
STATUTORY INSTRUMENTS

2004 No. 3426

The Information and Consultation
of Employees Regulations 2004

PART VI

COMPLIANCE AND ENFORCEMENT

Disputes about operation of a negotiated agreement or the standard information and consultation provisions

22.—(1) Where—

- (a) a negotiated agreement has been agreed; or
- (b) the standard information and consultation provisions apply,

a complaint may be presented to the CAC by a relevant applicant who considers that the employer has failed to comply with the terms of the negotiated agreement or, as the case may be, one or more of the standard information and consultation provisions.

(2) A complaint brought under paragraph (1) must be brought within a period of three months commencing with the date of the alleged failure.

(3) In this regulation—

“failure” means an act or omission; and

“relevant applicant” means—

- (a) in a case where information and consultation representatives have been elected or appointed, an information and consultation representative, or
- (b) in a case where no information and consultation representatives have been elected or appointed, an employee or an employees' representative.

(4) Where the CAC finds the complaint well-founded it shall make a declaration to that effect and may make an order requiring the employer to take such steps as are necessary to comply with the terms of the negotiated agreement or, as the case may be, the standard information and consultation provisions.

(5) An order made under paragraph (4) shall specify—

- (a) the steps which the employer is required to take; and
- (b) the period within which the order must be complied with.

(6) If the CAC makes a declaration under paragraph (4) the relevant applicant may, within the period of three months beginning with the date on which the declaration is made, make an application to the Appeal Tribunal for a penalty notice to be issued.

(7) Where such an application is made, the Appeal Tribunal shall issue a written penalty notice to the employer requiring him to pay a penalty to the Secretary of State in respect of the failure unless satisfied, on hearing representations from the employer, that the failure resulted from a reason beyond the employer's control or that he has some other reasonable excuse for his failure.

(8) Regulation 23 shall apply in respect of a penalty notice issued under this regulation.

(9) No order of the CAC under this regulation shall have the effect of suspending or altering the effect of any act done or of any agreement made by the employer or of preventing or delaying any act or agreement which the employer proposes to do or to make.

Penalties

23.—(1) A penalty notice issued under regulation 22 shall specify—

- (a) the amount of the penalty which is payable;
- (b) the date before which the penalty must be paid; and
- (c) the failure and period to which the penalty relates.

(2) No penalty set by the Appeal Tribunal under this regulation may exceed £75,000.

(3) Matters to be taken into account by the Appeal Tribunal when setting the amount of the penalty shall include—

- (a) the gravity of the failure;
- (b) the period of time over which the failure occurred;
- (c) the reason for the failure;
- (d) the number of employees affected by the failure; and
- (e) the number of employees employed by the undertaking or, where a negotiated agreement covers employees in more than one undertaking, the number of employees employed by both or all of the undertakings.

(4) The date specified under paragraph (1)(b) must not be earlier than the end of the period within which an appeal against a declaration or order made by the CAC under regulation 22 may be made.

(5) If the specified date in a penalty notice has passed and—

- (a) the period during which an appeal may be made has expired without an appeal having been made; or
- (b) such an appeal has been made and determined,

the Secretary of State may recover from the employer, as a civil debt due to him, any amount payable under the penalty notice which remains outstanding.

(6) The making of an appeal suspends the effect of a penalty notice.

(7) Any sums received by the Secretary of State under regulation 22 or this regulation shall be paid into the Consolidated Fund.

Exclusivity of remedy

24. The remedy for infringement of the rights conferred by Parts I to VI of these Regulations is by way of complaint to the CAC, and not otherwise.