

EMPLOYMENT (INFORMATION AND CONSULTATION OF EMPLOYEES) REGULATIONS 2005

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Subsidiary
2005/174

Regulations made under s. 86(1)(g) of the Employment Act.

EMPLOYMENT (INFORMATION AND CONSULTATION OF EMPLOYEES) REGULATIONS 2005

(LN. 2005/174)

15.12.2005

Amending enactments	Relevant current provisions	Commencement date
LN. 2012/064 Act. 2016-20	rr. 2, 3A, 8A, 16(1)(g) & 20(1)(b) rr. 6, 7(4)(b)(ii), (5), (6), (7), (9), 8(7), (8), (9), 10, 13, 14(3), (4), 15, 17, 19(4), (5), (6), 22(1), (4), (6), (9), 23(4), 25(6), (7), 26(2), (3), 29, 30(6)(a), (b), 31(6)(1), (b), 32(1), (3)(b), 33, 34(1)(b), 35, Sch. 2 (3), (4)	26.4.2012 13.10.2016

Transposing:

Directive 2002/14/EC

Directive 2008/104/EC

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In exercise of the powers conferred 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 2002/14/EC establishing a general framework for informing and consulting employees in the European Community.

**PART I
GENERAL****Title.**

1. These Regulations may be cited as the Employment (Information and Consultation of Employees) Regulations 2005.

Interpretation.

2.(1) In these Regulations—

“agency worker” has the same meaning as in regulation 3 of the Agency Workers Regulations 2012;

“consultation” means the exchange of views and establishment of dialogue between—

- (a) information and consultation representatives and the employer;
or
- (b) in the case of a negotiated agreement which provides as mentioned in regulation 16(1)(f)(ii), the employees and the employer;

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

“date of the ballot” means the day or last day on which voting may take place and, where voting in different parts of the ballot is arranged to take place on different days or during periods ending on different days, the last of those days;

“employee” means an individual who has entered into or works under a contract of employment and in Part VIII and regulation 35 includes, where the employment has ceased, an individual who worked under a contract of employment;

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“employee request” means a request by employees under regulation 7 for the employer to initiate negotiations to reach an agreement under these Regulations;

“employer notification” means a notification by an employer under regulation 11 that he wishes to initiate negotiations to reach an agreement under these Regulations;

“information” means data transmitted by the employer—

- (a) to the information and consultation representatives; or
- (b) in the case of a negotiated agreement which provides as mentioned in regulation 16(1)(f)(ii), directly to the employees,

in order to enable those representatives or those employees to examine and to acquaint themselves with the subject matter of the data;

“Information and Consultation Directive” means European Parliament and Council Directive 2002/14/EC of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community;

“information and consultation representative” means—

- (a) in the case of a negotiated agreement which provides as mentioned in regulation 16(1)(f)(i), a person appointed or elected in accordance with that agreement; or
- (b) a person elected in accordance with regulation 19(1);

“Minister” means the Minister with responsibility for employment;

“negotiated agreement” means—

- (a) an agreement between the employer and the negotiating representatives reached through negotiations as provided for in regulation 14 which satisfies the requirements of regulation 16(1); or
- (b) an agreement between the employer and the information and consultation representatives referred to in regulation 18(2);

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“negotiating representative” means a person elected or appointed pursuant to regulation 14(1)(a);

“parties” means the employer and the negotiating representatives or the information and consultation representatives, as the case may be;

“pre-existing agreement” means an agreement between an employer and his employees or their representatives which—

- (a) is made prior to the making of a valid employee request; and
- (b) satisfies the conditions set out in regulation 8(1)(a) to (d),

but does not include a negotiated agreement;

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

“standard information and consultation provisions” means the provisions set out in regulation 20;

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“suitable information relating to the use of agency workers” means information as to—

- (a) the number of agency workers working temporarily for and under the supervision and direction of the employer;
- (b) the parts of the employer’s undertaking in which those agency workers are working; and
- (c) the type of work those agency workers are carrying out;

“undertaking” means a public or private undertaking carrying out an economic activity, whether or not operating for gain which is located within Gibraltar;

“valid employee request” means an employee request made to their employer by the employees of an undertaking to which these Regulations apply (under regulation 3) that satisfies the requirements of regulation 7 and is not prevented from being valid by regulation 12.

Application.

3.(1) These Regulations apply to undertakings employing in Gibraltar, in accordance with the calculation in regulation 4, at least the number of employees in column 1 of the table in Schedule 1 to these Regulations on or after the corresponding date in column 2 of that table.

(2) In these Regulations, an undertaking to which these Regulations apply is referred to, in relation to its employees, as “the employer”.

Agency Workers.

3A.(1) Subregulations (2) and (3) apply to an agency worker whose contract within regulation 3(1)(b) of the Agency Workers Regulations 2012 (contract with the temporary work agency) is not a contract of employment.

(2) For the purposes of regulations 3, 4 and Schedule 1, any agency worker who has a contract with a temporary work agency shall be treated as being employed by that temporary work agency for the duration of that agency worker’s assignment with the employer.

(3) In these Regulations “assignment” has the same meaning as in regulation 2 and “temporary work agency” has the same meaning as in regulation 4 of the Agency Workers Regulations 2012.

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PART II

EMPLOYEE NUMBERS AND ENTITLEMENT TO DATA

Calculation of number of employees.

4.(1) Subject to sub-regulation (4), the number of employees for the purposes of regulation 3(1) shall be determined by ascertaining the average number of employees employed in the previous twelve months, calculated in accordance with sub-regulation (2).

(2) Subject to sub-regulation (3), the average number of employees is to be ascertained by determining the number of employees employed in each month in the previous twelve months (whether they were employed throughout the month or not), adding together those monthly figures and dividing the number by 12.

(3) For the purposes of the calculation in sub-regulation (2) if, for the whole of a month within the twelve month 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 representing half of a full-time employee for the month in question, if the employer so decides.

(4) If the undertaking has been in existence for less than twelve months, the references to twelve months in sub-regulations (1), (2) and (3), and the divisor of 12 referred to in sub-regulation (2), shall be replaced by the number of months the undertaking has been in existence.

Entitlement to data.

5.(1) An employee or an employees' representative may request data from the employer for the purpose of determining the number of people employed by the employer's undertaking in Gibraltar.

(2) Any request for data made under sub-regulation (1) must be in writing and be dated.

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(3) The employer must provide the employee or the employees' representative who made the request with data to enable him to—

- (a) make the calculation of the numbers of employees referred to in regulation 4; and
- (b) determine, for the purpose of regulation 7(2), what number of employees constitutes 10% of the employees in the undertaking.

Complaint of failure to provide data.

6.(1) An employee or an employees' representative who has requested data under regulation 5 may present a complaint to the Employment Tribunal that—

- (a) the employer has failed to provide the data referred to in regulation 5(3); or
- (b) the data which has been provided by the employer is false or incomplete in a material particular.

(2) Where the Employment Tribunal finds the complaint to be well-founded it shall make an order requiring the employer to disclose data to the complainant which order shall specify—

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

(3) The Employment 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 data under regulation 5.

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Employee request to negotiate an agreement in respect of information and consultation.

7.(1) On receipt of a valid employee request, the employer shall, subject to sub-regulations (8) and (9), initiate negotiations by taking the steps set out in regulation 14(1).

(2) Subject to sub-regulation (3), an employee request is not a valid employee request unless it consists of–

- (a) a single request made by at least 10% of the employees in the undertaking; or
- (b) a number of separate requests made on the same or different days by employees which when taken together mean that at least 10% of the employees in that undertaking have made requests, provided that the requests are made within a period of six months.

(3) Where the figure of 10% in sub-regulation (2) would result in less than 15 or more than 2,500 employees being required in order for a valid employee request to be made, that sub-regulation shall have effect as if, for the figure of 10%, there were substituted the figure of 15, or as the case may be, 2,500.

(4) An employee request is not a valid employee request unless the single request referred to in sub-regulation (2)(a) or each separate request referred to in sub-regulation (2)(b)–

- (a) is in writing;
- (b) is sent to–
 - (i) the registered office, head office or principal place of business of the employer; or
 - (ii) the Employment Tribunal; and
- (c) specifies the names of the employees making it and the date on which it is sent.

(5) Where a request is sent to the Employment Tribunal under sub-regulation (4)(b)(ii), the Employment Tribunal shall–

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- (a) notify the employer that the request has been made as soon as reasonably practicable;
 - (b) request from the employer such information as it needs to verify the number and names of the employees who have made the request; and
 - (c) inform the employer and the employees who have made the request how many employees have made the request on the basis of the information provided by the employees and the employer.
- (6) Where the Employment Tribunal requests information from the employer under sub-regulation (5)(b), the employer shall provide the information requested as soon as reasonably practicable.
- (7) The date on which an employee request is made is–
- (a) where the request 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 to the employer by the employees or the date on which the Employment Tribunal informs the employer and the employees in accordance with sub-regulation (5)(c) of how many employees have made the request; and
 - (b) where the request consists of separate requests made on different days, the date on which–
 - (i) the request which results in sub-regulation (2)(b) being satisfied is sent to the employer by the employees; or
 - (ii) the Employment Tribunal informs the employer and the employees in accordance with sub-regulation (5)(c) of how many employees have made the request where that request results in sub-regulation (2)(b) being satisfied.
- (8) If the employer decides to hold a ballot under regulation 8 or 9, the employer shall not be required to initiate negotiations unless and until the outcome of the ballot is that in regulation 8(5)(b).
- (9) If an application is made to the Employment Tribunal under regulation 13, the employer shall not be required to initiate negotiations unless and until the Employment Tribunal declares that there was a valid employee request or that the employer's notification was valid.

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Pre-existing agreements: ballot for endorsement of employee request.

8.(1) Subject to regulation 9, this regulation applies where a valid employee request has been made under regulation 7 by fewer than 40% of employees employed in the undertaking on the date that request was made and where there exists one or more pre-existing agreements which–

- (a) are in writing;
- (b) cover all the employees of the undertaking;
- (c) have been approved by the employees; and
- (d) set out how the employer is to give information to the employees or their representatives and seek their views on such information.

(2) Where this regulation applies, the employer may, instead of initiating negotiations in accordance with regulation 7(1), hold a ballot to seek the endorsement of the employees of the undertaking for the employee request in accordance with sub-regulations (3) and (4).

(3) The employer must–

- (a) inform the employees in writing within one month of the date of the employee request that he intends to hold a ballot under this regulation; and
- (b) arrange for the ballot to be held as soon as reasonably practicable thereafter, provided that the ballot does not take place before a period of 21 days has passed since the employer informed the employees under paragraph (a).

(4) A ballot must satisfy the following requirements–

- (a) the employer must make such arrangements as are reasonably practicable to ensure that the ballot is fair;
- (b) all employees of the undertaking on the day on which the 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, must be given an entitlement to vote in the ballot;
- (c) the ballot must be conducted so as to secure that–

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- (i) so far as is reasonably practicable, those voting do so in secret; and
 - (ii) the votes given in the ballot are accurately counted.
- (5) Where the employer holds a ballot under this regulation—
 - (a) he must, as soon as reasonably practicable after the date of the ballot, inform the employees of the result; and
 - (b) if the employees endorse the employee request, the employer is under the obligation in regulation 7(1) to initiate negotiations; and
 - (c) if the employees do not endorse the employee request, the employer is no longer under the obligation in regulation 7(1) to initiate negotiations.
- (6) For the purposes of sub-regulation (5), the employees are to be regarded as having endorsed the employee request if—
 - (a) at least 40% of the employees employed in the undertaking; and
 - (b) the majority of the employees who vote in the ballot,have voted in favour of endorsing the request.
- (7) An employee or an employees' representative who believes that an employer has not, pursuant to sub-regulation (3)(a), informed his employees that he intends to hold a ballot within the period specified in that sub-regulation may apply to the Employment Tribunal for a declaration that the employer is under the duty in regulation 7(1) to initiate negotiations.
- (8) Where an employer, acting pursuant to sub-regulation (3)(a), has informed the employees that he intends to hold a ballot, any employee or employees' representative who believes that the employer has not complied with sub-regulation (3)(b) may present a complaint to the Employment Tribunal.
- (9) Where the Employment Tribunal finds a complaint under sub-regulation (8) well-founded it shall make an order requiring the employer to

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hold the ballot within such period as the order may specify.

Pre-existing agreements: agency workers.

8A. Where information about the employment situation is to be provided under a pre-existing agreement by an employer, such information must include suitable information relating to the use of agency workers (if any) in that undertaking.

Pre-existing agreements covering groups of undertakings.

9.(1) This regulation applies where—

- (a) the requirements of regulation 8(1) are satisfied in relation to an undertaking;
- (b) the pre-existing agreement or one of the pre-existing agreements covers employees in one or more undertakings other than the undertaking mentioned in paragraph (a);
- (c) the other undertaking or each of the other undertakings mentioned in paragraph (b) is one in respect of which there is an agreement that satisfied, or are agreements that taken together satisfied, the requirements in paragraphs (a) to (d) of regulation 8(1) on the date on which the valid employee request was made in respect of the undertaking mentioned in paragraph (a); and
- (d) the valid employee request in relation to the undertaking mentioned in paragraph (a) either—
 - (i) alone; or
 - (ii) aggregated with any requests made by employees in the undertakings mentioned in paragraph (b) within the period of six months preceding the date of the valid employee request mentioned in regulation 8(1),

is made by fewer than 40% of the employees in the undertakings mentioned in sub-regulation (1)(a) and (b).

(2) Where this regulation applies the employers may hold a combined ballot for endorsement of the employee request in accordance with this regulation and in that event regulation 8 shall apply to the ballot with the modification that references to employees shall be treated as referring to the

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employees employed in all of the undertakings referred to in sub-regulation (1)(a) and (b).

(3) Notwithstanding sub-regulation (2), the undertaking mentioned in sub-regulation (1)(a) may choose to hold the ballot for endorsement of the employee request in accordance with regulation 8 rather than under this regulation.

Complaint about ballot for endorsement of employee request.

10.(1) Any employee in the undertaking referred to in regulation 8(1) or employee in one of the undertakings referred to in regulation 9(1), or representative of such employees, who believes that a requirement has not been satisfied that has to be satisfied in order to entitle either the employer, in accordance with regulation 8(2), to hold a ballot, or the employers, in accordance with regulation 9(2), to hold a combined ballot may, within 21 days of the employer informing the employees of the relevant undertaking under regulation 8(3)(a), present a complaint to the Employment Tribunal.

(2) Any employee or employees' representative who believes that the arrangements for a ballot held under regulation 8 or 9, as the case may be, did not satisfy one or more of the requirements set out in regulation 8(4) may, within 21 days of the date of the ballot, present a complaint to the Employment Tribunal.

(3) Where the Employment Tribunal finds a complaint under sub-regulation (1) or (2) well-founded it shall—

- (a) in the case of a finding on a complaint under sub-regulation (1) that any requirement set out in paragraphs (a) to (d) of regulation 8(1) was not satisfied in relation to the undertaking referred to in regulation 8(1) or 9(1)(a), make an order requiring the employer to whom regulation 8(1) or 9(1)(a) relates to initiate negotiations in accordance with regulation 7(1);
- (b) in the case of a finding on a complaint under sub-regulation (1) that any requirement set out in paragraphs (b) to (d) of regulation 9(1) has not been satisfied, make an order that no combined ballot shall take place and requiring the employer to whom regulation 9(1)(a) relates, according to the preference he has expressed, to initiate negotiations in accordance with regulation 7(1) or, within such period as the order may specify, to conduct a ballot under regulation 8; and

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- (c) in the case of a complaint under sub-regulation (2)–
 - (i) where prior to the order being made, the employer referred to in regulation 8(1) or 9(1)(a) makes representations to the Employment Tribunal that he would prefer to initiate negotiations under regulation 7, make an order requiring that employer to do so; or
 - (ii) in the absence of such representations, order the employer or employers to hold the ballot under regulation 8 or 9, as the case may be, again within such period as the order may specify.

Employer notification of decision to initiate negotiations.

11.(1) The employer may start the negotiation process set out in regulation 14(1) on his own initiative by issuing a written notification satisfying the requirements of sub-regulation (2), and where the employer issues such a notification regulations 14 to 17 shall apply.

(2) The notification referred to in sub-regulation (1) must–

- (a) state that the employer intends to start the negotiating process and that the notification is given for the purpose of these Regulations;
- (b) state the date on which it is issued; and
- (c) be published in such a manner as to bring it to the attention of, so far as reasonably practicable, all the employees of the undertaking.

Restrictions on employee request and employer notification.

12.(1) Subject to sub-regulation (2), no employee request or employer notification is valid if it is made or issued, as the case may be–

- (a) where a negotiated agreement applies, within a period of three years from the date of the agreement or, where the agreement is terminated within that period, before the date on which the termination takes effect;
- (b) where the standard information and consultation provisions apply within a period of three years from the date on which they started to apply; and

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- (c) where the employer has held a ballot under regulation 8, or was one of the employers who held a ballot under regulation 9 and the result was that the employees did not endorse the valid employee request referred to in regulation 8(1), within a period of three years from the date of that request.

(2) Sub-regulation (1) does not apply where there are material changes in the undertaking during the applicable period having the result–

- (a) where a ballot held under regulation 8 or 9 had the result that the employees did not endorse the valid employee request, that there is no longer a pre-existing agreement which satisfies sub-regulation (1)(b) and (c) of regulation 8 or in the case of a ballot held under regulation 9, that there is no longer an agreement satisfying sub-regulation (1)(b) of that regulation; or
- (b) where a negotiated agreement exists, that the agreement no longer complies with the requirement in regulation 16(1) that it must cover all the employees of the undertaking.

Dispute about employee request, employer notification or whether obligation in regulation 7(1) applies.

13.(1) If the employer considers that there was no valid employee request–

- (a) because the employee request did not satisfy any requirement of regulation 7(2) to (4) or was prevented from being valid by regulation 12; or
- (b) because the undertaking was not one to which these Regulations applied (under regulation 3) on the date on which the employee request was made,

the employer may apply to the Employment Tribunal for a declaration as to whether there was a valid employee request.

(2) If an employee or an employees' representative considers that an employer notification was not valid because it did not comply with one or more of the requirements in regulation 11(2) or was prevented from being valid by regulation 12, he may apply to the Employment Tribunal for a declaration as to whether the notification was valid.

(3) The Employment Tribunal shall only consider an application for a declaration made under sub-regulation (1) or (2) if the application is made

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within a one month period beginning on the date of the employee request or the date on which the employer notification is made.

Negotiations to reach an agreement.

14.(1) In order to initiate negotiations to reach an agreement under these Regulations the employer must as soon as reasonably practicable—

- (a) make arrangements, satisfying the requirements of sub-regulation (2), for the employees of the undertaking to elect or appoint negotiating representatives; and thereafter
- (b) inform the employees in writing of the identity of the negotiating representatives; and
- (c) invite the negotiating representatives to enter into negotiations to reach a negotiated agreement.

(2) The requirements for the election or appointment of negotiating representatives under sub-regulation (1)(a) are that—

- (a) the election or appointment of the representatives must be arranged in such a way that, following their election or appointment, all employees of the undertaking are represented by one or more representatives; and
- (b) all employees of the undertaking must be entitled to take part in the election or appointment of the representatives and, where there is an election, all employees of the undertaking on the day on which the 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, must be given an entitlement to vote in the ballot.

(3) The negotiations referred to in sub-regulation (1)(c) shall last for a period not exceeding six months commencing at the end of the period of three months beginning with the date on which the valid employee request was made or the valid employer notification was issued; but the following periods shall not count towards the three month period—

- (a) where the employer holds a ballot pursuant to regulation 8 or 9, the period between the employer notifying the employees of his decision to hold such a ballot and whichever of the following dates is applicable—

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- (i) where there is no complaint to the Employment Tribunal under regulation 10, the date of the ballot;
 - (ii) where there is a complaint to the Employment Tribunal under regulation 10 and the complaint is dismissed by the Employment Tribunal or on appeal, the date on which it is finally dismissed;
 - (iii) where there is a complaint to the Employment Tribunal and the outcome, whether of the complaint or of any appeal from it, is an order to hold the ballot under regulation 8 or 9 again, the date of the ballot that most recently took place;
 - (iv) where there is a complaint to the Employment Tribunal under regulation 10 and the outcome, whether of the complaint or of any appeal from it, is an order requiring the employer to initiate negotiations in accordance with regulation 7(1), the date on which the order is made;
- (b) where an application for a declaration is made to the Employment Tribunal pursuant to regulation 13, the period between the date of that application and the final decision of the Employment Tribunal or any appeal from that decision; and
- (c) where a complaint about the election or appointment of negotiating representatives is presented pursuant to regulation 15, the time between the date of the complaint and the determination of the complaint, including any appeal and, where the complaint is upheld, the further period until the negotiating representatives are re-elected or re-appointed.

(4) Where a complaint about the ballot for employee approval of a negotiated agreement is presented pursuant to regulation 17, the time between the date the complaint is presented to the Employment Tribunal and the determination of the complaint (including any appeal and, where the complaint is upheld, the further period until the re-holding of the ballot) shall not count towards the six month period mentioned in sub-regulation (3).

(5) If, before the end of the six month period referred to in sub-regulation (3), the employer and a majority of the negotiating representatives agree that that period should be extended, it may be extended by such period as the parties agree and thereafter may be further extended by such period or

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periods as the parties agree.

(6) Where one or more employers wish to initiate negotiations to reach an agreement to cover employees in more than one undertaking, any employer whose employees have not made a valid employee request and who has not issued a valid employer notification, shall issue such a notification.

(7) Where sub-regulation (6) applies, the provisions of sub-regulations (1) to (5) of this regulation and regulations 15 and 16 apply with the following modifications—

- (a) the references to the employees of the undertaking refer to the employees of all the undertakings to be covered by any agreement negotiated; and
- (b) references to employees refer to employees of all the undertakings to be covered by any agreement negotiated.

Complaints about election or appointment of negotiating representatives.

15.(1) If an employee or an employees' representative considers that one or both of the requirements for the appointment or election of negotiating representatives set out in regulation 14(2) have not been complied with, he may, within 21 days of the election or appointment, present a complaint to the Employment Tribunal.

(2) Where the Employment Tribunal finds the complaint well-founded it shall make an order requiring the employer to arrange for the process of election or appointment of negotiating representatives referred to in regulation 14 to take place again within such period as the order shall specify.

Negotiated agreements.

16.(1) A negotiated agreement must cover all employees of the undertaking and may consist either of a single agreement or of different parts (each being approved in accordance with sub-regulation (4)) which, taken together, cover all the employees of the undertaking. The single agreement or each part must—

- (a) set out the circumstances in which the employer must inform and consult the employees to which it relates;
- (b) be in writing;

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- (c) be dated;
- (d) be approved in accordance with sub-regulations (3) to (5);
- (e) be signed by or on behalf of the employer;
- (f) either—
 - (i) provide for the appointment or election of information and consultation representatives to whom the employer must provide the information and whom the employer must consult in the circumstances referred to in paragraph (a); or
 - (ii) provide that the employer must provide information directly to the employees to which it relates and consult those employees directly in the circumstances referred to in paragraph (a); and
- (g) provide that where an employer is to provide information about the employment situation, under that agreement or under any part, such information shall include suitable information relating to the use of agency workers (if any) in that undertaking.

(2) Where a negotiated agreement consist of different parts they may provide differently in relation to the matters referred to in sub-regulation (1)(a) and (f).

(3) A negotiated agreement consisting of a single agreement shall be treated as being approved for the purpose of sub-regulation (1)(d) if—

- (a) it has been signed by all the negotiating representatives; or
- (b) it has been signed by a majority of negotiating representatives and either—
 - (i) approved in writing by at least 50% of employees employed in the undertaking; or
 - (ii) approved by a ballot of those employees, the arrangements for which satisfied the requirements set out in sub-regulation (5), in which at least 50% of the employees voting, voted in favour of approval.

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(4) A part shall be treated as being approved for the purpose of sub-regulation (1)(d) if the part—

- (a) has been signed by all the negotiating representatives involved in negotiating the part; or
- (b) has been signed by a majority of those negotiating representatives and either—
 - (i) approved in writing by at least 50% of employees (employed in the undertaking) to which the part relates; or
 - (ii) approved by a ballot of those employees, the arrangements for which satisfied the requirements set out in sub-regulation (5), in which at least 50% of the employees voting, voted in favour of approving the part.

(5) The ballots referred to in sub-regulations (3) and (4) must satisfy the following requirements—

- (a) the employer must make such arrangements as are reasonably practicable to ensure that the ballot is fair;
- (b) all employees of the undertaking or, as the case may be, to whom the part of the agreement relates, on the day on which the 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, must be given an entitlement to vote in the ballot; and
- (c) the ballot must be conducted so as to secure that—
 - (i) so far as is reasonably practicable, those voting do so in secret; and
 - (ii) the votes given in the ballot are accurately counted.

(6) Where the employer holds a ballot under this regulation he must, as soon as reasonably practicable after the date of the ballot, inform the employees entitled to vote of the result.

Complaints about ballot for employee approval of negotiated agreement.

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17.(1) Any negotiating representative who believes that the arrangements for a ballot held under regulation 16 did not satisfy one or more of the requirements set out in sub-regulation (5) of that regulation, may, within 21 days of the date of the ballot, present a complaint to the Employment Tribunal.

(2) Where the Employment Tribunal finds the complaint well-founded it shall make an order requiring the employer to hold the ballot referred to in regulation 16 again within such period as the order may specify.

PART IV

STANDARD INFORMATION AND CONSULTATION PROVISIONS

Application of standard information and consultation provisions

18.(1) Subject to sub-regulation (2)–

(a) where the employer is under a duty, following the making of a valid employee request or issue of a valid employer notification, to initiate negotiations in accordance with regulation 14 but does not do so, the standard information and consultation provisions shall apply from the date–

(i) which is six months from the date on which the valid employee request was made or the valid employer notification was issued; or

(ii) information and consultation representatives are elected under regulation 19,

whichever is the sooner; and

(b) if the parties do not reach a negotiated agreement within the time limit referred to in regulation 14(3) (or that period as extended by agreement under sub-regulation (5) of that regulation) the standard information and consultation provisions shall apply from the date–

(i) which is six months from the date on which that time limit expires; or

(ii) information and consultation representatives are elected under regulation 19,

whichever is the sooner.

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(2) Where the standard information and consultation provisions apply, the employer and the information and consultation representatives elected pursuant to regulation 19 may, at any time, reach an agreement that provisions other than the standard information and consultation provisions shall apply.

(3) An agreement referred to in sub-regulation (2) shall only have effect if it covers all the employees of the undertaking, complies with the requirements listed in regulation 16(1)(a) to (c), (e) and (f), and is signed by a majority of the information and consultation representatives.

Election of information and consultation representatives.

19.(1) Where the standard information and consultation provisions are to apply, the employer shall, before the standard information and consultation provisions start to apply, arrange for the holding of a ballot of its employees to elect the relevant number of information and consultation representatives.

(2) The provisions in Schedule 2 to these Regulations apply in relation to the arrangements for and conduct of any such ballot.

(3) In this regulation the “relevant number of information and consultation representatives” means one representative per fifty employees or part thereof, provided that that number is at least 2 and does not exceed 25.

(4) An employee or an employee's representative may complain to the Employment Tribunal that the employer has not arranged for the holding of a ballot in accordance with sub-regulation (1).

(5) Where the Employment Tribunal finds the complaint well-founded, it shall make an order requiring the employer to arrange, or re-arrange, and hold the ballot.

(6) Where the Employment Tribunal finds a complaint under sub-regulation (4) well-founded, the employee or the employee's representative may make an application to the Supreme Court under regulation 22(6) and sub-regulations (7) and (8) of that regulation shall apply to any such application.

Standard information and consultation provisions.

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20.(1) Where the standard information and consultation provisions apply pursuant to regulation 18, the employer must provide the information and consultation representatives with information on—

- (a) the recent and probable development of the undertaking's activities and economic situation;
- (b) the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular, where there is a threat to employment within the undertaking (and such information must include suitable information relating to the use of agency workers (if any) in that undertaking); and
- (c) decisions likely to lead to substantial changes in work organisation or in contractual relations.

(2) The information referred to in sub-regulation (1) must be given at such time, in such fashion and with such content as are appropriate to enable, in particular, the information and consultation representatives to conduct an adequate study and, where necessary, to prepare for consultation.

(3) The employer must consult the information and consultation representatives on the matters referred to in sub-regulation (1)(b) and (c).

(4) The employer must ensure that the consultation referred to in sub-regulation (3) is conducted—

- (a) in such a way as to ensure that the timing, method and content of the consultation are appropriate;
- (b) on the basis of the information supplied by the employer to the information and consultation representatives and of any opinion which those representatives express to the employer;
- (c) in such a way as to enable the information and consultation representatives to meet the employer at the relevant level of management depending on the subject under discussion and to obtain a reasoned response from the employer to any such opinion; and
- (d) in relation to matters falling within sub-regulation (1)(c), with a view to reaching agreement on decisions within the scope of the employer's powers.

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(5) Where there is an obligation in these Regulations on the employer to inform and consult his employees, a failure on the part of a person who controls the employer (either directly or indirectly) to provide information to the employer shall not constitute a valid reason for the employer failing to inform and consult.

PART V DUTY OF CO-OPERATION

Co-operation.

21. The parties are under a duty, when negotiating or implementing a negotiated agreement or when implementing the standard information and consultation provisions, to work in a spirit of co-operation and with due regard for their reciprocal rights and obligations, taking into account the interests of both the undertaking and the employees.

PART VI COMPLIANCE AND ENFORCEMENT

Disputes about operation of a negotiated agreement or the standard information and consultation provisions.

22.(1) Where—

- (a) a negotiated agreement has been agreed; or
- (b) the standard information and consultation provisions apply,

a complaint may be presented to the Employment Tribunal by a relevant applicant who considers that the employer has failed to comply with the terms of the negotiated agreement or, as the case may be, one or more of the standard information and consultation provisions.

(2) A complaint brought under sub-regulation (1) must be brought within a period of three months commencing with the date of the alleged failure.

(3) In this regulation—

“failure” means an act or omission; and

“relevant applicant” means—

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- (a) in a case where information and consultation representatives have been elected or appointed, an information and consultation representative; or
- (b) in a case where no information and consultation representatives have been elected or appointed, an employee or an employees' representative.

(4) Where the Employment Tribunal finds the complaint well-founded it shall make a declaration to that effect and may make an order requiring the employer to take such steps as are necessary to comply with the terms of the negotiated agreement or, as the case may be, the standard information and consultation provisions.

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

- (a) the steps which the employer is required to take; and
- (b) the period within which the order must be complied with.

(6) If the Employment Tribunal makes a declaration under sub-regulation (4) the relevant applicant may, within the period of three months beginning with the date on which the declaration is made, make an application to the Supreme Court for a penalty notice to be issued.

(7) Where such an application is made, the Supreme Court shall issue a written penalty notice to the employer requiring him to pay a penalty to the Minister in respect of the failure unless satisfied, on hearing representations from the employer, that the failure resulted from a reason beyond the employer's control or that he has some other reasonable excuse for his failure.

(8) Regulation 23 shall apply in respect of a penalty notice issued under this regulation.

(9) No order of the Employment Tribunal under this regulation shall have the effect of suspending or altering the effect of any act done or of any agreement made by the employer or of preventing or delaying any act or agreement which the employer proposes to do or to make.

Penalties.

23.(1) A penalty notice issued under regulation 22 shall specify—

- (a) the amount of the penalty which is payable;

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- (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) Matters to be taken into account by the Supreme Court when setting the amount of the penalty shall include—

- (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 employed by the undertaking or, where a negotiated agreement covers employees in more than one undertaking, the number of employees employed by both or all of the undertakings.

(4) The date specified under sub-regulation (1)(b) must not be earlier than the end of the period within which an appeal against a declaration or order made by the Employment Tribunal under regulation 22 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 employer, as a civil debt due to him, any amount payable under the penalty notice which remains outstanding.

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

(7) Any sums received by the Minister under regulation 22 or this regulation shall be paid into the Consolidated Fund.

Exclusivity of remedy.

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24. Nothing in these Regulations prejudices the exercise by the Supreme Court of its inherent jurisdiction or powers in relation to any matter provided for in these Regulations.

PART VII
CONFIDENTIAL INFORMATION

Breach of statutory duty.

25.(1) A person to whom the employer, pursuant to his obligations under these Regulations, entrusts any information or document on terms requiring it to be held in confidence shall not disclose that information or document except, where the terms permit him to do so, in accordance with those terms.

(2) In this regulation a person referred to in sub-regulation (1) to whom information or a document is entrusted is referred to as a “recipient”.

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

(4) Sub-regulation (3) shall not affect any legal liability which any person may incur by disclosing the information or document, or any right which any person may have in relation to such disclosure otherwise than under this regulation.

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

(6) A recipient to whom the employer has entrusted any information or document on terms requiring it to be held in confidence may apply to the Employment Tribunal for a declaration as to whether it was reasonable for the employer to require the recipient to hold the information or document in confidence.

(7) If the Employment Tribunal considers, on an application under sub-regulation (6), that the disclosure of the information or document by the recipient would not, or would not be likely to, harm the legitimate interests of the undertaking, it shall make a declaration that it was not reasonable for the employer to require the recipient to hold the information or document in confidence.

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(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 the employer.

26.(1) The employer is not required to disclose any information or document to a person for the purposes of these Regulations where 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.

(2) If there is a dispute between the employer and—

- (a) where information and consultation representatives have been elected or appointed, such a representative; or
- (b) where no information and consultation representatives have been elected or appointed, an employee or an employees' representative,

as to whether the nature of the information or document which the employer has failed to provide is such as is described in sub-regulation (1), the employer or a person referred to in paragraph (a) or (b) may apply to the Employment Tribunal for a declaration as to whether the information or document is of such a nature.

(3) If the Employment Tribunal makes a declaration that the disclosure of the information or document in question would not, according to objective criteria, be seriously harmful or prejudicial as mentioned in sub-regulation (1), the Employment Tribunal shall order the employer 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 person or persons to whom the information or document is to be disclosed;
- (c) any terms on which the information or document is to be disclosed; and

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- (d) the date before which the information or document is to be disclosed.

PART VIII

PROTECTIONS FOR INFORMATION AND CONSULTATION REPRESENTATIVES, ETC.

Right to time off for information and consultation representatives, etc.

27.(1) An employee who is—

- (a) a negotiating representative; or
- (b) an information and consultation 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 representative.

(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 27.

28.(1) An employee who is permitted to take time off under regulation 27 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

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in force on the day when 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 is taken off; or
- (b) where the employee has not been employed for a sufficient period to enable the calculations 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 sub-regulation (5) as are appropriate in the circumstances.

(5) The considerations referred to in sub-regulation (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 27 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: complaint to the Employment Tribunal.

29.(1) An employee may present a complaint to the Employment Tribunal that his employer—

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- (a) has unreasonably refused to permit him to take time off as required by regulation 27; or
- (b) has failed to pay the whole or part of any amount to which the employee is entitled under regulation 28.

(2) The Employment 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 Employment 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 Employment Tribunal finds a complaint under this regulation well-founded, the Employment 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 Employment 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 28 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 28, the Employment Tribunal shall also order the employer to pay to the employee the amount it finds due to him.

Unfair dismissal.

30.(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 Employment Act.

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

- (a) an employees' representative;

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- (b) a negotiating representative;
- (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 representative.

(3) The reasons are that—

- (a) the employee performed or proposed to perform any functions or activities as such a representative or candidate;
- (b) the employee exercised or proposed to exercise an entitlement conferred on the employee by regulation 27 or 28; or
- (c) the employee (or a person acting on his behalf) made or proposed to make a request to exercise such an entitlement.

(4) Sub-regulation (1) does not apply in the circumstances set out in sub-regulation (3)(a) 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 25, 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 Employment 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 Employment Tribunal or the Supreme Court conferred by these Regulations or to exercise the right to appeal in connection with any rights conferred by these Regulations;
- (c) requested, or proposed to request, data in accordance with regulation 5;

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- (d) acted with a view to securing that an agreement was or was not negotiated or that the standard information and consultation provisions did or did not become applicable;
- (e) indicated that he supported or did not support the coming into existence of a negotiated agreement or the application of the standard information and consultation provisions;
- (f) stood as a candidate in an election in which any person elected would, on being elected, be a negotiating representative or an information and consultation representative;
- (g) influenced or sought to influence by lawful means 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 purpose of sub-regulation (6)(a)–

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

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

Detriment.

31.(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) an employees' representative;

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- (b) a negotiating representative
- (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 representative.

(3) The ground is that—

- (a) the employee performed or proposed to perform any functions or activities as such a representative or candidate;
- (b) the employee exercised or proposed to exercise an entitlement conferred on the employee by regulation 27 or 28; or
- (c) the employee (or a person acting on his behalf) made or proposed to make a request to exercise such an entitlement.

(4) Sub-regulation (1) does not apply in the circumstances set out in sub-regulation (3)(a) where the ground (or principal ground) for the subsection 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 25, 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 Employment 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 Employment Tribunal or the Supreme Court conferred by these Regulations or to exercise the right to appeal in connection with any rights conferred by these Regulations;
- (c) requested, or proposed to request, data in accordance with regulation 5;

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- (d) acted with a view to securing that an agreement was or was not negotiated or that the standard information and consultation provisions did or did not become applicable;
- (e) indicated that he supported or did not support the coming into existence of a negotiated agreement or the application of the standard information and consultation provisions;
- (f) stood as a candidate in an election in which any person elected would, on being elected, be a negotiating representative or an information and consultation representative;
- (g) influenced or sought to influence by lawful means 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 purpose of sub-regulation (6)(a)–

- (a) whether or not the employee has the right or entitlement; 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.

(8) This regulation does not apply where the detriment in question amounts to dismissal.

Detriment: enforcement and subsidiary provisions.

32.(1) An employee may present a complaint to the Employment Tribunal that he has been subjected to a detriment in contravention of regulation 31.

(2) On such a complaint it is for the employer to show the ground on which any act, or deliberated failure to act, was done

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(3) The 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 date of the act to which the complaint relates or, where that act or failure to act is part of a series of similar acts or failures, the last of them;
- (b) within such further period as the Employment 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.

(4) For the purposes of sub-regulation 3—

- (a) where an act extends over a period, the “date of the act” means the last day of that period; and
- (b) a deliberate failure to act shall be treated as done when it was decided on,

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

PART IX MISCELLANEOUS

Employment Tribunal proceedings.

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

(2) No appeal shall lie except to the Supreme Court from any decision of the Employment Tribunal under or by virtue of these Regulations.

Restrictions on contracting out: general.

34.(1) Any provision in any agreement (whether an employee's contract or not) is void in so far as it purports—

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- (a) to exclude or limit the operation of any provision of these Regulations other than a provision of Part VIII; or
- (b) to preclude a person from bringing any proceedings before the Employment Tribunal or the Supreme Court under any provision of these Regulations other than a provision of Part VIII.

(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.

Restrictions on contracting out: Part VIII.

35.(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 Part VIII; or
- (b) to preclude a person from bringing any proceedings before the Employment Tribunal under that Part.

(2) Sub-regulation (1) does not apply to any agreement to refrain from instituting or continuing proceedings before the Employment Tribunal where a conciliation officer has taken action under rule 8 of the Tribunal Rules (conciliation).

Crown employment.

36.(1) These Regulations have effect in relation to Crown employment and persons in Crown employment as they have effect in relation to other employment and other employees.

(2) In these Regulations “Crown employment” means employment in an undertaking to which these Regulations apply and which is under or for the purposes of a department of the Government of Gibraltar or of the United Kingdom of Great Britain and Northern Ireland or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision.

(3) For the purposes of the application of these Regulations in relation to Crown employment in accordance with sub-regulation (1)—

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- (a) references to an employee shall be construed as references to a person in Crown employment; and
- (b) references to a contract of employment shall be construed as references to the terms of employment of a person in Crown employment.

Exception for merchant navy.

37.(1) Nothing in these Regulations shall apply to an employee who is a member of the crew of any vessel plying the high seas.

(2) The exception in sub-regulation (1), shall not apply to—

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

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SCHEDULE 1

Regulation 3

APPLICATION OF REGULATIONS

Number of employees	<i>Date Regulations apply</i>
At least 150	<i>[date of publication]</i>
At least 100	6 April 2007
At least 50	6 April 2008

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SCHEDULE 2

Regulation 19

REQUIREMENTS FOR BALLOTS HELD UNDER REGULATION 19

Ballot arrangements

1. Ballots held under regulation 19 must comply with the requirements specified in paragraph 2.
2. The requirements referred to in paragraph 1 are that—
 - (a) the ballot must comprise a single ballot but may instead, if the employer so decides, comprise separate ballots of employees in such constituencies as the employer may decide where the employer considers that if separate ballots were to be held for those constituencies, the information and consultation representatives to be elected would better reflect the interests of the employees as a whole than if a single ballot were held;
 - (b) if, at any point, it becomes clear that the number of people standing as candidates in the ballot is equal to or fewer than the relevant number of information and consultation representatives (as defined in regulation 19(3)), the obligation on the employer to hold the ballot in regulation 19 will cease and the candidates referred to above will become the information and consultation representatives;
 - (c) all employees of the undertaking on the day on which the 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, must be given an entitlement to vote in the ballot;
 - (d) any employee who is an employee of the undertaking at the latest time at which a person may become a candidate in the ballot is entitled to stand in the ballot as a candidate as an information and consultation representative;
 - (e) the employer must, in accordance with paragraph 6, appoint an independent ballot supervisor to supervise the conduct of the ballot;

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- (f) after the employer has formulated proposals as to the arrangements for the ballot and before he has published the final arrangements under sub-paragraph (g) he must, so far as reasonably practicable, consult with employees' representatives or, if no such representatives exist, the employees, on the proposed arrangements for the ballot; and
- (g) the employer must publish the final arrangements for the ballot in such manner as to bring them to the attention of, so far as reasonably practicable, his employees and, where they exist, the employees' representatives.

3. Any employee or an employees' representative who believes that the arrangements for the ballot are defective may, within a period of 21 days beginning on the date on which the employer published the final arrangements under paragraph 2(g), present a complaint to the Employment Tribunal.

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

5. An order under paragraph 4 shall specify the modifications to the arrangements which the employer is required to make and the requirements he must satisfy.

6. A person is an independent ballot supervisor for the purposes of paragraph 2(e) if the employer 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 might reasonably be called into question.

7. For the purposes of paragraph 3 the arrangements for the ballot are defective if any of the requirements specified in sub-paragraphs (a) to (f) of paragraph 2 is not satisfied.

Conduct of the ballot.

8. The employer must—

- (a) ensure that a ballot supervisor appointed under paragraph 2(e) carries out his functions under this Schedule and that there is no interference with his carrying out of those functions; and

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- (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.

9. A ballot supervisor's appointment shall require that he—

- (a) supervises the conduct of the ballot he is being appointed to supervise, in accordance with the arrangements for the ballot published by the employer under paragraph 2(g) or, where appropriate, in accordance with the arrangements as required to be modified by an order made under paragraph 4;
- (b) does not conduct the ballot before the employer has satisfied the requirement specified in paragraph 2(g) and—
 - (i) where no complaint has been presented under paragraph 3, before the expiry of 21 days beginning with the date on which the employer published his arrangements under paragraph 2(g); or
 - (ii) where a complaint has been presented under paragraph 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 so as to secure that—
 - (i) so far as reasonably practicable, those entitled to vote are given the opportunity to do so;
 - (ii) so far as reasonably practicable, those entitled to stand as candidates are given the opportunity to stand;
 - (iii) so far as reasonably practicable, those voting are able to do so in secret; and
 - (iv) the votes given in the ballot are fairly and accurately counted.

10. As soon as reasonably practicable after the date of the ballot, the ballot supervisor must publish the results of the ballot in such manner as to make them available to the employer and, so far as reasonably practicable, the employees entitled to vote in the ballot and the persons who stood as candidates in the ballot.

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11. 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 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 the employer to comply with all reasonable requests made by him with the result that he was unable to form a proper judgement as to whether each of the requirements referred to in paragraph 2 was satisfied in the ballot.

12. 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 paragraph 10.

13. A ballot supervisor must publish an ineffective ballot report in such manner as to make it available to the employer and, so far as reasonably practicable, the employees entitled to vote in the ballot and the persons who stood as candidates in the ballot.

14. Where a ballot supervisor publishes an ineffective ballot report, the outcome of the ballot shall be of no effect and—

- (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 be of no effect and the employer shall again be under the obligation in regulation 19;
- (b) if there have been separate ballots and sub-paragraph (a) does not apply—
 - (i) the employer shall arrange for the separate ballot or ballots in respect of which an ineffective ballot report has been issued to be reheld in accordance with regulation 19; 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.

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