

European Works Councils

This document lists the applications and complaints that can be submitted to the CAC under The Transnational Information and Consultation of Employees Regulations 1999 (Statutory Instrument 1999 No. 3323) as amended by The Transnational Information and Consultation of Employees (Amendment) Regulations 2010 (Statutory Instrument 2010 No. 1088).

It is intended as a summary of the CAC's jurisdiction, not an authoritative interpretation of the law. You may also wish to consult the full texts of the two Statutory Instruments which are available at **legislation.gov.uk**.

If you wish to submit an application or complaint, the CAC does not require the completion of an application form but does require the following written information:

1. Name, position and full contact details of the person submitting the application or complaint.
2. Name, position and full contact details for the person or undertaking to which the application or complaint applies.
3. The appropriate Regulation number of the application or complaint (these are listed below).
4. A brief statement of the grounds for making the application or complaint.

This information can be sent to us electronically at **enquiries@cac.gov.uk**.

If you have any questions before submitting an application or complaint, please e-mail us at the above address or telephone **020 7904 2300**.

CAC

January 2012

1. Entitlement to information

Legislative Provision	CAC Involvement	CAC Decision
Regulation 7	Regulation 8	
<p>An employee, or employees' representative, may request information from the management of an establishment or of an undertaking to determine whether an undertaking is part of a Community-scale undertaking.</p> <p>The management must provide the average number of employees in the UK and in each of the other Member States in the last two years. This information to include information relating to agency workers, if any. Management must also obtain and provide information on the structure of the undertaking and its workforce.</p>	<p>An employee, or employees' representative, may present a claim to the CAC that the recipient has either failed to provide or failed to obtain and provide the information or that it is false or incomplete.</p> <p>A complainant must wait a month from the date of the request before lodging a complaint with the CAC</p>	<p>CAC can specify the information to be disclosed.</p> <p>CAC may also declare, if it has received sufficient information in considering the claim, that the establishment is part of a Community-scale undertaking</p>

2. *Request to establish an EWC or I & C procedure*

Legislative Provision	CAC Involvement	CAC Decision
Regulation 9	Regulation 10	
<p>Central Management should initiate negotiations for the establishment of a EWC or an I & C procedure if a valid request is made.</p> <p>A valid request consists of a single request (or a number of separate requests taken together) made by at least 100 employees, or employees' representatives representing at least that number, in at least two different Member States</p>	<p>Central management may apply to the CAC if it considers:</p> <ul style="list-style-type: none"> a) the employer is not a Community-scale undertaking; and/or b) a valid request has not been made, including whether sufficient numbers have requested the establishment of a EWC <p>The CAC can only consider an application –</p> <p>if it is made within 3 months of the date of the request (or date of first request if more than one).</p> <p>if it is made before central management take any steps to initiate negotiations.</p> <ul style="list-style-type: none"> c) that it is under no obligation, for any reason, to initiate negotiations. Such a complaint must be lodged within 3 months of the date of the valid request being made. 	<p>CAC can issue a declaration as to whether a valid request had been submitted.</p>

3. *Special Negotiating Body*

Legislative Provision	CAC Involvement	CAC Decision
Regulations 11 - 15	Regulations 13(4) and 15(7)	
<p>The SNB and central management determines the scope, composition, functions and term of office of a EWC or the arrangements for implementing an I & C procedure.</p> <p>The SNB should consist of one member for each 10% (or fraction thereof) which the employees represent of the total number of employees employed in the Member States (applies from 1 June 2011).</p> <p>The UK members of the SNB should be elected by a ballot, arranged by UK management, of the UK employees. The employees' representatives should be consulted about the proposed arrangements for the ballot. The final arrangements for the ballot must be published in such manner to bring them to the attention of, so far as is reasonably practicable, the UK employees and UK employees' representatives.</p> <p>If there is an existing consultative committee, it may nominate its members for the SNB (subject to several conditions).</p>	<p>Employees' representative may complain to the CAC that the proposed arrangements are defective eg that the number of seats of the SNB allocated to UK employees is incorrect.</p> <p>UK management or an employee or employees' representative may make a claim to the CAC that any nominations are invalid.</p>	<p>CAC may issue a declaration stipulating the modifications necessary to ensure the arrangement comply with the regulations.</p> <p>CAC may declare whether any nominations from the consultative committee are valid and whether all the UK members of the SNB should be elected by ballot.</p>

4. *Negotiating the establishment of the EWC or I & C procedure*

Legislative Provision	CAC Involvement	CAC Decision
Regulations 16 - 18	Regulation 20	
<p>Central management and SNB under a duty to negotiate with a view to reaching a written agreement.</p> <p>If no agreement is reached within 3 years of the valid request; or if central management refuses to commence negotiations within 6 months of the valid request; or if the parties so agree then the subsidiary requirements set out in the Schedule apply.</p>	<p>A complaint may be made to the CAC that because of a failure of central management the EWC or I & C procedure has not been established at all, or has not been established fully in accordance with the terms of the agreement reached or, as the case may be, in accordance with the provisions of the Schedule.</p>	<p>The CAC may make an order to take any steps necessary to comply with the Regulations. This may include the imposition of the statutory EWC contained in the Schedule.</p>

5. *Disputes about operation of the EWC or I & C procedure*

Legislative Provision	CAC Involvement	CAC Decision
Regulations 17- 18	Regulation 21	
A EWC or I &C procedure is established under regulation 17 or a EWC is established by virtue of regulation 18.	A complaint may be made to the CAC that the terms of the agreement under regulation 17 or the provisions of the Schedule have not been complied with or information has not been provided in accordance with regulation 18a or information has been provided, but is false or incomplete.	The CAC may issue orders requiring the defaulter to comply with the terms of the agreement or the provisions of the Schedule. If the defaulter is the central management an application can be made to the EAT within 3 months of the date of the CAC decision for a penalty notice to be issued.

6. *Disputes about failures of management*

Legislative Provision	CAC Involvement	CAC Decision
Regulations 16 & 19	Regulation 21A	
<p>Central management must convene a meeting with the SNB with a view to concluding an agreement. Before and after any meeting with central management the members of the SNB are entitled to meet without central management or its representatives being present. (Regulation 16(1A))</p> <p>Central management shall provide members of the EWC with the means required to fulfil their duty to represent collectively the interests of the employees (Regulation 19A)</p> <p>Central management shall provide an employee who is either a member of the SNB or a member of the EWC with the means required to undertake training in order to discharge their duty (Regulation 19B)</p> <p>No arrangements have been made to link information and consultation of a EWC with information and consultation of national employee representation bodies and there are circumstances likely to lead to substantial changes in work organisation or contractual relations (Regulation 19E)</p>	<p>A complaint may be made to the CAC that the SNB has been unable to meet in accordance with reg 16(1A).</p> <p>A complaint may be made to the CAC that members of the EWC have not been provided with the means required.</p> <p>A complaint may be made to the CAC that the training has not been provided</p> <p>A complaint may be made to the CAC that the EWC and the national employee representation bodies have not been informed and consulted.</p>	<p>The CAC may issue orders requiring the defaulter to comply with the relevant regulation. A complaint must be brought to the CAC within 6 months of the date of the alleged failure. If the CAC finds the complaint well-founded an application can be made to the EAT within 3 months of the date of the CAC decision for a penalty notice to be issued.</p>

7. *Complaints of failure to inform*

Legislative Provision	CAC Involvement	CAC Decision
Regulation 19D	Regulation 19D	
<p>An employee or employee’s representative may present a complaint that the EWC has failed to inform them of the content or outcome of the information and consultation procedure or the information provided by the EWC is false or incomplete in a material particular</p>	<p>A complaint may be made to the CAC.</p>	<p>The CAC may issue orders requiring the EWC to disclose the relevant information. However, the CAC shall not find a complaint well-founded if the failure to inform or the provision of false or incomplete information resulted from a failure by central management. A complaint under this regulation must be brought to the CAC within 6 months of the date of the alleged failure. There is no provision for an application to the EAT for a penalty notice should the CAC find the complaint well-founded.</p>

8. *Disclosure of Information*

Legislative Provision	CAC Involvement	CAC Decision
Regulations 23 - 24	Regulations 23(6) - (8) Regulations 24(2) - (4)	
Disclosure of information	<p>CAC can hear claims from central management that information they provided should be held in confidence by members of the EWC.</p> <p>CAC can hear claims from central management or EWC members that information should or should not be disclosed to the EWC as it would be prejudicial to the undertaking(s).</p>	<p>CAC issues declaration.</p> <p>CAC issues declaration.</p>

9. *Election of EWC members when the Subsidiary Requirements apply.*

Legislative Provision	CAC Involvement	CAC Decision
Paragraph 4 of the Subsidiary Requirements	Paragraph 4(3) of the Subsidiary Requirements	
<p>When the Subsidiary Requirements apply and the UK members of the EWC are to be elected by a ballot of the UK employees management is under a duty to consult with the UK employees' representatives on the proposed arrangements for the ballot. The final arrangements for the ballot must be published in such manner to bring them to the attention of, so far as is reasonably practicable, the UK employees and UK employees' representatives.</p>	<p>Any UK employee or UK Employees' representative may complain to the CAC that the proposed arrangements are defective. Such complaint to be lodged within 21 days of the arrangements being published.</p>	<p>CAC may issue a declaration stipulating the modifications necessary to ensure the arrangement comply with the regulations.</p>