

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3585 of 22nd February, 2007

B. 14/07

BILL

FOR

AN ACT to give effect to Council Regulation (EC) No. 1435/2003 of 22nd July 2003 on the Statute for a European Cooperative Society (SCE), to transpose into the law of Gibraltar Council Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees, and matters connected thereto.

ENACTED by the Legislature of Gibraltar.

PART I

PRELIMINARY AND INTERPRETATION

Title and commencement

1. This Act may be cited as the Cooperative Societies (SCE) Act 2007 and comes into operation on the day of publication.

Interpretation.

2.(1) In this Act and unless the context otherwise requires—

“concerned subsidiary or establishment” means a subsidiary or establishment of a participating legal entity which is proposed to become a subsidiary or establishment of the SCE upon its formation;

“consultation” means the establishment of dialogue and exchange of views between the body representative of the employees or the employees’ representatives and the competent organ of the SCE,

at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SCE;

“directive” means Council Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees;

“the EC Regulation” means Regulation (EC) No 1435/2003;

“employees’ representatives” means the employees’ representatives provided for by national law or practice;

“information” means the informing of the body representative of the employees or the employees’ representatives by the competent organ of the SCE on questions which concern the SCE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in Gibraltar at a time, in a manner and with a content which allows the employees’ representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SCE;

“involvement of employees” means any mechanism, including information, consultation and participation, through which employees’ representatives may exercise an influence on decisions to be taken within an undertaking;

“Member State” includes a reference to Gibraltar.

“Minister” means the Minister responsible for trade;

“participating legal entities” means companies, firms, cooperative societies or legal bodies directly participating in the establishing of an SCE;

“participation” means the influence of the body representative of the employees or the employees’ representatives in the affairs of a legal entity by way of–

- (a) the right to elect or appoint some of the members of the legal entity's supervisory or administrative organ; or
- (b) the right to recommend or oppose the appointment of some or all of the members of the legal entity's supervisory or administrative organ;

“representative body” means the body representative of the employees set up by the agreements referred to in section 4 or in accordance with the provisions of the Schedule with the purpose of informing and consulting the employees of an SCE and its subsidiaries and establishments situated in the Community and, where applicable, of exercising participation rights in relation to the SCE;

“SCE” means a cooperative society established in accordance with the EC Regulation;

“special negotiating body” means the body established in accordance with section 3 to negotiate with the competent organ of the participating legal entities regarding the establishment of arrangements for the involvement of employees within the SCE;

“subsidiary” of a participating legal entity or of an SCE means an undertaking over which that legal entity or SCE exercises a dominant influence defined in accordance with sub-section (2) and (3);

(2) For the purpose of subsection (1), the ability to exercise a dominant influence shall be presumed, without prejudice to proof to the contrary, when, in relation to another undertaking directly or indirectly an undertaking–

- (a) holds a majority of another undertaking's subscribed capital; or
- (b) controls a majority of the votes attached to that other undertaking's issued share capital; or
- (c) can appoint more than half of the members of that undertaking's administrative, management or supervisory body.

- (3) For the purposes of subsection (2)–
- (a) a controlling undertaking's rights as regards voting and appointment shall include the rights of any other controlled undertaking and those of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other controlled undertaking;
 - (b) an undertaking shall not be deemed to be a “controlling undertaking” with respect to another undertaking in which it has holdings where the former undertaking is a company referred to in Article 3 (5) (a) or (c) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings;
 - (c) a dominant influence shall not be presumed to be exercised solely by virtue of the fact that an office holder is exercising functions, according to law relating to liquidation, winding up, insolvency, cessation of payments, compositions or analogous proceedings;
 - (d) the law applicable in order to determine whether an undertaking is a “controlling undertaking” shall be the law of the Member State which governs that undertaking;
 - (e) where the law governing that undertaking is not that of a Member State, the law applicable shall be the law of the Member State within whose territory the representative of the undertaking or, in the absence of such a representative, the central management of the group undertaking which employs the greatest number of employees is situated; and
 - (f) where, in the case of a conflict of laws in the application of subsection (2), two or more undertakings from a group satisfy one or more of the criteria laid down in that subsection, the undertaking which satisfies the criterion laid down in paragraph (c) thereof shall be regarded as the controlling undertaking, without prejudice to proof that another undertaking is able to exercise a dominant influence.
- (4) Any word or expression used in this Act but not defined shall be construed in accordance with the Directive.

PART II

**NEGOTIATING PROCEDURE APPLICABLE TO SCEs
ESTABLISHED BY AT LEAST TWO LEGAL ENTITIES OR BY
TRANSFORMATION**

Creation of a special negotiating body.

3.(1) Where the management or administrative organs of participating legal entities draw up a plan for the establishment of an SCE, they shall, as soon as possible take the necessary steps, including—

- (a) providing information on the identity of the participating legal entities and subsidiaries or establishments; and
- (b) the number of their employees,

to start negotiations with the representatives of the employees of those legal entities on arrangements for the involvement of those employees in the SCE.

(2) For the purposes of subsection (1), the management or administrative organs of participating legal entities drawing up a plan for the establishment of an SCE shall create a special negotiating body representative of the employees of the participating legal entities and concerned subsidiaries or establishments in accordance with the following provisions—

- (a) when electing or appointing members of the special negotiating body, the management or administrative organs of participating legal entities drawing up a plan for the establishment of an SCE shall ensure that—
 - (i) such members are elected or appointed in proportion to the number of employees employed in each Member State by the participating legal entities and concerned subsidiaries or establishments, by allocating in respect of a Member State one seat per each portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together;

- (ii) in the case of an SCE formed by way of merger, there are such further additional members from each Member State as may be necessary in order to ensure that the special negotiating body includes at least one member representing each participating cooperative which is registered and has employees in that Member State and which it is proposed will cease to exist as a separate legal entity following the registration of the SCE, insofar as–
- (iii) the number of such additional members does not exceed 20 % of the number of members designated by virtue of paragraph (i);
- (iv) the composition of the special negotiating body does not entail a double representation of the employees concerned; and
- (iv) where the number of such cooperatives is higher than the number of additional seats available pursuant to the first subparagraph, these additional seats are allocated to cooperatives in different Member States by decreasing order of the number of employees they employ.

(3) The Minister may, by regulations–

- (a) determine the method to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed in their territories;
- (b) take steps to ensure that, as far as possible, such members shall include at least one member representing each participating legal entity with employees in Gibraltar, whilst not increasing the overall number of members and seeking to promote gender balance;
- (c) make provision for members of the special negotiating body to include representatives of trade unions whether or not they are employees of a participating legal entity or concerned subsidiary or establishment;

- (d) provide that employees in undertakings or establishments in which there are no employees' representatives through no fault of their own, have the right to elect or appoint members of the special negotiating body.

(4) The special negotiating body and the competent organs of the participating legal entities—

- (a) shall determine, by written agreement, arrangements for the involvement of employees within the SCE; and
- (b) shall inform the special negotiating body of the plan and the actual process of establishing the SCE, up to its registration.

(5) Subject to the provisions of this section, the following provisions apply to special negotiating bodies—

- (a) they shall take decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees;
- (b) each member shall have one vote. However, should the result of the negotiations lead to a reduction of participation rights, the majority required for a decision to approve such an agreement shall be the votes of two thirds of the members of the special negotiating body representing at least two thirds of the employees, including the votes of members representing employees employed in Gibraltar and at least one other Member State as follows—

- (i) in the case of an SCE to be established by way of merger, if participation covers at least 25 % of the overall number of employees of the participating cooperatives; or
- (ii) in the case of an SCE to be established by any other way, if participation covers at least 50 % of the overall number of employees of the participating legal entities.

(6) In this section, “reduction of participation rights” means a proportion of members of the organs of the SCE within the meaning of section 2, which

is lower than the highest proportion existing within the participating legal entities.

(7) For the purpose of the negotiations—

- (a) the special negotiating body may request experts of its choice to assist it with its work, who may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body, where appropriate to promote coherence and consistency at Community level; and
- (b) the special negotiating body may decide to inform the representatives of appropriate external organisations, including trade unions, of the start of the negotiations.

(8) The special negotiating body may decide by the majority set out in subsection (5) not to open negotiations or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in the Member States where the SCE has employees.

(9) Where a decision has been taken pursuant to subsection (8), it shall serve to stop the procedure intended to conclude the agreement referred to in section 4, and none of the provisions of the Schedule shall apply.

(10) The majority required to decide not to open or to terminate negotiations shall be the votes of two thirds of the members representing at least two thirds of the employees, including the votes of members representing employees employed in Gibraltar and at least one other Member State.

(11) In the case of an SCE established by way of transformation, subsections (8) to (10) shall not apply if there is participation in the cooperative to be transformed.

(12) The special negotiating body shall be reconvened at the written request of at least 10 % of the employees of the SCE, its subsidiaries and establishments, or their representatives, at the earliest two years after the decision in subsection (8), unless the parties agree to negotiations being reopened sooner. Where the special negotiating body decides to reopen negotiations with the management but no agreement is reached as a result of those negotiations, none of the provisions of the Schedule shall apply.

(12) Any expenses relating to the functioning of the special negotiating body and, in general, to negotiations shall be borne by the participating legal entities so as to enable the special negotiating body to carry out its task in an appropriate manner.

(13) The Minister may, by regulations, lay down budgetary rules regarding the operation of the special negotiating body.

Content of the agreement.

4.(1) The competent organs of the participating legal entities and the special negotiating body shall negotiate in a spirit of cooperation with a view to reaching an agreement on arrangements for the involvement of the employees within the SCE.

(2) Without prejudice to the autonomy of the parties, and subject to subsection (4) the agreement referred to in subsection (1) between the competent organs of the participating legal entities and the special negotiating body shall specify—

- (a) the scope of the agreement;
- (b) the composition, number of members and allocation of seats on the representative body which will be the discussion partner of the competent organ of the SCE in connection with arrangements for the information and consultation of the employees of the SCE and its subsidiaries and establishments;
- (c) the functions and the procedure for the information and consultation of the representative body;
- (d) the frequency of meetings of the representative body;
- (e) the financial and material resources to be allocated to the representative body;
- (f) where, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;

- (g) where, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SCE's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights;
- (h) the date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated and the procedure for its renegotiation, including, where appropriate, in the event of structural changes in the SCE and its subsidiaries and establishments which occur after the creation of the SCE.

(3) The agreement referred to in subsection (1) shall not, unless provision is made otherwise therein, be subject to the standard rules referred to in the Schedule.

(4) Without prejudice to section 15, in the case of an SCE established by means of transformation, the agreement referred to in subsection (1) shall provide for at least the same level of all elements of employee involvement as the ones existing within the cooperative to be transformed into an SCE.

(5) The agreement referred to in subsection (1) may specify the arrangements for the entitlement of employees to participate in the general meetings or in the section or sectorial meetings in accordance with section 9 and Article 59(4) of Regulation (EC) No 1435/2003.

Duration of negotiations.

5.(1) Negotiations on arrangements for the involvement of the employees within the SCE shall commence as soon as the special negotiating body is established and may continue for six months thereafter.

(2) The parties may decide, by joint agreement, to extend negotiations beyond the period referred to in subsection (1) up to a total of one year from the establishment of the special negotiating body.

Legislation applicable to the negotiation procedure.

6. The legislation applicable to the negotiation procedure provided for in sections 3, 4 and 5 shall be the law of Gibraltar where the registered office of the SCE is situated in Gibraltar.

Standard rules.

7.(1) The Minister may, by regulations, provide for standard rules on employee involvement in accordance with the provisions set out in the Schedule.

(2) The standard rules referred to above shall apply to SCE's having their registered office in Gibraltar and only as from the date of the registration of the SCE where either—

- (a) the parties so agree; or
- (b) by the deadline laid down in section 5, no agreement has been concluded; and—
 - (i) the competent organ of each of the participating legal entities decides to accept the application of the standard rules in relation to the SCE and so to continue with its registration of the SCE, and
 - (ii) the special negotiating body has not taken the decision provided in section 3.

(2) The standard rules made in accordance with Part 3 of the Schedule shall apply only—

- (a) in the case of an SCE established by transformation, where the standard rules relating to employee participation in the administrative or supervisory body apply to a cooperative transformed into an SCE;
- (b) in the case of an SCE established by merger—
 - (i) where, before registration of the SCE, one or more forms of participation applied in one or more of the

participating cooperatives covering at least 25 % of the total number of employees employed by them; or

- (ii) where, before registration of the SCE, one or more forms of participation applied in one or more of the participating cooperatives covering less than 25 % of the total number of employees employed by them and if the special negotiating body so decides;

(c) in the case of an SCE established by any other way—

- (i) where, before registration of the SCE, one or more forms of participation applied in one or more of the participating legal entities covering at least 50 % of the total number of employees employed by them; or
- (ii) where, before registration of the SCE, one or more forms of participation applied in one or more of the participating legal entities covering less than 50 % of the total number of employees employed by them and if the special negotiating body so decides;

(3) Where there was more than one form of participation within the various participating legal entities, the special negotiating body shall decide which of those forms must be established in the SCE. The Minister may, by regulations, provide for rules applicable in the absence of any decision on the matter for an SCE registered in their territory. The special negotiating body shall inform the competent organs of the participating legal entities of any decisions taken pursuant to this paragraph.

(4) The Minister may, by regulations, provide that the standard rules referred to in Part 3 of the Schedule shall not apply in the case provided for in subsection (2)(b).

PART III

**RULES APPLICABLE TO SCEs ESTABLISHED EXCLUSIVELY BY
NATURAL PERSONS OR BY A SINGLE LEGAL ENTITY AND
NATURAL PERSONS**

**SCEs established exclusively by natural persons or by a single legal
entity and natural persons.**

8.(1) Where an SCE is established exclusively by natural persons or by a single legal entity and natural persons, which together employ at least 50 employees in Gibraltar and at least one other Member State, sections 3 to 7 shall apply.

(2) Where an SCE is established exclusively by natural persons or by a single legal entity and natural persons, which together employ fewer than 50 employees, or employ 50 or more employees in Gibraltar and no other Member State, employee involvement shall be governed by the following provisions—

- (a) as respects the SCE itself, the provisions of Gibraltar law applicable to like entities shall apply, where the SCE has its registered office in Gibraltar;
- (b) as respects the SCE's subsidiaries and establishments, the provisions of the Gibraltar law applicable to like entities shall apply where the subsidiaries are established in Gibraltar; and
- (c) where an SCE governed by participation transfers its registered office from one Member State to Gibraltar, at least the same level of employee participation rights shall continue to apply.

(3) Where, after the registration of an SCE referred to in subsection (2), at least one third of the total number of employees of the SCE and its subsidiaries and establishments in Gibraltar and at least one other Member State so requests, or if the total number of employees reaches or exceeds 50 employees in Gibraltar and at least one other Member State, the provisions of sections (3) to (7) shall be applied subject to the amendments that the words "participating legal entities" and "concerned subsidiaries or

establishments" are substituted by the words "SCE" and "subsidiaries or establishments of the SCE" respectively.

PART IV

PARTICIPATION IN THE GENERAL MEETING OR SECTION OR SECTORIAL MEETING

Participation in meetings.

9. Subject to the limits laid down in Article 59(4) of Regulation (EC) No 1435/2003, the employees of the SCE or their representatives shall be entitled to participate in a general meeting or, if it exists, in the section or sectorial meeting, with the right to vote, in the following circumstances—

- (a) when the parties so decide in the agreement referred to in section 4;
- (b) when a cooperative governed by such a system transforms itself into an SCE; or
- (c) when, in the case of an SCE established by means other than transformation, a participating cooperative was governed by such a system; and—
 - (i) the parties cannot reach agreement, as referred to in section 4, by the deadline laid down in section 5; and
 - (ii) section 7(1)(b) and Part 3 of the Schedule apply; and
 - (iii) the participating cooperative governed by such a system has the highest proportion of participation, within the meaning of section 2(k), in force in the participating cooperatives concerned before registration of the SCE.

PART V

MISCELLANEOUS PROVISIONS

Reservation and confidentiality.

10.(1) The Minister may, by regulations, provide that—

- (a) members of the special negotiating body or the representative body, and experts who assist them; or
- (b) employees' representatives in the context of an information and consultation procedure,

are not authorised to reveal any information which has been given to them in confidence, wherever such persons may be, even after the expiry of their terms of office.

(2) The Minister may, by regulations, provide, in specific cases and under such conditions and limits as he may see fit—

- (a) that the supervisory or administrative organ of an SCE or of a participating legal entity established in its territory is not obliged to transmit information where its nature is such that, according to objective criteria, to do so would seriously harm the functioning of the SCE (or, as the case may be, a participating legal entity) or its subsidiaries and establishments or would be prejudicial to them;
- (b) that the exemption set out in paragraph (a) be subject to prior authorisation by the Minister or such other person as he may see fit to appoint for the purpose.

(3) The Minister may make regulations providing for administrative or judicial appeal procedures employees' representatives may initiate when, contrary to the provisions of this Act, the supervisory or administrative organ of an SCE or of a participating legal entity demands confidentiality or does not give information, including arrangements designed to protect the confidentiality of the information in question.

Operation of the representative body and procedure for the information and consultation of employees.

11.(1) The competent organ of the SCE and the representative body shall work together in a spirit of cooperation with due regard for their reciprocal rights and obligations.

(2) Subsection (1) shall apply to cooperation as between the supervisory or administrative organ of the SCE and the employees' representatives in conjunction with a procedure for the information and consultation of employees.

Protection of employees' representatives.

12.(1) In the exercise of their functions, the categories of persons set out in subsection (3) shall enjoy the same protection and guarantees provided in the Employment Act in respect of employees' membership of, or participation in, trade unions.

(2) In particular, subsection (1) shall apply to attendance at meetings of the special negotiating body or representative body, any other meeting under the agreement referred to in section 4 or any meeting of the administrative or supervisory organ, and to the payment of wages for members employed by a participating legal entity or the SCE or its subsidiaries or establishments during a period of absence necessary for the performance of their duties.

(3) The categories of persons referred to in subsection (1) are—

- (a) members of the special negotiating body;
- (b) members of the representative body;
- (c) any employees' representatives exercising functions under the information and consultation procedure; and
- (d) any employees' representatives in the supervisory or administrative organ of an SCE who are employees of the SCE, its subsidiaries or establishments or of a participating legal entity.

Misuse of procedures.

13. The Minister may make regulations with a view to preventing the misuse of an SCE for the purpose of depriving employees of rights to employee involvement or withholding such rights.

Offences.

14.(1) It shall be an offence for—

- (a) the management of establishments of an SCE and the supervisory or administrative organs of subsidiaries and of participating legal entities which are situated in Gibraltar; and
- (b) the employees' representatives or, as the case may be, the employees themselves,

to be responsible for any act or omission contrary to the provisions of this Act, whether or not the SCE has its registered office in Gibraltar.

(2) A person guilty of an offence contrary to subsection (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Link between this Act and other provisions.

15.(1) Where an SCE is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the meaning of the Employment (European Works Council) Regulations 2006 the provisions of this Act shall not apply to them or to their subsidiaries.

(2) Notwithstanding subsection (1), where the special negotiating body decides in accordance with section 3 not to open negotiations or to terminate negotiations already opened, the Employment (European Works Council) Regulations 2006 shall apply.

(3) Nothing in this Act shall prejudice the existing rights to involvement of employees as enjoyed by employees of the SCE and its subsidiaries and establishments, other than participation in the bodies of the SCE.

(4) In order to preserve the rights referred to in subsection (3), the Minister may make regulations guaranteeing the structures of employee

representation in participating legal entities which will cease to exist as separate legal entities are maintained after the registration of the SCE.

PART VI

THE EC REGULATION

Competent authority.

16. The competent authority responsible for the execution of the EC Regulation shall be the Registrar of Companies.

Register.

17.(1) The register designated for the purposes of article 11 of the EC Regulation shall be maintained by the competent authority in such form, in such place, and subject to such conditions as the Minister may prescribe.

(2) Without prejudice to the generality of the foregoing, regulations made under subsection (1) may make such provision for fees as the Minister may deem appropriate.

Publication of documents.

18. The publication of documents for all purposes connected with the operation of article 12(1) of the EC regulation shall be by way of advertisement in the Gazette.

Winding Up.

19.(1) The Supreme Court shall have the power to wind up SCE's in accordance with article 73 of the EC Regulation.

(2) The appropriate measures referred to in article 73(2) of the EC Regulation shall include the imposition of cumulative daily fines equivalent to level 3 on the standard scale. Where an SCE persistently fails to regularise its position in accordance with article 73(3) the competent authority shall take steps to wind up the SCE.

(3) Pursuant to article 73(4) of the EC Regulation, an SCE aggrieved by any act of the competent authority in accordance with subsection (2) may

appeal to the Supreme Court on a point of law. The act of the competent authority in question shall not have effect pending resolution of the appeal.

SCHEDULE

Sections 7 and 8

STANDARD RULES

Part 1: Composition of the body representative of the employees.

In the cases referred to in section 7, a representative body shall be set up in accordance with the following rules.

(1) The representative body shall be composed of employees of the SCE and its subsidiaries and establishments elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.

(2) The election or appointment of members of the representative body shall be carried out in accordance with such regulations as the Minister may make from time to time.

(3) The Minister may make rules to ensure that the number of members of, and allocation of seats on, the representative body shall be adapted to take account of changes occurring within the SCE and its subsidiaries and establishments. The methods used to nominate, appoint or elect employee representatives should seek to promote gender balance.

(4) Where its size so warrants, the representative body shall elect a select committee from among its members, comprising at most three members.

(5) The representative body shall adopt its rules of procedure.

(6) The members of the representative body are elected or appointed in proportion to the number of employees employed in each Member State by the SCE and its subsidiaries or establishments, by allocating in respect of a Member State one seat per each portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed by them in all the Member States taken together.

(7) The competent organ of the SCE shall be informed of the composition of the representative body.

(8) Not later than four years after its establishment, the representative body shall examine whether to open negotiations for the conclusion of the agreement referred to in sections 4 and 7 or to continue to apply the standard rules adopted in accordance with this Schedule.

(9) Section 3 and sections 4, 5 and 6 shall apply, *mutatis mutandis*, if a decision has been taken to negotiate an agreement according to section 4, in which case the term “special negotiating body” shall be replaced by “representative body”. Where, by the deadline by which the negotiations come to an end, no agreement has been concluded, the arrangements initially adopted in accordance with the standard rules shall continue to apply.

Part 2: Standard rules for information and consultation.

The competence and powers of the representative body set up in an SCE shall be governed by the following rules.

(1) The competence of the representative body shall be limited to questions which concern the SCE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State.

(2) Without prejudice to meetings held pursuant to paragraph (3), the representative body shall have the right to be informed and consulted and, for that purpose, to meet with the competent organ of the SCE at least once a year, on the basis of regular reports drawn up by the competent organ, on the progress of the business of the SCE and its prospects. The local managements shall be informed accordingly.

(3) The competent organ of the SCE shall provide the representative body with the agenda for meetings of the administrative, or, where appropriate, the management and supervisory organ, and with copies of all documents submitted to the general meeting of its members.

(4) The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, initiatives with regard to corporate social responsibility, the situation and probable trend of employment, investments, and substantial changes concerning organisation, the introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

(5) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies, the representative body shall have the right to be informed. The representative body or, where it so decides, in particular for reasons of urgency, the select committee, shall have the right to meet at its request, the competent organ of the SCE or any more appropriate level of management within the SCE having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

(6) Where the competent organ decides not to act in accordance with the opinion expressed by the representative body, this body shall have the right to a further meeting with the competent organ of the SCE with a view to seeking agreement.

(7) In the case of a meeting organised with the select committee, those members of the representative body who represent employees who are directly concerned by the measures in question shall also have the right to participate.

(8) The meetings referred to above shall not affect the prerogatives of the competent organ.

(9) The Minister may make rules on the chairing of information and consultation meetings.

(10) Before any meeting with the competent organ of the SCE, the representative body or the select committee, where necessary enlarged in accordance this Schedule, shall be entitled to meet without the representatives of the competent organ being present.

(11) Without prejudice to section 10, the members of the representative body shall inform the representatives of the employees of the SCE and of its subsidiaries and establishments of the content and outcome of the information and consultation procedures.

(12) The representative body or the select committee may be assisted by experts of its choice.

(13) In so far as this is necessary for the fulfilment of their tasks, the members of the representative body shall be entitled to time off for training without loss of wages.

(14) The costs of the representative body shall be borne by the SCE, which shall provide the body's members with the financial and material resources needed to enable them to perform their duties in an appropriate manner.

(15) In particular, the SCE shall, unless otherwise agreed, bear the cost of organising meetings and providing interpretation facilities and the accommodation and travelling expenses of members of the representative body and the select committee.

(16) In compliance with these principles, the Minister may lay down budgetary rules regarding the operation of the representative body,

Part 3: Standard rules for participation.

Employee participation in an SCE shall be governed by the following provisions.

(1) In the case of an SCE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SCE. Paragraph (2) shall apply *mutatis mutandis* to that end.

(2) In other cases where an SCE is established, the employees of the SCE, its subsidiaries and establishments or their representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SCE equal to the highest proportion in force in the participating companies concerned before registration of the SCE.

(3) If none of the participating legal entities was governed by participation rules before registration of the SCE, the latter shall not be required to establish provisions for employee participation.

(4) The representative body shall decide on the allocation of seats within the administrative or supervisory body among the members representing the employees from the various Member States or on the way in which the SCE's employees may recommend or oppose the appointment of the

members of these bodies according to the proportion of the SCE's employees in each Member State. If the employees of one or more Member States are not covered by this proportional criterion, the representative body shall appoint a member from one of those Member States, in particular the Member State of the SCE's registered office where that is appropriate. Each Member State may determine the allocation of the seats it is given within the administrative or supervisory body.

(5) Every member of the administrative body or, where appropriate, the supervisory body of the SCE who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees shall be a full member with the same rights and obligations as the members representing the members of the cooperative, including the right to vote.

EXPLANATORY MEMORANDUM

This Bill gives effect to Council Regulation (EC) No. 1435/2003 of 22nd July 2003 (on the Statute for a European Cooperative Society ("SCE")) (O.J. L.207, 18.8.2003) ("the EC Regulation") in Gibraltar. The Bill also transposes Council Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.

Cooperatives in Gibraltar are a corporate form normally registered under the Cooperative Societies Act. They are run by their members and operate for their benefit.

The EC Regulation establishes the European Cooperative Society or "SCE". The SCE is part of the European Council's proposals aimed at promoting cross-border business among various corporate forms while preserving their distinctive features and actively seeks to provide for the involvement of employees. The SCE parallels the proposal for the European Company (which came into force in 2004) but the SCE proposal has been tailored to the specific characteristics of cooperative societies.

SCEs need to have a minimum share capital of €30,000. The use of the SCE form is entirely voluntary. The SCE does not replace existing national or regional cooperatives.

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