

Britain's reluctant accommodation of EU-driven universal consultation rights

CIRA/CRIMT conference,
Quebec, June 2010

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Focus on ICE Regulations

- ⌘ driven by EU law not domestic policy
- ⌘ general statutory framework for employee consultation for first time in Britain
- ⌘ right for employees to trigger establishment of consultation arrangements, irrespective of union representation
- ⌘ radical departure from
 - voluntarist approach to consultation
 - 'single channel' trade union representation

Key EU employee consultation Directives

- ⌘ issue-specific – collective redundancies (1975), transfers of undertakings (1977)
- ⌘ transnational-level – European Works Councils (1994)
- ⌘ general statutory framework covering national undertakings (2002)

Guaranteed union involvement?

- ⌘ British law originally restricted EU-driven consultation rights to recognised unions
- ⌘ ‘single channel’ approach overturned by 1994 ECJ rulings
- ⌘ two subsequent policies
 - ‘union priority’ or ‘supplemented single channel’ (redundancies and transfers)
 - direct election of employee representatives (EWCs and ICE Regulations)

Legislative design of ICE Regulations

- ⌘ maximum flexibility of response
- ⌘ 'reflexive' law
- ⌘ 10% of workforce may trigger process to reach organization-specific 'negotiated agreements'
- ⌘ protection for 'pre-existing agreements'
- ⌘ minimalist default provisions

Impact of ICE Regulations

- ⌘ 'legislatively-prompted voluntarism'?
- ⌘ WERS 2004: continued decline of consultative committees
- ⌘ later surveys suggest increase in consultation bodies and reform of existing arrangements
- ⌘ no figures on 'pre-existing' or 'negotiated agreements'
- ⌘ little reported use of 10% trigger by employees
- ⌘ process largely employer-led

Union abstention

- ⌘ ICE Regulations a threat or opportunity for unions?
- ⌘ formal TUC support but union ambivalence
- ⌘ mixed messages from key legal cases
 - Moray Council
 - Macmillan Publishers
- ⌘ few union attempts to use Regulations
- ⌘ defensive union attitudes towards employer moves to set up consultation bodies

IRRU-based research on organisational responses to ICE Regulations

- ▣ introduction of consultation bodies management-led in all 25 cases
- ▣ no case of employee trigger or union pressure
- ▣ set up unilaterally by management in 11 cases
- ▣ formally-agreed arrangements also decisively shaped by management

IRRU-based research on organisational responses to ICE Regulations

- ❑ 'hybrid' union/non-union bodies typical in unionized organizations
- ❑ initially viewed with caution by recognized unions but pragmatic adaptation over time
- ❑ little tension reported between consultation and collective bargaining
- ❑ no significant decline in union membership or threat to union recognition

Summing up

- ⌘ full impact of Regulations yet to emerge
- ⌘ significant activity in terms of new or modified consultation arrangements, largely employer-led
- ⌘ union avoidance of Regulations; very little up-take by employees
- ⌘ ‘legislatively-prompted unilateralism’?
- ⌘ key barriers to effective implementation include
 - absence of guaranteed union role
 - 10% trigger
- ⌘ but early reform unlikely