Guide for RMT Reps

Information & Consultation Rights
(Employment Relations Act 2004)

What are the new Information & Consultation (I&C) rights and why were they introduced?

- The EC Information and Consultation Directive was incorporated into UK law in the Employment Relations Act 2004 and it aims to ensure that employees are informed and consulted by management ahead of likely changes within their company's organisation due to business reasons or economic outlook. This includes any potential threat to jobs. The European Union's intention is for employees to have influence over such decisions and in this sense the Act confers a more positive right than previous UK redundancy and TUPE legislation.

Who is covered by the I&C rights?

- Only companies with over 50 employees will be covered. I&C rights will be applied to companies on a phased basis depending on the number of employees:

Number of employees	*Date Regulations apply*
At least 150	6th April 2005
At least 100	6th April 2007
At least 50	6th April 2008

- Long haul seafarers are excluded from I&C rights. 'Long haul' means those seafarers not employed as ferry workers or those working on voyages of less than 48 hours duration.

How will I&C rights be triggered?

- In the absence of a decision by management to initiate negotiations with employees, the employer must establish an information and consultation procedure when a valid request has been made by 10% of employees

(minimum 15, maximum 2,500). This figure must be demonstrated by a petition.

- If the employees making the request wish to remain anonymous, names can be submitted to an independent body such as the Central Arbitration Committee.
- It is not enough for a recognised trades union which the employer knows represents in excess of 10% of employees to automatically secure new I&C rights on request. A petition is still necessary if the employer is not willing to negotiate in the first instance.

What rights does it confer?

As a statutory minimum the employer must provide information to elected employee representatives on the following:

- The recent and probable development of the company's activity and economic outlook.
- The probable development of employment within the company and in particular, whether this is likely to lead to substantial changes in the organisation or threat to jobs .

Information must be provided in good time and with such content to enable employee representatives to conduct an adequate study and where necessary to prepare for consultation. The employer must consult the employee representatives on the matters referred to above.

What if there is a pre-existing agreement in place?

Existing good practice will not be undermined – the Regulations provide only a statutory minimum for information and consultation rights. If a union is content that it is already being properly consulted in these areas, its agreement with a company would remain in operation. **No application for improved I&C rights can be lodged if the pre-existing workplace agreement is less than 3 years old.** However, if both the company and union wish to see existing information and

consultation rights strengthened, there is nothing to stop them from agreeing this through the normal collective bargaining machinery.

If the union and company disagree about whether the pre-existing agreement (which is more than 3 years old) is sufficient, the union must petition the company in the fashion outlined above with the names of 10% of employees. If the company still refuses to negotiate, it must prove that the existing agreement retains the support of the employees by holding a workplace ballot. If 40% of the workforce and a majority of those who vote do so in favour of obtaining improved I&C arrangements, the employer must negotiate a new agreement. Where fewer than 40% of the workforce or a minority of those voting endorse the need for new I&C rights the employer is under no obligation to negotiate a new agreement and a 3-year moratorium on further requests begins.

To be valid, as well as being approved by employees, pre-existing agreements must be in writing, cover all employees in the undertaking and set out how the employer will inform and consult the employees or their representatives. The legislation does not impose any requirements on the method, frequency, timing or subject matter of the information and consultation arrangements set up under pre-existing agreements.

How will I&C rights work in practice?

After it has been proven that the employees want new I&C rights (demonstrated either by a petition of 10% of the workforce or 40% plus a majority of those voting in a ballot), the employer must negotiate with employee representatives as soon as is reasonably practical and within 3 months at the latest. Negotiations between the parties can last up to 6 months (and this can be further extended by agreement).

The statutory provisions, do not state how I&C reps should be appointed or elected, how many there should be or for how long they can serve, only that all employees be entitled to take part in the appointment or election of

representatives (non-union members would be entitled to vote). Obviously, existing workplace RMT reps would be able to stand for election.

Contents of a **negotiated** agreement

The legislation sets only limited requirements as to the contents of negotiated agreements, leaving this to the employer and negotiating representatives to decide. The circumstances in which the employees will be informed and consulted must be set out in writing, but the legislation does not stipulate the method, frequency, timing or subject-matter of information and consultation.

Contents of a **standard** agreement

The standard information and consultation provisions only apply where an employer fails to initiate negotiations for an I&C agreement when required to do so or where negotiations have failed to lead to an agreement.

If there is a failure to agree, the employer has a further 6 months in which to set up the necessary I&C structures as per the statutory requirements before the employees can bring a complaint to the Central Arbitration Committee.

Where the standard I&C provisions apply, employee I&C representatives are to be elected and the employer must inform and consult them in the following manner: -

Information on:

i) The recent and probably development of the undertaking's (Company's) activities and economic situation. The purpose of this information is to help I&C representatives understand the context in which decisions affecting employment, work organisation and employee's contractual relations are made

Information and consultation on:

ii) The situation, structure and probable development of employment within the undertaking and in particular, on any anticipatory measures envisaged where there is a threat to employment within the

undertaking. The emphasis here is on the overall number of employees within the undertaking

Information and consultation with a view to reaching agreement on

iii) Decisions likely to lead to substantial changes in work organisation or in contractual relations. 'Contractual relations' means employers' contractual relations with their employees.

Decisions in category iii) include decisions on collective redundancies and business transfers which are already covered by existing legal obligations to consult employee representatives. Employers will not need to consult employees under the standard I&C provisions where they notify I&C reps on a case-by-case basis that they will be consulting under the legislation on collective transfers or TUPE.

Employers are not obliged to follow I&C representatives' opinion. Decision-making remains the responsibility of management.

Employers and I&C representatives may come to a negotiated agreement at any time after the standard information and consultation provisions apply.

Approval of a negotiated agreement

A negotiated agreement must be approved either by all employee representatives or by at least 50% of employees in a workplace ballot.

Electing an I&C Committee

Following the approval of a negotiated agreement, it is for the parties to decide how many employees are to act as I&C, how they will be appointed or elected and how long they will serve for.

However, if the standard procedures apply, an I&C committee must be established representing all the employees in the company, by election of representatives through a ballot organised by the employer. The number of

representatives is proportional to the number of employees (1 per 50 employees or part of), with a minimum of 2 up to a maximum of 25.

Disclosure of 'harmful' information

There is no duty on the employer to disclose information that would "seriously harm the functioning of, or would be prejudicial to the company". The Central Arbitration Committee would rule in disputes between the employers and representatives about whether information is likely to "seriously harm" the business and therefore whether it should be released.

Penalty for non-compliance with I&C

The failure by an employer to comply with either a negotiated agreement or the statutory I&C provisions (but not to pre-existing agreements) must be brought to the attention of the Central Arbitration Committee within 3 months and could result in a penalty fine of up to £75,000.

Rights for I&C reps and employees

Information and consultation representatives are entitled to 'reasonable' paid time off in order to perform their duties. Employees may complain to an employment tribunal if their employer unreasonably refuses to let them take time off or fails to pay them for it.

Employees are protected against unfair dismissal or detriment by their employer when acting as representatives of employees in an I&C capacity.

Further information

Please direct any questions specific to this guide to the RMT National Policy Department on 020 7529 8281 or a.gittins@rmt.org.uk The DTI has produced detailed guidance on the legislation which is available at www.dti.gov.uk/er/consultation/proposal.htm and the ACAS good practice arrangements are available at www.acas.org.uk/services/ic.html