

## STATUTORY INSTRUMENTS

# 2009 No. 2402

## The European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009

### PART 9

#### MISCELLANEOUS

##### Industrial Court proceedings

**34.**—(1) Where under these Regulations a person presents a complaint or makes an application to the Industrial Court, the complaint or application must be in writing and in such form as the Industrial Court may require.

(2) In its consideration of a complaint or application under these Regulations, the Industrial Court must—

- (a) make such enquiries as it sees fit, and
- (b) give any person whom it considers has a proper interest in the complaint or application an opportunity to be heard.

(3) Where the <sup>F1</sup>... concerned subsidiary or establishment or the [<sup>F2</sup>UK Societas] has its registered office in Northern Ireland—

- (a) a declaration made by the Industrial Court under these Regulations may be relied on as if it were a declaration or order made by the High Court, and
- (b) an order made by the Industrial Court under these Regulations may be enforced in the same way as an order of the High Court.

(4) A declaration or order made by the Industrial Court under these Regulations must be in writing and state the reasons for the Industrial Court's findings.

(5) An appeal lies to the High Court on any question of law arising from any declaration or order of, or arising in any proceedings before, the Industrial Court under these Regulations.

##### Textual Amendments

**F1** Words in [reg. 34\(3\)](#) omitted (31.12.2020) by virtue of [The European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1298\)](#), [regs. 1, 80\(a\)](#) (with [regs. 153-159A](#)) (as amended by [S.I. 2019/685](#), [Sch. 3 paras. 16, 17](#) and [S.I. 2020/523](#), [regs. 1\(2\), 5\(k\)-\(n\)](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)

**F2** Words in [reg. 34\(3\)](#) substituted (31.12.2020) by [The European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1298\)](#), [regs. 1, 80\(b\)](#) (with [regs. 153-159A](#)) (as amended by [S.I. 2019/685](#), [Sch. 3 paras. 16, 17](#) and [S.I. 2020/523](#), [regs. 1\(2\), 5\(k\)-\(n\)](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)

### **Labour Relations Agency**

**35.—**(1) If, on receipt of an application or complaint under these Regulations, the Industrial Court is of the opinion that it is reasonably likely to be settled by conciliation, it must—

- (a) refer the application or complaint to the Agency, and
- (b) notify the applicant or complainant and any persons whom it considers have a proper interest in the application or complaint accordingly,

and the Agency must seek to promote a settlement of the matter.

(2) If—

- (a) an application or complaint so referred is not settled or withdrawn, and
- (b) the Agency is of the opinion that further attempts at conciliation are unlikely to result in a settlement,

the Agency must inform the Industrial Court of that opinion.

(3) If—

- (a) the application or complaint is not referred to the Agency, or
- (b) it is so referred, but the Agency informs the Industrial Court of its opinion that further attempts at conciliation are unlikely to result in a settlement,

the Industrial Court must proceed to hear and determine the application or complaint.

### **Restrictions on contracting out: general**

**36.—**(1) Any provision in any agreement (whether an employee's contract or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of these Regulations, other than a provision of Part 8, or
- (b) to preclude a person from bringing any proceedings before the Industrial Court under any provision of these Regulations other than a provision of that Part.

(2) Paragraph (1) does not apply to any agreement to refrain from continuing any proceedings referred to in sub-paragraph (b) of that paragraph made after the proceedings have been instituted.

### **Restrictions on contracting out: Part 8**

**37.—**(1) Any provision in any agreement (whether an employee's contract or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of Part 8 of these Regulations, or
- (b) to preclude a person from bringing any proceedings before an industrial tribunal under that Part.

(2) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing proceedings before an industrial tribunal where the Agency has taken action under [<sup>F3</sup>any of Articles 20A to 20C] of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation).

(3) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing before an industrial tribunal proceedings within Article 20(1)(s) of the Industrial Tribunals (Northern Ireland) Order 1996 (proceedings under these Regulations where conciliation is available) if the conditions regulating compromise agreements under these Regulations are satisfied in relation to the agreement.

(4) For the purposes of paragraph (3) the conditions regulating compromise agreements are as follows—

- (a) the agreement must be in writing;
  - (b) the agreement must relate to the particular proceedings;
  - (c) the employee must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on the ability of the employee to pursue the employee's rights before an industrial tribunal;
  - (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the employee in respect of loss arising in consequence of the advice;
  - (e) the agreement must identify the adviser;
  - (f) the agreement must state that the conditions in sub-paragraphs (a) to (e) are satisfied.
- (5) For the purposes of paragraph (4)(c) a “relevant independent adviser” is a person who is any of the following—
- (a) a qualified lawyer;
  - (b) an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and authorised to do so on behalf of the trade union;
  - (c) a person who works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and authorised to do so on behalf of the centre;
- but this is subject to paragraph (6).
- (6) A person is not a relevant independent adviser for the purposes of paragraph (4)(c) in relation to the employee in any of the following cases—
- (a) if the person is, is employed by, or is acting in the matter for, the employer or an associated employer;
  - (b) in the case of a person within paragraph (5)(b) or (c), if the trade union or advice centre is the employer or an associated employer;
  - (c) in the case of a person within paragraph (5)(c), if the employee makes a payment for the advice received.
- (7) In paragraph (5)(a) “qualified lawyer” means—
- (a) a barrister (whether in practice as such or employed to give legal advice), or
  - (b) a solicitor who holds a practising certificate.
- (8) For the purposes of paragraph (6) any two employers are “associated” if—
- (a) one is a company of which the other (directly or indirectly) has control, or
  - (b) both are companies of which a third person (directly or indirectly) has control,
- and “associated employer” is to be construed accordingly.

#### Textual Amendments

- F3** Words in [reg. 37\(2\)](#) substituted (27.1.2020) by [The Industrial Tribunals \(1996 Order\) \(Application of Conciliation Provisions\) Order \(Northern Ireland\) 2020 \(S.R. 2020/4\)](#), art. 1, [Sch. para. 49](#)

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

**38.** In the Transnational Information and Consultation of Employees Regulations 1999 <sup>M1</sup>, for regulation 46A substitute—

“**46A.**—(1) These regulations do not apply to an SE that is—

- (a) a Community-scale undertaking, or
- (b) a controlling undertaking of a Community-scale group of undertakings,

except where the special negotiating body has taken the decision referred to in regulation 17 of the European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (decision not to open, or to terminate, negotiations)(S.I.2009/2402) or, as the case may be, regulation 17 of the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009(S.I.2009/2401).

(2) In this regulation an “SE” means a company established in accordance with the European Public Limited-Liability Company Regulations 2004(S.I.2004/2326 <sup>M2</sup>).”.

#### Marginal Citations

- M1** S.I. 1999/3323, as amended. Regulation 46A was inserted by regulation 51 of S.R. 2004 No.417.  
**M2** S.I. 2004/2326 was amended by S.I. 2009/2400.

#### Existing employee involvement rights

**39.**—(1) Nothing in these Regulations affects involvement rights of employees of an SE [<sup>F4</sup>or a UK Societas, or their] subsidiaries or establishments provided for by law or practice in the [<sup>F5</sup>Relevant State] in which they were employed immediately prior to the registration of the SE [<sup>F6</sup>(including an SE which converted to a UK Societas on IP completion day)].

(2) Paragraph (1) does not apply to rights to participation.

[<sup>F7</sup>(2A) In this regulation “participation” means the influence of the representative body and the employees' representatives in the SE or the UK Societas by way of the right to—

- (a) elect or appoint some of the members of the SE or the UK Societas's supervisory or administrative organ, or
- (b) recommend or oppose the appointment of some or all of the members of the SE or the UK Societas's supervisory or administrative organ.]

#### Textual Amendments

- F4** Words in [reg. 39\(1\)](#) substituted (31.12.2020) by [The European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1298), [regs. 1, 81\(a\)\(i\)](#) (with [regs. 153-159A](#)) (as amended by [S.I. 2019/685](#), [Sch. 3 paras. 16, 17](#) and [S.I. 2020/523](#), [regs. 1\(2\), 5\(k\)-\(n\)](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)
- F5** Words in [reg. 39\(1\)](#) substituted (31.12.2020) by [The European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1298), [regs. 1, 81\(a\)\(ii\)](#) (with [regs. 153-159A](#)) (as amended by [S.I. 2019/685](#), [Sch. 3 paras. 16, 17](#) and [S.I. 2020/523](#), [regs. 1\(2\), 5\(k\)-\(n\)](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)
- F6** Words in [reg. 39\(1\)](#) inserted (31.12.2020) by [The European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1298), [regs. 1, 81\(a\)\(iii\)](#) (with [regs. 153-159A](#)) (as amended by [S.I. 2019/685](#), [Sch. 3 paras. 16, 17](#) and [S.I. 2020/523](#), [regs. 1\(2\), 3, 5\(k\)-\(n\)](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)
- F7** [Reg. 39\(2A\)](#) inserted (31.12.2020) by [The European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1298), [regs. 1, 81\(b\)](#) (with [regs. 153-159A](#)) (as amended

---

**Changes to legislation:** There are currently no known outstanding effects for the The European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009, PART 9. (See end of Document for details)

---

by S.I. 2019/685, Sch. 3 paras. 16, 17 and S.I. 2020/523, regs. 1(2), 5(k)-(n)); 2020 c. 1, Sch. 5 para. 1(1)

**Changes to legislation:**

There are currently no known outstanding effects for the The European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009, PART 9.