

*Status: This version of this provision is prospective.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Transnational Information and Consultation of Employees Regulations 1999. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

## STATUTORY INSTRUMENTS

# 1999 No. 3323

## The Transnational Information and Consultation of Employees Regulations 1999

PROSPECTIVE

### PART I GENERAL

#### **Controlled and Controlling Undertaking**

**3.—(1)** In these Regulations “controlling undertaking” means an undertaking which can exercise a dominant influence over another undertaking by virtue, for example, of ownership, financial participation or the rules which govern it and “controlled undertaking” means an undertaking over which such a dominant influence can be exercised.

(2) The ability of an undertaking to exercise a dominant influence over another undertaking shall be presumed, unless the contrary is proved, when in relation to another undertaking it directly or indirectly—

- (a) can appoint more than half of the members of that undertaking’s administrative, management or supervisory body;
- (b) controls a majority of the votes attached to that undertaking’s issued share capital; or
- (c) holds a majority of that undertaking’s subscribed capital.

(3) In applying the criteria in paragraph (2), a controlling undertaking’s rights as regards voting and appointment shall include—

- (a) the rights of its other controlled undertakings; and
- (b) the rights of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other of the controlling undertaking’s controlled undertakings.

(4) Notwithstanding paragraphs (1) and (2) above an undertaking shall not be a controlling undertaking of another undertaking in which it has holdings where the first undertaking is a company referred to in Article 3(5)(a) or (c) of Council Regulation (EEC) No. 4064/89 of 21 December 1989<sup>(1)</sup> on the control of concentrations between undertakings.

(5) A dominant influence shall not be presumed to be exercised solely by virtue of the fact that an office holder is exercising functions, according to the law of a Member State, relating to liquidation, winding-up, insolvency, cessation of payments, compositions of creditors or analogous proceedings.

<sup>(1)</sup> O.J. L 395, 30.12.89, p. 1.

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(6) Where the law governing an undertaking is the law of a Member State, the law applicable in order to determine whether an undertaking is a controlling undertaking shall be the law of that Member State.

(7) Where the law governing an undertaking is not that of a Member State the law applicable shall be the law of the Member State within whose territory—

- (a) the representative of the undertaking is situated; or
- (b) in the absence of such a representative, the management of the group undertaking which employs the greatest number of employees is situated.

(8) If two or more undertakings (whether situated in the same or in different Member States) meet one or more of the criteria in paragraph (2) in relation to another undertaking, the criteria shall be applied in the order listed in relation to each of the first-mentioned undertakings and that which meets the criterion that is highest in the order listed shall be presumed, unless the contrary is proved, to exercise a dominant influence over the undertaking in question.

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#### **Commencement Information**

**II** Reg. 3 in force at 15.1.2000, see [reg. 1\(1\)](#)

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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)
- reg. 3 coming into force by S.I. 1999/3323 reg. 1(1)
- reg. 3(4) word substituted by S.I. 2019/535 Sch. 2 para. 4(a)
- reg. 3(4) words inserted by S.I. 2019/535 Sch. 2 para. 4(b)
- reg. 3(4) words substituted by S.I. 2004/1079 Sch. para. 4(2)

**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