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## STATUTORY INSTRUMENTS

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### 2006 No. 2059

## The European Cooperative Society (Involvement of Employees) Regulations 2006

### PART 9

#### MISCELLANEOUS

##### CAC proceedings

**36.**—(1) Where under these Regulations a person presents a complaint or makes an application to the CAC the complaint or application must be in writing and in such form as the CAC may require.

(2) In its consideration of a complaint or application under these Regulations, the CAC shall make such enquiries as it sees fit and give any person whom it considers has a proper interest in the complaint or application an opportunity to be heard.

(3) In the case of a participating individual resident in England and Wales, an SCE with its registered office in England and Wales, or a participating legal entity or concerned subsidiary with its registered office (or principal place of business if not a body corporate), in England and Wales—

- (a) a declaration made by the CAC under these Regulations may be relied on as if it were a declaration or order made by the High Court in England and Wales; and
- (b) an order made by the CAC under these Regulations may be enforced in the same way as an order of the High Court in England and Wales.

(4) In the case of a participating individual resident in Scotland, an SCE with its registered office in Scotland, or a participating legal entity or concerned subsidiary with its registered office (or principal place of business if not a body corporate), in Scotland—

- (a) a declaration or order made by the CAC under these Regulations may be relied on as if it were a declaration or order made by the Court of Session; and
- (b) an order made by the CAC under these Regulations may be enforced in the same way as an order of the Court of Session.

(5) A declaration or order made by the CAC under these Regulations must be in writing and state the reasons for the CAC's findings.

(6) An appeal lies to the Appeal Tribunal on any question of law arising from any declaration or order of, or arising in any proceedings before, the CAC under these Regulations.

##### Appeal Tribunal: location of certain proceedings under these Regulations

**37.**—(1) Any proceedings before the Appeal Tribunal under these Regulations, other than appeals under paragraph (r) of section 21(1) of the Employment Tribunals Act 1996 <sup>M1</sup> (appeals from employment tribunals on questions of law), shall—

- (a) in the case of a participating individual resident in England and Wales, an SCE with its registered office in England and Wales, or a participating legal entity or concerned

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subsidiary with its registered office (or principal place of business, if not a body corporate) in England and Wales, be held in England and Wales;

- (b) in the case of a participating individual resident in Scotland, an SCE with its registered office in Scotland, or a participating legal entity or concerned subsidiary with its registered office (or principal place of business, if not a body corporate) in Scotland, be held in Scotland.

(2) In section 20(4) of the Employment Tribunals Act 1996 (the Appeal Tribunal)—

- (a) for “2004 and” substitute “ 2004, ”; and  
 (b) after “Employees Regulations 2004” insert “ and regulation 37(1) of the European Cooperative Society (Involvement of Employees) Regulations 2006 ”.

#### Marginal Citations

**M1** [Section 21\(1\)](#) has been amended on a number of occasions to specify additional proceedings and claims to which the section applies.

#### Appeal Tribunal: appeals from employment tribunals

**38.** In section 21(1) of the Employment Tribunals Act 1996 (circumstances in which an appeal lies to the Appeal Tribunal from an employment tribunal)—

- (a) omit the word “or” at the end of paragraph (r); and  
 (b) after paragraph (s) insert—

“, or

- (t) the European Cooperative Society (Involvement of Employees) Regulations 2006.”.

#### ACAS

**39.**—(1) If on receipt of an application or complaint under these Regulations the CAC is of the opinion that it is reasonably likely to be settled by conciliation or other assistance provided by the Advisory, Conciliation and Arbitration Service (“ACAS”) in accordance with paragraph (2), it shall refer the application or complaint to ACAS and notify the applicant or complainant and any persons whom it considers have a proper interest in the application or complaint accordingly.

(2) Where the CAC refers an application or complaint to ACAS under paragraph (1), section 210 of the Trade Union and Labour Relations (Consolidation) Act 1992 (power of ACAS to offer assistance to settle disputes) shall apply, and ACAS may offer the parties to the application or complaint its assistance under that section with a view to bringing about a settlement, as if the dispute or difference between the parties amounted to a trade dispute as defined in section 218 of that Act.

(3) If ACAS does not consider it appropriate to offer its assistance in accordance with paragraph (2) it shall inform the CAC.

(4) If ACAS has offered the parties its assistance in accordance with paragraph (2), the application or complaint referred has not thereafter been settled or withdrawn, and ACAS is of the opinion that no provision or further provision of its assistance is likely to result in a settlement or withdrawal, it shall inform the CAC of its opinion.

(5) If—

- (a) an application or complaint is not referred to ACAS, or  
 (b) it is so referred, but ACAS informs the CAC as mentioned in paragraph (3) or (4),

the CAC shall proceed to hear and determine the application or complaint.

#### **Restrictions on contracting out: general**

**40.**—(1) Any provision in any agreement (whether a contract of employment or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of these Regulations other than a provision of Part 8; or
- (b) to preclude a person from bringing any proceedings before the CAC under these Regulations other than under a provision of Part 8.

(2) Paragraph (1) does not apply to any agreement to refrain from continuing any proceedings referred to in sub-paragraph (b) of that paragraph made after the proceedings have been instituted.

#### **Restrictions on contracting out: Part 8**

**41.**—(1) Any provision in any agreement (whether a contract of employment or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of Part 8 of these Regulations; or
- (b) to preclude a person from bringing any proceedings before an employment tribunal under that Part.

(2) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing proceedings before an employment tribunal where a conciliation officer has taken action under [<sup>F1</sup>any of sections 18A to 18C] of the Employment Tribunals Act 1996 (conciliation).

(3) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing before an employment tribunal proceedings within [<sup>F2</sup>section 18(1)(u)] of the Employment Tribunals Act 1996 (proceedings under these Regulations where conciliation is available) if the conditions regulating [<sup>F3</sup>settlement] agreements under these Regulations are satisfied in relation to the agreement.

(4) For the purposes of paragraph (3) the conditions regulating [<sup>F4</sup>settlement] agreements are that—

- (a) the agreement must be in writing;
- (b) the agreement must relate to the particular proceedings;
- (c) the employee must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an employment tribunal;
- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the employee in respect of loss arising in consequence of the advice;
- (e) the agreement must identify the adviser; and
- (f) the agreement must state that the conditions in sub-paragraphs (a) to (e) are satisfied.

(5) A person is a relevant independent adviser for the purposes of paragraph (4)(c)—

- (a) if he is a qualified lawyer;
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and authorised to do so on behalf of the trade union; or

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- (c) if he works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and authorised to do so on behalf of the centre.
- (6) But a person is not a relevant independent adviser for the purposes of paragraph (4)(c) in relation to the employee—
- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer;
- (b) in the case of a person within paragraph (5)(b) or (c), if the trade union or advice centre is the employer or an associated employer; or
- (c) in the case of a person within paragraph (5)(c), if the employee makes a payment for the advice received by him.
- (7) In paragraph (5)(a), a “qualified lawyer” means—
- (a) as respects England and Wales, [<sup>F5</sup>a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act)]; and
- (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.
- (8) A person shall be treated as being a qualified lawyer within sub-paragraph (7)(a) if he is a Fellow of the Institute of Legal Executives [<sup>F6</sup>practising in a solicitor’s practice (including a body recognised under section 9 of the Administration of Justice Act 1985)].
- (9) For the purposes of paragraph (6) any two employers shall be treated as associated if—
- (a) one is a company of which the other (directly or indirectly) has control; or
- (b) both are companies of which a third person (directly or indirectly) has control;
- and “associated employer” shall be construed accordingly.
- [<sup>F7</sup>(10) In the application of this regulation in relation to Northern Ireland, paragraphs (3) and (4) above shall have effect as is for “settlement agreements” there were substituted “compromise agreements.”]

#### Textual Amendments

- F1** Words in reg. 41(2) substituted (6.4.2014) by *The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2014 (S.I. 2014/386)*, art. 1, **Sch. para. 47**
- F2** Words in reg. 41(3) substituted (E.W.S.) (6.4.2014) by *The Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2014 (S.I. 2014/431)*, art. 1, **Sch. para. 34(a)**
- F3** Word in reg. 41(3) substituted (30.8.2013) by *The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2013 (S.I. 2013/1956)*, art. 1, **Sch. para. 12(a)**
- F4** Word in reg. 41(4) substituted (30.8.2013) by *The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2013 (S.I. 2013/1956)*, art. 1, **Sch. para. 12(a)**
- F5** Words in reg. 41(7)(a) substituted (1.1.2010) by *The Legal Services Act 2007 (Consequential Amendments) Order 2009 (S.I. 2009/3348)*, arts. 2(1), 23, **Sch. 2**
- F6** Words in reg. 41(8) substituted (16.12.2009) by *The Legal Services Act 2007 (Consequential Amendments) Order 2009 (S.I. 2009/3348)*, arts. 2(2), 22, **Sch. 1**
- F7** Reg. 41(10) inserted (30.8.2013) by *The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2013 (S.I. 2013/1956)*, art. 1, **Sch. para. 12(b)**

## **Amendment of the Transnational Information and Consultation of Employees Regulations 1999**

**42.** In the Transnational Information and Consultation of Employees Regulations 1999 <sup>M2</sup>, after regulation 46A insert—

“**46B.**—(1) These regulations do not apply to an SCE that is—

- (a) a Community-scale undertaking, or
- (b) a controlling undertaking of a Community-scale group of undertakings,

except where the special negotiating body has taken the decision referred to in regulation 19 of, or paragraph 13 of Schedule 1 to, the European Cooperative Society (Involvement of Employees) Regulations 2006 (decision not to open, or to terminate, negotiations).

(2) In this regulation an “SCE” means a European Cooperative Society established in accordance with the European Cooperative Society Regulations 2006.”

### **Marginal Citations**

**M2** SI 1999/3323.

### **Existing employee involvement rights**

**43.**—(1) Subject to paragraph (2), nothing in these Regulations shall prejudice involvement rights of employees of an SCE, its subsidiaries or establishments provided for by law or practice in the EEA State in which they were employed immediately prior to the registration of the SCE.

(2) Paragraph (1) does not apply to rights to participation.

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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\(b\)](#)
- Regulations revoked by [S.I. 2023/1426 reg. 10](#)

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

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

- Sch. 3 para. 9A inserted by [S.R. 2020/4 Sch. para. 40\(2\)](#)