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STATUTORY INSTRUMENTS

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**2004 No. 3426**

The Information and Consultation  
of Employees Regulations 2004

PART IV

STANDARD INFORMATION AND CONSULTATION PROVISIONS

**Application of standard information and consultation provisions**

**18.**—(1) Subject to paragraph (2)—

- (a) where the employer is under a duty, following the making of a valid employee request or issue of a valid employer notification, to initiate negotiations in accordance with regulation 14 but does not do so, the standard information and consultation provisions shall apply from the date—
  - (i) which is six months from the date on which the valid employee request was made or the valid employer notification was issued, or
  - (ii) information and consultation representatives are elected under regulation 19, whichever is the sooner; and
- (b) if the parties do not reach a negotiated agreement within the time limit referred to in regulation 14(3) (or that period as extended by agreement under paragraph (5) of that regulation) the standard information and consultation provisions shall apply from the date—
  - (i) which is six months from the date on which that time limit expires; or
  - (ii) information and consultation representatives are elected under regulation 19, whichever is the sooner.

(2) Where the standard information and consultation provisions apply, the employer and the information and consultation representatives elected pursuant to regulation 19 may, at any time, reach an agreement that provisions other than the standard information and consultation provisions shall apply.

(3) An agreement referred to in paragraph (2) shall only have effect if it covers all the employees of the undertaking, complies with the requirements listed in regulation 16(1)(a) to (c), (e) and (f), and is signed by a majority of the information and consultation representatives.

**Election of information and consultation representatives**

**19.**—(1) Where the standard information and consultation provisions are to apply, the employer shall, before the standard information and consultation provisions start to apply, arrange for the holding of a ballot of its employees to elect the relevant number of information and consultation representatives.

(2) The provisions in Schedule 2 to these Regulations apply in relation to the arrangements for and conduct of any such ballot.

(3) In this regulation the “relevant number of information and consultation representatives” means one representative per fifty employees or part thereof, provided that that number is at least 2 and does not exceed 25.

(4) An employee or an employee’s representative may complain to the CAC that the employer has not arranged for the holding of a ballot in accordance with paragraph (1).

(5) Where the CAC finds the complaint well-founded, it shall make an order requiring the employer to arrange, or re-arrange, and hold the ballot.

(6) Where the CAC finds a complaint under paragraph (4) well-founded, the employee or the employee’s representative may make an application to the Appeal Tribunal under regulation 22(6) and paragraphs (7) and (8) of that regulation shall apply to any such application.

### **Standard information and consultation provisions**

**20.**—(1) Where the standard information and consultation provisions apply pursuant to regulation 18, the employer must provide the information and consultation representatives with information on—

- (a) the recent and probable development of the undertaking’s activities and economic situation;
- (b) the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular, where there is a threat to employment within the undertaking; and
- (c) subject to paragraph (5), decisions likely to lead to substantial changes in work organisation or in contractual relations, including those referred to in—
  - (i) sections 188 to 192 of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(1)</sup>; and
  - (ii) regulations 10 to 12 of the Transfer of Undertakings (Protection of Employment) Regulations 1981<sup>(2)</sup>.

(2) The information referred to in paragraph (1) must be given at such time, in such fashion and with such content as are appropriate to enable, in particular, the information and consultation representatives to conduct an adequate study and, where necessary, to prepare for consultation.

(3) The employer must consult the information and consultation representatives on the matters referred to in paragraph (1)(b) and (c).

- (4) The employer must ensure that the consultation referred to in paragraph (3) is conducted—
  - (a) in such a way as to ensure that the timing, method and content of the consultation are appropriate;
  - (b) on the basis of the information supplied by the employer to the information and consultation representatives and of any opinion which those representatives express to the employer;

<sup>(1)</sup> 1992 c. 52.

<sup>(2)</sup> S.I.1981/1794; regulations 10 to 12 have been amended by the Tribunals and Inquiries Act 1992 (1992 c. 53), the Trade Union Reform and Employment Rights Act 1993 (1993 c. 19), the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1995 (S.I. 1995/2587), the Employment Rights (Dispute Resolution) Act 1998 (1998 c. 8), the [Collective Redundancies and Transfer of Undertakings \(Protection of Employment\) \(Amendment\) Regulations 1999](#) (S.I. 1999/ 1925) and the [Transfer of Undertakings \(Protection of Employment\) \(Amendment\) Regulations 1999](#) (S.I. 1999/2402).

- (c) in such a way as to enable the information and consultation representatives to meet the employer at the relevant level of management depending on the subject under discussion and to obtain a reasoned response from the employer to any such opinion; and
- (d) in relation to matters falling within paragraph (1)(c), with a view to reaching agreement on decisions within the scope of the employer's powers.

(5) The duties in this regulation to inform and consult the information and consultation representatives on decisions falling within paragraph (1)(c) cease to apply once the employer is under a duty under—

- (a) section 188 of the Act referred to in paragraph (1)(c)(i) (duty of employer to consult representatives); or
- (b) regulation 10 of the Regulations referred to in paragraph (1)(c)(ii) (duty to inform and consult representatives),

and he has notified the information and consultation representatives in writing that he will be complying with his duty under the legislation referred to in sub-paragraph (a) or (b), as the case may be, instead of under these Regulations, provided that the notification is given on each occasion on which the employer has become or is about to become subject to the duty.

(6) Where there is an obligation in these Regulations on the employer to inform and consult his employees, a failure on the part of a person who controls the employer (either directly or indirectly) to provide information to the employer shall not constitute a valid reason for the employer failing to inform and consult.