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STATUTORY INSTRUMENTS

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**2004 No. 3426**

The Information and Consultation  
of Employees Regulations 2004

PART II

EMPLOYEE NUMBERS AND ENTITLEMENT TO DATA

**Calculation of number of employees**

4.—(1) Subject to paragraph (4), the number of employees for the purposes of regulation 3(1) shall be determined by ascertaining the average number of employees employed in the previous twelve months, calculated in accordance with paragraph (2).

(2) Subject to paragraph (3), the average number of employees is to be ascertained by determining the number of employees employed in each month in the previous twelve months (whether they were employed throughout the month or not), adding together those monthly figures and dividing the number by 12.

(3) For the purposes of the calculation in paragraph (2) if, for the whole of a month within the twelve month period, an employee works under a contract by virtue of which he would have worked for 75 hours or less in that month—

- (i) were the month to have contained 21 working days;
- (ii) were the employee to have had no absences from work; and
- (iii) were the employee to have worked no overtime,

the employee may be counted as representing half of a full-time employee for the month in question, if the employer so decides.

(4) If the undertaking has been in existence for less than twelve months, the references to twelve months in paragraphs (1), (2) and (3), and the divisor of 12 referred to in paragraph (2), shall be replaced by the number of months the undertaking has been in existence.