
STATUTORY INSTRUMENTS

1999 No. 3323

**The Transnational Information and
Consultation of Employees Regulations 1999**

PART IX

EXCEPTIONS

Article 6 agreements

42.—(1) Where, in accordance with regulation 5, the central management is situated in the United Kingdom and, immediately before the date on which these Regulations come into force an Article 6 agreement is in force, those provisions referred to in regulation 4(1) which apply only where the central management is situated in the United Kingdom shall only apply if—

- (a) the parties to the Article 6 agreement agree or have agreed (whether before or after these Regulations come into force) to the effect that the provisions of these Regulations which would have applied in respect of the agreement had it been made under regulation 17 should apply in respect of the Article 6 agreement; or
- (b) the Article 6 agreement ceases to have effect.

(2) In paragraph (1) and regulation 47 “Article 6 agreement” means an agreement for the establishment of a European Works Council or information and consultation procedure made under the provisions of the law or practice of a Member State other than the United Kingdom which are designed to give effect to Article 6 of the Transnational Information and Consultation Directive.

(3) Where paragraph (1)(a) applies these Regulations shall apply as if the Article 6 agreement had been made under regulation 17.

Article 7 European Works Councils

43.—(1) Where, in accordance with regulation 5, the central management is situated in the United Kingdom, and immediately before the date these Regulations come into force an Article 7 European Works Council exists, those provisions referred to in regulation 4(1) which apply only where the central management is situated in the United Kingdom shall only apply if—

- (a) the central management and European Works Council agree or have agreed (whether before or after these Regulations come into force) to the effect that the provisions of these Regulations which would have applied in respect of the European Works Council had it been made, by virtue of regulation 18, under these Regulations should apply in respect of the Article 7 European Works Council; or
- (b) the European Works Council decides, under the provisions of the law or practice of a Member State other than the United Kingdom which are designed to give effect to paragraph 1(f) of the Annex to the Transnational Information and Consultation Directive, to negotiate an agreement for a European Works Council or an information and consultation procedure.

(2) In paragraph (1) and regulations 47 and 48 “Article 7 European Works Council” means a European Works Council established under the provisions of the law or practice of a Member State other than the United Kingdom which are designed to give effect to Article 7 of, and the Annex to, the Transnational Information and Consultation Directive.

(3) Where paragraph (1)(a) or (b) applies these Regulations shall apply, subject to the modifications referred to in paragraphs (4) to (6) of regulation 48, as if the Article 7 European Works Council had been established, by virtue of regulation 18, under these Regulations and, in a case where paragraph (1)(b) applies, as if a decision had been taken under paragraph 10(2) Of the Schedule.

Article 3 agreements

44.—(1) None of the obligations in these Regulations applies to a Community-scale undertaking or Community-scale group of undertakings where the conditions specified in Article 3 of the Extension Directive are satisfied.

(2) The conditions referred to in paragraph (1) above are that—

(a) an agreement is in force which—

(i) is in force immediately before 16th December 1999;

(ii) covers the entire workforce in the Member States; and

(iii) provides for the transnational information and consultation of employees, and

(b) the obligation (whether arising under these Regulations or under the national law or practice of any other Member State), to initiate negotiations for the establishment of a European Works Council or information and consultation procedure would, but for this paragraph, have applied to the Community-scale undertaking or Community-scale group of undertakings solely as a result of the Extension Directive.

(3) If an agreement when taken together with one or more other agreements satisfies the requirements specified in paragraph (2)(a) that agreement, when taken together with such other agreements, shall be treated as an agreement for the purposes of that paragraph.

Article 13 agreements

45.—(1) None of the obligations in these Regulations applies to a Community-scale undertaking or Community-scale group of undertakings where the conditions specified in Article 13 of the Transnational Information and Consultation Directive are satisfied.

(2) The conditions referred to in paragraph (1) are that an agreement is in force which—

(a) was in force immediately before whichever is the earlier of 23rd September 1996 and the day after the date on which the national law or practice giving effect to the Transnational Information and Consultation Directive came into force in the Member State (other than the United Kingdom) whose national law governs the agreement;

(b) covers the entire workforce in the Member States; and

(c) provides for the transnational information and consultation of employees.

(3) If an agreement when taken together with one or more other agreements satisfies the requirements specified in paragraph (2) that agreement, when taken together with such other agreements, shall be treated as an agreement for the purposes of that paragraph in question.

Merchant Navy

46.—(1) Subject to paragraph (3), no long haul crew member shall be—

(a) a member of a special negotiating body;

- (b) a member of a European Works Council; or
- (c) an information and consultation representative.

(2) In paragraph (1), a “long haul crew member” means a person who is a member of a merchant navy crew other than—

- (a) a ferry worker; or
- (b) a person who normally works on voyages the duration of which is less than 48 hours.

(3) Paragraph (1) shall not apply where the central management decides that the long haul crew member in question shall be permitted to be, as the case may be, a member of a special negotiating body or of a European Works Council, or an information and consultation representative.

(4) Where paragraph (1) applies, no long haul crew member shall—

- (a) stand as a candidate for election as a member of a special negotiating body or of a European Works Council, or as an information and consultation representative; or
- (b) be appointed or nominated to be a member of a special negotiating body or of a European Works Council, or an information and consultation representative.