

## Appendix 1

### ISSUES UNDER THE INFORMATION AND CONSULTATION REGULATIONS ON WHICH APPLICATIONS OR COMPLAINTS CAN BE MADE TO THE CAC

#### ***EMPLOYER'S OBLIGATION TO PROVIDE INFORMATION ON NUMBERS***

##### 1. **Regulation 6(1)**

Complaint by an employee or an employees' representative that the employer has failed to provide information to determine the number of people employed by the undertaking in the UK or the number of employees that constitutes 2% of employees in the undertaking, or that information provided is false or incomplete. Complaint can be submitted no earlier than one month after the complainant requested the information.

CAC can make an order specifying:

- the data to be disclosed;
- the date on which the employer refused to supply the data or disclosed false or incomplete information;
- the date (no earlier than one week from the date of the order) by which the employer must disclose the data.

#### ***PRE-EXISTING AGREEMENTS***

##### 2. **Regulation 8(7)**

Application by an employee or employees' representative that the employer has not informed the employees, within one month of the employees' request, that it intends to hold a ballot for the purpose of endorsing the request.

CAC can declare that the employer is under a duty to initiate negotiations.

### 3. **Regulation 8(8)**

Complaint by an employee or employees' representative that the employer has informed employees that it intends to hold a ballot to endorse the employee request, where it is made by fewer than 40% of employees and there is a pre-existing agreement, but either the employer has not arranged for the ballot to be held or the ballot has taken place prematurely.

CAC can make an order requiring the employer to hold a ballot within a specified period.

### 4. **Regulation 10(1)**

a) Complaint by an employee or employees' representative, within 21 days of the employer notifying its intention to hold a ballot, that there is no valid pre-existing agreement. A pre-existing agreement must:

- be in writing
- cover all employees
- have been approved by the employees
- set out how the employer is to give the information to employees or representatives and to seek their views

If the CAC decides that there is no pre-existing agreement, it can make an order requiring the employer to initiate negotiations.

b) Complaint by an employee or employees' representative that an employer was not entitled to run a combined ballot in circumstances where there are one or more pre-existing agreements covering employees in more than one undertaking.

If the CAC decides that a combined ballot should not take place, it can order the employer to initiate negotiations or to conduct a ballot in the undertaking to which the employee request relates.

### 5. **Regulation 10(2)**

Complaint, within 21 days of the ballot, by an employee or employees' representative that the ballot to endorse the employee request did not comply with Regulation 8(4):

- the ballot must be fair
- all employees are entitled to vote
- voting is in secret
- votes are accurately counted

CAC can order the employer to hold the ballot again or, if the employer makes representations that it would prefer to initiate negotiations, to require the employer to initiate negotiations.

## **VALIDITY OF REQUEST**

### **6. Regulation 13(1)**

Application by an employer (within one month of the request or the request which resulted in the requisite number of employees) that a request is not valid because

it did not conform with Regulations 7(2)-(4):

- request not made by 2% of the employees (subject to a minimum of 15 and a maximum of 2500)
- aggregated requests not made within a six month period of each other
- request not made in correct form

it was covered by the restrictions in Regulation 12:

- within three years of the date of a negotiated agreement or before the date of termination
- within three years of the date on which the standard provisions started to apply
- where there was a pre-existing agreement, within three years of a request which led to the non-endorsement of the request in a ballot

or that the obligation in Regulation 7(1) did not apply on the date the request was made:

- employer does not employ required number of employees
- employer is not 'a public or private undertaking carrying out an economic activity, whether or not operating for gain'

CAC can make a declaration as to whether the request was valid or whether the obligation applied on that date.

## ***VALIDITY OF EMPLOYER NOTIFICATION***

### **7. Regulation 13(2)**

Application by an employee or employees' representative (within one month of the notification) that an employer notification to initiate negotiations under Regulation 11 is not valid because it did not conform with the requirements of Regulation 11(2):

- the notification should state that it is made for the purpose of the Regulations
- it should state the date on which it is issued
- it should be brought to the attention of all employees in the undertaking

or was covered by the restriction in Regulation 12 (see paragraph 6 above).

CAC can make a declaration as to whether the notification was valid

## ***APPOINTMENT OR ELECTION OF NEGOTIATING REPRESENTATIVES***

### **8. Regulation 15(1)**

Complaint, within 21 days of the appointment or election of a negotiating representative, by an employee or employees' representative that the requirements for the appointment or election of negotiating representatives in Regulation 14(2):

- all employees entitled to take part in appointment/election
- all employees are represented by a representative

have not been complied with.

If well founded, CAC can make an order requiring the employer to arrange again the appointment or election of negotiating representatives within a specified period.

***BALLOT TO APPROVE A NEGOTIATED AGREEMENT***

**9. Regulation 17(1)**

Complaint, within 21 days of the ballot, by a negotiating representative that the arrangement for a ballot to approve a negotiated agreement did not comply with Regulation 16:

- the ballot must be fair
- all employees are entitled to vote
- voting is in secret
- votes are accurately counted
- the employer must inform the employees of the result as soon as is reasonably practicable after the date of the ballot

CAC can make an order requiring the employer to hold the ballot again within a specified period.

***BALLOT TO ELECT I & C REPRESENTATIVES***

**10. Regulation 19(4)**

Complaint by an employee or employees' representative that arrangements for a ballot to elect I&C representatives for the purposes of the standard provisions has not been arranged.

CAC can make an order requiring the employer to arrange and hold a ballot.

Employee or employees' representative can apply to the EAT for a penalty notice.

**11. Paragraph 3 of Schedule 2**

Complaint by an employee or employees' representative that the proposed ballot arrangements are defective.

CAC can make an order requiring the employer to modify the proposed arrangements

## ***EMPLOYER'S FAILURE TO COMPLY WITH AGREEMENT/PROVISIONS***

### **12. Regulation 22(1)**

Where a negotiated agreement has been agreed or the standard provisions apply, a complaint may be made to the CAC by a relevant applicant, within three months of the alleged failure, that an employer has failed to comply with the terms of the agreement or one or more of the standard provisions.

CAC can make an order requiring the employer to take steps to comply.

The relevant applicant can apply to the EAT for a penalty notice.

If the standard provisions apply, complaints may, for example, cover the following issues:

- not providing information under Regulation 20(1)(a), (b) and (c)
- not providing the information within the time, fashion and content requirements under Regulation 20(2)
- not consulting on the issues described in Regulation 20(1)(b) and (c) under Regulation 20(3)
- not consulting in accordance with the requirements in Regulation 20(4)

(See Appendix 2 for further information)

## ***REQUIREMENT TO HOLD INFORMATION IN CONFIDENCE***

### **13. Regulation 25(6)**

Application by a recipient of information as to whether it is reasonable for the employer to require him or her to hold the information in confidence.

CAC can make a declaration.

Applies where there is a negotiated agreement or the standard provisions apply.

***WHETHER INFORMATION SHOULD BE DISCLOSED***

**14. Regulation 26(2)**

Application by employer or recipient as to whether information is such that its disclosure would seriously harm the functioning of, or be prejudicial to, the undertaking.

CAC can make a declaration and, if appropriate, order the employer to disclose the information.

Applies where there is a negotiated agreement or the standard provisions apply.