

European and national works council

Where are we now?

What follows below is a brief synopsis on the rules and regulations governing European and National Works Councils.

An employer is required to enter into an agreement with its workforce to establish a European Works Council ("the Works Council") if it employs at least 1,000 employees within EU member states and at least 150 employees in two or more member states. The requirements are contained in the Transnational Information and Consultation of Employees Regulations 1999 ("the Transnational Regulations"), which came into force in the UK on the 15th January 2000.

At present the Transnational Regulations apply to transnational employers only. However the Information and Consultation Regulations come into force on 6 March 2005 and, once phased in, will apply to UK employers with 50 or more employees.

The purpose of the Transnational Regulations and the Information Consultation Regulations is to place an obligation on the employer to inform and consult with its employees on a range of matters relating to the business.

European Works Council

The process to enter into a Works Council agreement is triggered by either the management's own initiative or following a written request from at least 100 employees, or their representatives, in two or more EU member states. Agreement negotiations are usually conducted between central management and a special negotiating body of employees. This body will have a minimum of 3 and a maximum of 17 members. All countries where the

business has employees will be represented by at least one member.

The special negotiating body will work with central management to determine, through written agreement, the scope, functions and terms of office of the Works Council. Where the central management of a business is based in the UK, it shall assume responsibility for the creation of the Works Council.

Both parties (employers and employees) must negotiate "in the spirit of co-operation" with a view to reaching an agreement. The final agreement shall contain:

- a definition of the coverage of the Works Council;
- the composition of the Works Council and terms of office;
- the way in which information and consultation shall take place including the venue, frequency and duration of meetings;
- the funding and staffing of the Works Council;
- the way in which employee representatives will be able to meet and discuss information conveyed to them; and
- the period covered by the agreement and procedure for its re-negotiation.

If the management body refuses to negotiate within six months of receiving a request to create the Works Council or the parties fail to conclude an agreement within three years, the Works Council must be set up in accordance with the statutory model contained in the Transnational Regulations.

Head Office

3 Lonsdale Gardens
Tunbridge Wells
Kent TN1 1NX
T 01892 510000
F 01892 549884

Thames Gateway

The Old Rectory
St. Mary's Road
Greenhithe
Kent DA9 9AS
T 01322 623700
F 01322 623701

European and national works council

Where are we now? (continued)

The statutory model provides the right for the Works Council to be consulted upon the following:

- the economic and financial state of the business;
- the likely development of the business;
- probable employment trends;
- the introduction of any new working methods; and
- substantial organisational changes.

The Transnational Regulations do not apply to businesses that already have in place an agreed mechanism for informing and consulting their entire workforce on transnational issues.

The Works Council must be established at group level unless the management agree in writing to establish more than one consultation procedure.

National Works Council

1 Information and Consultation of Employees Regulations

The intention of the Information and Consultation of Employees Regulations (“the Regulations”) is to give UK employees a new right to minimum standards of information and consultation. Until now, UK employees’ rights to information and consultation were limited to collective redundancies and TUPE.

2 Negotiated Agreement

Provided that a Pre-Existing Agreement (see below) is not in place, the process to enter into an Information and Consultation agreement is triggered by either the

management’s own initiative or following a written request from at least 10% of the workforce.

Once an Information and Consultation process has been triggered, an agreement needs to be negotiated. In order to negotiate the employer must make arrangements for employees to appoint or elect negotiating representatives within 3 months of the trigger. Employers and representatives then have a further 6 months to agree the Information and Consultation arrangements that are to be put in place for their particular workplace.

The Regulations have been drafted in order to give an opportunity for real flexibility as to how information and consultation takes effect under the Regulations. Therefore, if a Negotiated Agreement is to be put in place, it is entirely up to employers and employees to agree the circumstances in which employers will inform and consult. Once agreement has been reached, these arrangements must be set out in a written agreement that is dated, signed by the employer and approved by the employees.

3 Standard Agreement

If employers and employees fail to agree a Negotiated Agreement within 9 months of the trigger (assuming no extension to this time has been agreed), then the Standard Information and Consultation Procedures will apply by default. The Standard Procedures are much more prescriptive than a Negotiated Agreement.

Where the Standard Procedures apply information and consultation representatives must be elected by employees in a ballot. The number of representatives must be proportional to the

European and national works council

Where are we now? (continued)

number of employees in the undertaking, one per 50 employees subject to a minimum of 2 and a maximum of 25. Further, the following 3 categories of information must be provided to the information and consultation representatives:

- 1 Information on the recent and probable developments of the undertaking's activities and economic situation.
- 2 Information of the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged.
- 3 Information on decisions likely to lead to substantial changes in work organisation or in contractual relations.

Information must be provided in good time and a genuine consultation procedure must be followed. An employer is not required to disclose any information which, assessed on an objective basis, would seriously harm or otherwise be prejudicial to the business.

4 Pre-Existing Agreement

If a business already has a valid Pre-Existing Information and Consultation Agreement in place, the regulations authorise an employer to dispense with the need to negotiate a new agreement provided that less than 40% of the employees request a new agreement. In order for a Pre-Existing Agreement to be valid under the Regulations it must comply with the following requirements:

- 1 Be in writing.
- 2 Cover all employees.
- 3 Set out what information is to be communicated and how consultation will occur.
- 4 Be approved by the employees.

Provided these conditions are satisfied, the Pre-Existing Agreement cannot be challenged for 3 years.

Finally

Although this information sheet highlights many of the key issues concerning European and National Works Council, it is intended for general guidance only and can be no substitute for considered advice on specific problems. It is based upon our understanding of the legal position as at 1 April 2005 and may be affected by subsequent changes in the law. It should not be considered comprehensive.

Should you require any further detailed information about the issues covered, simply e-mail Nick Hobden at HUnick.hobden@ts-p.co.uk or call on 01892 510000.