
STATUTORY INSTRUMENTS

2009 No. 2401

The European Public Limited-Liability Company
(Employee Involvement) (Great Britain) Regulations 2009

PART 3

ELECTION OR APPOINTMENT OF UK MEMBERS
OF THE SPECIAL NEGOTIATING BODY

Ballot arrangements

10.—(1) Subject to regulation 11, the UK members of the special negotiating body must be elected by balloting the UK employees.

(2) The management of the participating companies that employ UK employees (“the management”) must arrange for the holding of a ballot or ballots of those employees in accordance with the requirements specified in paragraph (3).

(3) The requirements are—

(a) in relation to the election of ordinary members under regulation 8(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 participating companies which have UK employees, there must be separate ballots of the UK employees in each participating company;
- (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 participating companies which have UK employees, there must be separate ballots of the UK employees in each participating company and the management must ensure, as far as practicable, that at least one member representing each such participating company is elected to the special negotiating body and that the number of members representing each company is proportionate to the number of employees in that company;
- (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 participating companies which have employees in the United Kingdom—
 - (aa) the number of ballots held must be equivalent to the number of members to be elected,
 - (bb) a separate ballot must be held in respect of each of the participating companies with the higher or highest number of employees, and
 - (cc) it must be ensured that any employees of a participating company 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 participating companies;

- (iv) if there are any UK employees employed by a concerned subsidiary or establishment of non-UK participating companies, the management must 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 8(3) the management must hold a separate ballot in respect of each participating company entitled to elect an additional member;
 - (c) that, in a ballot in respect of a particular participating company, all UK employees employed by that participating company or by its concerned subsidiaries or at its concerned establishments are entitled to vote;
 - (d) that a person is entitled to stand as a candidate for election as a member of the special negotiating body in a ballot in respect of a particular participating company if, immediately before the latest time at which a person may become a candidate, the person is—
 - (i) a UK employee employed by that participating company, by any of its concerned subsidiaries or at any of its concerned establishments, or
 - (ii) if the management of that participating company so permits, a representative of a trade union who is not an employee of that participating company or any of its concerned subsidiaries;
 - (e) that the management must appoint in accordance with paragraph (7) a person (a “ballot supervisor”)—
 - (i) to supervise the conduct of the ballot of UK employees, or
 - (ii) where there is to be more than one ballot, to supervise the conduct of each of the separate ballots,and, in a case falling within paragraph (ii), may appoint different persons to supervise the conduct of such different separate ballots as the management may determine;
 - (f) that after the management has formulated proposals as to the arrangements for the ballot of UK employees and before it has published the final arrangements under sub-paragraph (g) it must, so far as reasonably practicable, consult the UK employees’ representatives on the proposed arrangements for the ballot of UK employees; and
 - (g) that the management 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 management published the final arrangements under sub-paragraph (g) of that paragraph, present a complaint to the CAC.
- (5) If the CAC finds the complaint well-founded, it must make a declaration to that effect and may make an order requiring the management to modify the arrangements it has 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) must specify—
- (a) the modifications to the arrangements which the management is required to make, and
 - (b) the requirements it must satisfy.
- (7) The management may appoint a person to be a ballot supervisor for the purposes of paragraph (3)(e) only if the management—
- (a) reasonably believes that the person will carry out competently any functions conferred on the person in relation to the ballot, and

- (b) has no reasonable grounds for believing that the person's independence in relation to the ballot might reasonably be called into question.

Conduct of the ballot

11.—(1) The management must—

- (a) ensure that a ballot supervisor appointed under regulation 10(3)(e) carries out the functions conferred or imposed on the ballot supervisor under this regulation;
- (b) ensure that there is no interference from the management with the ballot supervisor's carrying out of those functions;
- (c) 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 must require that the ballot supervisor—

- (a) supervises the conduct of the ballot, or the separate ballots, that the ballot supervisor is being appointed to supervise, in accordance with the arrangements for the ballot of UK employees published by the management under regulation 10(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 10(4);
- (b) does not conduct the ballot or any of the separate ballots before the management has satisfied the requirement specified in regulation 10(3)(g) and—
 - (i) where no complaint has been presented under regulation 10(4), before the expiry of a period of 21 days beginning on the date on which the management published its arrangements under regulation 10(3)(g), or
 - (ii) where a complaint has been presented under regulation 10(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 management and, so far as reasonably practicable, to the UK employees entitled to vote in the ballot and the persons who stood as candidates.

(4) If a ballot supervisor considers (whether on the basis of representations made to the ballot supervisor by another person or otherwise)—

- (a) that 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) that there was interference with the carrying out of the ballot supervisor's functions, or a failure by the management to comply with all reasonable requests made by the ballot supervisor, with the result that the ballot supervisor was unable to form a proper judgement as to whether each of the requirements referred to in paragraph (2) was satisfied in the ballot,

the ballot supervisor must publish a report ("an ineffective ballot report").

(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 must publish an ineffective ballot report in such manner as to make it available to the management and, so far as reasonably practicable, to 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 if an ineffective ballot report has been published in respect of every separate ballot, the outcome of the ballot or ballots has no effect and the management is again under the obligation in regulation 10(2);
- (b) if there have been separate ballots and sub-paragraph (a) does not apply—
 - (i) the management must 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 10 and this regulation, and
 - (ii) no such ballot has effect until it has been re-held and no ineffective ballot report has been published in respect of it.

(8) All costs relating to the holding of a ballot, including payments made to a ballot supervisor for supervising the conduct of the ballot, must be borne by the management (whether or not an ineffective ballot report has been published).

Appointment of UK members by a consultative committee

12.—(1) This regulation applies where—

- (a) regulation 10(3)(a)(i) or (ii) or (b) would (apart from this regulation) require a ballot to be held, but
- (b) there exists in the participating company in respect of which a ballot would be held under regulation 10, a consultative committee.

(2) Where this regulation applies—

- (a) the election provided for in regulation 10 must not take place;
- (b) the consultative committee is entitled to appoint the UK member or members of the special negotiating body who would otherwise be elected pursuant to regulation 10;
- (c) any such appointment by the consultative committee must comply with paragraph (3).

(3) The consultative committee may appoint as a member of the special negotiating body—

- (a) one of their number, or
- (b) if the management of the participating company in respect of which the consultative committee exists so permits, a trade union representative who is not an employee of that company.

(4) In this regulation a “consultative committee” means a body of persons—

- (a) whose normal functions include or comprise the carrying out of an information and consultation function,
- (b) which is able to carry out its information and consultation function without interference from the management of the participating company,
- (c) which, in carrying out its information and consultation function, represents all the employees of the participating company, and
- (d) which consists wholly of persons who are employees of the participating company or its concerned subsidiaries.

- (5) In paragraph (4) “information and consultation function” means the function of—
- (a) receiving, on behalf of all the employees of the participating company, information which may significantly affect the interests of the employees of that company, but excluding information which is relevant only to a specific aspect of the interests of the employees, such as health and safety or collective redundancies, and
 - (b) being consulted by the management of the participating company on the information referred to in sub-paragraph (a).
- (6) 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 management of the participating company and, so far as reasonably practicable, the employees and the employees’ representatives of that company and its concerned subsidiaries.
- (7) Where the management of the participating company, or an employee or an employees’ representative, believes that—
- (a) the consultative committee does not satisfy the requirements in paragraph (4), or
 - (b) any of the persons appointed by the consultative committee is not entitled to be appointed,
- the management of the participating company or, as the case may be, the employee or the employees’ representative may present a complaint to the CAC within a period of 21 days beginning on the date on which the consultative committee published under paragraph (6) the names of the persons appointed.
- (8) If the CAC finds the complaint well-founded it must make a declaration to that effect.
- (9) Where the CAC has made a declaration under paragraph (8)—
- (a) any appointment made by the consultative committee is ineffective, and
 - (b) the members of the special negotiating body must be elected by a ballot of the employees in accordance with regulation 10.
- (10) Where the consultative committee appoints any person to be a member of the special negotiating body, that appointment has effect—
- (a) where no complaint has been presented under paragraph (7), after the expiry of a period of 21 days beginning on the date on which the consultative committee published under paragraph (6) the names of the persons appointed;
 - (b) where a complaint has been presented under paragraph (7), as from the day on which the complaint has been determined without a declaration under paragraph (8) being made.

Representation of employees

13.—(1) A member elected in a ballot in accordance with regulation 8(2) is treated as representing the employees for the time being of the participating company and of any concerned subsidiary or establishment whose employees were entitled to vote in the ballot in which the member was elected.

(2) If an additional member is elected in accordance with regulation 8(3) and (4), that additional member, and not any member elected in accordance with regulation 8(2), is treated as representing the employees for the time being of the participating company and of any concerned subsidiary or establishment whose employees were entitled to vote in the ballot in which the additional member was elected.

(3) When a member of the special negotiating body is appointed by a consultative committee in accordance with regulation 12, the employees whom the consultative committee represents and the employees of any concerned subsidiary are treated as being represented by the member so appointed.