
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, made under powers in section 42 of the Employment Relations Act 2004 implement in Great Britain Directive [2002/14/EC](#) establishing a general framework for informing and consulting employees in the European Community (“the Information and Consultation Directive”).

The principal provisions of the Regulations provide as follows—

1. Regulation 3 sets out the undertakings to which the Regulations apply.
2. Regulation 4 provides a method of calculating the number of employees in an undertaking, regulation 5 provides the employees of an undertaking with an entitlement to information to make the calculation in regulation 4 and regulation 6 allows a complaint to be made to the Central Arbitration Committee (“the CAC”) that the employer has failed to provide such information or has supplied false or incomplete information.
3. Part III deals with negotiated agreements and, in particular, regulation 7 provides that an employer must start negotiations on receipt of a valid employee request. However, the employer does not have to do so if there exists a pre-existing agreement and the request was made by fewer than 40% of employees. In the latter case the employer can choose to seek employee endorsement for the request and, unless at least 40% of employees in the undertaking and the majority of employees who vote do endorse the request, the employer does not have to start negotiations (regulation 8).
4. Regulation 9 allows for combined ballots to be held where there are pre-existing agreements covering groups of undertakings.
5. Regulation 10 covers complaints to the CAC about ballots held under regulation 8 or 9.
6. Negotiations can also be commenced by an employer notification of his intention to start negotiations (regulation 11).
7. Regulation 12 contains certain restrictions on when an employee request or an employer notification can be made.
8. Regulation 13 allows applications to the CAC that an employee request or an employer notification is invalid.
9. Regulation 14 sets out what steps have to be taken to initiate negotiations, including the appointment or election of negotiating representatives and regulation 15 allows a complaint to the CAC in relation to the appointment or election of such representatives.
10. Regulation 16 sets out what a negotiated agreement must contain and how it must be approved and regulation 17 provides for a complaint to the CAC about such approval.
11. Part IV contains provisions relating to the standard information and consultation provisions. Regulation 18 sets out when they apply, regulation 19 obliges the employer to hold a ballot for the appointment of information and consultation representatives to act under the standard provisions and regulation 20 sets out the employer’s obligations under the standard provisions.
12. Regulation 21 places the parties under a duty of cooperation.
13. Part VI deals with compliance and enforcement. Regulation 22 provides for complaints to the CAC about the operation of a negotiated agreement or the standard information and consultation

Status: This is the original version (as it was originally made).

provisions and for an application to be made to the Employment Appeal Tribunal for a penalty notice where the CAC finds a failure to comply with the negotiated agreement or the standard provisions by the employer. Regulation 23 deals with penalties under a penalty notice.

14. Regulation 24 provides that the only remedies available are the ones under Parts I to VI of the Regulations and not otherwise.

15. Part VII deals with confidential information and regulation 25 imposes a statutory duty not to disclose confidential information on anyone to whom such information is given and provides for an application to the CAC to challenge the necessity of information or a document being treated as confidential. Regulation 26 provides that an employer does not have to disclose certain information.

16. Part VIII provides protections to employees taking part in negotiations, information and consultation procedures or elections including protection against unfair dismissal (regulations 30 and 31) and detriment (regulations 32 and 33). Regulation 34 allows ACAS to conciliate in such disputes.

17. Regulations 39 and 40 place restrictions on contracting out of the rights provided by these Regulations.

18. Regulation 42 applies the rights of employees to Crown employees (although the Regulations will only apply if they are employed an undertaking within the meaning of the Directive) and regulation 43 provides an exception for the merchant navy.

A full Regulatory Impact Assessment of the effect that this instrument will have on the costs of business has been prepared and placed in the library of each House. This document can be obtained from the Department of Trade and Industry, Employee Involvement Team, Employment Relations Directorate, 1 Victoria Street, London, SW1H 0ET. It can also be downloaded from <http://www.dti.gov.uk/access/ria/index.htm>.