

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

1932-16

Revoked
Subsidiary
2006/026

Regulations made under s. 86(1)(g).

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

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(LN. 2006/026)

16.3.2006

Amending enactments

Relevant current
provisions

Commencement
date

EU Legislation/International Agreements involved:

Directive 94/45/EC

Directive 97/74/EC

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

ARRANGEMENT OF REGULATIONS.

Regulation

PART I GENERAL

1. Title.
2. Interpretation.
3. Controlled and Controlling Undertaking.
4. Circumstances in which provisions of these Regulations apply.
5. The central management.

PART II EMPLOYEE NUMBERS & REQUEST TO NEGOTIATE ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL OR INFORMATION AND CONSULTATION PROCEDURE

6. Calculation of numbers of employees.
7. Entitlement to information.
8. Complaint of failure to provide information.
9. Request to negotiate an agreement for a European Works Council or information and consultation procedure.
10. Dispute as to whether valid request made or whether obligation in regulation 9(1) applies.

PART III SPECIAL NEGOTIATING BODY

11. Functions of the special negotiating body.
12. Composition of the special negotiating body.
13. Ballot arrangements.
14. Conduct of ballot.
15. Consultative Committee.

PART IV EUROPEAN WORKS COUNCIL AND INFORMATION AND CONSULTATION PROCEDURE

16. Negotiation procedure.
17. Content and scope of a European Works Council agreement and information and consultation procedure.
18. Subsidiary requirements.
19. Cooperation.

PART V

Employment

1932-16

**EMPLOYMENT (EUROPEAN WORKS COUNCIL)
REGULATIONS 2006
COMPLIANCE AND ENFORCEMENT**

**Revoked
Subsidiary
2006/026**

20. Failure to establish European Works Council or information and consultation procedure.
21. Disputes about operation of European Works Council or information and consultation procedure.
22. Penalties.

**PART VI
CONFIDENTIAL INFORMATION**

23. Breach of statutory duty.
24. Withholding of information by central management.

**PART VII
PROTECTIONS FOR MEMBERS OF A EUROPEAN WORKS
COUNCIL, ETC.**

25. Right to time off for members of a European Works Council, etc.
26. Right to remuneration for time off under regulation 25.
27. Right to time off: complaints to Industrial Tribunal.
28. Unfair dismissal.
29. Detriment.
30. Detriment: enforcement and subsidiary provisions.

**PART VIII
MISCELLANEOUS**

The Industrial Tribunal

31. Industrial Tribunal: proceedings.

Restrictions on contracting out

32. Restrictions on contracting out.

**PART IX
EXCEPTIONS**

33. Merchant Navy.
34. Article 6 agreements.
35. Article 7 European Works Councils.
36. Article 3 agreements.
37. Article 13 agreements.
38. European public limited-liability companies.

PART X

1932-16

Revoked
Subsidiary
2006/026

Employment

**EMPLOYMENT (EUROPEAN WORKS COUNCIL)
REGULATIONS 2006
TRANSITIONAL PROVISIONS**

39. Transitional provisions: special negotiating body.
40. Transitional provisions: Article 7 European Works Councils.

**SCHEDULE
SUBSIDIARY REQUIREMENTS**

Employment

1932-16

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

Revoked
Subsidiary
2006/026

In exercise of the powers conferred on him by section 86(1)(g) of the Employment Act, and of all other enabling powers, the Minister with responsibility for employment has made the following Regulations for the purposes of transposing into the law of Gibraltar Council Directive 97/74/EC of 15 December 1997 extending Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

PART I GENERAL

Title.

1. These Regulations may be cited as the Employment (European Works Council) Regulations 2006.

Interpretation.

2.(1) In these Regulations—

“central management” means—

- (a) the central management of a Community-scale undertaking; or
- (b) in the case of a Community-scale group of undertakings, the central management of the controlling undertaking,

or, where appropriate, the central management of an undertaking or group of undertakings that could be or is claimed to be a Community-scale undertaking or Community-scale group of undertakings;

“Community-scale undertaking” means an undertaking with at least 1000 employees within the Member States and at least 150 employees in each of at least two Member States;

“Community-scale group of undertakings” means a group of undertakings which has—

- (a) at least 1000 employees within the Member States;
- (b) at least two group undertakings in different Member States; and
- (c) at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State;

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

“consultation” means the exchange of views and establishment of dialogue between members of a European Works Council in the context of a European Works Council, or information and consultation representatives in the context of an information and consultation procedure, and central management or any more appropriate level of management;

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

“controlled undertaking” has the meaning assigned to it by regulation 3;

“controlling undertaking” has the meaning assigned to it by regulation 3;

“employee” means an individual who has entered into or works under a contract of employment and in Part VII and regulation 32 includes, where the employment has ceased, an individual who worked under a contract of employment;

“employees representatives” means—

- (a) if the employees are of a description in respect of which a 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 employee representatives elected or appointed by employees 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;

“European Works Council “ means the council, established under and in accordance with—

Employment

1932-16

Revoked
Subsidiary
2006/026

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

- (a) regulation 17, or regulation 18 and the provisions of the Schedule; or
- (b) where appropriate, the provisions of the law or practice of a Member State other than Gibraltar which are designed to give effect to Article 6 of, or Article 7 of and the Annex to, the Transnational Information and Consultation Directive,

with the purpose of informing and consulting employees;

“Extension Directive” means Council Directive 97/74/EC of 15 December 1997 extending, to the United Kingdom, the Transnational Information and Consultation Directive;

“Gibraltar management” means the management which is, or would be, subject to the obligation in regulation 13(2) or paragraph 4(1) of the Schedule, being either the central management in Gibraltar or the local management in Gibraltar;

“Gibraltar member of the special negotiating body” means a member of the special negotiating body who represents Gibraltarian employees for the purposes of negotiating with central management an agreement for a European Works Council or an information and consultation procedure;

“group of undertakings” means a controlling undertaking and its controlled undertakings;

“group undertaking” means an undertaking which is part of a Community-scale group of undertakings;

“information and consultation procedure” means one or more information and consultation procedures agreed under–

- (a) regulation 17; or
- (b) where appropriate, the provisions of the law or practice of a Member State other than Gibraltar which are designed to give effect to Article 6(3) of the Transnational Information and Consultation Directive;

“information and consultation representative” means a person who represents employees in the context of an information and consultation procedure;

“local management” means the management of one or more establishments in a Community-scale undertaking or of one or

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

more undertakings in a Community-scale group of undertakings which is not the central management;

“Member State” means a state which is a Contracting Party to the Agreement on the European Economic Area, and includes a reference to Gibraltar;

“protected disclosure” means the disclosure of information which, in the reasonable belief of the employee making the disclosure, tends to show one or more of the following—

- (a) that a criminal offence has been committed, is being committed or is likely to be committed;
- (b) that a person has failed, or is failing or is likely to fail to comply with any legal obligation to which he is subject;
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) that the health or safety of any individual has been, is being or is likely to be endangered;
- (e) that the environment has been, or is likely to be damaged; or
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

The employee must make the disclosure in good faith, for reasons for other than personal gain and, in all the circumstances of the case, it must be reasonable for the employee to make the disclosure;

“special negotiating body” means the body established for the purposes of negotiating with central management an agreement for a European Works Council or an information and consultation procedure;

“trade union” has the same meaning as in the Trade Unions and Trade Disputes Act;

“Transnational Information and Consultation Directive” means Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees; and

**EMPLOYMENT (EUROPEAN WORKS COUNCIL)
REGULATIONS 2006**

(2) To the extent that the Transnational Information and Consultation Directive and the Extension Directive permit the establishment of more than one European Works Council in a Community-scale undertaking or Community-scale group of undertakings, these Regulations shall be construed accordingly.

(3) In sub-regulations (1) and (4) of this regulation and in regulations 6, 13 to 15 and paragraphs 3 to 5 of the Schedule, references to “Gibraltar employees” are references to employees who are employed in Gibraltar by a Community-scale undertaking or Community-scale group of undertakings.

(4) In regulations 13 and 15 and paragraphs 3 and 4 of the Schedule, references to “Gibraltar employees' representatives” are references to employees' representatives who represent Gibraltar employees.

(5) In the absence of a definition in these Regulations, words and expressions used in particular regulations and particular paragraphs of the Schedule to these Regulations which are also used in the provisions of the Transnational Information and Consultation Directive or the Extension Directive to which they are designed to give effect have the same meaning as they have in those provisions.

Controlled and Controlling Undertaking.

3.(1) In these Regulations “controlling undertaking” means an undertaking which can exercise a dominant influence over another undertaking by virtue, for example, of ownership, financial participation or the rules which govern it and “controlled undertaking” means an undertaking over which such a dominant influence can be exercised.

(2) The ability of an undertaking to exercise a dominant influence over another undertaking shall be presumed, unless the contrary is proved, when in relation to another undertaking it directly or indirectly—

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

(3) In applying the criteria in sub-regulation (2), a controlling undertaking's rights as regards voting and appointment shall include—

- (a) the rights of its other controlled undertakings; and

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

- (b) the rights of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other of the controlling undertaking's controlled undertakings.

(4) Notwithstanding sub-regulations (1) and (2) an undertaking shall not be a controlling undertaking of another undertaking in which it has holdings where the first 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.

(5) 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 the law of a Member State, relating to liquidation, winding-up, insolvency, cessation of payments, compositions of creditors or analogous proceedings.

(6) Where the law governing an undertaking is the law of a Member State, the law applicable in order to determine whether an undertaking is a controlling undertaking shall be the law of that Member State.

(7) Where the law governing an undertaking is not that of a Member State the law applicable shall be the law of the Member State within whose territory—

- (a) the representative of the undertaking is situated; or
- (b) in the absence of such a representative, the management of the group undertaking which employs the greatest number of employees is situated.

(8) If two or more undertakings (whether situated in the same or in different Member States) meet one or more of the criteria in sub-regulation (2) in relation to another undertaking, the criteria shall be applied in the order listed in relation to each of the first-mentioned undertakings and that which meets the criterion that is highest in the order listed shall be presumed, unless the contrary is proved, to exercise a dominant influence over the undertaking in question.

Circumstances in which provisions of these Regulations apply.

4.(1) Subject to sub-regulation (2) the provisions of regulations 7 to 32 shall apply in relation to a Community-scale undertaking or Community-scale group of undertakings where, in accordance with regulation 5, the central management is situated in Gibraltar.

(2) The following regulations shall apply in relation to a Community-scale undertaking or Community-scale group of undertakings whether or not the central management is situated in Gibraltar—

- (a) regulations 7 and 8(1), (2) and (4) (provision of information on employee numbers);
- (b) regulations 13 to 15 (Gibraltar members of the special negotiating body);
- (c) regulation 18 to the extent it applies paragraphs 3 to 5 of the Schedule (Gibraltar members of the European Works Council);
- (d) regulations 23(1) to (5) (breach of statutory duty);
- (e) regulations 25 to 30 (protections for members of European Works Council, etc.);
- (f) regulation 31 (enforcement bodies) to the extent it relates to applications made or complaints presented under any of the other regulations referred to in this regulation;
- (g) regulation 32 (restrictions on contracting out).

The central management.

5.(1) The central management shall be responsible for creating the conditions and means necessary for the setting up of a European Works Council or an information and consultation procedure in a Community-scale undertaking or Community-scale group of undertakings where—

- (a) the central management is situated in Gibraltar;
- (b) the central management is not situated in a Member State and the representative agent of the central management (to be designated if necessary) is situated in Gibraltar; or
- (c) neither the central management nor the representative agent (whether or not as a result of being designated) is situated in a Member State and—
 - (i) in the case of a Community-scale undertaking, there are employed in an establishment, which is situated in Gibraltar, more employees than are employed in any other establishment which is situated in a Member State, or
 - (ii) in the case of a Community-scale group of undertakings, there are employed in a group undertaking, which is situated in Gibraltar, more employees than are employed

Employment

**EMPLOYMENT (EUROPEAN WORKS COUNCIL)
REGULATIONS 2006**

in any other group undertaking which is situated in a Member State,

and the central management initiates, or by virtue of regulation 9(1) is required to initiate, negotiations for a European Works Council or information and consultation procedure.

(2) Where the circumstances described in sub-regulation (1)(b) or (1)(c) apply, the central management shall be treated, for the purposes of these Regulations, as being situated in Gibraltar and—

- (a) the representative agent referred to in sub-regulation (1)(b); or
- (b) the management of the establishment referred to in sub-regulation (1)(c)(i) or of the group undertaking, referred to in sub-regulation (1)(c)(ii),

shall be treated, respectively, as being the central management.

PART II

**EMPLOYEE NUMBERS & REQUEST TO NEGOTIATE
ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL OR
INFORMATION AND CONSULTATION PROCEDURE**

Calculation of numbers of employees.

6.(1) For the purposes of determining whether an undertaking is a Community-scale undertaking or a group of undertakings is a Community-scale group of undertakings, the number of employees employed by the undertaking, or group of undertakings, shall be determined—

- (a) in the case of employees in Gibraltar, by ascertaining the average number of employees employed during a two year period, calculated in accordance with sub-regulation (2) below;
- (b) in the case of employees in a Member State, by ascertaining the average number of employees employed during a two year period, calculated in accordance with the provisions of the law or practice of that Member State which is designed to give effect to the Transnational Information and Consultation Directive.

(2) Subject to sub-regulation (3), the average number of Gibraltar employees is to be ascertained by—

Employment

1932-16

Revoked
Subsidiary
2006/026

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

- (a) determining the number of Gibraltar employees in each month in the two year period preceding the relevant date (whether they were employed throughout the month or not);
- (b) adding together all of the monthly numbers; and

dividing the number so determined by 24.

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

- (a) were the month to have contained 21 working days;
- (b) were the employee to have had no absences from work; and
- (c) were the employee to have worked no overtime,

the employee may be counted as half a person for the month in question, if the Gibraltar management so decides.

(4) For the purposes of this regulation, regulations 7 to 10 and regulation 20 “relevant date” means—

- (a) where a request under regulation 7 is made and no valid request under regulation 9 has been made, the last day of the month preceding the month in which the request under regulation 7 is made; and
- (b) where a valid request under regulation 9 is made (whether or not a request under regulation 7 has been made), the last day of the month preceding the month in which the request under regulation 9 is made.

(5) Where appropriate, the references in sub-regulation (4) to regulations 7 and 9 shall be read, instead, as references to the provisions of the law or practice of a Member State other than Gibraltar which are designed to give effect to, respectively, Article 11(2) and Article 5(1) of the Transnational Information and Consultation Directive.

Entitlement to information.

7.(1) An employee or an employees' representative may request information from the management of an establishment, or of an undertaking in Gibraltar for the purpose of determining whether, in the case of an establishment, it is part of a Community-scale undertaking or Community-

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

scale group of undertakings or, in the case of an undertaking, it is a Community-scale undertaking or is part of a Community-scale group of undertakings.

(2) In this regulation and regulation 8, the management of an establishment or undertaking to which a request under sub-regulation (1) is made is referred to as the “recipient”.

(3) The recipient must provide the employee or employees' representative who has made the request with information on the average number of employees employed by the undertaking, or as the case may be the group of undertakings, in Gibraltar and each Member State in the last two years.

Complaint of failure to provide information.

8.(1) An employee or employees' representative who has requested information under regulation 7 may present a complaint to the Industrial Tribunal that—

- (a) the recipient has failed to provide the information referred to in regulation 7(3); or
- (b) the information which has been provided by the recipient is false or incomplete in a material particular.

(2) Where the Industrial Tribunal finds the complaint well-founded it shall make an order requiring the recipient to disclose information to the complainant which order shall specify—

- (a) the information in respect of which the Industrial Tribunal 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 recipient refused or failed to disclose information, or disclosed false or incomplete information;
- (c) a date (not being less than one week from the date of the order) by which the recipient must disclose the information specified in the order.

(3) If the Industrial Tribunal considers that, from the information it has obtained in considering the complaint, it is beyond doubt that the undertaking is, or that the establishment is part of, a Community-scale undertaking or that the establishment or undertaking is part of a Community-scale group of undertakings, it may make a declaration to that effect.

(4) The Industrial Tribunal 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 information under regulation 7.

Request to negotiate an agreement for a European Works Council or information and consultation procedure.

9.(1) The central management shall initiate negotiations for the establishment of a European Works Council or an information and consultation procedure where—

- (a) a valid request has been made by employees or employees' representatives; and
- (b) on the relevant date the undertaking is a Community-scale undertaking or the group of undertakings is a Community-scale group of undertakings.

(2) A valid request may consist of—

- (a) a single request made by at least 100 employees, or employees' representatives who represent at least that number, in at least two undertakings or establishments in at least two different Member States; or
- (b) a number of separate requests made on the same or different days by employees, or by employees' representatives, which when taken together mean that at least 100 employees, or employees' representatives who represent at least that number, in at least two undertakings or establishments in at least two different Member States have made requests.

(3) To amount to a valid request the single request referred to in sub-regulation (2)(a) or each separate request referred to in sub-regulation (2)(b) must—

- (a) be in writing;
- (b) be sent to—
 - (i) the central management; or
 - (ii) the local management;
- (c) specify the date on which it was sent; and

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

- (d) where appropriate, be made after the expiry of a period of two years, commencing on the date of a decision under regulation 16(3) (unless the special negotiating body and central management have otherwise agreed).

(4) The date on which a valid request is made is–

- (a) where it consists of a single request satisfying sub-regulation 2(a) or of separate requests made on the same day satisfying sub-regulation 2(b), the date on which the request is or requests are sent; and
- (b) where it consists of separate requests made on different days satisfying sub-regulation 2(b), the date of the sending of the request which resulted in that sub-regulation being satisfied.

(5) The central management may initiate the negotiations referred to in sub-regulation (1) on its own initiative.

Dispute as to whether valid request made or whether obligation in regulation 9(1) applies.

10.(1) If the central management considers that a request (or separate request) did not satisfy any requirement of regulation 9(2) or (3) it may apply to the Industrial Tribunal for a declaration as to whether the request satisfied the requirement.

(2) The Industrial Tribunal shall only consider an application for a declaration made under sub-regulation (1) if–

- (a) the application is made within a three month period beginning on the date when a request, or if more than one the first request, was made for the purposes of regulation 9, whether or not that request satisfied the requirements of regulations 9(2) and (3);
- (b) the application is made before the central management takes any step to initiate negotiations for the establishment of a European Works Council or an information and consultation procedure; and
- (c) at the time when the application is made there has been no application by the central management for a declaration under sub-regulation (3).

**EMPLOYMENT (EUROPEAN WORKS COUNCIL)
REGULATIONS 2006**

(3) If the central management considers for any reason that the obligation in regulation 9(1) did not apply to it on the relevant date, it may, within a period of three months commencing on the date on which the valid request was made, apply to the Industrial Tribunal for a declaration as to whether that obligation applied to it on the relevant date.

(4) Where the date on which the valid request was made is a date falling before the date of any declaration made pursuant to an application made under this regulation the operation of the periods of time specified in sub-regulations (1)(b) and (1)(c) of regulation 18 shall be suspended for a period of time—

- (a) commencing on the date of the application; and
- (b) ending on the date of the declaration.

(5) If on an application for a declaration under this regulation the Industrial Tribunal does not make any declaration in favour of the central management and considers that the central management has, in making the application or conducting the proceedings, acted frivolously, vexatiously, or otherwise unreasonably, the Industrial Tribunal shall make a declaration to the effect that sub-regulation (4) does not apply.

**PART III
SPECIAL NEGOTIATING BODY**

Functions of the special negotiating body.

11. The special negotiating body shall have the task of determining, with the central management, by written agreement, the scope, composition, functions, and term of office of a European Works Council or the arrangements for implementing an information and consultation procedure.

Composition of the special negotiating body.

12.(1) The special negotiating body shall be constituted in accordance with sub-regulations (2) and (3).

(2) There shall be on the special negotiating body at least one member representing each Member State in which the Community-scale undertaking has one or more establishments, or in which the Community-scale group of undertakings has its controlling undertaking or one or more controlled undertakings.

(3) There shall be on the special negotiating body the following additional members—

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL)
REGULATIONS 2006

- (a) one additional member from a Member State in which there are employed 25 per cent or more but less than 50 per cent of the employees of the undertaking or group of undertakings who are employed in the Member States;
- (b) two additional members from a Member State in which there are employed 50 per cent or more but less than 75 per cent of the employees of the undertaking or group of undertakings who are employed in the Member States;
- (c) three additional members from a Member State in which there are employed 75 per cent or more of the employees of the undertaking or group of undertakings who are employed in the Member States.

(4) The special negotiating body shall inform the central management and local managements of the composition of the special negotiating body.

Ballot arrangements.

13.(1) Subject to regulation 15, the Gibraltar members of the special negotiating body shall be elected by a ballot of the Gibraltar employees.

(2) The Gibraltar management must arrange for the holding of a ballot of Gibraltar employees, which satisfies the requirements specified in sub-regulation (3).

(3) The requirements referred to in sub-regulation (2) are that—

- (a) the ballot of the Gibraltar employees must comprise a single ballot but may instead, if the Gibraltar management so decides, comprise separate ballots of employees in such constituencies as the Gibraltar management may determine where—
 - (i) the number of Gibraltar members of the special negotiating body to be elected is more than one; and
 - (ii) the Gibraltar management considers that if separate ballots were held for those constituencies, the Gibraltar members of the special negotiating body to be elected would better reflect the interests of the Gibraltar employees as a whole than if a single ballot were held;
- (b) a Gibraltar employee who is an employee of the Community-scale undertaking or the Community-scale group of undertakings on the day on which votes may be cast in the

**EMPLOYMENT (EUROPEAN WORKS COUNCIL)
REGULATIONS 2006**

**Revoked
Subsidiary
2006/026**

ballot, or if the votes may be cast on more than one day, on the first day of those days, is entitled to vote in the ballot of the Gibraltar employees;

- (c) any Gibraltar employee, or Gibraltar employees' representative, who is an employee of, or an employees' representative in, the Community-scale undertaking or Community-scale group of undertakings immediately before the latest time at which a person may become a candidate in the ballot, is entitled to stand in the ballot of the Gibraltar employees as a candidate for election as a Gibraltar member of the special negotiating body;
- (d) the Gibraltar management must, in accordance with sub-regulation (7), appoint an independent ballot supervisor to supervise the conduct of the ballot of the Gibraltar employees but may instead, where there are to be separate ballots, appoint more than one independent ballot supervisor in accordance with that sub-regulation, each of whom is to supervise such of the separate ballots as the Gibraltar management may determine, provided that each separate ballot is supervised by a supervisor;
- (e) after the Gibraltar management has formulated proposals as to the arrangements for the ballot of the Gibraltar employees and before it has published the final arrangements under sub-sub-regulation (f) it must, so far as reasonably practicable, consult with the Gibraltar employees' representatives on the proposed arrangements for the ballot of the Gibraltar employees;
- (f) the Gibraltar management must publish the final arrangements for the ballot of the Gibraltar employees in such manner as to bring them to the attention of, so far as reasonably practicable, the Gibraltar employees and the Gibraltar employees' representatives.

(4) Any Gibraltar employee or Gibraltar employees' representative who believes that the arrangements for the ballot of the Gibraltar employees are defective may, within a period of 21 days beginning on the date on which the Gibraltar management published the final arrangements under paragraph (f), present a complaint to the Industrial Tribunal.

(5) Where the Industrial Tribunal finds the complaint well-founded it shall make a declaration to that effect and may make an order requiring the Gibraltar management to modify the arrangements it has made for the ballot of the Gibraltar employees or to satisfy the requirements in paragraph (e) or (f) of sub-regulation (3).

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

(6) An order under sub-regulation (5) shall specify the modifications to the arrangements which the Gibraltar management is required to make and the requirements which it must satisfy.

(7) A person is an independent ballot supervisor for the purposes of sub-regulation (3)(d) if the Gibraltar management reasonably believes that he will carry out any functions conferred on him in relation to the ballot competently and has no reasonable grounds for believing that his independence in relation to the ballot might reasonably be called into question.

(8) For the purposes of sub-regulation (4) the arrangements for the ballot of the Gibraltar employees are defective if—

- (a) any of the requirements specified in paragraphs (b)-(f) of sub-regulation (3) is not satisfied; or
- (b) in a case where the ballot is to comprise separate ballots, the constituencies determined by the Gibraltar management do not reflect adequately the interests of the Gibraltar employees as a whole.

Conduct of ballot.

14.(1) The Gibraltar management must—

- (a) ensure that a ballot supervisor appointed under regulation 13(3)(d) carries out his functions under this regulation and that there is no interference with his carrying out of those functions from the Gibraltar management, or the central management (where it is not also the Gibraltar management); and
- (b) comply with all reasonable requests made by a ballot supervisor for the purposes of, or in connection with, the carrying out of those functions.

(2) A ballot supervisor's appointment shall require that he—

- (a) supervises the conduct of the ballot, or the separate ballots he is being appointed to supervise, in accordance with the arrangements for the ballot of the Gibraltar employees published by the Gibraltar management under regulation 13(3)(f) or, where appropriate, in accordance with the arrangements as required to be modified by an order made as a result of a complaint presented under regulation 13(4);

Employment

1932-16

Revoked
Subsidiary
2006/026

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

- (b) does not conduct the ballot or any of the separate ballots before the Gibraltar management has satisfied the requirement specified in regulation 13(3)(e) and—
 - (i) where no complaint has been presented under regulation 13(4), before the expiry of a period of 21 days beginning on the date on which the Gibraltar management published its arrangements under regulation 13(3)(f); or
 - (ii) where a complaint has been presented under regulation 13(4), before the complaint has been determined and, where appropriate, the arrangements have been modified as required by an order made as a result of the complaint;
- (c) conducts the ballot, or each separate ballot so as to secure that—
 - (i) so far as reasonably practicable, those entitled to vote are given the opportunity to vote;
 - (ii) so far as reasonably practicable, those entitled to stand as candidates are given the opportunity to stand;
 - (iii) so far as is reasonably practicable, those voting are able to do so in secret; and
 - (iv) the votes given in the ballot are fairly and accurately counted.

(3) As soon as reasonably practicable after the holding of the ballot, the ballot supervisor must publish the results of the ballot in such manner as to make them available to the Gibraltar management and, so far as reasonably practicable, the Gibraltar employees entitled to vote in the ballot and the persons who stood as candidates in the ballot.

(4) A ballot supervisor shall publish a report (“an ineffective ballot report”) where he considers (whether or not on the basis of representations made to him by another person) that—

- (a) any of the requirements referred to in sub-regulation (2) was not satisfied with the result that the outcome of the ballot would have been different; or
- (b) there was interference with the carrying out of his functions or a failure by management to comply with all reasonable requests made by him with the result that he was unable to form a proper judgment as to whether each of the requirements

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

referred to in sub-regulation (2) was satisfied in relation to the ballot.

(5) Where a ballot supervisor publishes an ineffective ballot report the report must be published within a period of one month commencing on the date on which the ballot supervisor publishes the results of the ballot under sub-regulation (3).

(6) A ballot supervisor shall publish an ineffective ballot report in such manner as to make it available to the Gibraltar management and, so far as reasonably practicable, the Gibraltar employees entitled to vote in the ballot and the persons who stood as candidates in the ballot.

(7) Where a ballot supervisor publishes an ineffective ballot report then—

- (a) if there has been a single ballot or an ineffective ballot report has been published in respect of every separate ballot, the outcome of the ballot or ballots shall have no effect and the Gibraltar management shall again be under the obligation in regulation 13(2);
- (b) if there have been separate ballots and paragraph (a) does not apply—
 - (i) the Gibraltar management shall arrange for the separate ballot or ballots in respect of which an ineffective ballot report was issued to be reheld in accordance with regulation 13 and this regulation; and
 - (ii) no such ballot shall have effect until it has been reheld and no ineffective ballot report has been published in respect of it.

(8) All costs relating to the holding of a ballot, including payments made to a ballot supervisor for supervising the conduct of the ballot, shall be borne by the central management (whether or not an ineffective ballot report has been made).

Consultative Committee.

15.(1) Where a consultative committee exists—

- (a) no Gibraltar member of the special negotiating body shall be elected by a ballot of the Gibraltar employees, except in the circumstances specified in sub-regulations (2), (3) or (9) below; and

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

1932-16

Revoked
Subsidiary
2006/026

- (b) the committee shall be entitled to nominate from its number the Gibraltar members of the special negotiating body.

(2) Where the consultative committee fails to nominate any Gibraltar members of the special negotiating body, all of the Gibraltar members of the special negotiating body shall be elected by a ballot of the Gibraltar employees in accordance with regulations 13 and 14.

(3) Where the consultative committee nominates such number of persons to be a Gibraltar member, or Gibraltar members, of the special negotiating body, which number is less or more than the number of Gibraltar members of the special negotiating body required, the consultative committee shall be treated as having failed to have nominated any Gibraltar members of the special negotiating body.

(4) In this regulation, “a consultative committee” means a body of persons—

- (a) whose normal functions include or comprise the carrying out of an information and consultation function;
- (b) which is able to carry out its information and consultation function without interference from the Gibraltar management, or from the central management (where it is not also the Gibraltar management);
- (c) which, in carrying out its information and consultation function, represents all the Gibraltar employees; and
- (d) which consists wholly of persons who were elected by a ballot (which may have consisted of a number of separate ballots) in which all the employees who, at the time, were Gibraltar employees were entitled to vote.

(5) In sub-regulation (4) “information and consultation function” means the function of—

- (a) receiving, on behalf of all the Gibraltar employees, information which may significantly affect the interests of the Gibraltar employees, but excluding information which is relevant only to a specific aspect of the interests of the employees, such as health and safety or collective redundancies; and
- (b) being consulted by the Gibraltar management or the central management (where it is not also the Gibraltar management) on the information referred to in paragraph (a).

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

(6) The consultative committee must publish the names of the persons whom it has nominated to be Gibraltar members of the special negotiating body in such manner as to bring them to the attention of the Gibraltar management and, so far as reasonably practicable, the Gibraltar employees and Gibraltar employees' representatives.

(7) Where the Gibraltar management, a Gibraltar employee or a Gibraltar employees' representative believes that—

- (a) the consultative committee does not satisfy the requirements in sub-regulation (4); or
- (b) any of the persons nominated by the consultative committee is not entitled to be nominated,

it, or as the case may be he, may, within a period of 21 days beginning on the date on which the consultative committee published under sub-regulation (6) the names of persons nominated, present a complaint to the Industrial Tribunal.

(8) Where the Industrial Tribunal finds the complaint well-founded it shall make a declaration to that effect.

(9) Where the Industrial Tribunal has made a declaration under sub-regulation (8)—

- (a) no nomination made by the consultative committee shall have effect; and
- (b) all of the Gibraltar members of the special negotiating body shall be elected by a ballot of the Gibraltar employees in accordance with regulations 13 and 14.

(10) Where the consultative committee nominates any person to be a Gibraltar member of the special negotiating body, that nomination shall have effect after—

- (a) where no complaint has been presented under sub-regulation (7), the expiry of a period of 21 days beginning on the date on which the consultative committee published under sub-regulation (6) the names of persons nominated; or
- (b) where a complaint has been presented under sub-regulation (7), the complaint has been determined without a declaration under sub-regulation (8) having been made.

Employment

**EMPLOYMENT (EUROPEAN WORKS COUNCIL)
REGULATIONS 2006
PART IV**

**EUROPEAN WORKS COUNCIL AND INFORMATION AND
CONSULTATION PROCEDURE**

1932-16

**Revoked
Subsidiary
2006/026**

Negotiation procedure.

16.(1) With a view to concluding an agreement referred to in regulation 17, the central management must convene a meeting with the special negotiating body and must inform local managements accordingly.

(2) Subject to sub-regulation (3), the special negotiating body shall take decisions by a majority of the votes cast by its members and each member of the special negotiating body is to have one vote.

(3) The special negotiating body may decide not to open negotiations with central management or to terminate negotiations. Any such decision must be taken by at least two thirds of the votes cast by its members.

(4) Any decision made under sub-regulation (3) shall have the following effects—

- (a) the procedure to negotiate and conclude the agreement referred to in regulation 17 shall cease from the date of the decision; and
- (b) a purported request made under regulation 9 less than two years after the date of the decision shall not be treated as such a request, unless the special negotiating body and the central management otherwise agree.

(5) For the purpose of the negotiations, the special negotiating body may be assisted by experts of its choice.

(6) The central management shall pay for any reasonable expenses relating to the negotiations that are necessary to enable the special negotiating body to carry out its functions in an appropriate manner; but where the special negotiating body is assisted by more than one expert the central management is not required to pay such expenses in respect of more than one of them.

Content and scope of a European Works Council agreement and information and consultation procedure.

17.(1) The central management and the special negotiating body are under a duty to negotiate in a spirit of cooperation with a view to reaching a

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

written agreement on the detailed arrangements for the information and consultation of employees in a Community-scale undertaking or Community-scale group of undertakings.

(2) In this regulation and regulations 18 and 20, the central management and the special negotiating body are referred to as “the parties”.

(3) The parties may decide in writing to establish an information and consultation procedure instead of a European Works Council.

(4) Without prejudice to the autonomy of the parties, where the parties decide to proceed with the establishment of a European Works Council, the agreement establishing it shall determine—

- (a) the undertakings of the Community-scale group of undertakings or the establishments of the Community-scale undertaking which are covered by the agreement;
- (b) the composition of the European Works Council, the number of members, the allocation of seats and the term of office of the members;
- (c) the functions and the procedure for information and consultation of the European Works Council;
- (d) the venue, frequency and duration of meetings of the European Works Council;
- (e) the financial and material resources to be allocated to the European Works Council; and
- (f) the duration of the agreement and the procedure for its renegotiation.

(5) If the parties decide to establish an information and consultation procedure instead of a European Works Council—

- (a) the agreement establishing the procedure must specify a method by which the information and consultation representatives are to enjoy the right to meet to discuss the information conveyed to them; and
- (b) the information conveyed to the information and consultation representatives shall relate in particular to transnational questions which significantly affect the interests of the employees.

Employment

1932-16

Revoked
Subsidiary
2006/026

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

(6) An agreement referred to in sub-regulation (4) or (5) is not to be subject to the provisions of the Schedule, except to the extent that the parties provide in the agreement that any of those requirements are to apply.

(7) Where a Community-scale group of undertakings comprises one or more undertakings or groups of undertakings which are themselves Community-scale undertakings or Community-scale groups of undertakings, the European Works Council shall be established at the level of the first-mentioned Community-scale group of undertakings, unless an agreement referred to in sub-regulation (4) provides otherwise.

(8) Unless a wider scope is provided for in an agreement referred to in sub-regulation (1), the powers and competence of a European Works Council and the scope of an information and consultation procedure shall, in the case of a Community-scale undertaking, cover all the establishments located within the Member States and, in the case of a Community-scale group of undertakings, all group undertakings located within the Member States.

Subsidiary requirements.

18.(1) The provisions of the Schedule shall apply if–

- (a) the parties so agree;
- (b) within the period of six months beginning on the date on which a valid request referred to in regulation 9 was made, the central management refuses to commence negotiations; or
- (c) after the expiry of a period of three years beginning on the date on which a valid request referred to in regulation 9 was made, the parties have failed to conclude an agreement under regulation 17 and the special negotiating body has not taken the decision under regulation 16(3).

Cooperation.

19.(1) The central management and the European Works Council are under a duty to work in a spirit of cooperation with due regard to their reciprocal rights and obligations.

(2) The duty in sub-regulation (1) shall apply also to the central management and information and consultation representatives.

PART V **COMPLIANCE AND ENFORCEMENT**

Employment

**EMPLOYMENT (EUROPEAN WORKS COUNCIL)
REGULATIONS 2006**

Failure to establish European Works Council or information and consultation procedure.

20.(1) A complaint may be presented to the Supreme Court by a relevant applicant who considers—

- (a) that the parties have reached agreement on the establishment of a European Works Council or an information and consultation procedure, or that regulation 18 applies; and
- (b) that, because of a failure of the central management, the European Works Council or information and consultation procedure has not been established at all, or has not been established fully in accordance with the terms of the agreement under regulation 17 or, as the case may be, in accordance with the provisions of the Schedule.

(2) In this regulation “failure” means an act or omission and a failure by the local management shall be treated as a failure by the central management.

(3) In this regulation “relevant applicant” means—

- (a) in a case where a special negotiating body exists, the special negotiating body; or
- (b) in a case where a special negotiating body does not exist, an employee, employees' representative, or person who was a member of the special negotiating body (if that body existed previously).

(4) Where the Supreme Court finds the complaint well-founded it shall make a decision to that effect and may make an order requiring the central management to take such steps as are necessary to establish the European Works Council or information and consultation procedure in accordance with the terms of the agreement under regulation 17 or, as the case may be, to establish a European Works Council in accordance with the provisions of the Schedule.

(5) The Supreme Court shall not find a complaint under this regulation to be well-founded where—

- (a) the central management made no application in relation to the request under regulation 10(1), or where the request consisted of separate requests was unable by reason of the time limit in paragraph (a) of that regulation to make an application under the regulation in relation to a particular request, and shows that

Employment

1932-16

Revoked
Subsidiary
2006/026

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

the request was not a valid request because a requirement of regulation 9(2) or (3) was not satisfied; or

- (b) the central management made no application under regulation 10(3) but shows that the obligation in regulation 9(1) did not, for any reason, apply to it on the relevant date.

(6) An order under sub-regulation (4) shall specify—

- (a) the steps which the central management is required to take;
- (b) the date of the failure of the central management; and
- (c) the period within which the order must be complied with.

(7) If the Supreme Court makes a decision under sub-regulation (4) above it shall issue a written penalty notice to the central management requiring it to pay a penalty to the Minster in respect of the failure.

(8) Sub-regulation (7) shall not apply if the Supreme Court is satisfied, on hearing the representations of the central management, that the failure resulted from a reason beyond the central management's control or that it has some other reasonable excuse for its failure.

(9) Regulation 22 shall apply in respect of a penalty notice issued under this regulation.

(10) No order of the Supreme Court under this regulation shall have the effect of suspending or altering the effect of any act done or of any agreement made by the central management or the local management.

Disputes about operation of European Works Council or information and consultation procedure.

21.(1) Where—

- (a) a European Works Council or information and consultation procedure been established under regulation 17; or
- (b) a European Works Council has been established by virtue of regulation 18,

a complaint may be presented to the Supreme Court by a relevant applicant who considers that, because of the failure of a defaulter, the terms of the agreement under regulation 17 or, as the case may be, the provisions of the Schedule, have not been complied with.

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

(2) In this regulation, “failure” means an act or omission and a failure by the local management shall be treated as a failure by the central management.

(3) In this regulation “relevant applicant” means—

- (a) in the case of a failure concerning a European Works Council, either the central management or the European Works Council; or
- (b) in the case of a failure concerning an information and consultation procedure, either the central management or any one or more of the information and consultation representatives,

and “defaulter” means the persons mentioned in paragraph (a) or (b) against whom the complaint is presented.

(4) Where the Supreme Court finds the complaint well-founded it shall make a decision to that effect and may make an order requiring the defaulter to take such steps as are necessary to comply with the terms of the agreement under regulation 17 or, as the case may be, the provisions of the Schedule.

(5) An order made under sub-regulation (4) shall specify—

- (a) the steps which the defaulter is required to take;
- (b) the date of the failure; and
- (c) the period within which the order must be complied with.

(6) If the Supreme Court makes a decision under sub-regulation (4) and the defaulter in question is the central management, the Supreme Court shall issue a written penalty notice to the central management requiring it to pay a penalty to the Minister in respect of the failure.

(7) Sub-regulation (6) shall not apply if the Supreme Court is satisfied, on hearing the representations of the central management, that the failure resulted from a reason beyond the central management's control or that it has some other reasonable excuse for its failure.

(8) Regulation 22 shall apply in respect of a penalty notice issued under this regulation.

(9) No order of the Supreme Court under this regulation shall have the effect of suspending or altering the effect of any act done or of any

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

agreement made by the central management or the local management.

1932-16

Revoked
Subsidiary
2006/026

Penalties.

22.(1) A penalty notice issued under regulation 20 or 21 shall specify—

- (a) the amount of the penalty which is payable;
- (b) the date before which the penalty must be paid; and
- (c) the failure and period to which the penalty relates.

(2) No penalty set by the Supreme Court under this regulation may exceed £75,000.

(3) When setting the amount of the penalty, the Supreme Court shall take into account—

- (a) the gravity of the failure;
- (b) the period of time over which the failure occurred;
- (c) the reason for the failure;
- (d) the number of employees affected by the failure; and
- (e) the number of employees of the Community-scale undertaking or Community-scale group of undertakings in the Member States.

(4) The date specified under sub-regulation (1)(b) above must not be earlier than the end of the period within which an appeal against a decision or order made by the Supreme Court under regulation 20 or 21 may be made.

(5) If the specified date in a penalty notice has passed and—

- (a) the period during which an appeal may be made has expired without an appeal having been made; or
- (b) such an appeal has been made and determined,

the Minister may recover from the central management, as a civil debt due to him, any amount payable under the penalty notice which remains outstanding.

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

- (6) The making of an appeal suspends the effect of a penalty notice.

PART VI

CONFIDENTIAL INFORMATION

Breach of statutory duty.

23.(1) A person who is or at any time was—

- (a) a member of a special negotiating body or a European Works Council;
- (b) an information and consultation representative; or
- (c) an expert assisting a special negotiating body, a European Works Council or its select committee, or information and consultation representatives,

shall not disclose any information or document which is or has been in his possession by virtue of his position as described in paragraph (a), (b) or (c) of this sub-regulation, which the central management has entrusted to him on terms requiring it to be held in confidence.

(2) In this regulation and in regulation 24, a person specified in sub-regulation (1)(a), (b) or (c) of this regulation is referred to as a “recipient”.

(3) The obligation to comply with sub-regulation (1) is a duty owed to the central management, and a breach of the duty is actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).

(4) Sub-regulation (3) shall not affect the liability which any person may incur, nor affect any right which any person may have, apart from sub-regulation (3).

(5) No action shall lie under sub-regulation (3) where the recipient reasonably believed the disclosure to be a protected disclosure.

(6) A recipient whom the central management (which is situated in Gibraltar) has entrusted with any information or document on terms requiring it to be held in confidence may apply to the Industrial Tribunal for a declaration as to whether it was reasonable for the central management to impose such a requirement.

(7) If the Industrial Tribunal considers that the disclosure of the information or document by the recipient would not, or would not be likely to, prejudice or cause serious harm to the undertaking, it shall make a

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

1932-16

Revoked
Subsidiary
2006/026

declaration that it was not reasonable for the central management to require the recipient to hold the information or document in confidence.

(8) If a declaration is made under sub-regulation (7), the information or document shall not at any time thereafter be regarded as having been entrusted to the recipient who made the application under sub-regulation (6), or to any other recipient, on terms requiring it to be held in confidence.

Withholding of information by central management.

24.(1) The central management is not required to disclose any information or document to a recipient when the nature of the information or document is such that, according to objective criteria, the disclosure of the information or document would seriously harm the functioning of, or would be prejudicial to, the undertaking or group of undertakings concerned.

(2) Where there is a dispute between the central management and a recipient as to whether the nature of the information or document which the central management has failed to provide is such as is described in sub-regulation (1), the central management or a recipient may apply to the Industrial Tribunal for a declaration as to whether the information or document is of such a nature.

(3) If the Industrial Tribunal makes a declaration that the disclosure of the information or document in question would not, according to objective criteria, seriously harm the functioning of, or be prejudicial to, the undertaking or group of undertakings concerned, the Industrial Tribunal shall order the central management to disclose the information or document.

(4) An order under sub-regulation (3) shall specify–

- (a) the information or document to be disclosed;
- (b) the recipient or recipients to whom the information or document is to be disclosed;
- (c) any terms on which the information or document is to be disclosed; and
- (d) the date before which the information or document is to be disclosed.

PART VII **PROTECTIONS FOR MEMBERS OF A EUROPEAN WORKS** **COUNCIL, ETC.**

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

Right to time off for members of a European Works Council, etc.

25.(1) An employee who is–

- (a) a member of a special negotiating body;
- (b) a member of a European Works Council;
- (c) an information and consultation representative; or
- (d) a candidate in an election in which any person elected will, on being elected, be such a member or representative,

is entitled to be permitted by his employer to take reasonable time off during the employee's working hours in order to perform his functions as such a member, representative or candidate.

(2) For the purposes of this regulation the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

Right to remuneration for time off under regulation 25.

26.(1) An employee who is permitted to take time off under regulation 25 is entitled to be paid remuneration by his employer for the time taken off at the appropriate hourly rate.

(2) A “week’s pay” means the average of the gross weekly payments made to an employee in the period of 13 weeks ending–

- (a) where the calculation date is the last day of a week, with that week; and
- (b) otherwise with the last complete week before the calculation date,

and “calculation date” means the day on which the time off was taken or on which it is alleged the time off should have been permitted.

(3) The appropriate hourly rate, in relation to an employee, is the amount of one week’s pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time is taken.

(4) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week’s pay shall be divided instead by–

- (a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken; or
- (b) where the employee has not been employed for a sufficient period to enable the calculation to be made under paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in subsection (5) as are appropriate in the circumstances.

(5) The considerations referred to in subsection (4)(b) are—

- (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract; and
- (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(6) A right to any amount under sub-regulation (1) does not affect any right of an employee in relation to remuneration under his contract of employment (“contractual remuneration”).

(7) Any contractual remuneration paid to an employee in respect of a period of time off under regulation 25 goes towards discharging any liability of the employer to pay remuneration under sub-regulation (1) in respect of that period, and, conversely, any payment of remuneration under sub-regulation (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Right to time off: complaints to Industrial Tribunal.

27.(1) An employee may present a complaint to the Industrial Tribunal, that his employer—

- (a) has unreasonably refused to permit him to take time off as required by regulation 25; or
- (b) has failed to pay the whole or any part of any amount to which the employee is entitled under regulation 26.

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

(2) The Industrial Tribunal shall not consider a complaint under this regulation unless it is presented—

- (a) before the end of the period of three months beginning with the day on which the time off was taken or on which it is alleged the time off should have been permitted; or
- (b) within such further period as the Industrial Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where the Industrial Tribunal finds a complaint under this regulation well-founded, the Industrial Tribunal shall make a declaration to that effect.

(4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the Industrial Tribunal shall also order the employer to pay to the employee an amount equal to the remuneration to which he would have been entitled under regulation 26 if the employer had not refused.

(5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which he is entitled under regulation 26, the Industrial Tribunal shall also order the employer to pay to the employee the amount which it finds due to him.

Unfair dismissal.

28.(1) An employee who is dismissed and to whom sub-regulation (2) or (5) applies shall be regarded, if the reason (or, if more than one, the principal reason) for the dismissal is a reason specified in, respectively, sub-regulation (3) or (6), as unfairly dismissed for the purposes of Part VI of the Act.

(2) This sub-regulation applies to an employee who is—

- (a) a member of a special negotiating body;
- (b) a member of a European Works Council;
- (c) an information and consultation representative; or
- (d) a candidate in an election in which any person elected will, on being elected, be such a member or representative.

(3) The reason is that—

Employment

1932-16

Revoked
Subsidiary
2006/026

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

- (a) the employee performed any functions or activities as such a member, representative or candidate; or
- (b) the employee or a person acting on his behalf made a request to exercise an entitlement conferred on the employee by regulation 25 or 26;

or proposed to do so.

(4) The reason in sub-regulation (3)(a) does not apply where the reason (or principal reason) for the dismissal is that in the performance, or purported performance, of the employee's functions or activities he has disclosed any information or document in breach of the duty in regulation 23(1), unless the employee reasonably believed the disclosure to be a protected disclosure.

(5) This sub-regulation applies to any employee whether or not he is an employee to whom sub-regulation (2) applies.

(6) The reasons are that the employee—

- (a) took, or proposed to take, any proceedings before the Industrial Tribunal to enforce a right or secure an entitlement conferred on him by these Regulations;
- (b) exercised, or proposed to exercise, any entitlement to apply or complain to the Industrial Tribunal conferred by these Regulations;
- (c) requested, or proposed to request, information in accordance with regulation 7;
- (d) acted with a view to securing that a special negotiating body, a European Works Council or an information and consultation procedure did or did not come into existence;
- (e) indicated that he supported or did not support the coming into existence of a special negotiating body, a European Works Council or an information and consultation procedure;
- (f) stood as a candidate in an election in which any person elected would, on being elected, be a member of a special negotiating body or of a European Works Council or an information and consultation representative;

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

- (g) influenced or sought to influence the way in which votes were to be cast by other employees in a ballot arranged under these Regulations;
- (h) voted in such a ballot;
- (i) expressed doubts, whether to a ballot supervisor or otherwise, as to whether such a ballot had been properly conducted; or
- (j) proposed to do, failed to do, or proposed to decline to do, any of the things mentioned in paragraphs (d) to (i).

(7) It is immaterial for the purposes of sub-regulation (6)(a)–

- (a) whether or not the employee has the right; or
- (b) whether or not the right has been infringed;

but for that sub-regulation to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

Detriment.

29.(1) An employee to whom sub-regulation (2) or (5) applies has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer, done on a ground specified in, respectively, sub-regulation (3) or (6).

(2) This sub-regulation applies to an employee who is–

- (a) a member of a special negotiating body;
- (b) a member of a European Works Council;
- (c) an information and consultation representative; or
- (d) a candidate in an election in which any person elected will, on being elected, be such a member or representative.

(3) The ground is that–

- (a) the employee performed any functions or activities as such a member, representative or candidate; or
- (b) the employee or a person acting on his behalf made a request to exercise an entitlement conferred on the employee by regulation 25 or 26;

or proposed to do so.

(4) The ground in sub-regulation (3)(a) does not apply where the ground for the subjection to detriment is that in the performance, or purported performance, of the employee's functions or activities he has disclosed any information or document in breach of the duty in regulation 23(1), unless the employee reasonably believed the disclosure to be a protected disclosure.

(5) This sub-regulation applies to any employee, whether or not he is an employee to whom sub-regulation (2) applies.

(6) The grounds are that the employee—

- (a) took, or proposed to take, any proceedings before the Industrial Tribunal to enforce a right or secure an entitlement conferred on him by these Regulations;
- (b) exercised, or proposed to exercise, any entitlement to apply or complain to the Industrial Tribunal conferred by these Regulations;
- (c) requested, or proposed to request, information in accordance with regulation 7;
- (d) acted with a view to securing that a special negotiating body, a European Works Council or an information and consultation procedure did or did not come into existence;
- (e) indicated that he supported or did not support the coming into existence of a special negotiating body, a European Works Council or an information and consultation procedure;
- (f) stood as a candidate in an election in which any person elected would, on being elected, be a member of a special negotiating body or of a European Works Council or an information and consultation representative;
- (g) influenced or sought to influence the way in which votes were to be cast by other employees in a ballot arranged under these Regulations;
- (h) voted in such a ballot;
- (i) expressed doubts, whether to a ballot supervisor or otherwise, as to whether such a ballot had been properly conducted; or

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

- (j) proposed to do, failed to do, or proposed to decline to do, any of the things mentioned in paragraphs (d) to (i).

(7) It is immaterial for the purposes of sub-regulation (6)(a)–

- (a) whether or not the employee has the right; or
- (b) whether or not the right has been infringed;

but for that sub-regulation to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

Detriment: enforcement and subsidiary provisions.

30.(1) An employee may present a complaint to the Industrial Tribunal, that he has been subjected to a detriment in contravention of regulation 29.

(2) Regulation 31 does not apply where the detriment in question amounts to dismissal.

PART VIII MISCELLANEOUS

The Industrial Tribunal

Industrial Tribunal: proceedings.

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

(2) In its consideration of an application or complaint under these Regulations, the Industrial Tribunal shall make such enquiries as it sees fit and give any person whom it considers has a proper interest in the application or complaint an opportunity to be heard.

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

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

Employment

**EMPLOYMENT (EUROPEAN WORKS COUNCIL)
REGULATIONS 2006
Restrictions on contracting out**

1932-16

**Revoked
Subsidiary
2006/026**

Restrictions on contracting out.

32.(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 VII; or
- (b) to preclude a person from bringing any proceedings before the Supreme Court under any provision of these Regulations.

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

(3) 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 VII; or
- (b) to preclude a person from bringing any proceedings before the Industrial Tribunal under that Part.

(4) Sub-regulation (3) does not apply to any agreement to refrain from instituting or continuing proceedings before the Industrial Tribunal where a conciliation officer has taken action under rule 9 of the Tribunal Rules (conciliation).

PART IX EXCEPTIONS

Merchant Navy.

33.(1) Subject to sub-regulation (3), no long haul crew member shall be–

- (a) a member of a special negotiating body;
- (b) a member of a European Works Council; or
- (c) an information and consultation representative.

(2) In sub-regulation (1), a “long haul crew member” means a person who is a member of a merchant navy crew other than–

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

- (a) a ferry worker; or
- (b) a person who normally works on voyages the duration of which is less than 48 hours.

(3) Sub-regulation (1) shall not apply where the central management decides that the long haul crew member in question shall be permitted to be, as the case may be, a member of a special negotiating body or of a European Works Council, or an information and consultation representative.

(4) Where sub-regulation (1) applies, no long haul crew member shall—

- (a) stand as a candidate for election as a member of a special negotiating body or of a European Works Council, or as an information and consultation representative; or
- (b) be appointed or nominated to be a member of a special negotiating body or of a European Works Council, or an information and consultation representative.

Article 6 agreements.

34.(1) Where, in accordance with regulation 5, the central management is situated in Gibraltar and, immediately before the date on which these Regulations come into force an Article 6 agreement is in force, those provisions referred to in regulation 4(1) which apply only where the central management is situated in Gibraltar shall only apply if—

- (a) the parties to the Article 6 agreement agree or have agreed (whether before or after these Regulations come into force) to the effect that the provisions of these Regulations which would have applied in respect of the agreement had it been made under regulation 17 should apply in respect of the Article 6 agreement; or
- (b) the Article 6 agreement ceases to have effect.

(2) In sub-regulation (1) and regulation 38 “Article 6 agreement” means an agreement for the establishment of a European Works Council or information and consultation procedure made under the provisions of the law or practice of a Member State other than Gibraltar which are designed to give effect to Article 6 of the Transnational Information and Consultation Directive.

**EMPLOYMENT (EUROPEAN WORKS COUNCIL)
REGULATIONS 2006**

**Revoked
Subsidiary
2006/026**

(3) Where sub-regulation (1)(a) applies these Regulations shall apply as if the Article 6 agreement had been made under regulation 17.

Article 7 European Works Councils.

35.(1) Where, in accordance with regulation 5, the central management is situated in Gibraltar, and immediately before the date these Regulations come into force an Article 7 European Works Council exists, those provisions referred to in regulation 4(1) which apply only where the central management is situated in Gibraltar shall only apply if–

- (a) the central management and European Works Council agree or have agreed (whether before or after these Regulations come into force) to the effect that the provisions of these Regulations which would have applied in respect of the European Works Council had it been made, by virtue of regulation 18, under these Regulations should apply in respect of the Article 7 European Works Council; or
- (b) the European Works Council decides, under the provisions of the law or practice of a Member State other than Gibraltar which are designed to give effect to paragraph 1(f) of the Annex to the Transnational Information and Consultation Directive, to negotiate an agreement for a European Works Council or an information and consultation procedure.

(2) In sub-regulation (1) and regulations 38 and 39 “Article 7 European Works Council” means a European Works Council established under the provisions of the law or practice of a Member State other than Gibraltar which are designed to give effect to Article 7 of, and the Annex to, the Transnational Information and Consultation Directive.

(3) Where sub-regulation (1)(a) or (b) applies these Regulations shall apply, subject to the modifications referred to in sub-regulations (4) to (6) of regulation 39, as if the Article 7 European Works Council had been established, by virtue of regulation 18, under these Regulations and, in a case where sub-regulation (1)(b) applies, as if a decision had been taken under paragraph 10(2) of the Schedule.

Article 3 agreements.

36.(1) None of the obligations in these Regulations applies to a Community-scale undertaking or Community-scale group of undertakings where the conditions specified in Article 3 of the Extension Directive are satisfied.

(2) The conditions referred to in sub-regulation (1) are that–

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

- (a) an agreement is in force which—
 - (i) is in force immediately before 16th December 1999;
 - (ii) covers the entire workforce in the Member States; and
 - (iii) provides for the transnational information and consultation of employees, and
- (b) the obligation (whether arising under these Regulations or under the national law or practice of any other Member State), to initiate negotiations for the establishment of a European Works Council or information and consultation procedure would, but for this sub-regulation, have applied to the Community-scale undertaking or Community-scale group of undertakings solely as a result of the Extension Directive.

(3) If an agreement when taken together with one or more other agreements satisfies the requirements specified in sub-regulation (2)(a) that agreement, when taken together with such other agreements, shall be treated as an agreement for the purposes of that sub-regulation.

Article 13 agreements.

37.(1) None of the obligations in these Regulations applies to a Community-scale undertaking or Community-scale group of undertakings where the conditions specified in Article 13 of the Transnational Information and Consultation Directive are satisfied.

(2) The conditions referred to in sub-regulation (1) are that an agreement is in force which—

- (a) was in force immediately before whichever is the earlier of 23rd September 1996 and the day after the date on which the national law or practice giving effect to the Transnational Information and Consultation Directive came into force in the Member State (other than Gibraltar) whose national law governs the agreement;
- (b) covers the entire workforce in the Member States; and
- (c) provides for the transnational information and consultation of employees.

(3) If an agreement when taken together with one or more other agreements satisfies the requirements specified in sub-regulation (2) that

**EMPLOYMENT (EUROPEAN WORKS COUNCIL)
REGULATIONS 2006**

agreement, when taken together with such other agreements, shall be treated as an agreement for the purposes of that sub-regulation.

European public limited-liability companies.

38.(1) These regulations do not apply 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 section 29 of the European Public Limited-Liability Company Act 2005 (decision not to open, or to terminate, negotiations).

(2) In this regulation an “SE” means a company established in accordance with the European Public Limited-Liability Company Act 2005.

**PART X
TRANSITIONAL PROVISIONS****Transitional provisions: special negotiating body.**

39.(1) Where immediately before the date on which these Regulations come into operation–

- (a) a special negotiating body has been validly requested or established under the provisions of the law or practice of a Member State other than Gibraltar which is designed to give effect to the Transnational Information and Consultation Directive;
- (b) no Article 6 agreement is in force; and
- (c) no Article 7 European Works Council has been established–

sub-regulations (2) and (3) shall apply.

(2) Where the central management is situated in Gibraltar these Regulations shall apply, with the modifications specified in sub-regulations (4) to (6), as if a valid request had been made under regulation 9 and, where appropriate, as if the special negotiating body had been established under these Regulations.

(3) Where the central management is not situated in Gibraltar the

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

regulations referred to in regulation 4(2) shall apply with the modifications specified in sub-regulations (5) and (6) of this regulation.

(4) Regulation 12 shall apply in respect of the composition of the special negotiating body only to the extent that it determines the number of Gibraltar members on the special negotiating body but shall not affect in any way the number of non-Gibraltar members on the special negotiating body.

(5) Where, as a result of the implementation of the Extension Directive by a Member State there are required to be Gibraltar members on the special negotiating body and immediately before the date on which these Regulations come into force—

- (a) no person has been designated to attend meetings of the special negotiating body as a representative of employees in Gibraltar; or
- (b) one or more persons have been designated to attend meetings of the special negotiating body as a representative of employees in Gibraltar,

then in the case mentioned in paragraph (a), the Gibraltar members of the special negotiating body shall be elected or appointed in accordance with regulations 13 to 15, and in the case mentioned in paragraph (b), the person or persons shall be treated as from the date on which these Regulations come into force as a Gibraltar member of the special negotiating body who has been elected or appointed in accordance with regulations 13 to 15.

(6) Where the number of persons referred to in sub-regulation (5)(b) is—

- (a) in a case where regulation 12 applies, less than the number of Gibraltar members of the special negotiating body required by that regulation, or
- (b) in a case where regulation 12 does not apply, less than the number of Gibraltar members of the special negotiating body required by the provisions of the law or practice of the Member State under which the special negotiating body was established,

the additional number of Gibraltar members of the special negotiating body needed to secure compliance with regulation 12 or, as the case may be, the law or practice of the Member State referred to in paragraph (b) of this sub-regulation shall be elected or appointed in accordance with regulations 13 to 15.

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

Transitional provisions: Article 7 European Works Councils.

1932-16

Revoked
Subsidiary
2006/026

40.(1) Where, immediately before the date on which these Regulations come into force, a European Works Council has been established under the provisions of the law or practice of a Member State other than Gibraltar, which are designed to give effect to Article 7 of, and the Annex to, the Transnational Information and Consultation Directive, sub-regulations (2) and (3) shall apply.

(2) Where the central management is situated in Gibraltar and regulation 35(1)(a) or 35(1)(b) applies these Regulations shall apply with the modifications specified in sub-regulations (4) to (6) as if the European Works Council had been established under these Regulations.

(3) Where the central management is not situated in Gibraltar, or is situated in Gibraltar but neither regulation 35(1)(a) nor 35(1)(b) applies, the regulations referred to in regulation 4(2) shall apply with the modifications specified in sub-regulations (5) and (6) of this regulation.

(4) Paragraph 2 of the Schedule shall apply in respect of the composition of the European Works Council only to the extent that it determines the number of Gibraltar members on the European Works Council but shall not affect in any way the number of non-Gibraltar members on the European Works Council.

(5) Where, as a result of the implementation of the Extension Directive by a Member State, there are required to be Gibraltar members on the European Works Council and immediately before the date on which these Regulations come into force—

- (a) no person has been designated to attend meetings of the European Works Council as a representative of employees in Gibraltar; or
- (b) one or more persons have been designated to attend meetings of the European Works Council as a representative of employees in Gibraltar,

then in the case mentioned in paragraph (a), the Gibraltar members of the European Works Council shall be appointed or elected in accordance with paragraphs 3 to 5 of the Schedule, and in the case mentioned in paragraph (b), the person or persons shall be treated as from the date on which these Regulations come into force as a Gibraltar member of the European Works Council who has been elected or appointed in accordance with paragraphs 3 to 5 of the Schedule.

(6) Where the number of persons referred to in sub-regulation (5)(b) is—

1932-16

Revoked
Subsidiary
2006/026

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

- (a) in a case where paragraph 2 of the Schedule applies, less than the number of Gibraltar members of the European Works Council required by that paragraph; or
- (b) in a case where paragraph 2 of the Schedule does not apply, less than the number of Gibraltar members of the European Works Council required by the law or practice of the Member State under which the European Works Council was established,

the additional number of Gibraltar members needed to secure compliance with paragraph 2 or, as the case may be, the law or practice of the Member State referred to in paragraph (b) of this sub-regulation shall be elected or appointed in accordance with paragraphs 3 to 5 of the Schedule.

SCHEDULE

Regulation 18

SUBSIDIARY REQUIREMENTS

Establishment of European Works Council.

1. A European Works Council shall be established in the Community-scale undertaking or Community-scale group of undertakings in accordance with the provisions of this Schedule.

Composition of the European Works Council.

2.(1) The European Works Council shall comprise a minimum of three, and a maximum of 30, members.

(2) Subject to sub-paragraph (1), the European Works Council shall be constituted in accordance with sub-paragraphs (3) and (4) below.

(3) There shall be on the European Works Council at least one member representing each Member State in which the Community-scale undertaking has one or more establishments, or in which the Community-scale group of undertakings has its controlling undertaking or one or more controlled undertakings.

(4) There shall be on the European Works Council the following additional members—

- (a) one additional member from a Member State in which there are employed 25 per cent or more but less than 50 per cent of the employees of the undertaking or group of undertakings who are employed in the Member States;
- (b) two additional members from a Member State in which there are employed 50 per cent or more but less than 75 per cent of the employees of the undertaking or group of undertakings who are employed in the Member States;
- (c) three additional members from a Member State in which there are employed 75 per cent or more of the employees of the undertaking or group of undertakings who are employed in the Member States.

(5) The European Works Council shall inform the central management and any more appropriate level of management of the composition of the European Works Council.

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

(6) Where the European Works Council decides its size so warrants, it shall elect from among its members a select committee comprising no more than three members who are to act on behalf of the European Works Council.

Appointment or election of Gibraltar members of the European Works Council.

3.(1) The Gibraltar members of the European Works Council must be Gibraltar employees and—

- (a) in a case where all of those employees are represented by Gibraltar employees' representatives, shall be elected or appointed by such employees' representatives;
- (b) in a case where not all of those employees are represented by Gibraltar employees' representatives, shall be elected by ballot.

(2) For the purposes of this paragraph all of the Gibraltar employees are represented by Gibraltar employees' representatives if each of the employees referred to in sub-paragraph (1) is a Gibraltar employee—

- (a) in respect of which a trade union is recognised by his employer for the purpose of collective bargaining; or
- (b) who has elected or appointed an employees' representative for the purpose of receiving, on the employee's behalf, information—
 - (i) which is relevant to the employee's terms and conditions of employment; or
 - (ii) about the activities of the undertaking which may significantly affect the employee's interests,

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

(3) Where sub-paragraph (1)(a) above applies, the election or appointment of members of the European Works Council shall be carried out by whatever method the Gibraltar employees' representatives decide.

(4) Where sub-paragraph (1)(b) applies, the Gibraltar members of the European Works Council are to be elected by a ballot of the Gibraltar

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

employees in accordance with paragraphs 4 and 5.

1932-16

Revoked
Subsidiary
2006/026

Ballot arrangements.

4.(1) The Gibraltar management must arrange for the holding of a ballot of employees referred to in paragraph 3(4), which satisfies the requirements specified in sub-paragraph (2).

(2) The requirements referred to in sub-paragraph (1) are that–

- (a) the ballot of the Gibraltar employees must comprise a single ballot, but may instead, if the Gibraltar management so decides, comprise separate ballots of employees in such constituencies as the Gibraltar management may determine where–
 - (i) the number of Gibraltar members of the European Works Council to be elected is more than one; and
 - (ii) the Gibraltar management considers that if separate ballots were held for those constituencies, the Gibraltar members of the European Works Council to be elected would better reflect the interests of the Gibraltar employees as a whole than if a single ballot were held;
- (b) a Gibraltar employee who is an employee of the Community-scale undertaking or the Community-scale group of undertakings on the day on which votes may be cast in the ballot or, if the votes may be cast on more than one day, on the first day of those days is entitled to vote in a ballot of the Gibraltar employees;
- (c) any Gibraltar employee who is an employee of the Community-scale undertaking or Community-scale group of undertakings immediately before the latest time at which a person may become a candidate in the ballot, is entitled to stand in the ballot of the Gibraltar employees as a candidate for election as a Gibraltar member of the European Works Council;
- (d) the Gibraltar management must, in accordance with sub-paragraph (6), appoint an independent ballot supervisor to supervise the conduct of the ballot of the Gibraltar employees but may instead, where there are to be separate ballots, appoint more than one independent ballot supervisor in accordance with that sub-paragraph, each of whom is to supervise such of the separate ballots as the Gibraltar management may

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

determine, provided that each separate ballot is supervised by a supervisor;

- (e) after the Gibraltar management has formulated proposals as to the arrangements for the ballot of the Gibraltar employees and before it has published the final arrangements under paragraph (f) it must, so far as reasonably practicable, consult with the Gibraltar employees' representatives on the proposed arrangements for the ballot of the Gibraltar employees;
- (f) the Gibraltar management must publish the final arrangements for the ballot of the Gibraltar employees in such manner as to bring them to the attention of, so far as reasonably practicable, the Gibraltar employees and the Gibraltar employees' representatives.

(3) Any Gibraltar employee or Gibraltar employees' representative who believes that the arrangements for the ballot of the Gibraltar employees are defective may, within a period of 21 days beginning on the date the Gibraltar management published the final arrangements under paragraph (f), present a complaint to the Industrial Tribunal.

(4) Where the Industrial Tribunal finds the complaint well-founded it shall make a declaration to that effect and may make an order requiring the Gibraltar management to modify the arrangements it has made for the ballot of the Gibraltar employees or to satisfy the requirements in paragraph (e) or (f) of sub-paragraph (2).

(5) An order under sub-paragraph (4) shall specify the modifications to the arrangements which the Gibraltar management is required to make and the requirements which it must satisfy.

(6) A person is an independent ballot supervisor for the purposes of sub-paragraph (2)(d) if the Gibraltar management reasonably believes that he will carry out any functions conferred on him in relation to the ballot competently and has no reasonable grounds for believing that his independence in relation to the ballot might reasonably be called into question.

(7) For the purposes of sub-paragraph (3), the arrangements for the ballot of the Gibraltar employees are defective if—

- (a) any of the requirements specified in paragraphs (b) to (f) of sub-paragraph (2) is not satisfied; or
- (b) in a case where the ballot is to comprise separate ballots, the constituencies determined by the Gibraltar management do not

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

reflect adequately the interests of the Gibraltar employees as a whole.

1932-16

Revoked
Subsidiary
2006/026

Conduct of ballot.

5.(1) The Gibraltar management must—

- (a) ensure that a ballot supervisor appointed under paragraph 4(2)(d) carries out his functions under this paragraph and that there is no interference with his carrying out of those functions from the Gibraltar management, or the central management (where it is not also the Gibraltar management); and
- (b) comply with all reasonable requests made by a ballot supervisor for the purposes of, or in connection with, the carrying out of those functions.

(2) A ballot supervisor's appointment shall require that he—

- (a) supervises the conduct of the ballot, or the separate ballots he is being appointed to supervise, in accordance with the arrangements for the ballot of the Gibraltar employees published by the Gibraltar management under paragraph 4(2)(f) or, where appropriate, in accordance with the arrangements as required to be modified by an order made as a result of a complaint presented under paragraph 4(3);
- (b) does not conduct the ballot or any of the separate ballots before the Gibraltar management has satisfied the requirement specified in paragraph 4(2)(e) and—
 - (i) where no complaint has been presented under paragraph 4(3), before the expiry of a period of 21 days beginning on the date on which the Gibraltar management published its arrangements under paragraph 4(2)(f); or
 - (ii) where a complaint has been presented under paragraph 4(3), before the complaint has been determined and, where appropriate, the arrangements have been modified as required by an order made as a result of the complaint;
- (c) conducts the ballot, or each separate ballot, so as to secure that—
 - (i) so far as reasonably practicable, those entitled to vote are given the opportunity to vote;

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

- (ii) so far as reasonably practicable, those entitled to stand as candidates are given the opportunity to stand;
- (iii) so far as is reasonably practicable, those voting are able to do so in secret; and
- (iv) the votes given in the ballot are fairly and accurately counted.

(3) As soon as reasonably practicable after the holding of the ballot, or each separate ballot, the ballot supervisor must publish the results of the ballot in such manner as to make them available to the Gibraltar management and, so far as reasonably practicable, the Gibraltar employees entitled to vote in the ballot or who stood as candidates in the ballot.

(4) A ballot supervisor shall publish an ineffective ballot report where he considers (whether or not on the basis of representations made to him by another person) that—

- (a) any of the requirements referred to in sub-paragraph (2) was not satisfied with the result that the outcome of the ballot would have been different; or
- (b) there was interference with the carrying out of his functions or a failure by management to comply with all reasonable requests made by him with the result that he was unable to form a proper judgment as to whether each of the requirements referred to in sub-paragraph (2) was satisfied in relation to the ballot.

(5) Where a ballot supervisor publishes an ineffective ballot report the report must be published within a period of one month commencing on the date on which the ballot supervisor publishes the results of the ballot under sub-paragraph (3).

(6) A ballot supervisor shall publish an ineffective ballot report in such manner as to make it available to the Gibraltar management and, so far as reasonably practicable, the Gibraltar employees entitled to vote in the ballot or who stood as candidates in the ballot.

(7) Where a ballot supervisor publishes an ineffective ballot report then—

- (a) if there has been a single ballot or an ineffective ballot report has been published in respect of every separate ballot, the outcome of the ballot or ballots shall have no effect and the Gibraltar management shall again be under the obligation in paragraph 4(1);

- (b) if there have been separate ballots and paragraph (a) does not apply—
 - (i) the Gibraltar management shall arrange for the separate ballot or ballots in respect of which an ineffective ballot report was issued to be reheld in accordance with paragraph 4 and this paragraph; and
 - (ii) no such ballot shall have effect until it has been so reheld and no ineffective ballot report has been published in respect of it.

(8) All costs relating to the holding of a ballot, including payments made to a ballot supervisor for supervising the conduct of the ballot, shall be borne by the central management (whether or not an ineffective ballot report has been made).

Competence of the European Works Council.

6.(1) The competence of the European Works Council shall be limited to information and consultation on the matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States.

(2) In the case of a Community-scale undertaking or Community-scale group of undertakings falling within regulation 5(1)(b) or 5(1)(c), the competence of the European Works Council shall be limited to those matters concerning all of its establishments or group undertakings situated within the Member States or concerning at least two of its establishments or group undertakings situated in different Member States.

Information and consultation meetings.

7.(1) Subject to paragraph 8, the European Works Council shall have the right to meet with the central management once a year in an information and consultation meeting, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects.

(2) The central management shall inform the local managements accordingly.

(3) The information and consultation meeting shall relate in particular to the structure, economic and financial situation, the probable development of

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, 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.

Exceptional information and consultation meetings.

8.(1) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed. It shall have the right to meet in an exceptional information and consultation meeting, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

(2) Those members of the European Works Council who have been elected or appointed by the establishments or undertakings which are directly concerned by the measures in question shall also have the right to participate in an exceptional information and consultation meeting referred to in sub-paragraph (1) of this paragraph organised with the select committee elected under sub-paragraph (6) of paragraph 2.

(3) The exceptional information and consultation meeting referred to in sub-paragraph (1) of this paragraph shall take place as soon as possible on the basis of a report drawn up by the central management or any other appropriate level of management of the Community-scale undertaking or Community-scale group of undertakings, on which an opinion may be delivered at the end of the meeting or within a reasonable time.

(4) The exceptional information and consultation meeting referred to in sub-paragraph (1) of this paragraph shall not affect the prerogatives of the central management.

Procedures.

9.(1) Before an information and consultation meeting or exceptional information and consultation meeting with the central management, the European Works Council or the select committee, where necessary enlarged in accordance with sub-paragraph (2) of paragraph 8, shall be entitled to meet without the management concerned being present.

(2) Subject to regulation 23, the members of the European Works Council shall inform—

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

1932-16

Revoked
Subsidiary
2006/026

- (a) the employees' representatives of the employees in the establishments of a Community-scale undertaking or in the undertakings of a Community-scale group of undertakings; or
- (b) to the extent that any employees are not represented by employees' representatives, the employees themselves,

of the content and outcome of the information and consultation procedure carried out in accordance with the provisions of this Schedule.

(3) The European Works Council shall adopt its own rules of procedure.

(4) The European Works Council or the select committee may be assisted by experts of its choice, in so far as this is necessary for it to carry out its tasks.

(5) The operating expenses of the European Works Council shall be borne by the central management; but where the European Works Council is assisted by more than one expert the central management is not required to pay such expenses in respect of more than one of them.

(6) The central management shall provide the members of the European Works Council with such financial and material resources as enable them to perform their duties in an appropriate manner. In particular, the cost of organising meetings and arranging for interpretation facilities and the accommodation and travelling expenses of members of the European Works Council and its select committee shall be met by the central management unless the central management and European Works Council, or select committee, otherwise agree.

The continuing application of the subsidiary requirements.

10.(1) Four years after the European Works Council is established it shall examine whether to open negotiations for the conclusion of an agreement referred to in regulation 17 or to continue to apply the subsidiary requirements adopted in accordance with the provisions of this Schedule.

(2) If the European Works Council decides to negotiate an agreement in accordance with regulation 17, it shall notify the central management in writing to that effect, and

- (a) such notification shall be treated as a valid request made under regulation 9; and
- (b) regulations 16, 17 and 18 shall apply in respect of the negotiations for an agreement as if references in those

1932-16

Revoked

**Subsidiary
2006/026**

Employment

EMPLOYMENT (EUROPEAN WORKS COUNCIL) REGULATIONS 2006

regulations to the special negotiating body were references to the European Works Council.