Proposed paper for CIRA/CRIMT conference on employee representation (theme 3)

Assessing the impact of the UK’s new regulatory framework for employee consultation

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In response to European Union requirements, recent legislation in the UK has introduced for the first time a general regulatory framework promoting employee consultation. Reflecting the predominant European model of statutory works councils, absent in the UK, the 2002 EU employee consultation Directive had particularly significant implications for UK law and practice, given the UK’s ‘voluntarist’ institutional character and the traditional primacy of trade union-based employee representation. The resulting Information and Consultation of Employees (ICE) Regulations 2004 constitute a highly flexible, light-touch regulatory approach to implementing the new consultation rights in the UK context.

The aim of the proposed paper is to assess the impact to date of the UK’s new regulatory framework for employee consultation. In particular, it will assess how employee representation has evolved in response to the new legislative environment, and whether and to what extent information and consultation (I&C) bodies established in the light of the ICE Regulations provide a vehicle for effective consultation, drawing on empirical data from continuing longitudinal case study research in 25 organisations (Hall et al, 2007; Hall et al, 2008).

Significance of the UK’s legislative approach

The ICE Regulations enable considerable flexibility of response, and are a prime example of ‘reflexive’ employment law whereby ‘the preferred mode of intervention is for the law to underpin and encourage autonomous processes of adjustment’ by the parties to the employment relationship (Barnard and Deakin, 2000: 341). Employers need not act unless 10% of their employees trigger statutory procedures intended to lead to negotiated I&C agreements. Voluntary ‘pre-existing agreements’ may pre-empt the use of the Regulations’ procedures. Under either route, there is considerable latitude to agree organisation-specific I&C arrangements. Only where the Regulations’ procedures are triggered but no agreement is reached are ‘standard’ or default I&C provisions enforceable.

I&C in practice

After four years in operation, the legislation is widely perceived to have been a ‘damp squib’. In part, this reflects the apparent rarity of the statutory procedures being ‘triggered’ by employees or trade unions, leaving employers to take the initiative in introducing or modifying I&C arrangements – or to do nothing (Hall, 2006).

Another dimension – and a central focus of our research – concerns the quality of consultation in organisations that have introduced or reformed I&C bodies in response to the Regulations, and the effectiveness or otherwise of this form of employee representation.

The nature and extent of the I&C processes in the organisations involved in our research varies markedly. The 12 surviving case study organisations in the first wave of our research, covering employers with 150 or more employees, fell into three broad categories:

- Only a minority were ‘active consulters’. This category included two cases where management was pro-active in discussing strategic organisational issues with the I&C body and engaging in consultation leading to agreed outcomes. It also included others where consultation practice was less developed, involving a degree of I&C on strategic decisions but with limited evidence of employee views being influential.
- Elsewhere, management used I&C bodies essentially for ‘communications’ rather than consultation as such. ‘Strategic’ issues rarely featured on the agenda, and then only after decisions had been taken. Instead, I&C bodies were primarily a forum for progressing staff-raised issues, typically HR policies, ‘housekeeping’ matters and social activities.
- In two cases, the I&C bodies became defunct after only two years.
Explaining the differing experiences of consultation

The proposed paper will identify key factors shaping the differing experiences of I&C in our case study organisations. Management is the dominant player and the experience of consultation reflects the role envisaged for the I&C body by senior management. Whether underpinned by formal agreements or not, the I&C bodies in our research were invariably employer-led arrangements – with little or no input to their design from unions/employees. Similarly, management determined whether consultation was in practice ‘active’ or largely limited to ‘communication’. This in turn influenced the effectiveness of the I&C body as a consultative partner. A more active approach to consultation required the development of employee representatives’ competence and cohesion, whereas the ‘communications’ approach promoted little employee-side interaction.

The approach of unions, where they were recognised, was ambivalent and largely reflected their security within the organisation. Where they were the dominant player on the employee side they embraced involvement in consultative activities alongside their collective bargaining remit. In contrast, where they had low membership amongst the workforce and few seats on the I&C body, they sought to preserve their separate bargaining role and played little or no part in the consultation process.

The impact of regulatory design

Although the ICE Regulations have to varying extents been the catalyst for the introduction of I&C arrangements and shaped their formal remit, they have not generally influenced managements’ approach to consultation in practice. The wide range of I&C practice is facilitated by the legislation’s emphasis on organisation-specific I&C arrangements and the broad definition of consultation embodied in the Directive/Regulations – ‘the exchange of views and establishment of dialogue’, as distinct from the more traditional notion of managers seeking and taking account of employees’ views before making a decision. As a public policy benchmark, the indirect influence of Directive’s/Regulations’ more stringent ‘default’ provisions appears to have been negligible.

Methodology

Our research uses longitudinal case studies, tracking developments in 25 organisations over a two-year period. Case studies begun in 2006 in 13 private and voluntary sector organisations with over 150 employees have now been completed. These involved research visits to each organisation in the second half of 2006, repeated two years later, and interim telephone updates. Managers, employee representatives and trade unions (where present) were interviewed at each stage, supplemented by documentary analysis and an employee survey at the beginning and the end of the research. This research is being replicated in a second wave of case studies in eight organisations with 100-150 employees, and a third wave in four organisations with 50-100 employees.

References

Bernard C and S Deakin (2000) ‘In search of coherence: social policy, the single market and fundamental rights’, Industrial Relations Journal 31, 4, 331-345

