



Representation at Work

This booklet is intended to assist anyone involved in or organising Representation at Work. It is one of a series of booklets and handbooks designed to give impartial advice on employment matters to employers, employees and their representatives. Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

Information in this booklet has been revised up to the date of the last reprint - see date below. We also have an Acas Helpline - 08457 47 47 47 - which can answer most of your questions about employment relations matters including your legal rights and duties.

Acas is committed to building better relationships in the workplace and offers training to suit you. From a two-hour session on the key points of new legislation or employing people to courses specially designed for people in your organisation. [Click here](#) to find out about training sessions in your area. We also offer hands-on practical help and support to tackle issues in your business with you. This might be through one of our well-known problem-solving services or a programme we have worked out together to put your business firmly on track for effective employment relations.

Introduction

In all organisations employers and managers involve workers in various ways. In very small organisations this may simply entail employers giving workers information and asking them for views. In larger organisations informing and consulting workers directly remains necessary but it also becomes important to have effective employment relations with worker representatives. In addition there are a number of legal requirements for employers to provide information to and consult with worker representatives. Many larger organisations have formal processes for informing and consulting worker representatives, most commonly through some form of works council.

Worker representation may take many forms ranging from full trade union recognition to ad hoc groups. This booklet sets out the various ways of working with representatives and how those arrangements can be helped to work effectively. A summary of current legal requirements for employers to inform or consult worker representatives is also provided.

Small businesses

Small businesses generally do not need elaborate representational systems and the law recognises this in some cases by excluding them from requirements to consult with representatives. Where the law applies only to firms above a certain size this is indicated in bold type in the appendix to this booklet which gives an outline of legal aspects of employee representation.

Whether or not they are excluded from legal requirements it is good practice for firms of all sizes to have effective systems for providing information to and consulting with their employees. This booklet focuses on relations with employee representatives but further advice on all aspects of communication and consultation may be found in the Acas Advisory Booklet: Employee Communication and Consultation. In addition small businesses which are successful may grow rapidly and it is worthwhile to plan employee representation arrangements before the legal thresholds are reached.

What is representation?

Representation of workers

Key points:-

In the workplace workers may be represented by trade union or other representatives:

- on disciplinary and grievance matters
- on works councils or other consultative bodies
- for the collective bargaining of terms and conditions
- for making workforce agreements
- on joint working groups

In the workplace workers are represented for a variety of reasons including for:

Personal issues

Workers may be represented by trade union officials or other representatives in relation to disciplinary matters or grievances. Workers have a statutory right to be accompanied by a fellow worker or trade union official where they are required to attend certain disciplinary or grievance hearings if they make a reasonable request to be accompanied. The statutory right is often voluntarily extended to fuller representation by agreement between the employer and workers or their trade union(s).

Works Councils/consultation

Many organisations consult workers through representatives on works councils or some other form of consultative committee. Works councils are also known by many other titles including: joint consultative committees, staff councils, company councils, works committees, office committees, participation groups and joint panels. There are a number of legal requirements to provide information to and consult with worker representatives.

Collective bargaining

Employers who recognise trade unions for collective bargaining agree procedures for negotiating terms and conditions with union representatives acting on behalf of workers. Some employers without recognised unions may discuss matters with representatives on works councils.

Making 'workforce agreements'

The Working Time Regulations 1998 introduced the concept of 'workforce agreements' which allow employers to make agreements with workers or their representatives on the application of some aspects of the regulations.

Joint working

Representatives of workers and management meet to examine working relationships and work together in groups to identify and implement improvements.

Most organisations will have various arrangements for conducting relations between managers and worker representatives. For example, organisations with collective bargaining arrangements often have a separate works council for those matters on which it is more appropriate to consult worker representatives rather than negotiate. See more extensive advice on the forms of representation.

What are the benefits of representation at work?

Key points:-

- Involvement of employee representatives can encourage understanding, trust, better decision making and improve employment relations and organisational effectiveness
- Effective systems of representation can help the development of workplace partnership

Involving employee representatives in the policies and decisions of organisations can:

- Encourage the workforce to identify more closely with the organisation's performance. People more readily understand and accept even unpopular decisions, as long as reasons are given and their views are genuinely taken into account
- Help to develop trust and cooperation
- Improve the quality of decisions by providing input from workers with relevant knowledge and skills
- Improve business performance
- Increase the acceptability of decisions and consequently lead to greater commitment or 'ownership'
- Provide a barometer for employee relations. Changes in the views of employees can more rapidly be gauged by management
- Help satisfy legal requirements
- Help understanding and management of change
- Develop skills of both management and worker representatives in such things as negotiation consultation and group interaction
- provide easier access to managers at all levels and make them seem less remote.

A further benefit of effective systems of representation at work is that they can help facilitate a cooperative approach to employment relations and in many cases the development of partnerships. Provided representatives maintain good communications with the workers they represent they are in a good position to develop policies with management which are in the interests of all those with a stake in the enterprise.

Representation in practice

Key points:-

- Employees have a legal right to be accompanied at disciplinary and grievance hearings. Many organisations voluntarily extend this right to allow the accompanying person to take a fuller representational role

- Consultation is the process by which management and employees or their representatives jointly examine and discuss issues before making a decision
- The most common arrangement for consulting employee representatives is the works council known by many different titles including, joint consultative committees, staff councils or company councils
- European Works Councils are a particular type of works council used by large companies with sites in more than one country of the European Union
- Collective bargaining takes place when a union is recognised to negotiate agreements with employers on pay and other terms and conditions of employment on behalf of a group of employees known as the bargaining unit
- Most agreements by employers to recognise trade unions are voluntary and both Acas and the Central Arbitration Committee (the body which deals with statutory recognition claims) encourage voluntary arrangements
- Independent trade unions in organisations employing more than 20 workers have a statutory right to claim recognition for collective bargaining
- Many organisations now emphasise joint agreement based on mutual interests or partnership rather than adversarial bargaining
- Joint working groups enable managers and workers to tackle and solve problems together and improve relationships and attitudes

Representation of individuals on personal issues

Legal facts

- Workers have a statutory right to be accompanied by a fellow worker or trade union official where they are required or invited by their employer to attend certain disciplinary or grievance hearings and when they make a reasonable request to be so accompanied. This right is additional to any contractual rights.
- Section 1 of the Employment Rights Act 1996 requires employers to provide employees with a written statement of particulars of employment. Such statements must also specify any disciplinary rules applicable to them and indicate the person to whom they should apply if they are dissatisfied with any disciplinary decision. The statement should explain any further steps which exist in any procedure for dealing with disciplinary decisions. The employer may satisfy certain of these requirements by referring the employees to a reasonably accessible document which

provides the necessary information. The statutory requirements relating to disciplinary rules and procedures do not apply where on the day the employee's employment began the total number of employees employed by the employer and any associated employer was less than twenty.

- As part of the Employment Act 2002 the Government has introduced standard internal systems for dealing with dismissal, and discipline and grievance issues. These systems require employers and employees, as a minimum, to follow a 'three-step' procedure – involving a statement (setting out in writing the grounds for action or grievance), a meeting between the parties and the right to appeal. The new provisions apply to all employers, no matter how many employees they have.

Many organisations provide rights over and above the legal minimum and allow workers to be accompanied by a person of their choice at interviews, meetings or hearings on a range of disciplinary, grievance or other issues. As well as trade union officials and co-workers some organisations extend the right of accompaniment to spouses, partners, friends or legal practitioners. It is common practice for the accompanying person to take a full representational role rather than merely acting as a companion. Rights of accompaniment or representation will form part of a worker's contractual terms and conditions and should be set out in writing.

It is good practice for organisations to have clear rules and procedures for all disciplinary and grievance matters including the right to be accompanied. Detailed advice and examples of procedures are available in the Acas Code of Practice on Discipline and Grievance Procedures and the Acas Advisory Handbook: Discipline & Grievances at Work.

Where trade unions are recognised, recognition agreements normally include rights for members to be represented by union officials at disciplinary or grievance hearings or interviews.

Checklist for the statutory right to be accompanied

1. Applies to all workers including those who perform work personally for someone else, but are not genuinely self-employed
2. Applies to certain disciplinary and grievance hearings which may result in some disciplinary action or where the grievance is about the employer's duty to the worker
3. The worker must make a request to be accompanied to the employer and the request must be reasonable
4. The worker may choose to be accompanied by a co-worker or a trade-union official (full-time or lay)
5. Where the chosen companion cannot attend on the date proposed the worker can offer an alternative time and date which is reasonable and

within five working days beginning with the first working day after the day proposed by the employer

6. The accompanying person can address the hearing and confer with the worker, but not answer questions on behalf of the worker unless this is agreed by management

7. Refusing to allow a worker to be accompanied could lead to a finding of 'automatically unfair' dismissal if the worker is dismissed as a result of the disciplinary hearing and makes a claim of unfair dismissal to an Employment Tribunal.

Consultation

Legal facts

- Employers are required to consult employee representatives over planned collective redundancies and transfers of undertakings (The Trade Union and Labour Relations (Consolidation) Act 1992 and the Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1987)
- Employers are required to consult safety representatives of recognised trade unions (The Safety Representatives and Safety Committees Regulations (SRSCR) 1977)
- Employers are required to consult on health and safety any employees not in groups covered by trade union representatives. The employer can choose to consult them directly or through elected representatives (The Health and Safety (Consultation with Employees) Regulations (HSCER)1996)
- Employers with more than 250 employees must include in their annual report action that has been taken to inform, consult and involve employees (Companies Act 1985)
- Management, employees or their representatives in European Community scale undertakings (or groups of undertakings) may trigger the process for setting up a European Works Council or alternative arrangements for implementing an information and consultation procedure (The Transnational Information and Consultation of Employees Regulations 1999)
- A European Union Directive will give employees the right to information and consultation on employment developments and substantial changes to work organisation. The new Directive will be introduced in stages - to businesses with 150 or more employees (March 2005), businesses with 100 or more employees (2007) and businesses with 50 or more employees (2008). It does not apply to those businesses with fewer than 50 employees.

What is consultation?

Consultation is the process by which management and employees or their representatives jointly examine and discuss issues of mutual concern. It involves managers actively seeking and then taking account of the views of employees, either directly or through their representatives, before making a decision. Meaningful consultation depends on those being consulted having adequate information and time to consider it, but it is important to remember that merely providing information does not constitute consultation.

It is good practice for employers when consulting employee representatives to make sure that all representations are considered and where they are not accepted that reasons are given.

Works Councils

The most common arrangement for consulting employee representatives is the works council. Works councils are also known by many other titles including: joint consultative committees, staff councils, company councils, works committees, office committees, participation groups and joint panels. The advice given here for works councils is appropriate to most formal consultation arrangements between employers and employee representatives.

What are works councils?

Works councils are permanent bodies where representatives of employers can consult representatives of employees in order to listen to their views and take them into account when making decisions. European Works Councils are a special form of Works Council which operate in multi-site European undertakings.

What are European Works Councils?

European Works Councils operate on a company wide basis in multi-sited European Community undertakings. European Works Council's provide for employees to be informed and consulted at European level.

Management, employees or their representatives in European Community scale undertakings (or groups of undertakings) may trigger the process for setting up a European Works Council or alternative arrangements for implementing an information and consultation procedure (see The Transnational Information and Consultation of Employees Regulations 1999 for details).

What are the benefits of works councils?

As well as the general benefits of involving workers described earlier, works councils can also provide a permanent consultative body which may be used to help satisfy legal requirements for consulting with and

providing information to worker representatives for example over business transfers or redundancies (see appendix for further information on legal requirements).

Who should be represented on works councils?

Worker representatives on councils should be elected by the employees they will represent. Where an organisation has an established trade union structure one or more union representatives could sit on the council as of right or, alternatively, a separate election could be run and union representatives could still be candidates for those positions.

Worker representatives may be elected on a constituency basis irrespective of their trade union role or membership. The mixing of union and non-union representatives will clearly be a matter of concern to recognised trade unions and, to help allay any fears they might have, it is advisable for managers to discuss the arrangement with union representatives before it is introduced. An assurance that the consultative process will not detract from the powers or decisions of the recognised negotiating body may go some way to allaying union fears. The solution, however, will depend very much on the relationship between management and trade union representatives and their respective commitment to the consultation process.

In some workplaces there are clearly distinct fully unionised and fully non-unionised departments, but in others unionisation is partial within departments. Whether or not they are themselves union members it is normal for elected worker representatives to represent workers in their constituency for consultation purposes irrespective of their union status.

It is usual for management to nominate management representatives on works councils as this helps reinforce the point that they are on the council as part of the management team. In order to demonstrate commitment to consultation it is essential that a senior manager with authority and standing is included.

How to get the best from works councils

In order to be effective works councils need good will from both sides and a commitment from senior managers who must be prepared to attend meetings and provide the money and time for representatives to be able to carry out their roles effectively.

The following checklist covers other factors which help to make works councils effective:

1. A constitution agreed with employee representatives including, where appropriate, recognised trade unions. The constitution lays down the rules and procedures that will govern the council's operation and may include:

- The title and objectives of the council
- Terms of reference
- Composition
- Training for council members
- Procedure for electing employee representatives
- Period of office
- Electing/nominating officers of the council for example chairperson, secretary
- Assurance that members will suffer no detriment because of their role
- Meeting arrangements
- Rules on confidentiality
- Facilities for council members such as expenses and time off
- Recording and reporting arrangements
- Method of altering constitution

2. The right number of council members the council should not be too small so that important representatives are excluded nor too large so that discussions are difficult to control. The constituencies of employee representatives should also be considered if they are too large it may be difficult for their views to be properly represented. The number of representatives on a council is typically between ten and twenty

3. A good chairperson allows all members to contribute to discussions but does not allow meetings to drift from the subject. Some councils alternate the chair between suitable management and employee representatives

4. Training for council members in interpersonal and group effectiveness skills so that members are able to interact effectively, deal constructively with conflict and criticism and recognise the value of other members' contributions. Training should also be given about any legislation relevant to their role

5. Arrangements for representatives which cover:

- time allowed away from normal work to undertake council duties including canvassing views from constituents
- facilities available
- assurance that pay will not be lost as a result of attending meetings or carrying out associated activities

6. Regular scheduled meetings show continuing commitment to the process. The frequency of meetings will vary from organisation to organisation and should be mutually agreed by the parties. Four times a year with the provision for ad hoc meetings if the need arises may be reasonable

7. Agreement on the subjects appropriate for consideration by the council and those which are best dealt with in a negotiating forum or other

committee (eg: health and safety committee). Some issues commonly discussed by works councils include:

- welfare
- company prospects
- company strategy
- annual report
- job stability
- new ways of working
- output and quality
- training
- health and safety
- equal opportunities
- new equipment
- staffing levels
- welfare

8. A sensible agenda issued to council members well in advance of meetings which allows time for discussion of important items but which is not too long. If meetings last much longer than two hours concentration and quality of debate will suffer.

9. Freedom from interruption and somewhere to meet that is convenient, comfortable and not too formal.

10. A secretary with responsibility for gathering items and papers for the agenda, circulating meeting notices and agendas, dealing with correspondence concerning the council, taking action on matters as instructed by the council and taking minutes of meetings which:

- are an accurate record of the main points raised and decisions reached
- indicate who is responsible for action
- are distributed as soon as possible to all council members and senior managers and made available to workers either by issuing them individually or displaying them on a noticeboard
- are used by the chairperson to monitor progress on action points.

Reasonable time-off with pay should be agreed so that the secretary can carry out his or her duties effectively.

Collective Bargaining

Legal facts

- Independent trade unions (1) in organisations employing more than 20 workers have a statutory right to claim recognition for collective bargaining

- Recognised trade unions (whether recognised voluntarily or as a result of the statutory process) have rights to:

Information for collective bargaining purposes and on health and safety and occupational pension schemes

Information on occupational pensions principally provided by the Occupational Pensions Schemes (Disclosure of Information) Regulations 1996, but other provisions on pensions may also apply

Consultation on:

- a. health and safety at work
- b. redundancies, where it is proposed to dismiss 20 or more employees at one establishment over
- c. a period of 90 days or less
- d. business transfers

Paid time off for officials to carry out duties concerned with negotiations with the employer and training relevant to those duties

Reasonable time off (which need not be paid) for trade union members during working hours to take part in the activities of the union

- Those trade unions recognised by the statutory trade union recognition process also have legal rights to:

Collectively bargain about pay, hours, and holidays as a minimum consultation on training

Not to be derecognised for at least three years does not apply to voluntary recognition agreements

- Collective or 'Workforce' agreements may govern the application of some aspects of the Working Time Regulations 1998.

What is collective bargaining?

Collective bargaining takes place when a union is recognised to negotiate agreements with employers on pay and other terms and conditions of employment on behalf of a group of workers defined as 'the bargaining unit'.

What is trade union recognition?

Most agreements by employers to recognise trade unions for collective bargaining are entirely voluntary but independent trade unions in organisations employing more than 20 workers have a statutory right to claim recognition under schedule A1 of the Trade Union and Labour

Relations (Consolidation) Act 1992 (inserted by the Employment Relations Act 1999). More information about the statutory Trade Union Recognition process is in the appendix.

How is a bargaining procedure agreed?

Except in limited circumstances where, under the statutory recognition procedure, the parties cannot agree a bargaining procedure and it is determined by the Central Arbitration Committee (CAC) collective bargaining arrangements are for agreement between the employer and the trade union or unions. Many organisations where trade unions are recognised operate under a mixture of formal and informal agreements about the scope and method of collective bargaining. Informal methods that are well established may work well but formal written agreements often help regulate relations, avoid misunderstanding and ensure consistency, continuity and stability.

Collective bargaining agreements do not normally establish legal relations between an employer and trade union. But those parts of the agreement that affect terms and conditions of employment can become part of individual contracts if the employer and employee expressly agree that employment should be on terms agreed by the employer and trade union. It is important to remember that whether or not a worker decides to be a member of a trade union is entirely voluntary.

What should be agreed?

Principles and procedures to enable collective bargaining to operate effectively should be agreed. These may include:

1. Agreement on recognition the general scope of the arrangements for recognition:

- a statement of management and unions' common objectives as well as their different roles and responsibilities
- grades, categories, department etc that the union or unions represent (bargaining units)
- number of trade union representatives - including learning representatives (URLs)
- policy on trade union membership
- facilities for trade union representatives
- accreditation for union representatives

2. Agreement on procedural arrangements regulating the relationship between the parties to collective bargaining including those on:

- payment of union contributions from wages (check-off)
- time off for trade union duties and activities (see Acas Code of Practice 3 Time off for trade union duties and activities)
- disclosure of information
- consultation
- negotiation including how and when issues can be raised, number of stages and whether disputes can be referred to third parties (eg Acas)
- who will represent the employer and the trade union in negotiations. It is important to indicate whether full time trade union officials will be involved at any stage
- 'status quo' or 'standstill' arrangements designed to allow the organisation to work normally while attempts are made to resolve disputes
- handling redundancies

3. How agreements may be varied or terminated

4. The levels at which collective bargaining will take place eg plant level, company level, national level

5. Issues appropriate for collective bargaining (some procedures set out the issues on which bargaining may take place while others leave this open)

6. Where two or more unions are recognised, whether all unions involved should bargain separately or as a single unit (Single table bargaining).

Training will be required to ensure that employer and trade union representatives involved in collective bargaining have a good understanding of the factors affecting industrial relations and the bargaining process. Most trade unions have training facilities for their representatives and there are a number of independent training organisations that can provide industrial relations training separately for management or jointly with trade union representatives. Training is particularly important where a union is newly recognised. Union representatives have a right to paid time off for TUC or union accredited training.

Agreed procedures should meet the particular requirements of the organisation and should not be taken 'off-the-shelf'. Some organisations have a number of separate agreements covering various aspects of union/management relations while others prefer a single comprehensive agreement covering both collective and individual issues. For further information about how Acas can help and advise on recognition issues see

the leaflet Ask Acas: Trade Union Recognition available free from Acas main offices or by post from ACAS Publications or order online.

What are trade unions?

Trade unions are organisations of workers which aim to maintain and improve the terms and conditions of work of their members. They try to achieve this mainly through collective bargaining with employers and through the provision of benefits to their members.

Traditionally trade unions drew their members from workers in specific trades or industries but many unions have extended membership to other groups of workers either through amalgamation or by widening their membership base. The 1998 Workplace Employee Relations Survey found a union presence in 54 per cent of workplaces with 36 per cent of workers belonging to a trade union.

How can organisations get the best from collective bargaining?

Traditionally employment relations in Britain were conducted on an adversarial basis with managers proposing initiatives which were then scrutinised by the union who acted as the 'opposition' and vice versa. Many organisations nowadays are trying to find new ways of conducting employment relations with management, employees and their representatives working together towards joint agreement based on mutual interests. Often the intended nature of the relationship is written into a recognition agreement (see also Partnership). It is unlikely, however, that conflict can ever be entirely avoided and it is important to retain procedures for resolving any disputes that arise.

Positive management/union relations can be developed if there is:

- Goodwill on both sides
- Openness and honesty
- Clarity about agreed procedures
- Clear understanding about which issues are negotiable.

Partnership

Collective bargaining agreements increasingly reflect the notion of 'Partnership' with relations between management and union being conducted on the basis of a common interest in the success of the organisation. Partnership initiatives vary from statements of intent to pursue a cooperative approach to formal agreements involving new structures and systems for consultation and representation.

The TUC offers advice to member unions on partnership issues and has developed six principles of partnership which are:

- a shared commitment to the success of the organisation
- a commitment by the employer to employment security in return for which the union agrees to a higher level of functional flexibility in the workplace
- a renewed focus on the quality of working life, giving workers access to opportunities to improve their skills, focusing attention on improving job content and enriching the quality of work
- openness and a willingness to share information. So, for example, employers will share with unions and workers their thoughts about the future when they are at the 'glint in the eye' stage
- adding value unions, workers and employers must see that partnership is delivering measurable improvements
- a recognition by both the union and employer that they each have different and legitimate interests.

Where attempts are being made to move from traditional adversarial employment relations to a partnership approach there is often concern on both sides about the effects of such a change.

For example management may be concerned about losing the right to manage and trade unions may worry about losing their independence and separate identity. Acas can often assist in these circumstances by helping both sides work together to improve relationships and organisational effectiveness. An explanation of the role Acas might play, including illustrative case studies, may be found in the booklet *Towards Better Employment Relations* -using the Acas Advisory Service available free to personal callers to the Acas Helpline or £1 by post from Acas Publications.

Workforce agreements

The concept of workforce agreements was introduced by the Working Time Regulations 1998. Workforce agreements are not 'collective agreements' resulting from 'collective bargaining' but are agreements made between an employer and duly elected worker representatives or in the case of employers with 20 or fewer workers between the employer and the majority of workers. If workers are covered by a collective agreement (an agreement between employer and independent trade union) then a workforce agreement cannot apply to those workers.

Certain aspects of the application of The Working Time Regulations 1998 may be changed by collective or workforce agreements (or any other relevant agreement for example, contract of employment which is in writing). Further information is in the Appendix.

Joint working groups

What are joint working groups?

Joint working groups enable managers and workers to tackle and solve problems together. Representatives of management and workers meet to identify issues and problems affecting working relationships in their organisation. They attempt to come up with solutions to these problems and then work together to put any recommendations into place. Acas can provide expert help with this process and assist the development of effective employment relations.

What are the benefits of joint working groups?

Joint working groups have many of the advantages of other sorts of representation and provide the opportunity for maximum involvement of both management and employee representatives in considering particular issues. They also:

- secure greater commitment to recommendations because worker representatives have been involved in the decision making process
- emphasise dialogue, not conflict, by developing solutions which are acceptable to both sides
- utilise the skills and knowledge of employees
- improve relationships and attitudes.

Joint working group checklist

A checklist of items to consider when setting up a joint working group should include:

- choosing representatives from management and workers
- size of group (must be manageable)
- commitment of senior management and union representatives
- clear objectives
- role of the chair/facilitator
- training and team building
- use of problem solving techniques
- collecting information for example, through the commissioning of interviews or questionnaire surveys
- group decision making.

Conclusion

To operate effectively, modern organisations in a democratic society are strongly advised to take account of the interests of employees when making decisions and give the reasons for decisions once they are made particularly when they don't coincide with worker preferences. The day to

day relations between managers and workers are greatly enhanced by effective systems of communication and consultation between managers and worker representatives.

Appendix: outline of legal aspects of employee representation

This appendix provides basic information only and is not an authoritative statement of the law.

Consultation on collective redundancies and business transfers

Employers are obliged by law to inform and consult employee representatives over planned collective redundancies (definition below) and transfers of undertakings (the regulations on transfers can apply regardless of the size of the undertaking) see the Trade Union and Labour Relations (Consolidation) Act 1992 and the Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1987. The employer is also required to allow employee representatives reasonable access to the employees they represent and to accommodation and other facilities as appropriate plus reasonable paid time off to perform their duties and for training.

DTI employment legislation guides Redundancy consultation and notification (PL833) and Employment rights on the transfer of an undertaking (PL699).

Unionised organisations

Where there is a recognised independent trade union representing employees who may be affected by a planned collective redundancy or transfer of undertaking, the employer must inform and consult that union. In a multi-union company all unions must be consulted.

Non-union organisations

Where there are employees who may be affected by a planned collective redundancy or transfer of an undertaking but 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.

Collective redundancy

A collective redundancy is one where twenty or more employees are to be dismissed as redundant within a ninety day period. Employers are under no legal obligation to inform and consult employee representatives in cases falling outside these thresholds although it is good practice to do so.

They may, however, be at risk of successful unfair dismissal claims if they fail to inform and consult individual employees who are dismissed.

Affected employees

Employees may be affected by a planned collective redundancy or transfer of an undertaking even though they themselves are not to be made redundant or to move to a new employer. In the event of a dispute, whether or not any particular employee or class of employees was affected would be for an employment tribunal to decide in the light of all the facts.

Elections of representatives in non-union organisations

In non union organisations where employee representatives are specially elected the following rules apply:

- The employer must make arrangements that are reasonably practical and which ensure that the election is fair
- The employer must determine the number of representatives to be elected so that they represent the interests of all those affected
- The employer must determine whether the affected employees should be represented either by representatives of all them or by representatives of particular classes
- Before the election the employer must determine the term of office of employee representatives. It must be of sufficient length to enable relevant information to be given and consultations to be completed
- The candidates for election as employee representatives must be affected employees on the date of the election
- No affected employee is unreasonably excluded from standing for election
- All affected employees on the date of the election are entitled to vote
- The employees entitled to vote may vote for as many candidates as there are representatives to be elected; or, if there are to be representatives for particular classes of employees, for as many candidates as there are representatives to be elected to represent their particular class of employee
- The election must be conducted so that:
 - a. those voting do so in secret, and
 - b. the votes are accurately counted.

Where an employee representative ceases to act and, in consequence, certain employees are no longer represented, another election should be held which satisfies the rules.

If affected employees having had a genuine opportunity to do so fail to elect representatives, the employer may provide relevant information to them direct.

Compensation

The maximum compensation a tribunal can award in the event of an employer's failure to inform and consult in cases involving redundancies is 90 days' pay and in cases involving transfers of undertakings 13 weeks' pay.

Protection from victimisation

Employees and representatives have protection against unfair dismissal and other detrimental treatment for participating in elections, either as candidates or voters, or because of their status or activities. Those who feel that their rights have been infringed may complain to an employment tribunal.

Health and safety

By law, all employers must consult all their employees on health and safety matters.

If an employer recognises a trade union and that trade union has appointed, or is about to appoint, safety representatives under the Safety Representatives and Safety Committees Regulations (SRSCR) 1977, then the employer must consult those safety representatives on matters affecting the group or groups of employees they represent. The groups of employees being represented may include people who are not members of that trade union.

Any employees not in groups covered by trade union representatives must be consulted by their employers under the Health and Safety (Consultation with Employees) Regulations (HSCER) 1996. The employer can choose to consult them directly or through elected representatives.

If the employer consults employees directly, he or she can choose whichever method suits everyone best. If the employer decides to consult his or her employees through an elected representative, then employees have to elect one or more persons to represent them.

Employers must make sure that elected representatives receive the training they need to carry out their roles, give them the necessary time off with pay and pay any reasonable costs to do with the training. The Trades Union Congress (TUC) or the trade union concerned will offer

training to trade union safety representatives. All representatives must be given time off with pay to take part in any training needed.

Representatives must be given reasonable time off with pay and appropriate help and facilities so they can carry out their role. Candidates for election are also entitled to reasonable time off with pay to carry out their roles. Employees or their representatives must be given enough information to allow them to take a full and effective part in the consultation.

Health and safety inspectors enforce the Regulations. If employers do not satisfy the Regulations they will be committing an offence. Employees who feel they have been unfairly dismissed or have other action taken against them because they have taken part in health and safety consultation arrangements (whether as an individual or a representative) may complain to an employment tribunal.

The Companies Act 1985

The Companies Act 1985 although not imposing any obligation to consult requires employers whose average number of employees exceeds 250 to include in the directors' annual report 'a statement describing the action that has been taken during the financial year to introduce, maintain or develop arrangements aimed at:

- providing employees systematically with information on matters of concern to them as employees
- consulting employees or their representatives on a regular basis so that the views of employees can be taken into account in making decisions which are likely to affect their interests
- achieving a common awareness on the part of all employees of the financial and economic factors affecting the performance of the company.'

Transnational Information and Consultation of Employees Regulations 1999

(The Regulations use the term 'undertakings' which may include partnerships and other forms of organisation as well as companies.)

Scope of Regulations

The Regulations apply to European Community-scale undertakings (or groups of undertakings) with at least 1000 employees within the Member States and at least 150 employees in each of at least two Member States where:

- the central management is in the UK
- the central management is not in a Member State but their representative agent or the largest establishment is in the UK.

The Regulations do not apply if a European Works Council was set up voluntarily by 15 December 1999 which satisfies the conditions specified in Article 13 of the Transnational Information and Consultation Directive.

The process for establishing a European Works Council

The procedure may be triggered by the central management of the undertaking or by a written request from a 100 or more employees, or their representatives, in two Member States. Once the procedure has been triggered a special negotiating body is set up to conclude a written agreement with management covering the scope, composition, functions and term of office of the European Works Council, or alternatively the arrangements for implementing an information and consultation procedure. The 'Special negotiating body' must contain at least one member from each Member State plus additional members calculated in accordance with a formula based on the relative number of employees. UK members of the 'Special negotiating body' must be nominated in accordance with the Regulations either by an appropriate consultative committee or a ballot.

A European Works Council agreement must include:

- the undertakings or establishments covered
- the composition of the European Works Council, the number of members, the allocation of seats and the term of office of the members
- the functions and the procedure for information and consultation of the European Works Council
- the venue, frequency and duration of meetings of the European Works Council
- the financial and material resources to be allocated to the European Works Council
- the duration of the agreement and the procedure for its renegotiation.

Where an agreement is made for an alternative to a European Works Council it must specify a method by which representatives meet and discuss information relating to transnational questions which significantly affect the interests of the employees.

If within six months of receiving a request the central management refuses to negotiate, or if within three years the parties fail to reach agreement, a statutory European Works Council must be established. The composition and rights of a statutory European Works Council are set out in the schedule to the Regulations.

Disputes over the setting up of a European Works Council for example over the applicability of the Regulations in a particular case, constituencies for a ballot or disclosure of information will be referred to the Central

Arbitration Committee (CAC). Disputes about the operation of a European Works Council or failure to set one up will be referred to the Employment Appeal Tribunal (EAT) who may impose a penalty up to a maximum £75,000.

Representatives who feel they have been denied rights to paid time off or unfairly dismissed or victimised for carrying out their duties may apply to an employment tribunal.

Trade union recognition

Employers and employees may agree whatever arrangements for recognising trade unions for collective bargaining that they find suitable. Acas is willing and able to assist organisations with voluntary recognition arrangements. If, a voluntary agreement cannot be reached then a trade union may invoke the statutory recognition procedure in organisations where employers have 21 or more workers.

Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992, sets out the legal process for unions and employers when dealing with a request from a trade union to be recognised for collective bargaining.

The statutory recognition process

The statutory process for recognition applies only to an independent trade union (2), or two or more independent trade unions acting together. Even when the statutory process has begun there are a number of stages where the union can withdraw its application if the parties can reach voluntary agreement. Both Acas and the CAC are anxious for statutory recognition cases to be settled voluntarily wherever possible and the CAC is required to promote voluntary settlements. Parties to statutory recognition cases are therefore encouraged to seek Acas involvement whenever this could be helpful, at any stage of the application process.

Stage 1: Initial application

To start the process, a union must submit a formal request in writing to the employer. In order for the application to be valid it must:

- be received by the employer
- identify the union (or unions) making the request and the 'bargaining unit' (the group of workers) to which it relates
- state that it is made under Schedule 1 to the Employment Relations Act
- be made to an employer with 21 or more workers

- be made in the proper form.

Stage 2: Negotiation

The employer has ten working days (two full weeks) in which to respond. If the employer fails to respond, or rejects the union's request, the union may apply to the Central Arbitration Committee (CAC). If the employer agrees to negotiate, they have an additional 20 working days to negotiate about what the bargaining unit should be and whether the union should be recognised. This period can be extended, if the parties agree. The employer and the union (or unions) may request Acas to assist in conducting the negotiations.

If the employer agrees to recognise the union at this stage, it will count as 'semi-voluntary recognition'.

Stage 3: Application to the CAC

If the parties cannot agree, the union may apply to the CAC to decide the appropriate bargaining unit, if necessary, and whether the union should be recognised. The CAC has ten working days to apply a number of tests. In order to proceed the application must:

- be a valid application at stage 1
- be made in the proper form
- be copied to the employer, along with any supporting documents
- not cover any workers for whom a union (whether independent or non-independent) is already recognised (with limited exceptions)
- satisfy the CAC that at least 10 per cent of workers in the proposed bargaining unit are members of the union
- satisfy the CAC that a majority would be likely to favour recognition
- not cover any workers in respect of whom the CAC has already accepted an application. That is, bargaining units of applications must not overlap. The CAC cannot adjudicate between overlapping applications. If one of the competing applications has at least 10 per cent membership of the bargaining unit, then the CAC will consider that application and reject the others. If more than one application has 10 per cent membership in the bargaining unit, then the CAC must reject them all
- not be substantially the same as an application which the CAC accepted within the previous three years
- not be made within three years of a union failing to achieve recognition following a ballot or of the CAC declaring that the union (or the same

group of unions) be derecognised in respect of the same (or substantially the same) bargaining unit as in the current application.

If the CAC rejects the application then the recognition process ends. If the CAC accepts the application then it proceeds through stages four to eight.

Stage 4: Decision on bargaining unit

If the union and the employer have already agreed on a bargaining unit, the application proceeds to the next stage. Otherwise they have 20 working days in which the CAC will try to help them agree a bargaining unit. Acas can often help the parties agree a bargaining unit. The CAC can extend or shorten this period if necessary and will decide the appropriate bargaining unit if the union and the employer cannot agree.

Stage 5: Re-application of preliminary tests

If the bargaining unit agreed or decided at the previous stage is substantially different from the one proposed on the initial application then some of the initial tests the ones which concern the bargaining unit are re-applied. They are:

- whether there is an existing recognition agreement covering any workers in the bargaining unit agreed or decided by the CAC
- whether at least 10 per cent of the workers in the bargaining unit are members of the union making the application
- whether a majority of the workers in the bargaining unit are likely to favour recognition
- whether there are any competing applications, covering any workers in the bargaining unit
- whether the bargaining unit is the same or substantially the same as that in any application accepted in the last three years, or where a ballot was lost in the last three years, or where the union concerned was derecognised in the last three years.

Stage 6: Testing trade union support

Once the bargaining unit is either agreed or decided by the CAC, then (unless the employer and union can agree recognition) the CAC must decide the level of support. If over 50 per cent of the bargaining unit are members of the union the CAC will normally declare the union recognised and if membership is below 50 per cent will declare its intention to hold a recognition ballot. The CAC may declare a ballot even where membership is over 50 per cent if:

- it feels that it would be in the interest of good industrial relations

- a significant number of members inform them that they do not want the union to conduct collective bargaining on their behalf
- membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf.

Stage 7: Holding a ballot

If the CAC gives notice that it intends to hold a ballot, the union has ten working days to decide whether to withdraw. If the union withdraws, the ballot will not be held and recognition will not be granted. Otherwise the CAC will appoint an independent scrutineer to run the ballot following which the ballot must be conducted within 20 working days unless the CAC decides to extend the period. The costs of the ballot are shared 50:50 between the employer and the union or unions. The CAC decides whether the ballot should be conducted at the workplace or by post, or a combination of the two.

Stage 8: Ballot result

The CAC must declare recognition if a majority of participants and at least 40 per cent of the workers constituting the bargaining unit vote in favour. The CAC must inform the employer and union of the result as soon as possible after the ballot.

Recognition is for collective bargaining on pay, hours and holidays (and any other matters agreed by the parties). Once a union is recognised, a method for conducting collective bargaining on pay, hours and holidays needs to be agreed since otherwise recognition is virtually meaningless.

In the first instance it is for the two parties themselves to reach an agreement on a method of bargaining; they may wish to seek the help of Acas in doing so. If the parties cannot agree a procedure themselves within 30 working days, either party can apply to the CAC for assistance. The CAC then tries to help the parties reach agreement. The period for helping the parties reach agreement is 20 working days.

If the parties cannot reach agreement, the CAC will specify a method of collective bargaining. In drawing up a method, the CAC panel will take account of the views of the parties, and also of the Trade Union Recognition (Method of Collective Bargaining) Order 2000 (the 'model method'). Where the CAC both awards recognition to a trade union and specifies a method of collective bargaining, the employer is obliged to consult union representatives over training.

Where the CAC specifies the method of collective bargaining, the method is legally enforceable unless both parties agree in writing that the method is not to be legally binding or agree to vary or replace the method. As with

any legally binding contract, enforcement is a matter for the courts. The remedy for a breach of any aspect of the method is specific performance.

Working Time Regulations

The Working Time Regulations currently apply to most workers. For further information see the Acas Advisory Booklet: Changing Patterns of Work. Where current Regulations do not apply it is helpful to reach voluntary agreement with employees and their representatives on working time issues.

Under the Working Time Regulations employers and workers can agree that the night work limits, rights to rest periods and rest breaks may be varied, with the workers receiving 'compensatory rest'. They may also agree to extend the reference period for the working time limits up to 52 weeks.

These agreements can be made by 'collective agreement' (between the employer and an independent trade union) or a 'workforce agreement'. If a worker has any part of their conditions determined by a collective agreement they cannot be subject to a workforce agreement. Workforce agreements are made between an employer and duly elected worker representatives or in the case of employers with 20 or fewer workers between the employer and the majority of workers.

Where a collective or workforce agreement modifies or excludes any provision of the Regulations and a worker is required to work during a period which would otherwise be a rest break, the employer must allow compensatory rest wherever possible. In exceptional cases, in which it is not possible for objective reasons to grant such a rest period, the employer must afford the employee such protection as may be appropriate in order to safeguard the worker's health and safety.

'Workforce agreements' are made with elected representatives of the workforce in most cases (see below). A workforce agreement can apply to the whole workforce or to a group of workers. To be valid a workforce agreement must comply with the conditions set out in Schedule 1 to the 1998 Regulations it must:

- (a) be in writing
- (b) have effect for a specified period not exceeding five years
- (c) apply either to
 - (i) all of the relevant members of the workforce, or
 - (ii) all of the relevant members of the workforce who belong to a particular group
- (d) be signed by

- (i) the representatives of the workforce or of the particular group of workers, or
- (ii) where an employer employs 20 or fewer workers on the date on which the agreement is first made available for signature, either appropriate representatives or by a majority of the workers employed

(e) before the agreement was made available for signature, the employer must have provided all the workers to whom it was intended to apply with copies of the text of the agreement and such guidance as they might reasonably require in order to understand it fully.

Relevant members of the workforce' are defined as all the workers employed by a particular employer (excluding any worker whose terms and conditions of employment are provided for wholly or in part in a collective agreement). Therefore, as soon as a collective agreement is in force in respect of any worker, the provisions of any workforce agreement in respect of that worker cease to apply.

Requirements for the election of workforce representatives are as follows:

(i) the number of representatives to be elected shall be determined by the employer

(ii) candidates for election as representatives for the workforce must be relevant members of the workforce and the candidates for election as representatives of a particular group must be members of that group

(iii) no worker who is eligible to be a candidate can be unreasonably excluded from standing for election

(iv) all the relevant members of the workforce are entitled to vote for representatives of the workforce and all the members of a particular group must be entitled to vote for representatives of that group

(v) the workers must be entitled to vote for as many candidates as there are representatives to be elected

(vi) the election must be conducted so as to secure that (i) so far as is reasonably practicable those voting do so in secret, and (ii) the votes given at the election are fairly and accurately counted.

Notes

1. Trade unions certified as independent of employers by the Certification Officer.

2. The revised Acas Code of Practice Time off for trade union duties and activities is available from Acas Publications, tel: 08702 42 90 90 or by visiting the Acas web site at www.acas.org.uk.

Suggested further reading

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Basingstoke, Palgrave, 1998

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Employee relations (3rd ed)
London, CIPD, 2002

Gilbert, Robbie and Steel, Roger

Employee representation
Croydon, Tolley, 2000

Hollinshead, Graham, Tailby, Stephanie and Nicholls, Peter

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London, FT Prentice Hall, 2002

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Company councils
London, IDS, 2002
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European works councils
London, IDS, 2002
(IDS Study 722)

Moore, Roger

Joint consultation: making it work
London, Spiro Press, 1995
(Employment matters)

Sloan, Rachel

European works council: moving forward with employee consultation: a
guide to good practice
London, Involvement and Participation Association, 1998

Towers, Brian and Brown, William

Employment relations in Britain: 25 years of the Advisory, Conciliation and
Arbitration Service
Oxford, Blackwell, 2000

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Partners for progress: new unionism in the workplace
London, TUC, 1999

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