

Health and Safety Executive		Operational Minute	
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Target audience:
All visiting staff

**The Information and Consultation of Employees Regulations 2004
SI 2004 No 3426**

This OM informs operational staff about the introduction of DTI sponsored Regulations implementing EC directive 2002/14/EC which give employees in larger organisations the right to be informed and consulted about certain employment issues in their workplace. Although the regulations do not apply specifically to consultation on health, safety and welfare matters, employers and workers may raise questions about the relevance of these regulations to occupational health and safety, and about their relationship to HSE legislation and guidance on information and consultation. The Regulations are not relevant statutory provisions under HSWA. Enquiries should be referred to DTI .

BACKGROUND

1 The DTI Information and Consultation of Employees (ICE) Regulations 2004 implementing EC Directive 2002/14/EC came into force on 6 April 2005 and give employees in larger organisations the right to be informed and consulted about certain issues in their workplace, if at least 10% of employees formally request an Information and Consultation (I & C) agreement, or if the employers choose to start this process. Enforcement and resolution of complaints take place through a Central Arbitration Committee (CAC).

KEY POINTS

2 The ICE Regulations are quite complex and include many specific definitions and information on what constitutes an I & C agreement; the meaning of the term 'undertaking'; calculations on numbers of employees and the meaning of the term 'employee'; how the regulations apply to temporary, agency or contract workers; election or appointment of representatives; the setting up of consultation arrangements; and resolution of complaints by a Central Arbitration Committee (CAC), which can be found in the DTI guidance

to the Regulations.

3 The Regulations apply to undertakings with over 150 employees from 6 April 2005; over 100 employees from 6 April 2007; and over 50 employees from 6 April 2008. The regulations do not apply to undertakings with fewer than 50 employees.

4 The legislation envisages that most I & C agreements will be negotiated and sets very limited requirements as to the contents of such negotiated agreements, leaving it to the employer and representatives to agree arrangements best suited to their specific requirements. Where a negotiated agreement cannot be reached, the Regulations set out standard information and consultation provisions.

5 There are 3 categories of information that employers who are subject to the standard provisions must provide to I & C representatives. These are information on:

- a) The recent and probable development of the undertaking's activities and economic situation;
- b) The situation, structure and probable development of employment within the undertaking; and
- c) Decisions likely to lead to substantial changes in work organisation or in contractual relations.

Employers must also consult I & C representatives on b) and c) above.

6 Employees who act as negotiating or I & C representatives have certain rights and protection under the legislation, including the right to take reasonable time off during working hours to perform their functions as representatives.

RELEVANCE OF THE ICE REGULATIONS TO HSE/LA STAFF

7 While the DTI regulations do not impose any duties or rights with respect to consultation on occupational health and safety matters, guidance from the Advisory, Conciliation and Arbitration Service (ACAS) on the legislation emphasises the more general importance of communication and consultation. The guidance sets out good practice and the business benefits of consultation and worker involvement, and suggests that a communication and consultation process can be set up to include other issues, such as training and health and safety.

8 The ACAS guidance also refers to other legal aspects of consultation, including the Safety Representatives and Safety Committees Regulations 1977 (SRSC) and the Health and Safety (Consultation with Employees)

Regulations 1996 (H&SCWE) with which employers have a duty to comply. HSE and LA inspectors may therefore encounter enquiries about the relationship between the requirements of different regulations and whether joint consultation arrangements can be set up.

ACTION

9 Where employers or workers raise questions about consultation arrangements, HSE/LA staff should not insist on separate health and safety consultation arrangements, if arrangements made under ICE are also designed to satisfy the requirements of the SRSC or H&SCWE, and should, where appropriate, encourage sensible communication and consultation arrangements which will address all relevant legal duties. Specific queries about the ICE Regulations should be referred to the DTI Enquiry Unit Helpline on 020 7215 5000 or the website links in para 10 of this guidance.

FURTHER INFORMATION AND GUIDANCE

10 Further information on the ICE Regulations can be found at the [DTI Business Link website](#) or on the [ACAS website](#).

11 The HSE Worker Involvement Programme is currently involved in a number of initiatives to encourage more and better worker involvement in occupational health and safety. Further information and guidance on HSE legislation and initiatives can be found on the website at www.hse.gov.uk/workers/index.htm

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