

## Introduction to the Information and Consultation Regulations 2005

### When are the Regulations in Force?

From 6 April 2005 employers needed to be aware of their employees' rights under the Information and Consultation Regulations (the Regulations). Employers will need to understand these fairly detailed Regulations to ensure that they comply with them. Not only would failure to comply with the Regulations result in the employers being penalised with a fine up to a maximum £75,000, they may also find themselves in a situation where they have to comply with standard provisions that may not suit the needs of their organisation.

These Regulations apply to undertakings that carry out an economic activity who have 50 or more employees. An undertaking includes companies, partnerships, co-operatives, trade unions, charities etc and may even include schools, colleges, NHS trusts etc.

The Regulations have been phased into the UK as follows:

Undertakings with 150 or more employees from 6 April 2005

Undertakings with 100 or more employees from 6 April 2007

Undertakings with 50 or more employees from 6 April 2008

### What do employers need to do to comply?

#### 1 Trigger Events

The requirement to inform and consult with employees will not happen automatically, one of two trigger events must occur:

- A formal request from 10% of the employees, subject to a minimum of 15 and a maximum of 2,500, for an Information and Consultation Agreement (ICA). Prior to making their request employees have the right to data from their employer regarding the number of employees in the undertaking, to see if the Regulations apply. A request from the employees could be anonymous via the Central Arbitration Committee (CAC).
- The employer decides to initiate the negotiating process for an ICA.

On the occurrence of a trigger event, the process of negotiating an ICA begins. There are a number of deadlines and other requirements to be followed during this process; however these are beyond the scope of this article.

#### 2 Negotiating an ICA

The Regulations have been drafted in order to give employers the maximum flexibility when they consider how they are going to inform and consult with their employees. In negotiating an ICA the employer and the employees are required to negotiate in a "spirit of co-operation and with due regard for their reciprocal rights and obligations". The only restrictions over negotiated agreements are that they must set out the circumstances in which the employees will be informed and consulted. The Regulations do not stipulate what the subject matter, method or frequency of the information and consultation should be. This allows for different arrangements to apply to different parts of the undertaking if

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this would best suit the needs of the undertaking.

Where there is an existing agreement regarding information and consultation, if a valid employee request is made, by less than 40% of the employees, then the employer may ballot the rest of its employees to see if they agree that a new agreement should be negotiated. If the employees do not think a new agreement is necessary then the employer is under no obligation to negotiate such. In order for an existing agreement to be a valid it must be in writing, cover all the employees of the undertaking, set out how the information is to be given to the employees and have been approved by the employees.

### 3 Standard Provisions

If a new agreement needs to be negotiated and this falls through then the standard provisions in the Regulations apply. These are potentially more restrictive than a negotiated agreement. The major restriction being that there is no provision for different arrangements to apply to different parts of the undertaking, whereas with a negotiated agreement this is possible.

The standard provisions state that an employer must inform and consult their employees with regards to employment prospects and any decisions likely to lead to substantial changes in the work organisation or contractual relations; this will include "redundancies and transfers of

undertakings etc". The Department for Business Enterprise and Regulatory Reform (BEER) DTI guidance at [www.berr.gov.uk/files/file25934.pdf](http://www.berr.gov.uk/files/file25934.pdf) encourages employers to also inform and consult with regard to the undertaking's "economic situation", as this will enable the employees to understand the context in which decisions affecting the workforce are made.

### 4 3-year legal ban or delay

Finally, it should be noted that an employee request for an ICA or an employer initiation of the process, will not be valid if it is made within 3 years of:-

- a negotiated agreement being drawn up;
- the standard provisions applying; or
- the failure of a ballot of all the employees to support an employee request, where there is an existing agreement.

This is to prevent the employer or employees from unilaterally overturning agreements etc. However, the employer or employee can agree to change their current regime.

For further and specific application guidance or advice on this topic, including advice about what an Information and Consultation Agreement should contain please contact the Employment Team at TS&P on 01892 510000.

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