

**EXPLANATORY MEMORANDUM TO**  
**THE EUROPEAN PUBLIC LIMITED-LIABILITY COMPANY (EMPLOYEE INVOLVEMENT) (NORTHERN IRELAND) REGULATIONS 2009**

**2009 No. 2402**

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by command of Her Majesty.

**2. Purpose of the instrument**

2.1 Council Directive 2001/86/EC (“the EU Directive”) supplements the Statute for a European company<sup>1</sup> with regard to the involvement of employees. The EU Directive was originally transposed for Northern Ireland by Part 3 of the European Public Limited-Liability Company Regulations (Northern Ireland) 2004<sup>2</sup> (“the 2004 Northern Ireland Regulations”). Section 1285 of the Companies Act 2006 (“the 2006 Act”) extends Great Britain enactments relating to SEs to Northern Ireland. As a result the European Limited-Liability Company Regulations 2004 are amended to apply to the whole of the United Kingdom. However, because of differences in employment law between Great Britain and Northern Ireland, the separate Northern Ireland employee involvement regime needs to be preserved. The employee involvement provisions in Part 3 of the 2004 Northern Ireland Regulations are therefore re-enacted without substantive amendment in these Regulations. Separate regulations (the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009<sup>3</sup>) re-enact the employee involvement provisions for Great Britain.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative context**

4.1 The European legislation about the formation of a European Company or Societas Europaea (“SE”) comprises Council Regulation 2157/2001 on the Statute for a European Company (“the EU Regulation”) setting out the core company law framework and the EU Directive which specifies the employee involvement arrangements that apply to an SE. Part 3 of the 2004 Northern Ireland Regulations implemented the EU Directive for Northern Ireland.

4.2 The EU Regulation and EU Directive were implemented for SEs registered in Great Britain via a separate legislative instrument, the 2004

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<sup>1</sup> Council Regulation 2157/2001 on the Statute for a European Company

<sup>2</sup> S.R. (NI) 2004 No 417

<sup>3</sup> S.I. 2009/2401

Regulations. Section 1285 of the 2006 Act extends enactments in force in Great Britain relating to SEs to Northern Ireland, and repeals the 2004 Northern Ireland Regulations.

4.3 Parallel to this instrument, the 2004 Regulations are being consequentially amended in light of the changes to company law made by the 2006 Act. As part of this the 2004 Regulations are amended to extend their application from Great Britain to the United Kingdom.

4.4 Part 3 of the 2004 Regulations contain provisions regarding employee involvement arrangements for SEs registered in Great Britain. The employee involvement provisions for Great Britain and Northern differ in that they refer to different legislation and institutions.

4.5 In order to preserve the separate regimes for Great Britain and Northern Ireland, the provisions regarding employee involvement arrangements for SEs are covered in two new statutory instruments. For SEs with registered offices in Northern Ireland, the employee involvement provisions are covered by this instrument; for SEs with registered offices in Great Britain, the employee involvement provisions are covered by the European Limited-Liability (Employee Involvement) (Great Britain) Regulations 2009. These two statutory instruments will come into force on 1<sup>st</sup> October 2009, as will section 1285 of the 2006 Act and the instrument amending the 2004 Regulations.

4.6 The regulations are made using section 2(2) of the European Communities Act 1972.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Northern Ireland.

## **6. European Convention on Human Rights**

6.1 Lord Davies of Abersoch, the Minister for Trade, Investment and Business has made the following statement regarding Human Rights:

In my view the provisions of The European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 are compatible with the Convention rights.

## **7. Policy background**

7.1 The EU Directive sets out requirements for the information, consultation and participation of employees in SEs. All SEs must have employee involvement arrangements. These will always cover information and consultation, and may cover employee participation on the board of the company in certain circumstances (in particular, if it existed within one or more of the companies forming the SE). The EU Directive requires the management of the participating companies and representatives of employees

to try to reach a voluntary agreement on the employee involvement arrangements, or else to agree to rely on national information and consultation rules where the SE has employees.

7.2 In respect of SEs registered in Northern Ireland, the EU Directive was implemented by Part 3 of the 2004 Northern Ireland Regulations. The employee involvement provisions applying to SEs registered in Great Britain and Northern Ireland are different and are contained in separate instruments because they plead into different employment law regimes.

7.3 The effect of this instrument is that the employee involvement regulations for SEs registered in Northern Ireland are separate from the main body of the SE regulations. The substance of the provisions, however, remains the same as in Part 3 of the 2004 Northern Ireland Regulations. There are no policy changes and as such the UK's approach to transposition of the EU Directive is unaffected.

## **8. Consultation outcome**

8.1 This instrument is re-enacting Part 3 of the 2004 Northern Ireland Regulations and therefore there are no policy changes requiring consultation.

## **9. Guidance**

9.1 Companies House publishes guidance for SEs on their website <http://www.companieshouse.gov.uk/>.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The regulations have no impact on the public sector.

10.3 An Impact Assessment of the effect that the implementation of the Directive will have on the costs of business, charities and voluntary bodies was prepared when the Directive was transposed to UK law in 2004. Copies are available from the Department for Business, Innovation and Skills, Corporate Law and Governance Directorate, 1 Victoria Street, London SW1.

## **11. Regulating small business**

11.1 The legislation applies to small businesses that are SEs with registered offices in Northern Ireland.

11.2 These Regulations are not adding any additional burdens to small business.

## **12. Monitoring & review**

12.1 These regulations will be kept under review by the Department for Business, Innovation and Skills.

### **13. Contact**

13.1 Kate Gillies at the Department for Business, Innovation and Skills (tel: 020 7215 0253 or email: [kate.gillies@berr.gsi.gov.uk](mailto:kate.gillies@berr.gsi.gov.uk)) can answer any queries regarding the instrument.