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STATUTORY INSTRUMENTS

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**1999 No. 3323**

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

PROSPECTIVE

**PART V**

**COMPLIANCE AND ENFORCEMENT**

**Failure to establish European Works Council or information and consultation procedure**

**20.—(1)** A complaint may be presented to the Appeal Tribunal by a relevant applicant who considers—

- (a) that the parties have reached agreement on the establishment of a European Works Council or an information and consultation procedure, or that regulation 18 applies; and
- (b) that, because of a failure of the central management, the European Works Council or information and consultation procedure has not been established at all, or has not been established fully in accordance with the terms of the agreement under regulation 17 or, as the case may be, in accordance with the provisions of the Schedule.

(2) In this regulation “failure” means an act or omission and a failure by the local management shall be treated as a failure by the central management.

(3) In this regulation “relevant applicant” means—

- (a) in a case where a special negotiating body exists, the special negotiating body; or
- (b) in a case where a special negotiating body does not exist, an employee, employees' representative, or person who was a member of the special negotiating body (if that body existed previously).

(4) Where the Appeal Tribunal finds the complaint well-founded it shall make a decision to that effect and may make an order requiring the central management to take such steps as are necessary to establish the European Works Council or information and consultation procedure in accordance with the terms of the agreement under regulation 17 or, as the case may be, to establish a European Works Council in accordance with the provisions of the Schedule.

(5) The Appeal Tribunal shall not find a complaint under this regulation to be well-founded where—

- (a) the central management made no application in relation to the request under regulation 10(1), or where the request consisted of separate requests was unable by reason of the time limit in sub-paragraph (a) of that regulation to make an application under the regulation in relation to a particular request, and shows that the request was not a valid request because a requirement of regulation 9(2) or (3) was not satisfied; or
- (b) the central management made no application under regulation 10(3) but shows that the obligation in regulation 9(1) did not, for any reason, apply to it on the relevant date.

*Status: This version of this part contains provisions that are prospective.*

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- (6) An order under paragraph (4) shall specify—
- (a) the steps which the central management is required to take;
  - (b) the date of the failure of the central management; and
  - (c) the period within which the order must be complied with.

(7) If the Appeal Tribunal makes a decision under paragraph (4) above it shall issue a written penalty notice to the central management requiring it to pay a penalty to the Secretary of State in respect of the failure.

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

(9) Regulation 22 shall apply in respect of a penalty notice issued under this regulation.

(10) No order of the Appeal Tribunal 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.

#### Commencement Information

**II** Reg. 20 in force at 15.1.2000, see [reg. 1\(1\)](#)

### Disputes about operation of European Works Council or information and consultation procedure

**21.**—(1) Where—

- (a) a European Works Council or information and consultation procedure been established under regulation 17; or
- (b) a European Works Council has been established by virtue of regulation 18,

a complaint may be presented to the Appeal Tribunal by a relevant applicant who considers that, because of the failure of a defaulter, the terms of the agreement under regulation 17 or, as the case may be, the provisions of the Schedule, have not been complied with.

(2) In this regulation, “failure” means an act or omission and a failure by the local management shall be treated as a failure by the central management.

(3) In this regulation “relevant applicant” means—

- (a) in the case of a failure concerning a European Works Council, either the central management or the European Works Council; or
- (b) in the case of a failure concerning an information and consultation procedure, either the central management or any one or more of the information and consultation representatives,

and “defaulter” means the persons mentioned in sub-paragraph (a) or (b) against whom the complaint is presented.

(4) Where the Appeal Tribunal 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 the terms of the agreement under regulation 17 or, as the case may be, the provisions of the Schedule.

- (5) An order made under paragraph (4) 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.

(6) If the Appeal Tribunal makes a decision under paragraph (4) and the defaulter in question is the central management, the Appeal Tribunal shall issue a written penalty notice to the central management 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 central management, that the failure resulted from a reason beyond the central management's control or that it has some other reasonable excuse for its failure.

(8) Regulation 22 shall apply in respect of a penalty notice issued under this regulation.

(9) No order of the Appeal Tribunal 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.

#### Commencement Information

**I2** Reg. 21 in force at 15.1.2000, see [reg. 1\(1\)](#)

#### Penalties

**22.—**(1) A penalty notice issued under regulation 20 or 21 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 of the Community-scale undertaking or Community-scale group of undertakings in the Member States.

(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 Appeal Tribunal under regulation 20 or 21 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 the central management, 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 a penalty notice.

(7) Any sums received by the Secretary of State under regulation 20 or 21 or this regulation shall be paid into the Consolidated Fund.

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### Commencement Information

**I3** Reg. 22 in force at 15.1.2000, see [reg. 1\(1\)](#)

**Status:**

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**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Regulations modified by [S.R. 2011/350 art. 23\(1\)](#)Sch. 1 para. 1(a)
- Regulations words substituted by [S.I. 2019/535 Sch. 2 para. 2\(a\)](#)
- Regulations words substituted by [S.I. 2019/535 Sch. 2 para. 2\(b\)](#)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

- Blanket amendment words substituted by [S.I. 2011/1043 art. 3-68-10](#)

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. para. 6(3) inserted by [S.I. 2010/1088 reg. 25](#)
- Sch. para. 8A inserted by [S.I. 2010/1088 reg. 28](#)
- Sch. para. 9(7)(8) inserted by [S.I. 2010/1088 reg. 29\(b\)](#)
- Sch. para. 7(3)(4) substituted for Sch, para. 7(3) by [S.I. 2010/1088 reg. 26](#)
- reg. 2(4B)(a) omitted by [S.I. 2019/535 Sch. 2 para. 3\(d\)\(i\)](#)
- reg. 2(4B)(b) word substituted by [S.I. 2019/535 Sch. 2 para. 3\(d\)\(ii\)](#)
- reg. 2(4B)(c) word substituted by [S.I. 2019/535 Sch. 2 para. 3\(d\)\(ii\)](#)
- reg. 16(1A) inserted by [S.I. 2010/1088 reg. 8\(a\)](#)
- reg. 17(4)(dd) inserted by [S.I. 2010/1088 reg. 9\(b\)](#)
- reg. 17(4A) inserted by [S.I. 2010/1088 reg. 9\(d\)](#)
- reg. 17(9) inserted by [S.I. 2010/1088 reg. 9\(f\)](#)
- reg. 18A inserted by [S.I. 2010/1088 reg. 10](#)
- reg. 18A(1)(a) words inserted by [S.I. 2019/535 Sch. 2 para. 14](#)
- reg. 18A(1)(b) words inserted by [S.I. 2019/535 Sch. 2 para. 14](#)
- reg. 19A-19F inserted by [S.I. 2010/1088 reg. 11](#)
- reg. 19B(1)(a) and word omitted by [S.I. 2019/535 Sch. 2 para. 15](#)
- reg. 19E(1)(a) words substituted by [S.I. 2019/535 Sch. 2 para. 16](#)
- reg. 19F omitted by [S.I. 2019/535 Sch. 2 para. 17](#)
- reg. 20(A1) inserted by [S.I. 2019/535 Sch. 2 para. 18\(a\)](#)
- reg. 20(7A) inserted by [S.I. 2010/1088 reg. 12\(c\)](#)
- reg. 21(1A) inserted by [S.I. 2010/1088 reg. 13\(b\)](#)
- reg. 21(1A)(a) words inserted by [S.I. 2019/535 Sch. 2 para. 19\(b\)](#)
- reg. 21(6A) inserted by [S.I. 2010/1088 reg. 13\(e\)](#)
- reg. 21A inserted by [S.I. 2010/1088 reg. 14](#)
- reg. 21A(1)(a) omitted by [S.I. 2019/535 Sch. 2 para. 20\(a\)\(i\)](#)
- reg. 21A(1)(c) words omitted by [S.I. 2019/535 Sch. 2 para. 20\(a\)\(ii\)](#)
- reg. 21A(3) word omitted by [S.I. 2019/535 Sch. 2 para. 20\(b\)](#)
- reg. 21A(10)(c)(i) omitted by [S.I. 2019/535 Sch. 2 para. 20\(c\)\(i\)](#)
- reg. 21A(10)(c)(iii) words omitted by [S.I. 2019/535 Sch. 2 para. 20\(c\)\(ii\)](#)
- reg. 25(1A) inserted by [S.I. 2010/1088 reg. 16](#)
- reg. 25(1A)(a) omitted by [S.I. 2019/535 Sch. 2 para. 21\(b\)](#)
- reg. 27(2A) inserted by [S.I. 2014/386 Sch. para. 7](#)
- reg. 27(2B) inserted by [S.R. 2020/4 Sch. para. 12](#)
- reg. 27A inserted by [S.I. 2014/386 Sch. para. 8](#)

- reg. 27B inserted by S.R. 2020/4 Sch. para. 13
- reg. 41(7A) inserted by S.I. 2004/2518 reg. 2
- reg. 41(7A) words substituted by S.I. 2009/3348 art. 22Sch. 1
- reg. 41(9) inserted by S.I. 2013/1956 Sch. para. 3(b)
- reg. 44-45A substituted for reg. 44 by S.I. 2010/1088 reg. 23
- reg. 44(4)-(7) omitted by S.I. 2019/535 Sch. 2 para. 27(b)
- reg. 45(4)-(7) omitted by S.I. 2019/535 Sch. 2 para. 28(b)
- reg. 45A(1) substituted by S.I. 2019/535 Sch. 2 para. 29(a)
- reg. 45A(2)(a) words inserted by S.I. 2019/535 Sch. 2 para. 29(b)
- reg. 45A(3) word substituted by S.I. 2019/535 Sch. 2 para. 29(c)
- reg. 45A(3A) inserted by S.I. 2019/535 Sch. 2 para. 29(d)
- reg. 45A(4) omitted by S.I. 2019/535 Sch. 2 para. 29(e)
- reg. 45A(5) substituted by S.I. 2019/535 Sch. 2 para. 29(f)
- reg. 46A inserted by S.I. 2004/2326 reg. 53
- reg. 46A substituted by S.I. 2009/2401 reg. 40
- reg. 46A(1) words substituted by S.I. 2019/685 Sch. 3 para. 19(a)
- reg. 46A(2) substituted by S.I. 2019/685 Sch. 3 para. 19(b)
- reg. 46B inserted by S.I. 2006/2059 reg. 42