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STATUTORY INSTRUMENTS

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**2004 No. 3426**

The Information and Consultation  
of Employees Regulations 2004

PART VIII

PROTECTIONS FOR INFORMATION AND  
CONSULTATION REPRESENTATIVES, ETC.

**Detriment**

**32.**—(1) An employee to whom paragraph (2) or (5) applies has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer, done on a ground specified in, respectively, paragraph (3) or (6).

(2) This paragraph applies to an employee who is—

- (a) an employees' representative;
- (b) a negotiating representative;
- (c) an information and consultation representative; or
- (d) a candidate in an election in which any person elected will, on being elected, be such a representative.

(3) The ground is that—

- (a) the employee performed or proposed to perform any functions or activities as such a representative or candidate;
- (b) the employee exercised or proposed to exercise an entitlement conferred on the employee by regulation 27 or 28; or
- (c) the employee (or a person acting on his behalf) made or proposed to make a request to exercise such an entitlement.

(4) Paragraph (1) does not apply in the circumstances set out in paragraph (3)(a) where the ground (or principal ground) for the subjection to detriment is that in the performance, or purported performance, of the employee's functions or activities he has disclosed any information or document in breach of the duty in regulation 25, unless the employee reasonably believed the disclosure to be a "protected disclosure" within the meaning given to that expression by section 43A of the 1996 Act.

(5) This paragraph applies to any employee whether or not he is an employee to whom paragraph (2) applies.

(6) The grounds are that the employee—

- (a) took, or proposed to take, any proceedings before an employment tribunal to enforce a right or secure an entitlement conferred on him by these Regulations;
- (b) exercised, or proposed to exercise, any entitlement to apply or complain to the CAC or the Appeal Tribunal conferred by these Regulations or to exercise the right to appeal in connection with any rights conferred by these Regulations;

- (c) requested, or proposed to request, data in accordance with regulation 5;
  - (d) acted with a view to securing that an agreement was or was not negotiated or that the standard information and consultation provisions did or did not become applicable;
  - (e) indicated that he supported or did not support the coming into existence of a negotiated agreement or the application of the standard information and consultation provisions;
  - (f) stood as a candidate in an election in which any person elected would, on being elected, be a negotiating representative or an information and consultation representative;
  - (g) influenced or sought to influence by lawful means the way in which votes were to be cast by other employees in a ballot arranged under these Regulations;
  - (h) voted in such a ballot;
  - (i) expressed doubts, whether to a ballot supervisor or otherwise, as to whether such a ballot had been properly conducted; or
  - (j) proposed to do, failed to do, or proposed to decline to do, any of the things mentioned in sub-paragraphs (d) to (i).
- (7) It is immaterial for the purpose of paragraph (6)(a)—
- (a) whether or not the employee has the right or entitlement; or
  - (b) whether or not the right has been infringed,
- but for that sub-paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.
- (8) This regulation does not apply where the detriment in question amounts to dismissal.