

STUC Response to the DTI **Consultation on Informing & Consulting Employees**

Introduction

The STUC is Scotland's Trade Union Centre. Its purpose is to coordinate, develop and articulate the views and policies of the Trade Union Movement in Scotland and, through the creation of real social partnership, to promote trade unionism, equality and social justice; the creation and maintenance of high quality jobs and the public sector delivery of services.

The STUC represents around 630,000 working people and their families throughout Scotland. It speaks for trade union members in and out of work, in the community and in the workplace. Our affiliated organisations have interests in all sectors of the economy. Our representative structures are constructed to take account of the specific views of women members, young members, black/minority ethnic members, LGBT members, and members with a disability, as well as retired and unemployed workers.

STUC Policy on Informing & Consulting Employees

The STUC welcomes the Government's introduction of legislation to implement the EU Information and Consultation Directive. To us it has the potential to offer a vital means of protection to working people. This legislation has been long awaited and long advocated by trade unions. With manufacturing job losses in the UK in excess of 150,000 a year it is imperative that legislation is implemented at the earliest opportunity to bring UK workers rights to information and consultation in line with workers in the EU and ending the position of making it easier, quicker and cheaper to close workplaces in the UK.

Events in recent months, such as the proposed closure of Ethicon's plants in Edinburgh with the potential loss of hundreds of jobs - demonstrates the need to end the shameful practice, legally permissible in the UK, of allowing companies to make announcements on closures, take-overs and redundancies, without a proper mechanism for informing and consulting with the

employees affected and their trade unions.

Central to the case for a legal right to information and consultation on all major company decisions is the fact that the situation tolerated in the UK would be legally unacceptable in the vast majority of EU countries.

The STUC acknowledges the fact that UK workers do have some legal rights to information and consultation, when issues concerned are related to:

- Legislation on TUPE
- Collective Redundancies
- Information on collective bargaining
- European Works Councils
- Health and Safety

However, the fact remains that within the EU only the UK and Ireland take a voluntary approach concerning the general right to be informed and consulted. Although, even the limited rights that UK workers do have are frequently flouted by employers.

We welcome the approach to consultation that the DTI has taken in drafting a framework for implementation agreed between the DTI, CBI and TUC and we recognise that the way information and consultation rights will work in practice in the UK will depend on the outcome of this consultation and the Government's response to it.

For the Information and Consultation Act to be effective, it is our view that it would require to be underpinned by the following principles:

- 1) permanent arrangements for information and consultation through the representatives of independent trade unions recognised by employers or, in non-unionised situations, through representatives independently elected by workers;
- 2) a statutory procedure enabling recognised unions or employees to initiate negotiations with management about establishing information and consultation arrangements, with reference to the Central Arbitration Committee if management fails to respond;

- 3) statutory default arrangements providing a basic constitution for information and consultation;
- 4) clear requirements on timing and subject matter for consultation;
- 5) speedy and effective sanctions with strong enforcement mechanisms.

Below please find our specific views in response to the questions set out within the consultation.

Will the Proposed Regulations in the Consultation Work?

There are a number of areas where the STUC is concerned about whether the proposed regulations will work:

- Proposals are that legislation will be implemented in March 2005 where businesses have 150 employees or more; March 2007 for between 100 and 150 employees and March 2008 for between 50 and 100. The time delay in implementation where a 2 year delay for most workplaces and a 4-5 year delay for others in benefiting from the legislation is of major concern.
- In the case of larger companies and multi-nationals the £75,000 fine for non-compliance is demonstrably not an effective sanction. It is our view that this cap should be removed and that tribunals should be left to decide on an appropriate level of sanction.
- We believe information and consultation should exist as a right for all employees and are concerned by the proposals that information and consultation arrangements only need to be introduced if staff request them or if an employer seeks to negotiate an agreement.
- The balloting procedures relating to requests for Information and Consultation being introduced to a workplace seem unnecessarily complicated and we are also worried by proposals that part – time workers will only be entitled to a ½ vote in any vote for information and consultation arrangements. We believe that this flies in the face of existing legislation protecting Part-time Workers from less favourable treatment.

- Confidentiality clauses we believe will give real scope for this element of the legislation to be exploited by bad employers in order to avoid implementing information and consultation arrangements. We believe that it is absolutely vital that further guidance is given in relation to this issue in order to clarify what issues will come under this definition.

What Sort of Guidance Would Be Useful?

It is the STUC's view that the new legislation should ideally be underpinned by a standard ACAS Code of Practice, to provide a base-line of minimum standards for implementation by employers.

The code of practice should be detailed and provide practical examples and a checklist for use by companies and consultation representatives alike. However where existing agreements provide models, which go beyond any basic practice set out in the Code of Practice, these should be retained and actively protected.

Furthermore, while a code of practice is essential, the delivery of effective consultation in partnership will be reliant upon proper training for all parties. Significant funds will need to be made available by the DTI for this purpose.

Trade Unions have shown themselves to be proficient and effective in delivering workplace training – often in relation to partnership training that involves building the capacity of both trade union and employer representatives. We would therefore expect unions to fulfil a very significant proportion of the training requirements thrown up by the new regulations and hope that the government will provide the necessary financial support for this important work to be progressed.

Undertakings, Groups of Undertakings & Establishments

It is our view that the government will need to provide far more clarity and guidance on the definitions of “undertakings” and “establishments”, as this will be a key element towards the success of the legislation.

The STUC believes strongly that all employment rights should be automatic irrespective of the size of the company. However, in the case that a minimum size for Informing and Consulting Employees

Regulations is adopted, the workplace size should be consistent with the Employment Relations Act 1999, which defines the relevant bargaining unit size at 20. A large number of manufacturing and other workplaces fall between the 20 and 50 employees bracket and it is essential that these are included under the ICE regulations.

Where a pre-defined bargaining unit exists, this should form the recognised “undertaking” for information and consultation purposes. Where larger companies with national bargaining agreements identify smaller undertakings as appropriate at local level, then these could be developed under an overarching co-ordinating consultation group that could act at national/strategic level in addition to the local groups.

It is sensible that multi-national corporations should be broken up into smaller units but excessive fragmentation should be prevented where possible, especially if it is not compatible with existing and pre-agreed collective bargaining units between unions and employers. In all cases the legislation should be used to build on rather than undermine partnership working between trade unions and employers. In particular, the reorganising of companies into units designed to evade I.C.E. requests should not be permitted.

Relationship to Existing Information & Consultation Requirements

It is the STUC’s view that a Consolidation Bill may be required to join up legislation covering such other areas covered by statutory consultation such as redundancies and TUPE – with particular emphasis on the need for the DTI to synchronise the numbers and timing differences across these areas. We would stress the importance of adopting the highest common denominator in terms of employee rights when addressing these issues.

Relationship to Collective Agreements With Trade Unions

As the Government will be aware there are many workplaces in the UK where there are strong consultation processes in place as a result of existing collective bargaining agreements between trade unions and employers. There should be a capacity for good employers who recognise Trade Unions to retain agreements where they are felt to work well by both parties. Indeed the new

legislation should provide an opportunity for both trade unions and to build upon and improve agreements that already exist.

We would not wish to see the new legislation in any way being able to be used to dilute or undermine such arrangements and would urge the government to take strong steps to ensure that this is not made possible by the legislation.

Where recognition agreement exists between an employer and a Trade Union, it is vital that there is full integration between the bargaining and negotiation process and the information and consultation process. The introduction of a second representative structure would be in our view unnecessary, and might provide employers with the capacity to undermine strong agreements replacing experienced trade union reps with inexperienced or under-trained reps.

Conclusions

The STUC believes that workers would benefit from positive changes at UK and at EU level to provide legal rights for trade unions to apply their expertise in seeking alternatives to redundancies and identifying alternative work and financial support for those facing redundancy.

In the last few years, we have witnessed redundancy situations in our country where the media has been aware of mass job losses before the workers themselves have been told. There have even been situations where employees have been informed they are losing their jobs by text message.

This is simply unacceptable way to conduct industrial relations in the 21st Century, and it is why we urgently need the introduction of legal rights to information and consultation in our country.

We hope that the implementation of the Information and Consultation Directive will serve to enhance employees' rights in the UK. However, we believe that the areas of concern outlined in this response must be addressed in order to ensure that the legislation is effectively implemented.