

Who will be affected?

The Information and Consultation of Employees Regulations give employees in larger firms – those with 50 or more employees – rights to be informed and consulted on a regular basis about issues in the business they work for.

The Regulations apply to businesses with:-

150+ employees from 6 April 2005;

100+ employees from 6 April 2007; and

50+ employees from 6 April 2008.

They will not apply to businesses with less than 50 employees.

The Regulations apply to public and private undertakings situated in Great Britain that carry out an economic activity whether or not operating for gain. This covers companies, partnerships, co-operatives, mutuals, building societies, friendly societies, associations, trade unions, charities and individuals who are employers, if they carry out an economic activity. It may also include schools, colleges, universities, NHS trusts, and central and local Government bodies, again, if they carry out an economic activity. Ultimately it is a matter for the courts to decide, on a case-by-case basis, whether an organisation is carrying out an economic activity. However, further information may be obtained from the DTI's guidance which is available on its website (see page 7 below).

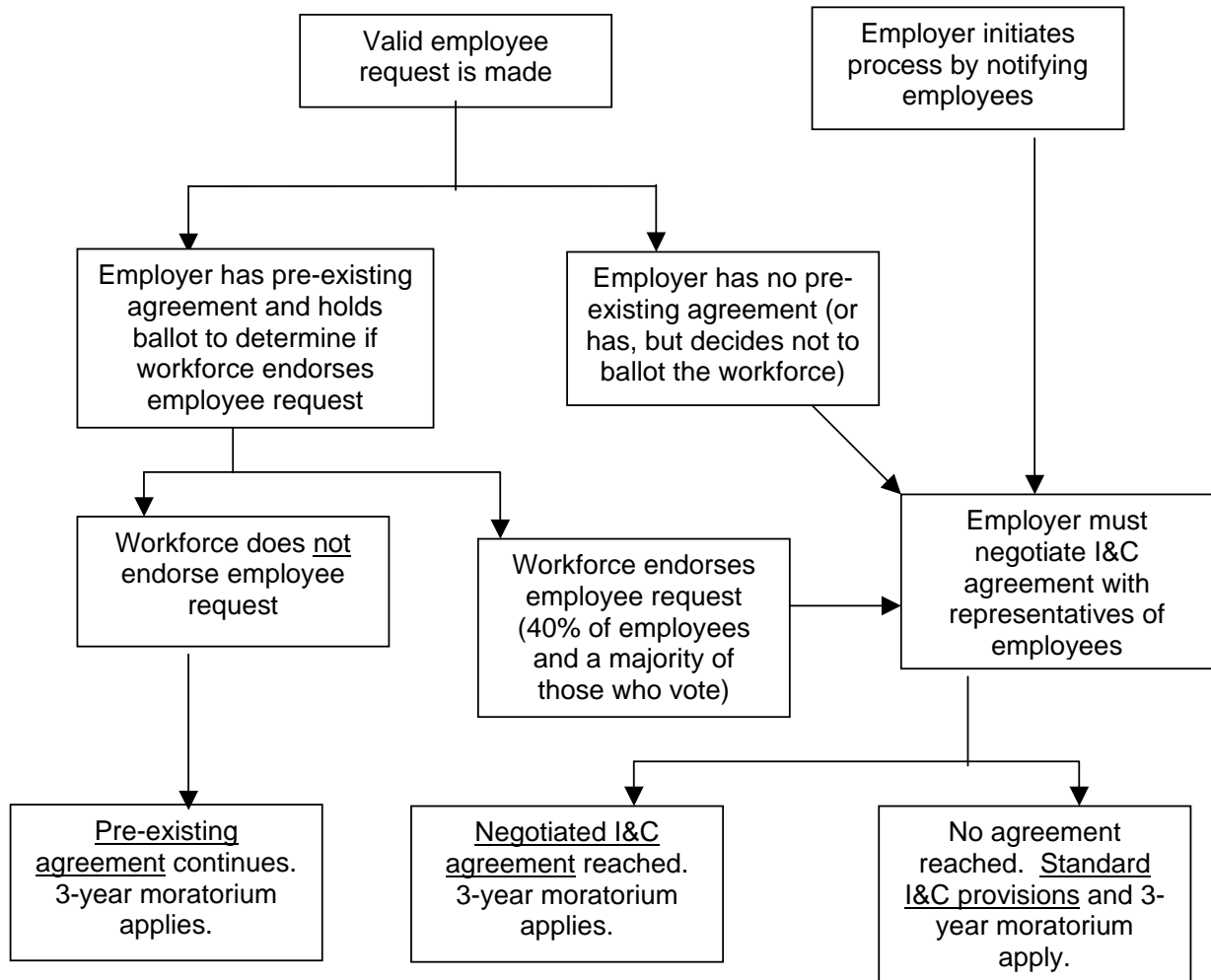
Overview of the Regulations

The requirement to inform and consult employees does not operate automatically. It is 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. An agreement must set out how the employer will inform and consult employees or their representatives on an on-going basis, but the legislation lets them agree arrangements and structures tailored to their individual circumstances.

The Regulations also provide for the retention of pre-existing agreements which have workforce support. Agreements may cover more than one company, or establish different arrangements in different parts of a company. Where no agreement is reached following an employee request, certain “standard” provisions for informing and consulting representatives of employees would apply. The Regulations are designed to minimise the potential for disputes arising throughout the process but, where these do occur and cannot be settled, the Central Arbitration Committee can resolve them.

Setting up Consultation Arrangements – Flow Chart

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



Key Aspects of the Information and Consultation Regulations

Within the 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 I&C 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* (see section on pre-existing agreements below).
- There is a 3-year moratorium on employee requests where: (1) a negotiated agreement is already in force; or (2) the standard I&C provisions apply; or (3) an earlier employee request to negotiate a new I&C agreement in place of a pre-existing agreement was not endorsed by the workforce in a ballot.
- 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.
- Negotiations can last for up to 6 months, but the employer and representatives can agree to extend this period for as long as they like in order to reach an agreement.
- A negotiated agreement must:-
 - (i) *set out the circumstances in which the employer 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, subject-matter, frequency and timing of information and consultation arrangements will be for the parties to agree.

- Agreements may cover more than one undertaking or provide for different arrangements in different parts of an undertaking, such as individual establishments (sites), divisions, business units or sections of the workforce.
- The standard I&C provisions in the Regulations apply where negotiations fail to lead to an agreement or where an employer fails to initiate negotiations following a valid employee request. The Regulations allow employers and I&C representatives to come to a different negotiated agreement at any time after the standard provisions are applied.
- Where the standard I&C provisions apply, employee I&C representatives are to be elected and the employer must inform and consult them in the way set out in the Regulations, namely:

Information on:

- (i) *the recent and probable development of the undertaking's activities and economic situation. The purpose of this information is to help I&C representatives understand the context in which decisions affecting employment, work organisation and employees' contractual relations are made;*

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. The emphasis here is on the overall number of employees within the undertaking; and*

Information and consultation with a view to reaching agreement on:

- (iii) *decisions likely to lead to substantial changes in work organisation or in contractual relations. "Contractual relations" means employers' contractual relations with their employees.*
- Decisions in category (iii) above include decisions on collective redundancies and business transfers – areas which are already covered by existing legal obligations to consult employee representatives. However, employers will not need to consult on these decisions under the standard I&C provisions where they

notify I&C representatives, on a case-by-case basis, that they will be consulting under the legislation on collective redundancies or business transfers. Employers may wish to include a provision addressing this issue in any negotiated agreement.

- Consultation means giving enough time and information to allow I&C representatives to consider the matter and form a view, with genuine and conscientious consideration of that view by the employer. The standard I&C provisions require the employer to meet the I&C representatives at a level of management relevant to the subject under discussion, and to give a reasoned response to any opinion they may give.
- Employers are not obliged to follow I&C representatives' opinion. Consultation is different from negotiation, collective bargaining or joint decision-making. Decision-making remains the responsibility of management. Employers must aim to reach agreement on decisions in category (c) above, though sometimes agreement may not be possible.
- Employers may, on confidentiality grounds, restrict information provided to I&C representatives in the legitimate interests of the undertaking. They may also withhold information from them altogether where its disclosure would be prejudicial to, or seriously harm, the functioning of the undertaking.
- There are provisions to protect employees who seek to exercise their legal rights.
- In the case of a negotiated agreement under the Regulations, or where the standard I&C provisions apply, complaints of failure to abide by the agreement or by the standard provisions may be brought to the Central Arbitration Committee.

Pre-existing agreements

As a general rule, when a valid employee request is made, the employer will come under an obligation to negotiate an I&C agreement with representatives of the employees. However, there is an important exception where employers already have in place one or more pre-existing I&C agreements approved by employees. Instead of negotiating a new agreement, they may ballot the workforce to ascertain whether it endorses the request by employees. If they choose not to ballot the workforce, they will come under the obligation to negotiate a new agreement.

Where a ballot is held, and 40% of the workforce plus a majority of those who vote, endorses the employee request, the employer would come under the obligation to negotiate a new agreement. Where fewer than 40% of the workforce or a minority of those voting endorses the employee request, the employer would not come under an obligation to negotiate a new agreement, and a three-year moratorium on further employee requests would begin.

A pre-existing agreement may cover employees in more than one undertaking, in which case employers may hold a single ballot of the employees in all the undertakings covered by the agreement.

Before holding a ballot to endorse an employee request, employers must inform the employees within one month of the request that they intend to do so. They must then wait 21 days before holding the ballot, in case employees wish to challenge the validity of the pre-existing agreement(s) at the Central Arbitration Committee.

To be valid, pre-existing agreements must:

(1) *be in writing*;

(2) *cover all the employees in the undertaking* (though there may be several agreements which between them cover all the employees, and agreements may cover employees in more than one undertaking);

(3) *set out how the employer will inform and consult the employees or their representatives*. The legislation does not impose any requirements or set any restrictions, on the method, frequency, timing or subject-matter of the information and consultation arrangements set up under pre-existing agreements; and

(4) *be approved by the employees*. This would include support indicated by a simple majority among those voting in a ballot of the workforce; a majority of the workforce expressing support through signatures; or the agreement of representatives of employees (including trade union and other appropriate representatives) who represent a majority of the workforce.

Different agreements may cover different parts of an undertaking, such as different establishments (sites), business units or sections of the workforce. They may establish different consultation arrangements in these different parts of the undertaking, and may be approved by employees separately, in different ways and at different times.

FURTHER GUIDANCE

The DTI has produced more detailed guidance on the legislation which is available at:

<http://www.dti.gov.uk/er/consultation/proposal.htm>

Acas has also produced some "good practice" advice which is intended to help organisations develop and maintain effective information and consultation arrangements:

<http://www.acas.org.uk/services/ic.html>

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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.