

Finance and Resources Committee 19 June 2008

Information and Consultation of Employees Regulations – HPC Actions

Executive summary and recommendations

### Introduction

From 6 April 2008, employees in organisations with 50 or more employees have the right to be informed and consulted on a regular basis about issues in the organisation for which they work and these rights are set out in the Information and Consultation of Employees Regulations 2004 (“ICE Regulations”). The same rights have applied to organisations employing 150 or more people since April 2005, and those employing an average of 100 or more people over a one year period, since April 2007. The HPC has recently reached employee numbers of over 100 and the current employee total number is 116.

The HPC’s legal advisors do not believe that the ICE Regulations apply to the HPC (Appendix 2), and the Department for Business Enterprise and Regulatory Reform could not offer advice as to whether the ICE Regulations apply (Appendix 1). Kelly Webster, HR Manager, conducted a survey of other regulators to establish how they had interpreted the provisions (Appendix 3). Of those regulators that had employee numbers above the threshold level at which the ICE Regulations become applicable, all presumed that the regulations would apply to them.

Under the ICE Regulations there are three options for introducing the regulations to an organisation. The HPC can also choose not to initiate any agreement and for example wait and see if employees make a request under the regulations. These agreements and options are outlined below:

Types of Agreements and Options	Detail
1. Negotiated Agreement	At least 10% of employees make a request, or an employer notifies employees that it proposes to start the process of negotiating an agreement. The parties need to reach agreement on the terms and can tailor this to the business.
2. Information and Consulting Agreement (standard or default procedures)	Where the employer and employees are unable to reach an agreement by negotiation, certain standard provisions

	will apply.
3. Pre-existing agreement	Where consultation arrangements are already in place in a pre-existing agreement that has been agreed between an employer and employees, the agreement can only be changed if 40% or more of the workforce request it. If so, the employer must comply with the regulations to negotiate a new 'negotiated agreement'. A pre-existing agreement can only be put in place provided that no request has already been made by 10% or more of employees as explained under 'negotiated agreement' above. To be valid a pre-existing agreement must be in writing, state how employees/representatives will be informed and consulted, cover all employees in the workplace, and have been approved and signed by a majority of the workforce <u>or</u> agreed by representatives who represented a majority of the employees.

It is useful to note that a negotiated agreement would be subject to the regulations, whereas a pre-existing agreement would not, therefore providing the organisation with more flexibility over the remit of the group.

Further, the HPC is not obliged to have any type of agreement unless 10% of the employees request one, although it has the option to initiate an agreement if it wishes to.

The Executive Management Team considered the options available and felt that whether the regulations legally applied or not, it would be good practice to set up a pre-existing agreement so that a consultative forum is provided for HPC's employees. This would also be pro-active, rather than waiting to see if employees choose to initiate an agreement at some point in the future. However, the EMT considered advice from HPC's employment advisors and the other regulators which indicated that such an agreement would be difficult if less than 25% of the workforce was interested in having this, due to the fact that employee representatives are required for this. Other regulators and organisations have conducted a survey before introducing any agreements to establish if there was enough employee interest for such a group to work.

The EMT therefore agreed that the best approach for the HPC would be to provide employees with information about the regulations, and take a vote as to whether employees would like a formal information and consultation structure at the HPC. If over 25% of employees were interested, the EMT would progress a pre-existing agreement as a request by 10% of employees has not previously been received. If less than 25% of employees were interested, an agreement would not be progressed however, in one year another vote would be taken.

If over 25% of employees are interested, the HR Department will then commence the processes of electing employee negotiating representatives to draft and consult on the agreement. This is when operational aspects such as term of the agreement, number of employee representatives, frequency of meetings and matters that would be consulted on, would be agreed and specified.

### **Decision**

The Council/Committee is asked to:

- Discuss the proposed action plan; and
- Approve the EMT's recommendation of a vote by employees to decide whether or not to progress a pre-existing agreement based on level of interest (more than 25% employee interest would commence the start of agreement negotiations).

### **Background information**

Nil

### **Resource implications**

Employee time will be involved for both the HR department and the EMT in progressing the project, and for employees from other departments who become involved as representatives.

### **Financial implications**

From time to time, advice may be required from HPC's employment advisors if needed. This has been accounted for in the HR budget for 2008/2009.

### **Appendices**

Appendix 1 – Letter from Department for Business Enterprise and Regulatory Reform

Appendix 2 - Legal Advice from Kingsley Napley

Appendix 3 – Survey of other Regulators

### **Date of paper**

5 June 2008

**Pat McFadden MP**

Minister for Employment Relations  
& Postal Affairs

Larissa Foster  
Director of Human Resources  
Health Professions Council  
Park House  
184 Kennington Park Road  
London  
SE11 4BU

Our ref: CN/53310

Your ref:

12 May 2008

*Dear Larissa,*

Thank you for your letter of 8 April, requesting advice on whether the ICE Regulations apply to the HPC.

Your legal advice, that the ICE Regulations only apply to organisations that undertake an economic activity, is correct. This may include organisations such as associations, trade unions, charities, NHS trusts, and Government bodies if they carry out an economic activity. We are unable to offer advice on individual cases as, ultimately, it is a matter for the courts to decide (in the first instance, the Central Arbitration Committee), on a case-by-case basis, whether an organisation is carrying out an economic activity.

I recommend that you seek further legal advice on whether the HPC engages in an economic activity. Alternatively, Acas may be able to advise on your particular situation. The Acas helpline number is 08457 47 47 47.

The Government is a keen supporter of information and consultation of employees. Effective communication between an employer and their employees can realise a number of business benefits including better decision making, improved staff morale and lower employee turnover. I therefore encourage you to maintain an effective dialogue with your employees, irrespective of whether the Regulations apply to your organisation.

*Yours sincerely,  
Pat McFadden*

**PAT MCFADDEN**

HR DEPARTMENT

14 MAY 2008

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1 Victoria Street, London SW1H 0ET

[www.berr.gov.uk](http://www.berr.gov.uk)

Our ref: KH/36615-5

Your ref:

2 April 2008

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**To be opened by Addressee only**

Ms Larissa Foster  
Human Resources Director  
Health Professions Council  
Park House  
184 Kennington Park Road  
London  
SE11 4BU

Dear Larissa

**Information & Consultation Regulations**

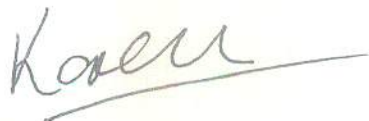
Further to our recent meeting in relation to the Information & Consultation Regulations, I have now had an opportunity to take Counsel's (Clive Sheldon) definitive advice in relation to the applicability of the Regulations to the HPC.

As I explained when we met, the Regulations are intended to apply to organisations that undertake an economic activity, even if that economic activity is not for gain. Consequently, Counsel has confirmed that the ICE Regulations will not apply to the HPC as it is a statutory body whose main function is the regulation and supervision of health professionals.

The HPC may therefore prefer not to establish open communication by way of information and consultation. Alternatively, it is open to the HPC to take this forward on an informal basis (i.e. outside of the Regulations).

Do let me know if you require any additional information.

Yours sincerely



**Karen Hostick**  
Solicitor

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## Appendix 3 - Information and Consultation of Employees Regulations 2004

### 1.0 Summary of Survey of other Regulators

Nine regulators were surveyed by the HPC's Human Resources Manager in order to gather information from like organisations as to how/whether the Information and Consultation of Employees Regulations (ICE Regulations) had impacted their organisation and what, if any, action they had taken in response to them. Of those regulators that had employee numbers above the threshold level at which the ICE Regulations become applicable, all presumed that the regulations would apply to them.

A summary is below, followed by full details from each organisation.

- Three regulators have employee numbers below the ICE Regulations threshold and so have regular informal face-to-face meetings to consult on matters (General Optical Council, General Osteopathic Council and General Chiropractic Council).
- Five regulators have implemented, or are in the process of implementing staff forums which have staff representatives who consult with employees. All five have taken the initiative themselves and none have resulted from a formal request from employees under the ICE Regulations (British Psychological Society, General Medical Council, General Dental Council, Nursing & Midwifery Council and Royal Pharmaceutical Society of Great Britain).
- One regulator has a partnership agreement with a union and has therefore not felt it necessary to have additional means of consultation and they have not received a request from employees to do so (General Social Care Council).

### 2.0 Responses in Detail

#### 2.1 General Optical Council (29 employees)

The ICE regulations do not apply as they have less than the 50 threshold employees. They do not have a staff forum but hold regular staff briefings and meetings.

#### 2.2 General Osteopathic Council (24 employees)

Although the ICE Regulations do not apply due to employee numbers, weekly face-to-face staff updates were established in 2004, combined with quarterly larger meetings with all departments.

### **2.3 The General Chiropractic Council (10 employees)**

The ICE Regulations do not apply due to employee numbers and a formal structure outside of regular meetings has not been necessary with this level of staffing.

### **2.4 The British Psychological Society (120 employees)**

The BPS is currently in the process of implementing a consultation unit. They have obtained committee approval, carried out a vote through a questionnaire and will shortly be electing staff representatives. Amicus is the recognised union, however, as it only represents members and not all staff this regulator wanted something that would apply to all staff.

### **2.5 General Medical Council (465 employees)**

The GMC chose to implement a staff forum approximately five years ago because the regulations applied to them but also because of an operational need following restructures and changes to their pension provisions. They hold regular cyclical meetings approx 4-6 times per year with staff representatives.

### **2.6 General Dental Council (130 employees)**

The GDC have a staff forum which meets once a quarter and then provides feedback to the employees via the intranet site. When they established the forum they ensured that terms of reference were set and that there was a clear remit.

### **2.7 Nursing & Midwifery Council (220 employees)**

The NMC is currently bedding-down a staff council and have held two to three meetings so far. To start the process they held employee focus groups to consult on the proposal and then held elections for employee representatives. They have one director who leads, the head of HR and ten employee representatives, one of whom chairs.

### **2.8 Royal Pharmaceutical Society of Great Britain (300 employees)**

Following a staff survey in 2003 which identified a need for better communication, a consultative forum was set up. Over six months they worked with a small group to agree terms of reference and then held voting for employee representatives. They decided to ask for representatives from each section of the organisation and have nine employee representatives who meet every three months.

## 2.9 The General Social Care Council (300 employees)

The GSCC have a partnership agreement with the union Unite and do not have any additional consultative mechanisms.