

EXPLANATORY MEMORANDUM TO
THE INFORMATION AND CONSULTATION OF EMPLOYEES
REGULATIONS 2004

2004 No.

1. This Explanatory Memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Information and Consultation of Employees Regulations 2004 establish a right for employees, or their representatives, to be informed and consulted by their employer on matters prescribed by the Regulations. The regulations implement the EC Directive on Informing and Consulting employees (2002/14/EC) (“the EC Directive”). The Regulations apply to undertakings with 150 or more employees from 6 April 2005, to those with 100 or more employees from 6 April 2007, and to those with 50 or more employees from 6 April 2008.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Regulations are subject to the affirmative resolution procedure, and are made under powers contained in the Employment Relations Act 2004. The enabling power came into force on 16th September 2004 when the Employment Relations Act 2004 (“the 2004 Act”) was passed. The Regulations are based on a framework agreed between the Government, the CBI and the TUC for implementing the EC Directive. The powers contained under section 2(2) of the European Communities Act 1972 are not considered sufficiently wide to cover all aspects of the agreed framework.

3.2 The Joint Committee will also wish to note the following matters.

3.3 The provision for the imposition of civil penalties on employers contained in regulations 22 and 23 is similar to that in regulations 21 and 22 of the Transnational Information and Consultation of Employees Regulations 1999 (SI 1999/3323) and uses those earlier Regulations as a precedent. The power to include this enforcement mechanism is contained, the Department considers, in section 42(3) and (5) of the 2004 Act. Section 42(3) expressly enables the Secretary of State to make provision for the enforcement of the obligations in the Regulations while section 42(5) expressly provides for the Secretary of State to make any provisions that appear to her to be necessary or expedient for the purpose of implementing the EC Directive. In that connection, Article 8 of the EC Directive provides that Member States must provide appropriate measures in the event of non-compliance with the Directive by, inter alia, employers and ensure that adequate administrative or judicial procedures are available for enforcing the obligations that derive from the Directive (Article 8.1); Member States must also provide for adequate sanctions to be applicable in the event of infringement which must be effective, proportionate and dissuasive (Article 8.2).

3.4 In accordance with undertakings given by the Department, a draft set of these Regulations was available to Parliament when the 2004 Act was going through its

Parliamentary stages. That draft included the provisions enabling these civil penalties to be imposed. The following paragraphs explain the content of the regulations 22 and 23 in more detail.

3.5 Where the Central Arbitration Committee (CAC) upholds a complaint against an employer for breach of a negotiated agreement or the standard information and consultation provisions, the person who brought it may then apply to the Employment Appeal Tribunal (EAT) for a penalty to be imposed (regulation 22(6)). The EAT is required to impose a penalty on the employer, unless satisfied by the employer that the reason for the failure was beyond his/her control or there was some other reasonable excuse (regulation 22(7)).

3.6 The maximum amount of any penalty imposed on an employer by the EAT is £75,000 (regulation 23(2)). This figure mirrors the maximum penalty set in the Transnational Information and Consultation of Employers Regulations 1999 mentioned above (which implemented the European Works Council Directive 94/45EC), and was part of the framework agreement between the Government, CBI and TUC for implementing the EC Directive. In setting the amount of any penalty, the EAT must take account of all relevant factors, including: the gravity and duration of the failure, the reason for it, the number of employees affected by it, and the size (in terms of the number of employees) of the undertaking (or the group of undertakings in the case of an agreement covering more than one undertaking). When imposing a penalty, the EAT must issue a notice specifying the amount of the penalty, the date by which it must be paid and the failure and period to which the penalty relates. Penalties are payable to the Secretary of State, and are required to be paid into the Consolidated Fund.

3.7 Regulation 24 has the effect that the only remedies available are those provided for in Parts I to VI of the Regulations. A similar provision is made in relation to many of the rights contained in other employment legislation, for example, section 192(4) of the Trade Union and Labour Relations (Consolidation) Act 1992, in relation to the procedure for handling redundancies.

4. Legislative Background

4.1 The Regulations are made under powers contained in section 42 of the Employment Relations Act 2004. They give effect to the EC Directive on Informing and Consulting Employees (Directive 2002/14/EC). Article 1 of the Directive states that its purpose is to establish a general framework setting out minimum requirements for the right to information and consultation of employees in the European Community. The Directive applies – at the choice of Member States - to Community undertakings with 50 or more employees in a Member State, or establishments with 20 or more employees in a Member State. The UK has chosen to apply the Directive to undertakings with 50 or more employees.

4.2 The practical arrangements for information and consultation must be defined and implemented in accordance with national law and industrial relations practices in individual Member States in such a way as to ensure their effectiveness. Article 4 of the Directive sets out the subject-matter, timing and method for informing and consulting employees, but Article 5 permits Member States to leave employers and

employees to reach agreements on information and consultation that establish provisions which are different from those referred to in Article 4.

4.3 Article 6 requires Member States to provide for the protection of confidential information, and Article 7 for the protection of employees' representatives. Article 8 requires appropriate measures, adequate administrative or judicial procedures, and adequate sanctions to be put in place to ensure effective enforcement of the rights in the Directive. Article 9 clarifies the relationship between this Directive and other rights to information and consultation. Article 10 allows Member States to phase in application of their legislation over a period of three years. Article 11 requires member States to transpose the Directive by 23 March 2005.

4.4 The practical arrangements are left to Member States to determine, and the Department wishes to ensure that the resulting Regulations make use of this flexibility. A transposition note is attached.

4.5 The Commission's proposal for a Council directive was published in December 1998, and was the subject of an Explanatory Memorandum dated 15 January 1999 (13099/98). The House of Commons European Scrutiny Committee considered the proposal to be "legally and politically important" and cleared it (Report No 27, item 19679, session 98/99). The House of Lords European Union Committee did not formally report on it (Progress of Scrutiny 5/2/99 session 98/99). Further Explanatory Memoranda were submitted by the Department in November 2000 and June 2001. Both were cleared by the scrutiny committees.

4.6 The power to make regulations to implement the Directive is contained in Section 42 of the Employment Relations Act 2004. During the Bill's passage through Parliament, issues surrounding information and consultation were debated (most notably in the House of Commons on 14th January 2004, in Standing Committee D on 24th February 2004; and in the House of Lords on 29 April 2004 and in Grand Committee on the 15th and 16th June 2004). Additionally, the Department submitted a Memorandum to the Delegated Powers and Regulatory Reform Committee who reported, on 6th May 2004, that including a power in the Bill to make Regulations was "not inappropriate".

5. Extent

5.1 The Information and Consultation Directive applies to the UK as a whole. The implementing Regulations apply to Great Britain only. The Department of Employment and Learning Northern Ireland (DELNI) intends to make Regulations that apply to Northern Ireland, mirroring those in Great Britain. The Government of Gibraltar will be making its own legislation to implement the Directive there.

6. European Convention on Human Rights

6.1 Gerry Sutcliffe, Parliamentary Under Secretary of State for Employment Relations, Consumers and Postal Services, has made the following statement regarding Human Rights:

“In my view the provisions of the Information and Consultation of Employees Regulations 2004 are compatible with the Convention rights”.

7. Policy background

7.1 The Directive aims to give employees across the European Community new rights to be informed and consulted on an on-going basis about developments in the organisations they work for. The Government supports the objectives behind the Directive, and considers that where employers and employees work together in this it can benefit both the company and the employees. It believes that genuine on-going consultation can help to develop a climate of trust and co-operation that can make implementing business decisions easier, as well as ensuring that employees are treated fairly and informed about decisions affecting their future. The CBI and TUC, with whom the Government agreed a framework for implementing the Directive in the UK, also broadly support these policy objectives, as do many other UK stakeholders consulted by the Department.

7.2 Unlike many other European countries the UK does not already have a general information and consultation legislative framework in place. Existing statutory arrangements are limited to specific topics, such as collective redundancies, transfers of undertakings, and transnational issues. Although research suggests that many firms in the UK already inform and consult their employees, to some the concept of information and consultation may be new. Though the legislation applies to only 3% of UK firms, these firms employ approximately three quarters of UK employees. These Regulations are therefore politically and legally important, and there has been a considerable degree of interest in them.

7.3 In developing the policy the Department has been mindful of the particular nature of the UK economy, and was keen to give employers and employees the flexibility to agree arrangements that suit their individual needs. For example, Part III of the Regulations sets out a procedure for negotiating agreements, rather than imposing specific rules on the content and scope of information and consultation. The Regulations also allow employers and employees to agree that any existing agreements on information and consultation will continue to apply where they meet certain minimum standards. Information and consultation can take place either with employee representatives or directly with employees, and such representatives are protected against unfair dismissal or some other detriment. The UK has also made use of the flexibility provided for in Article 10 of the Directive to phase-in gradually the new obligations, thus providing smaller firms, who are less likely to have existing consultation arrangements, with a longer preparation period. Part VI of the Regulations implements the requirements of Article 8 concerning enforcement.

7.4 The Department has consulted widely both when drafting the regulations and when preparing explanatory guidance. The Department published a discussion paper, *High Performance Workplaces: The role of employee involvement in a modern economy*, in July 2002, to help establish the context in which the new legislation would be introduced and obtain views on the approach to implementation that should be adopted. In light of responses to that consultation, the Government negotiated and agreed with the CBI and the TUC a framework for implementing the Directive. This framework was published for consultation in July 2003, together with draft

Regulations and a draft Regulatory Impact Assessment in the consultation document, *High Performance Workplaces: Informing and Consulting Employee*. Both consultations received over 100 responses, and the Government organised two series of regional roundtables in Autumn 2002 and Autumn 2003 involving a range of stakeholders to discuss the questions raised in the two documents. In the light of responses to consultation, the Government published revised draft Regulations in July 2004, together with draft guidance on the legislation drawn up in consultation with CBI and TUC and on which it carried out a further public consultation. Over 30 responses to this consultation were received, and in addition the Department commissioned a pilot of the guidance involving almost 100 organisations, which provided very valuable feedback.

8. Impact

8.1 A Regulatory Impact Assessment (RIA) is attached to this Memorandum.

8.2 The RIA states that some public sector bodies will qualify as undertakings and so will fall within the scope of the legislation. The public sector can be estimated to account for around 4 per cent of the total costs and benefits to employers (although this estimate does not include public corporations and nationalised bodies, which are usually included in the public sector).

9. Contact

9.1 Philip Sack at the Department of Trade and Industry – telephone 0207 215 5730 or e.mail Philip.sack@dti.gsi.gov.uk - can answer any queries regarding the Regulations.

Gerry Sutcliffe,
Parliamentary Under-Secretary of State
For Employment Relations, Postal Services
And Consumers

8th December 2004

Regulations to establish a general framework for informing and consulting employees in the UK

October 2004

<http://www.dti.gov.uk/er>

Executive summary

1. This is the full and final Regulatory Impact Assessment (RIA) prepared by the Department of Trade and Industry to accompany the Information and Consultation Regulations 2004. The purpose of the legislation is to implement the EC Directive on Information and Consultation (I&C) in Great Britain. The Directive establishes a right to new minimum standards for workforce communication and involvement in undertakings with 50 or more employees or establishments with 20 or more employees. It is to be phased in between 2005 and 2008. In the UK the legislation will apply at the undertaking level.¹
2. It should be noted that almost 97 per cent of enterprises in the United Kingdom employ less than 50 employees, and so will not come within the scope of the Information and Consultation Regulations. This significantly reduces the likely cost impact of the Regulations on UK business.
3. The legislation will only impact on undertakings where there is some employee demand for I&C², and will also allow for the continuation of pre-existing arrangements, as well as giving employers and employees the opportunity to draw up new agreements adapted to the individual circumstances of the undertaking concerned.

¹ Defined as a public or private undertaking carrying out an economic activity, whether or not operating for gain, which is located within the territory of the Member States.

² The legislation is activated if at least 10 per cent of all employees (subject to a minimum of 15 and a maximum of 2,500 employees) in an undertaking make a formal request for information and consultation.

4. Businesses that are affected will incur total one-off costs of between £24 million and £53 million spread between 2005 and 2012. This includes the costs of becoming familiar with the legislation, establishing that there is sufficient support amongst the workforce to adopt an I&C procedure, electing worker representatives where necessary, negotiations between employers and employees on the type of I&C arrangement to be adopted and holding a meeting to set up the I&C arrangement.
5. There will also be additional running costs in holding regular meetings that will enable management to inform and consult employee representatives. This will cost business between £20 million and £46 million each year by 2012.
6. It is expected that there will be substantial economic and social benefits from the legislation over time. Effective employee information and consultation systems are a key enabler of high performance workplaces – they can help staff feel more involved and valued by their employer, make them better aware of the business climate in which the organisation is operating and help them be more responsive to and better prepared for change. Employers should see gains from a better informed, more motivated and committed workforce. This should lead to a greater ability to react rapidly to opportunities and threats, and lower staff turnover, thereby ultimately enhancing a company's productivity. Moreover, if employees become more willing to undertake training as a result of greater information and consultation, the result would be a more skilled workforce. Given the nature of these benefits it is hard to quantify them. However, we estimate that they are in the order of magnitude of hundreds of millions of pounds over a ten-year period.
7. The table below summarises the costs and benefits of the regulations to employers, workers, the Exchequer and the economy.

Quantified costs and benefits			
Benefits		Costs	
		One-off implementation costs	Recurring policy costs
To employers		<ul style="list-style-type: none"> Aggregate cost to all enterprises with 50 or more employees of becoming familiar with the legislation: £1.3m Total aggregate cost of establishing workforce support, electing employees representatives, negotiations and setting-up: £23-52 m 	<ul style="list-style-type: none"> Running costs of new and changed I&C systems: £19-45 m a year Costs of disputes going to the Central Arbitration Committee (CAC), peaking at £85,000 to £2.4m in 2009
To workers	<ul style="list-style-type: none"> Gaining the right to be consulted on important decisions Gaining earlier access to information that could directly impact on their working lives Feeling more secure in their jobs 		<ul style="list-style-type: none"> Cost of disputes going to the CAC, which may be borne uniformly across the workforce, by employee representatives or trade unions
To the Exchequer			<ul style="list-style-type: none"> Extra costs to Acas in advice provision, peaking at £2,600-18,000 a year in 2009 Extra costs to the CAC, peaking at £47,000 to £1.3m a year (see paragraph 80 and table 9)
To the economy	<ul style="list-style-type: none"> Enhanced competitiveness through possibly higher productivity, lower labour turnover, and possibly a more skilled workforce through higher levels of training. Benefits net of costs may be in the order 	<ul style="list-style-type: none"> All the above costs 	<ul style="list-style-type: none"> All the above costs

**of hundreds of
millions over ten
years.** It is unclear
who will appropriate
these benefits -
employers or workers.

Purpose and intended effect

Background

1. Article 4 of the EC Information and Consultation Directive³ gives employees in the undertakings covered a right to be:

- Informed about the undertaking's economic situation;
- Informed and consulted about employment prospects; and
- Informed and consulted with a view to reaching agreement about decisions likely to lead to substantial changes in work organisation or contractual relations, including redundancies and business transfers.

2. The Directive is due to be implemented by 6th April 2005. It applies to undertakings with more than 50 employees, or establishments with more than 20 employees. Each Member State can decide whether it should apply at the undertaking or establishment level. In the United Kingdom, the legislation will apply at the undertaking level. There are transitional provisions that allow Member States to phase in implementation of the Directive. For undertakings employing between 100 and 149 employees, implementation may be delayed until 2007; for undertakings employing between 50 and 99 employees, implementation may be delayed until 2008. The UK intends to make use of these transitional provisions. Firm size will not be measured in terms of absolute number of employees, but in terms of the number of full-time equivalent employees.

3. Previously statutory information and consultation rights were limited to specific topics, in particular consultation about collective redundancies, transfers of business ownership, health and safety, and transnational issues through European Works Councils.

4. The Directive is geared towards a more systematic approach to information and consultation and gives employees expanded rights to be informed and consulted on an on-going basis about developments in the organisation they work for. Information and consultation has to take place at an appropriate time and at the level of management relevant to the subject. Normally it will be done via employee representatives, defined according to national law and practice. The representatives, having received the appropriate information, may meet the employer, present their opinion and receive a reasoned response. The legislation will also allow for direct methods of I&C where this has been agreed with the employees or their representatives.

Objective

5. The Government stated in the initial *High Performance Workplaces* discussion paper⁴ that the basic case for these standards is fair treatment for people at work and to give those employees who want it the right to information and consultation. There is a good deal of information, consultation and involvement already in the UK and the legislation is not intended to undermine existing good practice or impose rigid requirements across all businesses; rather it is intended to be supportive of existing

³ Directive 2002/14/EC of the European Parliament and of the Council of 11th March 2002 establishing a general framework for informing and consulting employees in the European Community. A copy of the Directive can be found at the following website: http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_080/l_08020020323en00290033.pdf

⁴ Copies available at: <http://www.dti.gov.uk/er/consultation/informconsult.pdf>

best practice. The overall objective should be to enhance the contribution of everyone involved in the business, to the benefit of the company itself and all its staff.

6. In negotiations on the Directive, the Government made clear that there should be no single, static model for information and consultation – a ‘one size fits all’ approach would not be appropriate. Article 5 of the Directive is key here because it allows undertakings the flexibility to agree on I&C procedures that are different from the standard model set out in Article 4. The UK Regulations take full advantage of this flexibility by providing an opportunity to help build on existing UK experience in the employee-communication field and create room for the wide diversity of practices that have built up over the years, combining both representative and direct forms of participation. The intention is to help individual organisations develop their own arrangements tailored to their particular circumstances, through pre-existing or newly negotiated agreements.

7. The standard provisions, based on Article 4, will only be relevant in the event that there is sufficient employee demand for new I&C procedures or a change to existing valid procedures, and where no agreement is reached on the form the new I&C arrangements should take. This approach should help to ensure that the legislation is applied in a less burdensome way than if all enterprises were automatically required to have a uniform system of I&C arrangements.

Risk assessment

8. The risk that exists with the status quo is that employers and employees are not making the most of their relationship within the workplace and as such are not contributing their full potential.

9. Approximately half of all establishments in the UK with over 25 employees have a formal means of communication and consultation between employers and employees – WERS 98⁵ found that 47 per cent of establishments have (at least) a joint consultation committee at the workplace level. All other member countries of the European Union except Ireland have legislated for the provision of I&C systems, usually via a works council, or an equivalent type of body. This is not to say that all companies required to have a works council do so – in many countries the proportion of enterprises with a works council is not particularly high, especially among smaller enterprises⁶ – and one of the reasons frequently given by companies is that employees do not want one.

10. Evidence from WERS 98 suggests that 35 per cent of employees rate the way management involve employees as either poor or very poor. Although not all these employees will wish to introduce or change I&C arrangements in their workplaces, it does suggest that there will be a significant demand for such introduction or change.

11. Given that many organisations already have some means of employee involvement in place, the proposed legislation has provisions that allow enterprises with existing arrangements in place to retain them, thus taking account of inherent differences amongst enterprises.

⁵ Workplace Employee Relations Survey 1998.

⁶ This is shown for Germany in table 1 of *Works Councils in Germany: their effects on establishment performance*, John T. Addison et al., 2001.

12. It is argued below that I&C arrangements bring significant benefits, but many enterprises do not have them in place at the moment. This may be due to employers' lack of knowledge about what the benefits would be, not being convinced that the benefits would outweigh the costs, and/or reluctance to let employees into 'their domain'. By the latter we mean fear of sharing decision-making (the decisions will remain with the management, however), or just fear of sharing information. For further discussion of these issues, please see the benefits section.

Options

13. The Partial RIA published in July 2003⁷ set out four possible options:

- 1) Do nothing.
- 2) All undertakings with over 50 employees must establish an I&C procedure as laid out by Article 4 of the Directive.
- 3) The legislation to only apply where a certain number of employees demonstrated a demand for a statutory I&C procedure. This would take the form of a written request made by at least 10 per cent⁸ of the employees in the undertaking concerned. Once this test has been passed the statutory I&C procedures would come into effect as in option 2. Where no such request was made, the employer could continue with whatever non-statutory I&C arrangements they currently have (if any).
- 4) This option takes the first element of option 3 – i.e. at least 10 per cent of employees would need to make a valid request for an I&C procedure. However, this option is more flexible in that it allows employees and employers to negotiate agreements that meet their particular needs. For enterprises that already have valid I&C agreements⁹ in place, the employer would have the option to organise a ballot of the workforce to confirm or reject the initial request. If the request is confirmed by at least 40 per cent of employees in this ballot (and a majority of those who vote), or if there is no valid pre-existing agreement, a period of negotiation follows whereby the employer and employee representatives seek agreement on an I&C procedure. This option makes full use of the provisions set out in Article 5 of the Directive that says that management and labour may reach negotiated agreements, or adopt pre-existing agreements that differ from those in Article 4 of the Directive. Only if the negotiations fail will the statutory provisions based on Article 4 of the Directive come into force.

14. In the partial RIA, the costs of the fourth option were estimated to be £430 million on a present value basis over ten years, whilst the third option was estimated to cost £459 million on the same basis, and the second option £819 million. Although the cost of the fourth option in this full RIA has been adjusted to £120 to £290 million

⁷ For a fuller analysis of the costs and benefits of each option see the earlier Partial Regulatory Impact Assessment available at: http://www.dti.gov.uk/er/consultation/i_c_ria.pdf

⁸ Subject to a minimum of 15 and a maximum of 2,500 employees. In certain cases this means the percentage of employees required to make a request for I&C procedures will be different from 10 per cent of the total workforce. For example in undertakings of 50 employees, the percentage figure would be 30 per cent and in undertakings of 100,000 employees, the figure would be 2.5 per cent.

⁹ A valid pre-existing agreement must be in writing, must cover all the employees of the undertaking, have been approved by the employees and set out how employees or their representatives are to be informed and consulted.

over ten years, the estimated cost of options two and three would still be significantly higher than that for option four, if they were recalculated on the same basis as option four has been. Moreover, there are likely to be greater benefits from tailoring arrangements to the circumstances of particular enterprises. The results of the consultation supported this view with those who expressed an opinion saying that they preferred option 4.

Business sectors affected

15. The Directive will be implemented across the entire UK, but the devolved administration in Northern Ireland is responsible for implementing the legislation in Northern Ireland. This Regulatory Impact Assessment considers the effects on the entire UK, because of difficulty in obtaining some statistics for Great Britain instead of the UK, and the relatively small difference between looking at the costs and benefits for the UK and those for Great Britain.

Table 1. Enterprises in the ‘private sector’, (including public corporations and nationalised bodies) with 50 or more employees, by sector

Firm size	Number of enterprises	Share of enterprises in industry (excluding one-person enterprises)
Agriculture, forestry and fishing	178	0.3%
Mining, quarrying, energy, water	*	*
Manufacturing	9,611	8.0%
Construction	1,584	1.4%
Wholesale, retail and repairs	5,496	2.1%
Hotels and restaurants	2,011	1.8%
Transport, storage, communication	1,822	4.0%
Financial intermediation	932	5.3%
Real estate, business activities	5,595	2.0%
Education	*	*
Health and social work	2,248	4.5%
Other social/Personal services	1,334	1.5%
All enterprises with 50 or more employees	32,171	2.8%

Source: SME Statistics for the UK 2003, published by the Small Business Service 2004. A * symbol replaces data that is deemed to be disclosive.

16. All sectors are covered by the legislation and hence by these proposals. But in practice, table 1 shows that the likely impact of these changes will vary considerably by sector.

17. Table 2 shows that almost 97 per cent of UK enterprises employ less than 50 employees, and so would not be affected by the Information and Consultation Directive. This significantly reduces the likely cost impact of the Directive on UK business.

Firm size	Number of enterprises	Share of total
1 – 49	1,190,062	97.0%
50 – 99	17,661	1.4%
100 – 149	5,746	0.5%
150 – 199	2,463	0.2%
200 – 249	1,848	0.2%
250 – 499	3,756	0.3%
500 and more	4,468	0.4%
All enterprises	1,226,915	100%

Sources: SME Statistics for the UK 2003, Office for National Statistics and Department of Trade and Industry calculations.

18. Of those enterprises with 50 or more full-time equivalent employees, enterprises with 50 to 99 employees are the largest group. They accounted for around 18,000 or 1.4 per cent of all enterprises and 49 per cent of enterprises with 50 or more full-time equivalent employees. This category will not be subject to the Regulations until 2008. There are around 5,700 enterprises with 100 to 149 employees; they will not be subject to the I&C Regulations until 2007. Around 13,000 UK enterprises – those with 150 or more employees – will be subject to the Regulations from April 2005.

19. The Small and Medium Enterprise (SME) statistics for the UK 2003 are approximately broken down into public, private and not-for-profit sectors. The ‘public sector’ consists of central and local government and the ‘private sector’ of clear private sector enterprises plus public corporations and nationalised bodies. The ‘public sector’ accounts for around 1,500 or 4 per cent of all enterprises with 50 or more employees, the ‘private sector’ for around 32,000 or 86 per cent and the not-for-profit sector around 3,600 or 10 per cent. The public sector can therefore be estimated to account for around 4 per cent of the costs and benefits to employers worked out below, although this estimate does not include public corporations and nationalised bodies, which are usually included in the public sector.

20. Moreover, the Regulations will only apply to undertakings. It is not possible to say how many public sector bodies or enterprises are undertakings. Some public sector bodies will qualify as undertakings, others will not. The main activities of traditional central government departments concern the exercise of public authority and are unlikely to be undertakings but the position of public sector bodies or enterprises that carry out some form of commercial activity is less clear. Ultimately it will be for the courts to decide whether an organisation that carries out some form of commercial activity falls within the scope of the legislation. Where a public sector body is an undertaking, the Regulations will apply in exactly the same way as in the private sector. The Cabinet Office is developing a code of practice for civil service departments that are not undertakings. They will be expected to adhere to the main principles of the legislation and carry out good practice with regard to informing and consulting employees.

Assumptions

21. Our main assumption is that the majority of agreements will involve some form of consultation via employee representatives¹⁰, which may take the form of some sort of Joint Consultation Committee (JCC). Information and consultation can also take place directly with employees. This could be in addition or instead of that which takes place via representatives. It would be logical for employers and employee representatives to negotiate on the basis of the least cost and the maximum benefit, with the minimum net benefit arising from the more rigid standard provisions. For some companies this will probably lead to direct consultation systems, probably with a greater net benefit for the companies concerned than the costs and benefit calculations below.

22. An I&C system requires staff resources, both for setting up (balloting, negotiating and a set-up meeting) as well as for running the system. We assume that the extent of the extra resources required would depend on:

- the size of the undertaking; and
- what existing channels of informing and consulting with employees exist.

23. Each meeting in a medium-sized firm is likely to take up fewer members of staff than in a large-sized firm.

24. If enterprises already have some existing means of informing or consulting with employees, setting up a new system will require fewer extra staff resources than if none had existed in the first place. This would apply to both the one-off costs, as well as the costs that will be borne through running the system.

25. The tables in Annex A show the assumptions for the numbers of staff required and how much time they are likely to spend in setting up and running an I&C system. We make separate assumptions for different-sized enterprises and for enterprises with different initial systems in place. We separate the initial systems into three categories: enterprises that have no system, including where there is just employee representation; enterprises that just have a union present, recognised or unrecognised, but without a JCC; and enterprises that have a JCC, with or without a union.

26. The 1998 Workplace Employee Relations Survey (WERS 98) shows the following breakdown of enterprises by pre-existing I&C arrangements:

¹⁰ These can represent trade unions or other employee bodies such as staff associations, or be directly elected or appointed non-union employee representatives.

Table 3. Enterprises by type of existing I&C arrangements *

Pre-existing I&C arrangements	Percentage of medium enterprises	Percentage of large enterprises
Nothing	34%	17%
Trade union only ¹¹	27%	19%
Joint Consultative Committee (JCC) ¹²	39%	64%

Source: WERS 98. Based on an unweighted sample of 1,533 employers with 50 or more employees. *Medium enterprises have 50-149 employees. Large enterprises have 150 or more employees.

27. The number of enterprises with these pre-existing arrangements can be estimated by taking these percentages and multiplying them by the number of medium and large enterprises respectively. This gives the results in the table below.¹³

Table 4. Enterprises by type of existing I&C arrangements

Firm size	Nothing	Trade union only	JCC	Total
Medium enterprises	7,958	6,320	9,129	23,406
Large enterprises	2,131	2,382	8,022	12,534

Source: Estimated from SME Statistics for the UK 2003 and WERS98.

28. The number of enterprises that will be affected by the legislation will depend on the number of employees that request an I&C procedure and whether they have a pre-existing agreement in place (see paragraph 30 below). If 10 per cent of the workforce say that they want it, then employers are obliged to negotiate with employees and agree on a system. The likelihood of a successful request should depend on the degree of dissatisfaction with the amount of consultation at the moment and the ability of employees to make a valid request for I&C arrangements.

29. Evidence from WERS 98 suggests that 35 per cent of employees rate the way management involve employees as either poor or very poor. Not all of these employees will be of the view that I&C arrangements will be the appropriate means of resolving this issue, and for those that do, not all will be able to organise themselves to put a valid request to management. Evidence from the European Union suggests that only approximately 35 per cent of enterprises that come under the scope of the Directive on European Works Councils actually have one¹⁴. This evidence covers countries where a tradition for worker consultation is part of the cultural norm, unlike the UK. Table 5 outlines the range of assumptions based on this evidence of the

¹¹ This consists of enterprises with a recognised or non-recognised union, and with or without a worker representative.

¹² These are enterprises with at least a Joint Consultation Committee at the workplace level.

¹³ A medium enterprise is defined as one that employs between 50 and 149 workers. A large enterprise is defined as one that employees 150 or more employees.

¹⁴ *European Works Councils facts and figures*, European Trade Union Institute. October 2002.

number of enterprises with no valid pre-existing procedures that are likely to either put in place a new system of I&C. Enterprises with no pre-existing I&C arrangements or just a trade union are assumed not to have valid procedures as defined by the Regulations. Twenty to thirty per cent of enterprises with JCCs are assumed to have valid procedures in place.

Table 5. Estimated numbers of enterprises in which 10 per cent workforce support for I&C arrangements will be successfully shown where there are no valid pre-existing procedures

Pre-existing I&C arrangements	Probability of a request being received	Number of medium enterprises expected to be affected	Number of large enterprises expected to be affected
Nothing	20-35%	1,600-2,800	430-750
Trade union only	20-35%	1,300-2,200	480-830
JCC	20-35%	1,300-2,600	1,100-2,200

Source: DTI estimates rounded to two significant figures *Medium enterprises have 50-149 employees. Large enterprises have 150 or more employees.

30. For enterprises that have a valid I&C system in place, at least 40 per cent of employees will need to be in favour of a change to the system before management have to negotiate with employees. We assume that of the 20 to 30 per cent of enterprises with JCCs that have a valid I&C system in place, 10 per cent receive a request to change procedures with 10 per cent support in the workforce. Where such a request is received, the undertaking will be able to ballot the workforce to confirm the request. We assume 50 to 100 per cent of these requests will be confirmed in this way. The table below shows the number of enterprises that are assumed to need to revise their arrangements because 40 per cent or more of their employees are unhappy with them.

Table 6. Estimated numbers of enterprises who will have ballot showing majority and at least 40 per cent overall workforce support for changing valid pre-existing agreement

Pre-existing I&C arrangements	Probability of a request being received	Number of medium enterprises expected to be affected	Number of large enterprises expected to be affected
Those with a JCC	1-3% (20-30% chance of having valid pre-existing agreement times 10% chance of initial request times 50-100% of successful ballot)	90-270	80-240

Source: DTI estimates rounded to two significant figures. *Medium enterprises have 50-149 employees. Large enterprises have 150 or more employees.

Benefits

31. If the proposed legislation acts to improve the workings of the economy, one can expect there to be some overall economic benefit. Economists have argued that

information and consultation, together with other employment relations practices, acts to better align the interests of the firm and employees thus improving performance. Others have argued that these types of participatory practices act to smooth the process of a restructuring as informed employees are more adaptable and responsive to change.

32. The empirical literature suggests that information and consultation at enterprise level is associated with lower employee turnover, higher productivity and sometimes higher profits. There is also evidence that for smaller enterprises the benefits are not significant, that it depends very much on what other employment relations practices are in place (like equal opportunities and employee share ownership) and that in unionised enterprises the impacts are greater. Contrary to some criticism there is evidence that information and consultation does not have a negative impact on innovation and the speed of decision-making.

33. However, it is important to establish the direction of causality. Is it that information and consultation leads to all these benefits, or do enterprises with lower turnover, higher productivity and profitability, as some have suggested, have the luxury of putting such structures in place?

34. Empirical and theoretical work suggests that causality works in both directions. For instance, because information and consultation systems incur costs before the benefits come about, it may be that it is only efficient to have such a system where there is already relatively low labour turnover. However, the existence of information and consultation will lead to higher commitment from the workforce and in turn act favourably on labour turnover.¹⁵

35. The possible benefits of information sharing and consultation are explored further below and are broadly broken down into three groups of beneficiaries: employees, employers and the economy.

Benefits to employees

36. Employees will gain the right to be consulted on important decisions and have access to information that could directly impact on their working lives. As a result of improved information and consultation they are likely to be more committed to their job and more likely to participate in training measures which will in turn improve their employability/skills.

37. A series of reports from companies highlights the potential benefits of employers informing and consulting with their staff. Birds Eye Walls' state that 'the discipline of having to explain policies to employees in terms they can understand and in a way which is relevant to their work can help managers to make better decisions. This is because it broadens managers' focus to take account of the interests of a wider range

¹⁵ See David L. Levine and Laura D'Andrea Tyson "Participation, Productivity and the Firm's Environment" in *Paying for Productivity. A Look at the evidence*, Blinder A.S for a review of the literature pre-1990; Olaf Hubler "Works Councils and Collective Bargaining in Germany: the Impact on Productivity and Wages" *IZA Discussion Paper no 322* – July 2001; Ralf Dewenter, Kornelius Kraft and Jorg Stank "Co-determination and Innovation" <http://www.vwl.uni-essen.de/dt/wipol/Codetermination.pdf>, Satoshi Nakano "Management Views of European Works Councils: A preliminary Survey of Japanese Multinationals" *European Journal of Industrial Relations* Volume 5 Number 3 pp307-326 1999; and John Addison, Claus Schnabel and Joachim Wagner "Works councils in Germany: their effects on establishment performance" *Oxford Economic Papers* 53 (2001) pp659 to 694.

of stakeholders, and obliges them to allow for a fuller consideration of their proposals than would otherwise be the case'.¹⁶

38. WERS 98 reported a positive correlation between perceived job security of employees and their job influence. Of those who had 'a lot' of job influence, 69% demonstrated that they felt secure in their job. For those that had no job influence, this figure fell to 43 per cent.¹⁷

Benefits to employers

39. The productivity of enterprises adopting I&C systems should increase as a result of higher skilled workers (due to greater motivation and willingness to participate in training measures). Employees are likely to be more committed to their job, and more prepared to be flexible – especially in times of change. A more committed workforce should lead to lower staff turnover. This again may improve productivity and will save the enterprises thousands of pounds in terms of replacement costs.¹⁸

40. Freeman and Lazaer¹⁹ state that consultation should bring about higher productivity in workplaces because consultation offers new solutions to problems and issues at work, and because it encourages workers to take a longer run perspective of the prospects of their firm.

41. A recent CBI/TUC submission stated that 'research evidence... suggests that new forms of work organisation, effective management leadership, a culture that encourages innovation, employee involvement and employee dialogue tailored to organisational needs are all necessary conditions for adaptable, high performance workplaces. Commitment to equal opportunities and managing diversity are also key issues. A central feature in the mix is the adoption of an inclusive management style that encourages workers at all levels of organisations to contribute'.²⁰

42. In addition, a multivariate analysis conducted of WERS 98 found a positive correlation between workplaces having 'non-managerial employees participating in problem-solving groups' and a higher level of financial performance and labour productivity. It also reported a negative correlation between a workplace that has 'non-managerial employees participating in problem-solving groups' and the 'rate of voluntary job resignations'.²¹

43. A paper produced by the Engineering Employers Federation (EEF) states that 'high performance works practices such as recruitment and selection procedures,

¹⁶ *Guide to Good Practice. Sharing the challenge ahead: informing and consulting with your workforce*, Involvement and Participation Association (IPA) 2001.

¹⁷ See Figure 8.1 in Mark Cully et al., *Britain at Work*, Routledge 1999.

¹⁸ The mean of the Chartered Institute of Personnel and Development labour turnover surveys 2002, 2003 and 2004 estimates of the cost to employers of turnover is £4,200 per leaver. As might be expected, those in higher skilled occupations cost more to replace. Whilst this survey provides a rough idea of the region of costs of turnover, the data is not statistically reliable as the sample sizes are small and the samples may not be properly representative of UK businesses.

¹⁹ R. B. Freeman and E.P. Lazaer (1994) "An Economic Analysis of Works Councils", National Bureau of Economic Research, Working Paper No W4918

²⁰ Cited in *High Performance Workplaces*, DTI 2001. Quote taken from "The UK productivity challenge", CBI/TUC Submission to the *Productivity Initiative October 2001*.

²¹ See Table 12.5 in Mark Cully et al., *Britain at Work*, Routledge 1999.

incentive compensation, performance management systems, employee involvement and training have been instrumental in boosting productivity'.²²

44. British Bakeries stated 'the effects and benefits of a structured joint communications and employee relations plan are already being felt within the business. Shop floor co-operation is much more positive. Absenteeism levels are falling and retention rates have stabilised'.²³

Economic benefits

45. Increased productivity and lower labour turnover at the firm level should enhance the competitiveness of the UK economy. The Directive could have wider implications for the labour market. If employees become more willing to undertake training as a result of greater information and consultation, the result would be a more skilled workforce.

46. Frick (2001b, 2003) found works council presence in Germany associated with sharply higher labour productivity – 25 per cent higher in western Germany and 30 per cent higher in eastern Germany. Schank, Schnabel and Wagner (2002) in contrast found no statistically significant differences in enterprises with or without works councils.

47. Illustrative calculations based on a modest increase in productivity,²⁴ suggest that productivity benefit net of costs may be of the order of hundreds of millions of pounds over ten years.

48. The benefits will take time to manifest themselves unlike the costs that are more immediate. We expect the 'take-up' to the legislation to take place over a period of years rather than in the immediate aftermath of implementation.

Costs

Non-recurring costs to employers

49. This includes the cost of becoming aware of the legislation, organising employee support, negotiation and the costs of setting-up a system. The assumptions on

²² *Catching up with Uncle Sam*, Engineering Employers Federation, 2001.

²³ Involvement and Participation Association (IPA) 2001, *Sharing the challenge ahead, informing and consulting with your workforce*.

²⁴ Say rising to 0.05 per cent per annum or a one-off productivity boost in the fourth year after implementation of 0.2 per cent. The former would lead to a £320-620m net present value benefit over ten years under our assumptions, and the latter would lead to a £190-360m benefit. This takes into account the fact that causality can work both ways, and that if the gains were much more firms would probably be setting up structures without legislation.

These assumptions of an increase in productivity are derived with reference to the evidence in *The Course of Research into the Economic Consequences of German Works Councils*, John T. Addison, Claus Schnabel and Joachim Wagner, 2003. This paper summarises the empirical literature on the productivity effects of works councils, then notes that 'some of the latest estimates of the effects on labour productivity are likely to seduce. But we have argued that they need to be taken with more than a pinch of statistical salt, and have provided evidence that work council [and by implication I&C arrangements] effects on average are likely to be small.' Hence the calculations above are only illustrative of potential productivity effects.

numbers of affected enterprises in different categories are outlined in flowchart form in Annex C.

50. Employers will have to be aware of the details of the legislation so that they can comply with it. We assume that a manager in every medium enterprise spends one hour reading the issued guidance, rising to two hours for large enterprises. This cost is estimated to be £52 for a large firm and £26 for a medium firm.²⁵ The aggregate awareness cost for medium and large enterprises is estimated to be around £610,000 and £650,000 respectively.²⁶ Aggregate costs for all enterprises will therefore be around £1.3 million.

51. In order to require an employer to put in place an I&C system (or to make changes to an existing system) employees will have to organise support for its introduction. If there is no valid pre-existing system in place employees will have to show that at least 10 per cent of the workforce are in favour. If a valid system is already in place they will have to show support from at least 40 per cent of the workforce. We assume that achieving this higher threshold will take more time.

52. The assumptions on the time required for these activities are set out in Annex A and the calculations on costs are set out in Annex B. Costs for medium enterprises are estimated to be between about £390 and £1,200 per firm, depending on pre-existing agreements. Costs for large enterprises are estimated to range between £580 and £1,600. Total aggregate costs for securing employee support are estimated at about £3.6 million to £6.4 million.

53. Employee representatives will be required to negotiate how the system will work. We assume that these will need to be elected in 80% of enterprises without a trade union or a JCC and that they are already present or appointed at negligible cost in the other 20%. The assumptions on the costs of these ballots are set out in Annex A, and the calculations are set out in Annex B. The cost of election is assumed to be £780 in a medium firm and £980 in a large firm. Total aggregate costs for electing employee representatives are estimated at about £1.3 million to £2.3 million.

54. Once employee support has been established, a period of negotiation will follow to decide how the system will work and what will be covered. Details of assumptions and calculations are in Annexes A and B. Costs for medium-sized enterprises are estimated to be about £1,900 per firm. Costs for large enterprises will be about £2,600. Total aggregate costs for negotiation are estimated at about £8.9 million to £27 million.

55. We assume that once agreement has been made on the I&C system, there will be a meeting to discuss the details of the system (like the terms of reference, the numbers of meetings, the distribution of information to employees etc.). Details of assumptions and calculations are in Annexes A and B. For medium enterprises this is estimated to cost between £330 and £3,400 each, depending on pre-existing arrangements. The

²⁵ In 2003, the average hourly pay, excluding overtime, of a corporate manager in Great Britain was £20. Source: *New Earnings Survey (NES) 2003*. The cost of a manager's time includes non-wage costs and overheads, estimated at 30 per cent of wage costs. The hourly cost of a manager's time is, therefore, £20 x 1.3 = £26. The cost for a large enterprise is (2 x £26) and for a medium enterprise (1 x £26).

²⁶ Calculated for medium enterprises as £26 x 23,406 and for large enterprises as: £52 x 12,534. Note: figures may not multiply out exactly due to rounding.

costs for large enterprises will be between £330 and £5,200. Total aggregate costs for set up meetings are estimated at about £9.6 million to £18 million.

56. One-off costs are estimated to range between about £1,700 and £6,600 for each medium firm whose employees get sufficient support for an I&C system (or a change to the existing one). The total one-off cost for each large firm is estimated to be between £2,200 and £9,800. Total aggregate one-off costs are estimated at about £23 million to £52 million.

57. We do not expect all enterprises with employee demand for I&C to incur these costs in the same year. Firstly, the legislation will apply to different-sized enterprises at different times (see paragraph 2). Secondly, it will take time for employees to make their wishes known: we assume that 20% of our estimated number of affected enterprises will go through the process each year for five years. One-off costs will therefore be incurred by enterprises over a period of about 8 years with the peak years being 2008 and 2009, when all enterprises will come under the legislation (see Table 7 for details).

Year	Firm size (by number of full-time equivalent employees)			Total
	50-99	100-149	150+	
2005			£2.3-4.6m	£2.3-4.6m
2006			£1.7-3.9m	£1.7-3.9m
2007		£0.83-1.6m	£1.7-3.9m	£2.5-5.6m
2008	£2.5-5.1m	£0.68-1.5m	£1.7-3.9m	£4.9-11m
2009	£2.1-4.7m	£0.68-1.5m	£1.7-3.9m	£4.4-10m
2010	£2.1-4.7m	£0.68-1.5m		£2.8-6.2m
2011	£2.1-4.7m	£0.68-1.5m		£2.8-6.2m
2012	£2.1-4.7m			£2.1-4.7m
Total	£11-24m	£3.5-7.7m	£8.9-20m	£23-52m

Source: DTI estimates rounded to two significant figures

Recurring costs to employers

58. Once a channel of I&C is established, if an indirect system has been decided upon, employers will have regular meetings with employee representatives. The assumptions on the staff time and costs of these meetings are outlined in Annexes A and B. The assumptions on numbers of affected enterprises in different categories are outlined in flowchart form in Annex C.

59. Employers and employees may also agree on a direct system of I&C. We assume that this is only the case if employers are of the view that the net benefits are greater than those of an indirect system and that employees are happy with a direct system. We do not attempt to quantify the costs and benefits of a direct system. It seems likely

that where a direct system is decided upon it will have a greater net benefit than an indirect system would. Our calculations are all based on the cost of indirect systems, and hence should represent a lower bound for the net benefits to the economy, since some enterprises will end up with direct systems at a lower cost.

60. The annual recurring costs of running an indirect system for a medium firm are estimated to be between £900 to £5,100 per year, depending on their pre-existing systems. The cost for large enterprises is expected to be between £1,100 and £6,400.²⁷ Total aggregate running costs are expected to build up gradually to about £19 million to £45 million each year. Where enterprises already have a JCC, these cost estimates only include the cost of additional meetings, not those that would take place anyway.

61. Table 8 shows the timing of the aggregate recurring costs for different sized enterprises. We assume that of the enterprises with 150 or more full-time equivalent employees that are going to adopt/change I&C procedures, 20% do so each year from 2005 to 2009. Similarly, those enterprises with 100 to 149 full-time equivalent employees adopting/changing I&C procedures are assumed to be spread evenly from 2007 to 2011, and those with 50 to 99 full-time equivalent employees from 2008 to 2012. It may be that more of these enterprises start I&C procedures earlier, in which case the aggregate costs will rise earlier, but the benefits will come earlier too.

Table 8. Timing of aggregate recurring costs of using I&C procedures

Year	Firm size (number of full-time equivalent employees)			Total
	50-99	100-149	150+	
2005			£1.4-3.2m	£1.4-3.2m
2006			£2.8-6.4m	£2.8-6.4m
2007		£0.61-1.4m	£4.2-9.6m	£4.8-11m
2008	£1.9 -4.4m	£1.2-2.8m	£5.6-13m	£8.7-20m
2009	£3.7-8.7m	£1.8-4.3m	£7.0-16m	£13-29m
2010	£5.6-13m	£2.4-5.7m	£7.0-16m	£15-35m
2011	£7.5-17m	£3.0-7.1m	£7.0-16m	£18-41m
2012 and future years	£9.3-22m	£3.0-7.1m	£7.0-16m	£19-45m

Source: DTI estimates rounded to two significant figures

62. The present value²⁸ of the recurring costs, from 2005 to 2014, is estimated to be between £53 million and £120 million and £46 million and £100 million for medium

²⁷ These estimates of running costs are much lower than the running costs of European Works Councils according to the survey in *Costs and Benefits of the European Works Councils Directive*, DTI Employment Relations Research Series No. 9, 2001, available at <http://www.dti.gov.uk/er/emarcamp.pdf>. We expect the costs of running I&C meetings to be lower because the procedures described here are less formal, and on average will not involve such high travel, translation and venue costs as European Works Council meetings.

²⁸ Present value is a standard tool in economic appraisals to value future costs and benefits. It alters the value of future costs and benefits so that they become less important the further

and large enterprises respectively. The present value of running costs for all enterprises is estimated to be about £96 million and £220 million.

63. There will also be costs incurred to employers from disputes that will inevitably arise between them and employee representatives, which will be adjudicated by the Central Arbitration Committee (CAC). These costs are estimated in the enforcement section of this RIA.

Cost to employees and their representatives

64. It is assumed that employees and employee representatives spend time at work on I&C activities, which is a cost to employers and is treated under the cost to employers section. It may be that some cost falls on trade unions, because some of the employee representatives may be union officials paid by the union. There will be no requirement in the legislation for union officials to act as employee representatives, and we have no evidence on which to estimate these costs, so they are not quantified.

65. There will also be costs to employees or their representatives, who may be trade union representatives, from disputes arising in relation with attempting to establish employee support, and from disputes concerning the setting up and operation of I&C procedures.

Costs to the Exchequer

66. An awareness campaign will be held in an effort to ensure employees and employers know their rights and responsibilities with respect to I&C. The cost of this campaign will be born by the taxpayer.

67. There will be increased costs to Acas in providing advice to employers and employees about the setting up and running of I&C arrangements. We assume that 25 to 75 per cent of affected enterprises will telephone Acas during the process of setting up procedures each year, and 1-10% of affected enterprises will telephone Acas with a query relating to running their I&C arrangements. These illustrative assumptions suggest that costs to Acas in running help lines may peak at £2,600 to £18,000 a year, with the net present value of total costs over ten years at £13,000 to £98,000.

68. There will be increased costs to the Central Arbitration Committee (CAC) since it will be the designated body for resolving disputes arising between employers and employees or their representatives, to do with the I&C Regulations. The costs to the CAC are estimated below in the enforcement and sanctions section.

Impact on small business

69. Given that the legislation only applies to undertakings with over 50 employees, we do not expect any direct impact on small businesses.

Competition assessment

70. We have applied the Competition Filter and we believe that the competition impact is likely to be very modest, for the following reasons:

71. The proposal will impact on all business sectors but will apply only to those businesses that employ over 50 employees. The legislation should help in the longer term to increase the competitiveness and hence overall productivity of UK enterprises. However, enterprises with I&C structures that compete in markets with enterprises

into the future they occur. This is captured in the discount rate applied to future costs and benefits. The above calculations are based on a discount rate suggested by the Treasury Green Book of 3.5%. See http://www.hm-treasury.gov.uk/economic_data_and_tools/greenbook/data_greenbook_index.cfm.

without I&C structures may, in the short term, be at a disadvantage, as they will bear a high fixed cost, and benefits may take some time to be realised. The timing of the implementation of the legislation, however, is likely to help, as larger enterprises will come under the legislation before medium sized enterprises, thus giving the latter some protection.²⁹ It is worth noting that enterprises with between 50 and 99 employees may be under some competitive pressure in 2008 compared with small enterprises if they have to set up I&C procedures. This is unlikely to give those smaller enterprises any market power though, unless they are in very particular niche markets.

72. Those industries with a higher proportion of larger enterprises will be more affected by the legislation. These include mining, quarrying, energy and water, and manufacturing (see Table 1). However, we do not think that there is likely to be a detrimental impact on competition, unless as explained earlier this gives small enterprises some market power in a small niche market.

73. The legislation is unlikely to result in barriers to entry, as it will take some time for a workforce to trigger a demand for an I&C agreement (if they do so at all). Therefore the fixed and sunk costs of the legislation will not be triggered as a firm enters a new market.

74. The costs per firm arising from the legislation are small and likely to be proportionate according to the size of the business (i.e. whether it is a medium or large business). In addition, the operation of a transitional period means that the costs will be spread over a period of time, lessening the impact further. Given that the low costs per firm involved, and the fact that these are proportionate and apply across all sectors, the proposal is not expected to create significant concerns for competition. The proposals could result in some businesses with 50 staff seeking to reduce their staff numbers to avoid application of the requirements. However, this is unlikely to be a strategy adopted by many businesses given the low costs per firm of the proposal and the fact that reducing staff would run contrary to any benefits that could be derived from the proposal of increasing employee involvement.

Enforcement and sanctions

75. There will inevitably be disputes as a consequence of the legislation. These fall into three broad areas: disputes concerning whether an undertaking is subject to the legislation and, where it is, about the procedures leading to the establishment of an information and consultation body; disputes about the operation of an existing information and consultation body; and disputes about the confidentiality provisions.

76. The first category of disputes concerns matters leading up to the establishment of an I&C arrangement under the legislation. For example, whether there are sufficient employees in the undertaking to bring that undertaking within the scope of the legislation. These kind of disputes, which will be partly procedural in nature, would be considered by the Central Arbitration Committee (CAC) who perform similar functions under the European Works Council legislation.³⁰ The CAC would issue a declaration, where appropriate requiring the undertaking to move to the next stage in the process of establishing an I&C arrangement, or to remedy failures in respect of matters such as the conduct of a ballot.

²⁹ See paragraph 2 on the timing of implementation of the Regulations for different enterprises.

³⁰ The Transnational Information and Consultation of Employees Regulations 1999.

77. 'Second-stage' disputes about the operation of an existing information and consultation body (e.g. an alleged failure to consult over a particular matter) may be more legalistic in nature and will require effective remedies. Again the CAC is considered the appropriate enforcement body because it has a lot of experience of dealing with disputes about collective employee rights under the trade union recognition legislation. Here there is a range of enforcement options that could be put in place. The main deterrent for a breach of an I&C agreement will be a financial penalty of up to £75,000. Such a penalty will be imposed, via a penalty notice issued by the Employment Appeal Tribunal, where the employer has failed to comply with a CAC order in respect of the operation of an I&C agreement.

78. Disputes about confidentiality would mainly concern the withholding of information by management. These could be disputes that employee representatives are asked not to disclose more widely, or about information withheld from the employee representatives altogether. The CAC already has a similar role under the Trade Union and Labour Relations (Consolidation) Act 1992 and the Transnational Information and Consultation of Employees Regulations 1999. The CAC will therefore play a similar role in respect of this legislation. The CAC would make a declaration as to whether the information met the tests specified in the Regulations, and, as appropriate, order its disclosure.

79. It is difficult to estimate how many cases will be brought to the CAC. The CAC has similar responsibilities regarding disputes concerning the operation of European Works Councils in the UK. Since the implementation of the European Works Councils Directive in the UK in January 2000, there has been just one case from an estimated 111 affected enterprises brought to the CAC, and that was withdrawn. Another piece of evidence is the proportion of union recognition agreements which are not voluntary, but use the statutory recognition procedures. This proportion is 7.75 per cent.³¹

80. Using the first two pieces of evidence, we assume that there will be a first-stage case in 0.5 per cent to 7.75 per cent of affected enterprises. It seems likely there will be a lower incidence of second-stage cases. We assume there will be a second-stage case in 0.1 per cent to 1.5 per cent of affected enterprises.³² The average cost of a case is assumed to be £4,198.³³ These assumptions imply costs for the CAC as shown in the table below, peaking at £47,000 to £1,300,000 in 2009. These large ranges reflect the degree of uncertainty about probable numbers of disputes.

³¹ Calculated as 73/942 (the number of union recognitions through the CAC over the total number of union recognitions November 2000 to October 2003).

³² First-stage disputes concern matters leading up to the establishment of an I&C arrangement under the legislation (e.g. whether there are sufficient employees in the undertaking to bring that undertaking within the scope of the legislation). Second-stage disputes are about the operation of an existing information and consultation body (e.g. an alleged failure to consult over a particular matter).

³³ Calculated as the sum of CAC salary costs of those in operational work (£264,452) and CAC committee fees and expenses in 2002/3 (£184,683), divided by references (cases) completed or withdrawn in that period (107).

Table 9. Illustrative calculation of costs to the CAC

Year	Caseload	Cost
2005	2-74	£10,000-310,000
2006	3-86	£12,000-360,000
2007	5-132	£19,000-550,000
2008	10-273	£41,000-1,100,000
2009	11-311	£47,000-1,300,000
2010	10-275	£42,000-1,200,000
2011	11-300	£46,000-1,300,000
2012	11-292	£45,000-1,200,000
2013 onwards	7-188	£29,000-790,000

Source: DTI estimates rounded to two significant figures

81. Employers will face costs from the disputes which go to the CAC. We only cost cases where the employer is compliant with the legislation, i.e. wins its case at the CAC. We assume the employers win half of such disputes. The DTI estimates that the average cost of an Employment Tribunal application to the exchequer is £910³⁴, and £3,300³⁵ to the employer. If we assume that the same ratio applies between the cost of these I&C disputes to the CAC and to employers, the aggregate cost of I&C disputes to employers would peak at £85,000 to £2,400,000 in 2009, and fall to £53,000 to £1,400,000 from 2013 onwards. These large ranges reflect the inherent uncertainty in our estimation of the number of disputes - see paragraphs 79 and 80 above.

Consultation

82. The Department of Trade and Industry took steps during 2002 and 2003 to canvass the views of as many people as possible prior to the introduction of the Information and Consultation Regulations. A discussion paper entitled *High Performance Workplaces*³⁶ was published in July 2002, and comments were invited over a period of five months, ending on 11th December 2002. During the autumn a series of 13 roundtable meetings were held around the UK hosted by organisations such as TUC, Acas, CBI and other employer organisations. This was followed by a further consultation document *High Performance Workplaces – Informing and Consulting Employees*,³⁷ which was published in July 2003. This contained draft legislative proposals based on a framework for implementation that had been agreed with the CBI and the TUC. The consultation ran until 7th November 2003. As with the previous consultation, a series of regional roundtable meetings (ten in total) were also held.

83. There were about one hundred written replies to each of the consultation documents, with respondents representing a broad range of interests, including individual businesses, business representative organisations and trade unions. There

³⁴ Source: DTI calculation based on Employment Tribunal Service annual reports and information provided by Acas.

³⁵ Source: Survey of Employment Tribunal Applications 2003.

³⁶ Available at <http://www.dti.gov.uk/er/consultation/informconsult.htm>

³⁷ Available at http://www.dti.gov.uk/er/consultation/i_c_consdoc.pdf

were also responses from human resources organisations, consultants, academics, lawyers and the public sector.

84. The findings showed that most respondents were in favour of having information and consultation in the workplace, although many stressed the importance of a flexible approach to methods of employee dialogue.³⁸ The responses to the second consultation demonstrated widespread support for the basic approach agreed with CBI and TUC, though some concern about lack of certainty in the regulations. This prompted strong demand for guidance on a wide range of issues.³⁹

Monitoring and evaluation

85. The Department will monitor the take up of information and consultation in the workplace and the extent of implementation costs through regular contact with social partners.

86. The 2004 Workplace Employment Relations Survey (WERS) will also provide a baseline to measure the extent and type of information and consultation in the workplace before the Regulations come into force. The WERS after that⁴⁰ will enable us to measure any changes that the legislation had brought about and to monitor changes in productivity and whether employees feel that they are involved in the major decisions made by employers.

87. The Department will also monitor the number of referrals to the CAC.

Summary and recommendation

88. This Regulatory Impact Assessment finds that establishing information and consultation is likely to incur a large fixed cost. However, there are also likely to be large benefits in the future to the economy and to individuals.

89. It also takes the finding from the earlier partial Regulatory Impact Assessment that under a more flexible option (only affecting enterprises where there is significant demand to introduce or modify an I&C system and where employees and employers are free to negotiate a system to suit) costs would be likely to be lower and benefits would be likely to be higher than under alternative options.

90. The total costs and benefits of setting up I&C structures are presented in table 10. We have also calculated the present value of the annual recurring costs over ten years in table 11, using the Treasury's discount rate of 3.5 per cent. This allows us to add the recurring to the non-recurring costs.⁴¹

³⁸ See chapter 2 of the consultation document *High Performance Workplaces: Informing and Consulting Employees*.

³⁹ Draft DTI guidance was published for consultation on 7 July 2004 - <http://www.dti.gov.uk/er/consultation/proposal.htm>

⁴⁰ Historically WERS surveys have been carried out every four to five years.

⁴¹ Present value is a standard tool in economic appraisals to value future returns. It takes into account that future returns are worth less than returns today. This is captured in the discount rate applied to future returns. The above calculations are based on a discount rate suggested by the Treasury Green Book of 3.5%. See http://www.hm-treasury.gov.uk/economic_data_and_tools/greenbook/data_greenbook_index.cfm.

Table 10. Summary of costs and benefits

	Benefits	Costs	
		One-off implementation costs	Recurring policy costs
To employers	<ul style="list-style-type: none"> • Lower employee turnover, better employment relations, higher productivity and possibly higher profits, through better aligned interests of workers with those of the firm and more motivated workforce • New solutions to problems • Smoother restructuring as informed employees will be more adaptable and responsive to change 	<ul style="list-style-type: none"> • Aggregate cost to all enterprises with more than fifty employees of becoming familiar with the legislation: £1.3 m • Aggregate cost of establishing workforce support, electing employee representatives, negotiations and setting-up: £23-52 m spread over 2005 to 2012 	<ul style="list-style-type: none"> • Running costs of new and changed I&C systems, reaching £19-45 m a year by 2012 • Costs of disputes going to the CAC, peaking at £85,000 to £2.4m in 2009
To workers	<ul style="list-style-type: none"> • Gaining the right to be consulted on important decisions • Gaining earlier access to information that could directly impact on their working lives • Feeling more secure in their jobs 		<ul style="list-style-type: none"> • Cost of disputes going to the CAC, which may be borne uniformly across the workforce, by employee representatives or trade unions
To the Exchequer		<ul style="list-style-type: none"> • Cost of an awareness campaign 	<ul style="list-style-type: none"> • Extra costs to Acas in advice provision peaking at £2,600-18,000 a year in 2009 • Extra costs to the CAC, peaking at £47,000 to £1.3 m a year in 2009
To the economy	<ul style="list-style-type: none"> • Enhanced competitiveness through higher productivity, lower labour turnover, and possibly a more skilled workforce through 	<ul style="list-style-type: none"> • All the above costs 	<ul style="list-style-type: none"> • All the above costs

⁴² It is unclear who will appropriate these benefits - employers or workers - but the evidence suggests there will no impact on costs.

- higher levels of training.
- **Benefits net of costs may be in the order of hundreds of millions over ten years.**⁴²

Source: DTI estimates rounded to two significant figures

Table 11. Net present value over ten years of quantified costs and benefits

Costs
£120-300m
Net benefits
Of the order of hundreds of millions of pounds (see 43 and footnote 24)

Source: DTI estimates founded to two significant figures

Ministerial declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister

Gerry Sutcliffe

Gerry Sutcliffe, Parliamentary Under-Secretary of State for Employment Relations, Consumers and Postal Services

Date 19th November 2004

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ANNEX A: Assumptions on staff resources needed for setting up and running I&C systems

A1. This Annex shows the assumptions made on the staff time required for each activity that will be required should employees show support for either a new form of I&C system or a change to an existing system. The costs of staff time to business are shown in Annex B.

Securing the support of the workforce

A2. Tables A1 and A2 show the assumptions made on the number of staff days required for securing support for an I&C system where no valid system already exists and for securing support for a change to an existing system. Support is needed from 10 per cent of the workforce, subject to a minimum of 15 and a maximum of 2,500 employees.⁴³ We assume that employees and employee representatives will need time to get support from their fellow employees and managers will need a bit of time to verify the degree of support.

A3. The time required would vary according to the size of the firm and the type of pre-existing agreement, with more staff time needed for larger enterprises and where there is neither a trade union nor a Joint Consultation Committee (JCC). We assume that even where there is no employee representative, at least one is appointed to represent employees while support is being assessed.

Table A1. Days required for showing 10 per cent support in a medium firm

	Nothing	Trade union only	JCC
Managers	0.5	0.5	0.5
HR managers	0.5	0.5	0.5
Employees	1	0.5	0.5
Employee representatives	1	1	1

Source: DTI estimates

Table A2. Days required for showing 10 per cent support in a large firm

	Nothing	Trade union only	JCC
Managers	0.5	0.5	0.5
HR managers	0.5	0.5	0.5
Employees	3	1	1
Employee representatives	3	3	2

Source: DTI estimates

⁴³ In certain cases this means the percentage of employees required to make a request for I&C procedures will be different from 10% of the total workforce. For example in undertakings of 50 employees, the percentage figure would be 30% and in undertakings of 100,000 employees, the figure would be 2.5%.

A4. Where a valid I&C system⁴⁴ is already in place any changes to the system will require the support of at least 40 per cent of employees, rather than 10 per cent. We assume that this requires more time from employees in showing that this level of support exists and from managers in verifying it. We assume that 10 to 20 per cent of enterprises with valid I&C procedures hold a ballot and that 5 to 10 per cent of them are successful.

Table A3. Days required to conduct a ballot on changing procedures

	Medium firm	Large firm
Managers	1	2
HR managers	1	1
Employees	1	1
Employee representatives	2	2

Source: DTI estimates

Election of employee representatives

A5. If ten per cent workforce support for I&C procedures is shown, or 40 per cent where there are pre-existing valid procedures, then employers will have to negotiate the I&C system to be used with employee representatives. Where there are no employee representatives already, they will have to be elected or appointed. It is assumed that in enterprises with JCCs or unions, existing representatives will be used. Of the enterprises without either of these it is assumed 20 per cent have representatives already or they are appointed at negligible cost, and in the other 80 per cent elections are held, with the same requirements on management, human resources, employees and employee representative time as for a ballot on changing existing valid procedures as in table A3.

Negotiations

A6. Once it has been agreed that there is sufficient support for an I&C system (or a change to the existing system), employers and employees need to agree on the type of system to be used and the scope of the system. We assume that it takes on average two meetings which require the following staff days in preparing, attending and following up any action points.

⁴⁴ A valid pre-existing agreement must be in writing, must cover all the employees of the undertaking, have been approved by the employees and set out how employees or their representatives are to be informed and consulted.

Table A4. Days required for each negotiation meeting and number of meetings required

	Staff days required per meeting		Number of meetings
	Medium enterprises	Large enterprises	
Managers	2	3	2
HR managers	1	1	2
Employee representatives	2	3	2
Admin staff	1	1	2

Source: DTI estimates

The above assumptions are for an Article 4-type agreement. Article 4 is the fallback position if negotiations fail to reach an article 5-type agreement. Article 5-type agreements will probably therefore take less time to negotiate than Article 4-type agreements. It is assumed that negotiations leading to an Article 5-type agreement cost 50 per cent to 100 per cent of the Article 4 cost. Twenty per cent of negotiations are assumed to lead to Article 4-type agreements, and 80 per cent to Article 5-type agreements.⁴⁵

Setting-up

A7. Once an agreement is in place, the details of the system need to be agreed and work needs to be done in setting up required systems. We assume that where there is a JCC in place that less time will be required. In large enterprises where nothing is in place the services of a computer programmer may be needed to set up information flows to employees. Tables A5 and A6 set out the detailed assumptions for the staff required for setting up an I&C system where employers and employees have fallen back to using the criteria in Article 4. Where employees and employers agree to follow Article 5 and to come to a more flexible agreement, we assume that for a new agreement, this costs 50 per cent of setting up an Article 4-type agreement. It is further assumed that three quarters of those enterprises with JCCs agreeing Article-5 type arrangements undergo only very minor changes, with a cost of just one day of management time and one day of employee representative time.

⁴⁵ Of ten firms with European Works Councils studied in the report *Costs and benefits of the European Works Councils Directive*, Employment Relations Research Series No. 9, 2000, eight negotiated Article 13-type agreements (analogous to Article 5 in the I&C Directive) and two negotiated Article 6-type agreements (analogous to Article 4 in the I&C Directive). This report is available at: <http://www.dti.gov.uk/er/emar/camp.pdf>.

	Nothing (Days)	Trade union only (Days)	JCC (Days)
Managers	2 (1)	2 (1)	2 (1)
HR managers	2 (4)	2 (3)	2 (2)
Employee representatives	3 (2)	3 (1.5)	1 (1.5)
Admin staff	2 (2)	2 (2)	1 (1)
Information officers	1 (1)	1 (1)	1 (1)

Source: DTI estimates

	Nothing (days)	Trade union only (days)	JCC (days)
Managers	4 (1)	4 (1)	3 (1)
HR managers	3 (4)	3 (3)	2 (2)
Employee representatives	3 (2)	3 (1.5)	2 (1.5)
Admin staff	3 (2)	3 (2)	2 (1)
Computer programmers	1 (1)	0	0
Information officers	1 (2)	1 (1)	1 (1)

Source: DTI estimates

Running meetings

A8. If an indirect system of I&C is agreed employers and employees will need to attend regular meetings so that employees can access relevant information and get a chance to be consulted on any organisational changes that are covered by the I&C agreement. The legislation will not stipulate how many meetings will be held, but we have assumed that about 4 a year will be required. It may be that there are more lower-level meetings, but this is not a requirement of the legislation.

A9. Tables A7 and A8 show the assumptions on the staff required for each meeting and the number of additional meetings required. If a JCC is already in place then regular meetings will already be taking place and any new agreement will not require as many additional meetings compared with a firm that has nothing in place. Again it is assumed that Article 5-type agreement may have lower costs: 70 per cent to 100 per cent of the Article 4-type costs based on the table below.

Table A7. Staff numbers and number of additional meetings each year for medium enterprises

	Nothing (Meetings per year)	Trade union only (Meetings per year)	JCC (Meetings per year)
Managers	3 (4)	3 (4)	3 (1)
Employee representatives	2 (4)	2 (4)	2 (1)
HR staff	2 (4)	2 (4)	2 (1)

Source: DTI estimates

Table A8. Staff numbers and number of additional meetings each year for large enterprises

	Nothing (Meetings per year)	Trade union only (Meetings per year)	JCC (Meetings per year)
Managers	4 (4)	4 (4)	4 (1)
Employee representatives	3 (4)	3 (4)	3 (1)
HR staff	2 (4)	2 (4)	2 (1)

Source: DTI estimates

ANNEX B: THE COST OF INTRODUCING AND RUNNING AN
I&C SYSTEM

B1. The cost of staff time is assumed to be equivalent to be their wages plus some margin for non-wage costs and some overheads. We assume that this margin is about 30 per cent of wages. Table B1 shows the costs for each type of staff per day.

Table B1. Daily cost per member of staff

Managers	£201
HR manager	£211
Employee representatives	£127
Admin staff	£85
Computer programmers	£172
Information officers	£225
Employees	£117

Source: New Earnings Survey 2003. *The salaries are increased by 30% to incorporate non – wage labour costs.

One-off costs

Securing employee support

B2. The costs outlined in tables B2 and B3 are calculated by taking the staff resources outlined in tables A1 and A2 and multiplying this by the cost of staff time in table B2. The result gives us an estimate of the cost of securing employee support per firm where no valid pre-existing agreement is in place. We assume 10 per cent support will be shown in 20 per cent to 35 per cent of enterprises with no valid pre-existing agreement.

Table B2. Cost of showing 10 per cent employee support in a medium firm

	Nothing	Trade union only	JCC
Managers	£101	£101	£101
HR managers	£105	£105	£105
Employees	£117	£58	£58
Employee representatives	£127	£127	£127
Total	£449	£391	£391

Source: DTI estimates

	Nothing	Trade union only	JCC
Managers	£101	£101	£101
HR managers	£105	£105	£105
Employees	£350	£117	£117
Employee representatives	£380	£380	£253
Total	£936	£703	£576

Source: DTI estimates

B3. Table B4 shows the costs to enterprises of employees establishing support for a modified I&C agreement should a valid one already be in place. We assume 10 per cent to 20 per cent of enterprises with valid systems of I&C in place will receive a request for a change to I&C arrangements with 10 per cent support, and hold a ballot to confirm that request. We further assume that half of these ballots (or 5 per cent to 10 per cent of those enterprises with valid systems in place) will be successful.

	Medium enterprises	Large firm
Managers	£201	£402
HR managers	£211	£211
Employees	£117	£117
Employee representatives	£253	£253
Total	£782	£983

Source: DTI estimate

Electing employee representatives

B4. Costs of electing employee representatives are assumed to be the same as the costs shown in table B4.

Negotiation

B5. The cost of negotiation is taken as the staff time as in table A4 multiplied by the staff costs in table B1. The results are presented in table B5 below. As discussed previously, negotiations leading to an Article 5-type agreement are assumed to incur 50 per cent to 100 per cent of the Article 4-type agreement costs below.

Table B5. Costs of negotiations leading to Article 4-type agreements		
	Medium firm	Large firm
Managers	£805	£1,207
HR managers	£422	£422
Employee representatives	£507	£760
Admin staff	£171	£171
Total	£1,904	£2,560

Source: DTI estimate

Non-recurring cost of initial set-up meeting

B6. Tables B6 and B7 show the costs per firm of setting-up an Article 4 type agreement. The costs are calculated by taking the daily cost per member of staff, and multiplying it by the days required per member of staff (and then if appropriate, by the number of staff required). See tables A1 and A2 for the number of days and staff required.

Table B6. Cost of set-up meeting for Article 4-type agreement for a medium firm			
	Nothing	Trade union only	JCC
Managers	£402	£402	£402
HR managers	£1,687	£1,265	£843
Employee representatives	£760	£570	£190
Admin staffs	£341	£341	£85
Information officers	£225	£225	£225
Total	£3,416	£2,805	£1,747

Source: DTI estimate

Table B7. Cost of set-up meeting for an Article 4-type agreement for a large firm

	Nothing	Trade union only	JCC
Managers	£805	£805	£604
HR managers	£2,530	£1,898	£843
Employee representatives	£760	£570	£380
Admin staff	£512	£512	£171
Computer programmers	£172	£0	£0
Information officers	£451	£225	£225
Total	£5,230	£4,010	£2,223

Source: DTI estimate

B7. The costs for setting-up a new Article 5-type agreement. As discussed previously are assumed to be 50 per cent of the costs of setting up an Article 4 type agreement.

B8. The costs of setting up a small change to an existing agreement is estimated to cost each firm £328 or one day of management time and one day of employee representative time.

Total one-off costs

B9. The total one-off costs per firm (excluding familiarisation costs explained in paragraph 50) are set out in table B8. These vary according to the type of agreement reached and the pre-existing agreements.

Table B8. Total one-off costs per firm excluding familiarisation costs

	Nothing	Trade union only	JCC
Medium enterprises	£3,100-6,600	£2,700-5,100	£1,700-4,800
Large enterprises	£4,800-9,700	£4,000-7,300	£2,200-6,300

Source: DTI estimates to two significant figures

B10. Table B9 shows the aggregate costs to all enterprises. These are calculated by taking the cost per firm times the number of enterprises that are likely to be affected. The numbers affected are outlined in Tables 5 and 6. Table B9 includes familiarisation costs, which will affect all enterprises irrespective of the demand for I&C structures.

Table B9. Aggregate one-off costs including familiarisation costs				
	Nothing	Trade union only	JCC	Total
Medium enterprises	£7.1-15m	£4.2-9.2m	£3.1-8.4m	£15-33m
Large enterprises	£2.7-5.4m	£2.2-4.6m	£3.3-9.2m	£8.8-20m
All enterprises	£9.8-20m	£6.4-14m	£6.4-18m	£24-53m

Source: DTI estimates to two significant figures

Recurring costs per firm

B11. Recurring costs are obtained by taking the cost per member of staff and multiplying it by the number of staff members (outlined in tables A7 and A8). We then multiply this by the number of meetings each year (see Tables B10 and B11).

Table B10. Recurring costs for a medium firm			
	Nothing	Trade union only	JCC
Managers	£604	£604	£604
Employee representatives	£253	£253	£253
HR managers	£422	£211	£211
Total per meeting	£1,279	£1,068	£1,068
Total per year	£5,115	£4,272	£1,068

Source: DTI estimate

Table B11. Recurring costs for a large firm			
	Nothing	Trade union only	JCC
Managers	£805	£805	£805
Employee representatives	£380	£380	£380
HR managers	£422	£422	£422
Total per meeting	£1,607	£1,607	£1,607
Total per year	£6,427	£6,427	£1,607

Source: DTI estimate

B12. The aggregate cost for enterprises is taken as the costs per meeting per year multiplied by the estimates of the numbers affected (see Table B12). These numbers are the costs for an Article 4-type agreement. Article 5 running costs may be lower, because they may involve direct rather representative consultation, and they may be more adapted to the nature of the firm in question. However, a study of European Works Councils found no substantial difference between the costs for companies which reached a voluntary agreement and those which chose to adopt the procedures

laid out by statute.⁴⁶ We assume therefore that Article 5-type agreement running costs are 70 per cent to 100 per cent of those of Article 4-type agreements.

Table B12. Aggregate running costs

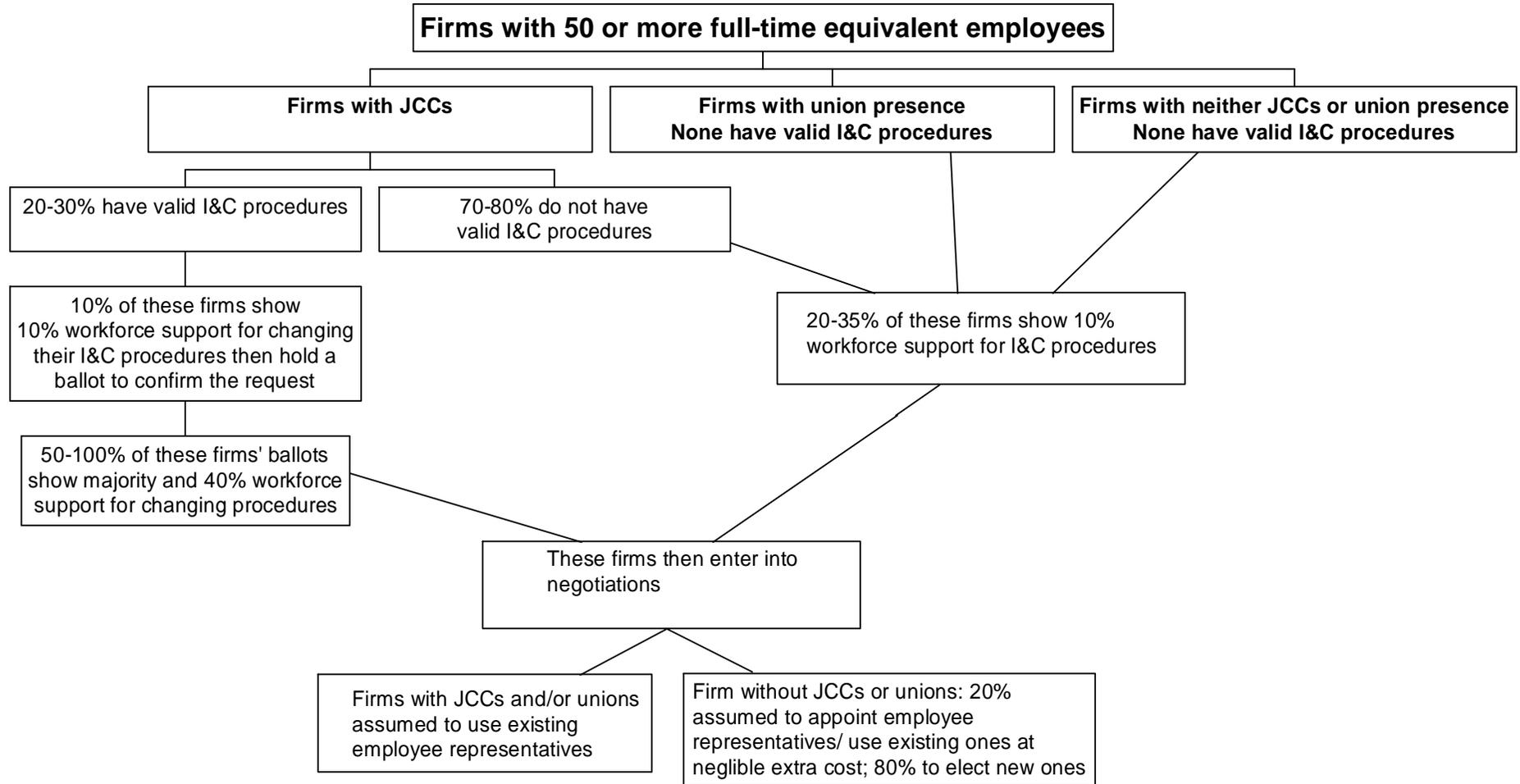
	Nothing	Trade union only	JCC	Total
Medium enterprises	£6.5-15m	£5.1-12m	£1.3-3.5m	£13-30m
Large enterprises	£3.2-6.7m	£2.3-5.2m	£1.4-3.6m	£6.8-16m
All enterprises	£9.7-22m	£7.4-17m	£2.7-7.1m	£20-46m

Source: DTI estimates rounded to two significant figures

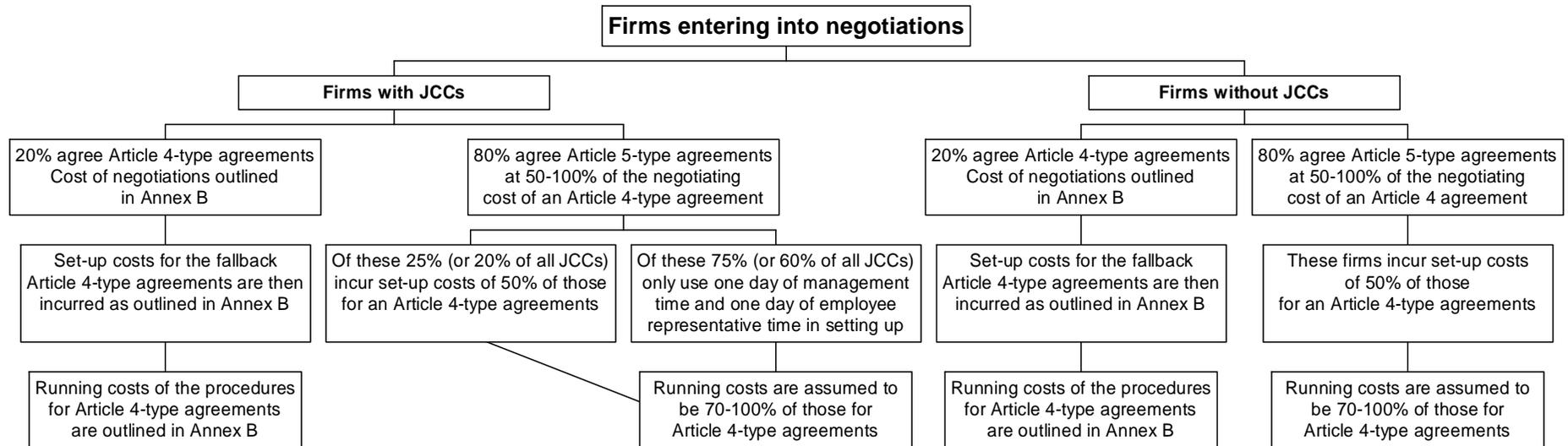
⁴⁶ *Costs and benefits of the European Works Councils Directive*, Employment Relations Research Series No. 9, 2000

ANNEX C: FLOWCHARTS OF MAIN COST ASSUMPTIONS

Flowchart 1: establishing support and election of employee representatives



Flowchart 2: negotiations, set-up meetings and running costs



TRANSPOSITION NOTE

DIRECTIVE 2002/14/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 11 MARCH 2002 ON ESTABLISHING A GENERAL FRAMEWORK FOR INFORMING AND CONSULTING EMPLOYEES IN THE EUROPEAN COMMUNITY

Article	Objective	Implementation
1	<u>Article 1 sets out the purpose of the Directive. It establishes a general framework setting out minimum requirements for the right to information and consultation of employees in the workplace. It requires Member States to implement the Directive in accordance with national law and industrial relations practices and requires employers and employees should work in a spirit of co-operation.</u>	The Regulations as a whole set the minimum requirements for information and consultation arrangements, whilst allowing business and employee representatives the flexibility to agree the content of agreements and the methods for information and consultation. Regulation 21 establishes the duty of co-operation between the parties.
2	<u>Defines certain terms used within the Directive</u>	Regulation 2 defines some of the terms referred to in the Directive and additional, commonly used terms in the Regulations.
3	Article 3 relates to the scope of the Directive. It gives Member States the option to apply the Directive to undertakings or establishments each with a certain number of employees. It provides that Member States shall determine the method for calculating the number of employees. Member States may make	Regulation 3 applies the Regulations to undertakings with a minimum number of employees. Regulation 4 sets out the requirements for calculating the number of employees. Regulations 5 and 6 respectively enable employees to request information on the number of employees in the undertaking to discover whether that

particular provision applicable to certain types of undertaking or establishment.

4

Article 4 requires Member States to determine the practical arrangements for exercising the right to information and consultation. It sets out three categories on which information and consultation should take place and establishes general obligations in relation to the timing and method of “information” and the timing, method and purpose of “consultation”. These requirements are without prejudice to any arrangements more favourable to employees.

5

Article 5 permits Member States to leave employers and employees to reach an agreement, or be covered by an existing agreement on information and consultation, where the arrangements are different than those set out in Article 4 (provided the general objectives set out in Article 1 are met). Member States may set conditions and limitations on such agreements.

undertaking comes within the scope of the Directive and to make a complaint if the employer does not provide such information.

Parts III and IV of the Regulations set out the practical arrangements which allow employees to exercise their right to information and consultation. They require employees to present a request to the employer or for the employer to initiate the procedure (regulations 7 and 11 respectively). Subject to some exceptions (regulations 8, 9 and 12), in either case there is an opportunity for the parties to reach a negotiated agreement (regulation 14 which is discussed in more detail below) and, if this does not happen, standard provisions apply (regulations 18 to 20 and Schedule 2).

Part III sets out the requirements for negotiated agreements and, in particular, regulation 7 provides that an employer must start negotiations on receipt of a valid “employee request”. The employer is not required to initiate negotiations if there exists a pre-existing information and consultation agreement (and the request was made by fewer than 40% of employees). In the latter case the employer can choose to seek employee endorsement for the request (regulations 8 and 9).

Regulation 10 covers complaints to the CAC about ballots held under regulation 8 and 9.

Regulation 14 sets out what steps have to be taken to initiate negotiations, including the appointment or election of negotiating representatives and regulation 15 allows a complaint to the CAC in relation to the appointment or election of such representatives.

Regulation 16 sets out what a negotiated agreement must contain and how it must be approved and regulation 17 provides for a complaint to the CAC about such approval.

6 Article 6 permits Member States to provide for the non-disclosure of certain types of confidential information. A form of judicial review, and procedures must exist to safeguard these requirements.

Regulation 25 imposes a statutory duty on anyone receiving confidential information from the employer not to disclose it. An application to the CAC may be made to challenge the necessity of such information or a document being treated as confidential. Regulation 26 provides that an employer is not required to disclose information that would seriously harm or be prejudicial to the undertaking. Again, the CAC may be asked to adjudicate on the nature of such information.

7 Article 7 requires employee representatives to enjoy adequate protections to enable them to perform the duties set out under the Directive

Part VIII provides protections to employees taking part in negotiations, information and consultation procedures or elections including protection against unfair dismissal (regulations 30 and 31) and detriment (regulations 32 and 33). Regulation 34 allows ACAS to conciliate in such disputes.

- | | | |
|----|---|--|
| 8 | Member States must ensure that the rights and obligations under the Directive are enforceable and provide for sanctions. | <p>Part VI deals with compliance and enforcement. Regulation 22 provides for complaints to the CAC about the operation of a negotiated agreement or the standard information and consultation provisions and for an application to be made to the Employment Appeal Tribunal for a penalty notice where the CAC finds a failure to comply with the negotiated agreement or the standard provisions by the employer.</p> <p>Regulation 23 deals with penalties under a penalty notice. Regulation 24 provides that the only remedies available are the ones under Parts I to VI of the Regulations and not otherwise.</p> |
| 9 | Article 9 states that the requirements of the Directive shall be without prejudice to other (listed) pieces of Community legislation, existing rights of information and consultation under national law, and shall not lead to a diminution in general levels of protection. | Where there is overlap between existing legislation requiring consultation with employees' representatives (on collective redundancies and on the transfer of undertakings), regulation 20(5) permits an employer to opt to comply with the duties imposed by that legislation. |
| 10 | Article 10 allows Member States with no general statutory system for information and consultation to stagger the Directive's entry into force according to the number employees in an undertaking. | Implemented by regulation 3 in conjunction with Schedule 1 |