Draft Order laid before Parliament under section 42 of the Employment Relations Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No.

TERMS AND CONDITIONS OF EMPLOYMENT

The Information and Consultation of Employees Regulations 2004

Made - - - -	*2005*
Laid before Parliament	*2004*
Coming into force - -	*6th April 2005*

Whereas a draft of these Regulations was laid before Parliament in accordance with section 42 of the Employment Relations Act 2004(**1**) and approved by resolution of each House of Parliament.

Now, therefore, the Secretary of State, in exercise of the powers conferred on her by section 42 of that Act, hereby make the following Regulations:

PART 1

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Information and Consultation of Employees Regulations 2004 and shall come into force on 6th April 2005.

(2) These Regulations extend to Great Britain.

Interpretation

2. In these Regulations—

"the 1996 Act" means the Employment Rights Act 1996(**2**);

"Appeal Tribunal" means the Employment Appeal Tribunal;

(**1**) 2004 c. 24.
(**2**) 1996 c. 18.

"CAC" means the Central Arbitration Committee;

"consultation" means the exchange of views and establishment of a dialogue between—

(a) information and consultation representatives and the employer; or

(b) in the case of a negotiated agreement which provides as mentioned in regulation 16(1)(f)(ii), the employees and the employer;

"contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

"date of the ballot" means the day or last day on which voting may take place and, where voting in different parts of the ballot is arranged to take place on different days or during periods ending on different days, the last of those days;

"employee" means an individual who has entered into or works under a contract of employment and in Part VIII and regulation 40 includes, where the employment has ceased, an individual who worked under a contract of employment;

"employee request" means a request by employees under regulation 7 for the employer to initiate negotiations to reach an agreement under these Regulations;

"employer notification" means a notification by an employer under regulation 11 that he wishes to initiate negotiations to reach an agreement under these Regulations;

"information" means data transmitted by the employer—

(a) to the information and consultation representatives; or

(b) in the case of a negotiated agreement which provides as mentioned in regulation 16(1)(f)(ii), directly to the employees,

in order to enable those representatives or those employees to examine and to acquaint themselves with the subject matter of the data;

"Information and Consultation Directive" means European Parliament and Council Directive 2002/14/EC of 11 March 2002(**3**) establishing a general framework for informing and consulting employees in the European Community;

"information and consultation representative" means—

(a) in the case of a negotiated agreement which provides as mentioned in regulation 16(1)(f)(i), a person appointed or elected in accordance with that agreement; or

(b) a person elected in accordance with regulation 19(1);

"negotiated agreement" means—

(a) an agreement between the employer and the negotiating representatives reached through negotiations as provided for in regulation 14 which satisfies the requirements of regulation 16(1); or

(b) an agreement between the employer and the information and consultation representatives referred to in regulation 18(2);

"negotiating representative" means a person elected or appointed pursuant to regulation 14(1)(a);

"parties" means the employer and the negotiating representatives or the information and consultation representatives, as the case may be;

"pre-existing agreement" means an agreement between an employer and his employees or their representatives which—

(a) is made prior to the making of an employee request; and

(**3**) OJ L 80, 23.3.2002, P29.

(b) satisfies the conditions set out in regulation 8(1)(a) to (d),

but does not include an agreement concluded in accordance with regulations 17 or 42 to 45 of the Transnational Information and Consultation of Employees Regulations 1999(**4**) or a negotiated agreement;

"standard information and consultation provisions" means the provisions set out in regulation 20;

"undertaking" means a public or private undertaking carrying out an economic activity, whether or not operating for gain;

"valid employee request" means an employee request made to their employer by the employees of an undertaking to which these Regulations apply (under regulation 3) that satisfies the requirements of regulation 7 and is not prevented from being valid by regulation 12.

Application

3.—(1) These Regulations apply to undertakings—

(a) employing in the United Kingdom, in accordance with the calculation in regulation 4, at least the number of employees in column 1 of the table in Schedule 1 to these Regulations on or after the corresponding date in column 2 of that table; and

(b) subject to paragraph (2), whose registered office, head office or principal place of business is situated in Great Britain.

(2) Where the registered office is situated in Great Britain and the head office or principal place of business is situated in Northern Ireland or vice versa, these Regulations shall only apply where the majority of employees are employed to work in Great Britain.

(3) In these Regulations, an undertaking to which these Regulations apply is referred to, in relation to its employees, as "the employer".

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,

(**4**) S.I.1999/3323.

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.

Entitlement to data

5.—(1) An employee or an employees' representative may request data from the employer for the purpose of determining the number of people employed by the employer's undertaking in the United Kingdom.

(2) Any request for data made under paragraph (1) must be in writing and be dated.

(3) The employer must provide the employee or the employees' representative who made the request with data to enable him to—

(a) make the calculation of the numbers of employees referred to in regulation 4, and

(b) determine, for the purpose of regulation 7(2), what number of employees constitutes 10% of the employees in the undertaking.

Complaint of failure to provide data

6.—(1) An employee or an employees' representative who has requested data under regulation 5 may present a complaint to the CAC that—

(a) the employer has failed to provide the data referred to in regulation 5(3); or

(b) the data which has been provided by the employer is false or incomplete in a material particular.

(2) Where the CAC finds the complaint to be well-founded it shall make an order requiring the employer to disclose data to the complainant which order shall specify—

(a) the data in respect of which the CAC finds that the complaint is well-founded and which is to be disclosed to the complainant;

(b) the date (or if more than one, the earliest date) on which the employer refused or failed to disclose data, or disclosed false or incomplete information;

(c) a date, not being less than one week from the date of the order, by which the employer must disclose the data specified in the order.

(3) The CAC shall not consider a complaint presented under this regulation unless it is made after the expiry of a period of one month beginning on the date on which the complainant made his request for data under regulation 5.

PART III

NEGOTIATED AGREEMENTS

Employee request to negotiate an agreement in respect of information and consultation

7.—(1) On receipt of a valid employee request, the employer shall, subject to paragraphs (8) and (9), initiate negotiations by taking the steps set out in regulation 14(1).

(2) Subject to paragraph (3), an employee request is not a valid employee request unless it consists of—

(a) a single request made by at least 10% of the employees in the undertaking; or

(b) a number of separate requests made on the same or different days by employees which when taken together mean that at least 10% of the employees in that undertaking have made requests, provided that the requests are made within a period of six months.

(3) Where the figure of 10% in paragraph (2) would result in less than 15 or more than 2,500 employees being required in order for a valid employee request to be made, that paragraph shall have effect as if, for the figure of 10%, there were substituted the figure of 15, or as the case may be, 2,500.

(4) An employee request is not a valid employee request unless the single request referred to in paragraph (2)(a) or each separate request referred to in paragraph (2)(b)—

(a) is in writing;

(b) is sent to—

(i) the registered office, head office or principal place of business of the employer; or

(ii) the CAC; and

(c) specifies the names of the employees making it and the date on which it is sent.

(5) Where a request is sent to the CAC under paragraph (4)(b)(ii), the CAC shall—

(a) notify the employer that the request has been made as soon as reasonably practicable;

(b) request from the employer such information as it needs to verify the number and names of the employees who have made the request; and

(c) inform the employer and the employees who have made the request how many employees have made the request on the basis of the information provided by the employees and the employer.

(6) Where the CAC requests information from the employer under paragraph (5)(b), the employer shall provide the information requested as soon as reasonably practicable.

(7) The date on which an employee request is made is—

(a) where the request consists of a single request satisfying paragraph (2)(a) or of separate requests made on the same day satisfying paragraph (2)(b), the date on which the request is or requests are sent to the employer by the employees or the date on which the CAC informs the employer and the employees in accordance with paragraph (5)(c) of how many employees have made the request; and

(b) where the request consists of separate requests made on different days, the date on which—

(i) the request which results in paragraph (2)(b) being satisfied is sent to the employer by the employees; or

(ii) the CAC informs the employer and the employees in accordance with paragraph (5)(c) of how many employees have made the request where that request results in paragraph (2)(b) being satisfied.

(8) If the employer decides to hold a ballot under regulation 8 or 9, the employer shall not be required to initiate negotiations unless and until the outcome of the ballot is that in regulation 8(5)(b).

(9) If an application is made to the CAC under regulation 13, the employer shall not be required to initiate negotiations unless and until if the CAC declares that there was a valid employee request or that the employer's notification was valid.

Pre-existing agreements: ballot for endorsement of employee request

8.—(1) Subject to regulation 9, this regulation applies where a valid employee request has been made under regulation 7 by fewer than 40% of employees employed in the undertaking on the date that request was made and where there exists one or more pre-existing agreements which—