating body at least one member representing each Member State in which the Community-scale undertaking has one or more establishments, or in which the Community-scale group of undertakings has its controlling undertaking or one or more controlled undertakings.

(3) There shall be on the special negotiating body the following additional members—

- (a) one additional member from a Member State in which there are employed 25 per cent or more but less than 50 per cent of the employees of the undertaking or group of undertakings who are employed in the Member States;
- (b) two additional members from a Member State in which there are employed 50 per cent or more but less than 75 per cent of the employees of the undertaking or group of undertakings who are employed in the Member States;
- (c) three additional members from a Member State in which there are employed 75 per cent or more of the employees of the undertaking or group of undertakings who are employed in the Member States.

(4) The special negotiating body shall inform the central management and local managements of the composition of the special negotiating body.

**Ballot arrangements**

**13.—**(1) Subject to regulation 15, the UK members of the special negotiating body shall be elected by a ballot of the UK employees.

(2) The UK management must arrange for the holding of a ballot of employees referred to in paragraph (1), which satisfies the requirements specified in paragraph (3).

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

- (a) the ballot of the UK employees must comprise a single ballot but may instead, if the UK management so decides, comprise separate ballots of employees in such constituencies as the UK management may determine where—
    - (i) the number of UK members of the special negotiating body to be elected is more than one, and
    - (ii) the UK management considers that if separate ballots were held for those constituencies, the UK members of the special negotiating body to be elected would better reflect the interests of the UK employees as a whole than if a single ballot were held;
  - (b) a UK employee who is an employee of the Community-scale undertaking or the Community-scale group of undertakings on the day on which votes may be cast in the ballot, or if the votes may be cast on more than one day, on the first day of those days, is entitled to vote in the ballot of the UK employees;
  - (c) any UK employee, or UK employees' representative, who is an employee of, or an employees' representative in, the Community-scale undertaking or Community-scale group of undertakings immediately before the latest time at which a person may become a candidate in the ballot, is entitled to stand in the ballot of the UK employees as a candidate for election as a UK member of the special negotiating body;
  - (d) the UK management must, in accordance with paragraph (7), appoint an independent ballot supervisor to supervise the conduct of the ballot of the UK employees but may instead, where there are to be separate ballots, 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 UK management may determine, provided that each separate ballot is supervised by a supervisor;
  - (e) after the UK management has formulated proposals as to the arrangements for the ballot of the UK employees and before it has published the final arrangements under sub-paragraph (f) it must, so far as reasonably practicable, consult with the UK employees' representatives on the proposed arrangements for the ballot of the UK employees;
  - (f) the UK management must publish the final arrangements for the ballot of the UK employees in such manner as to bring them to the attention of, so far as reasonably practicable, the 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 are defective may, within a period of 21 days beginning on the date on which the UK management published the final arrangements under sub-paragraph (f), 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 UK management to modify the arrangements it has made for the ballot of the UK employees or to satisfy the requirements in sub-paragraph (e) or (f) of paragraph (3).
- (6) An order under paragraph (5) shall specify the modifications to the arrangements which the UK management is required to make and the requirements which it must satisfy.
- (7) A person is an independent ballot supervisor for the purposes of paragraph (3)(d) if the UK 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.
- (8) For the purposes of paragraph (4) the arrangements for the ballot of the UK employees are defective if—
- (a) any of the requirements specified in sub-paragraphs (b)-(f) of paragraph (3) is not satisfied;
  - or

- (b) in a case where the ballot is to comprise separate ballots, the constituencies determined by the UK management do not reflect adequately the interests of the UK employees as a whole.

## **Conduct of ballot**

### **14.—(1) The UK management must—**

- (a) ensure that a ballot supervisor appointed under regulation 13(3)(d) carries out his functions under this regulation and that there is no interference with his carrying out of those functions from the UK management, or the central management (where it is not also the UK 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 the UK employees published by the UK management under regulation 13(3)(f) 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 13(4);
- (b) does not conduct the ballot or any of the separate ballots before the UK management has satisfied the requirement specified in regulation 13(3)(e) and—
  - (i) where no complaint has been presented under regulation 13(4), before the expiry of a period of 21 days beginning on the date on which the UK management published its arrangements under regulation 13(3)(f); or
  - (ii) where a complaint has been presented under regulation 13(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 the 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 is 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 UK 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.

(4) A ballot supervisor shall publish a report (“an ineffective ballot report”) where he considers (whether or not on the basis of representations made to him by another person) 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 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 judgment as to whether each of the requirements referred to in paragraph (2) was satisfied in relation to 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 UK 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 13(2);
- (b) if there have been separate ballots and sub-paragraph (a) does not apply—
  - (i) the UK management shall arrange for the separate ballot or ballots in respect of which an ineffective ballot report was issued to be reheld in accordance with regulation 13 and this regulation, and
  - (ii) no such ballot shall have effect until it has been reheld 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 central management (whether or not an ineffective ballot report has been made).

### **Consultative Committee**

**15.—**(1) Where a consultative committee exists—

- (a) no UK member of the special negotiating body shall be elected by a ballot of the UK employees, except in the circumstances specified in paragraphs (2), (3) or (9) below; and
- (b) the committee shall be entitled to nominate from its number the UK members of the special negotiating body.

(2) Where the consultative committee fails to nominate any UK members of the special negotiating body, all of the UK members of the special negotiating body shall be elected by a ballot of the UK employees in accordance with regulations 13 and 14.

(3) Where the consultative committee nominates such number of persons to be a UK member, or UK members, of the special negotiating body, which number is less or more than the number of UK members of the special negotiating body required, the consultative committee shall be treated as having failed to have nominated any UK members of the special negotiating body.

(4) 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 UK management, or from the central management (where it is not also the UK management);
- (c) which, in carrying out its information and consultation function, represents all the UK employees; and
- (d) which consists wholly of persons who were elected by a ballot (which may have consisted of a number of separate ballots) in which all the employees who, at the time, were UK employees were entitled to vote.

(5) In paragraph (4) “information and consultation function” means the function of—

- (a) receiving, on behalf of all the UK employees, information which may significantly affect the interests of the UK employees, 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 UK management or the central management (where it is not also the UK management) on the information referred to in sub-paragraph (a) above.
- (6) The consultative committee must publish the names of the persons whom it has nominated to be UK members of the special negotiating body in such manner as to bring them to the attention of the UK management and, so far as reasonably practicable, the UK employees and UK employees' representatives.
- (7) Where the UK management, a UK employee or a UK employees' representative believes that—
- (a) the consultative committee does not satisfy the requirements in paragraph (4) above; or
  - (b) any of the persons nominated by the consultative committee is not entitled to be nominated,
- 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 (6) the names of persons nominated, present a complaint to the CAC.
- (8) Where the CAC finds the complaint well-founded it shall make a declaration to that effect.
- (9) Where the CAC has made a declaration under paragraph (8)—
- (a) no nomination made by the consultative committee shall have effect; and
  - (b) all of the UK members of the special negotiating body shall be elected by a ballot of the UK employees in accordance with regulations 13 and 14.
- (10) Where the consultative committee nominates any person to be a UK member of the special negotiating body, that nomination shall have effect after—
- (a) where no complaint has been presented under paragraph (7), the expiry of a period of 21 days beginning on the date on which the consultative committee published under paragraph (6) the names of persons nominated; or
  - (b) where a complaint has been presented under paragraph (7), the complaint has been determined without a declaration under paragraph (8) having been made.