
STATUTORY INSTRUMENTS

2004 No. 3426

The Information and Consultation
of Employees Regulations 2004

PART III

NEGOTIATED AGREEMENTS

Employee request to negotiate an agreement in respect of information and consultation

7.—(1) On receipt of a valid employee request, the employer shall, subject to paragraphs (8) and (9), initiate negotiations by taking the steps set out in regulation 14(1).

(2) Subject to paragraph (3), an employee request is not a valid employee request unless it consists of—

- (a) a single request made by at least 10% of the employees in the undertaking; or
- (b) a number of separate requests made on the same or different days by employees which when taken together mean that at least 10% of the employees in that undertaking have made requests, provided that the requests are made within a period of six months.

(3) Where the figure of 10% in paragraph (2) would result in less than 15 or more than 2,500 employees being required in order for a valid employee request to be made, that paragraph shall have effect as if, for the figure of 10%, there were substituted the figure of 15, or as the case may be, 2,500.

(4) An employee request is not a valid employee request unless the single request referred to in paragraph (2)(a) or each separate request referred to in paragraph (2)(b)—

- (a) is in writing;
- (b) is sent to—
 - (i) the registered office, head office or principal place of business of the employer; or
 - (ii) the CAC; and
- (c) specifies the names of the employees making it and the date on which it is sent.

(5) Where a request is sent to the CAC under paragraph (4)(b)(ii), the CAC shall—

- (a) notify the employer that the request has been made as soon as reasonably practicable;
- (b) request from the employer such information as it needs to verify the number and names of the employees who have made the request; and
- (c) inform the employer and the employees who have made the request how many employees have made the request on the basis of the information provided by the employees and the employer.

(6) Where the CAC requests information from the employer under paragraph (5)(b), the employer shall provide the information requested as soon as reasonably practicable.

(7) The date on which an employee request is made is—

- (a) where the request consists of a single request satisfying paragraph (2)(a) or of separate requests made on the same day satisfying paragraph (2)(b), the date on which the request is or requests are sent to the employer by the employees or the date on which the CAC informs the employer and the employees in accordance with paragraph (5)(c) of how many employees have made the request; and
 - (b) where the request consists of separate requests made on different days, the date on which—
 - (i) the request which results in paragraph (2)(b) being satisfied is sent to the employer by the employees; or
 - (ii) the CAC informs the employer and the employees in accordance with paragraph (5)(c) of how many employees have made the request where that request results in paragraph (2)(b) being satisfied.
- (8) If the employer decides to hold a ballot under regulation 8 or 9, the employer shall not be required to initiate negotiations unless and until the outcome of the ballot is that in regulation 8(5)(b).
- (9) If an application is made to the CAC under regulation 13, the employer shall not be required to initiate negotiations unless and until if the CAC declares that there was a valid employee request or that the employer's notification was valid.

Pre-existing agreements: ballot for endorsement of employee request

8.—(1) Subject to regulation 9, this regulation applies where a valid employee request has been made under regulation 7 by fewer than 40% of employees employed in the undertaking on the date that request was made and where there exists one or more pre-existing agreements which—

- (a) are in writing;
 - (b) cover all the employees of the undertaking;
 - (c) have been approved by the employees; and
 - (d) set out how the employer is to give information to the employees or their representatives and seek their views on such information.
- (2) Where this regulation applies, the employer may, instead of initiating negotiations in accordance with regulation 7(1), hold a ballot to seek the endorsement of the employees of the undertaking for the employee request in accordance with paragraphs (3) and (4).
- (3) The employer must—
- (a) inform the employees in writing within one month of the date of the employee request that he intends to hold a ballot under this regulation; and
 - (b) arrange for the ballot to be held as soon as reasonably practicable thereafter, provided that the ballot does not take place before a period of 21 days has passed since the employer informed the employees under sub-paragraph (a).
- (4) A ballot must satisfy the following requirements—
- (a) the employer must make such arrangements as are reasonably practicable to ensure that the ballot is fair;
 - (b) all employees of the undertaking on the day on which the 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, must be given an entitlement to vote in the ballot;
 - (c) the ballot must be conducted so as to secure that—
 - (i) so far as is reasonably practicable, those voting do so in secret; and
 - (ii) the votes given in the ballot are accurately counted.
- (5) Where the employer holds a ballot under this regulation—

- (a) he must, as soon as reasonably practicable after the date of the ballot, inform the employees of the result; and
 - (b) if the employees endorse the employee request, the employer is under the obligation in regulation 7(1) to initiate negotiations; and
 - (c) if the employees do not endorse the employee request, the employer is no longer under the obligation in regulation 7(1) to initiate negotiations.
- (6) For the purposes of paragraph (5), the employees are to be regarded as having endorsed the employee request if—
- (a) at least 40% of the employees employed in the undertaking; and
 - (b) the majority of the employees who vote in the ballot,
- have voted in favour of endorsing the request.
- (7) An employee or an employees' representative who believes that an employer has not, pursuant to paragraph (3)(a), informed his employees that he intends to hold a ballot within the period specified in that paragraph may apply to the CAC for a declaration that the employer is under the duty in regulation 7(1) to initiate negotiations.
- (8) Where an employer, acting pursuant to paragraph (3)(a), has informed the employees that he intends to hold a ballot, any employee or employees' representative who believes that the employer has not complied with paragraph (3)(b) may present a complaint to the CAC.
- (9) Where the CAC finds a complaint under paragraph (8) well-founded it shall make an order requiring the employer to hold the ballot within such period as the order may specify.

Pre-existing agreements covering groups of undertakings

- 9.—(1) This regulation applies where—
- (a) the requirements of regulation 8(1) are satisfied in relation to an undertaking;
 - (b) the pre-existing agreement or one of the pre-existing agreements covers employees in one or more undertakings other than the undertaking mentioned in sub-paragraph (a); and
 - (c) the other undertaking or each of the other undertakings mentioned in sub-paragraph (b) is one in respect of which there is an agreement that satisfied, or are agreements that taken together satisfied, the requirements in sub-paragraphs (a) to (d) of regulation 8(1) on the date on which the valid employee request was made in respect of the undertaking mentioned in sub-paragraph (a); and
 - (d) the valid employee request in relation to the undertaking mentioned in sub-paragraph (a) either—
 - (i) alone, or
 - (ii) aggregated with any requests made by employees in the undertakings mentioned in sub-paragraph (b) within the period of six months preceding the date of the valid employee request mentioned in regulation 8(1),

is made by fewer than 40% of the employees in the undertakings mentioned in paragraph (1)(a) and (b).

(2) Where this regulation applies the employers may hold a combined ballot for endorsement of the employee request in accordance with this regulation and in that event regulation 8 shall apply to the ballot with the modification that references to employees shall be treated as referring to the employees employed in all of the undertakings referred to in paragraph (1)(a) and (b).

(3) Notwithstanding paragraph (2), the undertaking mentioned in paragraph (1)(a) may choose to hold the ballot for endorsement of the employee request in accordance with regulation 8 rather than under this regulation.

Complaint about ballot for endorsement of employee request

10.—(1) Any employee in the undertaking referred to in regulation 8(1) or employee in one of the undertakings referred to in regulation 9(1), or representative of such employees, who believes that a requirement has not been satisfied that has to be satisfied in order to entitle either the employer, in accordance with regulation 8(2), to hold a ballot, or the employers, in accordance with regulation 9(2), to hold a combined ballot may, within 21 days of the employer informing the employees of the relevant undertaking under regulation 8(3)(a), present a complaint to the CAC.

(2) Any employee or employees' representative who believes that the arrangements for a ballot held under regulation 8 or 9, as the case may be, did not satisfy one or more of the requirements set out in regulation 8(4) may, within 21 days of the date of the ballot, present a complaint to the CAC.

(3) Where the CAC finds a complaint under paragraph (1) or (2) well-founded it shall—

- (a) in the case of a finding on a complaint under paragraph (1) that any requirement set out in sub-paragraphs (a) to (d) of regulation 8(1) was not satisfied in relation to the undertaking referred to in regulation 8(1) or 9(1)(a), make an order requiring the employer to whom regulation 8(1) or 9(1)(a) relates to initiate negotiations in accordance with regulation 7(1);
- (b) in the case of a finding on a complaint under paragraph (1) that any requirement set out in sub-paragraphs (b) to (d) of regulation 9(1) has not been satisfied, make an order that no combined ballot shall take place and requiring the employer to whom regulation 9(1)(a) relates, according to the preference he has expressed, to initiate negotiations in accordance with regulation 7(1) or, within such period as the order may specify, to conduct a ballot under regulation 8; and
- (c) in the case of a complaint under paragraph (2)—
 - (i) where prior to the order being made, the employer referred to in regulation 8(1) or 9(1)(a) makes representations to the CAC that he would prefer to initiate negotiations under regulation 7, make an order requiring that employer to do so; or
 - (ii) in the absence of such representations, order the employer or employers to hold the ballot under regulation 8 or 9, as the case may be, again within such period as the order may specify.

Employer notification of decision to initiate negotiations

11.—(1) The employer may start the negotiation process set out in regulation 14(1) on his own initiative by issuing a written notification satisfying the requirements of paragraph (2), and where the employer issues such a notification regulations 14 to 17 shall apply.

(2) The notification referred to in paragraph (1) must—

- (a) state that the employer intends to start the negotiating process and that the notification is given for the purpose of these Regulations;
- (b) state the date on which it is issued; and
- (c) be published in such a manner as to bring it to the attention of, so far as reasonably practicable, all the employees of the undertaking.

Restrictions on employee request and employer notification

12.—(1) Subject to paragraph (2), no employee request or employer notification is valid if it is made or issued, as the case may be,—

- (a) where a negotiated agreement applies, within a period of three years from the date of the agreement or, where the agreement is terminated within that period, before the date on which the termination takes effect;

- (b) where the standard information and consultation provisions apply within a period of three years from the date on which they started to apply; and
- (c) where the employer has held a ballot under regulation 8, or was one of the employers who held a ballot under regulation 9 and the result was that the employees did not endorse the valid employee request referred to in regulation 8(1), within a period of three years from the date of that request.

(2) Paragraph (1) does not apply where there are material changes in the undertaking during the applicable period having the result—

- (a) where a ballot held under regulation 8 or 9 had the result that the employees did not endorse the valid employee request, that there is no longer a pre-existing agreement which satisfies paragraph (1)(b) and (c) of regulation 8 or in the case of a ballot held under regulation 9, that there is no longer an agreement satisfying paragraph (1)(b) of that regulation; or
- (b) where a negotiated agreement exists, that the agreement no longer complies with the requirement in regulation 16(1) that it must cover all the employees of the undertaking.

Dispute about employee request, employer notification or whether obligation in regulation 7(1) applies

13.—(1) If the employer considers that there was no valid employee request—

- (a) because the employee request did not satisfy any requirement of regulation 7(2) to (4) or was prevented from being valid by regulation 12, or
- (b) because the undertaking was not one to which these Regulations applied (under Regulation 3) on the date on which the employee request was made,

the employer may apply to the CAC for a declaration as to whether there was a valid employee request.

(2) If an employee or an employees' representative considers that an employer notification was not valid because it did not comply with one or more of the requirements in regulation 11(2) or was prevented from being valid by regulation 12, he may apply to the CAC for a declaration as to whether the notification was valid.

(3) The CAC shall only consider an application for a declaration made under paragraph (1) or (2) if the application is made within a one month period beginning on the date of the employee request or the date on which the employer notification is made.

Negotiations to reach an agreement

14.—(1) In order to initiate negotiations to reach an agreement under these Regulations the employer must as soon as reasonably practicable—

- (a) make arrangements, satisfying the requirements of paragraph (2), for the employees of the undertaking to elect or appoint negotiating representatives; and thereafter
- (b) inform the employees in writing of the identity of the negotiating representatives; and
- (c) invite the negotiating representatives to enter into negotiations to reach a negotiated agreement.

(2) The requirements for the election or appointment of negotiating representatives under paragraph (1)(a) are that—

- (a) the election or appointment of the representatives must be arranged in such a way that, following their election or appointment, all employees of the undertaking are represented by one or more representatives; and

- (b) all employees of the undertaking must be entitled to take part in the election or appointment of the representatives and, where there is an election, all employees of the undertaking on the day on which the 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, must be given an entitlement to vote in the ballot.
- (3) The negotiations referred to in paragraph (1)(c) shall last for a period not exceeding six months commencing at the end of the period of three months beginning with the date on which the valid employee request was made or the valid employer notification was issued; but the following periods shall not count towards the three month period—
- (a) where the employer holds a ballot pursuant to regulation 8 or 9, the period between the employer notifying the employees of his decision to hold such a ballot and whichever of the following dates is applicable—
- (i) where there is no complaint to the CAC under regulation 10, the date of the ballot;
 - (ii) where there is a complaint to the CAC under regulation 10 and the complaint is dismissed by the CAC or on appeal, the date on which it is finally dismissed;
 - (iii) where there is a complaint to the CAC and the outcome, whether of the complaint or of any appeal from it, is an order to hold the ballot under regulation 8 or 9 again, the date of the ballot that most recently took place;
 - (iv) where there is a complaint to the CAC under regulation 10 and the outcome, whether of the complaint or of any appeal from it, is an order requiring the employer to initiate negotiations in accordance with regulation 7(1), the date on which the order is made;
- (b) where an application for a declaration is made to the CAC pursuant to regulation 13, the period between the date of that application and the final decision of the CAC or any appeal from that decision; and
- (c) where a complaint about the election or appointment of negotiating representatives is presented pursuant to regulation 15, the time between the date of the complaint and the determination of the complaint, including any appeal and, where the complaint is upheld, the further period until the negotiating representatives are re-elected or re-appointed.
- (4) Where a complaint about the ballot for employee approval of a negotiated agreement is presented pursuant to regulation 17, the time between the date the complaint is presented to the CAC and the determination of the complaint (including any appeal and, where the complaint is upheld, the further period until the re-holding of the ballot) shall not count towards the six month period mentioned in paragraph (3).
- (5) If, before the end of the six month period referred to in paragraph (3), the employer and a majority of the negotiating representatives agree that that period should be extended, it may be extended by such period as the parties agree and thereafter may be further extended by such period or periods as the parties agree.
- (6) Where one or more employers wish to initiate negotiations to reach an agreement to cover employees in more than one undertaking, any employer whose employees have not made a valid employee request and who has not issued a valid employer notification, shall issue such a notification.
- (7) Where paragraph (6) applies, the provisions of paragraphs (1) to (5) of this regulation and regulations 15 and 16 apply with the following modifications—
- (a) the references to the employees of the undertaking refer to the employees of all the undertakings to be covered by any agreement negotiated; and
 - (b) references to employees refer to employees of all the undertakings to be covered by any agreement negotiated.

Complaints about election or appointment of negotiating representatives

15.—(1) If an employee or an employees' representative considers that one or both of the requirements for the appointment or election of negotiating representatives set out in regulation 14(2) have not been complied with, he may, within 21 days of the election or appointment, present a complaint to the CAC.

(2) Where the CAC finds the complaint well-founded it shall make an order requiring the employer to arrange for the process of election or appointment of negotiating representatives referred to in regulation 14 to take place again within such period as the order shall specify.

Negotiated agreements

16.—(1) A negotiated agreement must cover all employees of the undertaking and may consist either of a single agreement or of different parts (each being approved in accordance with paragraph (4)) which, taken together, cover all the employees of the undertaking. The single agreement or each part must—

- (a) set out the circumstances in which the employer must inform and consult the employees to which it relates;
- (b) be in writing;
- (c) be dated;
- (d) be approved in accordance with paragraphs (3) to (5);
- (e) be signed by or on behalf of the employer; and
- (f) either—

- (i) provide for the appointment or election of information and consultation representatives to whom the employer must provide the information and whom the employer must consult in the circumstances referred to in sub-paragraph (a); or

- (ii) provide that the employer must provide information directly to the employees to which it relates and consult those employees directly in the circumstances referred to in sub-paragraph (a).

(2) Where a negotiated agreement consist of different parts they may provide differently in relation to the matters referred to in paragraph (1)(a) and (f).

(3) A negotiated agreement consisting of a single agreement shall be treated as being approved for the purpose of paragraph (1)(d) if—

- (a) it has been signed by all the negotiating representatives; or
- (b) it has been signed by a majority of negotiating representatives and either—
 - (i) approved in writing by at least 50% of employees employed in the undertaking, or
 - (ii) approved by a ballot of those employees, the arrangements for which satisfied the requirements set out in paragraph (5), in which at least 50% of the employees voting, voted in favour of approval.

(4) A part shall be treated as being approved for the purpose of paragraph (1)(d) if the part—

- (a) has been signed by all the negotiating representatives involved in negotiating the part; or
- (b) has been signed by a majority of those negotiating representatives and either—
 - (i) approved in writing by at least 50% of employees (employed in the undertaking) to which the part relates, or
 - (ii) approved by a ballot of those employees, the arrangements for which satisfied the requirements set out in paragraph (5), in which at least 50% of the employees voting, voted in favour of approving the part.

- (5) The ballots referred to in paragraphs (3) and (4) must satisfy the following requirements—
- (a) the employer must make such arrangements as are reasonably practicable to ensure that the ballot is fair;
 - (b) all employees of the undertaking or, as the case may be, to whom the part of the agreement relates, on the day on which the 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, must be given an entitlement to vote in the ballot; and
 - (c) the ballot must be conducted so as to secure that—
 - (i) so far as is reasonably practicable, those voting do so in secret; and
 - (ii) the votes given in the ballot are accurately counted.
- (6) Where the employer holds a ballot under this regulation he must, as soon as reasonably practicable after the date of the ballot, inform the employees entitled to vote of the result.

Complaints about ballot for employee approval of negotiated agreement

17.—(1) Any negotiating representative who believes that the arrangements for a ballot held under regulation 16 did not satisfy one or more of the requirements set out in paragraph (5) of that regulation, may, within 21 days of the date of the ballot, present a complaint to the CAC.

(2) Where the CAC finds the complaint well-founded it shall make an order requiring the employer to hold the ballot referred to in regulation 16 again within such period as the order may specify.