STATUTORY RULES OF NORTHERN IRELAND

2004 No. 417

EUROPEAN COMMUNITIES

The European Public Limited-Liability Company Regulations (Northern Ireland) 2004

Made - - - -	*1st October 2004*
Coming into operation	*8th October 2004*

The Department of Enterprise, Trade and Investment and the Department for Employment and Learning, being Departments designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to the registration, operation and regulation of European public limited liability companies, and in relation to measures relating to the information and consultation of employees, acting jointly in exercise of the powers conferred on them by the said section 2(2) and of every other power enabling them in that behalf, hereby make the following Regulations:

PART I

GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the European Public Limited-Liability Company Regulations (Northern Ireland) 2004.

(2) These Regulations come into operation on 8th October 2004.

EC Directive and EC Regulation

2. In these Regulations –

"the EC Directive" means Council Directive 2001/86/EC(**3**) of 8 October 2001 supplementing the Statute for a European Company with regard to the involvement of employees;

(**1**) S.I. 2003/2901 and S.I. 1999/2788
(**2**) 1972 c. 68: as amended by the European Economic Area Act 1989 (c. 40)
(**3**) O.J. L294, 10.11.2001, p. 22

"the EC Regulation" means Council Regulation 2157/2001/EC(**4**) of 8 October 2001 on the Statute for a European Company;

and references to numbered Articles are, unless otherwise specified, references to Articles in the EC Regulation.

Interpretation

3.—(1) In these Regulations –

the "1986 Order" means the Companies (Northern Ireland) Order 1986(**5**);

the "1996 Order" means the Employment Rights (Northern Ireland) Order 1996(**6**);

"SE" means a European Public Limited–Liability Company (or Societas Europaea) within the meaning of the EC Regulation and, except as provided in these Regulations, means an SE which is to be, or is, registered in Northern Ireland.

(2) Words and expressions listed in the index of defined expressions in Article 2A(**7**) of the 1986 Order have the same meaning as they have in that Order.

(3) Words and expressions which are used in the EC Regulation or the EC Directive have the same meaning as they have in that Regulation or Directive.

(4) Where a word or expression is both listed in the index of defined expressions referred to in paragraph (2) and used in the EC Regulation or the EC Directive, it has the meaning it has in that Regulation or Directive.

(5) The Interpretation Act (Northern Ireland) 1954(**8**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

PART II

REGISTRATION OF SEs AND THE REGISTRAR ETC.

The registrar

4. The registrar has the functions conferred by this Part in relation to the registration, or the deletion of the registration, of an SE.

Registration of an SE formed by merger in accordance with Article 2(1)

5. Where it is proposed to register an SE formed by merger in accordance with Article 2(1) there shall be delivered to the registrar a registration form in Form SE5(NI) set out in Schedule 1 together with the documents specified in respect of that Form.

Registration of the formation of a holding SE in accordance with Article 2(2)

6. Where it is proposed to register a holding SE formed in accordance with Article 2(2) there shall be delivered to the registrar a registration form in Form SE6(NI) set out in Schedule 1 together with the documents specified in respect of that Form.

(**4**) O.J. L294, 10.11.2001, p. 1
(**5**) S.I. 1986/1032 (N.I. 6)
(**6**) S.I. 1996/1919 (N.I. 16)
(**7**) Article 2A was inserted by Article 78 of, and paragraph 1 of Schedule 5 to, the Companies (No. 2)(Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10))
(**8**) 1954 c. 33 (N.I.)

Registration of the formation of a subsidiary SE in accordance with Article 2(3)

7. Where it is proposed to register a subsidiary SE formed in accordance with Article 2(3) there shall be delivered to the registrar a registration form in Form SE7(NI) set out in Schedule 1 together with the documents specified in respect of that Form.

Registration of an SE by the transformation of a public company in accordance with Article 2(4)

8. Where it is proposed to register an SE by the transformation of a public company in accordance with Article 2(4) there shall be delivered to the registrar a registration form in Form SE8(NI) set out in Schedule 1 together with the documents specified in respect of that Form.

Registration of an SE formed as the subsidiary of an SE in accordance with Article 3(2)

9.—(1) Where it is proposed to register an SE formed as the subsidiary of an SE in accordance with Article 3(2) there shall be delivered to the registrar a registration form in Form SE9(1)(NI) set out in Schedule 1 together with the documents specified in respect of that Form.

(2) The reference to an SE, a subsidiary of which is to be registered under this regulation, includes a reference to an SE whose registered office is in another Member State.

Registration of an SE on the transfer of its registered office to Northern Ireland in accordance with Article 8

10. Where it is proposed to transfer to Northern Ireland the registered office of an SE whose registered office is situated in another Member State there shall be delivered to the registrar a registration form in respect of that SE in Form SE10(NI) set out in Schedule 1 together with the documents specified in respect of that Form.

Certificate of the competent authority under Article 8(8)

11. Where it is proposed to transfer the registered office of an SE from Northern Ireland to another Member State there shall be delivered to the Department for the purposes of applying for the issue of a certificate under Article 8(8), a transfer form in Form SE11(NI) set out in Schedule 1 together with the documents specified in that Form.

Registration of an SE

12. The registrar shall register an SE formed or transformed under the provisions of Articles 2 and 3 or an SE whose registered office is transferred to Northern Ireland under Article 8 where he is satisfied that all the requirements of these Regulations and the EC Regulation in respect of such formation, transformation or transfer of an SE, as the case may be, have been complied with in respect of that SE.

Documents sent to the registrar

13.—(1) The registrar shall retain any document delivered to him under any provision of these Regulations or the EC Regulation and such documents shall be treated as records kept by the registrar for the purposes of the 1986 Order in respect of the SE or the company to which they relate.

(2) For the purposes of this regulation documents delivered to the Department under regulation 11 shall be treated as documents delivered to the registrar on the deletion of the registration of the SE making the application under the regulation and the provisions of regulation 14 will apply accordingly.

Application of the 1986 Order to the registration of SEs

14. The provisions of the 1986 Order specified in Schedule 2 shall apply in respect of –

(a) the registration or the deletion of registration of SEs under these Regulations and the EC Regulation;

(b) the functions of the registrar in respect of such registrations or deletions.

Those provisions shall apply under this regulation subject to any limitations or qualifications specified in relation to each such provision in that Schedule.

False statements in documents sent to the registrar or the Department

15. Any person who makes a false statement –

(a) in any registration form sent to the registrar under regulations 5 to 10 and regulation 83;

(b) in any transfer form sent to the Department under regulation 11;

(c) in any document, specified in such a form; or

(d) in any other document required to be sent to the registrar under these Regulations,

which he knows to be false or does not believe to be true is liable, on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine, or to both, and on summary conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding the statutory maximum or to both.

PART III

EMPLOYEE INVOLVEMENT

CHAPTER 1

interpretation of part iii

Interpretation of Part III

16.—(1) In this Part –

"absolute majority vote" means a vote passed by a majority of the total membership of the special negotiating body where the members voting with that majority represent the majority of the employees of the participating companies and their concerned subsidiaries and establishments employed in the EEA states;

"the Agency" means the Labour Relations Agency;

"dismissed" and "dismissal", in relation to an employee, shall be construed in accordance with Part XI of the 1996 Order;

"EEA state" means a Member State, Norway, Iceland and Liechtenstein;

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

"employee involvement agreement" means an agreement reached between the special negotiating body and the competent organs of the participating companies governing the arrangements for the involvement of employees within the SE;

"employees' representatives" means –

(a) if the employees are of a description in respect of which an independent trade union is recognised by their employer for the purpose of collective bargaining, representatives of the trade union who normally take part as negotiators in the collective bargaining process, and

(b) any other employees of their employer who are elected or appointed as employee representatives to positions in which they are expected to receive, on behalf of the employees, information –

(i) which is relevant to the terms and conditions of employment of the employees, or

(ii) about the activities of the undertaking which may significantly affect the interests of the employees,

but excluding representatives who are expected to receive information relevant only to a specific aspect of the terms and conditions or interests of the employees, such as health and safety or collective redundancies;

"information and consultation representative" has the meaning given to it in regulation 28(5);

"participation" means the influence of the representative body and the employees' representatives in the SE or a participating company by way of the right to –

(a) elect or appoint some of the members of the SE's or the participating company's supervisory or administrative organ; or

(b) recommend and/or oppose the appointment of some or all of the members of the SE's or the participating company's supervisory or administrative organ;

"representative body" means the persons elected or appointed under the employee involvement agreement or under the standard rules on employee involvement;

"SE established by merger" means an SE established in accordance with Article 2(1);

"SE established by formation of a holding company or subsidiary company" means an SE established in accordance with Article 2(2) or 2(3), as the case may be;

"SE established by transformation" means an SE established in accordance with Article 2(4);

"standard rules on employee involvement" means the rules in Schedule 3;

"two thirds majority vote" means a vote passed by a majority of at least two thirds of the total membership of the special negotiating body where the members voting with that majority –

(a) represent at least two thirds of the employees of the participating companies and their concerned subsidiaries and establishments employed in the EEA states; and

(b) include members representing employees employed in at least two EEA states;

"UK employee" means an employee employed to work in the United Kingdom; and

"UK members of the special negotiating body" means members of the special negotiating body elected or appointed by UK employees.

(2) In this Part, the following terms have the meaning given by Article 2 of the EC Directive –

"participating companies"

"subsidiary"

"special negotiating body"

"involvement of employees"

"information"

"consultation"