STATUTORY INSTRUMENTS

2006 No. 2059

TERMS AND CONDITIONS OF EMPLOYMENT

The European Cooperative Society (Involvement of Employees) Regulations 2006

Made - - - -	*25th July 2006*
Laid before Parliament	*27th July 2006*
Coming into force - -	*18th August 2006*

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in respect of measures relating to employment rights and duties(**2**).

Accordingly the Secretary of State, in exercise of the powers conferred on him by section 2(2) of that Act, makes the following Regulations:

PART 1

GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the European Cooperative Society (Involvement of Employees) Regulations 2006.

(2) These Regulations come into force on 18th August 2006.

Extent and application

2.—(1) These Regulations extend to Northern Ireland.

(2) These Regulations, in their application in relation to Northern Ireland, shall have effect subject to the modifications set out in Schedule 3.

Interpretation

3.—(1) In these Regulations—

(**1**) 1972 c. 68. The enabling powers of section 2(2) of this Act were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51).

(**2**) S.I.2000/738

"the 1996 Act" means the Employment Rights Act 1996(**3**);

"absolute majority vote" means a vote passed by a majority of the total membership of the special negotiating body where the members voting with that majority represent the majority of the employees of—

(a) the participating individuals, participating legal entities and such participating legal entities' concerned subsidiaries employed in the EEA States; or

(b) in relation to an SCE to which regulation 6(1) applies, the SCE and its subsidiaries employed in the EEA States;

"Appeal Tribunal" means the Employment Appeal Tribunal;

"CAC" means the Central Arbitration Committee;

"contract of employment" means a contract of service or apprenticeship whether express or implied, and (if it is express), whether oral or in writing;

"dismissed" and "dismissal", in relation to an employee, shall be construed in accordance with Part 10 of the 1996 Act;

"the EC Directive" means Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees(**4**);

"the EC Regulation" means Council Regulation 1435/2003/EC of 22 July 2003 on the Statute for a European Cooperative Society (**5**);

"EEA State" means a Member State, Norway, Iceland or Liechtenstein;

"employee" means an individual who has entered into or works under a contract of employment and, in Part 8 and regulation 41, includes, where the employment has ceased, an individual who worked under a contract of employment;

"employee involvement agreement" means an agreement reached—

(a) between the special negotiating body on the one hand and the participating individuals and competent organs of the participating legal entities on the other governing the arrangements for the involvement of employees within the SCE; or

(b) in relation to an SCE to which regulation 6(1) applies, between the special negotiating body on the one hand and the competent organ of the SCE on the other governing the arrangements for the involvement of employees within the SCE;

"employees' representatives" means—

(a) if 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, representatives of the trade union who normally take part as negotiators in the collective bargaining process, and

(b) any other employees of their employer who are elected or appointed as employee representatives to 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,

(**3**) 1996 c. 18

(**4**) O.J. L207, 18.8.03, p.25. The EC Directive extends to the EEA under Article 98 of the EEA Agreement by Decision No: 44/2004 of the EEA Joint Committee (OJNo. L277, 26.8.2004, p. 11 and EEA Supplement No. 43, 26.8.2004, p. 11.

(**5**) O.J. L207, 18.8.03, p.1.

but excluding representatives who are expected to receive information relevant only to a specific aspect of the terms and conditions or interests of the employees, such as health and safety, collective redundancies, or pension schemes;

"information and consultation representative" has the meaning given to it in regulation 17(5) or, in relation to an SCE to which regulation 6(1) applies, under paragraph 11(4) of Schedule 1;

"participating individual" means a natural person directly participating in the establishing of an SCE;

"participation" means the influence of the representative body and the employees' representatives in the SCE or a participating legal entity by way of the right to—

(a) elect or appoint some of the members of the SCE's or the participating legal entity's supervisory or administrative organ; or

(b) recommend or oppose the appointment of some or all of the members of the SCE's or the participating legal entity's supervisory or administrative organ;

"participating cooperative" means a participating legal entity which is a cooperative;

"relevant time" means the happening of an event referred to in paragraphs (a) to (c) of regulation 7(1);

"representative body" means the persons elected or appointed under the employee involvement agreement or under the standard rules on employee involvement;

"SCE" means a European Cooperative Society within the meaning of the EC Regulation and, except as provided in these Regulations, means an SCE which is to be, or is, registered in the UK;

"SCE to be formed by merger" means an SCE to be formed in accordance with the penultimate paragraph of Article 2(1) of the EC Regulation;

"SCE to be formed by conversion" means an SCE to be formed in accordance with the final paragraph of Article 2(1) of the EC Regulation and "SCE formed by conversion" shall be construed accordingly;

"standard rules on employee involvement" means the rules in Schedule 2;

"total workforce" means the total number of employees employed by—

(a) all participating individuals, participating legal entities and concerned subsidiaries throughout all EEA States; or

(b) in relation to an SCE to which regulation 6(1) applies, employed by the SCE and its subsidiaries throughout all EEA States;

"two thirds majority vote" means a vote passed by a majority of at least two thirds of the total membership of the special negotiating body where the members voting with that majority—

(a) represent at least two thirds of the employees of the participating individuals, participating legal entities and their concerned subsidiaries employed in the EEA States; or

(b) in relation to an SCE to which regulation 6(1) applies, represent at least two thirds of the employees of the SCE and its subsidiaries employed in the EEA States, and

in either case include members representing employees employed in at least two EEA States;

"UK employee" means an employee employed to work in the United Kingdom; and

"UK members of the special negotiating body" means members of the special negotiating body elected or appointed by UK employees.

(2) The following terms have the same meaning in these Regulations as that given by Article 2 of the EC Directive—

"participating legal entities"

"subsidiary"

"involvement of employees"

"information"

"consultation"

and references to a "concerned subsidiary" or a "concerned establishment" shall be construed in accordance with the definition of "concerned subsidiary or establishment" in the EC Directive, except that the references in such definition to an "establishment of a participating legal entity" shall be taken to include an establishment of a participating individual.

(3) In these Regulations, "special negotiating body" means—

(a) the body established pursuant to regulation 10 to negotiate with the participating individuals and the competent organs of the participating legal entities, or

(b) in relation to an SCE to which regulation 6(1) applies, the body established pursuant to paragraph 4 of Schedule 1 to negotiate with the competent organ of the SCE,

in either case, as to the establishment of arrangements for the involvement of employees within the SCE.

(4) Except as otherwise provided in these Regulations, words and expressions which are used in the EC Regulation or the EC Directive have the same meaning as they have in that Regulation or Directive.

PART 2

PARTICIPATING INDIVIDUALS AND LEGAL ENTITIES AND THE SPECIAL NEGOTIATING BODY

Circumstances in which different regulations apply

4.—(1) This regulation is subject to regulation 5.

(2) These Regulations shall apply where—

(a) a participating individual or a participating legal entity intends to form an SCE whose registered office is to be in the UK; or

(b) an SCE has its registered office in the UK.

(3) Where there are UK employees, without prejudice to paragraph (2), Part 3 (or, in relation to an SCE to which regulation 6(1) applies, Part 2 of Schedule 1) shall apply (election or appointment of UK members of the special negotiating body and representation of employees), regardless of where the registered office is, or is intended to be, situated, in relation to the election or appointment of UK members of the special negotiating body.

(4) Parts 6 to 9 shall apply, without prejudice to paragraph (2) regardless of where the registered office of the SCE is, or is intended to be situated, where—

(a) a participating individual;

(b) a participating legal entity, its concerned subsidiaries or concerned establishments;

(c) a subsidiary of an SCE;

(d) an establishment of an SCE; or

(e) an employee or an employees' representative,

is resident, registered, or situated, as the case may be, in the UK.

Exempt formations and SCEs

5.—(1) These Regulations shall not apply where a participating individual intends to form an SCE and at the relevant time—

(a) all or all but one of the other parties to its formation are participating individuals; and

(b) the total workforce at the relevant time comprises employees employed to work in one EEA State only or numbers less than 50.

(2) These Regulations shall not apply where a participating legal entity intends to form an SCE where—

(a) all of the other parties to its formation are participating individuals, and

(b) the total workforce at the relevant time comprises employees employed to work in one EEA State only or numbers less than 50.

(3) Subject to regulation 6, these Regulations shall not apply where an SCE has been registered and at the relevant time the circumstances in regulation 5(1) or 5(2) applied.

(4) Notwithstanding paragraphs (1) to (3), in the case of transfer from another EEA state to the UK of the registered office of an SCE governed by participation, at least the same level of employee participation rights shall continue to apply after that transfer.

Subsequent application of Regulations to a formerly exempt SCE

6.—(1) If a relevant condition is satisfied in respect of an SCE referred to in regulation 5(3), these Regulations, subject to paragraph (2), shall apply.

(2) The provisions in Schedule 1 shall have effect in substitution for regulations 7 to 21.

(3) In this regulation, "relevant condition" means—

(a) the total workforce is 50 or more and includes employees employed to work in at least two different EEA States; or

(b) a valid request is made to the effect that these Regulations be applied.

(4) A request pursuant to paragraph 3(b) is not a valid request unless

(a) it consists of—

(i) a single request made by at least one third of the total workforce; or

(ii) a series of separate requests made within a period of six months which when taken together mean that it is made by at least one third of the total workforce;

(b) the employees comprising such third include employees employed to work in at least two different EEA States; and

(c) the single request, or each separate request, of which it consists—

(i) is in writing;

(ii) is sent to the registered office, head office or principal place of business of the SCE or any subsidiary; and

(iii) specifies the names of the employees making it and the date on which it is made.

(5) If a relevant condition is satisfied but subsequently ceases to be satisfied, these Regulations (as modified by virtue of paragraph (2)), shall continue to apply.

Duty on participating individual and participating legal entity to provide information

7.—(1) When a participating individual or the competent organ of a participating legal entity decides to form an SCE, that individual or organ shall, as soon as possible after—

(a) in the case of an SCE to be formed by merger, publishing the draft terms of merger,

(b) in the case of an SCE to be formed by conversion, publishing the draft terms of conversion, or

(c) in the case of an SCE to be formed in any other way, agreeing a plan to form an SCE,

provide information to the employees' representatives of the participating individual or the participating legal entity, any concerned subsidiaries and concerned establishments or, if no such representatives exist, the employees themselves.

(2) The information referred to in paragraph (1) must include, as a minimum, information—

(a) identifying the participating individuals, participating legal entities, subsidiaries and establishments,

(b) identifying the concerned subsidiaries and concerned establishments,

(c) giving the number of employees employed by each participating individual, participating legal entity, subsidiary and at each establishment, and

(d) giving the number of employees employed to work in each EEA State.

(3) When a special negotiating body has been formed in accordance with regulation 10, each participating individual and the competent organs of each participating legal entity must provide that body with such information as is necessary to keep it informed of the plan to establish and the progress of establishing the SCE up to the time the SCE has been registered.

Complaint of failure to provide information

8.—(1) An employees' representative or, where there is no such representative for an employee, the employee, may present a complaint to the CAC that—

(a) a participating individual or the competent organ of a participating legal entity has failed to provide the information referred to in regulation 7; or

(b) the information provided by the participating individual or the competent organ of a participating legal entity for the purpose of complying with regulation 7 is false or incomplete in a material particular.

(2) Where the CAC finds the complaint well-founded it shall make an order requiring the participating individual or the competent organ 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; and

(b) a date (not being less than one week from the date of the order) by which the participating individual or the competent organ must disclose the information specified in the order.

Function of the special negotiating body

9. The special negotiating body and the participating individuals and competent organs of the participating legal entities shall have the task of reaching an employee involvement agreement.

Composition of the special negotiating body

10.—(1) The participating individuals and the competent organs of the participating legal entities shall make arrangements for the establishment of a special negotiating body, which body shall be constituted as soon as possible after the relevant time and in accordance with paragraphs (2) to (7) below. The method used to elect or appoint employee representatives to the special negotiating body should seek to promote gender balance.

(2) The total number of employees employed to work in each EEA State of the participating individuals, participating legal entities and concerned subsidiaries shall be given an entitlement to elect or appoint one member of the special negotiating body for each 10% or fraction thereof which those employees represent of the total workforce. These members shall be the "ordinary members".

(3) If, in the case of an SCE to be formed by merger, following an election or appointment under paragraph (2), the members elected or appointed to the special negotiating body do not include at least one eligible member in respect of each relevant cooperative, the employees of any relevant cooperative in respect of which there is no eligible member shall be given an entitlement, subject to paragraph (4), to elect or appoint an additional member to the special negotiating body.

(4) The number of additional members which the employees are entitled to elect or appoint under paragraph (3) shall not exceed 20% of the number of ordinary members elected or appointed under paragraph (2) and if the number of additional members under paragraph (3) would exceed that percentage the employees who are entitled to appoint or elect the additional members shall be:

(a) if one additional member is to be appointed or elected, those employed by the relevant cooperative not represented under paragraph (3) having the highest number of employees; and

(b) if more than one additional member is to be appointed or elected, those employed by the relevant cooperatives in each EEA State that are not represented under paragraph (3) having the highest number of employees in descending order, starting with the relevant cooperative with the highest number, followed by those employed by the relevant cooperative in each EEA State that are not so represented having the second highest number of employees in descending order, starting with the relevant cooperative (among those relevant cooperatives) with the highest number.

(5) The participating individuals and the competent organs of the participating legal entities shall, as soon as reasonably practicable and in any event no later than one month after the establishment of the special negotiating body, inform their employees and those of any concerned subsidiaries of the identity of the members of the special negotiating body.

(6) If, following the appointment or election of members to the special negotiating body in accordance with this regulation,

(a) changes to the participating individuals, participating legal entities, concerned subsidiaries or concerned establishments result in the number of ordinary or additional members which employees would be entitled to elect or appoint under this regulation either materially increasing or decreasing, the original appointment or election of members of the special negotiating body shall cease to have effect and those employees shall be entitled to elect or appoint the new number of members in accordance with the provisions of these Regulations; and

(b) a member of the special negotiating body is no longer willing or able to continue serving as such a member, the employees whom he represents shall be entitled to elect or appoint a new member in his place.

(7) In this regulation—

(a) "eligible member" means a person who is—

(i) in the case of a relevant cooperative formed under the law of an EEA State whose legislation allows representatives of trade unions who are not employees to be elected to the special negotiating body, an employee of the relevant cooperative or a trade union representative; and

(ii) in the case of a relevant cooperative not formed under the law of such an EEA State, an employee of the relevant cooperative; and

(b) "relevant cooperative" means a participating legal entity which has employees in the EEA State under whose law it is formed and which it is proposed will cease to exist on or following the registration of the SCE.

Complaint about establishment of special negotiating body

11.—(1) An application may be presented to the CAC for a declaration that the special negotiating body has not been established at all or has not been established properly in accordance with regulation 10.

(2) An application may be presented under this regulation by—

(a) a person elected or appointed to be a member of the special negotiating body;

(b) an employees' representative or, where no such representative exists in respect of a participating individual, participating legal entity or concerned subsidiary, an employee of that participating individual, participating legal entity or concerned subsidiary; or

(c) a participating individual or the competent organ of a participating legal entity or concerned subsidiary.

(3) The CAC shall only consider an application made under paragraph (1) that a special negotiating body has not been properly constituted if it is made within a period of one month from the date or, if more than one, the last date on which the participating individuals and participating legal entities complied or should have complied with the obligation to inform the employees under regulation 10(5).

(4) Where the CAC finds the application well-founded it shall make a declaration that the special negotiating body has not been established at all or has not been established properly and the participating individuals and the competent organs of the participating legal entities continue to be under the obligation in regulation 10(1).

PART 3

ELECTION OR APPOINTMENT OF UK MEMBERS OF THE SPECIAL NEGOTIATING BODY

Ballot arrangements

12.—(1) Subject to regulation 14, the UK members of the special negotiating body shall be elected by balloting the UK employees.

(2) The participating individuals and the participating legal entities that employ UK employees ("the relevant employers") must arrange for the holding of a ballot or ballots of those employees in accordance with the requirements of paragraph (3), and having regard to the fact that the methods of election should seek to promote gender balance.

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

(a) in relation to the election of ordinary members under regulation 10(2), that—

(i) if the number of members which UK employees are entitled to elect to the special negotiating body is equal to the number of relevant employers, there shall be separate ballots of the UK employees of each relevant employer;

(ii) if the number of members which the UK employees are entitled to elect to the special negotiating body is greater than the number of relevant employers, there shall be separate ballots of the UK employees of each relevant employer and the relevant employers shall ensure, as far as practicable, that at least one member

representing the UK employees of each such relevant employer is elected to the special negotiating body and that the number of members representing the UK employees of that employer is proportionate to the number of employees of that employer;

(iii) if the number of members which the UK employees are entitled to elect to the special negotiating body is smaller than the number of relevant employers—

(aa) the number of ballots held shall be equivalent to the number of members to be elected;

(bb) a separate ballot shall be held in respect of each of the relevant employers with the higher or highest number of employees; and

(cc) it shall be ensured that any employees of a relevant employer in respect of which a ballot does not have to be held are entitled to vote in a ballot held in respect of one of the other relevant employers; and

(iv) if there are any UK employees employed by a concerned subsidiary or at a concerned establishment of non-UK participating legal entities, or non-UK participating individuals, the relevant employers shall ensure that those employees are entitled to vote in a ballot held pursuant to this regulation;

(b) that in relation to the ballot of additional members under regulation 10(3), that a separate ballot is held in respect of the employees of each relevant employer entitled to elect an additional member.

(c) that in a ballot in respect of the employees of a particular relevant employer, all UK employees employed by that employer or by such employer's concerned subsidiaries or at its concerned establishments are entitled to vote;

(d) that in a ballot in respect of the employees of a particular relevant employer, any person who is immediately before the latest time at which a person may become a candidate—

(i) a UK employee employed by that employer or by any of such employer's concerned subsidiaries or at any of its concerned establishments; or

(ii) if the relevant employer so permits, a representative of a trade union who is not an employee of that employer or any of such employer's concerned subsidiaries,

is entitled to stand as a candidate for election as a member of the special negotiating body in that ballot;

(e) that the relevant employers appoint an independent ballot supervisor to supervise the conduct of the ballot of UK employees except that, where there is to be more than one ballot, the relevant employers may appoint more than one independent ballot supervisor, each of whom is to supervise such of the separate ballots as the relevant employers may determine, provided that each separate ballot is supervised by a supervisor;

(f) that after the relevant employers have formulated proposals as to the arrangements for the ballot of UK employees and before they have published the final arrangements under sub-paragraph (g) they must, so far as reasonably practicable, consult with the UK employees' representatives on the proposed arrangements for the ballot of UK employees; and

(g) that the relevant employers must publish the final arrangements for the ballot of UK employees in such manner as to bring them to the attention of, so far as reasonably practicable, all 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 do not comply with the requirements of paragraph (3) may, within a period of 21 days beginning on the date on which the final arrangements were published under sub-paragraph (g), 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 relevant employers to modify the arrangements they have made for the ballot of UK employees or to satisfy the requirements in sub-paragraph (f) or (g) of paragraph (3).

(6) An order under paragraph (5) shall specify the modifications to the arrangements which the relevant employers are required to make and the requirements they must satisfy.

(7) A person is an independent ballot supervisor for the purposes of paragraph (3)(e) if the relevant employers reasonably believe that he will carry out any functions conferred on him in relation to the ballot competently and have no reasonable grounds for believing that his independence in relation to the ballot might reasonably be called into question.

Conduct of the ballot

13.—(1) The relevant employers must—

(a) ensure that a ballot supervisor appointed under regulation 12(3)(e) carries out his functions under this regulation and that there is no interference with his carrying out of those functions from the relevant employers; 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 UK employees published by the relevant employers under regulation 12(3)(g) 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 12(4);

(b) does not conduct the ballot or any of the separate ballots before the relevant employers have satisfied the requirement specified in regulation 12(3)(g) and—

(i) where no complaint has been presented under regulation 12(4), before the expiry of a period of 21 days beginning on the date on which the relevant employers published their arrangements under regulation 12(3)(g); or

(ii) where a complaint has been presented under regulation 12(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 that 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 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 relevant employers and, so far as reasonably practicable, the UK employees entitled to vote in the ballot and the persons who stood as candidates.

(4) A ballot supervisor shall publish a report ("an ineffective ballot report") where he considers (whether on the basis of representations made to him by another person or otherwise) 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 an interference with the carrying out of his functions or a failure by the relevant employers to comply with all reasonable requests made by him with the result that he was unable to form a proper judgement as to whether each of the requirements referred to in paragraph (2) was satisfied in 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 relevant employers 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 relevant employers shall again be under the obligation in regulation 12(2).

(b) If there have been separate ballots and sub-paragraph (a) does not apply—

(i) the relevant employers shall arrange for the separate ballot or ballots in respect of which an ineffective ballot report was published to be re-held in accordance with regulation 12 and this regulation; and

(ii) no such ballot shall have effect until it has been re-held and no ineffective ballot report has been published in respect of it within the period specified in paragraph 5.

(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 relevant employers (whether or not an ineffective ballot report has been published).

Appointment of UK members by a consultative committee

14.—(1) This regulation applies where—

(a) regulation 12(3)(a)(i) or (ii) or (b) would require a ballot to be held; and

(b) there exists in relation to the participating individual or the participating legal entity whose employees would otherwise need to be balloted under regulation 12, a consultative committee.

(a) (2) (a) Where this regulation applies, the election provided for in regulation 12 shall not take place but the consultative committee shall be entitled to appoint the UK member or members of the special negotiating body who would otherwise be elected pursuant to regulation 12, where appropriate having regard to the fact that the method used should seek to promote gender balance.

(b) The consultative committee is entitled to appoint as a member of the special negotiating body:

(i) one of their number; or

(ii) if the participating individual or the participating legal entity in respect of which the consultative committee exists so permits, a trade union representative who is not an employee of that participating individual or that participating legal entity.

(3) 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 participating individual or the participating legal entity;

(c) which, in carrying out its information and consultation function, represents all the employees of the participating individual or the participating legal entity; and

(d) which consists wholly of persons who are employees of the participating individual or the participating legal entity or such participating legal entity's concerned subsidiaries.

(4) In paragraph (3) "information and consultation function" means the function of—

(a) receiving, on behalf of all the employees of the participating individual or the participating legal entity, information which may significantly affect the interests of the employees of that participating individual or participating legal entity, but excluding information which is relevant only to a specific aspect of the interests of the employees, such as health and safety, collective redundancies or pension schemes; and

(b) being consulted by the participating individual or the participating legal entity on the information referred to in sub-paragraph (a) above.

(5) The consultative committee must publish the names of the persons whom it has appointed to be members of the special negotiating body in such a manner as to bring them to the attention of the participating individual or the participating legal entity and, so far as reasonably practicable, the employees and the employees' representatives of that participating individual or participating legal entity and such participating entity's concerned subsidiaries.

(6) Where the participating individual, the participating legal entity, an employee or an employees' representative believes that—

(a) the consultative committee does not satisfy the requirements in paragraph (3) above; or

(b) any of the persons appointed by the consultative committee is not entitled to be appointed,

he, or as the case may be, it, may, within a period of 21 days beginning on the date on which the consultative committee published under paragraph (5) the names of the persons appointed, present a complaint to the CAC.

(7) Where the CAC finds the complaint well-founded it shall make a declaration to that effect.

(8) Where the CAC has made a declaration under paragraph (7)—

(a) no appointment made by the consultative committee shall have effect; and

(b) the members of the special negotiating body shall be elected by a ballot of the employees in accordance with regulation 12.

(9) Where the consultative committee appoints any person to be a member of the special negotiating body, that appointment shall have effect—

(a) where no complaint has been presented under paragraph (6), after the expiry of a period of 21 days beginning on the date on which the consultative committee published under paragraph (5) the names of the persons nominated; or

(b) where a complaint has been presented under paragraph (6), as from the day on which the complaint has been determined without a declaration under paragraph (7) being made.

Representation of employees

15.—(1) Subject to paragraphs (2) and (3) below, a member elected in a ballot in accordance with regulation 10(2), shall be treated as representing the employees for the time being of the participating individual or of the participating legal entity, and of any concerned subsidiary or concerned establishment, whose employees were entitled to vote in the ballot in which he was elected.

(2) If an additional member is elected in accordance with regulation 10(3) and (4), he, and not any member elected in accordance with regulation 10(2), shall be treated as representing the employees for the time being of the participating individual or the participating legal entity, and of any concerned

subsidiary or concerned establishment, whose employees were entitled to vote in the ballot in which he was elected.

(3) When a member of the special negotiating body is appointed by a consultative committee in accordance with regulation 14, the employees whom the consultative committee represents and the UK employees of any concerned subsidiary shall be treated as being represented by the member so appointed.

PART 4

NEGOTIATION OF THE EMPLOYEE INVOLVEMENT AGREEMENT

Negotiations to reach an employee involvement agreement

16.—(1) In this regulation and in regulation 17 the participating individuals and competent organs of the participating legal entities on the one hand and the special negotiating body on the other are referred to as "the parties".

(2) The parties are under a duty to negotiate in a spirit of cooperation with a view to reaching an employee involvement agreement.

(3) The duty referred to in paragraph (2) commences one month after the date or, if more than one, the last date on which the members of the special negotiating body were elected or appointed and applies—

(a) for the period of 6 months starting with the day on which the duty commenced or, where an employee involvement agreement is successfully negotiated within that period, until the completion of the negotiations; or

(b) where the parties agree before the end of that 6 month period that it is to be extended, for the period of 12 months starting with the day on which the duty commenced or, where an employee involvement agreement is successfully negotiated within the 12 month period, until the completion of the negotiations.

The employee involvement agreement

17.—(1) The employee involvement agreement must be in writing.

(2) Without prejudice to the autonomy of the parties and subject to paragraph (4), the employee involvement agreement shall specify:

(a) the scope of the agreement;

(b) the composition, number of members and allocation of seats on the representative body;

(c) the functions and the procedure for the information and consultation of the representative body;

(d) the frequency of meetings of the representative body;

(e) the financial and material resources to be allocated to the representative body;

(f) if, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;

(g) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SCE's administrative or supervisory organ which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights; and

(h) if, where the statute of the SCE so provides, during negotiations the parties decide to establish arrangements for employees or their representatives to participate in and vote in the general meeting or any section or sectorial meetings of the SCE, the substance of those arrangements, including (where appropriate) the number of employees or representatives who will be entitled to participate, the procedure as to how they are to be elected, appointed, recommended or opposed, and their rights; and

(i) the date of entry into force of the agreement, its duration, the circumstances, if any, in which the agreement is required to be re-negotiated including (where appropriate), in the event of changes in the structure of the SCE or its subsidiaries or establishments, and the procedure for its re-negotiation.

(3) The employee involvement agreement shall not be subject to the standard rules on employee involvement, unless it contains a provision to the contrary.

(4) In relation to an SCE to be formed by conversion, the employee involvement agreement shall provide for the elements of employee involvement at all levels to be at least as favourable as those which exist in the cooperative to be converted into an SCE.

(5) If the parties decide, in accordance with paragraph (2)(f), to establish one or more information and consultation procedures instead of a representative body and if those procedures include a provision for representatives to be elected or appointed to act in relation to information and consultation, those representatives shall be "information and consultation representatives".

Decisions of the special negotiating body

18.—(1) Each member of the special negotiating body shall have one vote.

(2) Subject to paragraph (3) and regulation 19, the special negotiating body shall take decisions by an absolute majority vote.

(3) In the following circumstances any decision which would result in a reduction of participation must be taken by a two thirds majority vote:

(a) where an SCE is to be formed by merger and at least 25% of the employees employed to work in the EEA States by the participating cooperatives which are due to merge have participation; and

(b) where an SCE is to be formed in any other way and at least 50% of the total number of employees employed to work in the EEA States by the participating individuals and participating legal entities have participation.

In this paragraph, reduction of participation means that the proportion of members of the supervisory or administrative organ of the SCE who may be elected or appointed (or whose appointment may be recommended or opposed) by virtue of participation is lower than the proportion of such members in the participating legal entity which had the highest proportion of such members.

(4) The special negotiating body must publish the details of any decision taken under this regulation or under regulation 19 in such a manner as to bring the decision, so far as reasonably practicable, to the attention of the employees whom they represent and such publication shall take place as soon as reasonably practicable and, in any event no later than 14 days after the decision has been taken.

(5) For the purpose of negotiations, the special negotiating body may be assisted by experts of its choice.

(6) The participating individuals and participating legal entities shall pay for any reasonable expenses of the functioning of the special negotiating body and any reasonable expenses relating to the negotiations that are necessary to enable the special negotiating body to carry out its functions in an appropriate manner; but where the special negotiating body is assisted by more than one expert

the participating individuals and participating legal entities are not required to pay such expenses in respect of more than one of them.

Decision not to open or to terminate negotiations

19.—(1) Subject to paragraph (2), the special negotiating body may decide, by a two thirds majority vote, not to open negotiations with the participating individuals and the competent organs of the participating legal entities or to terminate any such negotiations.

(2) The special negotiating body cannot take the decision referred to in paragraph (1) in relation to an SCE to be formed by conversion if any employees of the cooperative to be converted have participation.

(3) Any decision made under paragraph (1) shall have the following effects—

(a) the duty in regulation 16(2) to negotiate with a view to reaching an employee involvement agreement shall cease as from the date of the decision;

(b) any rules relating to the information and consultation of employees in an EEA State in which employees of the SCE are employed shall apply to the employees of the SCE in that EEA State; and

(c) the special negotiating body shall be reconvened only if a valid request in accordance with paragraph (4) is made by employees or employees' representatives.

(4) To amount to a valid request, the request referred to in paragraph (3)(c) must—

(a) be in writing;

(b) be made by at least 10% of the employees of, or by employees' representatives representing at least 10% of, the total number of employees employed by—

(i) the participating individuals, the participating legal entities and such participating legal entities' concerned subsidiaries, or

(ii) where the SCE has been registered, the SCE and it subsidiaries; and

(c) be made no earlier than two years after the decision made under paragraph (1) was or should have been published in accordance with regulation 18(4) unless the special negotiating body and every participating individual and the competent organs of every participating legal entity or, where the SCE has been registered, the SCE agree to the special negotiating body being reconvened earlier.

Complaint about decisions of the special negotiating body

20.—(1) If a member of the special negotiating body, an employees' representative, or where there is no such representative in respect of an employee, that employee believes that the special negotiating body has taken a decision referred to in regulation 18 or 19 and—

(a) that the decision was not taken by the majority required by regulation 18 or 19, as the case may be; or

(b) the special negotiating body failed to publish the decision in accordance with regulation 18(4),

he may present a complaint to the CAC within 21 days of the date the special negotiating body did or should have published their decision in accordance with regulation 18(4).

(2) Where the CAC finds the complaint well-founded it shall make a declaration that the decision was not taken properly and that it shall have no effect.

PART 5

STANDARD RULES ON EMPLOYEE INVOLVEMENT

Standard rules on employee involvement

21.—(1) Without prejudice to paragraphs (3) and (5), where this regulation applies, the competent organ of the SCE and its subsidiaries and establishments shall make arrangements for the involvement of employees of the SCE and its subsidiaries and establishments in accordance with the standard rules on employee involvement.

(2) This regulation, save for paragraph 5, applies in the following circumstances:

(a) where it is agreed that the standard rules on employee involvement shall apply; or

(b) where the period specified in regulation 16(3)(a) or, where applicable, (b) has expired without an employee involvement agreement having been reached and—

(i) each participating individual and the competent organs of each of the participating legal entities agree that the standard rules on employee involvement shall apply and so continue with the registration of the SCE; and

(ii) the special negotiating body has not taken any decision under regulation 19(1) either not to open or to terminate the negotiations referred to in that regulation.

(3) The standard rules set out in Part 3 of Schedule 2 to these Regulations (standard rules on participation) only apply in the following circumstances—

(a) in the case of an SCE to be formed by merger if, before registration of the SCE, one or more forms of participation existed in at least one of the participating legal entities and either—

(i) that participation applied to at least 25% of the total number of employees of the participating legal entities employed in the EEA States, or

(ii) (i) that participation applied to less than 25% of the total number of employees of the participating legal entities employed in the EEA States but the special negotiating body has decided that the standard rules of participation will apply to the employees of the SCE; or

(b) in the case of an SCE to be formed in any other way if, before registration of the SCE, one or more forms of employee participation existed in at least one of the participating legal entities and either:

(i) that participation applied to at least 50% of the total number of employees of the participating individuals and participating legal entities employed in the EEA States; or

(ii) that participation applied to less than 50% of the total number of employees of the participating individuals and participating legal entities employed in the EEA States but the special negotiating body has decided that the standard rules of participation will apply to the employees of the SCE.

(4) Where the standard rules on participation apply and more than one form of employee participation exists in the participating legal entities, the special negotiating body shall decide which of the existing forms of participation shall exist in the SCE and shall inform the competent organs of the participating legal entities accordingly.

(5) The standard rule set out in paragraph 7(4) of Schedule 2 to these Regulations shall apply only in the following circumstances—

(a) the SCE is established by means other than conversion;

(b) there is a participating cooperative which is governed by a system whereby employees or employee representatives may participate in general meetings or section or sectorial

meetings, and that participating cooperative has the highest proportion of participation, within the meaning of regulation 3, in force in the participating cooperatives concerned before registration of the SCE;

(c) the period specified in regulation 16(3)(a) or, where applicable, (b) has expired without an employee involvement agreement having been reached;

(d) each participating individual and the competent organs of each of the participating legal entities agree that the standard rules on employee involvement shall apply and so continue with the registration of the SCE; and

(e) the special negotiating body has not taken any decision under regulation 19(1) either not to open or to terminate the negotiations referred to in that regulation.

PART 6

COMPLIANCE AND ENFORCEMENT

Disputes about operation of an employee involvement agreement or the standard rules on employee involvement

22.—(1) Where—

(a) an employee involvement agreement has been agreed; or

(b) the standard rules on employee involvement apply,

a complaint may be presented to the CAC by a relevant applicant who considers that a participating individual or the competent organ of a participating legal entity or of the SCE has failed to comply with the terms of the employee involvement agreement or, as the case may be, one or more of the standard information and consultation provisions.

(2) A complaint brought under paragraph (1) must be brought within a period of three months commencing with the date of the alleged failure or, where the failure takes place over a period, the last day of that period.

(3) In this regulation—

"failure" means an act or omission,

"relevant applicant" means—

(a) in a case where a representative body has been elected or appointed, a member of that body; or

(b) in a case where no representative body has been elected or appointed, an information and consultation representative or an employee of the SCE.

(4) Where the CAC finds the complaint well-founded it shall make a declaration to that effect and may make an order requiring, as appropriate, the participating individual, participating legal entity or SCE to take such steps as are necessary to comply with the terms of the employee involvement agreement or, as the case may be, the standard rules on employee involvement.

(5) An order made under paragraph (4) shall specify—

(a) the steps which, as appropriate, the participating individual, participating legal entity or SCE is required to take;

(b) the date of the failure; and

(c) the period within which the order must be complied with.

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

(7) Where such an application is made, the Appeal Tribunal shall issue a written penalty notice to, as appropriate, the participating individual, participating legal entity or SCE requiring it to pay a penalty to the Secretary of State in respect of the failure unless satisfied, on hearing representations, that the failure resulted from a reason beyond the its control or that it has some other reasonable excuse for its failure.

(8) Regulation 23 shall apply in respect of 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 participating individual, participating legal entity or by the SCE.

Penalties

23.—(1) A penalty notice issued under regulation 22 shall specify—

(a) the amount of the penalty which is payable;

(b) the date before which the penalty must be paid; and

(c) the failure and period to which the penalty relates.

(2) No penalty set by the Appeal Tribunal under this regulation may exceed £75,000.

(3) When setting the amount of the penalty, the Appeal Tribunal shall take into account—

(a) the gravity of the failure;

(b) the period of time over which the failure occurred;

(c) the reason for the failure;

(d) the number of employees affected by the failure; and

(e) the number of employees employed by the SCE.

(4) The date specified under paragraph (1)(b) above must not be earlier than the end of the period within which an appeal against a decision or order made by the CAC under regulation 22 may be made.

(5) If the specified date in a penalty notice has passed and—

(a) the period during which an appeal may be made has expired without an appeal having been made; or

(b) such an appeal has been made and determined,

the Secretary of State may recover from, as appropriate, the participating individual, participating legal entity or SCE, as a civil debt due to him, any amount payable under the penalty notice which remains outstanding.

(6) The making of an appeal suspends the effect of the penalty notice.

(7) Any sums received by the Secretary of State under regulation 22 or this regulation shall be paid into the Consolidated Fund.

Misuse of procedures

24.—(1) If an employees' representative or where there is no such representative in relation to an employee, the employee, believes that a participating individual, a participating legal entity or an SCE is misusing or intending to misuse the SCE or the powers in these Regulations for the purpose of—

(a) depriving the employees of, as appropriate, that participating individual, that participating legal entity or of any of its concerned subsidiaries, or that SCE or of its subsidiaries of their rights to employee involvement; or

(b) withholding rights to employee involvement from any of the people referred to in sub-paragraph (a),

he may make present a complaint to the CAC.

(2) Where a complaint is made to the CAC under paragraph (1) before registration or within a period of 12 months of the date of the registration of the SCE, the CAC shall uphold the complaint unless the respondent proves that it did not misuse or intend to misuse the SCE or the powers in these Regulations for either of the purposes set out in sub-paragraphs (a) or (b) of paragraph (1).

(3) If the CAC finds the complaint to be well founded—

(a) it shall make a declaration to that effect and may make an order requiring, as appropriate, the participating individual, participating legal entity or SCE, to take such action as is specified in the order to ensure that the employees referred to in paragraph (1)(a) are not deprived of their rights to employee involvement or that such rights are not withheld from them; and

(b) the provisions in regulations 22(6) to (9) and 23 shall apply to the complaint.

Exclusivity of remedy

25. Where Parts 2 to 6 of, and Schedule 1 to, these Regulations provide for a remedy of infringement of any right by way of application or complaint to the CAC, and provide for no other remedy, no other remedy is available for infringement of that right.

PART 7

CONFIDENTIAL INFORMATION

Breach of statutory duty

26.—(1) Where an SCE, a subsidiary of an SCE, a participating legal entity, any concerned subsidiary, or a participating individual entrusts a person, pursuant to these Regulations, with any information or document on terms requiring it to be held in confidence, the person shall not disclose that information or document except in accordance with the terms on which it was disclosed to him.

(2) In this regulation a person referred to in paragraph (1) to whom information or a document is entrusted is referred to as a "recipient".

(3) The obligation to comply with paragraph (1) is a duty owed to the SCE, subsidiary of an SCE, participating legal entity, concerned subsidiary, or participating individual that disclosed the information to the person and a breach of the duty is actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).

(4) Paragraph (3) does not affect any legal liability which any person may incur by disclosing the information, or any right which any person may have in relation to such disclosure otherwise than under this Regulation.

(5) No action shall lie under paragraph (3) where the recipient reasonably believed the disclosure to be a "protected disclosure" within the meaning given to that expression by section 43A of the 1996 Act(**6**).

(**6**) Section 43A of the 1996 Act was inserted by the Public Interest Disclosure Act 1998 (c. 23), section 1.

(6) A recipient to whom an SCE, subsidiary of an SCE, participating legal entity, concerned subsidiary or participating individual has entrusted any information or document on terms requiring it to be held in confidence, may apply to the CAC for a declaration as to whether it was reasonable to have required him to hold the information or document in confidence.

(7) If the CAC considers that the disclosure of the information or the document by the recipient would not, or would not be likely to, harm the legitimate interests of the SCE, subsidiary of an SCE, participating legal entity, concerned subsidiary or participating individual, as the case may be, it shall make a declaration that it was not reasonable to have required the recipient to hold the information or document in confidence.

(8) If a declaration is made under paragraph (7), the information or document shall not at any time thereafter be regarded as having been entrusted to the recipient who made the application under paragraph (6), or to any other recipient, on terms requiring it to be held in confidence.

Withholding of information

27.—(1) An SCE, participating legal entity, or participating individual may refuse to disclose any information or document to a person for the purposes of these Regulations where the nature of the information or document is such that, according to objective criteria, the disclosure of the information or document would seriously harm the functioning of, or would be prejudicial to, as appropriate, the SCE or any subsidiary or establishment of the SCE, the participating legal entity or any subsidiary or establishment of the participating legal entity, the participating individual or any establishment of the participating individual.

(2) Where there is a dispute between the SCE, participating legal entity or participating individual and—

(a) where a representative body has been appointed or elected, a member of that body; or

(b) where no representative body has been elected or appointed, an information and consultation representative or an employee,

as to whether the nature of the information or document which the SCE, the participating legal entity or participating individual has failed to provide is such as is described in paragraph (1), the SCE, participating legal entity, participating individual or a person referred to in sub-paragraph (a) or (b) may apply to the CAC for a declaration as to whether the information or document is of such a nature.

(3) If the CAC makes a declaration that the disclosure of the information or document in question would not, according to objective criteria, be seriously harmful or prejudicial as mentioned in paragraph (1), the CAC shall order the SCE, participating legal entity or participating individual, as the case may be, to disclose the information or document.

(4) An order under paragraph (3) shall specify—

(a) the information or document to be disclosed;

(b) the person or persons to whom the information or document is to be disclosed;

(c) any terms on which the information or document is to be disclosed; and

(d) the date before which the information or document is to be disclosed.

PART 8

PROTECTION FOR MEMBERS OF SPECIAL NEGOTIATING BODY, ETC.

Right to time off for members of special negotiating body, etc.

28.—(1) An employee who is—

(a) a member of a special negotiating body;

(b) a member of a representative body;

(c) an information and consultation representative;

(d) an employee member of a supervisory or administrative organ;

(e) a candidate in an election in which any person elected will, on being elected, be such a member or a representative; or

(f) a participant in general meetings or section or sectorial meetings of the SCE as provided for in regulation 17(2)(h) or paragraph 11(2)(h) of Schedule 1 or paragraph 7(4) of Schedule 2,

is entitled to be permitted by his employer to take reasonable time off during the employee's working hours in order to perform his functions as such a member, representative, candidate or participant.

(2) For the purpose of this regulation the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

Right to remuneration for time off under regulation 28

29.—(1) An employee who is permitted to take time off under regulation 28 is entitled to be paid remuneration by his employer for the time taken off at the appropriate hourly rate.

(2) Chapter 2 of Part 14 of the 1996 Act (a week's pay) shall apply in relation to this regulation as it applies in relation to section 62 of the 1996 Act.

(3) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time is taken.

(4) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—

(a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken; or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in paragraph (5) as are appropriate in the circumstances.

(5) The considerations referred to in paragraph (4)(b) are—

(a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract; and

(b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(6) A right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under his contract of employment.

(7) Any contractual remuneration paid to an employee in respect of a period of time off under regulation 28 goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period, and conversely, any payment of remuneration under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Right to time off: complaints to tribunals

30.—(1) An employee may present a complaint to an employment tribunal that his employer—

(a) has unreasonably refused to permit him to take time off as required under regulation 28; or

(b) has failed to pay the whole or any part of any amount to which the employee is entitled under regulation 29.

(2) A tribunal shall not consider a complaint under this regulation unless it is presented—

(a) before the end of the period of three months beginning with the day on which the time off was taken or on which it is alleged the time off should have been permitted; or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where a tribunal finds a complaint under this regulation well-founded, the tribunal shall make a declaration to that effect.

(4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer to pay to the employee an amount equal to the remuneration to which he would have been entitled under regulation 29 if the employer had not refused.

(5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which he is entitled under regulation 29, the tribunal shall also order him to pay to the employee the amount which it finds is due to him.

Unfair dismissal

31.—(1) An employee who is dismissed and to whom paragraph (2) or (5) applies shall be regarded, if the reason (or, if more than one, the principal reason) for the dismissal is a reason specified in, respectively, paragraph (3) or (6), as unfairly dismissed for the purposes of Part 10 of the 1996 Act.

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

(a) a member of a special negotiating body;

(b) a member of a representative body;

(c) an information and consultation representative;

(d) an employee member of a supervisory or administrative organ; or

(e) a candidate in an election in which any person elected will, on being elected, be such a member or a representative; or

(f) a participant in general meetings or section or sectorial meetings of the SCE as provided for in regulation 17(2)(h) or paragraph 11(2)(h) of Schedule 1, or paragraph 7(4) of Schedule 2.

(3) The reason is that—

(a) the employee performed or proposed to perform any functions or activities as such a member, representative, candidate or participant; or

(b) the employee or a person acting on his behalf made or proposed to make a request to exercise an entitlement conferred on the employee by regulation 28 or 29.

(4) Paragraph (1) does not apply in the circumstances set out in paragraph (3)(a) where the reason (or principal reason) for the dismissal 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 26, 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 reasons are that the employee—

(a) took, or proposed to take, any proceedings before an employment tribunal to enforce any right 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) acted with a view to securing that a special negotiating body, a representative body or an information and consultation procedure did or did not come into existence;

(d) indicated that he did or did not support the coming into existence of a special negotiating body, a representative body or an information and consultation procedure;

(e) stood as a candidate in an election in which any person elected would, on being elected, be a member of a special negotiating body, a representative body, an employee member of a supervisory or administrative organ, a participant in general or section or sectorial meetings or an information and consultation representative;

(f) 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;

(g) voted in such a ballot;

(h) expressed doubts, whether to a ballot supervisor or otherwise, as to whether such a ballot had been properly conducted; or

(i) proposed to do, failed to do, or proposed to decline to do, any of the things mentioned in sub-paragraphs (d) to (h).

(7) It is immaterial for the purposes of sub-paragraph (a) of paragraph (6)—

(a) whether or not the employee has the right, 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.

Subsidiary provisions relating to unfair dismissal

32.—(1) In section 105 of the 1996 Act (redundancy as unfair dismissal)—

(a) for paragraph (c) of subsection (1) (which requires one of a specified group of subsections to apply for a person to be treated as unfairly dismissed)(**7**) substitute—

"(c) it is shown that any of subsections (2A) to (7J) applies."; and

(b) after subsection (7I) insert—

"(7J) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 31 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (read with paragraphs (4) and (7) of that regulation)."

(2) In section 108(**8**) of the 1996 Act (exclusion of right: qualifying period of employment), in subsection (3) (cases where no qualifying period of employment is required)(**9**)—

(a) omit the word "or" at the end of paragraph (m); and

(**7**) Section 105 has been amended on a number of occasions to specify additional circumstances in which an employee dismissed by reason of redundancy is to be regarded as unfairly dismissed.

(**8**) Section 108(1) was amended by S.I. 1999/1436, article 3.

(**9**) Section 108(3) has been amended on a number of occasions to specify additional cases in which no qualifying period of employment is required.

(b) after paragraph (n) insert—

", or

(o) paragraph (3) or (6) of regulation 31 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (read with paragraphs (4) and (7) of that regulation) applies."

(3) In section 109 of the 1996 Act (exclusion of right: upper age limit), in subsection (2) (cases where the upper age limit does not apply)(**10**)—

(a) omit the word "or" at the end of paragraph (l); and

(b) after paragraph (m) insert—

", or

(n) paragraph (3) or (6) of regulation 31 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (read with paragraphs (4) and (7) of that regulation) applies."

Detriment

33.—(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) a member of a special negotiating body;

(b) a member of a representative body;

(c) an information and consultation representative;

(d) an employee member of a supervisory or administrative organ;

(e) a candidate in an election in which any person elected will, on being elected, be such a member or a representative; or

(f) a participant in general meetings or section or sectorial meetings of the SCE as provided for in regulation 17(2)(h) or paragraph 11(2)(h) of Schedule 1, or paragraph 7(4) of Schedule 2.

(3) The ground is that—

(a) the employee performed or proposed to perform any functions or activities as such a member, representative, candidate or participant; or

(b) the employee or person acting on his behalf made or proposed to make a request to exercise an entitlement conferred on the employee by regulation 28 or 29.

(4) Paragraph (1) does not apply in the circumstances set out in paragraph (3)(a) where the 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 26, 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—

(**10**) Section 109(2) has been amended on a number of occasions to specify additional cases where the upper age limit does not apply.

(a) took, or proposed to take, any proceedings before an employment tribunal to enforce any right 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) acted with a view to securing that a special negotiating body, a representative body or an information and consultation procedure did or did not come into existence;

(d) indicated that he did or did not support the coming into existence of a special negotiating body, a representative body or an information and consultation procedure;

(e) stood as a candidate in an election in which any person elected would, on being elected, be a member of a special negotiating body, a representative body, an employee member of a supervisory or administrative organ, a participant in general or section or sectorial meetings or be an information and consultation representative;

(f) 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;

(g) voted in such a ballot;

(h) expressed doubts, whether to a ballot supervisor or otherwise, as to whether such a ballot had been properly conducted; or

(i) proposed to do, failed to do, or proposed to decline to do, any of the things mentioned in sub-paragraphs (d) to (h).

(7) It is immaterial for the purposes 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 has been infringed must be made in good faith.

(8) This regulation does not apply where the detriment in question amounts to dismissal.

Detriment: enforcement and subsidiary provisions

34.—(1) An employee may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of regulation 33.

(2) The provisions of sections 48(2) to (4) of the 1996 Act (complaints to employment tribunals) shall apply in relation to a complaint under this regulation as they apply in relation to a complaint under section 48 of that Act.

(3) The provisions of section 49(1) to (5) of the 1996 Act shall apply in relation to a complaint under this regulation.

(4) At the end of each of the following Schedules to the Employment Act 2002(**11**)—

(a) Schedule 3 (tribunal jurisdictions to which section 31 applies for adjustment of awards for non-completion of statutory procedure);

(b) Schedule 4 (tribunal jurisdictions to which section 32 applies for complaints where the employee must first submit a statement of grievance to employer); and

(c) Schedule 5 (tribunal jurisdictions to which section 38 applies in relation to proceedings where the employer has failed to give a statement of employment particulars),

insert—

(**11**) 2002 c. 22. Schedules 3, 4 and 5 to the 2002 Act have been amended on a number of occasions to specify additional tribunal jurisdictions to which sections 31, 32 and 38 of the Act apply.

"Regulation 34 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (detriment in relation to involvement in a European Cooperative Society)".

Conciliation

35. In section 18 of the Employment Tribunals Act 1996 (conciliation), in subsection (1) (which specifies the proceedings and claims to which the section applies)(**12**)—

(a) omit the word "or" at the end of paragraph (q); and

(b) after paragraph (r) insert—

", or

(s) under regulation 30 or 34 of the European Cooperative Society (Involvement of Employees) Regulations 2006."

PART 9

MISCELLANEOUS

CAC proceedings

36.—(1) Where under these Regulations a person presents a complaint or makes an application to the CAC the complaint or application must be in writing and in such form as the CAC may require.

(2) In its consideration of a complaint or application under these Regulations, the CAC shall make such enquiries as it sees fit and give any person whom it considers has a proper interest in the complaint or application an opportunity to be heard.

(3) In the case of a participating individual resident in England and Wales, an SCE with its registered office in England and Wales, or a participating legal entity or concerned subsidiary with its registered office (or principal place of business if not a body corporate), in England and Wales—

(a) a declaration made by the CAC under these Regulations may be relied on as if it were a declaration or order made by the High Court in England and Wales; and

(b) an order made by the CAC under these Regulations may be enforced in the same way as an order of the High Court in England and Wales.

(4) In the case of a participating individual resident in Scotland, an SCE with its registered office in Scotland, or a participating legal entity or concerned subsidiary with its registered office (or principal place of business if not a body corporate), in Scotland—

(a) a declaration or order made by the CAC under these Regulations may be relied on as if it were a declaration or order made by the Court of Session; and

(b) an order made by the CAC under these Regulations may be enforced in the same way as an order of the Court of Session.

(5) A declaration or order made by the CAC under these Regulations must be in writing and state the reasons for the CAC's findings.

(6) An appeal lies to the Appeal Tribunal on any question of law arising from any declaration or order of, or arising in any proceedings before, the CAC under these Regulations.

(**12**) 1996 c. 17. Section 18(1) has been amended on a number of occasions to specify additional proceedings and claims to which the section applies.

Appeal Tribunal: location of certain proceedings under these Regulations

37.—(1) Any proceedings before the Appeal Tribunal under these Regulations, other than appeals under paragraph (r) of section 21(1) of the Employment Tribunals Act 1996(**13**) (appeals from employment tribunals on questions of law), shall—

(a) in the case of a participating individual resident in England and Wales, an SCE with its registered office in England and Wales, or a participating legal entity or concerned subsidiary with its registered office (or principal place of business, if not a body corporate) in England and Wales, be held in England and Wales;

(b) in the case of a participating individual resident in Scotland, an SCE with its registered office in Scotland, or a participating legal entity or concerned subsidiary with its registered office (or principal place of business, if not a body corporate) in Scotland, be held in Scotland.

(2) In section 20(4) of the Employment Tribunals Act 1996 (the Appeal Tribunal)—

(a) for "2004 and" substitute "2004,"; and

(b) after "Employees Regulations 2004" insert "and regulation 37(1) of the European Cooperative Society (Involvement of Employees) Regulations 2006".

Appeal Tribunal: appeals from employment tribunals

38. In section 21(1) of the Employment Tribunals Act 1996 (circumstances in which an appeal lies to the Appeal Tribunal from an employment tribunal)—

(a) omit the word "or" at the end of paragraph (r); and

(b) after paragraph (s) insert—

", or

(t) the European Cooperative Society (Involvement of Employees) Regulations 2006.".

ACAS

39.—(1) If on receipt of an application or complaint under these Regulations the CAC is of the opinion that it is reasonably likely to be settled by conciliation or other assistance provided by the Advisory, Conciliation and Arbitration Service ("ACAS") in accordance with paragraph (2), it shall refer the application or complaint to ACAS and notify the applicant or complainant and any persons whom it considers have a proper interest in the application or complaint accordingly.

(2) Where the CAC refers an application or complaint to ACAS under paragraph (1), section 210 of the Trade Union and Labour Relations (Consolidation) Act 1992 (power of ACAS to offer assistance to settle disputes) shall apply, and ACAS may offer the parties to the application or complaint its assistance under that section with a view to bringing about a settlement, as if the dispute or difference between the parties amounted to a trade dispute as defined in section 218 of that Act.

(3) If ACAS does not consider it appropriate to offer its assistance in accordance with paragraph (2) it shall inform the CAC.

(4) If ACAS has offered the parties its assistance in accordance with paragraph (2), the application or complaint referred has not thereafter been settled or withdrawn, and ACAS is of the opinion that no provision or further provision of its assistance is likely to result in a settlement or withdrawal, it shall inform the CAC of its opinion.

(**13**) Section 21(1) has been amended on a number of occasions to specify additional proceedings and claims to which the section applies.

(5) If—

(a) an application or complaint is not referred to ACAS, or

(b) it is so referred, but ACAS informs the CAC as mentioned in paragraph (3) or (4),

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

Restrictions on contracting out: general

40.—(1) Any provision in any agreement (whether a contract of employment or not) is void in so far as it purports—

(a) to exclude or limit the operation of any provision of these Regulations other than a provision of Part 8; or

(b) to preclude a person from bringing any proceedings before the CAC under these Regulations other than under a provision of Part 8.

(2) Paragraph (1) does not apply to any agreement to refrain from continuing any proceedings referred to in sub-paragraph (b) of that paragraph made after the proceedings have been instituted.

Restrictions on contracting out: Part 8

41.—(1) Any provision in any agreement (whether a contract of employment or not) is void in so far as it purports—

(a) to exclude or limit the operation of any provision of Part 8 of these Regulations; or

(b) to preclude a person from bringing any proceedings before an employment tribunal under that Part.

(2) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing proceedings before an employment tribunal where a conciliation officer has taken action under section 18 of the Employment Tribunals Act 1996 (conciliation).

(3) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing before an employment tribunal proceedings within section 18(1)(s) of the Employment Tribunals Act 1996 (proceedings under these Regulations where conciliation is available) if the conditions regulating compromise agreements under these Regulations are satisfied in relation to the agreement.

(4) For the purposes of paragraph (3) the conditions regulating compromise agreements are that—

(a) the agreement must be in writing;

(b) the agreement must relate to the particular proceedings;

(c) the employee must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an employment tribunal;

(d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the employee in respect of loss arising in consequence of the advice;

(e) the agreement must identify the adviser; and

(f) the agreement must state that the conditions in sub-paragraphs (a) to (e) are satisfied.

(5) A person is a relevant independent adviser for the purposes of paragraph (4)(c)—

(a) if he is a qualified lawyer;

(b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and authorised to do so on behalf of the trade union; or

(c) if he works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and authorised to do so on behalf of the centre.

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

(a) if he is, is employed by or is acting in the matter for the employer or an associated employer;

(b) in the case of a person within paragraph (5)(b) or (c), if the trade union or advice centre is the employer or an associated employer; or

(c) in the case of a person within paragraph (5)(c), if the employee makes a payment for the advice received by him.

(7) In paragraph (5)(a), a "qualified lawyer" means—

(a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990(**14**)); and

(b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.

(8) A person shall be treated as being a qualified lawyer within sub-paragraph (7)(a) if he is a Fellow of the Institute of Legal Executives employed by a solicitors' practice.

(9) For the purposes of paragraph (6) any two employers shall be treated as associated if—

(a) one is a company of which the other (directly or indirectly) has control; or

(b) both are companies of which a third person (directly or indirectly) has control;

and "associated employer" shall be construed accordingly.

Amendment of the Transnational Information and Consultation of Employees Regulations 1999

42. In the Transnational Information and Consultation of Employees Regulations 1999(**15**), after regulation 46A insert—

"**46B.**—(1) These regulations do not apply to an SCE that is—

(a) a Community-scale undertaking, or

(b) a controlling undertaking of a Community-scale group of undertakings,

except where the special negotiating body has taken the decision referred to in regulation 19 of, or paragraph 13 of Schedule 1 to, the European Cooperative Society (Involvement of Employees) Regulations 2006 (decision not to open, or to terminate, negotiations).

(2) In this regulation an "SCE" means a European Cooperative Society established in accordance with the European Cooperative Society Regulations 2006.".

Existing employee involvement rights

43.—(1) Subject to paragraph (2), nothing in these Regulations shall prejudice involvement rights of employees of an SCE, its subsidiaries or establishments provided for by law or practice in the EEA State in which they were employed immediately prior to the registration of the SCE.

(**14**) 1990 c. 41.
(**15**) SI 1999/3323.

(2) Paragraph (1) does not apply to rights to participation.

Jim Fitzpatrick
Parliamentary Under Secretary of State for
Employment Relations
Department of Trade and Industry

25th July 2006

SCHEDULE 1 Regulation 6(2)

PART 1

PROVISION OF INFORMATION AND THE SPECIAL NEGOTIATING BODY

Duty on SCE to provide information

1.—(1) The competent organ of the SCE shall, as soon as possible after the satisfaction of a relevant condition (within the meaning given in regulation 6(3)), provide information to the employees' representatives of the SCE and of any subsidiaries and establishments or, if no such representatives exist, the employees themselves.

(2) The information referred to in paragraph (1) must include, as a minimum, information—

(a) identifying the SCE and any subsidiaries and establishments,

(b) giving the number of employees employed by the SCE, any subsidiary and at any establishment, and

(c) giving the number of employees employed to work in each EEA State.

Complaint of failure to provide information

2.—(1) An employees' representative or, where there is no such representative for an employee, the employee, may present a complaint to the CAC that—

(a) the competent organ of the SCE has failed to provide the information to paragraph 1; or

(b) the information provided by such competent organ for the purpose of complying with paragraph 1 is false or incomplete in a material particular.

(2) Where the CAC finds the complaint well-founded it shall make an order requiring the competent organ 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; and

(b) a date, (not being less than one week from the date of the order) by which the competent organ must disclose the information specified in the order.

Function of the special negotiating body

3. The special negotiating body and the competent organ of the SCE shall have the task of reaching an employee involvement agreement.

Composition of the special negotiating body

4.—(1) The competent organ of the SCE shall make arrangements for the establishment of a special negotiating body, which body shall be constituted as soon as possible and in accordance with sub-paragraphs (2) to (4) below. The methods used to elect or appoint employee representatives to the special negotiating body should seek to promote gender balance.

(2) The total number of employees employed to work in each EEA State of the SCE and its subsidiaries shall be given an entitlement to elect or appoint one member of the special negotiating body for each 10% or fraction thereof which those employees represent of the total workforce.

(3) The competent organ of the SCE shall, as soon as reasonably practicable and in any event no later than one month after the establishment of the special negotiating body, inform its employees and those of its subsidiaries of the identity of the members of the special negotiating body.

(4) If, following the appointment or election of members to the special negotiating body in accordance with this paragraph,

(a) changes to the SCE, its subsidiaries or establishments result in the number of members which employees would be entitled to elect or appoint under this paragraph either materially increasing or decreasing, the original appointment or election of members of the special negotiating body shall cease to have effect and those employees shall be entitled to elect or appoint the new number of members in accordance with the provisions of this Schedule; and

(b) a member of the special negotiating body is no longer willing or able to continue serving as such a member, the employees whom he represents shall be entitled to elect or appoint a new member in his place.

Complaint about establishment of the special negotiating body

5.—(1) An application may be presented to the CAC for a declaration that the special negotiating body has not been established at all or has not been established properly in accordance with paragraph 4.

(2) An application may be presented under this paragraph by—

(a) a person elected or appointed to be a member of the special negotiating body;

(b) an employees' representative or, where no such representative exists in respect of an SCE or subsidiary, an employee of the SCE or subsidiary; or

(c) the competent organ of an SCE or subsidiary.

(3) The CAC shall only consider an application made under sub-paragraph (1) that a special negotiating body had not been properly constituted if it is made within a period of one month from the date on which the competent organ of the SCE complied or should have complied with the obligation to inform the employees under paragraph 4(3).

(4) Where the CAC finds the application well-founded it shall make a declaration that the special negotiating body has not been established at all or has not been established properly and the competent organ of the SCE continues to be under the obligation in paragraph 4(1).

PART 2

ELECTION OR APPOINTMENT OF UK MEMBERS OF THE SPECIAL NEGOTIATING BODY

Ballot arrangements

6.—(1) Subject to paragraph 8, the UK members of the special negotiating body shall be elected by balloting the UK employees.

(2) An SCE and its subsidiaries employing UK employees ("the relevant employers") must arrange for the holding of a ballot or ballots of those employees in accordance with the requirements of sub-paragraph (3), and having regard to the fact that the methods of election should seek to promote gender balance.

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

(a) in relation to the election of members under paragraph 4(2), that—

(i) if the number of members which UK employees are entitled to elect to the special negotiating body is equal to the number of relevant employers, there shall be separate ballots of the UK employees of each relevant employer;

(ii) if the number of members which the UK employees are entitled to elect to the special negotiating body is greater than the number of relevant employers there shall be separate ballots of the UK employees of each relevant employer and the relevant employers shall ensure, as far as practicable, that at least one member representing the UK employees of each such employer is elected to the special negotiating body and that the number of members representing the UK employees of that employer is proportionate to the number of employees of that employer;

(iii) if the number of members which the UK employees are entitled to elect to the special negotiating body is smaller than the number of relevant employers,—

(aa) the number of ballots held shall be equivalent to the number of members to be elected;

(bb) a separate ballot shall be held in respect of each of the relevant employers with the higher or highest number of employees; and

(cc) it shall be ensured that any employees of a relevant employer in respect of which a ballot does not have to be held are entitled to vote in a ballot held in respect of one of the other relevant employers; and

(iv) if there are any UK employees employed by a non-UK SCE or by a subsidiary or at an establishment of an non-UK SCE, the relevant employers shall ensure that those employees are entitled to vote in a ballot held pursuant to this paragraph;

(b) that in a ballot in respect of a particular relevant employer all UK employees employed by that employer at its establishments are entitled to vote;

(c) that in a ballot in respect of a particular relevant employer any person who is immediately before the latest time at which a person may become a candidate—

(i) a UK employee employed by that employer or at any of its establishments; or

(ii) if the employer so permits, a representative of a trade union who is not an employee of that employer,

is entitled to stand as a candidate for election as a member of the special negotiating body in that ballot;

(d) that the relevant employers appoint an independent ballot supervisor to supervise the conduct of the ballot of UK employees except that, where there is to be more than one ballot, the relevant employers may appoint more than one independent ballot supervisor, each of whom is to supervise such of the separate ballots as the relevant employers may determine, provided that each separate ballot is supervised by a supervisor;

(e) that after the relevant employers have formulated proposals as to the arrangements for the ballot of UK employees and before they have published the final arrangements under paragraph (f) they must, so far as reasonably practicable, consult with the UK employees' representatives on the proposed arrangements for the ballot of UK employees; and

(f) that the relevant employers must publish the final arrangements for the ballot of UK employees in such manner as to bring them to the attention of, so far as reasonably practicable, all 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 do not comply with the requirements of sub-paragraph (3) may, within a period of 21 days beginning on the date on which the management published the final arrangements under 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 relevant employers to modify the arrangements they have made for the ballot of UK employees or to satisfy the requirements in paragraph (e) or (f) of sub-paragraph (3).

(6) An order under sub-paragraph (5) shall specify the modifications to the arrangements which the relevant employers are required to make and the requirements they must satisfy.

(7) A person is an independent ballot supervisor for the purposes of sub-paragraph (3)(d) if the relevant employers reasonably believe that he will carry out any functions conferred on him in relation to the ballot competently and have no reasonable grounds for believing that his independence in relation to the ballot might reasonably be called into question.

Conduct of the ballot

7.—(1) The relevant employers must—

(a) ensure that a ballot supervisor appointed under paragraph 6(3)(d) carries out his functions under this paragraph and that there is no interference with his carrying out of those functions from the relevant employers; 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 UK employees published by the relevant employers under paragraph 6(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 paragraph 6(4);

(b) does not conduct the ballot or any of the separate ballots before the relevant employers have satisfied the requirement specified in paragraph 6(3)(f) and—

(i) where no complaint has been presented under paragraph 6(4), before the expiry of a period of 21 days beginning on the date on which the relevant employers published their arrangements under paragraph 6(3)(f); or

(ii) where a complaint has been presented under paragraph 6(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 that 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 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 relevant employers and, so far as reasonably practicable, the UK employees entitled to vote in the ballot and the persons who stood as candidates.

(4) A ballot supervisor shall publish a report ("an ineffective ballot report") where he considers (whether on the basis of representations made to him by another person or otherwise) that—

(a) any of the requirements referred to in sub-paragraph (2) was not satisfied with the result that the outcome of the ballot would have been different; or

(b) there was an interference with the carrying out of his functions or a failure by the relevant employers to comply with all reasonable requests made by him with the result that he was

unable to form a proper judgement as to whether each of the requirements referred to in sub-paragraph (2) was satisfied in 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 sub-paragraph (3).

(6) A ballot supervisor shall publish an ineffective ballot report in such manner as to make it available to the relevant employers 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 relevant employers shall again be under the obligation in paragraph 6(2).

(b) If there have been separate ballots and paragraph (a) does not apply—

(i) the relevant employers shall arrange for the separate ballot or ballots in respect of which an ineffective ballot report was published to be re-held in accordance with paragraph 6 and this paragraph; and

(ii) no such ballot shall have effect until it has been re-held and no ineffective ballot report has been published in respect of it within the period specified in sub-paragraph (5).

(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 relevant employers (whether or not an ineffective ballot report has been published).

Appointment of UK members by a consultative committee

8.—(1) This paragraph applies where—

(a) paragraph 6(3)(i) or (ii) would require a ballot to be held; and

(b) there exists in relation to the SCE whose employees would otherwise need to be balloted under paragraph 6, a consultative committee.

(a) (2) (a) Where this paragraph applies, the election provided for in paragraph 4 shall not take place but the consultative committee shall be entitled to appoint the UK member or members of the special negotiating body who would otherwise be elected pursuant to paragraph 6, where appropriate having regard to the fact that the method used should seek to promote gender balance.

(b) The consultative committee is entitled to appoint as a member of the special negotiating body:

(i) one of their number; or

(ii) if the SCE in respect of which the consultative committee exists so permits, a trade union representative who is not an employee of that SCE.

(3) 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 SCE;

(c) which, in carrying out its information and consultation function, represents all the employees of the SCE; and

(d) which consists wholly of persons who are employees of the SCE or such SCE's subsidiaries.

(4) In sub-paragraph (3) "information and consultation function" means the function of—

(a) receiving, on behalf of all of the employees of the SCE, information which may significantly affect the interests of the employees of that SCE, but excluding information which is relevant only to a specific aspect of the interests of the employees, such as health and safety, collective redundancies or pension schemes; and

(b) being consulted by the SCE on the information referred to in paragraph (a) above.

(5) The consultative committee must publish the names of the persons whom it has appointed to be members of the special negotiating body in such a manner as to bring them to the attention of the SCE and, so far as reasonably practicable, the employees and the employees' representatives of the SCE and such SCE's subsidiaries.

(6) Where the SCE, an employee or an employees' representative believes that—

(a) the consultative committee does not satisfy the requirements in sub-paragraph (3) above; or

(b) any of the persons appointed by the consultative committee is not entitled to be appointed,

he, or as the case may be, it may, within a period of 21 days beginning on the date on which the consultative committee published under sub-paragraph (5) the names of the persons appointed, present a complaint to the CAC.

(7) Where the CAC finds the complaint well-founded it shall make a declaration to that effect.

(8) Where the CAC has made a declaration under sub-paragraph (7)—

(a) no appointment made by the consultative committee shall have effect; and

(b) the members of the special negotiating body shall be elected by a ballot of the employees in accordance with paragraph 6.

(9) Where the consultative committee appoints any person to be a member of the special negotiating body, that appointment shall have effect—

(a) where no complaint has been presented under sub-paragraph (6), after the expiry of a period of 21 days beginning on the date on which the consultative committee published under sub-paragraph (5) the names of the persons nominated; or

(b) where a complaint has been presented under sub-paragraph (6), as from the day on which the complaint has been determined without a declaration under sub-paragraph (7) being made.

Representation of employees

9.—(1) Subject to sub-paragraph (2) below, a member elected in a ballot in accordance with paragraph 6(2), shall be treated as representing the employees for the time being of the SCE and of any such SCE's subsidiary or establishment whose employees were entitled to vote in the ballot in which he was elected.

(2) When a member of the special negotiating body is appointed by a consultative committee in accordance with paragraph 8, the employees whom the consultative committee represents and the UK employees of any subsidiary of the SCE or establishment shall be treated as being represented by the member so appointed.

PART 3

NEGOTIATION OF THE EMPLOYEE INVOLVEMENT AGREEMENT

Negotiations to reach an employee involvement agreement

10.—(1) In this paragraph and in paragraph 11 the competent organ of the SCE and the special negotiating body are referred to as "the parties".

(2) The parties are under a duty to negotiate in a spirit of cooperation with a view to reaching an employee involvement agreement.

(3) The duty referred to in paragraph (2) commences one month after the date or, if more than one, the last date on which the members of the special negotiating body were elected or appointed and applies—

(a) for the period of 6 months starting with the day on which the duty commenced or, where an employee involvement agreement is successfully negotiated within that period, until the completion of the negotiations; or

(b) where the parties agree before the end of that 6 month period that it is to be extended, for the period of 12 months starting with the day on which the duty commenced or, where an employee involvement agreement is successfully negotiated within the 12 month period, until the completion of the negotiations.

The employee involvement agreement

11.—(1) The employee involvement agreement must be in writing.

(2) Without prejudice to the autonomy of the parties, the employee involvement agreement shall specify:

(a) the scope of the agreement;

(b) the composition, number of members and allocation of seats on the representative body;

(c) the functions and the procedure for the information and consultation of the representative body;

(d) the frequency of meetings of the representative body;

(e) the financial and material resources to be allocated to the representative body;

(f) if, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;

(g) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members of the SCE's administrative or supervisory organ which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights;

(h) if, where the statute of the SCE so provides, during negotiations the parties decide to establish arrangements for employees or their representatives to participate in and vote in the general meeting or any section or sectorial meetings of the SCE, the substance of those arrangements including (if applicable) the number of employees or representatives who will be entitled to participate, the procedure as to how they are to be elected, appointed, recommended or opposed, and their rights; and

(i) the date of entry into force of the agreement, its duration, the circumstances, if any, in which the agreement is required to be re-negotiated including (where appropriate) in the

event of changes in the structure of the SCE or its subsidiaries or establishments, and the procedure for its re-negotiation.

(3) The employee involvement agreement shall not be subject to the standard rules on employee involvement, unless it contains a provision to the contrary.

(4) If the parties decide, in accordance with paragraph (2)(f), to establish one or more information and consultation procedures instead of a representative body and if those procedures include a provision for representatives to be elected or appointed to act in relation to information and consultation, those representatives shall be "information and consultation representatives".

Decisions of the special negotiating body

12.—(1) Each member of the special negotiating body shall have one vote.

(2) Subject to paragraph 13, the special negotiating body shall take decisions by an absolute majority vote.

(3) The special negotiating body must publish the details of any decision taken under this paragraph or under paragraph 13 in such a manner as to bring the decision, so far as reasonably practicable, to the attention of the employees whom it represents and such publication shall take place as soon as reasonably practicable and, in any event no later than 14 days after the decision has been taken.

(4) For the purpose of negotiations, the special negotiating body may be assisted by experts of its choice.

(5) The SCE shall pay for any reasonable expenses of the functioning of the special negotiating body and any reasonable expenses relating to the negotiations that are necessary to enable the special negotiating body to carry out its functions in an appropriate manner but where the special negotiating body is assisted by more than one expert the SCE is not required to pay such expenses in respect of more than one of them.

Decision not to open or to terminate negotiations

13.—(1) The special negotiating body may decide, by a two thirds majority vote, not to open negotiations with the competent organ of the SCE or to terminate any such negotiations.

(2) Any decision made under sub-paragraph (1) shall have the following effects—

(a) the duty in paragraph 10(2) to negotiate with a view to reaching an employee involvement agreement shall cease as from the date of the decision;

(b) any rules relating to the information and consultation of employees in an EEA State in which employees of the SCE are employed shall apply to the employees of the SCE in that EEA State; and

(c) the special negotiating body shall be reconvened only if a valid request in accordance with sub-paragraph (3) is made by employees or employees' representatives.

(3) To amount to a valid request, the request referred to in sub-paragraph (2)(c) must—

(a) be in writing;

(b) be made by at least 10% of the employees of, or by employees' representatives representing at least 10% of, the total number of employees employed by the SCE and it subsidiaries; and

(c) be made no earlier than two years after the decision made under sub-paragraph (1) was or should have been published in accordance with paragraph 12(3) unless the special negotiating body and the SCE agrees to the special negotiating body being reconvened earlier.

Complaint about decisions of the special negotiating body

14.—(1) If a member of the special negotiating body, an employees' representative, or where there is no such representative in respect of an employee, that employee believes that the special negotiating body has taken a decision referred to in paragraph 12 or 13 and—

(a) that the decision was not taken by the majority required by paragraph 12 or 13, as the case may be; or

(b) the special negotiating body failed to publish the decision in accordance with paragraph 12(3),

he may present a complaint to the CAC within 21 days of the date the special negotiating body did or should have published its decision in accordance with paragraph 12(3).

(2) Where the CAC finds the complaint well-founded it shall make a declaration that the decision was not taken properly and that it shall have no effect.

PART 4

STANDARD RULES ON EMPLOYEE INVOLVEMENT

Standard rules on employee involvement

15.—(1) Without prejudice to sub-paragraphs (3) and (4), where this paragraph applies, the competent organ of the SCE and its subsidiaries and establishments shall make arrangements for the involvement of employees of the SCE and its subsidiaries and establishments in accordance with the standard rules on employee involvement.

(2) This paragraph save for sub-paragraph 4, applies in the following circumstances:

(a) where it is agreed that the standard rules on employee involvement shall apply; or

(b) where the period specified in paragraph 10(3)(a) or, where applicable, (b) has expired without an employee involvement agreement having been reached and the special negotiating body has not taken any decision under paragraph 13(1) either not to open or to terminate the negotiations referred to in that regulation.

(3) Paragraph 7(1) of Part 3 of Schedule 2 to these Regulations (standard rules for participation) does not apply and the remaining provisions of that Part only apply if:

(a) a participating legal entity was a party to the formation of the SCE and, before its registration, one or more forms of employee participation existed in the participating legal entity, and,

(b) the special negotiating body has decided that the standard rules for participation will apply to the employees of the SCE.

(4) The standard rule set out in paragraph 7(4) of Part 3 of Schedule 2 to these Regulations shall apply only in the following circumstances—

(a) the SCE is established by means other than conversion;

(b) there is a participating cooperative which, immediately prior to the establishment of the SCE, was governed by a system whereby employees or employee representatives may participate in general meetings or section or sectorial meetings, and that participating cooperative had the highest proportion of participation, within the meaning of regulation 3, in force in the participating cooperatives concerned before registration of the SCE; and

(c) the period specified in paragraph 10(3)(a) or, where applicable, (b) has expired without an employee involvement agreement having been reached, and the special negotiating body

has not taken any decision under paragraph 13(1) either not to open or to terminate the negotiations referred to in that paragraph.

SCHEDULE 2

Regulation 21 and paragraph 15 of Schedule 1

STANDARD RULES ON EMPLOYEE INVOLVEMENT

PART 1

COMPOSITION OF THE REPRESENTATIVE BODY

1.—(1) The management of the SCE shall arrange for the establishment of a representative body in accordance with the following provisions—

(a) the representative body shall be composed of employees of the SCE and its subsidiaries and establishments;

(b) the representative body shall be composed of one member for each 10% or fraction thereof of employees of the SCE, its subsidiaries and establishments employed for the time being in each EEA State;

(c) the members of the representative body shall be elected or appointed by the members of the special negotiating body or, in the absence thereof, by the employees; and

(d) the election or appointment shall be carried out by whatever method the special negotiating body decides which should seek to promote gender balance.

2. Where its size so warrants, the representative body shall elect a select committee from among its members comprising at most three members.

3. The representative body shall adopt rules of procedure.

4. The representative body shall inform the competent organ of the SCE of the composition of the representative body and any changes in its composition.

5.—(1) Not later than four years after its establishment, the representative body shall decide whether to open negotiations with the competent organ of the SCE to reach an employee involvement agreement or whether the standard rules in Part 2 and, where applicable, Part 3 of this Schedule shall continue to apply.

(2) Where a decision is taken under sub-paragraph (1) to open negotiations, paragraphs 10 to 12 and paragraph 14 of Schedule 1 shall apply to the representative body as they apply to the special negotiating body.

PART 2

STANDARD RULES FOR INFORMATION AND CONSULTATION

6.—(1) The competence of the representative body shall be limited to questions which concern the SCE itself and any of its subsidiaries or establishments in another EEA State or which exceed the powers of the decision-making organ in a single EEA State.

(2) For information and consultation purposes, the competent organ of the SCE shall—

(a) prepare and provide to the representative body regular reports on the progress of the business of the SCE and the SCE's prospects;

(b) provide the representative body with the agenda for meetings of the administrative or, where appropriate, the management or supervisory organs and copies of all documents submitted to the general meeting of its members; and

(c) inform the representative body when there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies.

(3) The following provisions shall apply to the relationship between the competent organ and the representative body—

(a) The competent organ shall, if the representative body so desires, meet with that body, without prejudice to paragraph (b) below, at least once a year to discuss the reports referred to in sub-paragraph (2)(a). The meetings shall relate in particular to the structure, economic and financial situation, the probable development of business and of production and sales, 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 thereof; collective redundancies; and initiatives with regard to corporate social responsibility;

(b) in the circumstances set out in sub-paragraph (2)(c), the representative body or, where it so decides (in particular, for reasons of urgency), any select committee, is entitled to meet the competent organ of the SCE or any more appropriate level of management within the SCE on request; and

(c) in the event of the competent organ not acting in accordance with the opinion expressed by the representative body, the two bodies shall meet again to seek agreement, if the representative body so wishes.

(4) In the circumstances set out in sub-paragraph (3)(b) above, if the select committee attends the meeting, any other members of the representative body who represent employees who are directly concerned by the measures being discussed also have the right to participate in the meeting.

(5) Before any meeting referred to in sub-paragraph (3), the members of the representative body or the select committee, as the case may be, shall be entitled to meet without the representatives of the competent organ being present.

(6) Without prejudice to regulations 26 and 27, the members of the representative body shall inform the employees' representatives or, if no such representatives exist, the employees of the SCE and its subsidiaries and establishments, of the content and outcome of the information and consultation procedures.

(7) The representative body and any select committee may be assisted by experts of its choice.

(8) The costs of the representative body shall be borne by the SCE which shall provide the members of that body with financial and material resources needed to enable them to perform their duties in an appropriate manner, including (unless agreed otherwise) the cost of organising meetings, providing interpretation facilities and accommodation and travelling expenses. However, where the representative body or the select committee is assisted by more than one expert the SCE is not required to pay the expenses of more than one of them.

PART 3

STANDARD RULES FOR PARTICIPATION

7.—(1) In the case of an SCE formed by conversion, if the rules of an EEA State relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SCE. Sub-paragraph (3) shall apply with any necessary modifications to that end.

(2) In the case where an SCE is formed other than by conversion and where the employees or the representatives of the employees of at least one of the participating legal entities had participation, the representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SCE, such number to be equal to the number in the participating legal entity which had the highest proportion of such members.

(3) The following provisions shall apply to the allocation of seats within and membership of the administration or supervisory body—

(a) subject to paragraph (b), the representative body shall, taking into account the proportion of employees of the SCE employed in each EEA State, decide on the allocation of seats within the administrative or supervisory body, or on the means by which the SCE's employees may recommend or oppose the appointment of the members of these bodies;

(b) in making the decision set out in paragraph (a), if the employees of one or more EEA State are not included by virtue of the proportional criterion set out in that paragraph, the representative body shall appoint a member from one of those EEA States including one from the EEA State in which the SCE is registered, if appropriate;

(c) every member of the administrative body or, where appropriate, the supervisory body of the SCE who has been elected, appointed or recommended by the representative body or the employees shall be a full member with the same rights and obligations as the members representing the members of the SCE including the right to vote.

(4) In the case where regulation 21(5) or paragraph 15(4) of Schedule 1 applies, the rules for employees or employees' representatives participating in general meetings or, if applicable, section or sectorial meeting, shall be determined—

(a) by agreement between the representative body and the competent organ of the SCE; or

(b) if no such agreement is reached, by the rules applicable to the participating cooperative governed by such a system which has the highest proportion of participation, within the meaning of regulation 3, in force in the participating cooperatives concerned before registration of the SCE.

SCHEDULE 3

Regulation 2

APPLICATION OF THE REGULATIONS IN RELATION TO NORTHERN IRELAND

1. Regulations 8, 12 and 24 and paragraphs 2 and 6 of Schedule 1 shall apply in relation to any complaint by a Northern Ireland employee or any representative appointed or elected to act in Northern Ireland as if the reference to the CAC were a reference to the Industrial Court.

2. Regulation 11 shall apply in relation to any application by—

(a) a Northern Ireland member of the special negotiating body;

(b) a Northern Ireland employee or any representative appointed or elected to act in Northern Ireland; or

(c) any participating individual resident in Northern Ireland or the competent organ of a participating legal entity or a concerned subsidiary with its registered office (or principal place of business if not a body corporate) in Northern Ireland,

as if any reference to the CAC were a reference to the Industrial Court.

3. Regulation 14 shall apply in relation to any complaint made by—

(a) a Northern Ireland employee or any representative appointed or elected to act in Northern Ireland; or

(b) a participating individual resident in Northern Ireland or participating legal entity with its registered office (or principal place of business if not body corporate) in Northern Ireland,

as if a reference to the CAC were a reference to the Industrial Court.

4. Regulation 20 shall apply in relation to a complaint by—

(a) a Northern Ireland member of the special negotiating body; or

(b) a Northern Ireland employee or a representative appointed or elected to act in Northern Ireland,

as if the reference to the CAC were a reference to the Industrial Court.

5.—(1) Regulation 22 shall apply in relation to a complaint made by —

(a) a Northern Ireland employee;

(b) a member of a representative body elected or appointed to act in Northern Ireland; or

(c) an information and consultation representative elected or appointed to act in Northern Ireland,

as if any reference to the CAC were a reference to the Industrial Court.

(2) In relation to a complaint to the Industrial Court to which sub-paragraph (1) relates—

(a) regulations 22(6) and (7) and 23(2) and (3) shall apply as if any reference to the Appeal Tribunal were a reference to the High Court in Northern Ireland;

(b) regulations 22(7) and 23(5) and (7) shall apply as if any reference to the Secretary of State were a reference to the Department of Employment and Learning and any reference to the Consolidated Fund were a reference to the Consolidated Fund of Northern Ireland; and

(c) regulations 22(7) and 23(4) shall apply as if a reference to the CAC were a reference to the Industrial Court.

6. Regulation 25 shall have effect as if the reference to the CAC included a reference to the Industrial Court.

7. Regulation 26 shall apply in relation to a recipient to whom—

(a) an SCE registered in Northern Ireland, or a subsidiary of such an SCE;

(b) a participating individual resident in Northern Ireland; or

(c) a participating legal entity or concerned subsidiary with its registered office (or principal place of business if not a body corporate) in Northern Ireland

has entrusted information or documents as if the reference to the CAC were a reference to the Industrial Court.

8. Where there is a dispute to which paragraph (2) of regulation 27 applies, that regulation shall apply in relation to—

(a) any application made by an SCE registered in Northern Ireland, participating individual resident in Northern Ireland or participating legal entity with its registered office (or principal place of business if not a body corporate) in Northern Ireland; or

(b) a Northern Ireland employee, a member of a representative body elected or appointed to act in Northern Ireland or an information and consultation representative elected or appointed to act in Northern Ireland,

as if the reference to the CAC were a reference to the Industrial Court.

9. Regulation 30 shall apply in relation to a complaint by a Northern Ireland employee as if the reference to an employment tribunal were a reference to an Industrial Tribunal.

10. Regulation 31 shall apply in relation to any Northern Ireland employee as if—

(a) a reference to an employment tribunal included a reference to an Industrial Tribunal;

(b) a reference to an entitlement to apply or complain included an entitlement to apply or complain to the Industrial Court or the High Court in Northern Ireland.

(c) a reference to a right to appeal included a right to appeal to the High Court in Northern Ireland.

11. For regulation 32 there shall be substituted the following regulation—

"**Subsidiary provisions relating to unfair dismissal: Northern Ireland**

32.—(1) In Article 137 of the Employment Rights (Northern Ireland) Order 1996(**16**)—

(a) in paragraph (1)(c) (which requires one of a specified group of paragraphs to apply for a person to be treated as unfairly dismissed) for "7F" substitute "7G"; and

(b) after paragraph (7F) insert—

"(7G) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 31 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (read with paragraphs (4) and (7) of that regulation)".

(2) In Article 140 of that Order(**17**) (exclusion of right: qualifying period of employment) in paragraph (3) (cases where no qualifying period of employment is required)—

(a) omit the word "or" at the end of sub-paragraph (n); and

(b) after sub-paragraph (o) insert—

"or

(p) paragraph (3) or (6) of regulation 31 of the European Cooperative Society (Involvement of Employees) Regulations 2006 applies".

(3) In Article 141 of that Order(**18**) (exclusion of right: upper age limit) in paragraph (2) (cases where upper age limit does not apply)—

(a) omit the word "or" at the end of sub-paragraph (n); and

(b) after sub-paragraph (o) insert—

(**16**) S.I. 1996/1919 (NI 16). Article 137 has been amended on a number of occasions to specify additional circumstances in which the employee dismissed by reason of redundancy is to be regarded as unfairly dismissed.

(**17**) Article 140(1) was amended by S.R. 1999 No. 277. Article 140(3) has been amended on a number of occasions to specify additional cases in which no qualifying period of employment is required.

(**18**) Article 141(2) has been amended on a number of occasions to specify additional cases where the upper age limit does not apply.

"or

(p) paragraph (3) or (6) of regulation 31 of the European Cooperative Society (Involvement of Employees) Regulations 2006 applies".".

12. Regulation 33 shall apply in relation to any Northern Ireland employee as if—

(a) any reference to an employment tribunal included a reference to an Industrial Tribunal;

(b) any reference to an entitlement to apply or complain included an entitlement to apply or complain to the Industrial Court or the High Court in Northern Ireland; and

(c) any reference to a right to appeal included a right of appeal to the High Court in Northern Ireland.

13.—(1) Regulation 34 shall apply in relation to a Northern Ireland employee as if reference to an employment tribunal were a reference to an Industrial Tribunal.

(2) For regulation 34(4) there shall be substituted—

"(4) At the end of each of the following Schedules to the Employment (Northern Ireland) Order 2003(**19**)—

(a) Schedule 2 (tribunal jurisdictions to which Article 17 applies);

(b) Schedule 3 (tribunal jurisdictions to which Article 19 applies); and

(c) Schedule 4 (tribunal jurisdictions to which Article 27 applies),

insert—

"Regulation 34 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (detriment in relation to involvement in a European Cooperative Society).".".

14. For regulation 35 there shall be substituted—

"**35.** In Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996(**20**) (Conciliation) in paragraph (1) (which specifies the proceedings and claims to which the Article applies) after sub-paragraph (m) omit the word "or" and after sub-paragraph (n), insert—

"or

(o) under regulation 30 or 34 of the European Cooperative Society (Involvement of Employees) Regulations 2006.".".

15. Regulation 36 shall have effect as if for the heading there were substituted—

"Industrial Court Proceedings" and as if—

(a) in paragraphs (1) and (2) the reference to the CAC included a reference to the Industrial Court;

(b) after paragraph (4) there were inserted—

"(4A) in the case of a participating individual resident in Northern Ireland; an SCE with its registered office in Northern Ireland; or a participating legal entity or concerned subsidiary with its registered office (or principal place of business if not a body corporate) in Northern Ireland—

(**19**) S.I. 2003/2902. Schedules 2, 3 and 4 to the 2003 Order have been amended on a number of occasions to specify additional tribunal jurisdictions to which Articles 17, 19 and 27 apply.

(**20**) S.I. 1996/1921. Article 20(1) has been amended on a number of occasions to specify additional proceedings and claims to which the Article applies.

(a) a declaration made by an Industrial Court under these Regulations may be relied upon as if it were a declaration or order made by the High Court in Northern Ireland; and

(b) an order made by the Industrial Court under these Regulations may be enforced in the same way as an order of the High Court in Northern Ireland"; and

(c) paragraphs (5) and (6) shall apply as if a reference to the CAC were a reference to the Industrial Court and a reference to the Appeal Tribunal were a reference to the High Court in Northern Ireland.".

16.—(1) Regulation 39 shall have effect as if a reference to an application or complaint received by the CAC included a reference to an application or complaint received by the Industrial Court under these Regulations (as modified by this Schedule) and in relation to such an application or complaint—

(a) any reference to ACAS was a reference to the Labour Relations Agency; and

(b) any other reference in the regulation to the CAC were a reference to the Industrial Court.

(2) Regulation 39 shall also have effect as if—

(a) a reference to section 210 of the Trade Union and Labour Relations (Consolidation) Act 1992 were a reference to Article 84 of the Industrial Relations (Northern Ireland) Order 1992(**21**) (functions of the Agency in relation to trade disputes); and

(b) a reference to section 218 of that Act were a reference to Article 127 of the Trade Union and Labour Relations (Northern Ireland) Order 1995(**22**).

17. Regulation 40 shall apply in relation to any agreement on contract enforceable under the law of Northern Ireland as if the reference to the CAC included a reference to the Industrial Court.

18.—(1) Regulation 41 shall apply in relation to any Northern Ireland employee as if—

(a) a reference to an employment tribunal were a reference to an Industrial Tribunal; and

(b) a reference to a conciliation officer were a reference to the Labour Relations Agency.

(2) Regulation 41(3) shall have effect as if for the reference to Section 18(1)(s) of the Employment Tribunals Act 1996 there were a reference to Article 20(1)(o) of the Industrial Tribunals (Northern Ireland) Order 1996.

(3) After regulation 41(7)(b) there shall be inserted—

"; and

(c) as respects Northern Ireland a barrister (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.".

19. Paragraph 5 of Schedule 1 shall apply in relation to an application presented by—

(a) a Northern Ireland member of the special negotiating body;

(b) a Northern Ireland employee or any representative appointed or elected to act in Northern Ireland, or

(c) a competent organ or subsidiary of an SCE registered in Northern Ireland,

as if a reference to the CAC were a reference to the Industrial Court.

20. Paragraph 8 of Schedule 1 shall apply in relation to any complaint by—

(**21**) S.I. 1992/807 (N.I. 5).
(**22**) S.I. 1995/1980 (N.I. 12).

(a) an SCE registered in Northern Ireland; or

(b) a Northern Ireland employee or any representative appointed or elected to act in Northern Ireland,

as if the reference to the CAC were a reference to the Industrial Court.

21. Paragraph 14 of Schedule 1 shall apply in relation to a complaint by—

(a) a Northern Ireland member of a special negotiating body;

(b) a Northern Ireland employee; or

(c) a representative appointed or elected to act in Northern Ireland,

as if a reference to the CAC were a reference to the Industrial Court.

22. For any reference in these Regulations to a provision of the Employment Rights Act 1996 in column (1) of the following table there shall be substituted a reference to the provision in the Employment Rights (Northern Ireland) Order 1996 specified opposite thereto in column (2).

Table

Column (1) **Employment Rights Act 1996**	**Column (2)** **Employment Rights (Northern Ireland) Order 1989**
Part 10	Part XI
Section 43A	Article 67A
Chapter 2 of Part 14	Chapter IV of Part I
Section 48(2) to (4)	Article 71(2) to (14)
Section 48	Article 71
Section 49(1) to (5)	Article 72(1) to (5)
Section 62	Article 90

23. For the purposes of this Schedule—

"Industrial Court" means the Industrial Court constituted under Article 91 of the Industrial Relations (Northern Ireland) Order 1992;

"Industrial Tribunal" means a tribunal established under Article 3 of the Industrial Tribunal (Northern Ireland) Order 1996;

"Northern Ireland employee" means an employee employed to work in Northern Ireland; and

"Northern Ireland member of the special negotiating body" means a member of the special negotiating body elected or appointed by Northern Ireland employees.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees. The Directive supplements Regulation 1435/2003/EC.

The Regulations set out the provisions relating to the involvement of employees in the European Cooperative Society (known as the "SCE"); a new form of cooperative which can operate across the European Economic Area on the basis of registration in one Member State.

Part 2 of the Regulations sets out details of the participating individuals and legal entities and the special negotiating body which should negotiate the employee involvement agreement. It makes provision for the circumstances in which the Regulations apply (regulation 4) and the exemption of certain formations below a de minimis threshold from the provisions of the regulations (regulation 5). It also makes provision for the Regulations to apply if a formerly exempt SCE increases in size to fall above the threshold or a request is made by a sufficient proportion of the workforce (regulation 6).

Regulations 7 and 8 impose a duty on participating individuals or legal entities involved in forming an SCE to provide information to the employees or their representatives, who may complain to the Central Arbitration Committee (CAC) if such information is not provided correctly.

Regulations 9 and 10 define the function of the special negotiating body and its composition, and regulation 11 provides for a right of complaint if the special negotiating body is not established in accordance with the requirements set out in regulation 10.

Part 3 of the Regulations addresses the election or appointment of UK members of the special negotiating body. It sets out details of the arrangements for and conduct of the ballot by which members of the body should be elected (regulations 12 and 13) and provides that in certain circumstances members shall be appointed by a consultative committee instead of being elected by a ballot (regulation 14). There is a right of complaint to the CAC on the grounds that the consultative committee is not correctly constituted (regulation 14). Regulation 15 also sets out when an individual is to be treated as an employee representative after being elected or appointed.

Part 4 deals with negotiation of the employee involvement agreement. Regulation 16 sets out the timing of the requirement to negotiate the agreement and regulation 17 sets out the content and scope of the agreement. Provision is made for the decision-making procedure of the special negotiating body (regulation 18) and the consequences of a decision not to open or to terminate negotiations with the participating individuals or legal entities (regulation 19). Decisions of the special negotiating body may be subject to complaint to the CAC (regulation 20).

Part 5 sets out standard rules on employee involvement which shall apply either if the parties so agree or have reached the end of the negotiation period without an agreement being reached and certain other criteria apply (regulation 21). Standard rules on participation set out in Schedule 2 will apply in certain circumstances set out in this regulation.

Part 6 deals with compliance and enforcement. Complaints may be brought before the CAC where the terms of the employee involvement agreement or the information and consultation provisions have not been complied with and if the complaint is well founded a penalty notice may be issued by the Appeal Tribunal (regulations 22 and 23). A complaint may also be brought over the misuse of procedures (regulation 24).

Part 7 deals with confidential information and provides that it shall be a breach of statutory duty for a recipient of such information to disclose it except in accordance with the terms on which it

was disclosed to him (regulation 26). Provision is also made for the withholding of information in certain circumstances (regulation 27).

Part 8 deals with protection for members of the special negotiating body and other representatives. It provides for rights to remuneration for time off (regulation 29), protection from unfair dismissal (regulation 31) and protection from detriment (regulation 33) and provides for recourse to an employment tribunal for breach of such rights.

Part 9 deals with miscellaneous provisions and covers matters relating to CAC proceedings (regulation 36), the Appeal Tribunal (regulations 37 and 38) and ACAS (regulation 39). There are restrictions on contracting out of the provisions of the Regulations (regulations 40 and 41). Finally provision is made for the interaction with other existing rights.

Schedules 1 and 2 contain the standard rules referred to mentioned in regulation 21 above. Schedule 3 provides for modifications to be made in the application of the Regulations in Northern Ireland.

A full Regulatory Impact Assessment of the effect that this instrument will have on the costs of business may be obtained from the General Insurance, Mutuals and Inclusion Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ or from HM Treasury's website (www.hm-treasury.gov.uk). Copies of the regulatory impact assessment have been placed in the libraries of both Houses of Parliament.