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BERR | Department for Business
Enterprise & Regulatory Reform

**EXTENSION OF LAWS FOR
INFORMING AND CONSULTING
YOUR EMPLOYEES**

How to listen and talk
to your employees about
changes and developments
in your organisation

Improve Your Business – Listen and Talk to Your Employees

From 6th April 2008, the Information and Consultation of Employees Regulations 2004 will be extended to include organisations that employ between 50 and 99 employees¹. As your company falls into this bracket, the Department for Business, Enterprise and Regulatory Reform (BERR) has sent you this booklet to give you a summary of the legislation. The booklet isn't intended to be

comprehensive, nor will it provide you with any legal advice, but it is designed to help you prepare for when the Regulations come into effect. If you'd like to know more, please visit the Business Link website. And for practical advice on setting up an Information and Consultation agreement, visit the Acas website (see 'More information, guidance and advice').

“For three years these Regulations have helped larger organisations to improve the good practice they already demonstrate in employee communications. This extension of the Regulations opens the same opportunities to smaller organisations.”

Pat McFadden
Minister of State

What do you need to do now?

Read this leaflet, keep it to hand and make sure your organisation is prepared for the new requirements by 6th April 2008.

The new law, in a nutshell

From 6th April 2008, employees in organisations of your size will have the right, subject to certain conditions, to be informed and consulted on a regular basis about issues in the organisation for which they work. Because no two organisations are the same, the legislation deliberately allows flexibility when it comes to choosing how individual organisations inform and consult their employees. For example, it provides scope for employees to be informed and consulted directly, or through employee representatives, or via a combination of both methods.

The legislation establishes procedures which, if activated, can require you to establish new arrangements to inform and consult your employees. The procedures are triggered either by a formal request from employees for an Information and Consultation (I&C) agreement, or by employers choosing to start the process themselves. The Regulations also provide for the retention of pre-existing agreements which have workforce support.



¹The Regulations have applied to organisations with 150 or more employees since 6th April 2005, and organisations with 100 or more employees since 6th April 2007.

Why inform and consult your employees?

By sitting down with employees and their representatives, to keep them informed and hear what they have to say on issues that affect them, you're making your organisation a more inclusive place to work, where your employees feel valued. Working collaboratively like this can help to transform employer-employee relations – building a stronger, mutually considerate culture, often resulting in more effective business solutions being created and making it easier to introduce changes.

Under what circumstances does the law apply?

The legislation will apply if at least 15 of your employees (for an organisation with between 50 and 99 employees) make a written request for Information and Consultation arrangements or you, as the employer, start negotiations for an I&C agreement. If this happens, you will need to make arrangements to allow the workforce to elect negotiating representatives and then negotiate an I&C agreement with those representatives.

All negotiated I&C agreements must:

- Set out the circumstances in which employers will inform and consult their employees;
- Provide either for the appointment or election of Information and Consultation representatives, or for information and consultation directly with employees (or both);
- Be in writing and dated;
- Cover all employees;
- Be signed by the employer and approved by the negotiating representatives or by a proportion of the representatives and a proportion of the employees.

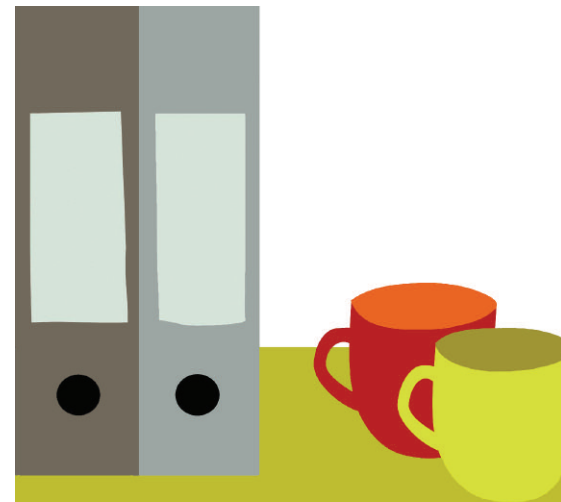
The method, subject matter, frequency and timing of Information and Consultation arrangements will be for employers and negotiating representatives to agree.

What if you already have an agreement on Information and Consultation?

There are provisions in the legislation covering 'pre-existing agreements'. Although such agreements will not have been set up under the Regulations, they may continue and will be treated as meeting the requirements of the Regulations – unless there is significant demand from the workforce for new I&C arrangements (see next question).

What happens to the existing agreement if at least 15 employees request new arrangements?

You have two choices: agree to negotiate something new or ballot your employees to see whether at least 40% of them want new arrangements. If there is such a level of support, then you must negotiate something new. If not, the agreement can continue as before. These provisions only apply to pre-existing agreements that meet certain criteria, for example, they must cover all employees and must have been approved by them.



What if you can't come to an agreement following an employee request?

Negotiations can last up to six months but you and the employee representatives can agree to extend this period in order to reach an agreement. However, if an agreement cannot be reached, or you fail to start negotiations following a valid employee request, the standard I&C provisions come into effect. Under the standard provisions, you must ballot your employees to elect I&C representatives and you must inform and consult the representatives on issues as follows:

- i) **Inform on:**
recent and probable development of the organisation's activities and economic situation.
- ii) **Inform and consult on:**
the situation, structure and probable development of employment within the organisation and, in particular, on any anticipatory measures envisaged where there is a threat to employment.
- iii) **Inform and consult with a view to reaching agreement on:**
decisions likely to lead to substantial changes in work organisation or in contractual relations.

What are the penalties for breach of an agreement?

Under the Regulations, a failure to inform and consult under either a negotiated agreement or the standard provisions can result in a complaint being taken to the Central Arbitration Committee (CAC). The CAC will take the steps it thinks are needed to put any breach right and on application, the Employment Appeal Tribunal can impose a financial penalty of up to £75,000. Pre-existing agreements are different. It is for the parties to the agreement to decide what should happen if there is any breach of the agreement.

What if you already recognise a trade union?

Where a union is recognised by an employer, it is often the case that the employer would use union channels as one method to inform and consult its employees. Sometimes, the employer in this situation will use other consultative methods as well, such as team briefings. The Regulations are flexible and permit employers to continue using these tried and tested methods of engaging their employees, though some adaptation may be needed. For example, to qualify as a pre-existing agreement or an I&C agreement, the

consultative arrangements must cover all employees and not just members of the trade union.

Key points to be aware of:

- The Regulations set procedures which, if triggered, can lead to new arrangements to inform and consult.
- To trigger the procedure, a valid employee request must be made by at least 15 of your employees.
- There are provisions that enable pre-existing agreements to continue. Criteria for a valid pre-existing agreement can be found on the Business Link website.
- If an employee request is received and there is no valid pre-existing agreement in place or the employees vote for new arrangements, then the employer and employee representatives must negotiate an I&C agreement.
- The standard provisions are intended as a fall-back. They only apply where negotiations do not take place when required to, or when they fail to reach an agreement.



Related regulatory changes

From 6th April 2008 the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 will require employers with 50 or more employees to consult with as many affected members of the pension scheme (or their representatives) as possible before making a significant change to their work-based pension scheme. For more information on how this affects you, see the DWP website.

More information, guidance and advice

You can find out more about your responsibilities under the Information and Consultation of Employees Regulations at:

www.businesslink.gov.uk/ice

For advice on any issues arising from the Regulations and for 'good practice' guidance visit:

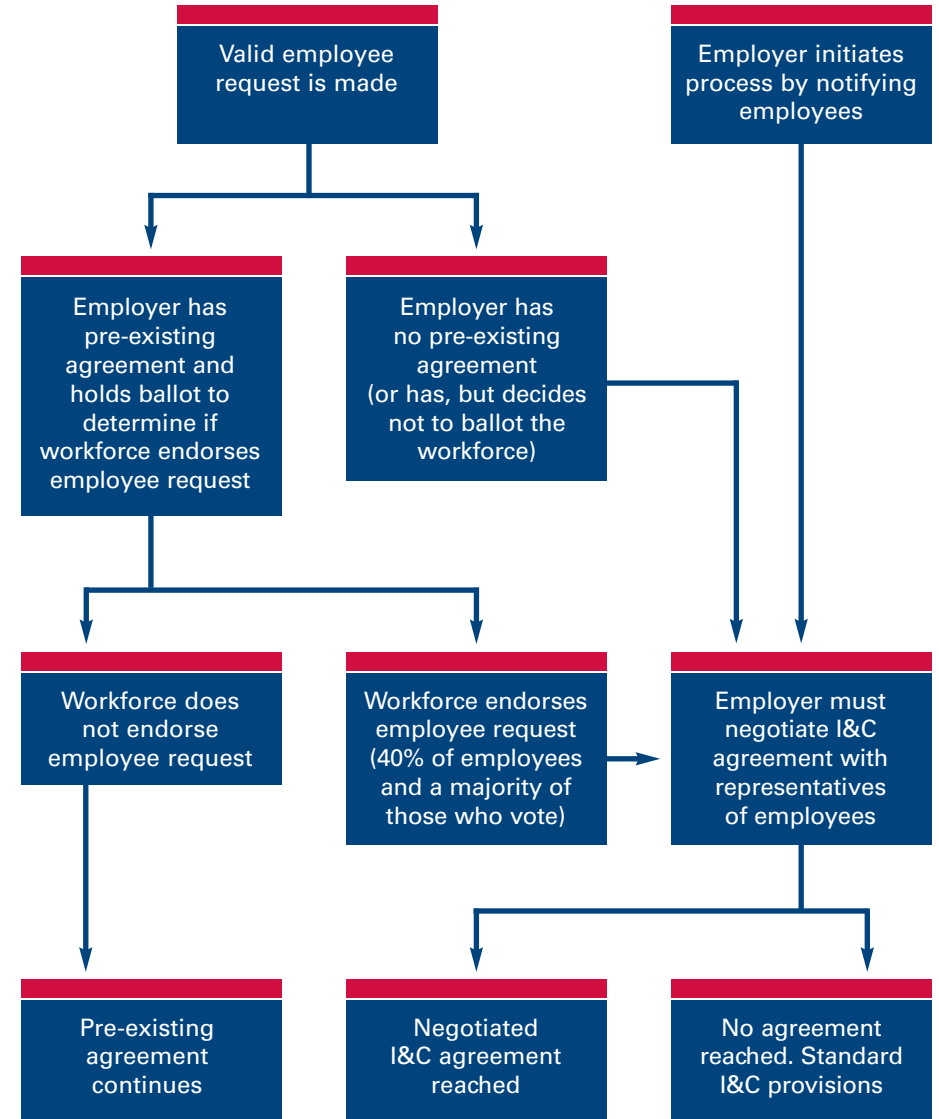
www.acas.org.uk/informationandconsultation

For more information on the changes to the pensions regulations visit:

http://www.dwp.gov.uk/publications/dwp/2005/occ_pen_schemes/occ_personal_pens_schemes_regs06.pdf



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



Asking Employees for Ideas Improved our Business

Escrick Park Estate near York is a family-owned country house estate dating back to 1668. The Estate is run as a business, comprising commercial and residential property services, leisure facilities, land management and architectural consultancy.

Following major diversification and restructuring, the Estate management opted for a change in management style. They now hold weekly strategy meetings where they ask staff for ideas and feedback, and try to give staff ownership of issues. For example, following significant investment

in a new luxury holiday home park, The Hollicarrs, the Estate needed to generate quick sales. The staff meetings came up with the idea of using the Estate's staff to promote the new park, which resulted in a significant number of homes being sold before they had even opened.

Jane Whetstone, Accounts Manager and Administrator, puts the success down to staff enthusiasm created by a greater sense of involvement and ownership felt by staff at the Estate:

“We've found that staff are more motivated to follow ideas through if they're given responsibility, so we let them run with the idea wherever practical. Staff now feel that anything's possible, within reason!”

Jane Whetstone
Accounts Manager and Administrator
Escrick Park Estate

