BIS | Department for Business Innovation & Skills

GUIDANCE

The Transnational Information and Consultation of Employees (Amendment) Regulations 2010

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Contents

Chapter 1 - Introduction

Employees who work for a large multinational company that has employees in the UK and another member state of the European Economic Area[1], may have the right to be represented by a European Works Council (EWC).

What is a European Works Council ?

A European Works Council (EWC) is a consultative body representing the European workforce of a multinational organisation or business. The central purpose of an EWC is to establish a dialogue with the European central management of the multinational so that the decisions taken by them or local management are informed by the views of the workforce.

Many multinational companies operating in the EEA have businesses outside this zone, in say the US or the Far East. Some of these companies run their EWCs as part of a wider global system to inform and consult their employees across continents.

In many countries where multinationals operate, there will be national-level consultative arrangements. To avoid duplication, the remit of EWCs is limited to the discussion of "transnational" issues only.

The law affecting EWCs - what companies are covered ?

The law on EWCs applies to multinationals which have:

- at least 1000 employees in the European Economic Area (EEA), and
- at least 150 employees in each of at least two EEA member states.

It also applies to groups of companies which have:

- at least 1000 employees in the EEA;
- at least two parts of that group in different EEA member states; and
- at least one part of that group in one member state has at least 150 employees and one other part of that group in another member state has at least 150 employees

How do employees know if the company they work for is covered ?

If an employee thinks that they work for a company that meets the above criteria they can ask the company to provide them with information to allow them to check. The company should provide the employee with information relating to:

- the number of employees in the company in total
- the country that those employees work in

[1] The EEA is made up of the member states of the European Union and Norway, Iceland and Liechtenstein

- the part of the company they work for

If the employer does not provide the employee with this information when asked for it, in Great Britain the employee can apply to the Central Arbitration Committee (CAC) who can order the company to provide it. To find out more about the CAC and the enforcement of the law, click here.

It is also good practice for the company to provide the employee with contact details to allow them to co-ordinate a valid request to establish an EWC.

How does the law treat different categories of EWC ?

The law has evolved in two stages, reflecting the fact that the EU Directive underpinning UK law was significantly revised in 2009. The first requirements on companies to establish EWCs in the UK took effect in 2000. A revised set of requirements come into force on 5 June 2011, which reflect the changes introduced by the 2009 EU Directive. This guidance describes the law as it will operate after 5 June 2011.[2]

There are very important differences in the extent to which multinationals are covered by the law in this area. In particular, employees' legal rights will depend a lot on the date when the agreement establishing an EWC was signed.

- EWCs which are created after 5 June 2011 are subject to all the revisions introduced by the second set of regulations. Also, EWCs which were established by agreement after 15 December 1999 are similarly subject to all the revisions, provided those agreements were not revised in the two years before 5 June 2011. For further information about the law affecting EWCs which fall into this category, click here.

- Some EWCs have existed for decades and preceded the making of any EU and UK laws. Such pre-existing EWCs are accorded special treatment under the law, and are in effect exempted from most of its provisions. For further information about the law affecting EWCs which fall into this category of EWC, click here.

- If an EWC was:
    - established in the two years before 5 June 2011, or
    - established by agreement after 15 December 1999 and before 5 June 2009 and the agreement was revised later during the two years before 5 June 2011,

[2] Throughout this guidance, the law relating to the establishment and operation of EWCs is described. As an alternative, the law also provides for information and consultation on transnational issues to take place via so-called "information and consultation procedures" which do not involve an EWC. Such procedures are rare in the UK or elsewhere. For simplicity, this guidance limits itself to the law relating to EWCs.

then to a large extent the original set of regulation introduced in 2000 will continue to apply. In other words, many of the revisions introduced in the second set of regulation do not apply to this category of EWC. For further information about the law affecting EWCs which fall into this category of EWC, click here.

Chapter 2 - Setting up a new EWC on or after 5 June 2011

This chapter describes the ways in which employees or the central management can initiate the process to establish an EWC.

Which EWCs are covered ?

This chapter describes the law affecting EWCs which are created on or after 5 June 2011. The same law also applies to those EWCs which were established by agreement after 15 December 1999 under agreements which were not revised in the two years before 5 June 2011. The law in respect of EWCs established before 15 December 1999 is described in Chapter 9; and the law for EWCs signed or revised in the two years before 5 June 2011 is described in Chapter 10.

Establishing an EWC

There are two main ways in which EWCs can be established under the law.

Central Management Initiative

First, the central management of the multinational can start the process. However, management cannot establish an EWC unilaterally[3]. Instead, the law requires them to negotiate the membership and other features of the EWC with a body of employee representatives set up for this specific purpose. That body is called the Special Negotiating Body (SNB) and its objective is to conclude an EWC agreement with central management.

The central management must make the necessary arrangements for employees to elect or appoint one or more representatives to the SNB for each EEA member state where the company has employees.

Employee Request

Second, any employee can formally ask for an EWC to be set up. To do this they will need to put together a valid request.

For a request to be valid it must be:

- made by at least 100 employees in at least two undertakings in two or more member states or by representatives representing that many employees.
- in writing and dated
- sent to either the company's central management or local management

[3] It is possible for central management to establish an EWC without a Special Negotiating Body (SNB) if it uses the statutory fall-back provisions for an EWC (termed "subsidiary requirements" in the regulations). In practice, few, if any, multinationals have made use of this option, preferring to negotiate an agreement with their workforce which suits their own particular requirements.

A valid request can be made up of a number of separate requests which, when taken together, mean at least 100 employees in at least two EEA member states have made requests.

Once a valid request has been received, the company's central management must make the necessary arrangements for its employees to elect or appoint representatives to the Special Negotiating Body (SNB). The central management has six months to set up the SNB and start negotiations. If negotiations haven't started after six months, then the subsidiary requirements that are set out in the Regulations will apply. These "subsidiary requirements" set out standardised terms under which EWCs are formed and function.

If the central management believes that a request is not valid for any reason then, in GB, it can apply to the CAC who will decide whether or not the request is valid.

Once a SNB has been set up, the parties have up to three years to negotiate a EWC agreement in order to work out, among other things:

- the composition of the EWC
- what it will discuss
- how often it will meet
- what it should be provided with to help it function

More information about SNBs can be found by clicking here.

More information about what should go into an EWC agreement can be found by clicking here.

More information about the way these rights and obligations are enforced can be found by clicking here.

Chapter 3 - Special Negotiating Bodies (SNBs)

Chapter 2 explained how negotiations to establish a new EWC can be initiated. This chapter explains what happens next by explaining how Special Negotiating Bodies (SNBs) operate.

Which EWCs are covered ?

This chapter describes the law affecting EWCs which are created after 5 June 2011. The same law also applies to those EWCs which were established by agreement after 15 December 1999 under agreements which were not revised in the two years before 5 June 2011. The law in respect of EWCs established before 15 December 1999 is described in Chapter 9; and the law for EWCs signed or revised in the two years before 5 June 2011 is described in Chapter 10.

Who should be members of the SNB ?

SNBs should be representative of the employees on whose behalf they are negotiating. To ensure that this is the case the law sets out that an SNB should have:

- At least one member from each EEA member state where the company has employees
- At least one member for each 10% or part of 10% of the total number of employees employed in each member state.

So a member state that has 12% of the company's total employees will have at least two representatives on the SNB, whilst a member state with 38% of employees will have at least four SNB members.

Most multinational companies operating in the UK will have systems to inform and consult their UK employees. In some cases, such domestic consultation will take place via committees on which employee representatives sit. If all of the company's UK employees are represented by such a consultative committee, then that committee may nominate its own members as members of the SNB. If they choose not to, if there is no consultative committee or if the consultative committee does not represent all the employees, then the UK management of the company must arrange for ballots to elect UK members of the SNB. They can either hold a ballot of the whole UK workforce or they can hold separate, smaller, ballots to elect representatives of particular sets or workers, for example, different ballots at different sites.

If the company's employees do not think that the management's ballot plans are correct, then in GB they can bring a complaint to the CAC which can order the management to change the ballot process.

Notifying competent European-level organisations

Once the SNB's membership is decided and the first negotiations are scheduled, the SNB has a duty to inform certain European-level bodies accordingly. These bodies are :

- competent bodies representing workers in the sectors in which the multinational operates. These "competent bodies" are trade union federations operating at the European level and recognised by the EU authorities.

- competent bodies representing employers in the sectors in which the multinational operates. These "competent bodies" are employer federations operating at the European level and recognised by the EU authorities. The central management should be able to advise the SNB on the identity and contact details of these bodies.

What does the SNB do ?

The SNB's job is to negotiate the terms of an EWC agreement with the multinational's central management. Once a SNB has been set up, the parties have up to three years to negotiate an EWC agreement in order to decide such matters as:

- how the EWC will be set up
- what it will discuss
- how often it will meet

To find out more about the content of EWC agreements, click here.

If, after three years, the SNB and the central management can't reach an agreement, then the standard provisions specifying how an EWC will operate will apply. These are set out in law and are called the "subsidiary requirements". Among other things, they specify what the company must consult over and when. To find out more about the subsidiary requirements, click here

The SNB may also decide, by a majority of at least two-thirds, not to take part in negotiations or to end negotiations that have already started. If this happens, then there will be no EWC agreement and no more requests to establish one can be made for at least two years unless the central management and EWC agree otherwise.

Most SNBs are established to negotiate EWC agreements where no EWC has previously existed. However, they can also be convened to re-negotiate existing EWC agreements where the EWC's role or membership needs to be adapted to significant changes to the multinational's sphere of activity. To find out more about the adaptation of existing EWCs to these changed circumstances, click here.

Where can SNB members go for advice and training ?

SNB members are entitled to receive necessary training to help them perform their role. UK members of the SNB are entitled to receive paid time off from their employer to attend any necessary training. Central management is obliged to pay for that training. For more information, go to Chapter 6 on the rights of representatives.

If the SNB feels that it needs help during the course of negotiations, then it can ask for assistance from experts of its choice. These may include representatives of European-level trade union organisations or other organisations with expertise in conducting this type of negotiations.

The appointed experts are entitled to attend negotiation meetings to offer advice to the SNB if the SNB wishes. If the SNB needs to take the advice of their expert during the course of a negotiation meeting, then they may want to consider asking for a short adjournment to consult the expert. However, it may be more efficient and a good practice for the SNB's expert to speak at the meeting, particularly where the central management is also represented by an external expert who speaks at the meeting. It is advisable for the SNB and central management to discuss the role of the expert at the first negotiating meeting to agree ground rules for the expert's involvement.

Meeting before and after a negotiation meeting

The SNB can also meet before and after any meeting with central management, without management being present. The SNB's experts may attend, if the SNB wishes. These meetings enable the SNB to decide on its negotiating strategy and to discuss the outcome of negotiation meetings. The meetings should take place within a reasonable time before or after each negotiation meeting, thereby avoiding unnecessary cost and helping to ensure that the SNB conducts its business efficiently.

Who pays for the SNB ?

The central management of the company with whom the SNB is negotiating is required to cover any expenses relating to the negotiations, including the costs of an expert. This may include expenses relating to travel to meetings and accommodation whilst there, as well as any costs relating to translation services. The central management must also pay for the training of SNB members.

Chapter 4 - Content of an agreement

This chapter explains what issues an EWC agreement should cover.

Which EWCs are covered ?

This chapter describes the law affecting EWCs which are created after 5 June 2011. The same law also applies to those EWCs which were established by agreement after 15 December 1999 under agreements which were not revised in the two years before 5 June 2011. The law in respect of EWCs established before 15 December 1999 is described in Chapter 9; and the law for EWCs signed or revised in the two years before 5 June 2011 is described in Chapter 10.

An EWC Agreement

As explained in chapter 3, EWC agreements are negotiated, and sometimes re-negotiated, by an SNB and the central management of the multinational.

A negotiated EWC agreement must in general set out the following:

- what parts of the company or group of companies will be covered by the agreement.

Some multinationals have two or more EWCs covering different parts of their European operations. In addition, some multinationals may include companies outside the EEA in their EWC arrangements.

- the composition of the EWC and how long its members will serve.

When agreeing on the make-up of the EWC, it is important that thought is given to ensuring it is representative of the employees it covers, taking into account the mix of employment across the multinational's workforce by gender, sectoral activity and occupational role. For example, it would not be appropriate for a predominantly female workforce to be represented by an entirely male EWC.

- the functions of the EWC and the way consultation will take place and how information will be disclosed by central management

The law contains important provisions specifying the way central management should inform and consult the EWC. These obligations should shape the way EWC agreements are drafted. For more information on these important provisions, click here.

- the venue, frequency and duration of EWC meetings

Most EWCs meet at least once a year, with the precise timing linked to the publication of the multinational's financial results. Agreements may also address the issue of calling additional meetings in particular circumstances.

- how the consultative dialogue with the EWC should be linked to other consultative dialogues at the national-level

In many countries where multinationals operate, there will be national-level consultative arrangements undertaken by subsidiary companies. In many cases these processes will be entirely separate from the EWC dialogue and national-level bodies will often discuss different issues. However, there will be some cases where national-level consultation will discuss an issue with a transnational dimension on which the EWC would also be consulted. The agreement should set out mechanisms for linking the two types of dialogue, especially the typical timetables within which these consultations on transnational issues should occur. Where agreements fail to specify how consultation should be linked, the law sets out some obligations which the multinational must follow. Click here to find out more.

- the financial and material resources that will be available to the EWC

It is important that the EWC agreement addresses the financial resources available to the EWC. Under the law, the central management must provide the EWC members with the means required to undertake their duties. For more information on what resources should be made available, click here.

- how long the EWC agreement will last

Some agreements may not specify an end date, perhaps preferring instead to define a timetable for reviewing the EWC's performance.

- how the EWC agreement will be renegotiated

The structure of multinational companies can change significantly over time, as the companies sell or acquire businesses or as they shift production from one country to another. These major adaptations will usually require some adjustment to the membership of the EWC or to its methods of working. It is a good practice for EWC agreements to discuss how such changes will be handled. Where EWC agreements fail to detail how such matters will be handled, the law will require EWC agreements to be re-negotiated via a Special Negotiating Body (SNB). To find out more about the law on adapting EWCs, click here.

- if a select committee should be set up and, if so, how it will operate.

Not all EWCs have select committees. Where they operate, they tend to be small bodies, usually compromising senior members of the EWC, who carry out certain executive functions between the full meetings of the EWC. They help ensure continuity, and can be used as a sounding-board by central

management to decide how EWC consultations should be organised. They are in particular useful in situations where swift decisions are needed.

Other Issues

An EWC agreement may also set out other things relating to the operation of the EWC. For example, they may discuss the aims of the EWC or the corporate culture the parties want to promote.

The parties may also set out their approach to the training that should be given to EWC members.

Complying with an EWC agreement

It is important that EWC members and central management follow the terms set out in their EWC agreement.

Disputes about the operation of an EWC may be resolved in a number of ways. If the agreement sets out a dispute resolution procedure then this should be followed. Even if the agreement does not contain such a provision, the EWC should look to agree a solution with the central management. If neither route is successful, then the EWC may be able to raise a complaint with the Central Arbitration Committee (CAC). The EWC has six months from the date of the alleged failure to bring a complaint to the CAC.

If the CAC agrees with the complaint they can order the central management to fulfil its obligations. The applicant may then ask the Employment Appeal Tribunal to impose a fine on the central management. To find out more about enforcement and remedies, click here.

Chapter 5 - How an EWC should operate

This chapter explains what the law says about the remit of EWCs and the way they should conduct their affairs. These provisions are relevant to the commitments which EWC agreements should contain.

Which EWCs are covered ?

This chapter describes the law affecting EWCs which are created after 5 June 2011. The same law also applies to those EWCs which were established by agreement after 15 December 1999 under agreements which were not revised in the two years before 5 June 2011. The law in respect of EWCs established before 15 December 1999 is described in Chapter 9; and the law for EWCs signed or revised in the two years before 5 June 2011 is described in Chapter 10.

The overall remit of the EWC

EWCs help ensure that a multinational's European workforce is informed and consulted about transnational issues which affect it. They should therefore complement, but not duplicate, the way the multinational's subsidiaries inform and consult their workforce at national level.

EWCs should therefore focus on transnational issues only. A "transnational" issue is essentially one that affects operations or businesses in two or more EEA countries or one which affects the multinational's operation overall. An issue which affects the multinational's operation overall may involve a matter which is sufficiently large in scale or significance to have an actual or potential impact on the multinational's overall employment or business strategy in the EU or EEA.

How should central management inform and consult the EWC ?

Both the EWC and central management are under a general duty to work in a spirit of co-operation.

The central management also has a specific duty to provide information to the EWC representatives at a time and in a way to enable them to:

- gain an understanding of the subject
- carry out an in-depth assessment of the possible impact, and
- if appropriate, prepare for consultation with the company's management

Consultation between the company's management and the EWC should take place in such a way that the EWC can give an opinion on the matter being discussed which may be taken into account by the central management. Many decisions by a multinational need to be taken quite quickly. A timely input by the EWC gives a greater chance for its opinion to be factored into the

decision-making process. The opinion of the EWC should be given within a reasonable period of time after the EWC has received the information mentioned above.

Confidential information

The central management and the EWC should always try to work in a spirit of cooperation and trust. As such, the central management should always try to ensure that it provides the EWC with as much of the relevant information as possible to help them represent the employees effectively. During the course of EWC consultations, the central management may provide the EWC with information that is confidential in nature. When this happens, it is a legal requirement on all EWC members and experts that are assisting them not to pass this information to any other party.

The Regulations do not define what confidential information is, but if any EWC member thinks that a piece of important information is incorrectly categorised as confidential, then, in GB, he can apply to the CAC who will decide whether or not that information should be treated as confidential.

Linkage of EWC and national level consultation

National level consultation with workplace representatives may be required by statute. For example, such consultation may occur where larger scale redundancies are proposed. In addition, local managements may voluntarily consult workplace representatives on other issues such as business performance, workplace amenities or the employment situation. Such consultation may take place through joint institutions set up for the purpose. Such representative bodies may carry various names, including Joint Consultative Committees and works councils. Consultations may also take place through machinery set up to enable employers to bargain with the trade unions they recognise.

For the most part, EWC members will discuss issues with central management which are not the subject of consultation at national level. There may be some occasions, however, where both bodies will discuss the same or very similar issue. This will generally occur where a national issue has a transnational dimension as well.

EWC agreements should set out arrangements whereby these consultations may be linked. Some EWC agreements may not specify how this is to be achieved. Where that happens, and where the issue is significant in the sense that it is likely to lead to substantial changes in work organisation or contractual relations, then the law requires that the consultation with the EWC and with the national-level representative body should begin within a reasonable time of each other. Either process could start before the other, but the law means that they should begin at about the same time. However, what will be a “reasonable time” will depend on the circumstances. For example, in some cases of national-level consultations on redundancies which are driven by a statutory timetable, which cannot always be re-arranged

to fit into the timetable for consulting the EWC, a gap between the start of the consultations may be reasonable.

It is important to note that the law on EWCs does not establish any new rights for workers to be consulted at national level where none already exists.

Requirement on EWCs to report back

EWCs should report back the outcome of EWC discussions to the people they represent. There is no set way for an EWC to provide feedback. In some cases, it could be achieved by the EWC having space in a company newsletter to discuss what the EWC has done. It may be a good practice for such communications to be jointly issued with the central management, or at least cleared with central management in advance to help ensure factual accuracy.

It is also possible that an EWC may require each of its members to report back to his or her constituency directly. If this occurs, then the UK members of an EWC would be required to provide feedback to the UK employees of the multinational.

Whatever the approach followed, the central management should provide the EWC with the means required to undertake this duty. As a consequence, it is a good idea to agree how the EWC will feedback when drawing up the EWC agreement.

Access to the required means

It is good practice for an EWC agreement to set out how the central management will provide the EWC with the means required to allow it to fulfil its duties. This only applies to the EWC's role in representing employees collectively.

Even if the EWC agreement does not set out what means the EWC will be given, the EWC still has the right to receive them. There is no prescribed definition of what constitutes the ‘means required’ but it may include:

- Travel and accommodation costs for attending EWC meetings
- Translation costs at EWC meetings
- Facilities to allow EWC members to perform their EWC duties at their own workplace by, for example, having access to a telephone or a computer to communicate with central management or other EWC members
- The costs an EWC faces when providing feedback on EWC affairs to the employees they represent.

It is also the responsibility of management to provide the means required for SNB and EWC members to undertake necessary training. This is discussed in Chapter 6.

Of course, the means which central management must make available to EWCs are not without limit. In particular, management must provide only those means that are "required". Expenditure which is superfluous to requirements or which is excessive relative to the need may therefore not be covered.

Chapter 6 - The rights of EWC and SNB representatives

An EWC member or a member of a Special Negotiating Body (SNB) will enjoy certain entitlements and protections. This chapter explains those entitlements and protections.

Which EWCs are covered ?

This chapter describes the law affecting EWCs which are created after 5 June 2011. The same law also applies to those EWCs which were established by agreement after 15 December 1999 under agreements which were not revised in the two years before 5 June 2011. The law in respect of EWCs established before 15 December 1999 is described in Chapter 9; and the law for EWCs signed or revised in the two years before 5 June 2011 is described in Chapter 10.

Time off rights

EWC and SNB members are entitled to reasonable time off with pay :

- to attend EWC and SNB meetings

- to carry out their other functions as EWC and SNB members; and

- to receive such training as is necessary to perform their functions.

Acas provides non-statutory guidance on the practical application of these time off rights. Click here to access this guidance.

Training for EWC and SNB members

SNB and EWC representatives are entitled to receive training that is necessary to carry out their duties as representatives.

To a large extent, the training that is necessary will depend on the previous experience and existing knowledge of the individuals concerned. There may also be a case for new EWC members to receive some induction training to familiarise themselves with the law on EWCs, the multinational's business and the EWC's consultative practices There may also be a need for specialist training on individual topics, such as the effects of globalisation on business practices.

Who provides the training ?

The training does not have to be provided by a particular organisation.
In some cases, the EWC may have already selected a range of providers for standard courses, which it has discussed and agreed with central management. If an EWC or SNB member is a union member, then the union,

or any European federation that it is affiliated to, may also offer a suitable training course.

If the EWC or SNB member is not a union member and does not know where to go for training, other EWC members, central management or the EWC or SNB member's employer may be able to help them find a suitable course through their existing training networks.

It would be a good idea for the EWC or SNB member to discuss their training needs and potential training providers with their employer and/ or central management in advance.

Who pays for the training ?

The central management is under a duty to pay for the training, provided it is necessary for the EWC or SNB member to perform their duties. In practice, central management could pay for the training directly or it could authorise the local management or employer to pay for it.

Whilst it is the management's responsibility to pay for the training, they are required to pay only for that training which is necessary. This means that they may question the cost of training if they think that it is not all necessary. An EWC or SNB member should agree with their central or local management in advance of booking the training to ensure that they agree it is necessary.

Protections for EWC and SNB members

An EWC or SNB member's employer must not dismiss them or punish them in other ways on the following grounds

- for being an EWC or SNB member

- for standing in an election to become an EWC or SNB member.

Enforcement and remedies

The time off rights (including the right to be paid for that time off) and the protections against dismissal or other detriment are enforced through the Employment Tribunal.

If there are disputes about whether the training is necessary or the cost of the training an EWC or SNB member can make a complaint, in GB, to the Central Arbitration Committee. The CAC can decide whether the type and cost of the training is appropriate. If the CAC considers that it is, it can issue a notice that requires the employer to pay.

To find out more about the enforcement of the law on EWCs and the remedies available, click here.

Chapter 7 - Subsidiary Requirements

This chapter describes the fall-back arrangements - called subsidiary requirements - under which an EWC can be established when it cannot be set up through the normal route of an EWC agreement. The subsidiary requirements set out in more detail how an EWC should operate and what it should discuss.

Which EWCs are covered ?

This chapter describes the law affecting EWCs which are created after 5 June 2011. The same law also applies to those EWCs which were established by agreement after 15 December 1999 under agreements which were not revised in the two years before 5 June 2011. The law in respect of EWCs established before 15 December 1999 is described in Chapter 9; and the law for EWCs signed or revised in the two years before 5 June 2011 is described in Chapter 10.

When do the subsidiary requirements apply?

The subsidiary requirements act as a fall-back where:

- the central management and the SNB agree that they should
- the central management does not start EWC negotiations within six months of receiving a valid request
- agreement cannot be reached on EWC arrangements within three years

These fallback provisions will apply to new requests to establish an EWC, and where no agreement can be reached.

They can also apply in situations where an EWC already exists but the parties cannot agree on arrangements to adapt their EWC in response to significant restructuring within the multinational's operations. Click here to find out more about the law on adapting existing EWCs.

What do the subsidiary requirements provide ?

They give much less flexibility on the composition of the EWC, what it can discuss during EWC meetings and how the EWC should work.

Membership of the EWC

The membership of EWCs that are set up under the subsidiary requirements is made up of at least one member for each 10% or part of 10% of the total number of employees employed in each member state.

So if there are 12% of the company's total employees working a member state it will have at least two representatives on the EWC, whilst a member state with 38% of employees will have at least four EWC members.

Representative(s) on the EWC may be appointed by employee representatives in the UK (provided they represent all UK employees) or elected directly by the UK employees.

What must the EWC discuss ?

These standard provisions give an EWC the right to be informed about the multinational's

- structure
- economic and financial situation
- probable development
- production and sales

and to be informed and consulted about

- probable trends of employment
- investments
- substantial changes to the organisation
- the introduction of new working methods or production processes
- transfers of production
- mergers, cut-backs or closures
- collective redundancies

How should the EWC operate ?

If a company has an EWC that was set up under the subsidiary requirements, then that EWC must:

- set up a select committee to help it coordinate its activities
- meet with central management once a year, (and at other times where there are exceptional circumstances affecting the employees' interests)
- be given a report by the central management on the company's progress and its prospects so that they can discuss it at the annual meeting

EWCs set up under the subsidiary requirements are entitled to meet with central management where there are exceptional circumstances or decisions affecting employees' interests to a considerable extent. This might include large scale redundancies and plant closures.

EWCs are entitled to meet before any meeting with the central management without the central management being present. They may also be assisted by experts of their choice.

The EWC must adopt it own rules of procedure.

Who pays ?

Central management must meet the operating costs of the EWC. It must also provide financial and material assistance to EWC members to enable them to perform their duties in an appropriate manner.

Can the parties discontinue the use of the subsidiary requirements ?

An EWC, set up under the subsidiary requirements, can be reviewed after four years or longer. At this point, the EWC can decide whether it wants to continue under the subsidiary requirements or to attempt to negotiate an EWC agreement. If the EWC chooses to negotiate, it must tell the central management in writing. The central management must then enter into negotiation with the EWC as if it were an SNB. Click here for more information on SNBs.

Chapter 8 - Adaptation

Employees who work for a multinational company may be represented by an EWC. If the multinational experiences a major restructuring in its European operations, then the agreement under which the EWC operates may need to be adapted through negotiation. This chapter describes the law on the adaptation of EWCs.

Which EWCs are covered ?

All EWCs are subject to the law in this area, including those pre-existing EWCs which were established voluntarily before the first EU and UK laws on EWCs took effect in the 1990s.

What triggers the renegotiation of an existing EWC agreement ?

If an employee works for a multinational company that has recently gone through significant restructuring, then their EWC may need to be adapted to reflect the company's new structure. For example, the membership of the EWC may need to change, if, say, the multinational, which previously was concentrated in the UK and Germany, acquires a major business in Spain which employs a large number of people.

There is no single definition of what constitutes a "significant" change in a company's structure. It is likely to include situations where the multinational buys another European company, or sells a subsidiary business or merges with another company. In some of these situations, it is possible that two or more multinationals - each with an existing EWC - could be involved. A significant restructuring may also include other situations, such as the transfer of operations from one country to another, which cause a major change to the multinational's structure and the distribution of its workforce across Europe.

If an existing EWC agreement contains provisions which determine how it will be adapted in such situations, then those provisions within the agreement should be followed. In this case, no formal renegotiation of the EWC agreement would normally be required.

However, the central management of the multinational will have to open new negotiations about its EWC agreement if:

- the EWC agreement doesn't have a clause that allows it to be adapted; or
- where two or more EWCs are involved and provisions within one of the EWC agreements that allows it to be adapted clash with those in another EWC agreement.

What if central management does not initiate fresh negotiations ?

If an employee feels that the multinational they work for has undergone a significant change in structure but its central management hasn't started negotiations for a new EWC agreement, then the employees or their representatives can draw up and submit a valid request for a renegotiation.

For a request to be valid, it must be:

- made by at least 100 employees in at least two undertakings in two or more member states or by representatives representing that many employees,
- in writing and dated, and
- sent to either the company's central management or local management.

A valid request can be made up of a number of separate requests which, when taken together, mean that at least 100 employees in each of at least two EEA member states have made requests.

Upon receipt of a valid request the central management must make the necessary arrangements to set up a Special Negotiating Body (SNB) to negotiate the terms of the new EWC agreement. This SNB must include at least three members from each of the existing EWCs involved. Whilst the negotiations take place, the existing EWC or EWCs should continue to operate.

Click here for more information on SNBs.

What happens after a new EWC agreement has been negotiated ?

It is probable that a new agreement will involve some changes to the membership of the EWC. In this case some new members may need to be elected or appointed. That process may take some weeks or months. Once it is completed, the new EWC should be up and running. In addition, it is possible that the renegotiation may involve some other changes to the agreement, especially if the opportunity is taken to update or revise other terms.

Throughout this guidance, reference has been made to the fact that the law applies in different ways to different categories of EWC. As a general rule, the status of an EWC which undergoes adaptation is not altered by the process. So, an agreement which was largely outside the scope of the law because it was initially established before any EU or UK law was in place, will remain largely outside the law following a renegotiation.

What happens if the parties cannot agree a new EWC agreement ?

If the SNB and central management cannot reach an agreement over the new EWC, then the fallback, subsidiary requirements apply. Click here to find out more about the subsidiary requirements.

Chapter 9 - The law for pre-existing EWCs

The law on EWCs does not apply to all EWCs to the same extent. This chapter explains the significant exemptions which apply to EWCs established voluntarily before the relevant EU and UK law took effect in the 1990s.

What are pre-existing EWCs ?

There are two categories of EWC which can qualify as "pre-existing" :

- EWCs based in the UK which were established by agreement before 16 December 1999 ; and

- EWCs based in other EU countries which were established by agreement before 23 September 1996

For an EWC to qualify, these agreements must cover the whole of the company's workforce and allow for transnational information and consultation.

These agreements can be revised subsequently without necessarily changing their status as pre-existing agreements.

There are a large number of EWCs - an estimated 40% of the total currently operating - which qualify as "pre-existing".

How does the law apply to multinationals with pre-existing EWCs ?

With one notable exception, the law does not apply to these multinationals at all. This means that these agreements establishing these "pre-existing" EWCs cannot be enforced in the courts, unless the parties decide to make them enforceable. As voluntary arrangements, it is largely up to the parties themselves to sort out any differences in the interpretation and practical application of the agreements under which they were established.

What is the exception where the law on EWCs applies ?

If the multinational goes through a major change of structure in the EU or EEA, for example as a result of a takeover, merger or the sale of part of the business, then the agreement may need to be adapted to allow it to continue to represent all the employees. The law relating to the adaptation of EWCs in these circumstances applies to multinationals with pre-existing agreements as well (when it comes into force on 5 June 2011).

In brief, this law provides for a renegotiation of the pre-existing agreement where :

- the agreement does not specify how adaptation should take place ; or

- where the agreement does contain provisions specifying how adaptation should take place but those provisions conflict with provisions in the agreements underpinning any other EWCs involved.

Where renegotiation occurs, a Special Negotiating Body must be established, and if the SNB and central management cannot reach a new agreement, then the subsidiary requirements for EWCs apply. More information on SNBs can be found in chapter 3 and on the subsidiary requirements in chapter 7.

If the renegotiation does not take place in these circumstances then the subsidiary requirements will apply. In GB, the CAC can determine complaints that the election or appointment of SNB members is not taking place in accordance with the law. Click here for more information about enforcement and remedies.

The status of an EWC agreement which undergoes adaptation should not be altered by the process. A pre-existing agreement will in general retain its status as a pre-existing EWC, even if the subsidiary requirements apply, after it has been renegotiated. This means that the parties cannot go to the courts to enforce the terms of renegotiated agreements.

To find out more about the law on the adaptation of EWCs, click here.

Chapter 10 - EWCs established or revised between 5 June 2009 and 5 June 2011

The law on EWCs does not apply to all EWCs to the same extent. This chapter explains the significant differences in the treatment of certain EWCs established or revised on or after 5 June 2009 and before 5 June 2011.

Which EWCs are subject to this different legal regime ?

There are two categories of EWC which fall into this group.

- new EWCs established by agreement under the 1999 TICE Regulations on or after 5 June 2009 and before 5 June 2011

and

- EWCs, other than pre-existing EWCs, which were established by agreement under the 1999 TICE Regulations before 5 June 2009 and which were then revised on or after 5 June 2009 and before 5 June 2011.

What are the 1999 TICE Regulations

These are the original Transnational Information and Consultation of Employees Regulations 1999.

The 1999 TICE Regulations were amended significantly by the Transnational Information and Consultation of Employees (Amendment) Regulations 2010. These amendments take effect on 5 June 2011.

Click here to access the original - i.e. unamended - 1999 TICE Regulations.

What is the different legal treatment for these EWCs ?

With one notable exception, the amendments introduced by the 2010 Regulations will mostly not apply to them. In other words, they will remain largely subject to the original and unamended 1999 Regulations after the amendments take effect on 5 June 2011.

Among other things, this means that :

- there are no requirements on central management to supply information in a particular way, at a particular time or with particular content

- there is a different, and less prescriptive, requirement about how and when consultation must take place between central management and EWCs

- outside the subsidiary requirements, there are no provisions detailing how consultation between the EWC and central management should be conducted

- consultation with the EWC is not limited only to transnational issues and no definition of a transnational issue applies

- there is no need for consultation with the EWC to be linked to consultation at national level.

- there is no requirement for EWC and SNB members to be trained or given time off with pay to attend training

- outside the subsidiary requirements, there is no requirement on central management to provide the means required for EWCs to operate

- the membership of the SNB is determined by a different formula.

Whilst there are no explicit legal requirements for central management to fund the operation of EWCs or to enable EWC members to be trained, in practice many central managements voluntarily agree to do so.

What is the exception where the amendments introduced by the 2010 TICE Regulations apply ?

If the multinational goes through a major change of structure in the EU or EEA, for example as a result of a takeover, merger or the sale of part of the business, then the EWC agreement may need to be adapted to allow it to continue to represent all the employees. The amendments relating to the adaptation of EWCs in these circumstances applies to these EWCs as well (when the amendments come into force on 5 June 2011).

In brief, this law provides for a renegotiation of the EWC agreement where :

- the agreement does not specify how adaptation should take place ; or

- where the agreement does contain provisions specifying how adaptation should take place but those provisions conflict with provisions in the agreements underpinning any other EWCs involved.

Where renegotiation occurs, a Special Negotiating Body must be established, and if the SNB and central management cannot reach a new agreement, then the subsidiary requirements for EWCs apply. Click for more information on SNBs and the subsidiary requirements.

The status of an EWC agreement which undergoes adaptation is not altered by the process. So, after it has been renegotiated, EWC agreements covered by this regime will still be subject to the original, and unamended, 1999 TICE Regulations.

To find out more about the law on the adaptation of EWCs, click here.

Chapter 11 - Enforcement and Remedies

This chapter explains how the law relating to EWCs will be enforced after 5 June 2011. It also describes the remedies which are available, where breaches have occurred.

Some rights and obligations are enforced through complaints made to the Employment Tribunal (ET) and other rights and obligations are enforced through complaints to the Central Arbitration Committee (CAC).

After the initial determination of complaints by the CAC, it is possible for an application to be made to the Employment Appeal Tribunal (EAT) for a penalty to be issued.

The Role of the Employment Tribunal (ET)

The legislation provides protections and time off rights with pay for representatives who serve on SNBs and EWCs. Click here to find out more about these entitlements.

Representatives who feel these rights have been breached may make a complaint against their employer to the ET. In general, these complaints should be made within three months of the alleged breach.

In time-off cases, the ET, if it upholds a complaint, may make a declaration to that effect and it may order the employer to pay the representative an amount equal to the remuneration he or she should have received while attending the training.

The remedies for unfair dismissal are the same as those which apply to general cases of unfair dismissal. Click here to find out more about this law.

Click here to find out more about ETs.

The Role of the Central Arbitration Committee (CAC)

All other complaints about alleged breaches of the law in this area must be made to the CAC. The CAC is a specialist public body which determines a range of issues in the field of industrial relations. To find out more about the CAC click here.

In most cases, the EWC, the SNB or individual employees may apply to the CAC about breaches by central management of their obligations under EWC law. Also, employees may complain about the failure of the EWC to provide feedback on their work. In most cases, these complaints must be made within six months of the alleged breach occurring.

If it upholds a complaint, the CAC is empowered to make declarations and order any of the parties concerned to act or cease acting in a particular way.

In some circumstances, the CAC may order an EWC to be established under the subsidiary requirements.

The CAC has no powers to issue financial penalties.

The Role of the Employment Appeal Tribunal (EAT)

The EAT has three main roles under EWC law.

First, the EAT may hear appeals against decisions taken by the ET.

Second, the EAT may also hear appeals against decisions taken by the CAC.

Third, the EAT may issue a penalty notice in cases where the CAC has decided that central management has breached one of its duties. That penalty notice may be issued only if the EWC, SNB or employee concerned applies to the EAT for a penalty notice. Such an application must be made within three months of the CAC's decision. In a penalty notice, the EAT may order central management to pay the Exchequer an amount up to a maximum of £100,000 for each breach. In other words, the penalty is not paid to those who made the application.

For more information about the EAT, click here.

Northern Ireland

Separate institutions determine complaints about breaches of EWC law in Northern Ireland. In general, the Industrial Court undertakes the roles assigned to the ET and CAC, and the High Court undertakes the role assigned to the EAT.

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