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STATUTORY INSTRUMENTS

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**1999 No. 3323**

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

**PART VII**

**PROTECTIONS FOR MEMBERS OF A EUROPEAN WORKS COUNCIL, ETC.**

**Unfair dismissal**

**28.**—(1) An employee who is dismissed and to whom paragraph (2) or (5) applies shall be regarded, if the reason (or, if more than one, the principal reason) for the dismissal is a reason specified in, respectively, paragraph (3) or (6), as unfairly dismissed for the purposes of Part X of the 1996 Act and of Part XI of the 1996 Order.

(2) This paragraph applies to an employee who is—

- (a) a member of a special negotiating body;
- (b) a member of a European Works Council;
- (c) an information and consultation representative; or
- (d) a candidate in an election in which any person elected will, on being elected, be such a member or representative.

(3) The reason is that—

- (a) the employee performed any functions or activities as such a member, representative or candidate; or
- (b) the employee or a person acting on his behalf made a request to exercise an entitlement conferred on the employee by regulation 25 or 26;

or proposed to do so.

(4) The reason in paragraph (3)(a) does not apply where the reason (or principal reason) for the dismissal is that in the performance, or purported performance, of the employee's functions or activities he has disclosed any information or document in breach of the duty in regulation 23(1), unless the employee reasonably believed the disclosure to be a "protected disclosure" within the meaning given to that expression by section 43A of the 1996 Act or, as the case may be, by Article 67A of the 1996 Order.

(5) This paragraph applies to any employee whether or not he is an employee to whom paragraph (2) applies.

(6) The reasons are that the employee—

- (a) took, or proposed to take, any proceedings before an employment tribunal or industrial tribunal to enforce a right or secure an entitlement conferred on him by these Regulations;
- (b) exercised, or proposed to exercise, any entitlement to apply or complain to the Appeal Tribunal or the CAC, or in Northern Ireland the Industrial Court, conferred by these Regulations;

- (c) requested, or proposed to request, information in accordance with regulation 7;
  - (d) acted with a view to securing that a special negotiating body, a European Works Council or an information and consultation procedure did or did not come into existence;
  - (e) indicated that he supported or did not support the coming into existence of a special negotiating body, a European Works Council or an information and consultation procedure;
  - (f) stood as a candidate in an election in which any person elected would, on being elected, be a member of a special negotiating body or of a European Works Council or an information and consultation representative;
  - (g) influenced or sought to influence the way in which votes were to be cast by other employees in a ballot arranged under these Regulations;
  - (h) voted in such a ballot;
  - (i) expressed doubts, whether to a ballot supervisor or otherwise, as to whether such a ballot had been properly conducted; or
  - (j) proposed to do, failed to do, or proposed to decline to do, any of the things mentioned in sub-paragraphs (d) to (i).
- (7) It is immaterial for the purposes of paragraph (6)(a)—
- (a) whether or not the employee has the right; or
  - (b) whether or not the right has been infringed;
- but for that paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.