Industrial Court

The Information and Consultation Regulations

Guidance for Employers and Employees

Sept 2005

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The Information and Consultation Regulations

A Guide for Employers and Employees

Introduction

1. The Information and Consultation of Employees Regulations (Northern Ireland) 2005 (Statutory Rule 2005 No. 47) came into operation on 6 April 2005. They implement the EU Information and Consultation Directive 2002, which will be taken into account in interpreting the Regulations. Initially they will apply to undertakings with at least 150 employees. They will be extended to undertakings with 100 or more employees from 6 April 2007 and 50 or more employees from 6 April 2008. If 10% of the employees request it, the Regulations require employers to establish arrangements for informing and consulting their employees by way of either a negotiated agreement or the standard provisions laid down in the Regulations. Even where a valid agreement that pre-exists the employees' request is in place, if 40% of employees (and a majority of those voting in a ballot) request information and consultation arrangements, the employer must begin negotiations to establish such arrangements. The Court's responsibility is to resolve disputes about the establishment and operation of these arrangements.

2. This booklet is a practical guide to the types of applications and complaints that can be made to the Industrial Court and the way the Industrial Court handles them. It should not be relied on as an authoritative statement of the law.

3. Further guidance about the Regulations is available from the organisations listed in Annex 3.

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The Industrial Court and the Information and Consultation of Employees Regulations

- There are 14 different applications or complaints that can be made to the Industrial Court under the Regulations.

- They are listed in Annex 1 to this Guide.

- There is a separate form for each application or complaint and it is important to complete the correct one.

- If you are unsure about which form to complete or how to complete it, please telephone or e-mail the Industrial Court. Our contact details are on page 19.

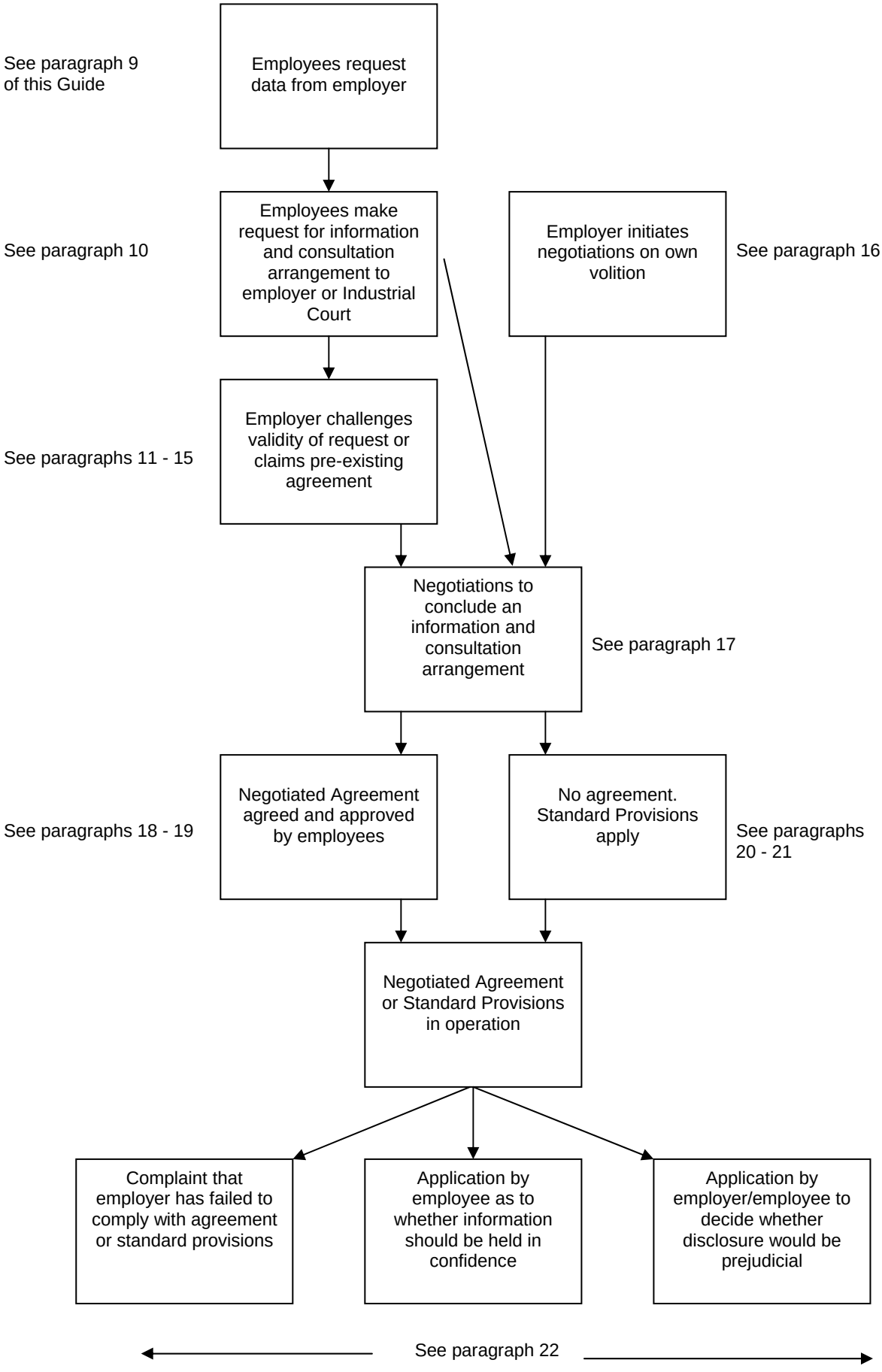
- If you have an application or complaint made against you, the Industrial Court will send you a form for you to respond. Again, if you are unsure how to complete the form please contact the Industrial Court.

- An Industrial Court Case Manager is appointed to every application or complaint we receive. They are available to inform employers, employees and their representatives about Industrial Court procedures.

- Although the Industrial Court is required to make decisions under the Regulations, where the Court is of the opinion that the complaint is reasonably likely to be settled by conciliation or other assistance it will refer the parties to the Labour Relations Agency (LRA).

- If hearings are necessary, the Industrial Court aims to keep these as informal as possible but with sufficient structure to ensure that those involved are given a full opportunity to present their views.

Procedure for implementing information and consultation arrangements



Background to the Industrial Court

4. The Industrial Court is an independent tribunal with statutory powers. The Chairman is supported by a Deputy Chairman and Members with experience as representatives of employers and employees. In addition to its responsibilities under the Information and Consultation regulations, the Industrial Court also has the following duties:

- Handling applications for trade union recognition and derecognition
- Adjudicating complaints from a trade union that an employer has failed to disclose information for collective bargaining purposes
- Resolving disputes over the establishment and operation of European Works Councils
- Resolving disputes over the information and consultation requirements of the European Company Statute.
- Providing voluntary arbitration in industrial disputes.

This Guide relates solely to the Information and Consultation of Employees Regulations NI (2005). Information about the Industrial Court's other statutory powers is available on the Industrial Court website (www.industrialcourt.gov.uk) or from the Industrial Court; our contact details are on page 19.

5. The Industrial Court's responsibility in this context is to resolve disputes about the establishment and operation of information and consultation arrangements. The Regulations also contain provisions relating to the protection of individuals such as information and consultation representatives. Claims under those provisions are dealt with by the Industrial Tribunals and are not covered in this Guide. For more information about the Industrial Tribunal's role, please visit www.industrialfairemploymenttribunalsni.gov.uk or telephone 028 9032 7666.

6. The main points in the Regulations are summarised below and further details are given in Annex 1 to this Guide.

A Summary of the Regulations

7. From 6 April 2005, the Regulations apply to undertakings with 150 or more employees. From 6 April 2007 the Regulations apply to undertakings with 100 or more employees and from 6 April 2008 to those with 50 or more employees. An undertaking is defined as "a public or private undertaking carrying out an economic activity, whether or not operating for gain." An employee means an individual who has entered into or works under a contract of employment, although for the purposes of calculating the number of employees within an organisation agency staff or sub-contracted workers are not counted, and the employer may wish to count part time employees as half a full time employee for any month in which they worked 75 hours or less. The Regulations apply to undertakings within Northern Ireland (identical but separate Regulations apply in the Great Britain) and where the registered office, head office or principal place of business is situated in Northern Ireland. If an undertaking operates in both Northern Ireland and Great Britain, the Northern Ireland Regulations apply if the majority of employees work in Northern Ireland.

8. Where an agreement for Information and Consultation arrangements pre-dates either an employee request or an employer's decision to pursue a negotiated agreement and meets certain criteria specified in the Regulations (for more details see Paragraph 12 of this guide), this is considered to be a pre-existing agreement. Other than to determine its validity the Court will have no jurisdiction in respect of such agreements. In contrast, the Court will have jurisdiction over the other ways in which information and consultation arrangements can come into operation: either employees making a request to their employer to establish arrangements or an employer initiating negotiations to establish information and consultation arrangements. To make a valid request under the Regulations, 10% of the employees in an undertaking must make the request; the 10% figure is subject to a minimum of 15 employees and a maximum of 2500. Employees can make the request as individuals or a group of employees can make a single request. Where separate requests are aggregated to achieve the 10% figure, all the requests must be made within a six month period of each other.

9. As a first step, employees can request data from their employer about the number of employees in the undertaking. This allows employees to calculate whether the undertaking has the relevant number of employees and therefore comes within scope of the Regulations. The data can also be used to calculate how many employees need to support a request to establish information and consultation arrangements to meet the 10% criteria. If an employee or their representative wants to request this data, they must write to their employer and date the request. If the employer refuses to provide the data, or if the employer provides data which the employees' representative considers is false or incomplete, they can make a complaint to the Industrial Court. The method of making an application or complaint to the Industrial Court and the way the Industrial Court will handle them is described in more detail in this Guide in paragraph 24 onwards.

10. Employees may make a request to their employer for information and consultation arrangements. Employees can do this even if they have not made the request for data described in paragraph 9 above. If employees wish to make a request on a confidential basis, they can write to the Industrial Court giving their own name and address, the employer's name and address and if possible, the name of the appropriate manager whom the Industrial Court should contact, ensuring that their letter is dated. It is essential that the request should, on its face, be a personal request from the named employee. If a number of requests are made in respect of the same undertaking, it would be helpful to the Industrial Court if one person could be nominated as a lead representative so that that person could act as the main point of contact. The Industrial Court will then contact the employer to obtain a list of the names of the undertaking's employees and will check whether the requests are from individuals whose names are on the list. The Industrial Court will then write to the employer and the employees to inform them of the number of employees who have made requests to the Industrial Court. ***The Industrial Court will not reveal to the employer the names of the employees who have written to the Industrial Court***. It is then up to the employer to decide if information and consultation arrangements should be established and, if appropriate, to begin negotiations. In paragraph 20 of this Guide we explain the action employees may take if they consider a sufficient number have made requests to comply with the 10% threshold and the employer refuses to negotiate to establish information and consultation arrangements.

11. An employer may wish to challenge the validity of a request for information and consultation arrangements. For example, the employer may consider that it is not an

'undertaking' as defined by the Regulations or that the undertaking does not employ sufficient employees to come within scope of the Regulations. If that is the case, the employer may make an application to the Industrial Court which will decide if the employer is required to act on the employees' request.

12. An employer may also consider that there is a 'pre-existing agreement' in place which provides for informing and consulting employees and that it should not be required to establish information and consultation arrangements under the Regulations. A pre-existing agreement should be in writing, cover all employees in the undertaking, have been approved by the employees and should set out the information and consultation arrangements. In these circumstances, if 40% of employees request information and consultation arrangements, the employer must nevertheless start negotiations to establish such arrangements. However, if the number of requests is at least 10% but less than 40%, the employer can choose to run a ballot for the employees to decide if the employer should initiate negotiations to establish information and consultation arrangements. If the employer decides to run a ballot, it must inform the employees within one month of the employee's request; the ballot should not take place earlier than 21 days after the employer notifies the employees of its intention to run a ballot. If the employees consider that there is no valid pre-existing agreement, they can make a complaint to the Industrial Court which will decide the matter. Employees may also make an application to the Industrial Court if they consider that the employer did not notify them that a ballot was to take place, that the ballot has not been held or that it took place before the 21 day period had expired or that the ballot did not conform with the requirements of the Regulations; the balloting requirements include the facility to vote in secret and the necessity to ensure that votes are accurately counted. The Industrial Court can order the employer to arrange the ballot in line with the requirements of the Regulations.

13. If there are one or more pre-existing agreements that cover employees in more than one undertaking, an employer may choose to run a combined ballot involving the employees in all the undertakings. Employees may make an application to the Industrial Court that the employer is not entitled to run a ballot on this basis or that, if such a ballot does take place, that the conditions described in paragraph 12 above have not been met.

14. If a ballot does take place, the request to establish information and consultation arrangements must be supported by a majority of those voting ***and*** 40% of those entitled

to vote to be successful. If either of these criteria is not met, the request is unsuccessful and the employees cannot make another request for three years from the date of the initial employee request.

15. If the result of the ballot is that the employees support the request to establish information and consultation arrangements, or if there is no pre-existing agreement, or if the employer has decided to initiate negotiations, the procedure moves to the next stage which is to start the negotiating process. This process must begin within three months of a valid request being made or the employer issuing a valid notification. The first step is for the employer to make arrangements for the election or appointment of representatives who will negotiate the information and consultation arrangements with the employer. These are referred to in the Regulations as 'Negotiating Representatives'.

16. If an employer decides to initiate negotiations under the auspices of the Regulations without waiting for a request from employees, it must inform the employees in accordance with the following requirements:

a) it must state that it intends to start the negotiating process and that the notification is given for the purposes of the Regulations;

b) it must state the date on which the notification is issued; and

c) it must be brought to the attention of all employees in the undertaking

Employees may make an application to the Industrial Court that the employer did not conform to these requirements.

17. Negotiating Representatives must be elected or appointed in accordance with the following requirements:

a) all employees must be represented by one or more Negotiating Representatives

b) all employees are entitled to take part in the process for appointing or electing Negotiating Representatives.

Employees may make a complaint to the Industrial Court that these requirements have not been met. It is for the employer to choose whether Negotiating Representatives are elected or appointed but the employees are entitled to take part in the process once the employer has chosen the method.

18. If the Negotiating Representatives and the employer successfully conclude an agreement, it must conform to the following requirements:

a) it must set out the circumstances in which the employer must inform and consult the employees;

b) it must be in writing, dated and signed on behalf of the employer;

c) it must be approved by all the Negotiating Representatives or, if it has been approved by the majority of the Negotiating Representatives, it must be approved in writing by 50% of the employees or supported in a ballot by 50% of those voting; and

d) it must provide for the appointment of Information and Consultation Representatives or provide that the employer must inform and consult directly with all employees.

If a ballot of employees is held to approve the agreement, it must conform to the requirements of the Regulations; these include the facility to vote in secret and the obligation to ensure the votes are accurately counted. A complaint can be made to the Industrial Court that the balloting requirements have not been met.

19. The Regulations state that there is a six month period for the employer and the Negotiating Representatives to reach an agreement. The six month period starts three months after the employer receives a valid request from its employees for information and consultation arrangements or three months after the date on which the employer decides to initiate negotiations itself. The six month period can be extended by agreement between the employer and the employees.

20. If it does not prove possible for the employer and the Negotiating Representatives to reach an agreement, or if the employer fails to enter negotiations, the ‘Standard

Information and Consultation Provisions' will automatically apply. Generally, if the employer has refused to enter into negotiations, the Standard Provisions will apply six months from the date on which a valid request was made (or a valid notification was issued by the employer) or the date on which Information and Consultation Representatives are elected (see paragraph 21 below) whichever is the sooner. If, however, negotiations have taken place but did not result in an agreement, the Standard Provisions will apply six months from the expiry of the time limit described in paragraph 19 above, or the date on which Information and Consultation Representatives are elected, whichever is the sooner.

21. The Standard Information and Consultation Provisions do not resemble the traditional types of collective agreements between employers and trade unions or typical agreements between an employer and its employees. They are a series of obligations on the employer to inform the employees' representatives on a range of issues affecting the undertaking's activities. The employer is under an additional duty to consult employees' representatives on some of those issues. Under the Standard Provisions, the employer also has to arrange a ballot to elect Information and Consultation Representatives and a complaint can be made to the Industrial Court if that obligation is not met. The Regulations relating to the Standard Information and Consultation Provisions have been reproduced at Annex 2.

22. If a Negotiated Agreement is in place or if the Standard Provisions apply, there are three issues on which an application or a complaint can be made to the Industrial Court (these are explained in more detail in Annex 1):

a) a complaint can be made to the Industrial Court that an employer has **failed to comply** with a Negotiated Agreement or the Standard Provisions;

b) where an employer has disclosed information to an employee or an employees' representative and has required them to keep that information confidential, the recipient of the information can make an application to the Industrial Court for a decision on whether it was **reasonable for the employer to impose that requirement**; and

c) an application to the Industrial Court by either an employee or the employer that **disclosing information would seriously harm the functioning of, or be prejudicial to, the undertaking.**

23. In Annex 1 you will find more detailed information about all the applications and complaints that can be made to the Industrial Court. There is no facility for employees to bring any of the three complaints above to the Industrial Court if the agreement is a pre-existing one rather than a negotiated agreement or the standard provisions.

Industrial Court Proceedings

24. The Industrial Court will be even-handed in its application of the provisions of the Regulations. The procedures will be as user-friendly as possible for employers, employees and their representatives.

25. An Industrial Court Case Manager will be appointed to every application or complaint. They will do all they can to help employers and employees understand the Regulations and to resolve any difficulties.

26. The Industrial Court normally publishes decisions on its website. When an application or complaint is received, the Industrial Court will only identify the case by way of the employer's name. We will not publish the names and contact details of individual employees.

27. Throughout this Guide we have referred to employees. For the avoidance of doubt, an application or complaint to the Industrial Court may be made by an employee, a group of employees or an employees' representative. If an application or complaint is made by a group of employees, it would be helpful to the Industrial Court if one person could be identified as the lead representative.

28. A panel of three Industrial Court members will be convened to deal with each application or complaint. The panel will consist of the Industrial Court Chairman or Deputy Chairman, one Member with experience as a representative of employers and one Member with experience as a representative of employees. While the composition of the panel will normally remain the same throughout the handling of an application or complaint, it may occasionally be necessary to change the membership. All those involved will be informed of the names of the panel members, and of any changes in the composition of the panel.

29. The Industrial Court's approach will be as flexible as possible. The Industrial Court will try to take a problem-solving approach and to help the parties, where possible, to reach voluntary agreements outside the statutory process. Where the Court is of the

opinion that a complaint is reasonably likely to be settled by conciliation or other assistance, it will refer parties to the LRA. The parties to an application or complaint are free to contact the Case Manager at any time to discuss any aspect of the application. The Case Managers will do all they can to explain the statutory procedures and help both parties understand the implications of the legislation, as well as resolve difficulties. However, the impartiality of the Court cannot be compromised in this process. Either party can contact the Case Manager with queries and the Case Manager can quickly liaise with the Panel where necessary. Should the Case Manager be out of the office for any reason, another Industrial Court official will handle the case in his/her absence. The Industrial Court panel will expect the parties to co-operate in providing any relevant information and may draw an adverse inference if the parties do not co-operate with a reasonable request for information or documents.

30. Since the Industrial Court has a duty to help the parties to resolve underlying problems and reach agreement, some contacts between the Industrial Court and the parties will be of an informal nature. However the Industrial Court also has to take formal decisions based on evidence available to both parties, so there can be a mix of informal and formal processes. Where necessary, the Case Manager and the panel will make it clear to the parties when they are discussing matters informally and when the discussion is part of a formal process. The Industrial Court is also under a duty to establish if it is reasonably likely that the application or complaint could be settled by conciliation through the Labour Relations Agency. Although employers and employees are free to seek assistance from the Labour Relations Agency at any time, the Industrial Court Case Manager may also discuss this option with the parties to an application or complaint.

Making an application or complaint to the Industrial Court

31. There are 14 different applications or complaints that can be made to the Industrial Court. These are listed in Annex 1 to this Guide and a separate form is available for each application or complaint. Each form contains details of the relevant Regulations and the questions on the form are specific to each application or complaint. Applicants should complete the form in as much detail as possible, but in the knowledge that it, and any supporting documentation sent with it, will be copied to the other party by the Court.

32. When the Industrial Court receives an application or complaint it will copy it to the other party and invite them to complete a form in response. That form will in turn be copied to the other party and to the panel appointed to deal with the case. The Case Manager will then contact both parties to explain the course of action the panel has decided to take. This may be, for example, a request for further information, a discussion about the possibility of a voluntary settlement of the issue or to arrange a formal hearing.

Hearings

33. Hearings are not always necessary and some decisions may be taken by the panel on the papers, after giving each party the opportunity to make submissions or if it appears to the panel that there is no material dispute. If it appears that a hearing will be necessary, the Chairman of the panel may hold a preliminary meeting in order to set out procedures and identify the issues disputed. The parties will be asked to submit and exchange evidence in the form of written submissions prior to the hearing. New evidence will only be admitted at hearings for good reasons and at the discretion of the panel. If the parties choose not to present evidence, that will not prevent the Industrial Court reaching a decision. The parties will be asked to inform the Industrial Court panel in advance of the names of the speakers and witnesses proposed for the hearing. The parties may appoint representatives but there is no requirement to use lawyers. Hearings will generally be held in public, although it is open to the Industrial Court to hold a hearing (or part of a hearing) in private, for example if the panel considers there are areas of particular confidentiality or that it is necessary in order to reach a satisfactory settlement. The Industrial Court holds hearings in as informal a way as is consistent with clarity and fairness. Each party will be asked to comment on and amplify its written statement and to comment on the other's evidence and to answer questions put by the panel. Speakers and any witnesses may be cross-questioned where factual issues are in dispute, at the discretion of the panel. In particular cases, the Industrial Court panel may determine that stricter standards of evidence are required, or that more formality in proceedings is appropriate. Parties will be advised if this is the case in good time prior to the hearing.

34. Although the Regulations do not prescribe deadlines within which applications and complaints should be processed, the Industrial Court will act as expeditiously as possible and will expect employers, employees and their representatives to co-operate with this principle. In practice this means that on receipt of an application or complaint the

Industrial Court will ask the other party to respond normally within five working days. The Industrial Court also aims to inform the parties within a further five working days of the way it intends to handle the application or complaint and to communicate any decisions as soon as they have been taken or, if a hearing has taken place, to communicate the Panel's decision as soon as is practicable after the hearing date.

35. If a hearing is necessary, it will be arranged as soon as is possible. Wherever possible, hearing dates will be arranged taking account the commitments of the parties but there are occasions where it is necessary for the Industrial Court to impose a hearing date in order to avoid unnecessary delays. Where a hearing date is imposed, the Industrial Court will give as much notice to the parties as is possible. The Industrial Court expects that hearings will normally be completed in a day, and the procedures adopted at the hearings will be based on that expectation. While the Industrial Court is based in Belfast, it may hold hearings at other locations where this is believed helpful to, or more convenient for, the parties to the case. The decision on location will rest with the Industrial Court. Forthcoming hearings are listed on the Industrial Court's website.

Industrial Court Decisions

36. Decisions of the Industrial Court are normally publicly available, but are not publicised by means of a Press Notice. Where decisions of the Industrial Court are publicised by means of a Press Notice, the parties will be informed first. All decisions are made in the name of the Industrial Court rather than that of the individual panel members. After notification has been made to the parties, decisions of the Industrial Court are posted on the Industrial Court website (www.industrialcourt.gov.uk). The parties will be invited to give evidence to the Industrial Court that the publication of the details of a decision could lead to the release of information that could be detrimental to either side.

Enforcement of Industrial Court Decisions

37. A declaration or order of the Industrial Court under the Regulations may be relied on as if it were a declaration or order made by the High Court in relation to an employer whose registered office, head office or principal place of business is in Northern Ireland. In the case of complaints under Regulations 19(4) and 22(1) (see Annex 1 for further details), an application can be made to the High Court for a penalty notice.

Appeals

38. There is a right of appeal to the High Court on any question of law arising from any declaration or order of, or arising in any proceedings before, the Industrial Court under the Regulations.

Confidentiality

39. As already stated in Paragraph 10 of this guidance, employees can make a request for Information and Consultation arrangements on a confidential basis to the Industrial Court. However, there are two further areas in the Regulations where confidentially may be of particular concern to those involved in Industrial Court proceedings. These are Regulation 25(6) in which a recipient of information may make an application to the Industrial Court for a declaration as to whether it was reasonable for the employer to require the recipient to hold the information in confidence and Regulation 26(2) in which an employer, an employee or an employees' representative may apply to the Industrial Court for a declaration as to whether the nature of information is such that, according to objective criteria, the disclosure of the information would seriously harm the functioning of, or would be prejudicial to, the undertaking.

40. Industrial Court hearings are normally held in public and decisions are normally published on our website. The Industrial Court recognises that employers may be concerned that the very information which they seek to retain as confidential may be disclosed as a result of Industrial Court proceedings, or that information they regard as commercially confidential may need to be disclosed to enable the Industrial Court to make the decisions described in paragraph 39 above. If there are important issues relating to the disclosure of confidential information, the Industrial Court panel appointed to determine a particular application or complaint will consider representations made by any party to a case that, for example, a hearing be held, at least in the first instance, without notice to or in the absence of any other party, or should not be held in public, or that the publication, or the publication in full, of a decision on the Industrial Court website should not take place or should be deferred for a specific period.

Contact Details for the Industrial Court

Address: The Industrial Court
Room 203
Adelaide House
39/49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7599 (9.00am-5.00pm – Monday to Friday)
Fax: 028 9025 7555
E-mail: mailto:enquiries@industrialcourt.gov.uk
Web-site: www.industrialcourt.gov.uk

Contact names:

Secretary:	Lynne Taylor
Senior Case Manager:	Marie Turner
Case Manager:	Brenda Slowey
Head of Administration:	Paul Cassidy
Administration Support:	Alan Finlay

User Satisfaction

If you are asked for your views on any aspect of our service, we would appreciate your co-operation. But if you have comments, whether of satisfaction, complaint or suggestion, please do not wait to be asked. If you are dissatisfied with any aspect of our service, or have any comments to make please let us know. If you cannot resolve the problem with the person who dealt with you originally, please ask to speak to the Secretary, who will investigate this issue. If you wish to complain or make any comments, please write to Lynne Taylor, at the address above.

In the event of any complaint, we hope that you will let us try to put things right. But if necessary you can write to your MLA who can tell you how to have your complaint referred to the Parliamentary Commissioner for Administration (the Ombudsman).

Annex 1

Issues Under the Information and Consultation Regulations on which Applications or Complaints Can Be Made to the Industrial Court

EMPLOYER'S OBLIGATION TO PROVIDE INFORMATION ON NUMBERS

1. **Regulation 6(1)**

Complaint by an employee or an employees' representative that the employer has failed to provide information to determine the number of people employed by the undertaking in Northern Ireland, or the number of employees that constitutes 10% of employees in the undertaking, or that information provided is false or incomplete. Complaint can be submitted no earlier than one month after the complainant requested the information.

The Industrial Court can make an order specifying:

- the data to be disclosed;
- the date on which the employer refused to supply the data or disclosed false or incomplete information;
- the date (no earlier than one week from the date of the order) by which the employer must disclose the data.

PRE-EXISTING AGREEMENTS

2. **Regulation 8(7)**

Application by an employee or employees' representative that the employer has not informed the employees, within one month of the employees' request, that it intends to hold a ballot for the purpose of endorsing the request.

The Industrial Court can declare that the employer is under a duty to initiate negotiations.

3. **Regulation 8(8)**

Complaint by an employee or employees' representative that the employer has informed employees that it intends to hold a ballot to endorse the employee request, where it is made by fewer than 40% of employees and there is a pre-existing agreement, but either the employer has not arranged for the ballot to be held or the ballot has taken place prematurely.

The Industrial Court can make an order requiring the employer to hold a ballot within a specified period.

4. **Regulation 10(1)**

(a) Complaint by an employee or employees' representative, within 21 days of the employer notifying its intention to hold a ballot, that there is no valid pre-existing agreement. A pre-existing agreement must:

- be in writing
- cover all employees
- have been approved by the employees
- set out how the employer is to give the information to employees or representatives and to seek their views

If the Industrial Court decides that there is no pre-existing agreement, it can make an order requiring the employer to initiate negotiations.

(b) Complaint by an employee or employees' representative that an employer was not entitled to run a combined ballot in circumstances where there are one or more pre-existing agreements covering employees in more than one undertaking.

If the Industrial Court decides that a combined ballot should not take place, it can order the employer to initiate negotiations or to conduct a ballot in the undertaking to which the employee request relates.

5. **Regulation 10(2)**

Complaint, within 21 days of the ballot, by an employee or employees' representative that the ballot to endorse the employee request did not comply with Regulation 8(4):

- the ballot must be fair
- all employees are entitled to vote
- voting is in secret
- votes are accurately counted

The Industrial Court can order the employer to hold the ballot again or, if the employer makes representations that it would prefer to initiate negotiations, to require the employer to initiate negotiations.

VALIDITY OF REQUEST

6. **Regulation 13(1)**

Application by an employer (within one month of the request or the request which resulted in the requisite number of employees) that a request is not valid because it did not conform with Regulations 7(2)-(4):

- request not made by 10% of the employees (subject to a minimum of 15 and a maximum of 2500)
- aggregated requests not made within a six month period of each other
- request not made in correct form

or was covered by the restrictions in Regulation 12:

- within three years of the date of a negotiated agreement or before the date of termination
- within three years of the date on which the standard provisions started to apply
- where there was a pre-existing agreement, within three years of a request which led to the non-endorsement of the request in a ballot

or that the obligation in Regulation 7(1) did not apply on the date the request was made:

- employer does not employ required number of employees
- employer is not 'a public or private undertaking carrying out an economic activity, whether or not operating for gain'

The Industrial Court can make a declaration as to whether the request was valid or whether the obligation applied on that date.

VALIDITY OF EMPLOYER NOTIFICATION

7. **Regulation 13(2)**

Application by an employee or employees' representative (within one month of the notification) that an employer notification to initiate negotiations under Regulation 11 is not valid because it did not conform with the requirements of Regulation 11(2):

- the notification should state that it is made for the purpose of the Regulations
- it should state the date on which it is issued
- it should be brought to the attention of all employees in the undertaking

or was covered by the restriction in Regulation 12 (see paragraph 6 above).

The Industrial Court can make a declaration as to whether the notification was valid.

APPOINTMENT OR ELECTION OF NEGOTIATING REPRESENTATIVES

8. **Regulation 15(1)**

Complaint, within 21 days of the appointment or election of a negotiating representative, by an employee or employees' representative that the requirements for the appointment or election of negotiating representatives in Regulation 14(2):

- all employees entitled to take part in appointment/election
- all employees are represented by a representative

have not been complied with.

If well founded, the Industrial Court can make an order requiring the employer to arrange again the appointment or election of negotiating representatives within a specified period.

BALLOT TO APPROVE A NEGOTIATED AGREEMENT

9. **Regulation 17(1)**

Complaint, within 21 days of the ballot, by a negotiating representative that the arrangement for a ballot to approve a negotiated agreement did not comply with Regulation 16:

- the ballot must be fair
- all employees are entitled to vote
- voting is in secret
- votes are accurately counted
- the employer must inform the employees of the result as soon as is reasonably practicable after the date of the ballot

The Industrial Court can make an order requiring the employer to hold the ballot again within a specified period.

BALLOT TO ELECT I&C REPRESENTATIVES

10. **Regulation 19(4)**

Complaint by an employee or employees' representative that arrangements for a ballot to elect I&C representatives for the purposes of the standard provisions has not been arranged.

The Industrial Court can make an order requiring the employer to arrange and hold a ballot.

Employee or employees' representative can apply to the High Court for a penalty notice.

11. **Paragraph 3 of Schedule 2**

Complaint by an employee or employees' representative that the proposed ballot arrangements are defective.

The Industrial Court can make an order requiring the employer to modify the proposed arrangements.

EMPLOYER'S FAILURE TO COMPLY WITH AGREEMENT/PROVISIONS

12. **Regulation 22(1)**

Where a negotiated agreement has been agreed or the standard provisions apply, a complaint may be made to the Industrial Court by a relevant applicant, within three months of the alleged failure, that an employer has failed to comply with the terms of the agreement or one or more of the standard provisions.

The Industrial Court can make an order requiring the employer to take steps to comply.

The relevant applicant can apply to the High Court for a penalty notice.

If the standard provisions apply, complaints may, for example, cover the following issues:

- not providing information under Regulation 20(1)(a), (b) and (c)
- not providing the information within the time, fashion and content requirements under Regulation 20(2)
- not consulting on the issues described in Regulation 20(1)(b) and (c) under Regulation 20(3)
- not consulting in accordance with the requirements in Regulation 20(4)

(See Annex 2 for further information)

REQUIREMENT TO HOLD INFORMATION IN CONFIDENCE

13. **Regulation 25(6)**

Application by a recipient of information as to whether it is reasonable for the employer to require him or her to hold the information in confidence.

The Industrial Court can make a declaration.

Applies whether there is a negotiated agreement or the standard provisions apply.

WHETHER INFORMATION SHOULD BE DISCLOSED

14. **Regulation 26(2)**

Application by employer or recipient as to whether information is such that its disclosure would seriously harm the functioning of, or be prejudicial to, the undertaking.

The Industrial Court can make a declaration and, if appropriate, order the employer to disclose the information.

Applies whether there is a negotiated agreement or the standard provisions apply.

Annex 2

Regulation 20: The Standard Information and Consultation Provisions

This is a copy of Regulation 20, which sets out the standard provisions for the Information and Consultation of Employees.

20. – (1) Where the standard information and consultation provisions apply pursuant to regulation 18, the employer must provide the information and consultation representatives with information on –

(a) the recent and probable development of the undertaking's activities and economic situation;

(b) the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular, where there is a threat to employment within the undertaking; and

(c) subject to paragraph (5), decisions likely to lead to substantial changes in work organisation or in contractual relations, including those referred to in-

(i) articles 216 to 220 of the 1996 Order (**a**); and

(ii) regulations 10 to 12 of the Transfer of Undertakings (Protection of Employment) Regulations 1981(**b**).

(2) The information referred to in paragraph (1) must be given at such time, in such fashion and with such content as are appropriate to enable, in particular, the information and consultation representatives to conduct an adequate study and, where necessary, to prepare for consultation.

(3) The employer must consult the information and consultation representatives on the matters referred to in paragraph (1)(b) and (c).

(4) The employer must ensure that the consultation referred to in paragraph (3) is conducted -

(a) in such a way as to ensure that the timing, method and content of the consultation are appropriate;

(b) on the basis of the information supplied by the employer to the information and consultation representatives and of any opinion which those representatives express to the employer;

(c) in such a way as to enable the information and consultation representatives to meet the employer at the relevant level of management depending on the subject under discussion and to obtain a reasoned response from the employer to any such opinion; and

(d) in relation to matters falling within paragraph (1)(c), with a view to reaching agreement on decisions within the scope of the employer's powers.

(5) The duties in this regulation to inform and consult the information and consultation representatives on decisions falling within paragraph (1)(c) cease to apply where the employer is under a duty under –

(a) Article 216 of the 1996 Order referred to in paragraph (1)(c)(i) (duty of employer to consult representatives of employees); or

(b) regulation 10 of the Regulations referred to in paragraph (1(c)(ii) (duty to inform and consult trade union representatives);

and he has notified the information and consultation representatives in writing that he will be complying with his duty under the legislation referred to in sub-paragraph (a) or (b), as the case may be, instead of under these Regulations provided that the notification is given on each occasion on which the employer has become or is about to become subject to the duty.

(6) Where there is an obligation in these Regulations on the employer to inform and consult his employees, a failure on the part of a person who controls the employer (either directly or indirectly) to provide information to the employer shall not constitute a valid reason for the employer failing to inform and consult.

INDUSTRIAL COURT NOTE

In relation to paragraph 20(1)(c) above:

Articles 216 to 220 of the 1996 Order refer to an employer's obligation to consult employees' representatives in a redundancy situation

Regulations 10 to 12 of the Transfer of Undertakings (Protection of Employment) Regulations 1981 refer to an employer's obligation to consult employees and their representatives prior to the transfer of an undertaking

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Annex 3

Regulation 20: The Standard Information and Consultation Provisions

The Department for Employment and Learning has published detailed guidance about the Regulations which can be obtained from the Employment page of its website (Information and Consultation in the workplace - a guide | Department for Employment and Learning). Copies of the Regulations are available from HMSO, and can be accessed online at www.hmso.gov.uk

Guidance about good practice on informing and consulting employees is available from the website of the Labour Relations Agency (www.lra.org.uk).

The Confederation of British Industry (CBI), the Trades Union Congress (TUC) and various other employer bodies and trade unions have also published guidance about the Regulations.

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