

SCHEDULE

Regulation 18

SUBSIDIARY REQUIREMENTS

Establishment of European Works Council

1. A European Works Council shall be established in the Community-scale undertaking or Community-scale group of undertakings in accordance with the provisions in this Schedule.

Composition of the European Works Council

2.—(1) The European Works Council shall comprise a minimum of three, and a maximum of 30, members.

(2) Subject to sub-paragraph (1), the European Works Council shall be constituted in accordance with sub-paragraphs (3) and (4) below.

(3) There shall be on the European Works Council at least one member representing each Member State in which the Community-scale undertaking has one or more establishments, or in which the Community-scale group of undertakings has its controlling undertaking or one or more controlled undertakings.

(4) There shall be on the European Works Council the following additional members—

- (a) one additional member from a Member State in which there are employed 25 per cent or more but less than 50 per cent of the employees of the undertaking or group of undertakings who are employed in the Member States;
- (b) two additional members from a Member State in which there are employed 50 per cent or more but less than 75 per cent of the employees of the undertaking or group of undertakings who are employed in the Member States;
- (c) three additional members from a Member State in which there are employed 75 per cent or more of the employees of the undertaking or group of undertakings who are employed in the Member States.

(5) The European Works Council shall inform the central management and any more appropriate level of management of the composition of the European Works Council.

(6) Where the European Works Council decides its size so warrants, it shall elect from among its members a select committee comprising no more than three members who are to act on behalf of the European Works Council.

Appointment or election of UK members of the European Works Council

3.—(1) The UK members of the European Works Council must be UK employees and—

- (a) in a case where all of those employees are represented by UK employees' representatives, shall be elected or appointed by such employees' representatives;
- (b) in a case where not all of those employees are represented by UK employees' representatives, shall be elected by ballot.

(2) For the purposes of this paragraph all of the UK employees are represented by UK employees' representatives if each of the employees referred to in sub-paragraph (1) is a UK employee—

- (a) in respect of which an independent trade union is recognised by his employer for the purpose of collective bargaining; or
- (b) who has elected or appointed an employees' representative for the purpose of receiving, on the employee's behalf, information—
 - (i) which is relevant to the employee's terms and conditions of employment; or

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(ii) about the activities of the undertaking which may significantly affect the employee's interests

but excluding representatives who are expected to receive information relevant only to a specific aspect of the terms and conditions or interests of the employee, such as health and safety or collective redundancies.

(3) Where sub-paragraph (1)(a) above applies, the election or appointment of members of the European Works Council shall be carried out by whatever method the UK employees' representatives decide.

(4) Where sub-paragraph (1)(b) applies, the UK members of the European Works Council are to be elected by a ballot of the UK employees in accordance with paragraphs 4 and 5.

Ballot arrangements

4.—(1) The UK management must arrange for the holding of a ballot of employees referred to in paragraph 3(4), which satisfies the requirements specified in sub-paragraph (2).

(2) The requirements referred to in sub-paragraph (1) are that—

(a) the ballot of the UK employees must comprise a single ballot, but may instead, if the UK management so decides, comprise separate ballots of employees in such constituencies as the UK management may determine where—

(i) the number of UK members of the European Works Council to be elected is more than one, and

(ii) the UK management considers that if separate ballots were held for those constituencies, the UK members of the European Works Council to be elected would better reflect the interests of the UK employees as a whole than if a single ballot were held;

(b) a UK employee who is an employee of the Community-scale undertaking or the Community-scale group of undertakings on the day on which votes may be cast in the ballot or, if the votes may be cast on more than one day, on the first day of those days is entitled to vote in a ballot of the UK employees;

(c) any UK employee who is an employee of the Community-scale undertaking or Community-scale group of undertakings immediately before the latest time at which a person may become a candidate in the ballot, is entitled to stand in the ballot of the UK employees as a candidate for election as a UK member of the European Works Council;

(d) the UK management must, in accordance with sub-paragraph (6), appoint an independent ballot supervisor to supervise the conduct of the ballot of the UK employees but may instead, where there are to be separate ballots, appoint more than one independent ballot supervisor in accordance with that sub-paragraph, each of whom is to supervise such of the separate ballots as the UK management may determine, provided that each separate ballot is supervised by a supervisor;

(e) after the UK management has formulated proposals as to the arrangements for the ballot of the UK employees and before it has published the final arrangements under paragraph (f) it must, so far as reasonably practicable, consult with the UK employees' representatives on the proposed arrangements for the ballot of the UK employees;

(f) the UK management must publish the final arrangements for the ballot of the UK employees in such manner as to bring them to the attention of, so far as reasonably practicable, the UK employees and the UK employees' representatives.

(3) Any UK employee or UK employees' representative who believes that the arrangements for the ballot of the UK employees are defective may, within a period of 21 days beginning on the date

the UK management published the final arrangements under paragraph (f), present a complaint to the CAC.

(4) Where the CAC finds the complaint well-founded it shall make a declaration to that effect and may make an order requiring the UK management to modify the arrangements it has made for the ballot of the UK employees or to satisfy the requirements in paragraph (e) or (f) of sub-paragraph (2).

(5) An order under sub-paragraph (4) shall specify the modifications to the arrangements which the UK management is required to make and the requirements which it must satisfy.

(6) A person is an independent ballot supervisor for the purposes of sub-paragraph (2)(d) if the UK management reasonably believes that he will carry out any functions conferred on him in relation to the ballot competently and has no reasonable grounds for believing that his independence in relation to the ballot might reasonably be called into question.

(7) For the purposes of sub-paragraph (3), the arrangements for the ballot of the UK employees are defective if—

- (a) any of the requirements specified in paragraphs (b) to (f) of sub-paragraph (2) is not satisfied; or
- (b) in a case where the ballot is to comprise separate ballots, the constituencies determined by the UK management do not reflect adequately the interests of the UK employees as a whole.

Conduct of ballot

5.—(1) The UK management must—

- (a) ensure that a ballot supervisor appointed under paragraph 4(2)(d) carries out his functions under this paragraph and that there is no interference with his carrying out of those functions from the UK management, or the central management (where it is not also the UK management); and
- (b) comply with all reasonable requests made by a ballot supervisor for the purposes of, or in connection with, the carrying out of those functions.

(2) A ballot supervisor's appointment shall require that he—

- (a) supervises the conduct of the ballot, or the separate ballots he is being appointed to supervise, in accordance with the arrangements for the ballot of the UK employees published by the UK management under paragraph 4(2)(f) or, where appropriate, in accordance with the arrangements as required to be modified by an order made as a result of a complaint presented under paragraph 4(3);
- (b) does not conduct the ballot or any of the separate ballots before the UK management has satisfied the requirement specified in paragraph 4(2)(e) and—
 - (i) where no complaint has been presented under paragraph 4(3), before the expiry of a period of 21 days beginning on the date on which the UK management published its arrangements under paragraph 4(2)(f); or
 - (ii) where a complaint has been presented under paragraph 4(3), before the complaint has been determined and, where appropriate, the arrangements have been modified as required by an order made as a result of the complaint;
- (c) conducts the ballot, or each separate ballot, so as to secure that—
 - (i) so far as reasonably practicable, those entitled to vote are given the opportunity to vote,
 - (ii) so far as reasonably practicable, those entitled to stand as candidates are given the opportunity to stand,

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- (iii) so far as is reasonably practicable, those voting are able to do so in secret, and
- (iv) the votes given in the ballot are fairly and accurately counted.

(3) As soon as reasonably practicable after the holding of the ballot, or each separate ballot, the ballot supervisor must publish the results of the ballot in such manner as to make them available to the UK management and, so far as reasonably practicable, the UK employees entitled to vote in the ballot or who stood as candidates in the ballot.

(4) A ballot supervisor shall publish an ineffective ballot report where he considers (whether or not on the basis of representations made to him by another person) that—

- (a) any of the requirements referred to in sub-paragraph (2) was not satisfied with the result that the outcome of the ballot would have been different; or
- (b) there was interference with the carrying out of his functions or a failure by management to comply with all reasonable requests made by him with the result that he was unable to form a proper judgment as to whether each of the requirements referred to in sub-paragraph (2) was satisfied in relation to the ballot.

(5) Where a ballot supervisor publishes an ineffective ballot report the report must be published within a period of one month commencing on the date on which the ballot supervisor publishes the results of the ballot under sub-paragraph (3).

(6) A ballot supervisor shall publish an ineffective ballot report in such manner as to make it available to the UK management and, so far as reasonably practicable, the UK employees entitled to vote in the ballot or who stood as candidates in the ballot.

(7) Where a ballot supervisor publishes an ineffective ballot report then—

- (a) if there has been a single ballot or an ineffective ballot report has been published in respect of every separate ballot, the outcome of the ballot or ballots shall have no effect and the UK management shall again be under the obligation in paragraph 4(1);
- (b) if there have been separate ballots and paragraph (a) does not apply—
 - (i) the UK management shall arrange for the separate ballot or ballots in respect of which an ineffective ballot report was issued to be reheld in accordance with paragraph 4 and this paragraph, and
 - (ii) no such ballot shall have effect until it has been so reheld and no ineffective ballot report has been published in respect of it.

(8) All costs relating to the holding of a ballot, including payments made to a ballot supervisor for supervising the conduct of the ballot, shall be borne by the central management (whether or not an ineffective ballot report has been made).

Competence of the European Works Council

6.—(1) The competence of the European Works Council shall be limited to information and consultation on the matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States.

(2) In the case of a Community-scale undertaking or Community-scale group of undertakings falling within regulation 5(1)(b) or 5(1)(c), the competence of the European Works Council shall be limited to those matters concerning all of its establishments or group undertakings situated within the Member States or concerning at least two of its establishments or group undertakings situated in different Member States.

Information and consultation meetings

7.—(1) Subject to paragraph 8, the European Works Council shall have the right to meet with the central management once a year in an information and consultation meeting, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects.

(2) The central management shall inform the local managements accordingly.

(3) The information and consultation meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

Exceptional information and consultation meetings

8.—(1) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed. It shall have the right to meet in an exceptional information and consultation meeting, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

(2) Those members of the European Works Council who have been elected or appointed by the establishments or undertakings which are directly concerned by the measures in question shall also have the right to participate in an exceptional information and consultation meeting referred to in sub-paragraph (1) of this paragraph organised with the select committee elected under sub-paragraph (6) of paragraph 2.

(3) The exceptional information and consultation meeting referred to in sub-paragraph (1) of this paragraph shall take place as soon as possible on the basis of a report drawn up by the central management or any other appropriate level of management of the Community-scale undertaking or Community-scale group of undertakings, on which an opinion may be delivered at the end of the meeting or within a reasonable time.

(4) The exceptional information and consultation meeting referred to in sub-paragraph (1) of this paragraph shall not affect the prerogatives of the central management.

Procedures

9.—(1) Before an information and consultation meeting or exceptional information and consultation meeting with the central management, the European Works Council or the select committee, where necessary enlarged in accordance with sub-paragraph (2) of paragraph 8, shall be entitled to meet without the management concerned being present.

(2) Subject to regulation 23, the members of the European Works Council shall inform—

- (a) the employees' representatives of the employees in the establishments of a Community-scale undertaking or in the undertakings of a Community-scale group of undertakings; or
- (b) to the extent that any employees are not represented by employees' representatives, the employees themselves

of the content and outcome of the information and consultation procedure carried out in accordance with the provisions of this Schedule.

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(3) The European Works Council shall adopt its own rules of procedure.

(4) The European Works Council or the select committee may be assisted by experts of its choice, in so far as this is necessary for it to carry out its tasks.

(5) The operating expenses of the European Works Council shall be borne by the central management; but where the European Works Council is assisted by more than one expert the central management is not required to pay such expenses in respect of more than one of them.

(6) The central management shall provide the members of the European Works Council with such financial and material resources as enable them to perform their duties in an appropriate manner. In particular, the cost of organising meetings and arranging for interpretation facilities and the accommodation and travelling expenses of members of the European Works Council and its select committee shall be met by the central management unless the central management and European Works Council, or select committee, otherwise agree.

The continuing application of the subsidiary requirements

10.—(1) Four years after the European Works Council is established it shall examine whether to open negotiations for the conclusion of an agreement referred to in regulation 17 or to continue to apply the subsidiary requirements adopted in accordance with the provisions of this Schedule.

(2) If the European Works Council decides to negotiate an agreement in accordance with regulation 17, it shall notify the central management in writing to that effect, and

- (a) such notification shall be treated as a valid request made under regulation 9; and
- (b) regulations 16, 17 and 18 shall apply in respect of the negotiations for an agreement as if references in those regulations to the special negotiating body were references to the European Works Council.