
STATUTORY INSTRUMENTS

2010 No. 1088

**The Transnational Information and Consultation
of Employees (Amendment) Regulations 2010**

Disputes about failures of management

14. After regulation 21 (disputes about operation of European Works Council or information and consultation procedure) insert—

“Disputes about failures of management

21A.—(1) A complaint may be presented to the CAC by a relevant applicant who considers that—

- (a) because of the failure of a defaulter, the members of the special negotiating body have been unable to meet in accordance with regulation 16(1A);
- (b) because of the failure of a defaulter, the members of the European Works Council have not been provided with the means required to fulfil their duty to represent collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings in accordance with regulation 19A;
- (c) because of the failure of a defaulter, a member of a special negotiating body or a member of the European Works Council has not been provided with the means required to undertake the training referred to in regulation 19B; or
- (d) regulation 19E(2) applies and that, because of the failure of a defaulter, the European Works Council and the national employee representation bodies have not been informed and consulted in accordance with that regulation.

(2) A complaint brought under paragraph (1) must be brought within a period of six months beginning with the date of the alleged failure.

(3) Where the CAC finds the complaint well-founded it shall make a decision to that effect and may make an order requiring the defaulter to take such steps as are necessary to comply with regulation 16(1A), 19A, 19B or 19E(2), as the case may be.

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

- (a) the steps which the defaulter is required to take;
- (b) the date of the failure; and
- (c) the period within which the order must be complied with.

(5) If the CAC makes a decision under paragraph (3), the relevant applicant may, within the period of three months beginning with the date on which the decision is made, make an application to the Appeal Tribunal for a penalty notice to be issued.

(6) Where such an application is made, the Appeal Tribunal shall issue a written penalty notice to the defaulter requiring it to pay a penalty to the Secretary of State in respect of the failure.

(7) Paragraph (6) shall not apply if the Appeal Tribunal is satisfied, on hearing the representations of the defaulter, that the failure resulted from a reason beyond the defaulter's control or that it has some other reasonable excuse for its failure.

(8) Regulation 22 shall apply to 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 central management or the local management.

(10) In this regulation—

(a) “defaulter” means, as the case may be—

(i) the management of any undertaking belonging to the Community-scale group of undertakings;

(ii) the central management; or

(iii) the representative agent or the management treated as the central management of the Community-scale undertaking or Community-scale group of undertakings within the meaning of regulation 5(2);

(b) “failure” means an act or omission and a failure by the local management shall be treated as a failure by the central management;

(c) “relevant applicant” means—

(i) for a complaint in relation to regulation 16(1A), a member of the special negotiating body;

(ii) for a complaint in relation to regulation 19A, a member of the European Works Council;

(iii) for a complaint in relation to regulation 19B, a member of the special negotiating body or a member of the European Works Council;

(iv) for a complaint in relation to regulation 19E(2), a member of the European Works Council, a national employee representation body, an employee, or an employees' representative.”.