
STATUTORY INSTRUMENTS

1999 No. 3323

**The Transnational Information and
Consultation of Employees Regulations 1999**

PART II

**EMPLOYEE NUMBERS & REQUEST TO NEGOTIATE
ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL
OR INFORMATION AND CONSULTATION PROCEDURE**

Calculation of numbers of employees

6.—(1) For the purposes of determining whether an undertaking is a Community-scale undertaking or a group of undertakings is a Community-scale group of undertakings, the number of employees employed by the undertaking, or group of undertakings, shall be determined—

- (a) in the case of UK employees, by ascertaining the average number of employees employed during a two year period, calculated in accordance with paragraph (2) below;
- (b) in the case of employees in another Member State, by ascertaining the average number of employees employed during a two year period, calculated in accordance with the provisions of the law or practice of that Member State which is designed to give effect to the Transnational Information and Consultation Directive.

(2) Subject to paragraph (3), the average number of UK employees is to be ascertained by—

- (a) determining the number of UK employees in each month in the two year period preceding the relevant date (whether they were employed throughout the month or not);
- (b) adding together all of the monthly numbers, and

dividing the number so determined by 24.

(3) For the purposes of the calculation in paragraph 2(a) if for the whole of a month within the two year period an employee works under a contract by virtue of which he would have worked for 75 hours or less in that month—

- (a) were the month to have contained 21 working days;
- (b) were the employee to have had no absences from work; and
- (c) were the employee to have worked no overtime,

the employee may be counted as half a person for the month in question, if the UK management so decides.

(4) For the purposes of this regulation, regulations 7 to 10 and regulation 20 “relevant date” means—

- (a) where a request under regulation 7 is made and no valid request under regulation 9 has been made, the last day of the month preceding the month in which the request under regulation 7 is made; and

- (b) where a valid request under regulation 9 is made (whether or not a request under regulation 7 has been made), the last day of the month preceding the month in which the request under regulation 9 is made.

(5) Where appropriate, the references in paragraph (4) to regulations 7 and 9 shall be read, instead, as references to the provisions of the law or practice of a Member State other than the United Kingdom which are designed to give effect to, respectively, Article 11(2) and Article 5(1) of the Transnational Information and Consultation Directive.

Entitlement to information

7.—(1) An employee or an employees' representative may request information from the management of an establishment, or of an undertaking in the United Kingdom for the purpose of determining whether, in the case of an establishment, it is part of a Community-scale undertaking or Community-scale group of undertakings or, in the case of an undertaking, it is a Community-scale undertaking or is part of a Community-scale group of undertakings.

(2) In this regulation and regulation 8, the management of an establishment or undertaking to which a request under paragraph (1) is made is referred to as the “recipient”.

(3) The recipient must provide the employee or employees' representative who has made the request with information on the average number of employees employed by the undertaking, or as the case may be the group of undertakings, in the United Kingdom and in each of the other Member States in the last two years.

Complaint of failure to provide information

8.—(1) An employee or employees' representative who has requested information under regulation 7 may present a complaint to the CAC that—

- (a) the recipient has failed to provide the information referred to in regulation 7(3); or
- (b) the information which has been provided by the recipient is false or incomplete in a material particular.

(2) Where the CAC finds the complaint well-founded it shall make an order requiring the recipient 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;
- (b) the date (or if more than one, the earliest date) on which the recipient refused or failed to disclose information, or disclosed false or incomplete information;
- (c) a date (not being less than one week from the date of the order) by which the recipient must disclose the information specified in the order.

(3) If the CAC considers that, from the information it has obtained in considering the complaint, it is beyond doubt that the undertaking is, or that the establishment is part of, a Community-scale undertaking or that the establishment or undertaking is part of a Community-scale group of undertakings, it may make a declaration to that effect.

(4) The CAC shall not consider a complaint presented under this regulation unless it is made after the expiry of a period of one month beginning on the date on which the complainant made his request for information under regulation 7.

Request to negotiate an agreement for a European Works Council or information and consultation procedure

9.—(1) The central management shall initiate negotiations for the establishment of a European Works Council or an information and consultation procedure where—

- (a) a valid request has been made by employees or employees' representatives; and
 - (b) on the relevant date the undertaking is a Community-scale undertaking or the group of undertakings is a Community-scale group of undertakings.
- (2) A valid request may consist of—
- (a) a single request made by at least 100 employees, or employees' representatives who represent at least that number, in at least two undertakings or establishments in at least two different Member States; or
 - (b) a number of separate requests made on the same or different days by employees, or by employees' representatives, which when taken together mean that at least 100 employees, or employees' representatives who represent at least that number, in at least two undertakings or establishments in at least two different Member States have made requests.
- (3) To amount to a valid request the single request referred to in paragraph (2)(a) or each separate request referred to in paragraph (2)(b) must—
- (a) be in writing;
 - (b) be sent to—
 - (i) the central management, or
 - (ii) the local management;
 - (c) specify the date on which it was sent; and
 - (d) where appropriate, be made after the expiry of a period of two years, commencing on the date of a decision under regulation 16(3) (unless the special negotiating body and central management have otherwise agreed).
- (4) The date on which a valid request is made is—
- (a) where it consists of a single request satisfying paragraph 2(a) or of separate requests made on the same day satisfying paragraph 2(b), the date on which the request is or requests are sent; and
 - (b) where it consists of separate requests made on different days satisfying paragraph 2(b), the date of the sending of the request which resulted in that paragraph being satisfied.
- (5) The central management may initiate the negotiations referred to in paragraph (1) on its own initiative.

Dispute as to whether valid request made or whether obligation in regulation 9(1) applies

10.—(1) If the central management considers that a request (or separate request) did not satisfy any requirement of regulation 9(2) or (3) it may apply to the CAC for a declaration as to whether the request satisfied the requirement.

- (2) The CAC shall only consider an application for a declaration made under paragraph (1) if—
- (a) the application is made within a three month period beginning on the date when a request, or if more than one the first request, was made for the purposes of regulation 9, whether or not that request satisfied the requirements of regulations 9(2) and (3);
 - (b) the application is made before the central management takes any step to initiate negotiations for the establishment of a European Works Council or an information and consultation procedure; and
 - (c) at the time when the application is made there has been no application by the central management for a declaration under paragraph (3).

(3) If the central management considers for any reason that the obligation in regulation 9(1) did not apply to it on the relevant date, it may, within a period of three months commencing on the date on which the valid request was made, apply to the CAC for a declaration as to whether that obligation applied to it on the relevant date.

(4) Where the date on which the valid request was made is a date falling before the date of any declaration made pursuant to an application made under this regulation the operation of the periods of time specified in paragraphs (1)(b) and (1)(c) of regulation 18 shall be suspended for a period of time—

- (a) commencing on the date of the application; and
- (b) ending on the date of the declaration.

(5) If on an application for a declaration under this regulation the CAC does not make any declaration in favour of the central management and considers that the central management has, in making the application or conducting the proceedings, acted frivolously, vexatiously, or otherwise unreasonably, the CAC shall make a declaration to the effect that paragraph (4) does not apply.