
STATUTORY INSTRUMENTS

2010 No. 1088

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

Article 3 agreements, Article 13 agreements and agreements signed or revised on or after 5th June 2009 and before 5th June 2011

23. For regulation 44 (article 3 agreements) and regulation 45 (article 13 agreements) substitute—

“Article 3 agreements

44.—(1) Subject to paragraphs (4) and (5), none of the obligations in these Regulations, except those in regulation 19F, applies to a Community-scale undertaking or Community-scale group of undertakings where the conditions specified in Article 3 of the Extension Directive are satisfied.

(2) The conditions referred to in paragraph (1) are that—

(a) an agreement is in force which—

(i) was in force immediately before 16th December 1999;

(ii) covers the entire workforce in the Member States; and

(iii) provides for the transnational information and consultation of employees,
and

(b) the obligation (whether arising under these Regulations or under the national law or practice of any other Member State) to initiate negotiations for the establishment of a European Works Council or information and consultation procedure would, but for this paragraph, have applied to the Community-scale undertaking or Community-scale group of undertakings solely as a result of the Extension Directive.

(3) If an agreement when taken together with one or more other agreements satisfies the requirements specified in paragraph (2)(a), that agreement, when taken together with such other agreements, shall be treated as an agreement for the purposes of that paragraph.

(4) Regulations 9 to 18 apply where the structure of a Community-scale undertaking or Community-scale group of undertakings changes significantly and there is—

(a) one European Works Council agreement, or one agreement for an information and consultation procedure;

(b) more than one European Works Council agreement;

(c) more than one agreement for an information and consultation procedure; or

(d) at least one European Works Council agreement and at least one agreement for an information and consultation procedure,

in force and there are no provisions for the continuance of the European Works Council or information and consultation procedure, as the case may be, where there are significant

changes in the structure of the Community-scale undertaking or Community-scale group of undertakings or there are such provisions, but there is a conflict between them.

(5) Regulations 25(1) and (2), 26 to 28, 31 and 32 apply to an employee who is a member of a special negotiating body or a candidate in an election in which any person elected will, on being elected, be such a member, where the structure of a Community-scale undertaking or Community-scale group of undertakings changes significantly and paragraphs (6) and (7) apply.

(6) This paragraph applies where there is—

- (a) one European Works Council agreement, or one agreement for an information and consultation procedure;
- (b) more than one European Works Council agreement;
- (c) more than one agreement for an information and consultation procedure; or
- (d) at least one European Works Council agreement and at least one agreement for an information and consultation procedure,

in force and there are no provisions for the continuance of the European Works Council or information and consultation procedure, as the case may be, where there are significant changes in the structure of the Community-scale undertaking or Community-scale group of undertakings or there are such provisions, but there is a conflict between them.

(7) This paragraph applies where the central management has initiated negotiations for the establishment of a European Works Council or an information and consultation procedure under regulation 19F(1) or (3).

Article 13 agreements

45.—(1) Subject to paragraphs (4) and (5), none of the obligations in these Regulations, except those in regulation 19F, applies to a Community-scale undertaking or Community-scale group of undertakings where the conditions specified in Article 13 of the Transnational Information and Consultation Directive are satisfied.

(2) The conditions referred to in paragraph (1) are that an agreement is in force which—

- (a) was in force immediately before whichever is the earlier of 23rd September 1996 and the day after the date on which the national law or practice giving effect to the Transnational Information and Consultation Directive came into force in the Member State (other than the United Kingdom) whose national law governs the agreement;
- (b) covers the entire workforce in the Member States; and
- (c) provides for the transnational information and consultation of employees.

(3) If an agreement when taken together with one or more other agreements satisfies the requirements specified in paragraph (2), that agreement, when taken together with such other agreements, shall be treated as an agreement for the purposes of that paragraph.

(4) Regulations 9 to 18 apply where the structure of a Community-scale undertaking or Community-scale group of undertakings changes significantly and there is—

- (a) one European Works Council agreement or one agreement for an information and consultation procedure;
- (b) more than one European Works Council agreement;
- (c) more than one agreement for an information and consultation procedure; or
- (d) at least one European Works Council agreement and at least one agreement for an information and consultation procedure,

in force and there are no provisions for the continuance of the European Works Council or information and consultation procedure, as the case may be, where there are significant changes in the structure of the Community-scale undertaking or Community-scale group of undertakings or there are such provisions, but there is a conflict between them.

(5) Regulations 25(1) and (2), 26 to 28, 31 and 32 apply to an employee who is a member of a special negotiating body or a candidate in an election in which any person elected will, on being elected, be such a member, where the structure of a Community-scale undertaking or Community-scale group of undertakings changes significantly and paragraphs (6) and (7) apply.

(6) This paragraph applies where there is—

- (a) one European Works Council agreement, or one agreement for an information and consultation procedure;
- (b) more than one European Works Council agreement;
- (c) more than one agreement for an information and consultation procedure; or
- (d) at least one European Works Council agreement and at least one agreement for an information and consultation procedure,

in force and there are no provisions for the continuance of the European Works Council or information and consultation procedure, as the case may be, where there are significant changes in the structure of the Community-scale undertaking or Community-scale group of undertakings or there are such provisions, but there is a conflict between them.

(7) This paragraph applies where the central management has initiated negotiations for the establishment of a European Works Council or an information and consultation procedure under regulation 19F(1) or (3).

Agreements signed or revised on or after 5th June 2009 and before 5th June 2011

45A.—(1) Subject to paragraph (4), where the conditions specified in paragraph (2) are satisfied, these Regulations shall apply to a Community-scale undertaking or Community-scale group of undertakings as if the amendments listed in paragraph (3) had not been made.

(2) The conditions referred to in paragraph (1) are that an agreement is in force which—

- (a) establishes a European Works Council or information and consultation procedure under regulation 17 of these Regulations; and
- (b) is signed or revised on or after 5th June 2009 and before 5th June 2011.

(3) The amendments referred to in paragraph (1) are those made by the following provisions of the 2010 Regulations—

- (a) regulation 3, in so far as it inserts the definition of “national employee representation bodies” and paragraphs (4A) and (4B) into regulation 2 of these Regulations;
- (b) regulations 5 to 10;
- (c) regulation 11, in so far as it inserts regulations 19A, 19B, 19C, 19D and 19E into these Regulations;
- (d) regulation 13, in so far as it inserts paragraph (1A)(b) into regulation 21 of these Regulations;
- (e) regulation 14, in so far as it inserts regulation 21A(1)(b), (c) and (d) into these Regulations and makes provision for the resolution of complaints in relation to regulations 19A, 19B and 19E(2);
- (f) regulation 16;

(g) regulation 23, in so far as it amends regulations 44 and 45 of these Regulations;
and

(h) regulations 24 to 29.

(4) Regulations 9 to 18 apply where the structure of a Community-scale undertaking or Community-scale group of undertakings changes significantly and there is—

(a) one European Works Council agreement, or one agreement for an information and consultation procedure;

(b) more than one European Works Council agreement;

(c) more than one agreement for an information and consultation procedure; or

(d) at least one European Works Council agreement and at least one agreement for an information and consultation procedure,

in force and there are no provisions for the continuance of the European Works Council or information and consultation procedure, as the case may be, where there are significant changes in the structure of the Community-scale undertaking or Community-scale group of undertakings or there are such provisions, but there is a conflict between them.

(5) In this regulation “the 2010 Regulations” means the Transnational Information and Consultation of Employees (Amendment) Regulations 2010(1).”.