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Information and Consultation Regulations

For over 25 years, the law has imposed a duty on employers to consult with employees:

- when redundancies are proposed; and
- when all or part of a business is being transferred.

The details have varied, but rules on this have been in place a long time.

But as a result of EU directives, there are now UK regulations which impose a general obligation on employers above a certain size to make provision for employee information and consultation. This brief filenote captures a few 'headlines' about the Regulations and how they apply.

- the regulations are called the **Information and Consultation of Employees Regulations 2004**
- the Regulations apply:
 - from April 2005, to undertakings with 150 or more employees;
 - from April 2007, with 100 or more employees
 - from April 2008, with 50 or more employees

[Note that larger organisations employing 1,000 or more people in total, in two or more EU states, may have a requirement to set up a European Works Council. That is not covered in this note.]

- an employer must negotiate and operate an information and consultation ("I&C") agreement if it receives a 'valid employee request':
 - request made by at least 10% of the employees in the undertaking as a whole (NB not just a division or a particular site);
 - request is in writing, gives the employees' names, and is dated
 - request must not be made within three years of a previous statutory process of attempting to or actually setting up an I&C agreement.

Even if the employer thinks the request is invalid, it is wise to take action and respond to the request. If the request is valid and the employer does nothing, statutory default I&C

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This document contains brief general guidance on complex topics. Take specialist advice on particular situations before action.

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arrangements will automatically come into operation six months later.

- an employer can trigger the set-up of an I&C agreement without waiting for the employees to request it.

If an I&C agreement is set up, the employer will then deal with members of staff who have been elected by staff as “information and consultation representatives” (referred to from here on as “I&CReps”).

The Regulations define:

Consultation: means the exchange of views and establishment of a dialogue

Information: means data transmitted by the employer to enable representatives to examine and acquaint themselves with the subject matter

‘Consultation’ is not, as quite a number of people seem to think, just telling people what is going to happen but a bit in advance!

Once an agreement is set up, at the very least, the employer must provide I&CReps 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 on any anticipatory measures envisaged, in particular, where there is a threat to employment within the undertaking
- c) decisions likely to lead to substantial changes in work organisation or in contractual relations

And the information must be given (1) at such time (2) in such fashion (3) with such content, as are appropriate to enable the I&CReps to conduct an adequate study and, where appropriate, to prepare for consultation. Consultation must take place on the information disclosed in relation to items b) and c).

The Regulations also deal with the ongoing process:

- they provide a framework for the conduct of consultation, amongst other things placing the onus on the employer to ensure that it is appropriate, and the I&CReps get reasoned responses to their comments. And where consultation is about substantial changes in work organisation or contractual relations, it must be conducted with a view to reaching

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agreement on decisions within the scope of the employer's powers

- they impose a duty of co-operation on both parties
- they deal with protecting confidential information that is disclosed in the context of I&C discussions
- they provide protection for I&CReps, in getting reasonable paid time to do their duties as a rep, and protection from dismissal for doing their job as a rep.

FINALLY

- An employer is not required to take any action on the Regulations unless he receives a valid employee request to set up an information/consultation process
- If you do get a request from your employees, don't delay. You can make these things work for the benefit of the business if you get properly engaged early on.
- Some of our clients have decided to take the initiative and set up consultation arrangements, so as to improve staff morale and commitment. If the process is badly handled it will not in any way add to employee motivation. But a well-run I&C process can yield observable and worthwhile gains in employee engagement in the business' goals.

Christopher Head, Director
Irenicon Ltd
01 December 2005

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