

Name of the country: UK

EWC Act = TICER, 2010 No. 1088 TERMS AND CONDITIONS OF EMPLOYMENT The Transnational Information and Consultation of Employees (Amendment) Regulations 2010

**1. Presence of legally based administrative or judicial conflict solving procedures for:**

		No	Yes	Unclear	brief explanation
A	SNB (including the pre-SNB phase, i.e. requesting the necessary information about the company, staff distribution, etc.)		Yes <sup>1</sup>		
B	EWC based on Art. 6 agreements		Yes		
C	EWC based on art. 13 agreement	No <sup>2</sup>			
D	EWC based on subsidiary requirements		Yes		

**2. Litigation on different sets of rights: presence of national provisions**

		No	Yes <sup>3</sup>	Which authority (e.g., court) is competent <sup>4</sup>
A	Breaches against the provision of information to the SNB as per art. 4 (4) of Directive 2009/38/EC (information on the number of employees)/Failure to establish a SNB		Yes, but limited (only obstruction to impede a meeting of the SNB) <sup>5</sup>	CAC (Central Arbitration Committee) as the first instance. Second instance: EAT (Employment Appeal Tribunal)
B	Operation of the EWC: breaches and compliance with the law (statutes), agreement or Subsidiary Requirements		Yes, but limited (failure of the management to provide the means required to fulfil the duties of EWC members)	In Northern Ireland the Industrial Court hears the complaints and the High Court in Northern

<sup>1</sup> Section 21A, consolidated TICER.

<sup>2</sup> Explicit exclusion in Regulation 45 of TICER.

<sup>3</sup> A full list of disputes/claims that can be brought to the CAC is:

**1) Entitlement to information**

1. [2\) Request to establish an EWC or I & C procedure](#)
2. [3\) Special Negotiating Body](#)
3. [4\) Negotiating the establishment of the EWC or I & C procedure](#)
4. [5\) Disputes about operation of the EWC or I & C procedure](#)
5. [6\) Disputes about failures of management](#)
6. [7\) Complaints of failure to inform](#)
7. [8\) Disclosure of Information](#)
8. [9\) Election of EWC members when the Subsidiary Requirements apply](#)

<https://www.gov.uk/guidance/guide-to-european-works-councils>

<sup>4</sup> Material and geographical competence.

<sup>5</sup> Section 21A, consolidated TICER.

(3) Where the CAC finds the complaint well-founded it shall make a decision to that effect and may make an order requiring the defaulter to take such steps as are necessary to comply with regulation 16(1A), 19A, 19B or 19E(2), as the case may be.



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C	Challenging management on the use of confidentiality and secrecy/withholding information)		Yes (to CAC <sup>6</sup> ) <sup>7</sup>	Ireland will issue penalties.
E	Individual rights of the SNB/EWC members under national EWC legislation		Yes, but limited (failure of the management to provide the means required to fulfil the duties of EWC members) or undertake training	
F	(Others to be filled in)			

### 3. Capacity to act in court

		Brief explanation/ differences for 2A-2F above)
1	Who/which body can start a judicial procedure?	EWC or SNB, employee representatives
2	What legal status (ius standi) is a requirement to start a judicial procedure? (legal personality, capacity to act in courts, other forms?)	Natural and legal persons can start legal proceedings in labour disputes.
3	What is the legal status of the EWC (legal personality or other capacity to act in court)?	Employee representatives=EWC members can act on behalf of EWC. Unclear if the EWC has collective legal capacity.
4	In case of lacking capacity to act in court: how can it be circumvented (think of representation by trade unions)?	
5	Who represents the EWC in law?	Mandated Employee representatives=EWC members
6	What is the capacity to act in court of joint type ('forum' or French-type) EWCs composed of both management and employees' representatives and can it be an obstacle?	disputable/unclear. <sup>8</sup>

### 4. Starting a procedure and timelines

<sup>6</sup> Regulation 24 TICER: "(2) Where there is a dispute between the central management and a recipient as to whether the nature of the information or document which the central management has failed to provide is such as is described in paragraph (1), the central management or a recipient may apply to the CAC for a declaration as to whether the information or document is of such a nature."

<sup>7</sup> Regulation 23 TICER: "(7) If the CAC considers that the disclosure of the information or document by the recipient would not, or would not be likely to, prejudice or cause serious harm to the undertaking, it shall make a declaration that it was not reasonable for the central management to require the recipient to hold the information or document in confidence.

(8) If a declaration is made under paragraph (7), the information or document shall not at anytime thereafter be regarded as having been entrusted to the recipient who made the application under paragraph (6), or to any other recipient, on terms requiring it to be held in confidence."

<sup>8</sup> In the P&O case in pre-court proceedings the capacity of a joint-type EWC was questioned by the judge.



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		Brief explanation
1	Does the law set conditions as to how the EWC can take a valid decision on entering a judicial procedure? Think of voting, quorum, the necessity of a physical meeting to take a decision,...	No
1.a	Does the law contain any requirements on the internal rules concerning question 1?	No
2	How does one file a case in court? (Who, format, steps)	<p>If the central management of the company is in England, Scotland or Wales, you should send your application to the CAC.</p> <p>If it's in Northern Ireland, you should send your application to the <a href="#">Industrial Court</a>.</p> <p>There is no application form for the Central Arbitration Committee (CAC) so you should write or email with the following information:</p> <ul style="list-style-type: none"> <li>• your name and contact details</li> <li>• the name and contact details of the other party (the employer or employee as appropriate)</li> <li>• the Regulation number of your application or complaint listed in the <a href="#">EWC Applications and Complaints</a></li> <li>• a brief statement explaining your complaint</li> </ul> <p>Send your email to <a href="mailto:enquiries@cac.gov.uk">enquiries@cac.gov.uk</a></p> <p>After the initial hearing of complaints by the CAC, the Employment Appeal Tribunal (EAT) decides on penalties for the defaulter in question (Rules 17 to 22 of Statutory Instrument 1088 of 2010) .</p> <p>The CAC will acknowledge your complaint and invite the other party to respond to it.</p> <p>We will tell you the names of the panel members who will be considering your complaint and the name of the case manager who will be your contact.</p> <p>The case manager will tell you what happens next. This could include:</p> <ul style="list-style-type: none"> <li>• providing further information</li> <li>• attending an informal meeting to discuss the issues</li> <li>• attending a formal hearing after which the CAC will issue a decision<sup>9</sup></li> </ul>

<sup>9</sup> <https://www.gov.uk/guidance/apply-to-resolve-a-european-works-councils-dispute>



3	What is the deadline to start a judicial procedure?	There are time limits or limitation periods during which a court action should be made. The general limitation period is six years from a relevant date – for example the date of breach of contract or when damage was suffered or sometimes when any damage was discovered. <sup>10</sup>
4	Are there other relevant deadlines in the judicial procedure?	3 months since the issue of a decision by the CAC to apply to EAT for a penalty notice <sup>11</sup>
5	What is the role of out of court settlements once a case has been filed?	Examples of ADR include Mediation and Arbitration; page of <a href="#">trained mediators</a> who will mediate for a sliding fixed-fee. Should the parties attempt ADR, and the matter not conclude, there is nothing that precludes the case continuing through the court process. <sup>12</sup>
6	How long does a judicial procedure typically take?	
7	Is an injunction or a summary procedure possible?	Yes, but in a limited number of situation: <ol style="list-style-type: none"> <li>1) when EWC members fail to report back about the work of EWC (outcome of information and consultation)<sup>13</sup> – the order will be to disclose the information to the employee/employee representative.</li> <li>2) Linking the levels of information and consultation (articulation);</li> <li>3) SNB meeting without management before and after a meeting with the central management, using any means necessary for communication;</li> <li>4) Providing the EWC with the means required to represent collectively the interests of the employees;</li> <li>5) Obligation to provide training to EWC and SNB members;</li> <li>6) Managerial obligation that the procedures for informing and consulting the EWC and national representation bodies in relation to the substantial changes in work organisation or contractual relations are linked so as to begin within a reasonable time of each other.</li> </ol>

<sup>10</sup> [https://e-justice.europa.eu/34/EN/how\\_to\\_bring\\_a\\_case\\_to\\_court?ENGLAND\\_AND\\_WALES&member=1](https://e-justice.europa.eu/34/EN/how_to_bring_a_case_to_court?ENGLAND_AND_WALES&member=1)

<sup>11</sup> Section 21A, TICER.

<sup>12</sup> <https://www.gov.uk/guidance/apply-to-resolve-a-european-works-councils-dispute>

<sup>13</sup> Art. 19D of TICER: “Where the CAC finds the complaint well-founded it shall make an order requiring the European Works Council to disclose information to the complainant [employee or employees’ representative]”



		<p>7) In cases of abuse of confidentiality<sup>14</sup>;</p> <p>8) Where management refuses to grant time-off or fails to pay for the time-off<sup>15</sup></p> <p>However:</p> <p>“No order of the CAC under this regulation shall have the effect of suspending or altering the effect of any act done or of any agreement made by the central management or the local management.”<sup>16</sup></p>
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## 5. Costs

		Brief explanation
1	What are the court fees for a judicial procedure?	any party to proceedings in the UK can now be burdened with a ‘costs order’ (Rule 75 of the Statutory Instrument) which is a separate instrument from a penalty and which may comprise ‘fees, charges, disbursements or expenses incurred by or on behalf of the receiving party (including expenses that witnesses incur for the purpose of, or in connection with, attendance at a Tribunal hearing)’. Furthermore, if a tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party to pay a deposit not exceeding £1 000 (€1 174) as a condition of continuing to advance that allegation or argument (Rule 39 of the Statutory Instrument).
2	Is legal representation by a lawyer required in a judicial procedure?	There is no requirement for a person to seek the advice of, or be represented by, a lawyer; in a simple case of debt you may not consider it necessary to consult a solicitor. As a general rule, however, if your claim is for a sum over £10000 and particularly if it includes a claim for compensation ('damages'), it is advisable to seek the advice of a solicitor. <sup>17</sup>
3	Who pays the costs for:	Problems with financing were anticipated since the start of application of the original Directive <sup>18</sup>

<sup>14</sup> Regulation 24, TIGER: (3) If the CAC makes a declaration that the disclosure of the information or document in question would not, according to objective criteria, seriously harm the functioning of, or be prejudicial to, the undertaking or group of undertakings concerned, the CAC shall order the central management to disclose the information or document.

<sup>15</sup> Regulation 27, TIGER.

<sup>16</sup> Section 21A(9) of TIGER.

<sup>17</sup> [https://e-justice.europa.eu/34/EN/how\\_to\\_bring\\_a\\_case\\_to\\_court?ENGLAND\\_AND\\_WALES&member=1](https://e-justice.europa.eu/34/EN/how_to_bring_a_case_to_court?ENGLAND_AND_WALES&member=1)

<sup>18</sup> In course of implementation of the EWC Directive 94/45/EC into UK law, when the Government Department for Business, Enterprise & Regulatory Reform (BERR) recommended that ‘As the EWC will have no financial resources of its own, it is proposed that costs should be borne by the undertaking (excluding frivolous applications)’ (BERR 1999: 37-38).



		You will usually need to pay a fee to start your claim. The level of the fee will depend on the amount you are claiming. If the defendant does not pay once you have judgment, or says the money is not owed and your claim proceeds as a 'defended' (disputed) case, you may have to pay further fees. If you win your case, the fees will be added to the amount the defendant owes you. <sup>19</sup>
	- Legal expert	Experts limited to one.
	- Court fees	
	- Other costs (travel/interpretation)	
4	Does a EWC normally have an independent budget and/or an own bank account under a given national legislation?	No
5	Can the EWC be sentenced to pay the costs of the other party in the judicial procedure?	Yes
6	Can the EWC <i>members</i> be sentenced to pay the costs of the other party in the judicial procedure?	

## 6. Sanctions

		Brief explanation
	How is a breach of law classified?	Administrative offence
1	What are the sanctions for breaches of EWC laws?	Penalty up to 110 000 EUR <sup>20</sup>
2	Can the court rule to stop or reverse the companies' decision-making?	No <sup>21</sup>
3	Whom should fines be paid to?	the Secretary of State <sup>22</sup>
4	Can a member of management be held personally liable (personal vs. corporate liability)	
5	Can individual EWC members be sentenced to pay fines or be subject to other sanctions?	
6	Can the EWC collectively be sentenced to pay fines or be subject to other sanctions?	

<sup>19</sup> [https://e-justice.europa.eu/34/EN/how\\_to\\_bring\\_a\\_case\\_to\\_court?ENGLAND\\_AND\\_WALES&member=1](https://e-justice.europa.eu/34/EN/how_to_bring_a_case_to_court?ENGLAND_AND_WALES&member=1)

<sup>20</sup> European Commission 2018: 63.

<sup>21</sup> "No order of the CAC under this regulation shall have the effect of suspending or altering the effect of any act done or of any agreement made by the central management or the local management." (Section 21A (9) of Ticer).

<sup>22</sup> Section 21A (6), TICER.



## 7. Out of court settlements

		Brief explanation
1.	In general, are alternative conflict resolutions available in a given country can out of court settlements be reached once a case has been filed? Does it happen in practice?	<p>A public body called <b>ACAS (Advisory, Conciliation and Arbitration Service)</b> offers conciliation, mediation and arbitration services for the parties to a collective dispute. The use of ACAS is entirely voluntary so both sides to the dispute would have to agree to involve ACAS. Normally conciliation is the first stage, with mediation or arbitration reserved for disputes which cannot be resolved by conciliation. Where “there exist appropriate agreed procedures for negotiation or the settlement of disputes” ACAS may not provide arbitration unless those procedures have failed or some special reason justifies the resort to arbitration. In principle, all kinds of matters may be brought before ACAS, but ACAS only has power to offer conciliation or arbitration where a ‘trade dispute exists or is apprehended’.<sup>23</sup></p> <p>It has been in operation since 1976 and is a Government-funded, but operating at arms-length, independent service, ACAS is a purely voluntary conciliation, mediation and arbitration mechanism that can be accessed when collective negotiations have broken down. If conciliation by ACAS’s own officials has been unsuccessful, or not requested, but the parties then request mediation or arbitration, ACAS will propose a choice from a panel of independent experts who have to be agreed by the parties. The mediators and arbitrators are paid a fee by ACAS on a case-by-case basis (Jefferys et al. 2010: 17-18). The decisions reached in both mediation and arbitration are binding in honour only. There is no legal recourse, but in the case of arbitration, the parties agree beforehand to accept the arbitrators’ decision and thus settle their dispute. Alongside ACAS, however, there is a separate <b>Central Arbitration Committee</b> that, although it only deals with a small number of cases each year, can make binding decisions.</p> <p>With the continuous decline of union representation and the introduction of legal incentives for workers to resolve individual employment disputes without resorting to the courts, ADR is gaining increasing prominence in the British landscape of industrial relations. The most important sign and motor of this change has been the conciliation service offered by ACAS to all workers wishing to lodge a claim in Employment Tribunals.<sup>24</sup></p>

<sup>23</sup> van Hoek & Hendrickx F. (2009): 97.

<sup>24</sup> Kirk et al. 2019.



## 8. Resources for EWCs

		Brief explanation
1.	Can unions provide legal support or financing for litigation?	Yes and they often do, by providing legal advice and participating in litigation at courts of law.
2.	What other resources are available in terms of legal support to EWCs and/or EWC members in your country (e.g., Arbeiterkammer, legal support centres)	Acas normally intervenes rapidly, entails no direct financial cost for parties and seems to be positively evaluated by most of its users as well as (other) employers.



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