

National Works
Councils in the UK
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Introduction

- National Works Councils Directive
 - in force March 2002
 - deadline for implementation – March 2005

- UK Information and Consultation of Employees Regulations 2004 (“ICE”)
 - in force 6 April 2005
 - apply to “undertakings” whose registered office, head office or principal place of business is in Great Britain and who employ a sufficiently high number of employees to trigger the Regulations
 - Department of Trade and Industry (“DTI”) guidance: “undertakings” includes:
 - partnerships
 - trade unions
 - charities
 - individuals
 - companies

Why national works councils?

- traditions in the other member states
- political motivation behind the proposal
- genesis of the current directive
- UK's blocking tactics
- UK ultimately had to accept the directive (with a long transitional period)

Transitional period

- **Staggered implementation:**
 - all undertakings with 150 or more employees from 6 April 2005
 - all undertakings with 100 or more employees from 6 April 2007
 - all undertakings with 50 or more employees from 6 April 2008
 - Employees throughout the UK should be counted but employees employed overseas should not
 - Average number of employees over the previous 12 months
 - Part-time employees may be counted as half a person
- **Impact?**
 - 2005 DTI: “almost 97 per cent. of firms in the UK employ less than 50 employees”

Types of national works councils

- **National works councils**
 - first class = voluntary agreements
 - second class = negotiated agreements under the Regulations
 - third class = default agreements under the Regulations

Voluntary agreements

- **First class = voluntary agreements**
 - the employees need not make a formal “employee request”
 - can be put in place at any time

Negotiated agreements (1)

- **Second class = negotiated agreements**
 - the “employee request”: an aggregate of 10% of employees (subject to a minimum of 15 and a maximum of 2,500)
 - employees have six months from the first request to achieve the 10% aggregate
 - employer then obliged to negotiate national works council agreement – appoint “negotiating representatives” as soon as is “reasonably practicable”
 - unless pre-existing agreement in place (and employee request not supported by 40% of the workforce)
 - six months to reach agreement (beginning three months after valid employee request)
 - minimum content of such agreement specified by the Regulations

Negotiated agreements (2)

- **Second class = negotiated agreements – employee approval**
 - be signed by all the negotiating representatives; or
 - be signed by majority of the negotiating representatives and either
 - written approval of at least 50% of the workforce; or
 - approved by 50% of employees who vote in a ballot of the entire workforce

Advantages of a pre-existing agreement

- Pre-existing agreement – higher criteria for valid employee request before employer is obliged to negotiate a national works council agreement
 - 40% threshold
 - less than 40% - employee request is subject to an endorsement ballot
 - endorsement ballot requires support of at least 40% of workforce and the majority of employees who vote in the ballot
 - endorsement = obligation to initiate negotiations
 - no endorsement = three-year moratorium from date of valid request

Default agreements

- **Third class = default agreements**
 - standard provisions imposed where no negotiated agreement has been reached during the six month period (and time limit not extended by mutual consent)
 - employer to set up information and consultancy structures to comply with standard provisions
 - employers who conducted negotiations that failed have a further six months to implement the standard provisions
 - failure to implement – penalty notice from Central Arbitration Committee or Employment Appeal Tribunal fine of up to £75,000 (to Secretary of State of Trade and Industry)

Conclusion

- ICE Regulations have had a limited impact
 - staggered implementation
 - lack of awareness and apathy among employees
 - role of the trade unions
 - pre-existing agreements and three-year moratorium
 - Regulations do not prescribe methods of consultation
 - “soft” sanctions for failing to comply with the Regulations
 - employees have little motivation to bring a claim
 - under Article 8(2) of the Directive, sanctions must be “effective, proportionate and dissuasive” – Regulations open to challenge on this point
 - overlap with existing statutory duties to consult (TUPE, collective bargaining, collective redundancy, health and safety and pensions legislation)