

## Unit 7

### Other legislation dealing with information and consultation at work

This unit covers the following:

- information about conditions of employment
- occupational pensions
- the Companies Act 1985
- trade union recognition
- collective redundancies and business transfers
- health and safety
- the Transnational Information and Consultation of Employees Regulations 1999

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

### Information about conditions of employment

Employers are required to give employees written statements specifying the main contractual details within two calendar months of the commencement of employment. Employers must also notify employees in writing of any alteration in the specified details, generally within one month of the changes taking place.

The information to be included in a written statement is described in the Department of Trade and Industry's guidance PL700, *Written statement of main terms and conditions of employment*, available on-line at [www.dti.gov.uk/er/regs.htm](http://www.dti.gov.uk/er/regs.htm) The written statement must cover all the main details of pay and conditions including, for example, pay, hours of work, holidays, length of notice of termination and disciplinary rules. The written statement must also set out the employee's terms and conditions in full; it is not sufficient (except for certain items (2) to refer the employee to some other document such as an employee handbook.

Some contracts of employment include important terms and conditions additional to those that must be set out in a written statement for example: time-off arrangements and use of company cars. Future difficulties can be

avoided if such terms and conditions are also given to the employees in writing.

When providing employees with information on disciplinary rules and procedures, employers are advised to consult the Acas Code of Practice No 1 Disciplinary and Grievance Procedures. The Code urges employers to make every effort to ensure that employees know and understand the disciplinary rules that apply and are aware of the likely consequences of breaking those rules.

Such explanations and full coverage of the subject should be included in the induction programme of new employees.

Employers are also required by law to give employees itemised pay statements whenever payments are made. The statements should cover such detail as gross amount of pay, amounts of any fixed deductions and the net amount of pay. The detailed requirements are set out in the Department of Trade and Industry explanatory guidance PL704, *Pay statements: what they must itemise*, available on-line at <http://www.dti.gov.uk/er/regs.htm>

### **Occupational pensions**

The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 came into force on 6 April 2006.

Employers making certain changes to occupational and personal pension schemes are not required to consult employees or their representatives under the Information and Consultation of Employees Regulations 2004, as long as they are consulting about them under the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006. If the standard information and consultation provisions apply, an employer can give written notice to employee representatives that it will be consulting under the 2006 Regulations. If a negotiated agreement exists which contains requirements to consult on listed pension changes, an employer can give written notice to employee representatives or individuals that it will be consulting under the 2006 Regulations (provided that the agreement was made before 6 April 2006).

## **The Companies Act 1985**

Companies employing more than 250 people (calculated according to the legislation) are required by the Companies Act 1985 to include a statement in their Director's report describing the action taken in the previous financial year to introduce, maintain or develop arrangements in the following areas:

### Information/communication

- providing employees systematically with information on matters of concern to them as employees.

### Consultation

- 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.

### Financial participation

- encouraging the involvement of employees in the company's performance through an employee share scheme or some other means.

### Economic awareness

- achieving a common awareness on the part of all employees of the financial and economic factors affecting the performance of the company.

## **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.

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 a period of 90 days or less c. 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
  - not to be derecognised for at least three years

In rare cases where they are unable to reach agreement on a method of collective bargaining, trade unions and employers who are subject to an award of statutory recognition may have a method of collective bargaining imposed. In such cases, the recognised trade union also has a right to consultation on training.

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

For further details, see Acas advisory booklet on *Representation at work*. See also Acas code on *Time off for trade union duties and activities*. For the statutory trade union recognition procedure, visit the Central Arbitration Committee (CAC) website <http://www.cac.gov.uk>

## **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.

### *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 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.

For further details, see Department of Trade and Industry leaflets PL833 *Redundancy Consultation* and *Notification and Employment rights on the transfer of an undertaking* (PL699) <http://www.dti.gov.uk/publications>. See also Acas Advisory Booklet *Redundancy Handling* for further information on consulting in redundancy situations <http://www.acas.org.uk>.

### **Health and safety**

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.

## **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).

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. Further information on European Works Councils and the UK implementing legislation can be found at <http://www.dti.gov.uk/er/europe/workscouncil.htm>