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Department for
**Employment
and Learning**
www.delni.gov.uk

Introduction to **Information and Consultation in the Workplace**

(Revised April 2007)



INTRODUCTION TO INFORMATION AND CONSULTATION IN THE WORKPLACE

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The European Information and Consultation Directive, which established new minimum standards for workforce communication and involvement, was implemented in Northern Ireland by the Information and Consultation of Employees Regulations (Northern Ireland) 2005.

Who is affected?

From **April 2007** employees in undertakings with 100 or more employees, can exercise a right to be informed and consulted about *issues* in the business they work for. From **April 2008** the Regulations will apply to undertakings with 50 or more employees. The issues include prospects for employment, including for instance recruitment or redundancy prospects and substantial changes in the work organisation or contractual relations (see page 6 for more detail). Previously, from April 2005, the Regulations only affected businesses with 150 or more employees.

Both public and private undertakings which carry out an 'economic activity' whether or not operating for profit are affected. The precise scope of this definition is ultimately for the courts to decide, but may include companies, partnerships or trade unions.

Further information may be obtained from the Department for Employment and Learning's detailed guidance which is available on its website. A code of practice applies the principles of the legislation to Central Government Departments not covered by the Regulations. Local government organisations which do not fall under the Regulations are also encouraged to adhere to the code's principles. The code is available at: www.cabinetoffice.gov.uk.

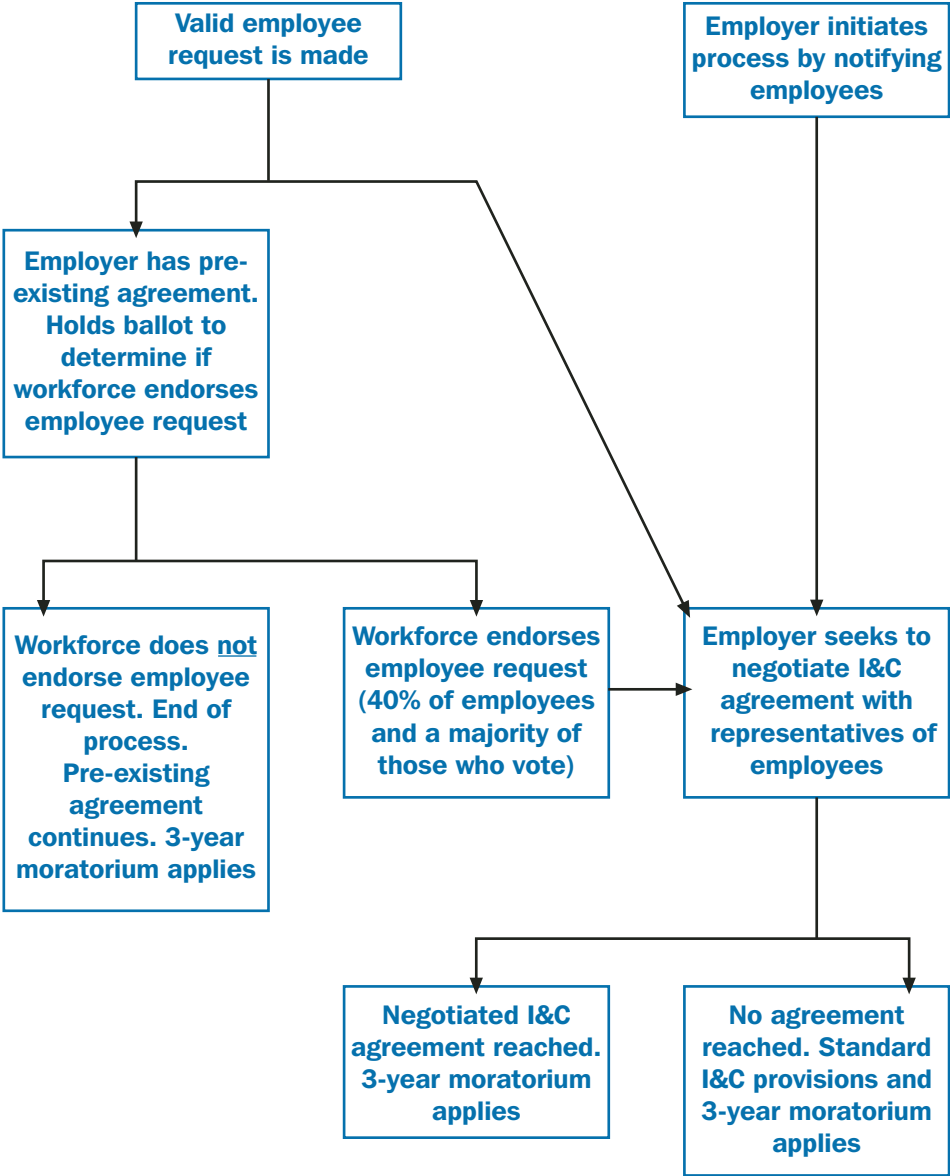
Although the legal obligations only apply to larger undertakings the Department encourages all employers to inform and consult with their employees in a way suited to their particular circumstances.

Overview of the Regulations

When a valid employee request to negotiate an Information and Consultation (I&C) agreement is made or the employer starts the process on his own initiative the requirement to negotiate an agreement will be triggered. The Regulations also provide for the retention of pre-existing agreements which have workforce support. Where the parties fail to negotiate an agreement the Regulations allow for standard I&C provisions to be applied. The Regulations are designed to minimise the potential for disputes arising throughout the process but where these do occur they provide for the Industrial Court and in certain circumstances the Industrial Tribunals to resolve them.

Setting up Consultation Arrangements – Flow Chart

The following flow chart outlines the general process for setting up an I&C agreement.



Key Aspects of the Proposed Information and Consultation Regulations

Within the general process set out in the flow chart there are a number of important steps. Some of the more significant are listed below:-

- An employee request to negotiate an agreement must be made by at least 10% of the employees in the undertaking (*subject to a minimum of 15 and a maximum of 2,500 employees*).
- Upon receipt of a valid request an employer must negotiate an agreement unless there is a valid pre-existing agreement in place.
- Pre-existing agreements must meet certain criteria to be valid. The main requirements will be that they should be in writing, cover all the employees in the undertaking, set out how the employer will inform and communicate with the employees and be approved by the employees (further details on pre-existing agreements can be found in the detailed guide).
- There is a 3-year moratorium on employee requests where a negotiated agreement is already in force, or the standard I&C provisions apply, or an earlier employee request to negotiate a new I&C agreement was not endorsed by the workforce in a ballot relating to a pre-existing agreement. However, the employer and employees can agree at any time to terminate a negotiated or pre-existing agreement or to adopt an agreement in place of the standard I&C provisions.
- Employers must initiate negotiations for an agreement no later than three months after a valid request is made. During this 3-month period the employer must make arrangements for the appointment or election of employee negotiating representatives.
- All negotiated agreements must:-
 - (i) *set out the circumstances in which employers will inform and consult their employees;*
 - (ii) *provide either for employee I&C representatives or for information and consultation directly with employees (or both);*
 - (iii) *be in writing and dated;*
 - (iv) *cover all the employees of the undertaking;*
 - (v) *be signed by the employer; and*
 - (vi) *be approved by the employees.*
- More detailed issues such as method, frequency and timing of information and consultation arrangements are for the parties to agree.
- Agreements may cover more than one undertaking and make provision for different arrangements within different parts of an undertaking.
- The standard I&C provisions in the Regulations apply where an employer fails

to initiate negotiations following a valid employee request or where negotiations fail to lead to an agreement. The Regulations allow for employers and I&C representatives to come to a different negotiated agreement at any time after the standard I&C provisions are applied.

- Where the standard I&C provisions apply employee I&C representatives are to be elected. The process for the employer to inform and consult is set out in the Regulations.
- The range of information to be consulted on is subject to the details of the negotiated agreement. However, under the standard I&C provisions there are three categories of information that employers must provide to I&C representatives.

Information on:-

(i) recent and probable development of the undertaking's activities and economic situation; and

Information and consultation on:-

(ii) the situation, structure and probable development of employment within the undertaking and in particular on any anticipatory measures envisaged where there is a threat to employment within the undertaking; and

(iii) decisions likely to lead to substantial changes in work organisation or in contractual relations.

N.B. There are some instances where an employer may on confidentiality grounds restrict or withhold certain information.

- Decisions in category *(iii)* above include decisions on collective redundancies, business transfers and pension schemes – areas which are already covered by existing legal obligations to consult employee representatives. Employers will therefore not need to consult on these matters under the standard I&C provisions although they must notify I&C representatives that they will be consulting under the legislation on collective redundancies, business transfers or pension schemes. Employers may wish to include a provision addressing this issue in any negotiated agreement.
- In the case of a negotiated agreement under the Regulations, or where the standard I&C provisions have been applied, complaints of failure to abide by the agreement may be brought to the Industrial Court which has a compliance and enforcement role. The Court may also refer suitable cases to the Labour Relations Agency when it is considered conciliation may resolve the dispute. In the case of a pre-existing agreement, disputes must be resolved in the way provided for in that agreement.
- Employees who act as I&C representatives are afforded certain rights, such as the rights to paid time off and not to be unfairly dismissed or treated detrimentally because of their I&C activity. The Regulations provide protection for them in this regard.

- Employers may not exclude or limit the rights and obligations in the Regulations by means of another agreement, such as employees' contracts.

Where an undertaking goes into administration or receivership the I&C agreement will continue to apply. The administrator or receiver will be acting on behalf of the employer who will continue to be subject to the obligations in the agreement or the standard provisions.

This leaflet and the related Departmental guidance provide **general guidance only** and should not be regarded as a complete or authoritative statement of the law. Authoritative interpretations of the law can only be given by the courts. Readers should be alert to the possibility of developments in case law that may affect the rights described.

Other Legislation

It is worth noting that there is other legislation in operation which contains similar provisions to the Information and Consultation Regulations namely:-

The Transnational Information and Consultation of Employees Regulations 1999

The European Public Limited-Liability Company Regulations (Northern Ireland) 2004

The European Cooperative Society (Involvement of Employees) Regulations 2006

Further Guidance

The Department for Employment and Learning has produced more detailed guidance on the application of the Regulations which is currently available on the Department's website at www.delni.gov.uk/er.

The Labour Relations Agency can also assist and advise on good practice in informing and consulting with employees in the workplace. Such advice and assistance may take the form of supplying information, providing guidance on the detail of the Regulations or facilitating the introduction or development of information and consultation arrangements.

Useful Addresses

Department for Employment and Learning

Employment Rights Branch
Room 203
Adelaide House
39-49 Adelaide Street
BELFAST
BT2 8FD
Tel: 028 9025 7580
Fax: 028 9025 7555
Website: www.delni.gov.uk/er
E-mail:
employment.rights@delni.gov.uk

Labour Relations Agency Head Office

2-8 Gordon Street
BELFAST
BT1 2LG
Tel: 028 9032 1442
Fax: 028 9033 0827
Textphone: 028 9023 8411
Website: www.lra.org.uk
E-mail: info@lra.org.uk

Office of the Industrial Tribunals and the Fair Employment Tribunal (OITFET)

Long Bridge House
20-24 Waring Street
BELFAST
BT1 2EB
Tel: 028 9032 7666
Fax: 028 9023 0184
Website:
www.employmenttribunalsni.org
E-mail:
mail@employmenttribunalsni.org

The Industrial Court

Room 203
Adelaide House
39-49 Adelaide Street
BELFAST
BT2 8FD
Tel: 028 9025 7599
Fax: 028 9025 7555
Website: www.industrialcourt.gov.uk
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INVESTOR IN PEOPLE

THE DEPARTMENT:

Our aim is to promote learning and skills, to prepare people for work and to support the economy.

This document is available in other formats upon request.

Further information:

telephone: 028 9025 7580

e-mail: employment.rights@delni.gov.uk

website: www.delni.gov.uk