



Information and consultation **in the Republic of Ireland**

Last updated: 12 May 2006

The ***Employees (Provision of Information and Consultation) Act 2006***, which was published in July 2005, transposes the European Union's Information and Consultation Directive (EU Directive 2002/14/EC) into Irish law.

The Bill, which transposes the Directive, passed all stages in the Oireachtas on 29 March 2006 and was signed by the President on 9 April 2006. A Commencement Order will be made by the minister responsible before bringing the Act into effect. This should also coincide with an announcement about the final date for larger organisations (with 150 or more employees) to implement a pre-existing agreement before the regulations come into effect.

Key features of the Act:

- As in the UK, employees will not have an automatic right to be informed and consulted. Instead, they will have to “trigger” negotiations that will result in either a negotiated agreement or the Standard Rules.
- At least 10% of employees, subject to a minimum of 15 and a maximum of 100, must ask to open negotiations.
- Where trade unions are recognised and represent at least 10% of the workforce, they can nominate their representatives, on a pro rata basis.
- Undertakings will have a “window of opportunity” to put a pre-existing agreement in place (a date before March 2007, still to be announced).
- Where negotiated or standard provisions apply, detailed requirements will set out the basic requirements for operating information and consultation arrangements.
- Systems of “direct” employee information and consultation are provided for by the legislation.

This is a summary of the legislation. Members are advised to consult the text of the Act, which is available at:

<http://www.oireachtas.ie/documents/bills28/acts/2006/A906.pdf>



General provisions

Transitional arrangements

The Act will apply to:

- Undertakings with 150+ employees will be covered from a date to be prescribed (being a date before 23 March 2007)
- Undertakings with 100+ employees will be covered from 23 March 2007
- Undertakings with 50+ employees will be covered from 23 March 2008

Without prejudice

The new legislation is without prejudice to existing rights under the Collective Redundancies, Transfer of Undertakings and EWC legislation.

Trigger mechanism

The employer, may at his or her own initiative, or at the written request of at least 10 per cent of employees received either directly or by the Labour Court may enter into negotiations with employees or their representatives (or both) to establish information and consultation arrangements.

To trigger the process, known as the 'workforce threshold', employees must make a written request from 10% of the workforce, subject to a minimum of 15 employees and a maximum of 100.

If the employee threshold is not met, the employees' of the Undertaking shall not make a further request for negotiations until 2 years have passed from the date on which the employer received the request.

Calculating the workforce threshold

The number of employees in the Undertaking shall be established by calculating the average number of employees employed in the undertaking during the 2 years before the date that a request is made.

The employer must provide information within 4 weeks of the date that a request is received, or as agreed between the parties. The Labour Court may also request that the employer verify the number and names of the employees who have made the request.

If the undertaking has been in existence for less than 2 years, the period of 2 years shall be replaced by the period the undertaking has been in existence.

Negotiations

Once a valid request is received the employer must provide for the election or appointment of negotiating representatives. There are no references to how many negotiating



representatives there should be. The parties have six months in which to reach an agreement, though they can extend this time limit by agreements. They can:

- Negotiate one or more information and consultation arrangements, or;
- Apply the Standard Rules

The period of 6 months may be extended by agreement of the parties.



Negotiated agreements

Negotiated agreements must be:

- In writing
- Dated
- Signed by the employer
- Approved to by the employees*
- Applicable to all employees
- Available for inspection by those persons and at the place agreed between the parties

*The approval of employee may be validated by:

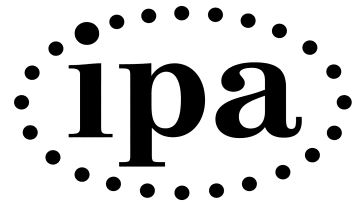
- A majority of employees who vote, vote in favour (in a confidential and independently verifiable procedure), or
- A majority of the employee representatives, elected or appointed for the purposes of the negotiations, have approved the agreement in writing.

The employer is required to ensure that the procedure for the casting a preference is confidential and capable of independent verification and of being used by all employees.

Negotiated agreements must include the following:

- The duration of the agreement and the procedure, if any, for its renegotiation
- The subjects for information and consultation
- The method and timeframe by which information is to be provided
- The method and timeframe by which consultation will be conducted
- The procedure for dealing with confidential information.

The parties to the agreement may renew it for any further period they think fit, at any time before a negotiated agreement expires or within 6 months after its expiry.



Pre-existing agreements

For undertakings employing more than 150 employees pre-existing agreements must be in existence on or before a date to be prescribed by the Minister (being a date before March 23 2007 - see **transitional arrangements** above).

Pre-existing agreements must be:

- In writing
- Dated
- Signed by the employer
- Approved to by the employees*
- Applicable to all employees
- Available for inspection by those persons and at the location agreed by the parties

*The approval of employee may be validated by:

- A majority of employees who vote, vote in favour (in a confidential and independently verifiable procedure), or
- A majority of the employee representatives, elected or appointed for the purposes of the negotiations, have approved the agreement in writing.

The employer is required to ensure that the procedure for the casting a preference is confidential and capable of independent verification and of being used by all employees.

A pre-existing agreement must include the following:

- The duration of the agreement and the procedure, if any, for its review
- The subjects for information and consultation
- The method by which information is to be provided
- The method by which consultation is to be conducted

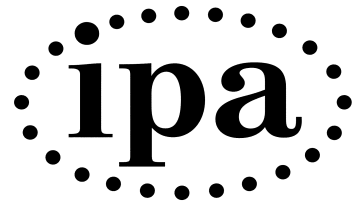
Standard rules

The Standard Rules will apply where:

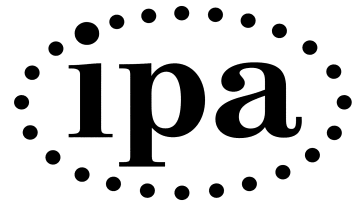
- The parties so agree
- The employer fails to open negotiations within 3 months of having received a valid written request;
- The parties fail to reach agreements with the six months

The Standard Rules provide for:

- The election of an Information and Consultation Forum of not less than three employees or more than 30
- Arrangements for the meetings to be agreed between the employer and the employees' representatives



- A minimum of 2 meetings a year, with provision for “exceptional” meetings where necessary
- An employee “pre-meeting” before the meeting with the employer
- Agreed minutes
- Information and consultation shall cover:
 - Information on the recent and probable development of the undertaking’s activities and economic situation;
 - Information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment
 - Information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the Transfer of Undertakings and Collective Redundancies legislation.
- Information shall be given by the employer at such time, in such fashion and with such content as are appropriate to enable, in particular the forum to conduct an adequate study and, where necessary, prepare for consultation.
- Consultation shall take place:
 - While ensuring that the timing, method and content thereof are appropriate;
 - At the relevant level of management and the Forum, depending on the subject under discussion;
 - On the basis of the information supplied by the employer (see above) and of the opinion which the employees’ representatives are entitled to formulate;
 - In such a way as to enable the Forum to meet the employer and obtain a response and the reasons for that response, to any opinion they might formulate;
 - With a view to reaching an agreement on decisions within the scope of the employer’s powers on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the Transfer of Undertakings and Collective Redundancies legislation.
- The expenses of the forum are to be covered by the employer
- The employer shall provide the members of the Forum with such financial and other resources as are necessary and reasonable to enable them to perform their duties in an appropriate manner.



Other issues

Direct arrangements

The legislation allows employees to be directly informed and consulted, provided they are always free to exercise the right to be informed and consulted through elected or appointed representatives.

Paid time off and facilities

Employees' representative shall be afforded any reasonable facilities, including time off, that will enable him or her to perform his or her functions as employees' representative promptly and efficiently.

An employees' representative shall be paid his or her wages for any period of absence afforded to him or her in accordance with these functions.

The granting of facilities shall have regard to the needs, size and capabilities of the undertaking concerned and shall not impair the efficient operation of the undertaking.

Employee Representative Protection

Employers may not take any detrimental action against employees' representatives for performing their functions in accordance with the provisions of the Act.

Confidential information

Employee representatives (and any experts assisting them) are not entitled to reveal to third parties any information given in confidence.

Employers are entitled to withhold information the release of which would have a serious prejudicial impact on the business or whose revelation would break statutory or regulatory rules.

Disputes relating to confidentiality are to be dealt with by the Labour Court.

Disputes

Disputes about the negotiation or workings of information and consultation agreements are to be referred to the Labour Court. Before investigating such a dispute the Court may, subject to the agreement of the parties, mediate or appoint a mediator for the purpose of effecting a settlement.

Penalties

The legislation provides for penalties of up to €30,000 or imprisonment for a term not exceeding 3 years or both.

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