



**central arbitration
committee**

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THE INFORMATION AND CONSULTATION REGULATIONS

A Guide for Employers and Employees to the role of the Central Arbitration Committee (CAC)

Introduction

1. The Information and Consultation of Employees Regulations 2004 (Statutory Instrument 2004 No. 3426) came into force on 6 April 2005 for undertakings with at least 150 employees. They extended to undertakings with 100 or more employees from 6 April 2007 and from 6 April 2008 to undertakings with 50 or more employees. The Regulations require employers to establish arrangements for informing and consulting their employees by way of either a negotiated agreement or the standard provisions laid down in the Regulations if requested by 10% of the workforce. This will reduce to 2% from 6 April 2020. The CAC's responsibility is to resolve disputes about the establishment and operation of these arrangements.

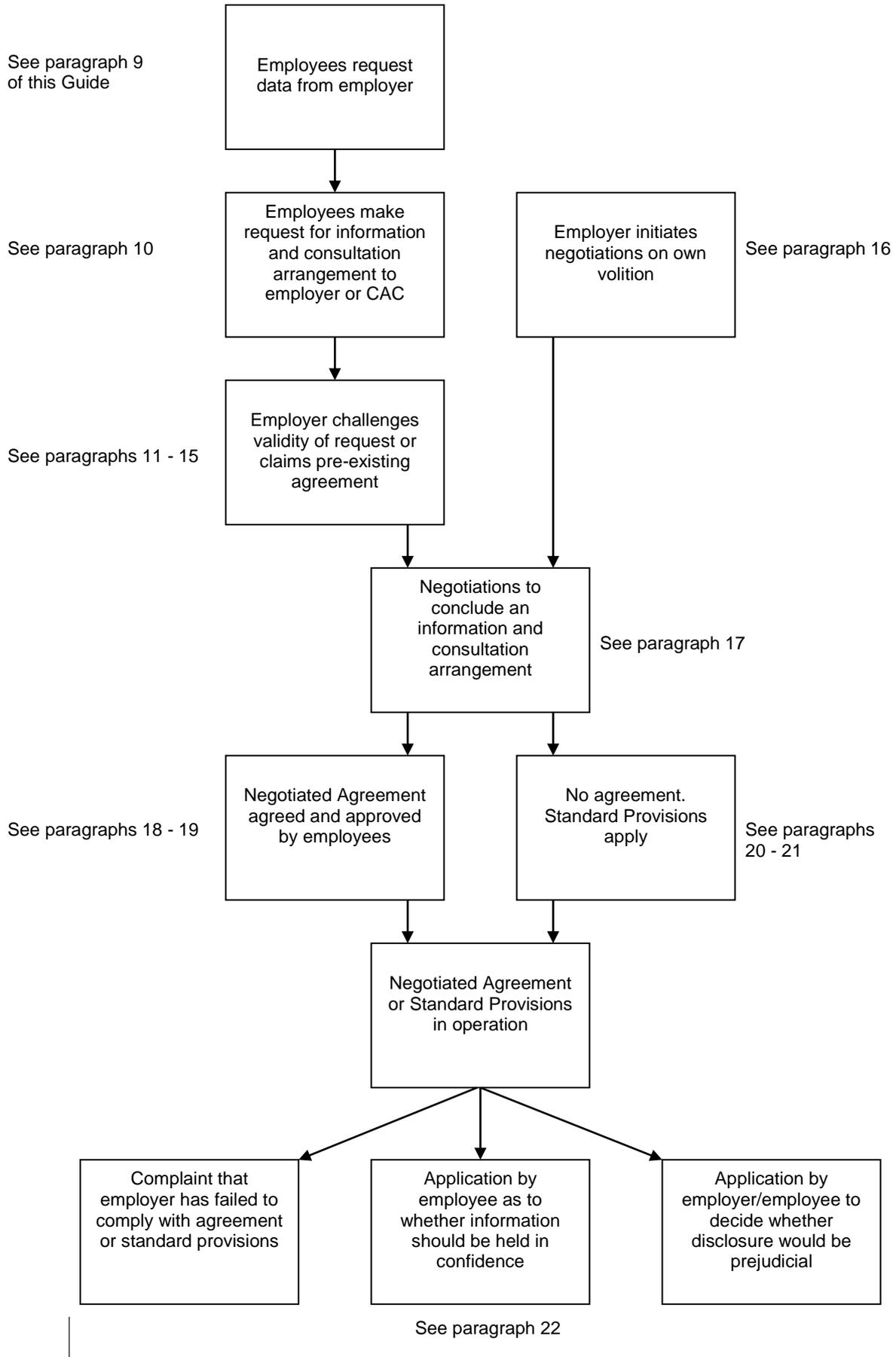
2. This booklet is a practical guide to the types of applications and complaints that can be made to the CAC and the way the CAC handles them. It should not be relied on as an authoritative statement of the law.

3. Further guidance about the Regulations is available from the organisations listed in Appendix 3.

The Information and Consultation Regulations

- There are 14 different applications or complaints that can be made to the CAC
- They are listed in Appendix 1 to this Guide.
- There is a separate form for each application or complaint and it is important to complete the correct one.
- If you are unsure about which form to complete or how to complete it, please telephone or e-mail the CAC. Our contact details are on page 17.
- If you have an application or complaint made against you, the CAC will send you a form for you to respond.
- Again, if you are unsure how to complete the form please contact the CAC.
- A CAC Case Manager is appointed to every application or complaint we receive. They are available to inform employers, employees and their representatives about CAC procedures.
- Although the CAC is required to make decisions under the Regulations, it will where appropriate assist employers and employees to reach voluntary settlements.
- If hearings are necessary, the CAC aims to keep these as informal as possible but with sufficient structure to ensure that those involved are given a full opportunity to present their views.

Procedure for implementing information and consultation arrangements



The Central Arbitration Committee

4. The Central Arbitration Committee (CAC) is an independent tribunal with statutory powers. Its Chair is Stephen Redmond, and he is supported by panels of Deputy Chairmen, and Members with experience as representatives of employers and workers. In addition to its responsibilities under the Information and Consultation regulations, the CAC also has the following duties:

- Handling applications for trade union recognition and derecognition
- Adjudicating complaints from a trade union that an employer has failed to disclose information for collective bargaining purposes
- Resolving disputes over the establishment and operation of European Works Councils
- Resolving disputes over the information and consultation requirements of the European Company Statute, the European Cooperative Society Statute and the Cross-Border Merger Regulations.

This Guide relates solely to the Information and Consultation of Employees Regulations. Information about the CAC's other statutory powers is available on the CAC web site (www.cac.gov.uk) or from the CAC; contact details are on page 17.

5. The CAC's responsibility is to resolve disputes about the establishment and operation of information and consultation arrangements. The Regulations also contain provisions relating to the protection of individuals who are information and consultation representatives. Claims under those provisions are dealt with by the Employment Tribunals and are not covered in this Guide.

6. The main points in the Regulations are summarised below and further details are given in Appendix 1 to this Guide.

A Summary of the Regulations

7. The Regulations apply at present to undertakings with 50 or more employees. An undertaking is defined as “a public or private undertaking carrying out an economic activity, whether or not operating for gain.” An employee means an individual who has entered into or works under a contract of employment¹. The Regulations apply to undertakings whose registered office, head office or principal place of business is situated in Great Britain (identical but separate Regulations apply in Northern Ireland). If an undertaking has its registered office in Great Britain and its head office in Northern Ireland (or vice versa), the British Regulations only apply where the majority of employees are employed to work in Great Britain.

8. There are two ways in which information and consultation arrangements can come into operation. Either employees make a request to their employer to establish arrangements or an employer can itself initiate negotiations to establish arrangements. To make a valid request under the Regulations, 10% of the employees in an undertaking must make the request; the 10% figure is subject to a minimum of 15 employees and a maximum of 2500. Employees can make the request as individuals or a group of employees can make a single request. Where separate requests are aggregated to achieve the 10% figure, all the requests must be made within a six month period of each other. When this reduces to 2% of the employees (on 6 April 2020), it will still be subject to a minimum of 15 employees.

9. As a preliminary step, employees can request data from their employer about the number of employees in the undertaking. This allows employees to calculate whether the undertaking has 50 employees and therefore comes within scope of the Regulations. They can also calculate how many employees need to support a request to establish information and consultation arrangements to meet the 10% criterion². If employees want to request this data, they must write to their employer and date the request. If the employer refuses to provide the data, or if the employer

¹ Under the Agency Workers Regulations 2010 an agency worker whose contract with a temporary work agency is not a contract of employment is to be treated as having a contract of employment with the temporary work agency during an assignment with an employer. If employers, employees or their representatives are unsure as to whether or not individuals meet the definition of “employee” in Regulation 2 of the Information & Consultation Regulations, they may wish to take their own legal advice.

² This reduces to 2% from 6 April 2020.

provides data which the employees consider is false or incomplete, the employees can make a complaint to the CAC. The method of making an application or complaint to the CAC and the way the CAC will handle them is described in more detail in this Guide in paragraph 24 onwards.

10. The first stage in the formal process is for employees to make a request to their employer for information and consultation arrangements. Employees can do this even if they have not made the request for data described in paragraph 9 above. If employees wish to make a request on a confidential basis, they can write to the CAC giving their own name and address, the employer's name and address and, if possible, the name of the appropriate manager whom the CAC should contact, and ensuring that their letter is dated. If a number of requests are made in respect of the same undertaking, it would be helpful to the CAC if one person could be nominated as a lead representative so that that person could act as the main point of contact. The CAC will then contact the employer to obtain a list of the names of the undertaking's employees and will check whether the requests are from individuals whose names are on the list. The CAC will then write to the employer and the employees to inform them of the number of employees who have made requests to the CAC. ***The CAC will not reveal to the employer the names of the employees who have written to the CAC.*** It is then up to the employer to decide if information and consultation arrangements should be established and, if appropriate, to begin negotiations. In paragraph 20 of this Guide we explain the action employees may take if they consider a sufficient number have made requests to comply with the 10% threshold³ and the employer refuses to negotiate to establish information and consultation arrangements.

11. An employer may wish to challenge the validity of a request for information and consultation arrangements. For example, the employer may consider that it is not an 'undertaking' as defined by the Regulations or that the undertaking does not employ sufficient employees to come within scope of the Regulations. If that is the case, the employer may make an application to the CAC which will decide if the employer is required to act on the employees' request.

³ The threshold is 2% from 6 April 2020.

12. An employer may also consider that there is a 'pre-existing agreement' in place which provides for informing and consulting employees and that it should not be required to establish information and consultation arrangements under the Regulations. A pre-existing agreement must cover all employees in the undertaking and have been approved by the employees. In these circumstances, if 40% of employees request information and consultation arrangements, the employer must nevertheless start negotiations to establish such arrangements. However, if the number of requests is at least 10%⁴ but less than 40%, the employer can choose to run a ballot for the employees to decide if the employer should initiate negotiations to establish information and consultation arrangements. If the employer decides to run a ballot, it must inform the employees within one month of the employees' request; the ballot should not take place earlier than 21 days after the employer notifies the employees of its intention to run a ballot. If the employees consider that there is no valid pre-existing agreement, they can make a complaint to the CAC which will decide the matter. Employees may also make an application to the CAC if they consider that the employer did not notify them that a ballot was to take place, that the ballot has not been held or that it took place before the 21 day period had expired or that the ballot did not conform with the requirements of the Regulations; the balloting requirements include the facility to vote in secret and the necessity to ensure that votes are accurately counted. The CAC can order the employer to arrange the ballot in line with the requirements of the Regulations.

13. If there are one or more pre-existing agreements that cover employees in more than one undertaking, an employer may choose to run a combined ballot involving the employees in all the undertakings. Employees may make an application to the CAC that the employer is not entitled to run a ballot on this basis or that, if such a ballot does take place, that the conditions described in paragraph 12 above have not been met.

14. If a ballot does take place, the request to establish information and consultation arrangements must be supported by a majority of those voting **and** 40%

⁴ This figure will be 2% from 6 April 2020.

of those entitled to vote to be successful. If either of those criteria is not met, the request is unsuccessful and the employees cannot make another request for three years.

15. If the result of the ballot is that the employees support the request to establish information and consultation arrangements, or if there is no pre-existing agreement, or if the employer has decided to initiate negotiations, the procedure moves to the next stage which is to start the negotiating process. This process must begin within three months of a valid request being made or the employer issuing a valid notification. The first step is for the employer to make arrangements for the election or appointment of representatives who will negotiate the information and consultation arrangements with the employer. These are referred to in the Regulations as 'Negotiating Representatives'.

16. If an employer decides to initiate negotiations without waiting for a request from employees, it must inform the employees in accordance with the following requirements:

- a) it must state that it intends to start the negotiating process and that the notification is given for the purposes of the Regulations;
- b) it must state the date on which the notification is issued; and
- c) it must be brought to the attention of all employees in the undertaking

Employees may make an application to the CAC that the employer did not conform to these requirements.

17. Negotiating Representatives must be elected or appointed in accordance with the following requirements:

- a) all employees must be represented by one or more Negotiating Representatives

- b) all employees are entitled to take part in the process for appointing or electing Negotiating Representatives.

Employees may make a complaint to the CAC that these requirements have not been met. It is for the employer to choose whether Negotiating Representatives are elected or appointed but the employees are entitled to take part in the process once the employer has chosen the method.

18. If the Negotiating Representatives and the employer successfully conclude an agreement, the agreement must nevertheless conform to the following requirements:

- a) it must set out the circumstances in which the employer must inform and consult the employees;
- b) it must be in writing, dated and signed on behalf of the employer;
- c) it must be approved by all the Negotiating Representatives or, if it has been approved by a majority of the Negotiating Representatives, it must be approved in writing by 50% of the employees or supported in a ballot by 50% of those voting; and
- d) it must provide for the appointment of Information and Consultation Representatives or provide that the employer must inform and consult directly with all employees.
- e) where information about the employment situation is to be provided, it must include suitable information relating to the use of agency workers (if any) in the undertaking.

If a ballot of employees is held to approve the agreement, it must conform to the requirements of the Regulations; these include the facility to vote in secret and the obligation to ensure the votes are accurately counted. A complaint can be made to the CAC that these balloting requirements have not been met.

19. The Regulations state that there is a six month period for the employer and the Negotiating Representatives to reach an agreement. The six month period starts three months after the employer receives a valid request from its employees for information and consultation arrangements or three months after the date on which the employer decides to initiate negotiations itself. The six month period can be extended by agreement between the employer and the employees (or their representatives).

20. If it does not prove possible for the employer and the Negotiating Representatives to reach an agreement, or if the employer fails to enter negotiations, the 'Standard Information and Consultation Provisions' will automatically apply. Generally, if the employer has refused to enter into negotiations, the Standard Provisions will apply six months from the date on which a valid request was made (or a valid notification was issued by the employer) or the date on which Information and Consultation Representatives are elected (see paragraph 21 below) whichever is the sooner. If, however, negotiations have taken place but did not result in an agreement, the Standard Provisions will apply six months from the expiry of the time limit described in paragraph 19 above, or the date on which Information and Consultation Representatives are elected, whichever is the sooner.

21. The Standard Information and Consultation Provisions are not a formal procedure of the type that may be agreed between an employer and its employees or, traditionally, the sort of collective agreement that is agreed between an employer and a trade union. They are a series of obligations on the employer to inform the employees' representatives on a range of issues affecting the undertaking's activities. The employer is under an additional duty to consult employees' representatives on some of those issues. Under the Standard Provisions, the employer also has to arrange a ballot to elect Information and Consultation Representatives and a complaint can be made to the CAC if that obligation is not met. The Regulations relating to the Standard Information and Consultation Provisions have been reproduced at Appendix 2.

22. If a Negotiated Agreement is in place or if the Standard Provisions apply, there are three issues on which an application or a complaint can be made to the CAC (these are explained in more detail in Appendix 1):

- a) a complaint can be made to the CAC that an employer has failed to comply with a Negotiated Agreement or the Standard Provisions;
- b) where an employer has disclosed information to an employee or an employees' representative and has required them to keep that information confidential, the recipient of the information can make an application to the CAC for a decision on whether it was reasonable for the employer to impose that requirement; and
- c) an application to the CAC by either an employee or the employer that disclosing information would seriously harm the functioning of, or be prejudicial to, the undertaking.

23. In Appendix 1 you will find more detailed information about all the applications and complaints that can be made to the CAC.

CAC Proceedings

24. The CAC will be even-handed in its application of the provisions of the Regulations. Our procedures will be as user-friendly as possible for employers, employees and their representatives.

25. A CAC Case Manager will be appointed to every application or complaint. They will do all they can to help employers and employees understand the Regulations and to resolve any difficulties.

26. The CAC normally publishes decisions on its web site. When an application or complaint is received, the CAC will only identify the case by way of the employer's name. We will not publish the names and contact details of individual employees.

27. Throughout this Guide we have referred to employees. For the avoidance of doubt, an application or complaint to the CAC may be made by an employee, a group of employees or an employees' representative. If an application or complaint is made by a group of employees, it would be helpful to the CAC if one person could be identified as the lead contact.

28. A panel of three CAC members will be convened to deal with each application or complaint. The panel will consist of the CAC Chair or, more usually, one of the Deputy Chairmen, and one Member with experience as a representative of employers and one Member with experience as a representative of workers. While the composition of the panel will normally remain the same throughout the handling of an application or complaint, it may be necessary to change the membership in the event of unavailability of one of the members. All those involved will be informed of the names of the panel members, and of any changes in the composition of the panel.

29. The CAC's approach will be as flexible as possible. The CAC will try to take a problem-solving approach and to help the parties, where possible, to reach voluntary agreements outside the statutory process. The parties to an application or complaint are free to contact the Case Manager at any time to discuss any aspect of the application. The CAC panel will expect the parties to co-operate in providing any relevant information and may draw an adverse inference if the parties do not cooperate with a reasonable request for information or documents.

30. Since the CAC has a duty to help the parties to resolve underlying problems and reach agreement, some contacts between the CAC and the parties will be of an informal nature. However the CAC also has to take formal decisions based on evidence available to both parties, so there can be a mix of informal and formal processes. Where necessary, the Case Manager and the panel will make it clear to the parties when they are discussing matters informally and when the discussion is part of a formal process. The CAC is also under a duty to establish if it is reasonably likely that the application or complaint could be settled by conciliation through Acas. Although employers and employees are free to seek assistance from Acas at any

time, the CAC Case Manager may also discuss this option with the parties to an application or complaint.

Making an application or complaint to the CAC

31. There are 14 different applications or complaints that can be made to the CAC. These are listed in Appendix 1 to this Guide and a separate form is available for each application or complaint. Each form contains details of the relevant Regulation and the questions on the form are specific to each application or complaint. Applicants should complete the form in as much detail as possible, but in the knowledge that it, and any supporting documentation sent with it, must be copied to the other party.

32. When the CAC receives an application or complaint it will copy it to the other party and invite them to complete a form in response. That form will in turn be copied to the other party and to the panel appointed to deal with the case. The Case Manager will then contact both parties to explain the course of action the panel has decided to take. This may be, for example, a request for further information, a discussion about the possibility of a voluntary settlement of the issue or to arrange a formal hearing.

Hearings

33. Hearings are not always necessary and some decisions may be taken by the panel on the papers, after giving each party the opportunity to make submissions or if it appears to the panel that there is no material dispute. If it appears that a hearing will be necessary, the Chairman of the panel may hold a preliminary meeting in order to set out procedures and identify the issues disputed. The parties will be asked to submit and exchange evidence in the form of written submissions prior to the hearing. New evidence will only be admitted at hearings for good reasons and at the discretion of the panel. If the parties choose not to present evidence, that will not prevent the CAC reaching a decision. The parties will be asked to inform the CAC panel in advance of the names of the speakers and any witnesses proposed for the hearing. The parties may appoint representatives but there is no requirement to use lawyers. Hearings will generally be held in public, although it is open to the CAC to hold a hearing (or part of a hearing) in private, for example if the panel considers there are areas of particular confidentiality or that it is necessary in order to reach a

satisfactory settlement. The CAC holds hearings in as informal a way as is consistent with clarity and fairness. Each party will be asked to comment on and amplify its written statement and to comment on the other's evidence and to answer questions put by the panel. Speakers and any witnesses may be cross-questioned where factual issues are in dispute, at the discretion of the panel. In particular cases, the CAC panel may determine that stricter standards of evidence are required, or that more formality in proceedings is appropriate. Parties will be advised if this is the case in good time prior to the hearing.

34. Although the Regulations do not prescribe deadlines within which applications and complaints should be processed, the CAC will act as expeditiously as possible and will expect employers, employees and their representatives to cooperate with this principle. In practice this means that on receipt of an application or complaint the CAC will ask the other party to respond normally within five working days. The CAC also undertakes to inform the parties within a further five working days of the way it intends to handle the application or complaint and to communicate any decisions as soon as they have been taken or, if a hearing has taken place, to communicate the panel's decision as soon as is practicable after the hearing date.

35. If a hearing is necessary, it will be arranged as soon as is possible. Wherever possible, hearing dates will be arranged taking into account the commitments of the parties but there are occasions where it is necessary for the CAC to impose a hearing date in order to avoid unnecessary delays. Where a hearing date is imposed, the CAC will give as much notice to the parties as is possible. The CAC expects that hearings will normally be completed in a day, and the procedures adopted at the hearings will be based on that expectation. While the CAC is based in London, it may hold hearings at other locations where this is believed helpful to, or more convenient for, the parties to the case. The decision on location will rest with the CAC. Forthcoming hearings are listed on the CAC's website.

CAC Decisions

36. Decisions of the CAC are normally publicly available, but are not publicised by means of a Press Notice. Where decisions of the CAC are publicised, the parties

will be informed first. All decisions are made in the name of the CAC rather than that of the individual panel members. After notification has been made to the parties, decisions of the CAC are posted on the CAC web-site (www.cac.gov.uk). The parties will be invited to give evidence to the CAC that the publication of the details of a decision could lead to the release of information that could be detrimental to either side.

Enforcement of CAC decisions

37. A declaration or order of the CAC under the Regulations may be relied on as if it were a declaration or order made by the High Court or Court of Session depending on whether the employer's registered office, head office or principal place of business is, respectively, in England or Wales, or Scotland. In the case of successful complaints under Regulations 19(4) and 22(1) (see Appendix 1 for further details), an application can be made to the Employment Appeal Tribunal for a penalty notice.

Appeals

38. There is a right of appeal to the Employment Appeal Tribunal on any question of law arising from any declaration or order of, or arising in any proceedings before, the CAC under the Regulations.

Confidentiality

39. There are two areas in the Regulations where confidentiality may be of particular concern to those involved in CAC proceedings. These are Regulation 25(6) in which a recipient of information may make an application to the CAC for a declaration as to whether it was reasonable for the employer to require the recipient to hold the information in confidence and Regulation 26(2) in which an employer, an employee or an employees' representative may apply to the CAC for a declaration as to whether the nature of information is such that, according to objective criteria, the disclosure of the information would seriously harm the functioning of, or would be prejudicial to, the undertaking.

40. CAC hearings are normally held in public and decisions are normally published on our web site. The CAC recognises that employers may be concerned that the very information which they seek to retain as confidential may be disclosed as a result of CAC proceedings, or that information they regard as commercially confidential may need to be disclosed to enable the CAC to make the decisions described in paragraph 39 above. If there are important issues relating to the disclosure of confidential information, the CAC panel appointed to determine a particular application or complaint will consider representations made by any party to a case that, for example, a hearing be held, at least in the first instance, without notice to or in the absence of any other party, or should not be held in public, or that the publication, or the publication in full, of a decision on the CAC web site should not take place or should be deferred for a specific period.

Contact details for CAC:

Address: Central Arbitration Committee
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX

Tel: 0330 109 3610

Website: www.cac.gov.uk

E-Mail: enquiries@cac.gov.uk

Contact names:

Chief Executive - James Jacob
Operations Manager - Maverlie Tavares

User Satisfaction

If you are asked for your views on any aspect of our service, we would appreciate your cooperation. But if you have comments, whether of satisfaction, complaint or suggestion, please do not wait to be asked. If you are dissatisfied with any aspect of our service, please let us know so that we can put things right. If you cannot resolve the problem with the person who dealt with you originally, please ask to speak to the Operations Manager or, if necessary, the Chief Executive who will investigate your complaint. If you wish to complain in writing, please write to James Jacob, Chief Executive, at the address above.

In the event of any complaint, we hope that you will let us try to put things right. But if necessary you can write to your MP who can tell you how to have your complaint referred to the Parliamentary Commissioner for Administration (the Ombudsman).

Appendix 1

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

EMPLOYER'S OBLIGATION TO PROVIDE INFORMATION ON NUMBERS

1. Regulation 6(1)

Complaint by an employee or an employees' representative that the employer has failed to provide information to determine the number of people employed by the undertaking in the UK or the number of employees that constitutes 10%⁵ of employees in the undertaking, or that information provided is false or incomplete. Complaint can be submitted no earlier than one month after the complainant requested the information.

CAC can make an order specifying:

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

PRE-EXISTING AGREEMENTS

2. Regulation 8(7)

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

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

⁵ This will be 2% from 6 April 2020.

3. **Regulation 8(8)**

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

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

4. **Regulation 10(1)**

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

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

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

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

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

5. **Regulation 10(2)**

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

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

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

VALIDITY OF REQUEST

6. Regulation 13(1)

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

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

- request not made by 10%⁶ of the employees (subject to a minimum of 15 and a maximum of 2500)
- aggregated requests not made within a six month period of each other
- request not made in correct form

it was covered by the restrictions in Regulation 12:

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

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

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

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

⁶ This is 2% from 6 April 2020.

VALIDITY OF EMPLOYER NOTIFICATION

7. Regulation 13(2)

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

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

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

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

APPOINTMENT OR ELECTION OF NEGOTIATING REPRESENTATIVES

8. Regulation 15(1)

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

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

have not been complied with.

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

BALLOT TO APPROVE A NEGOTIATED AGREEMENT

9. Regulation 17(1)

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

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

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

BALLOT TO ELECT I & C REPRESENTATIVES

10. Regulation 19(4)

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

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

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

11. Paragraph 3 of Schedule 2

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

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

EMPLOYER'S FAILURE TO COMPLY WITH AGREEMENT/PROVISIONS

12. Regulation 22(1)

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

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

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

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

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

(See Appendix 2 for further information)

REQUIREMENT TO HOLD INFORMATION IN CONFIDENCE

13. Regulation 25(6)

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

CAC can make a declaration.

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

WHETHER INFORMATION SHOULD BE DISCLOSED

14. Regulation 26(2)

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

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

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

Appendix 2

REGULATION 20: THE STANDARD INFORMATION AND CONSULTATION PROVISIONS

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 such information must include suitable information relating to the use of agency workers (if any) in that undertaking) and on any anticipatory measures envisaged, in particular, where there is a threat to employment within the undertaking; and
- (c) subject to paragraph (5), decisions likely to lead to substantial changes in work organisation or in contractual relations, including those referred to in-
 - (i) sections 188 to 192 of the Trade Union and Labour Relations (Consolidation) Act 1992; and
 - (ii) regulations 10 to 12 of the Transfer of Undertakings (Protection of Employment) Regulations 1981.

(2) The information referred to in paragraph (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 paragraph (1)(b) and (c).

(4) The employer must ensure that the consultation referred to in paragraph (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 paragraph (1)(c), with a view to reaching agreement on decisions within the scope of the employer's powers.

(5) The duties in this regulation to inform and consult the information and consultation representatives on decisions falling within paragraph (1)(c) cease to apply where the employer is under a duty under –

(a) section 188 of the Act referred to in paragraph (1)(c)(i) (duty of employer to consult representatives); or

(b) regulation 10 of the Regulations referred to in paragraph (1)(c)(ii) (duty to inform and consult representatives), and

he has notified the information and consultation representatives in writing that he will be complying with his duty under the legislation referred to in sub-paragraph (a) or (b), as the case may be, instead of under these Regulations.

(6) 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.

CAC NOTE 1

In relation to paragraph 20(1)(c) above:

- sections 188 to 192 of the Trade Union and Labour Relations (Consolidation) Act 1992 refer to an employer's obligation to consult employees' representatives in a redundancy situation
- regulations 10 to 12 of the Transfer of Undertakings (Protection of Employment) Regulations 1981 refer to an employer's obligation to consult employees and their representatives prior to the transfer of an undertaking

CAC NOTE 2

In relation to paragraph 20(1)(b) above, 'suitable information relating to the use of agency workers' means:

- (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.

For the full definition, see paragraph 2 of the Regulations. The definition of 'suitable information' also applies to the requirements of a negotiated agreement described in paragraph 18 of this Guide.

Appendix 3

FURTHER INFORMATION ABOUT THE INFORMATION AND CONSULTATION REGULATIONS

- The Department for Business, Energy and Industrial Strategy has published detailed guidance about the Regulations which can be obtained from the Employment Matters page of its web site: *beis.gov.uk*.
- The Information and Consultation of Employees Regulations 2004 (Statutory Instrument 2004 No 3426) and The Information and Consultation of Employees (Amendment) Regulations 2006 (Statutory Instrument 2006 No 514) are available at *tso.gov.uk* and *legislation.gov.uk*.
- Guidance about good practice on informing and consulting employees is available from the web site of the Advisory, Conciliation and Arbitration Service: *acas.org.uk*.
- Other organisations that have published guidance about the Regulations are:

Chartered Institute of Personnel and Development
Involvement and Participation Association
Confederation of British Industry
EEF
TUC