

---

STATUTORY INSTRUMENTS

---

**2007 No. 2974**

**The Companies (Cross-Border Mergers) Regulations 2007**

**PART 4**

**EMPLOYEE PARTICIPATION**

**CHAPTER 9**

**MISCELLANEOUS**

**CAC proceedings**

**57.**—(1) Where under these Regulations a person presents a complaint or makes an application to the CAC the complaint or application must be in writing and in such form as the CAC may require.

(2) In its consideration of a complaint or application under these Regulations, the CAC 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.

(3) Where a transferee company or merging company has its registered office in England and Wales—

- (a) a declaration made by the CAC under these Regulations may be relied on as if it were a declaration or order made by the High Court in England and Wales; and
- (b) an order made by the CAC under these Regulations may be enforced in the same way as an order of the High Court in England and Wales.

(4) Where a transferee company or merging company has its registered office in Scotland—

- (a) a declaration or order made by the CAC under these Regulations may be relied on as if it were a declaration or order made by the Court of Session; and
- (b) an order made by the CAC under these Regulations may be enforced in the same way as an order of the Court of Session.

(5) A declaration or order made by the CAC under these Regulations must be in writing and state the reasons for the CAC's findings.

(6) An appeal lies to the Appeal Tribunal on any question of law arising from any declaration or order of, or arising in any proceedings before, the CAC under these Regulations.

**Appeal Tribunal: location of certain proceedings under these Regulations**

**58.**—(1) Any proceedings before the Appeal Tribunal under these Regulations, other than appeals under paragraph (u) of section 21(1) of the Employment Tribunals Act 1996 <sup>F1</sup> (appeals from employment tribunals on questions of law), shall—

- (a) where the registered office of the transferee company or merging company is situated in England and Wales, be held in England and Wales; and
- (b) where the registered office of the transferee company or merging company is situated in Scotland, be held in Scotland.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Companies (Cross-Border Mergers) Regulations 2007. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (2) In section 20(4) of the Employment Tribunals Act 1996 (the Appeal Tribunal)—
- (a) for “2004 and” substitute “ 2004, ”; and
  - (b) after “Regulations 2006” insert “ and regulation 58(1) of the Companies (Cross-Border Mergers) Regulations 2007 ”.

**F1** Section 21(1) has been amended on a number of occasions to specify additional proceedings and claims to which the section applies.

### Appeal Tribunal: appeals from employment tribunals

**59.** In section 21(1) of the Employment Tribunals Act 1996 (circumstances in which an appeal lies to the Appeal Tribunal from an employment tribunal)—

- (a) omit the word “or” at the end of paragraph (s); and
- (b) after paragraph (t), insert—
  - “or
  - (u) the Companies (Cross-Border Mergers) Regulations 2007.”.

### ACAS

**60.**—(1) If on receipt of an application or complaint under these Regulations the CAC is of the opinion that it is reasonably likely to be settled by conciliation, it shall refer the application or complaint to the Advisory, Conciliation and Arbitration Service (“ACAS”) and shall notify the applicant or complainant and any persons whom it considers have a proper interest in the application or complaint accordingly, whereupon ACAS shall seek to promote a settlement of the matter.

(2) If an application or complaint so referred is not settled or withdrawn and ACAS is of the opinion that further attempts at conciliation are unlikely to result in a settlement, it shall inform the CAC of its opinion.

- (3) If—
- (a) the application or complaint is not referred to ACAS; or
  - (b) ACAS informs the CAC of its opinion that further attempts at conciliation are unlikely to result in a settlement,

the CAC shall proceed to hear and determine the application or complaint.

### Restrictions on contracting out: general

**61.**—(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 this Part of these Regulations other than a provision of Chapter 7 (protection for employees and members of special negotiating body) (but see regulation 62); or
- (b) to preclude a person from bringing any proceedings before the CAC, under any provision of this Part (other than a provision of that Chapter).

(2) Paragraph (1) does not apply to any agreement to refrain from continuing any proceedings referred to in sub-paragraph (b) of that paragraph made after the proceedings have been instituted.

## Restrictions on contracting out: Chapter 7 of this Part

62.—(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 Chapter 7 of this Part of these Regulations; or
- (b) to preclude a person from bringing any proceedings before an employment tribunal under that Chapter.

(2) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing proceedings before an employment tribunal where a conciliation officer has taken action under [<sup>F2</sup>any of sections 18A to 18C] of the Employment Tribunals Act 1996 (conciliation).

(3) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing before an employment tribunal proceedings within section 18(1) of the Employment Tribunals Act 1996 if the conditions regulating [<sup>F3</sup>settlement] agreements under these Regulations are satisfied in relation to the agreement.

(4) For the purposes of paragraph (3) the conditions regulating [<sup>F4</sup>settlement] agreements are that—

- (a) the agreement must be in writing;
  - (b) the agreement must relate to the particular proceedings;
  - (c) the employee must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an employment tribunal;
  - (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the employee in respect of loss arising in consequence of the advice;
  - (e) the agreement must identify the adviser; and
  - (f) the agreement must state that the conditions in sub-paragraphs (a) to (e) are satisfied.
- (5) A person is a relevant independent adviser for the purposes of paragraph (4)(c)—
- (a) if he is a qualified lawyer;
  - (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and authorised to do so on behalf of the trade union; or
  - (c) if he works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and authorised to do so on behalf of the centre.

(6) But a person is not a relevant independent adviser for the purposes of paragraph (4)(c) in relation to the employee—

- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer; or
- (b) in the case of a person within paragraph (5)(b) or (c), if the trade union or advice centre is the employer or an associated employer.

(7) In paragraph (5)(a), a “qualified lawyer” means—

- (a) as respects England and Wales, [<sup>F5</sup>a person who, for the purposes of the Legal Services Act 2007), is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act)]; and

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Companies (Cross-Border Mergers) Regulations 2007. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.

(8) A person shall be treated as being a qualified lawyer within paragraph (7)(a) if he is a Fellow of the Institute of Legal Executives [<sup>F6</sup>practising in a solicitor’s practice (including a body recognised under section 9 of the Administration of Justice Act 1985)].

(9) For the purposes of paragraph (6) any two employers shall be treated as associated if—

(a) one is a company of which the other (directly or indirectly) has control; or

(b) both are companies of which a third person (directly or indirectly) has control,

and “associated employer” shall be construed accordingly.

[<sup>F7</sup>(10) In the application of this regulation in relation to Northern Ireland, paragraphs (3) and (4) above shall have effect as if for “settlement agreements” there were substituted “compromise agreements”.]

- |           |   |
|-----------|---|
| <b>F2</b> | Words in reg. 62(2) substituted (6.4.2014) by <a href="#">The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2014 (S.I. 2014/386)</a> , art. 1, <b>Sch. para. 51</b>     |
| <b>F3</b> | Word in reg. 62(3) substituted (30.8.2013) by <a href="#">The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2013 (S.I. 2013/1956)</a> , art. 1, <b>Sch. para. 13(a)</b> |
| <b>F4</b> | Word in reg. 62(4) substituted (30.8.2013) by <a href="#">The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2013 (S.I. 2013/1956)</a> , art. 1, <b>Sch. para. 13(a)</b> |
| <b>F5</b> | Words in reg. 62(7)(a) substituted (1.1.2010) by <a href="#">The Legal Services Act 2007 (Consequential Amendments) Order 2009 (S.I. 2009/3348)</a> , arts. 2(1), 23, <b>Sch. 2</b>                               |
| <b>F6</b> | Words in reg. 62(8) substituted (16.12.2009) by <a href="#">The Legal Services Act 2007 (Consequential Amendments) Order 2009 (S.I. 2009/3348)</a> , arts. 2(2), 22, <b>Sch. 1</b>                                |
| <b>F7</b> | Reg. 62(10) inserted (30.8.2013) by <a href="#">The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2013 (S.I. 2013/1956)</a> , art. 1, <b>Sch. para. 13(b)</b>           |

## Amendments to the Employment Act 2002

**63.** In the Employment Act 2002 <sup>F8</sup> at the end of each of the following Schedules—

- Schedule 3 (tribunal jurisdictions to which section 31 applies for adjustment of awards for non-completion of statutory procedure);
- Schedule 4 (tribunal jurisdictions to which section 32 applies for complaints where the employee must first submit a statement of grievance to employer); and
- Schedule 5 (tribunal jurisdictions to which section 38 applies in relation to proceedings where the employer has failed to give a statement of employment particulars),

there is inserted—

“Regulation 51 of the Companies (Cross-Border Mergers) Regulations 2007 (detriment in relation to special negotiating body or employee participation)”.

<b>F8</b>	<a href="#">2002 c.22.</a>
-----------	----------------------------

## Amendments to the Employment Appeal Tribunal Rules 1993

**64.**—(1) In rule 2(1) of the Employment Appeal Tribunal Rules <sup>F9</sup> 1993, after ““the Information and Consultation Regulations” means the Information and Consultation of Employees Regulations 2004;” insert—

““the 2007 Regulations” means the Companies (Cross-Border Mergers) Regulations 2007;”.

(2) In rules 3(1)(d), 3(3)(d), 4(1)(e), 5(c) and 7(1)(e), after “or regulation 35(6) of the Information and Consultation Regulations” insert “ or regulation 57(6) of the 2007 Regulations ”.

(3) In rule 16AA after “or regulation 22(6) of the Information and Consultation Regulations” insert “ or regulation 53(6) of the 2007 Regulations ” and after “regulation 33(4) of the 2004 Regulations or regulation 22(4) of the Information and Consultation Regulations” insert “ or regulation 53(4) of the 2007 Regulations ”.

(4) In rules 26 and 31(1)(c) omit “or” before “regulation 22 of the Information and Consultation Regulations” and after insert “ or regulation 53 the 2007 Regulations ”.

(5) In the Schedule, on the Heading of Form 1A, omit “or” before “regulation 35(6) of the Information and Consultation Regulations” and after insert “ or regulation 57(6) of the Companies (Cross-Border Mergers) Regulations 2007 ”.

(6) In the Schedule—

- (a) on the Heading of Form 4B, in the heading, after “regulation 22 of the Information and Consultation Regulations” insert “ or regulation 53 of the Companies (Cross-Border Mergers) Regulations 2007 ”; and
- (b) in paragraph 5, after “regulation 22 of the Information and Consultation Regulations” and before “*(delete which does not apply).*” insert “ or regulation 53 of the Companies (Cross-Border Mergers) Regulations 2007 ”.

<b>F9</b> <a href="#">S.I. 1993/2854.</a>
---

**Changes to legislation:**

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Companies (Cross-Border Mergers) Regulations 2007. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

**Changes and effects yet to be applied to :**

- Regulations applied (with modifications) by [S.I. 2021/716 Sch. 3 para. 23](#)
- Regulations revoked by [S.I. 2019/348 reg. 5\(a\)](#)