



dti

Department of Trade and Industry

HIGH PERFORMANCE WORKPLACES

*The role of employee involvement
in a modern economy*

A discussion paper



July 2002

Foreword by Patricia Hewitt

The UK now has 1¼ million more people in work than 5 years ago. Unemployment is at its lowest level for more than 26 years – although there is still more we can do to create and sustain employment, provide opportunity and deliver prosperity for all members of our economy and our society.

The UK is also home to many outstanding businesses. Many of our businesses and the people who work at all levels within them are truly world class. The best companies are successful because they are focused on their customers, generate wealth, create quality products and services **and** get the best from their staff.

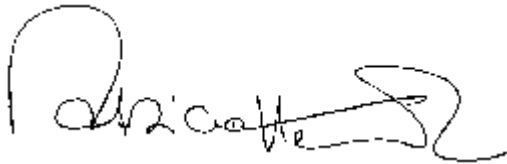
Such businesses come in many different forms – they operate in different sectors and are of different sizes. But they all have a passionate commitment to quality, to innovation, to the people they employ. The commitment to employees takes different forms, from quality circles to a more wide-ranging “partnership” approach. Significant numbers of businesses have found that such “partnerships” - often, but not necessarily, involving trade unions - can be a highly effective way of running a business to its own benefit and to the benefit of its employees.

Good communication with employees is a common characteristic of all such approaches. A modern forward-looking business does not keep its workers in the dark about important decisions affecting them. It trusts them and involves them and strives for leadership at all levels. “Command and control” is no longer a sufficient model. A more open and collaborative framework will harness the talents of all employees.

Our goals for the labour market are full employment, high levels of productivity, and higher standards – including greater diversity and choice - in the workplace. More jobs, better jobs, and high performance workplaces. As part of this, the Government will introduce legislation to set a right to new standards for information and consultation in large firms. They will address the issue that in a modern economy it is simply not acceptable for employees to hear for the first time on the radio that they are going to lose their jobs.

I want the UK to have a labour market that offers employees a wide range of opportunities for rewarding employment, and offers businesses the ability to profitably meet the needs of their customers. Our continuing economic prosperity requires Britain to have a modern labour market and modern workplaces. New standards for information and consultation, with businesses and employees building on these standards with fresh initiatives of their own, will make a significant contribution to achieving that goal. This document aims to start a wide-ranging debate on what we should do and how we should do it.

PATRICIA HEWITT

A handwritten signature in black ink, appearing to read 'Patricia Hewitt', with a large, stylized initial 'P' at the start.

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Executive summary

The EC Directive on informing and consulting employees – to be implemented in the UK by March 2005 – establishes a right to new minimum standards for workforce communication and involvement in large firms¹. The basic case for these new standards is fair treatment for people at work. It is simply not acceptable for employees to hear on the media for the first time that they are going to lose their jobs. But information and consultation can also contribute to improved performance at the workplace. There is a good deal of information, consultation and involvement already in the UK. The legislation will not cut across existing good practice or impose rigid arrangements across all businesses. It will not be imposed on workforces, but will give those who want it the right to information and consultation. These standards will be supportive of existing best practice.

The Government has taken a number of steps to improve the performance of the UK labour market through measures to promote flexibility and fairness. We are seeing the benefits in terms of employment growth, greater participation in the workforce, especially by women, and more flexible working practices. But UK productivity still lags behind some of our major partners.

Organisational issues at the workplace are part of the explanation of the productivity gap. Our best workplaces achieve world class productivity, but there are too many where outdated attitudes and practices hinder performance. There is no single, simple formula for achieving high performance at the workplace, but successful workplaces do have some common characteristics. One of them is a positive approach by management to communicating with and involving the workforce. (Chapter 1)

Involvement, participation and consultation can take many different forms. This paper looks at current UK experience and identifies examples of best practice, ranging from team briefings and quality circles, to firms where management and the workforce have agreed to adopt a “partnership” approach. They show that best practice takes many different forms, ranging from schemes of direct manager-to-employee communication and involvement, to more formalised, representative involvement. And they demonstrate that what works best is what most suits the needs and circumstances of the particular business and its workforce. (Chapter 2)

Industrial change is an inevitable and desirable part of raising productivity and creating wealth, but must be handled sensitively, especially when it may involve redundancies. Managing the process well – including keeping staff properly informed and involved - is a vital part of good employment relations, and employees deserve no less. It can also benefit relations with the staff who remain. Many UK businesses have already shown the benefits that can be had from this approach, even in times of economic difficulty. For quoted companies, this can be managed within the constraints of the Listing Rules. (Chapter 3)

¹ The Directive applies to undertakings with 50 or more employees in a single Member State. There are transitional periods allowing phased implementation in the UK so that it would apply only to undertakings with 150 or more employees from March 2005, to those with 100 or more employees from March 2007, and those with 50 or more from March 2008. Undertakings with 50 or more employees constitute 1% of UK enterprises, but employ 75% of employees.

There is a variety of information and consultation arrangements in other EU countries which could be a helpful source of ideas for implementing the Directive in the UK. But the different history, traditions and culture of employment relations in each country, and the context in which works councils and similar structures operate, mean that caution is needed in drawing lessons. (Chapter 4)

The long history of practice and thinking on employee involvement in the UK, combined with the absence up to now of any general legal requirements in this area, help explain the diversity of practice here. The Information and Consultation Directive does not impose a single “one size fits all” approach. In considering how best to implement the Directive in the UK, our objective should be to enhance the contribution of all employees, to the benefit of the company and the employees; we should avoid a single, static solution and put the emphasis on voluntary agreements; legislation must be fully consistent with the Directive, but strike the right balance with promoting of best practice; and commitment from both senior managers and employees in individual firms will be needed if arrangements are to succeed. (Chapter 5)

We will be consulting at a later stage on specific proposals for implementing the Information and Consultation Directive. Before then, we wish to have the views and experience of as many people as possible on the questions for discussion set out in the next section. The deadline for comments is **11 December 2002**.

Questions for discussion

Before making specific proposals for implementing the Directive, the Government is keen to gather the views and experience of all the key stakeholders in our economy and as many people as possible who are interested or taking part in workplace practices of employee involvement. We would therefore welcome your comments on the following questions:

- what do you see as important contributors to high performance workplaces?
- what do you think employees want from their place of work?
- what benefits do you see in employees being informed and consulted about their company or organisation?
- what information and consultation mechanisms are used in your company? What works well and why? What are the main obstacles to developing a meaningful dialogue?
- what issues do you think employees should be informed and consulted about? How and when do you think this should happen?
- do you have any experience of information and consultation arrangements overseas that you think might be relevant to the UK?
- what should be the key features of domestic legislation to implement the Information and Consultation Directive?
- should the Government try to promote information and consultation in small and medium-sized enterprises not covered by the Information and Consultation Directive (those with less than 50 employees)? If so, how should it do so?

Responses to these questions can be e-mailed to informing@dti.gsi.gov.uk, or sent to:

Information & Consultation Team
Employment Relations Directorate
DTI
1 Victoria Street
London SW1H 0ET

You may also respond via a form on our website at www.dti.gov.uk/er/consultation/informconsult.htm.

The deadline for comments is **11 December 2002**.

Your response to this consultation document may be made publicly available in whole or in part at the Department's discretion. If you do not wish all or part of your response (including your identity) to be made public, please state in the response which parts you wish us to keep confidential. Where confidentiality is not requested, responses may be made available to any enquirer, including enquirers outside the UK, or published by any means, including on the internet.

Chapter 1 Introduction

1.1 Today's companies operate in a demanding environment: competition is intensifying with globalisation and the deepening of the European Single Market, the pace of technological change is fast and consumers are increasingly demanding. Success in this environment requires a sustained effort by those who work, manage and invest in business to offer consumers value-for-money goods and services. The tools for success are innovation, investment, good business practices, a skilled and motivated workforce and an ability to draw on a flexible and fair labour market.

1.2 In the Government's first term the priority was the reform of the labour market. The DTI White Paper *Fairness at Work*² set out a strategy for creating the conditions in which a flexible and fair labour market can develop. The Government has helped deliver these conditions by:

- establishing a **stable macro-economic environment** based on low inflation, sound public finances and competitive markets;
- enhancing **incentives to work** through reforms to the tax and benefit system, and the introduction of the New Deal and the national minimum wage;
- adopting measures to **address skills shortages** through improving basic education and training, and seeking to foster a culture of lifelong learning; and
- introducing **fair standards for employees** and a **better framework for industrial relations** designed to promote both fairness and flexibility in the workplace and to contribute to productivity and competitiveness by fostering a more positive relationship between employers and employees. This framework, which continues to evolve, includes provisions for the fair treatment of employees such as enhanced protection against unfair dismissal, improved dispute resolution mechanisms, and measures to combat discrimination and promote diversity; new procedures for trade union recognition; and policies aimed at facilitating a better work-life balance.

1.3 The success of this approach is demonstrated in the many strengths of the UK labour market. The number in work is at record levels – 1¼ million more than five years ago. The UK's employment rate is high by international standards – nearly 72% of those eligible for work were in employment at the end of 1999 compared with 65% in Germany, 62% in France, 55% in Spain and 53% in Italy³. The UK figure has steadily increased since 1994, and now stands at around 75%. Employment rates among women, younger workers and older workers are all well above the EU average. Unemployment, including long-term unemployment, is at its lowest level since the 1970s. Disincentives to work and to take on workers have been removed so that companies can react rapidly to increasing demand. Working arrangements are diverse and flexible - we have the second highest rate of part-time working in the EU, for

² *Fairness at Work*, Department of Trade and Industry, May 1998, available at <http://www.dti.gov.uk/er/fairness/index.htm>

³ *Eurostat European Labour Force Survey 2000* (data are from 1999, the most recent year that comparable information is available).

example - reflecting the needs of business and staff. We are one of the largest users of agency workers. The combination of fairness and flexibility has improved the effectiveness of the labour market. The UK is acknowledged by both the IMF and OECD to be better placed than any other industrialised country to withstand - and recover rapidly - from economic downturns. It is also a significant factor in the UK being Europe's top inward investment location.

1.4 Despite these strengths, more needs to be done. In particular, UK productivity remains lower than that of France and Germany, and substantially lower than that of the US - output per worker in the US is 38 per cent higher than in the UK, in France it is 18% higher and in Germany 9% higher. Using the measure of output per hour worked the gap with the US falls to 25%, but increases in the case of France (to 27%) and Germany (to 25%)⁴. This productivity gap is due to a number of factors. One of these is the relative failure to invest in the skills and abilities of the workforce. Organisational issues at the workplace are also part of the explanation.

1.5 The Government believes productivity can be boosted by firms and employees working together to build high performance workplaces. The characteristics of high performance workplaces are high levels of adaptability, flexibility and involvement by both employees and employers. High performance workplaces are achieved by a wide variety of means – initiatives to offer employees greater incentives, investment in skills, and improving the working environment. Information and consultation can be one of the ingredients of a modern, high performance workplace. Supporting the efforts of managers and workforces to modernise their workplaces and achieve high performance is a priority for the Government's second term.

1.6 The potential contribution of high performance workplaces to improving our productivity is a theme of a number of recent reports and studies. For example the Engineering Employers Federation report on US and UK manufacturing productivity⁵ concluded that US experience provides convincing evidence that new workplace practices have been a contributing factor to productivity growth in the US manufacturing sector, and that there is a clear link between the use of such workplace practices and productivity and profitability in UK manufacturing. While the CBI/TUC Submission to the Productivity Initiative stated:

“research evidence ... suggests that new forms of work organisation, effective management leadership, a culture that encourages innovation, employee involvement and employee development tailored to organisational needs are all necessary conditions for adaptable, high performance workplaces. Commitment to equal opportunities and managing diversity are also key issues. A central feature in the mix is the adoption of an inclusive management style that encourages workers at all levels of the organisation to contribute. Management leadership and employee involvement are complementary features of the high performance/high commitment model.”⁶

⁴ Budget report 2002 (data for 2000).

⁵ *Catching up with Uncle Sam*, The EEF final report on US and UK manufacturing productivity, December 2001, available at <http://www.eef.org.uk/fed/fedpub/fedpub.htm>

⁶ *The UK Productivity Challenge*, CBI/TUC Submission to the Productivity Initiative, October 2001.

1.7 Following adoption of the EC Directive on informing and consulting employees, the Government will be introducing legislation to establish a right to new minimum standards for information and consultation in large firms. The basic case for these new standards is fair treatment for people at work. It is simply not acceptable for employees to hear on the media for the first time they are going to lose their jobs. But they will also provide a firm foundation on which business and employees, by agreement, can develop, or, where they already exist, continue with broader consultation, participation and partnership arrangements. These arrangements can make a positive contribution to the performance of the business. The Government therefore wishes to use implementation of the Information and Consultation Directive to contribute to its promotion of high performance workplaces, partnership and employee involvement in larger companies.

1.8 Consultation can make a practical difference which is of mutual benefit to management and staff. It can aid understanding on the part of staff of the reasons for a particular proposal, and hence smooth its implementation. And it provides staff with the opportunity to express their views and interests. The process can lead to better decisions and their more effective implementation. But consultation does not of itself negate the need sometimes to make and implement difficult decisions. And information and consultation is not joint decision-making or an extension of collective bargaining. Management continues to be responsible for making the ultimate decisions in the business, but in making those decisions it needs to have seriously engaged with its workforce.

1.9 The Government successfully resisted attempts to make the Directive overly prescriptive – a “one size fits all” model for the whole of the EU. The final Directive respects the wide diversity of employee involvement practices throughout Europe. It gives those workforces who want it a right to information and consultation. And it will allow us to introduce arrangements in the UK that respect and build on the best of our tradition and experience, and at the same time help to spread existing best practice. The Government wants to see business and employees agreeing arrangements that best suit their needs. Where agreement is not reached, there will be a statutory minimum requirement for formal information and consultation procedures consistent with the arrangements laid out in the Directive.

Chapter 2 Modern, high performance workplaces

2.1 Modern, high performance workplaces have a variety of features. A common characteristic is high levels of employee involvement and regard. They build on the simple insight that individuals are more likely to give of their best if they feel valued and are given the opportunity to contribute their ideas; and that people who are well-prepared for change can help to introduce it and thereby help to secure employment within the business. Other elements are:

- a joint approach to solving business problems involving everyone employed in the firm. This means establishing dialogue between different groups and individuals within the business, creating a shared vision and objectives based on the success of the enterprise, and committing to work together constructively to achieve that success;
- recognising the different rights, responsibilities and interests of different groups and individuals within the business. This requires a mutual understanding of, and respect for, one another's different needs and interests, and a genuine attempt to reconcile them and build consensus;
- implementing change through informing, consulting and involving all stakeholders in the business. This can only be achieved by building relationships of trust at the workplace which facilitate genuine employee involvement and influence through open and comprehensive communication and consultation;
- helping to improve the balance between work and home life;
- and in some cases, reaching agreement concerning employment security in exchange for flexibility on the part of individuals as to how they will be deployed within the organisation.

2.2 Some leading companies have formalised their new approach to workplace relations by means of partnership agreements, usually involving the recognised trade unions. Partnership normally requires representative structures because they provide a means to have a dialogue about change in a focused and effective way moving from the general policy intent to the specifics of implementation. The format of partnership agreements varies considerably, but as a

*Employee Relations at **Westinghouse UK Fuel Business** were transformed following a development programme for Senior Managers and Trade Union representatives. The group's employee relations style now follows a simple partnership philosophy of working together for mutual benefit. Grievances have reduced dramatically, formal meetings are now much shorter and held less frequently, issues are dealt with much more quickly and very few issues remain unresolved at site level. There has been a fundamental step change in employee relations at senior level. The head of Human Resources commented - "When we have had issues in the past, we tended to avoid communicating early with the unions for fear of their reaction. Nowadays, because of the level of trust that has been established, I will involve them as early as possible in the knowledge that they will help us resolve the issue earlier, and in the best way possible."*

general rule they set out agreed objectives or common beliefs, principles on which relations are based, and ways in which the parties will seek to achieve their common goals. In some cases, they also entail agreement by employees to accept new working practices in return for assurances about future job security.

2.3 The Government seeks to promote high performance working through a number of means. DTI has created the **Partnership Fund**, an essential part of the Government's non-legislative approach to improve industrial relations in order to secure productivity improvements. To date the Fund has sponsored around 160 projects across 4 rounds, distributing £5 million to promote best practice. This rises to around £10 million when the matched funding is taken into account. The Fund provides up to £50,000 of matched finance for each project. To date it has supported a variety of different organisations to develop projects that solve business problems; improve workplace relationships, horizontally and vertically; implement schemes to enhance work-life balance; and disseminate best practice solutions to a wider audience. Dissemination projects include funding for work of the TUC and the Involvement and Participation Association in this area, the benefits and experience of which will be disseminated throughout and beyond both organisations. The Secretary of State recently announced a £20 million package of support over 2 years for Government best practice initiatives including the Partnership Fund. This increased funding will support the planned expansion of the Fund which it is anticipated will maintain and build on the success of the direct grants to organisations, expand its publicity and dissemination activities, and focus on hard-to-reach sectors.⁷

2.4 In addition, DTI has commissioned **research** into the benefits of partnership and ways in which it can be pursued, as well as **case studies** of organisations that have adopted partnership approaches. By publishing the results it aims to spread best practice more widely. Publications include *Partnership at Work*⁸ (a research paper commissioned by DTI as part of its Employment Relations Research Series), *Competitiveness through Partnerships with People* (1997), *Partnerships with People: Fit for the Future* (1998), and *Working for the Future: The changing face of work practices* (1999).

What are the benefits?

2.5 The benefits of creating a good working environment have been acknowledged in the DTI and *Sunday Times*' survey of the *100 Best Companies to Work For*. Its edition for 2002 states:

“the companies that make it on to our list have fared better than most during a bumpy year on the stock market. Whereas the FTSE All-Share index fell 15.6% in the year to January 31, 2002, the listed companies among our top 100 fell a more modest 5.9%. A study of performance over a five-year period is even more instructive. Share and dividend returns for these companies have shown 25.4% growth year on year over this period, compared with 6.3% for

⁷ Further information on the Partnership Fund can be found on the DTI website at <http://www.dti.gov.uk/partnershipfund/index.html>.

⁸ *Partnership at Work*, Dr John Knell, August 1999 (Employment Relations Research Series No.7), available at <http://www.dti.gov.uk/er/emar/emar7.pdf>.

the rest of the All-Share index. Being a great place to work clearly pays in the long run.”

2.6 Information and consultation can be one of the contributors to creating a “great place to work”. A recent joint CBI/TUC report concludes:

“companies with higher levels of employee involvement and high commitment practices are more competitive and employees' jobs are more secure and satisfying. These practices should be actively promoted.”⁹

2.7 This conclusion is corroborated by research carried out for the Department in 1999 by the Industrial Society¹⁰ (now known as the Work Foundation). It argued that the basis of competitive advantage is increasingly derived from the value contained within intellectual capital (ie people). Consequently,

“Volkswagen’s culture has been specifically designed to demonstrate and promote a belief in the role of individuals. In order to maintain this ethos and encourage equality, Volkswagen Group introduced an initiative called New Retail three years ago. Under this, everyone – employees and clients alike – is treated as a valued customer. Volkswagen Group management believes this has enabled the group to develop into an organization where employees value and respect one another and each staff member strives for improvement... Staff involvement has implications as to how people work with staff and customers. Therefore, members of staff are invited to talk and work out what they are and what it means to them. Focus groups are called to discuss new policies, including a current proposal for flexible working and job sharing.”

Volkswagen UK

trust, innovation and commitment are likely to become progressively more important to the way businesses are managed and organised, and the way business itself is conducted. The report concluded that such approaches may prove to be a vital component of UK enterprise’s adaptation to the demands of the new information age and increasingly competitive world markets.

2.8 The TUC believes there is significant evidence that more formalised partnership agreements can deliver significant benefits to both employers and workforces. Their report *Partners for Progress*¹¹ shows there is increasing evidence that partnership delivers. For employees it provides greater job security in satisfying, good quality jobs with access to training and influence over work organisation. For employers the benefits include better quality decision-making and outcomes, achieved by involving the whole workforce. A reduction in the amount of time spent on grievances and a more committed staff with a flexible approach to work.

2.9 The TUC’s analysis of the 1998 Workplace Employee Relations Survey found that partnership organisations are much more likely to enjoy high productivity growth and better than average profitability – they are 34% more likely to enjoy financial performance that is a lot better than average and 24% more likely to experience high labour productivity growth than non-partnership organisations. Similarly, in the CBI employment trends

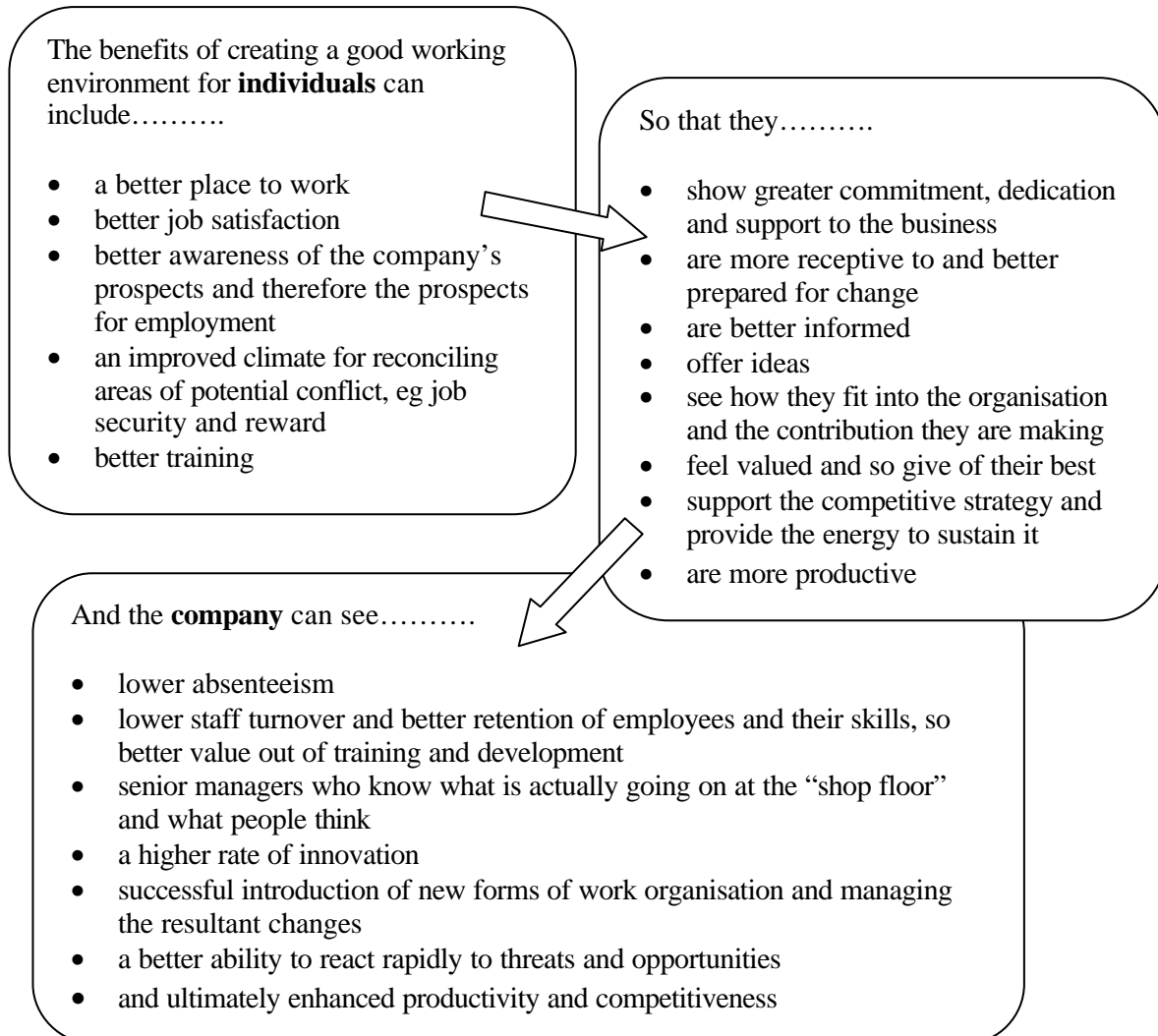
⁹ CBI/TUC Submission to the Productivity Initiative, October 2001.

¹⁰ see footnote 8.

¹¹ *Partners for progress: Winning at work*, TUC, May 2001, available at <http://www.tuc.org.uk/partnership/tuc-3202-f0.cfm>.

survey 2001, 25% of respondents ascribed increased productivity to changes in work culture and organisation.

2.10 Summing up.....



Information and consultation

2.11 Research recently commissioned by the Chartered Institute of Personnel and Development (CIPD)¹² found that dialogue with employees or "employee voice" was regarded within the companies surveyed as contributing to performance via better employee contributions, improved management systems and productivity gains. The managers in the sample were in little doubt that "voice" did have a positive impact on performance, particularly through the number of ideas that emerged through employee feedback and joint problem-solving teams. It also found a wide selection of different mechanisms in operation, the most widely-used being two-way communications,

¹² *Management Choice and Employee Voice*, CIPD, 2001.

project teams, joint consultation and collective representation, with a growing interest in the use of electronic media, attitude surveys and partnership schemes. There was widespread acceptance that informal methods were a critical supplement to formal schemes, and in some workplaces – especially the smaller and “newer” firms – this was central to their culture.

2.12 The 1998 Workplace Employee Relations Survey (WERS98) is the most recent, comprehensive survey of employment relations in the UK and provides valuable information on a wide range of contemporary practice. It showed that most companies in the UK have some form of employee communication. In terms of dialogue between managers and staff, it found that there is a wide range of **direct communication** practices: team briefings, workplace-wide meetings, cascading of information via the management chain and regular staff newsletters. Almost all of the more than 3000 workplaces surveyed used at least one of these methods, most used more than one, a tenth operated all four. Those that said they operated none of them were more likely to be stand-alone sites; in the manufacturing or construction sectors; those without a union presence; and those where there was no personnel specialist¹³.

2.13 The WERS study looked at **upward information flows** in the workplace and asked about non-managerial involvement in problem-solving groups, staff suggestion schemes and formal staff attitude surveys. Around 12% of workplaces used all three of these methods together, a quarter operated two of them, a third operated one method in isolation, and 30% had none. Both problem-solving groups and staff surveys were more likely to be found in workplaces with a personnel specialist in the organisation, those with an integrated employee development plan, and those with a recognised union¹⁴.

2.14 The Survey also found that more than 50% of workplaces with 25 or more employees operate some sort of “**joint consultative committee**”¹⁵, and looked at how such committees operated in practice. Responses to the Survey showed that there were a variety of methods by which employees were appointed to sit on committees – elected by employees (46%), volunteered (22%), appointed by management (21%), chosen by unions or staff associations (17%), some other method (5%), and possibly more than one method in the case of some committees. The frequency of consultative meetings fell into three fairly even-sized groups of those meeting at least once a month, those meeting between once a month and once a quarter, and those meeting once a quarter or less often. On the issues dealt with WERS found a broad range – most commonly, working practices (88%), health and safety (86%), welfare services and facilities (83%) and future workplace plans (83%). Pay issues were among the least frequently mentioned (50%)¹⁶.

2.15 The evidence from WERS is that consultation and involvement in some form or another is fairly widespread. The survey did however find a discrepancy between employer and employee perceptions. While management in 70% of workplaces said they consulted about change, only 30% of staff agreed with them.

¹³ *Britain at Work*, Cully, Woodland, O’Reilly and Dix (1999), pp. 64 - 66.

¹⁴ *Ibid.*, pp. 66 - 69.

¹⁵ *Ibid.*, pp. 98 – 101.

¹⁶ *Ibid.*, pp 101 – 102.

2.16 In small and medium-sized enterprises (SMEs) direct face-to-face communication between owners/managers and staff probably plays the major role in informing and consulting. The evidence from WERS shows that formalised consultation through committee is relatively rare in smaller organisations – only 20% of those with less than 100 employees operated one, compared with 43% of those with 100 to 999 employees and over 70% of those with 1000 or more employees - and that mechanisms for upward feedback such as employee surveys and suggestion schemes are also comparatively rare.

2.17 WERS also found that the incidence of joint committees was related to a trade union presence – three-quarters of workplaces with a recognised union had a committee, compared with one-third of those with no union members. Finally, WERS found that consultative committees are least prevalent in the following sectors: manufacturing, construction, hotels and restaurants, and “other business services” (eg consultancy, the professions, advertising).

2.18 Many of the WERS findings are supported by a survey of over 350 UK manufacturers conducted by NOP on behalf of the Engineering Employers Federation¹⁷. This showed that manufacturing companies are embracing new workplace practices, such as employee participation groups, self-managing work teams, employee share ownership programmes, employee attitude surveys and staff suggestion schemes. But over half of those surveyed said they had done so moderately, minimally, or not at all. In addition, the survey found that on every type of workplace initiative a substantially lower proportion of UK-owned firms is using them, compared to US-owned firms in the UK, and on virtually every type of initiative a much higher proportion of larger firms are undertaking them than smaller firms. The report of the House of Commons Trade and Industry Committee on UK manufacturing endorsed these findings, and urged more companies to invest the comparatively small amount of time, both from management and workforce, to at least examine the potential of well-known techniques to improve communications with employees¹⁸.

2.19 The Industrial Society/Work Foundation study referred to above (see paragraph 2.7) suggests that important barriers to the introduction of new approaches include the reluctance of management to shift from traditional forms of work organisation, a lack of modern managerial and leadership skills, and scepticism as to the benefits. Similarly, the CIPD research referred to in paragraph 2.11 found that the major constraints on effective employee dialogue were a lack of skills and enthusiasm on the part of managers and employees.

2.20 The evidence from WERS98 and other studies suggests that a wide diversity of practices aimed at involving people more closely in the workplace are found in the UK, and in many organisations. But there remains plenty of scope for wider take up of best practice, especially among smaller organisations, in non-unionised workplaces, and in certain sectors. Much depends on the attitudes and commitment of both managers and employees.

¹⁷ *Catching up with Uncle Sam*, The EEF final report on US and UK manufacturing productivity, December 2001, available at <http://www.eef.org.uk/fed/fedpub/fedpub.htm>

¹⁸ *The competitiveness and productivity of the UK manufacturing industry*, House of Commons Trade and Industry Committee, Third Report of Session 20001-02 (HC 597), paragraph 33.

2.21 ACAS, the Advisory, Conciliation and Arbitration Services, has produced a guide on employee communications and consultation. It provides advice and guidance to employers, employees and their representatives on how to develop effective arrangements for communicating with and consulting employees. It describes why communications and consultation are important, who should take responsibility for carrying them out, what kinds of information are required and when consultation should take place, the main methods of employee communications and consultation, and the need for regular review of procedures and adequate training.¹⁹

¹⁹ *Employee communications and consultation*, ACAS, November 2001. Available at <http://www.acas.org.uk/publications/b06.html>. It should be noted that the November 2001 version of the ACAS guide does not aim to take account of the Information & Consultation Directive.

Chapter 3 Dealing with redundancies

3.1 Industrial change is inevitable and desirable as part of the process of raising productivity and creating wealth. Relocations, rationalisations and redundancies happen as the economy changes in response to competition, shifts in consumer preferences and new technology. But change needs to be dealt with in a way that does not provoke resistance and resentment and that shares its benefits fairly.

3.2 A well-informed workforce that understands the factors driving the business will be more adaptable and responsive to change. And consultation can improve management's understanding of the impact of change on the workforce. It is widely accepted that regular discussion of the competitive environment and company strategy will lead to a greater understanding of specific company decisions arising out of the strategy. By contrast, consultation about a specific proposal will usually be less effective if it is launched in a vacuum, in the absence of any regular, ongoing consultation process concerning the state of the business.

3.3 Where the issue in question is likely to have a significant impact on staff the consultation should start sufficiently early in the process for it to be meaningful. The Government believes that it is best practice to maintain an ongoing dialogue with the employees or their representatives about the company's overall prospects. In particular, consultations about proposed redundancies should begin as soon as practicable. It is recognised that it will not be feasible to consult specifically about possible redundancies (as opposed to the general state of the firm) before proposals have become reasonably firm and there are definite proposals to consult about. But it should not be left so late that it is seen as a *fait accompli*.

3.4 With a lot of redundancies, there may have been prior discussion of the general situation affecting the company with the employee representatives and possibly an alternative course of action proposed. But in many cases there may be no discussion before management reaches its proposed decision internally about specific proposed redundancies and announces it publicly. Some companies do however enter into confidential consultations with employee representatives about specific redundancy proposals some time before a public announcement, at a stage when management thinking is not finalised. Situations vary but in general it is important to manage the process in such a way as to avoid a sudden announcement that comes as a surprise to the employees or their representatives and over which they may well feel they have had no influence.

3.5 Some firms follow a two-stage process. In the first stage, the reasons leading to the need for redundancies have been discussed with employees. Ideally that would lead to an acceptance of the need for them. In the second stage the implementation of the redundancy programme is discussed, including the usual negotiations over the severance package and other terms. This may go more smoothly if the underlying decision has already been accepted as a result of the earlier discussion and the employees have come to terms with it. The process becomes more confused if consultations simultaneously address both the case for the redundancies themselves and also the terms of the severance package that will accompany them. It is better to take these separately and sequentially. There is a legal obligation to consult

employees' representatives where it is proposed to make 20 or more employees redundant at one establishment over a period of 90 days (Annex A provides further details). In practice this consultation often covers only the second stage of the process outlined above – the implementation of the redundancy programme. The Information and Consultation Directive could help promote more widespread use of a prior stage of consultation over the need for the redundancies (though the scope of the Directive is not confined to redundancy situations).

Stock Exchange rules

3.6 It has frequently been said that listed companies are prevented by the UK Listing Rules from sharing information with employees or their representatives which is price-sensitive, such as information concerning a possible takeover or restructuring operation which may involve redundancies. This question is considered in more detail in Annex B, which has been drawn up in consultation with the UK Listing Authority. It concludes that the Listing Rules do **not** prevent a company from consulting with its employee representatives, in confidence, about proposed redundancies before they are publicly announced. Although they do not allow a company to inform the employees as a whole of proposed redundancies before the relevant public announcement, a simultaneous announcement direct to employees should be possible in most circumstances.

Conclusion

3.7 Implementing organisational change, and managing the process of announcing and making redundancies, is of enormous importance to employees and employers alike. Some companies have made great strides in developing good practice in this area, seeking to minimise the pain for those affected, and to maintain a good working environment among those who remain. But this is not universal practice, and too often announcements about large-scale redundancies appear to come completely unexpectedly to those affected, exacerbating the shock and making the whole process much more difficult for all concerned. The Information and Consultation Directive could help promote more widespread use of best practice in this area, and the UK Listing Rules do **not** appear to create any great obstacle to this in the case of quoted companies.

Chapter 4 Information and consultation in other EU countries²⁰

4.1 All member countries of the European Union except the UK and Ireland have legislated for the provision of information and consultation systems²¹. The works council, or an equivalent, is the most commonly used means, but the nature of this body differs from country to country, as does its ability to impact on management decision-making. This chapter examines some of the main features of information and consultation arrangements in the EU, with particular reference to Belgium, France, Germany, Spain, Sweden and the Netherlands.

Mechanism for informing and consulting employees

4.2 In most countries, all companies or establishments over a certain size (in terms of numbers of employees), are required to set up a works council or similar body. In Germany though, employees must request one. That is not to say that all companies required to have them do so – in many countries the proportion of firms with a works council is not especially high, particularly among smaller undertakings (eg less than 60% of Dutch companies with 50 to 100 employees have established a works council), and one of the reasons frequently given by companies is that employees do not want one²². The employee threshold varies from country to country. In Germany and Austria, the threshold is just five employees, in a number of countries (eg France, Netherlands and Spain) it is 50, while in Belgium it is currently 100. Sweden and Portugal have no threshold. In Sweden, however, there are no works councils as such but a system of information and consultation of trade unions, who are present in almost every workplace.

4.3 In many Member States, the size of the works council increases with the total number of employees, eg in France it ranges from 3 in firms with 50 employees to 15 in firms with 10,000. The general rule is that representatives are directly elected by the workforce, the period of office usually being between two and four years. Most works councils are employee only bodies although there is provision in some countries, eg Belgium and Denmark, for management also to be represented on the body. German legislation provides for proportional representation of wage earners and salaried employees, employees of individual divisions of the establishment, and of men and women; employees may stand for election to the works council if they have worked for the establishment for at least 6 months. In Belgium the works council includes representatives for blue- and white-collar workers, young workers and professional/managerial staff.

²⁰ The information in this chapter is derived from a number of sources including the European Foundation for the Improvement of Living and Working Conditions, the *European Industrial Relations Review*, and DTI's own research.

²¹ In Denmark the operation of works councils, or "co-operation committees", is determined primarily by a national collective agreement.

²² "Problems emerge as works councils' role expands", Robbert van het Kaar. (2002), at <http://www.eiro.eurofound.ie/2002/03/Feature/NL0203102F.html>.

4.4 In some countries, eg France, Netherlands and Germany, there is also provision for a central works council where a company consists of more than one establishment, and also where companies are part of a group. In addition, in larger German companies, sub-committees may be set up to deal with day-to-day operations, or specific issues, for example an economic committee to be informed and consulted on the company's economic affairs.

Rights to information and consultation

4.5 As in the UK, specific legislation providing for information and consultation of employees exists in areas governed by EU Directives – collective redundancies, transfers of undertakings, and health & safety. However, the right to be informed and consulted on an on-going basis about more general company matters is a pivotal part of the works council's role in many countries. The most common issues on which management should inform and consult are the company's financial situation, the employment situation and prospects, proposed changes to the structure of the business, work organisation and training.

4.6 In France the employer must provide the works council annually with a report covering developments in a range of matters including the company's financial situation, the development of employment, training and pay. Works councils must be consulted on the information provided, and the employer's decision may not be made until this consultation has taken place, giving the works council time to respond to the employer's proposals. However, its opinion is not binding on the employer (though in the case of redundancies it may put forward its own proposals and if the employer does not agree with them a mediator is called in). There are similar information provisions in Spain where the works council is able to put forward its opinion on the information provided to it. There is no one specific time limit for the works council to do this, rather that time limits are specific to the subject concerned. However, the works council cannot block a management decision. Nevertheless, consultation frequently has the specific purpose of preventing an industrial dispute and opens up a period of negotiation which may lead to the conclusion of an agreement on a specific matter of labour relations.

4.7 In some countries, notably Germany, information and consultation rights extend to co-determination in respect of certain "social" matters, including working time arrangements, health and safety, and drawing up financial compensation plans for redundant employees. Some co-determination rights on similar issues also exist in Belgium, the Netherlands and Austria. In Sweden there is an obligation to negotiate with the employees representatives on some issues, including major changes to the structure of the business (transfers, mergers, cutbacks, closures, relocation), and business activities, major investment projects and personnel planning issues. However, there is no obligation to reach an agreed solution, and management may implement decisions provided it has fulfilled its consultation and negotiation obligations.

Confidential information

4.8 All Member States have rules to protect confidential information. In general, works council members are bound by confidentiality requirements where the employer considers information to be commercially sensitive, and employers may be allowed to withhold information where disclosure would harm the company. There are a variety of means of punishing breaches of confidentiality. In France, disciplinary action may be taken if representatives breach a general obligation of “discretion”, and it is a criminal offence to divulge certain confidential information. In Germany works council members can be removed from office on the grounds of grave dereliction of duty.

Sanctions and dispute resolution

4.9 The Labour Court (or equivalent court) often has a role to play in determining the outcome of disputes about the application of information and consultation requirements. Where employers are found to be in breach, the most common form of remedy is a financial penalty, as is the case in France, Germany and Spain. Some countries make certain breaches by the employer a criminal offence.

4.10 Dispute resolution is handled in a number of ways. German law provides for the establishment of a “conciliation committee” at the **company** level, comprising an equal number of employer- and employee-appointed members, and an independent chairman. The committee takes binding decisions on co-determined issues (subject to appeal to the Labour Court on certain grounds), and can make non-binding recommendations on other issues. In the Netherlands a mechanism exists at the **industry** level to resolve disputes between companies and their works council, while in Sweden, on certain issues if agreement cannot be reached within the company, it may be referred to the social partners at the **national** level.

Role of Trade Unions

4.11 In some Member States, such as France, Sweden and Italy, trade unions have a guaranteed involvement in works councils or their equivalent. In France, however, there is a clear separation between the **consultative** role of the works council and the **negotiating** role of trade unions more generally.

4.12 Trade union involvement is common in other Member States even if the legislation does not specifically prescribe such involvement. In Belgium, in the elections of blue- and white-collar worker representatives, the list of candidates may be submitted only by unions. In Spain, there is no automatic role for trade union members in the works council. However, the works council occupies a central position in the Spanish industrial relations system and has consequently been used to bring trade union activities and programmes into the enterprise and workplace. So although the works council is not union-based, it has from the start been strongly influenced by the trade unions.

4.13 In Germany, as in France, there is a clear distinction between the role of the works council, and that of trade unions. For example, the works council must refrain from activities that interfere with operations or imperil the peace in the establishment; it may not call a strike or call for participation in a strike; works council members may participate in industrial action but in doing so may not take advantage of their position; unions represented in an establishment may submit lists of candidates for election to the works council alongside lists submitted by employees, but all candidates must be employees of the establishment; unions have the right to attend meetings of the works council, but not to vote at them; and there are restrictions on what may be contained in a “works agreement” between the employer and the works council where a matter is covered by a collective agreement with a union.

Conclusion

4.14 The variety of I&C arrangements in other EU countries stems not only from differences in the history, traditions and culture of employment relations in each country, but also from the context in which works councils and similar structures operate there. For example, the role of the works council, and its rights, will be influenced by such things as the rights and responsibilities of employers and employees in related areas, the role of unions, and the place and nature of collective bargaining. Arrangements in other countries may be a source of ideas for the UK, but some caution is needed in drawing lessons for UK implementation of the I&C Directive from other EU Member States, as the UK possesses its own distinct labour market characteristics that are likely to affect how the Directive is implemented here.

Chapter 5 Towards implementation of the Information and Consultation Directive

5.1 Since the early 1970s a growing number of legal requirements to inform and/or consult employees in the UK has developed in a somewhat piecemeal fashion. In the main, they are confined to specific matters such as collective redundancies, transfers of undertakings, health and safety, and occupational pensions. More recently they have been (or will soon be) supplemented by some general obligations deriving from EC legislation to inform and consult on a wider range of issues, but only in certain types of company – large multinationals (by virtue of the European Works Council Directive) and “European Companies” (by virtue of the European Company Statute Regulation and Directive). Annex A sets out the current and prospective legal requirements in more detail.

5.2 There is a long history of thinking on employee involvement practice in the UK, and this, together with the influx of new ideas from overseas and the absence of any general legal requirements in this area, helps explain the wide diversity of practice that has grown up in the UK. This diversity is regarded by many as one of the strengths of our labour market. On the other hand, some might find the disparate nature of existing legal requirements confusing and complicated. The previous chapter showed that in other EU Member States there are quite a lot of differences when it comes to informing and consulting employees. There is no single European model, and the Information and Consultation Directive does not seek to impose one. Instead, it leaves it to individual Member States to determine the practical arrangements for implementation. The works council model seen in a number of European countries may be suitable for some UK companies, but it may be inappropriate for others, especially for smaller and medium-sized firms.

5.3 In considering how best to implement the Information and Consultation Directive, the Government believes the following factors need to be taken into account:-

- the overall objective should be to enhance the contribution of everyone involved in the business, to the benefit of the company itself and all its staff.
- a single, static model - a “one size fits all” approach - will not do. Instead, we should build on UK experience and create room for the wide diversity of practices that have built up over the years, combining both representative and direct forms of participation. Individual organisations should be able to develop their own arrangements tailored to their particular circumstances, through voluntary agreements. And we should not stifle further innovation and creativity in employee involvement practices.
- legislation must be fully consistent with the new rights and responsibilities contained in the Information and Consultation Directive (see paragraphs 5.6 onwards below). The Government will be consulting fully on implementation of the Directive and intends to produce guidance to help with understanding of the legislation.

- arrangements in individual organisations will need the **support of senior managers** if they are to succeed. The evidence cited in chapter 2 earlier suggests that management attitude towards informing and consulting employees is a vital factor. Managers must see that fair treatment of staff in a modern economy requires on-going dialogue with employees, but that there is also a positive business benefit to be had, not just a legal requirement to be met. This does not mean simply personnel and human resources managers, but chief executives and directors too. Commitment to new ways of working, and changes in the culture need to come from the top. Without this commitment employees do not respond. In addition, to deliver this managers and leaders may need new skills and new training.
- arrangements in individual organisations will also need the **support of employees** if they are to succeed. Studies of works councils in the Netherlands²³ suggests that employee disinterest may be a problem as well as the ability of individual works council members to perform their duties, which in turn can affect the value of the works council. This can become self-reinforcing if the perceived (lack of) value of the mechanism further diminishes interest in it. While commitment to new ways of working, and changes in the culture must come from the top, they cannot be imposed from the top – they also have to come from staff, preferably both male and female and in all occupations. Just as with senior managers, apathy, scepticism and a lack of skills may have to be overcome. However, employees must also recognise that their role is not to supplant managers, but to assist them.
- **personnel and human resource managers**, in organisations that have them, will have a key role to play in promoting the benefits both to senior managers and employees.

Small and medium-sized enterprises (SMEs)

5.4 The potential benefits of employee involvement are not confined to large companies. From a practical point of view it could well be easier to organise within a smaller workforce. But it is particularly important in the case of small and medium-sized enterprises that legislation should only be imposed where absolutely necessary. This is why the Government opposed any reduction in the 50-employee threshold in the Information and Consultation Directive, and obtained derogations enabling us to delay applying the legislation to firms with less than 150 employees for up to 3 years (to March 2008). Once fully implemented, the Directive will only apply to 1% of companies in the UK – though 75% of employees stand to benefit.

5.5 The Government will be considering with small business stakeholders how best to promote information and consultation among SMEs, by non-legislative means, and would welcome views on this from consultees.

²³ see footnote 22

The Information and Consultation Directive

5.6 The Directive²⁴ came into force on 23 March 2002. It gives employees in the undertakings or establishments covered the right to information and consultation about the business in which they work and its prospects, with particular emphasis on the prospects for employment. The practical arrangements are to be defined and implemented in accordance with national law and industrial relations practices in individual Member States.

5.7 The Directive covers “undertakings”, meaning public or private undertakings carrying out an economic activity whether or not operating for gain, which are located in the EU Member States. Only undertakings with 50 or more employees in a single Member State are covered (or, at the choice of individual governments, establishments employing at least 20 employees).

5.8 The Directive lays down some basic requirements in terms of the nature, method and timing of information and consultation, but states that the practical arrangements are to be determined by individual Member States. It also allows management and labour at undertaking level to agree arrangements, or to adopt pre-existing arrangements, that are different from those requirements. The basic requirements state that information and consultation should cover:

- information on the recent and probable development of the undertaking’s activities and economic situation;
- information and consultation on 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;
- information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by legislation concerning collective redundancies and transfers of undertakings.

5.9 Information must be given “at such time, in such fashion and with such content” as are appropriate to enable, in particular, employees’ representatives to conduct an adequate study and, where necessary, prepare for consultation.

5.10 Consultation must take place with appropriate timing, method and content, at the relevant level of management and representation depending on the subject under discussion, on the basis of the information supplied by the employer, and in such a way as to enable employees’ representatives to meet the employer and obtain a reasoned response to any opinion they may formulate. In addition, consultation should take place with a view to reaching an agreement on decisions within the employer’s powers concerning substantial changes in work organisation or in contractual relations, including collective redundancies and transfers of undertakings.

²⁴ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, published on 23 March 2002 and available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_080/l_08020020323en00290033.pdf.

5.11 The Directive contains provisions on the protection of employee representatives, enforcement and sanctions, the handling of confidential information and the relationship with other employment legislation.

5.12 We have three years in which to transpose the Directive into national legislation, that is, by 23 March 2005 (though there are transitional periods of up to 3 years for firms with fewer than 150 employees). The Government wishes to consult widely on how best to frame legislation that will underpin and give further impetus to partnership, engaging with a broad range of interested parties throughout the consultation process. We will be consulting again later on the detail of implementing legislation, but at this stage our aim is to establish a context for legislation, and to begin to draw out some of the main issues raised by the Directive.

5.13 The questions and issues on which the Department would welcome the views of interested parties – including what should be the key features of domestic legislation to implement the Information & Consultation Directive - are set out on page 7 of this document.

Annex A Current UK legal requirements to inform and consult

1. At present UK law provides for the information and/or consultation of employees or their representatives in certain, specified circumstances. The main provisions concern collective redundancies, transfers of undertakings, collective bargaining, health and safety, occupational pensions, European Works Councils, and the forthcoming European Company Statute. The broad requirements are set out below.

Collective Redundancies

2. Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 requires employers to inform and consult employee representatives over proposed collective redundancies. This implements the Collective Redundancies Directive²⁵. A collective redundancy is one where 20 or more employees are to be dismissed at one establishment as redundant within a 90-day period.

3. The consultation with employee representatives should include ways of avoiding the dismissals, reducing the numbers of employees to be dismissed, and mitigating the consequences of the dismissals. The consultation should be undertaken with a view to reaching agreement. The employer must disclose certain particulars in writing to the appropriate representatives, including the reasons for the redundancies, the numbers and descriptions of employees affected, the selection criteria to be used, proposals on how and when the dismissals are to be carried out, and the proposed method of calculating any redundancy payments beyond statutory redundancy pay.

4. Consultation is required even where those being made redundant are volunteers. Consultation must begin in “good time”. Consultation must begin:

- at least 90 days before the first dismissal takes effect, if 100 or more redundancies are proposed at one establishment within a 90-day period;
- at least 30 days in advance if between 20-99 redundancies are proposed at one establishment within a 90-day period.

5. Where there is a recognised independent trade union representing employees who may be affected, the employer must inform and consult that union. In that case the employer is not required to inform and consult any other employee representatives, but may do so voluntarily if desired. Where there are affected employees who are not represented by a recognised trade union, the employer must inform and consult other appropriate representatives of those employees. These may be either existing representatives (provided that their remit and method of election or appointment gives them suitable authority from the employees concerned), or new ones specially elected for the purpose. If employees fail to elect representatives within a reasonable time, the employer must give the relevant information directly to the affected employees.

²⁵ Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.

6. Any breach of the obligation to consult employee representatives may result in a protective award of up to 90 days' pay to each affected employee at the direction of an employment tribunal.

Transfers of undertakings

7. The Transfer of Undertakings (Protection of Employment) Regulations 1981²⁶ implement the Transfer of Undertakings (or Acquired Rights) Directive²⁷. They require an employer to inform and, if appropriate, consult employee representatives on matters relating to the transfer of a business or undertaking to a new employer.

8. The employer of any employee who may be affected by such a transfer must tell their representatives that the transfer is going to take place, approximately when, and why; the legal, economic and social implications of the transfer for the affected employees; whether the employer envisages taking any action (reorganisation for example) in connection with the transfer which will affect the employees, and if so, what action is envisaged; and where the previous employer is required to give the information, he or she must disclose whether the prospective new employer envisages carrying out any action which will affect the employees, and if so, what. The new employer must give the previous employer the necessary information so that the previous employer is able to meet this requirement.

9. The information must be provided long enough before the transfer to give adequate time for the representatives to consult the employees. If action is envisaged which will affect the employees, the employer must consult the representatives of the employees affected about that action, with a view to seeking their agreement to the measures to be taken. During these consultations the employer must consider and respond to any representations made by the representatives. If the employer rejects these representations he must state the reasons.

10. The provisions on employee representatives are the same as with collective redundancies – see paragraph 5 above.

11. Any breach of the obligation to consult employee representatives may result in compensation of up to thirteen weeks' pay to each of the employees concerned at the direction of an employment tribunal. In cases involving both collective redundancies and transfers of undertakings a separate award may be made in relation to each, with no provision for one to be offset against the other.

Collective bargaining

12. Sections 181 and 182 of the Trade Union and Labour Relations (Consolidation) Act 1992 contain provisions concerning the disclosure of information to trade union representatives for the purposes of collective bargaining.

²⁶ Statutory Instrument 1981/1794.

²⁷ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

13. The information to be disclosed is all information relating to the employer's undertaking in his possession (or in the possession of an associated employer), without which the trade union representatives would be impeded to a material extent in bargaining, and which it would be in accordance with good industrial relations practice to disclose. An ACAS Code of Practice²⁸ sets out such practice. The requirement only arises if the union requests it and the employer can specify that any such request must be made or confirmed in writing. The union can also insist that the information must be provided or confirmed in writing. The Act contains certain restrictions on the general duty to disclose information, for example, where the information has been given to the employer in confidence, or where disclosure would cause substantial injury to the undertaking.

Health and safety

14. There are a number of pieces of legislation requiring employers to inform and consult their employees about health and safety issues. An EC Framework Directive²⁹ sets out general principles including "the informing, consultation, balanced participation ... and training of workers and their representatives". Much of the Directive is given effect by the Health and Safety at Work Act 1974, and regulations made under it. The main regulations are The Safety Representatives and Safety Committees Regulations (SRSCR) 1977³⁰ and The Health and Safety (Consultation with Employees) Regulations (HSCER) 1996³¹.

15. Under the SRSCR 1977, if an employer recognises a trade union and that trade union has appointed safety representatives, then the employer must consult them on matters affecting the group of employees they represent. Members of these groups of employees may include people who are not members of that trade union. Under the HSCER 1996, any employees not in groups covered by trade union safety representatives must be consulted by their employer. The employer can choose to consult them directly or through elected representatives.

16. If the employer consults employees directly, they can choose whichever method suits everyone best. If the employer decides to consult the employees through an elected representative, then employees have to elect one or more people to represent them.

17. The consultation will be about various matters to do with the health and safety of employees at work, including any change which may substantially affect their health and safety at work, for example in procedures, equipment or ways of working, the employer's arrangements for getting competent people to help them satisfy health and safety laws, the information that employees must be given on the likely risks and dangers arising from their work, measures to reduce or eliminate these risks and what they should do if they have to deal with a risk of danger, the planning of health and

²⁸ *Disclosure of information to trade unions for collective bargaining purposes*, ACAS, 1997, available at <http://www.acas.org.uk/publications/pdf/cop2.pdf>.

²⁹ Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

³⁰ Statutory Instrument 1977/500.

³¹ Statutory Instrument 1996/1513.

safety training, and the health and safety consequences of introducing new technology.

Occupational pensions

18. The Pension Schemes Act 1993 requires employers to consult with independent recognised trade unions on certain matters in relation to the contracting out of the state scheme of an occupational pension scheme. There are also requirements concerning the obligations of trustees of pension schemes to disclose information about their stewardship. These requirements are contained principally in the Occupational Pensions Schemes (Disclosure of Information) Regulations 1996³².

19. Under these regulations the trustees of an occupational pension scheme are obliged to disclose specified information to members and prospective members of the scheme, their spouses, other beneficiaries under the scheme, and any independent trade union which is also a recognised trade union (ie "recognised for the purposes of collective bargaining in relation to members and prospective members of the scheme" - to be determined by an Employment Tribunal).

European Works Councils

20. The European Works Councils Directive³³ requires companies over a certain size (at least 1000 employees) and with at least 150 employees in each of two Member States, to establish a European Works Council (EWC) or equivalent procedure if requested by employees. EWCs comprise employee representatives who are to be informed and consulted about transnational questions which significantly affect employees' interests. The management and representatives of the employees are free to reach an agreement over the nature and operation of the EWC or equivalent procedure. If they are unable to reach agreement, certain subsidiary requirements set out in the Regulations apply.

21. The subsidiary requirements specify the size and composition of the EWC and how UK members are to be elected. They list the subjects to be discussed at annual information and consultation meetings with central management as "the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures ... and collective redundancies". They allow the EWC to request exceptional information and consultation meetings where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or collective redundancies. The subsidiary requirements also provide for EWC members to meet together before meeting with management, and to be assisted by experts of their choice. Central management is

³² Statutory Instrument 1996/1655.

³³ Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purpose of informing and consulting employees. Extended to cover the UK by Directive 97/74/EC and implemented in the UK by the Transnational Information and Consultation of Employees Regulations 1999 (SI 1999/3323).

required to bear the operating expenses of the EWC, including the cost of up to one expert, and to provide EWC members with the necessary financial and material resources to perform their duties, in particular the cost of organising meetings and accommodation and travel expenses.

European Company Statute

22. In October 2001 an EC Regulation to establish a European Company Statute (ECS) and a related Directive concerning worker involvement in European Companies were adopted in Brussels. The Regulation will come into force in October 2004. A European Company would be a new form of legal entity, available on a voluntary basis to companies operating in more than one Member State. The Government will be drawing up legislation to implement the Directive and to ensure the effective application of the Regulation over the coming months.

23. Arrangements for employee involvement in the European Company must be in place before it may be registered. Employee involvement in this context means information and consultation, and may, depending on the circumstances, include employee representation (“participation”) on the board of the company. As with European Works Councils, the Directive provides for free negotiations in the first instance between management and representatives of employee with the aim of reaching a voluntary agreement, though there are certain requirements, particularly in relation to employee participation, that apply to voluntary agreements. If it is not possible to negotiate an agreement then a set of standard rules complying with the Directive will apply. These provide for a representative body very similar to a European Works Council, to be informed and consulted about the company's current and future business plans, production and sales levels, implications of these for the workforce, management changes, mergers, divestments, potential closures and layoffs.

Annex B Stock Exchange Rules on price-sensitive information

1. Companies listed on the London Stock Exchange are subject to rules drawn up and enforced by the UK Listing Authority (UKLA), which is part of the Financial Services Authority. These rules are known as the Listing Rules. Among the aims of the Listing Rules is the maintenance of an orderly market by seeking to ensure that all market participants have simultaneous access to accurate price-sensitive information. Listed companies planning a major transaction which could involve large-scale redundancies, such as a restructuring or a merger, have frequently commented that they could not in any case have informed employees or their representatives of the proposed redundancies before making a public announcement because they were prevented from doing so by the Listing Rules. This annex of the discussion paper aims to clarify the relationship between the Listing Rules and legal obligations to inform and consult employees and their representatives. It has been drafted with the assistance of the UKLA.

2. Chapter 9 of the Listing Rules imposes a general continuing obligation of public disclosure on listed companies in respect of matters which are not public knowledge and which may substantially affect their share price. Specifically, Rules 9.1 and 9.2 require a company to notify the Company Announcements Office without delay of major new developments in its sphere of activity, and of changes in its financial condition or the performance or expected performance of its business, which if made public would substantially affect the share price. The UKLA also publishes guidance on the dissemination of price sensitive information in its PSI Guide, which is an appendix to the UKLA Guidance Manual³⁴ and listed companies will find it useful when assessing how best to comply with Listing Rules 9.1, 9.2, 9.4 and 9.5.

3. When a company is preparing proposals, for example a restructuring, this does not have to be notified during the planning stage provided the relevant information is kept confidential: Rule 9.4 provides that a company need not notify to the Company Announcements Office information concerning impending developments or matters in the course of negotiation. However, the company may give such information in confidence to recipients within the categories described in Rule 9.5. The categories of persons include “representatives of employees or trades unions acting on their behalf”. The company must be satisfied that such recipients of information are aware that they must not deal in the company’s securities before the relevant information has been made available to the public. Investors who trade on inside information are liable to prosecution under the Insider Dealing laws, and may also be pursued under Market Abuse provisions.

4. Rule 9.4 further provides that if the company has reason to believe that a breach of such confidence has occurred or is likely to occur and that knowledge of the information in question could lead to a substantial movement in the share price, then the company must notify to the Company Announcements Office at least a warning announcement to the effect that the company expects shortly to release information which may lead to such a movement.

³⁴ available at <http://www.fsa.gov.uk/>. Guidance is also available through the UKLA’s helpline on 020-7943 0333.

5. If information does leak in advance of a decision being finalised or announced, the UKLA may oblige the company to make an interim announcement to clarify the situation. These are usually statements confirming or denying that certain matters are under consideration. Often there will be intense press speculation about a company in the run-up to an announcement. If the press speculation suggests that there has been a leak of unpublished price-sensitive information, the UKLA may require an interim announcement to be made by the company in question. The UKLA also has the power to suspend the listing of a company's shares if it becomes concerned about market disorder, or in order to protect investors.

6. A major restructuring operation, which may involve large-scale redundancies, will often be share price-sensitive in that the announcement of the proposed restructuring will cause a movement in the company's share price, reflecting the market's re-evaluation of the company's new prospects. The obligations in Chapter 9 of the Listing Rules will therefore be relevant.

7. The usual practice of companies preparing a restructuring operation appears to be to keep the matter entirely confidential within the senior management of the company and its advisers until the proposals have been finalised, at which point they are immediately notified to the Company Announcements Office and so made public. This is consistent with Rule 9.4. If there are leaks or informed speculation about the plans before they are finalised, the company may confirm that the matter is under consideration, but without going into detail. It appears to be rare for companies to take advantage of the provision in Rule 9.5 which allows them to inform employee representatives in confidence about the proposals during the preparatory phase before they are announced.

8. The reason generally advanced for not informing employee representatives at this stage is that the information might be leaked by them. Some companies consider it would be better not to place employee representatives in what they see as an invidious position of possessing information of vital interest to employees which they could not communicate to them. Others feel that employee representatives may be tempted to leak information to the press or politicians in an attempt to frustrate restructuring plans by creating a public outcry.

9. Companies preparing a restructuring are also often concerned to ensure that the announcement is favourably perceived by the Stock Market. Good timing, clarity and decisiveness, for example with regard to cost-savings, are seen as essential ingredients for a favourable response. They may fear that the early involvement in the process of employee representatives could delay things or complicate the message. Some companies have also drawn attention to the impact of the rules of overseas Exchanges on which they are listed, particularly the New York Stock Exchange.

10. Whatever the reasons for not consulting employee representatives in advance of a public announcement of proposed redundancies, it is clear that the UK Listing Rules do **not** create an obstacle to such consultation because they allow companies to inform employee representatives in confidence about the proposals during the preparatory phase before they are announced. However, the situation is more complex with regard to informing the workforce as a whole.

11. The Listing Rules do not allow companies to inform all the employees about such matters during the pre-announcement phase. In order to give a reasonable guarantee that information will be kept confidential, the circle of people privy to price-sensitive information must necessarily be a restricted one. To inform more widely would mean that a group of potential and perhaps actual shareholders (the employees) were given access to price-sensitive information before others, which might risk creating a disorderly market and might also lead to breaches of the insider dealing provisions and the market abuse regime.
12. The Rules require announcements to be made as soon as proposals are finalised. This is to reduce the possibility of leaks between the taking of a decision and its announcement. For some companies the practice appears to be that the board will approve decisions towards the end of the day, after trading in the Stock Exchange has ceased, and then notify them to the Company Announcements Office for release at 7.30am the following day, before trading starts. A consequence of this is that in large-scale redundancies the affected employees may first learn of the proposals through early morning news reports before they arrive at work, rather than directly from their employer. This is an unsatisfactory situation, certainly for employees and possibly also for employers who would prefer to be able to treat their employees with more sensitivity.
13. In fact the Listing Rules do not prescribe the specific time of day at which announcements should be made. There are provisions in the Listing Rules for submitting announcements at any time of the day and they can be released to market at any point between 7.00am and 6.30pm. When the Company Announcements Office is not open for business, the Listing Rules require a company to ensure that there is adequate coverage of the information by distributing it to not less than two national newspapers and to two newswire services.
14. There is therefore scope for listed companies to orchestrate the process so as to be able to make the regulatory announcement during working hours rather than early in the morning. Many companies already do this. This would allow the company to make a simultaneous announcement in the workplace to the employees concerned.
15. In principle there is no reason why a decision taken after trading had ceased the day before could not be held over until the following day and then communicated to the Company Announcements Office for release at say 9.00am and announced simultaneously to the workforce, as long as there was no leak before the regulatory announcement was made.
16. Listing Rule 9.7 relates to a situation analogous to that just described. It provides that where it is proposed to announce price-sensitive information at a shareholders' meeting, arrangements must be made for notification of it to the Company Announcements Office so that the announcement at the meeting is made no earlier than the time at which the information is published to the market.
17. Of course it will not always be possible to inform all employees directly before they may hear about the announcement through other channels. For example shift workers may not be at the workplace if an announcement there was made at say 9.00am. Also it may be difficult to control the timing of announcements made by

multinational companies based in other countries and who are carrying out global restructuring operations. But the key point is that with forethought companies can ensure that most of the employees affected by redundancy proposals learn about them directly via company channels, no later than the public announcement is made.

18. In conclusion, the Listing Rules do not prevent a company from consulting with its employee representatives, in confidence, about proposed redundancies before they are publicly announced. Although they do not allow a company to inform the employees as a whole of proposed redundancies before the relevant public announcement, a simultaneous announcement direct to employees should be possible in most circumstances.