

EXPLANATORY MEMORANDUM TO
THE TRANSNATIONAL INFORMATION AND CONSULTATION OF EMPLOYEES
(AMENDMENT) REGULATIONS 2010

2010 No. 1088

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills (BIS) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Transnational Information and Consultation of Employees Regulations 1999 (SI 1999/3323). The 1999 Regulations provide employees in large multinational companies with the right to be informed and consulted about transnational issues that affect them through a European Works Council (EWC). The amendments are required to implement the provisions of the recast European Works Council Directive (2009/38/ EC) (the “recast Directive”). This instrument also implements Articles 7 and 8 of the EU Directive 2008/104/EC on temporary agency work, in so far as those Articles are relevant to the transnational information and consultation of employees.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Directive on the establishment of a European Works Council or a procedure in Community-scale undertakings or Community-scale groups of undertakings for the purpose of informing and consulting employees (94/45/EC) (the “1994 Directive”) has applied to the UK since 1997. It was implemented in the UK by the Transnational Information and Consultation of Employees Regulations 1999 (the “1999 Regulations”), which came into force in January 2000.

4.2 In July 2008 the European Commission published a legislative proposal to make changes to specified elements of the Directive in order to increase the number of EWCs and to improve their performance. Under the French Presidency of the EU the European Social Partners were invited to submit their joint view on the Commission’s proposal. Their response strongly influenced negotiation of the recast Directive. The recast Directive was agreed at the Council of Ministers and the European Parliament in December 2008. It was published in the Official Journal of the European Union on 16 May 2009.

4.3 The recast Directive requires all Member States to transpose it by 5 June 2011. The central purpose of these Regulations (the “2010 Regulations”) is to transpose the recast Directive in the UK by making the necessary amendments to the 1999 Regulations. The 2010 Regulations are therefore laid under section 2(2) of the European Communities Act 1972.

4.4 The recast Directive introduced a number of measures aimed at improving information and consultation with EWCs. Amongst the most significant are:

- definitions that set out how information and consultation should take place
- a definition of what constitutes a transnational issue for the purposes of information and consultation with EWCs
- a requirement that EWCs are adapted following significant structural changes to the company to ensure that all employees are represented;

- rights for members of Special Negotiating Bodies (SNBs) and EWCs to receive necessary training and to have time off for that training
- a requirement that the EWC shall be provided with the means required to represent the employees in the context of transnational information and consultation
- a requirement for a link to be established between consultations at national level on issues where national employee representation bodies are entitled to be consulted and related consultations with the EWC where issues relate to transnational matters.

4.5 The recast Directive does not apply in the same way to all EWCs, and the 2010 Regulations therefore apply in different ways to the various categories of EWC. In particular, EWCs which were established before the 1994 Directive took effect are not covered by the TICE 1999 Regulations, and they will not be subject to the amendments introduced by the 2010 Regulations, except for new Regulation 19F (and related negotiation provisions) dealing with the adaptation of an EWC to major structural changes within the multinational company concerned. EWCs which are established after the 2010 Regulations take effect are fully covered by the amended 1999 Regulations. Other EWCs are covered mainly by the original 1999 Regulations, provided they were established or revised during the two years between the adoption of the recast Directive and its commencement. In other words, none of the amendments introduced by the 2010 Regulations will apply to them except new Regulation 19F (and related negotiation provisions).

4.6. A Transposition Note (TN) is attached to this Memorandum. The Government's negotiating strategy on the recast Directive was cleared through the NSID(EU) committee in September 2008 and the Government's consultation on draft Regulations was cleared through the same committee in November 2009.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The recast Directive represents a carefully balanced compromise, which was heavily influenced by BusinessEurope and the European Trades Union Confederation, between improving the information and consultation of employees and the ability of companies to make timely decisions. The Government's policy aims are to transpose the Directive effectively and thus help to improve the operation of EWCs, whilst retaining the balance that was achieved during the negotiation of the recast Directive. To achieve this, the 2010 Regulations incorporate wording which is identical, or very close, to that used in the recast Directive.

7.2 The Directive does not need to be transposed until 5 June 2011. Due to the transnational nature of the bodies created by the Directive, it is important that all Member States implement at roughly the same time. As such, the majority of the Regulations do not commence until 5 June 2011. The Regulations implementing aspects of the Agency Workers Directive (see para 7.6 below) will not commence until 1 October 2011. However, as explained above, the extent to which some companies and their workforces are covered by the recast Directive and these transposing 2010 Regulations depend on actions they might take before 5 June 2011. The Regulations are being laid early to allow those affected to make an informed decision.

7.3 Among other things, the Regulations:

- introduce new obligations on central management on the way that information and consultation should take place in EWCs;
- define more clearly what constitutes a transnational issue which EWCs are entitled to consider;
- require that EWCs are adapted following significant structural changes to the company to ensure that all employees are represented (the 'adaptation clause');
- create a new right for members of EWCs and Special Negotiating Bodies to receive necessary training;
- create an obligation for the central management to provide the EWC with the means required to fulfil its duties
- provide for a link to be established between consultations at national level on issues where national employee representation bodies are entitled to be consulted and related consultations with the EWC where issues related to transnational matters; and
- increase the maximum penalty from £75,000 to £100,000 that can be awarded for a breach of the Regulations

7.4 The Instrument also makes changes to the Regulations' enforcement regime to establish the Central Arbitration Committee (CAC) as the court to hear the majority of complaints brought in Great Britain. This will result in responsibility for hearing complaints brought under Regulations 20 and 21 transferring from the Employment Appeals Tribunal (EAT). The EAT will retain its role in issuing penalties for non-compliance. The CAC is the recognised authority on hearing complaints under similar legislation, such as the Information and Consultation of Employees Regulations 2004 (ICE), and is deemed the most appropriate place to hear complaints under this Instrument. A six month time limit for complaints to be raised with the CAC is introduced. This differs to most similar legislation, such as ICE (which include three month time-limits for complaints) due to the greater difficulty for an EWC to exchange information to reach an informed decision on whether or not a complaint should be raised. Difficulties may arise as a result of the spread of members across different EEA member states and they may have further issues connected with, for example, translation. The Employment Tribunal will be established as the court to hear complaints brought under the new right for EWC and SNB members to be given paid time off for training.

7.5 The 2010 Regulations include provisions that implement aspects of the Agency Workers Directive that impact on transnational information and consultation. These changes have been incorporated here to ensure that all changes to the EWC regime are made in one Instrument. Article 7 of the Agency Workers Directive requires that agency workers are taken into account when deciding whether thresholds for bodies representing workers are reached or exceeded. In the UK, agency workers will count towards the threshold of the agency which provides them with work and not to the company in which they are placed. Article 8 of the Agency Workers Directive requires that suitable information on the use of agency workers is provided by business to employees' representatives when providing information on the employment situation of that business. Various Regulations have been amended to ensure that this takes place as part of the process of information and consultation with an EWC. The main provisions of the Agency Workers Directive are implemented via the Agency Workers Regulations 2010 (SI 2010/93). As the Agency Workers Regulations do not commence until 1 October 2011, the provisions that relate to them in this Instrument will also commence on that date.

- ***Consolidation***

7.6 No plans to consolidate.

8. Consultation outcome

8.1 More than four hundred organisations were consulted including businesses, European Works Councils, trade unions and employers' representative organisations. The Consultation ran for twelve weeks from 26 November 2009 to 12 February 2010. The consultation produced 44 responses from a cross-section of respondents.

8.2 A document summarising the outcome of the consultation and the Government's response will be published around the same time as the 2010 Regulations are laid in Parliament. In brief, the consultation produced a mixed response. Employers' respondents were generally happy with the overall policy intention but raised concerns about the complex structure of the draft Regulations. Trade unions and EWCs were less happy with the overall approach of the Regulations and felt that they did not go far enough in implementing certain key aspects of the Directive.

8.3 Unions and EWC members expressed concern that certain phrases from the Articles of the Directive and from the recitals in the Directive's pre-ambles were not used in the Instrument, particularly in relation to the obligations relating to how information and consultation should take place and the definition of what constitutes a transnational issue. Both employers and unions raised concerns about the way in which national and transnational information and consultation are linked. Both were concerned that the two levels of information and consultation should begin within a reasonable time of each other.

8.4 Following the consultation on the draft Regulations the Government acted on a number of respondents' recommendations in an attempt to make the Regulations easier to understand and to bring them more closely into line with the Directive, including: amending the Part of the 1999 Regulations that deals with exemptions; introducing further words from the Directive into the new obligations on 'information' and 'consultation'; and requiring that, where there is no agreement to the contrary, national and transnational information and consultation should start within a reasonable time of each other.

9. Guidance

9.1 Guidance will be provided for employees and representatives on the Direct.gov website and for employers on the Business Link website.

10. Impact

10.1 This Instrument builds on the existing requirement in the 1999 Regulations that all companies based in the UK with at least 1,000 employees and at least 150 employees in each of at least two EEA Member States create the circumstances necessary to allow for the creation of a European Works Council or a transnational information and consultation arrangement. The Regulations provide new rights to EWC members and those of Special Negotiating Bodies that are likely to increase the running costs associated with an EWC.

10.2 The Regulations do not apply to the public sector.

10.3 An Impact Assessment is attached to this memorandum. The total costs for compliance per year for all businesses have been estimated at between £4.5 million and £5.4 million.

11. Regulating small business

11.1 The Regulations do not apply to small business.

12. Monitoring & review

12.1 It is a requirement of the Directive that its implementation shall be assessed by the European Commission by no later than 5 June 2016.

12.2 Few legal actions have been brought under the 1999 Regulations. The additional rights of the 2010 Regulations may prompt more cases and the Department will monitor any cases closely.

13. Contact

Carl Davies at the Department for Business, Innovation and Skills Tel: 020 7215 6220 or email: carl.davies@bis.gsi.gov.uk can answer any queries regarding the instrument.

IMPACT ASSESSMENT

Implementation of the
Recast European Works
Council Directive

MARCH 2010

Summary: Intervention & Options

Department /Agency: BIS	Title: Review of Commission Directive 94/45/EC on European Work Councils for the purpose of informing and consulting employees. Impact assessment to accompany Government response on implementing draft UK regulations	
Stage: Government response on implementation	Version: Version 2	Date: March 2010
Related Publications: Government consultation document and Government response		

Available to view or download at: <http://www.bis.gov.uk/Consultations/european-works-council-directive>

Contact for enquiries: Asad Ghani/Carl Davies

Telephone: 0207 215 1627/ 6220

What is the problem under consideration? Why is government intervention necessary?

A Commission review of the European Works Council (EWC) Directive identified a number of problems with respect to the practical application of the Directive with regard to the information and consultation of employees; legal certainty, and coherence between EWCs and national level procedures, with a significant market failure noted in the form of information asymmetry between employer and employee. Following Member State negotiation, the Commission has published a recast of the EWC Directive which seeks to address the problems set out above. The Government has conducted a consultation on draft Regulations that will implement this Directive.

What are the policy objectives and the intended effects? The Government's objective is to transpose the recast Directive in order to achieve the Commission's objectives in amending the Directive, which are:

- to improve the effectiveness of information and consultation of employees in existing EWCs;
- to increase the number of EWCs being established;
- to improve legal certainty in the setting up and the operation of EWCs (for example during mergers and acquisitions); and
- to enhance the coherence between EWCs and other national level procedures for informing and consulting employees.

What policy options have been considered? Please justify any preferred option.

Government issued a consultation paper in September 2008 on the European Commission's proposals to recast Directive 94/45/EC (the European Works Council directive). A Government response to the consultation was published in December 2008. The UK Government held a further consultation on regulations to transpose the recast Directive in November 2009 and plans to publish the accompanying Government response in March 2010. Policy options consist of (1) do nothing or (2) implement the Directive in UK law. Option 1 is not viable as the UK would face infraction proceedings and is only used as a benchmark in this IA. A more detailed description of option 2 can be found later in this IA.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Article 15 of the Directive requires a review by the Commission five years after the revised Directive comes into force. The Government will continue to monitor the take up and use of EWCs through the Workplace Employment Relations Survey (WERS), next report expected in 2011. The Central Arbitration Committee (CAC) and the Employment Appeals Tribunal (EAT) are currently responsible for the enforcement of the Transnational Information and Consultation of Employees Regulations 1999.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Lord Young of Norwood Green, Minister for Postal Affairs and Employment Relations Date: 30/3/2010

Summary: Analysis & Evidence

Policy Option: 2

Description: Implement proposed review to the Directive.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Direct costs are increased costs borne by existing EWCs and indirect costs capture the cost of additional take-up. One-off costs are estimated at £2.61m over 3 years (as 19 new EWCs are expected to be established) and average annual (running) costs are estimated at between £4.87m and £5.95m depending upon scenario considered.	
	One-off (Transition)	Yrs		
	£ 2.6m	3		
	Average Annual Cost (excluding one-off)			
	£ 4.9 – 6.0m	10	Total Cost over 10 years (PV)	£ 44.0m – 53.3m
Other key non-monetised costs by 'main affected groups' There are a number of negligible costs relating to Admin Burdens detailed within individual articles.				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'. It was not possible to quantify benefits, given their intangible nature.	
	One-off	Yrs		
	£ n/a	0		
	Average Annual Benefit (excluding one-off)			
	£ n/a	10	Total Benefit (PV)	£ n/a
Other key non-monetised benefits by 'main affected groups' More effective information & consultation of employees, if achieved, has the potential to demonstrate a positive commitment to employees and to enhance understanding of management, employee-management relationship and the impact of restructuring on employees.				

Key Assumptions/Sensitivities/Risks.

Please refer to Sections E and F, which detail assumptions made and risks identified.

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £ -44.0m – -53.3m	NET BENEFIT (NPV Best estimate) £ m
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What is the geographic coverage of the policy/option?		UK		
On what date will the policy be implemented?		5 June 2011		
Which organisation(s) will enforce the policy?		CAC/ EAT/ ET		
What is the total annual cost of enforcement for these organisations?		£		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes	Yes	Yes	No

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)
 Increase of £ negligible Decrease of £ 0 **Net Impact** £ negligible

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

A: Strategic overview

Existing Government initiatives

The European Works Council (EWC) Directive was adopted in September 1994, with an implementation date of September 1996. At the time, the UK Government had not signed the social chapter of the Maastricht Treaty 1992 and so the Directive did not apply to the UK. The Government accepted the social chapter in June 1997, and as a result the original Directive was extended to cover the UK and was given effect in UK law in January 2000 by the Transnational Information and Consultation of Employees (TICE) Regulations 1999.

B: The issue

The TICE Regulations implement the EWC Directive and set out requirements for informing and consulting employees at the European level in undertakings or groups of undertakings, who have their central management in the UK, with at least 1,000 employees across the Member States of the European Economic Area (EEA) and at least 150 employees in each of two or more of those Member States. The purpose of the Directive is to establish mechanisms for informing and consulting employees where the undertaking has been requested to do so in writing by at least 100 employees or their representatives in two or more Member States, or on the management's own initiative. This will entail the setting up of a European Works Council (or some other form of transnational information and consultation procedure). Where no request is received or where management does not initiate the process, there is no obligation to start negotiations or to set up an EWC.

Once a request has been made (or at the management's initiative) employee representatives are either elected or appointed to a Special Negotiating Body (SNB). Article 6 of the Directive requires the SNB to negotiate with central management to determine the scope, composition and functions of the EWC and the duration of the agreement. Negotiations can last up to three years but where agreement has not been reached after that period, or the undertaking has failed to initiate negotiations six months after receipt of the employees' request to establish an EWC, a set of minimum 'subsidiary requirements' will apply which are laid out in the Annex to the Directive and in the Schedule to the TICE Regulations. In practice few, if any, EWCs have been set up under these fall-back subsidiary requirements but it is understood that the provisions of many EWC agreements have been influenced by them.

Where a company had already in place arrangements to inform and consult all of its employees in the EEA prior to the Directive coming into force, such agreements are exempt from the provisions of the EWC Directive. These provisions are made at Article 13 of the 1994 Directive and apply to agreements concluded by 22 September 1996 (or 15 December 1999 for UK companies when the Directive was extended to the UK). Such voluntary arrangements are often referred to as 'Article 13 agreements' and 'Article 3 agreements' respectively and make up approximately 40 per cent of the EWCs in operation in the EEA today.

Expenses related to the negotiations are borne by the employer, including the cost of one expert to advise the SNB. The Directive further sets out the procedures for the handling of confidential information and makes provisions to ensure that the employees' representatives do not suffer any detriment as a result of their role. Representatives are also entitled to time off with pay for attending SNB or EWC meetings.

Review of the EWC Directive

Responding to concerns about the operation of the 1994 Directive, the European Commission issued a legislative proposal in July 2008 to recast the EWC Directive, aiming to increase the number of EWCs and improve their effectiveness. The resultant recast Directive (2009/38/EC) was heavily informed by joint advice submitted by the European Social Partners (BusinessEurope, the European Trade Union Confederation, CEEP and UEAPME) and, as a result, it represents a compromise that balances the interests of business and employees.

The recast Directive seeks to address existing problems in EWCs – which include ineffective information and consultation (I&C) of employees, lack of legal clarity on I&C issues and lack of coherence between national and transnational procedures – involve clearer definitions of I&C and the scope of EWC activities and purpose, provision for more balanced representation within EWCs, establishment of arrangements to link national-level procedures to those at European level (i.e. EWCs), increased obligation of reporting of information following information and consultation before and during the establishment of EWCs and the right to training without loss of wages for EWC members.

The Transnational Information and Consultation of Employees (Amendment) Regulations 2010 (TICE 2010) transpose the recast Directive.

Consultation

Within government

These proposals have been developed in consultation with the following Government departments: The Foreign and Commonwealth Office, the Ministry of Justice and the Devolved Administrations.

Public consultation

The Government conducted a public consultation on the proposed negotiating strategy in September 2008. The consultation closed on 6 October 2008. A further public consultation on draft regulations to transpose the recast Directive in the UK was started in November 2009. This consultation closed on 12 February 2010. A total of 44 responses to the second consultation were received, of which 6 commented on the Impact Assessment. These are discussed below in Section E on Costs and Benefits. The consultation responses highlighted a divergence in views between unions and employers on the Government's transposition proposals as well as suggesting alternative approaches to a number of issues, though a majority of those who commented on the IA felt that the estimated cost of an EWC meeting was too low.

C: Objectives

Background

This Impact Assessment (IA) seeks to assess the impact of the proposed amendment of TICE 1999 following the revision of Council Directive 94/45/EC, which allows for the provision and establishment of European Work Councils (EWCs) within companies of more than 1,000 employees operating in two or more EU Member States. The aim of such councils is to improve employee understanding of management decisions in issues such as restructuring by encouraging effective information and consultation for employees in all operating countries. The European Commission was under a duty to review the Directive and, following a Commission review of its failings, the objectives for the recast Directive are:

1. To improve the effectiveness of information and consultation of employees in existing EWCs
2. To increase the number of EWCs being established
3. To improve legal certainty in the setting up and operation of EWCs
4. To enhance the coherence between EWCs and other national level procedures for informing and consulting employees.

The following analysis will review the impact the Directive has had on such companies with headquarters in the UK since its creation in 1994, as well as the likely effect on affected UK businesses of the proposed implementing Regulations.

D: Options identification

Option One: Do nothing

The directive has been agreed at EU level, the UK will now have to implement the necessary changes. Doing nothing therefore is not a viable option.

Option Two: Implement changes proposed by the draft Directive

The European Commission decided that the best approach for achieving their goal of improved operation of EWCs was to recast the EWC Directive.

The Commission's proposal of July 2008, as amended by the Social Partners, has now been adopted, and the Government is undertaking this Impact Assessment accordingly as part of its public consultation exercise on the implementing regulations.

The detail of the proposed changes to UK legislation was discussed fully in the consultation document¹ and is presented in summary form below in the section on costs and benefits.

Given that it is not feasible for the UK not to implement the changes stemming from the recast Directive, the Impact Assessment will solely assess the changes to UK legislation.

E: Analysis of options

Costs and Benefits

Assumptions

A number of information sources have been used to inform the cost-benefit analysis that follows. These include data on the current number of EWCs created across the EEA. Although there is no requirement to register EWCs, the European Trade Union Institute (ETUI) maintains a database of EWCs created since the early 1990s², providing information such as date of creation, date ended (if the EWC is no longer effective), the article of the Directive under which the EWC was established, the sector in which the undertaking operates, the number of meetings per year and the number of EWC members by country. These are the best available data to allow an up to date analysis³ of the current take-up of EWCs in both the UK and across the EEA. The ETUI database has been widely used as a reference source by assorted EU and national institutions as well as research and academic centres.

More detailed information relating, amongst other things, to the costs of setting up and running EWCs are derived from two key sources. First, we revisit and, where necessary, revise original unit cost estimates used in the original Department of Trade and Industry (DTI) Regulatory Impact Assessment⁴ (RIA) which accompanied implementation of Directive 97/74/EC extending to the UK Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in community-scale undertakings and community-scale groups of undertakings for the purposes of informing and consulting employees. Much of the analysis used for that RIA was based on a study commissioned by the then DTI⁵.

More recent data and information have been taken from the European Commission Impact Assessment⁶ (IA) of July 2008 which underpinned the proposal for the recast Directive. The European Commission IA itself drew on the findings of a preparatory study⁷ and we have used these data where appropriate.

¹ <http://www.berr.gov.uk/files/file52969.pdf>

² ETUI – Database on European Works Councils Agreements: <http://www.ewcdb.eu/>

³ As of mid-August 2008

⁴ The Transnational Information and Consultation of Employees Regulations 1999, <http://www.berr.gov.uk/files/file34183.pdf>

⁵ Costs and benefits of the European Works Councils Directive, DTI, ERRS No.9. Tina Weber, Peter Foster and Kursat Levent Egriboz. URN 00/630; <http://www.berr.gov.uk/files/file11620.pdf>

⁶ Impact Assessment on the revision of the European Works Council Directive SEC(2008)2166 of 2 July 2008, http://ec.europa.eu/employment_social/labour_law/docs/2008/impact_assessment_part1_en.pdf

⁷ Preparatory study for an Impact Assessment of the European Works Council Directive, EPEC GHK, May 2008, http://ec.europa.eu/employment_social/labour_law/docs/2008/ewc_impact_assessment_preparatory_study_en.pdf

It should be noted that these studies of EWCs are based on a case study approach and therefore the sample size for obtaining cost estimates is relatively small and may result in wide variations. This may be exacerbated by the fact that the recent European Commission studies report estimates based mainly on EEA averages. These may not always reflect the costs experienced in the creation and operation of UK-based EWCs. Therefore where suitable data exist, we use relevant UK cost estimates wherever possible.

The issue of differential costs by size of EWC was also raised in the consultation. While instructive to present costs with such a breakdown, the lack of reliable data at this level prevents this. Therefore costs in this IA remain based on the average across all sizes of EWC. The unit cost estimates for the set-up and operation of EWCs we have used in this Impact Assessment are presented in tables 1 and 2 below:

1. Set-up costs

The UK price estimates are derived from the ECOTEC study in 1999, which formed the basis of the UK Impact Assessment (1999), updated to 2010 prices. Details of how prices have been updated are noted below relevant tables. The 'Commission IA average', included for the sake of comparison, comes from the 2008 Commission Impact Assessment figure for the average cost of setting up an EWC agreement since 1996 (hence of Article 6 agreements).

Table 1: Average costs of setting up UK EWC (2010 prices)*

Element	Average setting up costs
management time	£23,586
employee time	£10,029
cost of venue	£10,835
Travel	£10,335
translation costs	£5,001
interpretation costs	£18,503
Language and other	£13,335
admin support	£2,000
dissemination costs	£1,667
costs of experts - for employees	£4,829
costs of experts - for management	£6,686
documentation for meetings	£667
admin of ballot	£22,837
Total	£130,308
Commission IA average – 2008	£98,584

Source: Source: UK EWC IA (1999). All figures are updated using RPI (CHAW) (factor change of 1.33) apart from figures relating to labour costs (management and employee time & expert costs), whose prices are updated using the average earnings index (JQDW), excluding bonuses (a factor change of 1.49). A further 25% uplift has been added to the costs to reflect consultation responses where numerous stakeholders felt the costs presented in the November 2009 IA were underestimated.

2. Operating costs

Table 2: Average costs of a UK EWC annual meeting (2010 prices)

Element	Running Costs (£)
management time	£8,153
employee time	£11,886
cost of venue	£24,970
travel	£17,048
translation costs	£8,435
interpretation costs	£17,769
admin support	£2,600
dissemination costs	£4,484
costs of experts - for employees	£3,491
costs of experts - for management	£9,750
documentation for IT	£1,617
TOTAL	£110,204

Source: UK EWC IA (1999) . UK EWC IA (1999). All figures are updated using RPI (CHAW) (factor change of 1.33) apart from figures relating to labour costs (management and employee time & expert costs), whose prices are updated using the average earnings index (JQDW), excluding bonuses (a factor change of 1.49). A further 25% uplift has been added to the costs (apart from travel) to reflect consultation responses where numerous stakeholders felt the costs presented in the November 2009 IA were underestimated.

Table 3: Total average annual running costs of a UK EWC (2010 prices)

Type of meeting	Average unit cost	Average annual frequency	UK average annual cost	Commission IA average
Annual meeting	£110,204	1.13	£124,530	£79,574
Extraordinary meeting				£79,574
Select Committee	£7,505	1.6	£12,008	£20,208
Training	£38,371		£38,371	£34,440
Total			£174,908	£213,796

Source: UK EWC Impact Assessment (1999) and Commission IA (2008)

**Unit cost for Select Committee taken from Commission IA. The Commission IA total assumes there are 3 meetings per year.

The UK price estimates are again derived from the ECOTEC study in 1999, which formed the base of the UK Impact Assessment (1999), updated to 2009 prices and the 'European averages' come from the Commission IA (2008), converted from Euros at €1 = £0.8760⁸. The average annual frequency of general (plenary) meetings is derived from the ETUI EWC database data⁹, in which UK EWCs list the number of general meetings held each year, whereas the Commission averages assume each EWC holds on average two full-size plenary meetings each year; one standard annual meeting along with one extraordinary meeting. The frequency of Select Committee meetings is calculated from the ECOTEC study (1999) assumption that 80 per cent of UK EWCs hold Select Committee meetings, of which each holds two per year.

Data from the ETUI EWC Database indicates that the majority of UK EWCs hold just one annual meeting (with an average of 1.1 meetings per year for UK EWCs), hosting an average of eight UK and eleven non-UK members. Beyond this, nearly all UK EWCs have provision for Select Committees to meet before the annual meeting in order to prepare the agenda, currently with a maximum of three members, which is proposed to be increased to five members.

⁸ Source: Bank of England, Monthly average End month Spot Quarterly average, Spot exchange rate. Data for February 2010

⁹ ETUI Database on European Works Councils Agreements <http://www.ewcdb.eu/>

Responses to the consultation noted that some of the unit costs derived from the ECOTEC study may have increased since enlargement of the EU from 2004 onwards. We have therefore revised the following unit costs to take account of this:

- the unit costs for travel and subsistence for an annual meeting are now taken from the GHK study¹⁰ at £17,048
- the unit costs for Select Committees have also been taken from GHK such that per meeting the at £7,505.
- an additional 25 percent has been added to all other unit costs (excluding training which comes from the commission's impact assessment). Numerous consultation responses felt that the impact assessment underestimated the unit costs. One consultation response felt the annual cost of running a EWC could be as much as £500,000 per annum. Other responses felt there was underestimation without expressing the magnitude of likely costs. There was also one response which felt the costs were overestimating. To reflect the most typical view from consultation respondents that the costs were an underestimate a 25 percent uplift was applied. This figure is to an extent arbitrary but attempts to incorporate consultation responses. The underlying figures are derived from the ECOTEC study which are now over 10 years old so there is scope for these costs to drift away from the true costs.

Implications for Administrative Burdens (AB)

Original PwC administrative burdens exercise estimated total post-BAU (Business as Usual) costs of just under £5.4m a year. This was based on an estimated 55 UK-based EWCs. The proposed changes to the Directive on EWCs has no potential to reduce admin burdens, as amendments increase the obligation to provide information in a number of areas. However, as detailed in more depth in Section E, the additional admin burdens are predicted to be negligible in each of the areas when admin burdens are affected.

Take-up of EWCs in the UK

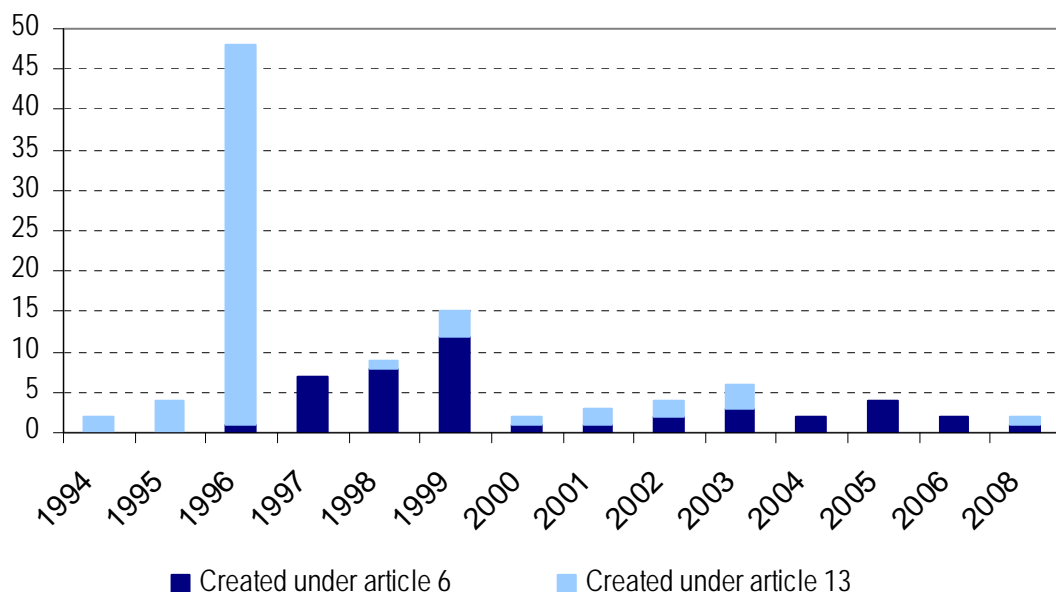
Since the Directive was originally implemented across the EU in 1994 141 undertakings¹¹ with headquarters in the UK had, according to the EWC database, been established by the end of August 2008. Of these 113 are currently effective.

Graph 1 below provides a summary of UK-based EWCs created by year. Around 60 per cent were created under Article 13 of the Directive, which allows companies to continue with agreements arranged before the Directive came into force, with the remaining 40 per cent having established newly formed council agreements under Article 6, which entails a specific procedure as set out by the Directive.

Graph 1: Creation of UK EWCs (those currently effective) by year and by Directive article.

¹⁰ Travel costs per meeting were estimated at EUR 15,300 and subsistence costs EUR 4,160

¹¹ In November 2008 146 and 116 of these were still effective.



There are an estimated 265 companies¹² with UK headquarters that could potentially fall within the scope of the Directive. This implies a current take-up rate of 43 per cent¹³, which compares with the EEA average of 36 per cent.

Under Directive 94/45/EC, companies are only obliged to set up an EWC at the request of 100 or more of its employees. This would remain the case under the 2009 recast Directive, though such amendments intend to allow EWCs to be created more easily, by obliging management to ‘obtain and provide information to enable the commencement of negotiations...’ Take up could also be increased following proposed improvements to current EWCs, in terms of the provision of more effective information and consultation, improved legal clarity and increased coherence between national and transnational procedures.

BENEFITS

It is extremely difficult to quantify benefits associated with EWCs, given their intangible nature, though it is still worth considering positive effects the establishment and maintenance an EWC may have for a UK company.

The potential benefits of the recast Directive largely mirror those set out during the establishment of Directive 94/45/EC, as the recast Directive aims to enhance the working of EWCs, by improving the effectiveness of information and consultation of employees.

Evidence from the ECOTEC study in 1999 identified a number of benefits perceived by a majority of companies surveyed, primarily a notion of ‘symbolic value’ of EWCs, wherein the presence of an EWC ‘demonstrates a positive commitment to employees’. This was accompanied by a general consensus that the establishment of an EWC had increased ability to exchange information with employee representatives and had involved employees more closely in the business.

A number of sample companies also believed the EWC had improved employees understanding of reasons for management decisions.

GHK (2008)¹⁴ drew similar perceived benefits from their survey of EWCs across Europe, with 81 per cent of surveyed EWCs agreeing or strongly agreeing that understanding of management decisions had been improved; 79 per cent that there was a better exchange of information trans-nationally and 75 per cent

¹² Commission Impact Assessment 2008, page 66, from ETUI-REHS, Brussels, 2006.

¹³ Data from the EWC Database in August 2009 suggest that the UK take-up rate around 42 per cent

¹⁴ A Preparatory Study for an Impact Assessment of the European Works Council Directive: GHK Consulting, 2007.

that relations between management and employees had improved. Such benefits, as with those found by ECOTEC, are surely a desirable consequence of the presence of an EWC, though it remains difficult to assess their economic impact and indeed to be certain that the perceived benefits mirror reality.

The Commission Impact Assessment goes further in their benefit analysis, suggesting that associated improvements in legal clarity and effectiveness of information and consultation of employees – particularly on restructuring issues – is likely to improve the management of change within the company. From this, they suggest costs relating to labour disputes and legal processes in situations could be reduced; huge economic costs relating to redundancy payouts (of up to €220 000 per worker)¹⁵ could thus be reduced, which could far outweigh the costs of the running of an EWC. However, the Department for Business, Innovation and Skills (BIS) does not believe that there is sufficient evidence to support this proposed benefit; whilst effective information and consultation is highly desirable in effecting management of change, the presence of an EWC is unlikely to have such a direct impact on issues of this kind.

The Chartered Institute of Personnel Development (CIPD)¹⁶ have identified in principle increased employee voice leads to benefits for employers from employees' skills and knowledge being better used, leading to higher productivity. Employees feeling more valued, so they are more likely to stay and contribute more. The organisation gains a positive reputation, making it easier to recruit good employees. Conflict is reduced and co-operation between employer and employee is based on interdependence. Employees in turn should benefit from having more influence over their work, higher job satisfaction and more opportunity to develop skills.

In July 2009 BIS published its 'Engaging for Success: enhancing performance through employee engagement report'¹⁷. David MacLeod and Nita Clarke led an independent review on employee engagement. The review found that levels of engagement can positively correlate with performance. One area of evidence was the 2006 Gallup study of 23,910 business units which compared top quartile and bottom quartile financial performance with engagement scores. They found that those with engagement scores in the bottom quartile averaged 31-51 per cent more employee turnover, 51 per cent more inventory shrinkage and 62 per cent more accidents. Those with engagement scores in the top quartile averaged 12 per cent [higher?] customer advocacy, 18 per cent higher productivity and 12 per cent higher profitability. It should be noted that the review found correlation between engagement and performance and that correlation does not necessarily imply causation.

Given mixed evidence for company support for the merits of EWCs, the potential positive impact of EWCs on issues such as the management of change should not be overestimated. It seems more reasonable that, at best, the establishment and presence of an EWC may ameliorate the impact of restructuring on employees rather than achieving significant reductions in the cost of restructuring.

COSTS

The cost estimates presented below focus on two broad areas:

- The direct effect of proposed changes to the Transnational Information and Consultation of Employees Regulations 1999 that seek to implement the recast Directive; and
- The indirect effect of these changes on the possible take-up of EWCs

Direct effect of proposed changes

The changes required by the recast Directive can summarised as follows:

- Information and consultation must be effective and allow undertakings to take decisions effectively (Article 1.2)
- EWCs to be limited to transnational issues only (Article 1.3/4)

¹⁵ 1999. Commission Impact Assessment, page 41.

¹⁶ <http://www.cipd.co.uk/subjects/empreltns/comconst/empvoice.htm>

¹⁷ <http://www.berr.gov.uk/files/file52215.pdf>

- Information to be defined and consultation to be redefined (Articles 2.1.f and 2.1.g)
- Obligation on management to provide information to enable commencement of negotiations (Article 4.4)
- Changed rules on size and composition of Special Negotiating Body (SNB) to ensure balanced representation of employees (Article 5.2.b)
- The SNB to be allowed to meet before and after any meeting with the central management, without presence of employee representatives (Article 5.4)
- Where possible, ensuring balanced representation of employees as EWC representatives (Article 6.2.b)
- Establishment of arrangements for linking EWC procedures with those of national employee representation bodies (Articles 6.2.c and 12).
- The option to set up a select committee (Article 6.2.e)
- Management and SNB able to amend and terminate agreement and date of entry into force (Article 6.2.g)
- Duty of EWC to represent collectively the interest of employees, with an entitlement to the 'means required' to do this. (Article 10.1)
- EWC members to ensure that they report the outcome of EWC discussions to their members (Article 10.2)
- Access to training without loss of wages for EWC and SNB representatives (10.4)
- Clarification that there is no obligation to renegotiate EWC agreements established under Article 6.
- In the case of 'significant changes in structure' taking place within the company, agreements must be renegotiated at the request of at least 100 employees or their representatives (Article 13)

The anticipated effect of each of these changes and their estimated costs are presented in turn below.

Article 1: Legal Clarity on EWC objectives and information and consultation.

Article 1 has been amended so that the arrangements for informing and consulting employees must be defined and implemented in such a way to ensure the effectiveness of the procedure and enable the undertaking to take decisions effectively. The UK has implemented the new measures in a way that seeks to retain the balance of the recast Directive between effective information and consultation and efficient business decision-making.

The Commission Impact Assessment argues that the current lack of clarity on information and consultation leads to time-consuming and therefore costly disputes within companies, citing examples of EWC companies who have suffered greatly lengthened restructuring processes, which they claim to be partially as a result of such a lack of clarity. Therefore, it is argued that proposals to this Directive should reduce costs in this area, rather than increase them. However, BIS questions the extent to which a clarification of I&C would reduce costs associated with restructuring and prefers the logic that improved I&C is likely to improve the impact restructuring has on employees.

In addition, the Commission has proposed a new paragraph in order to clarify that the information and consultation procedures for consideration by EWCs is limited to transnational issues and thereby distinct to matters of national interest only. Thus, matters for the consideration of the EWC must concern the Community scale undertaking as a whole, or at least two undertakings or establishments situated in two different Member States. The UK has introduced the new definition of 'transnational' through Regulation 3 of TICE 2010. It very closely reflects the wording of the Directive. The definition does not include words from recital 16 to the Directive (which sets out what might be considered transnational) as there is no legal obligation on the UK to transpose the recitals of the Directive and it is our policy not to do so generally.

Clarifying that EWC business should be limited to transnational issues only is unlikely to create any additional costs; conversely, it is likely to shorten EWC meetings by ensuring that the objectives of EWC meetings are understood. Taking a relatively narrow approach to the implementation of the definition should ensure that the burden on business is controlled.

Article 2: Definitions of information and consultation

The Commission has proposed a new definition for 'information' and has amended the definition for 'consultation', introducing the concept of time, fashion and content for the information and consultation procedures, in order to bring it into line with other Directives containing information and consultation provisions. The UK has implemented these 'definitions' as obligations on central management to conduct information and consultation in a specified manner because they do not fit easily as pure definitions in the UK legal context.

This is a very similar argument to part one of Article 1 (above), wherein more clearly defined information and consultation could improve company operations, for example by reducing costs resulting from lengthening of undertaking restructuring due to labour disputes. However, BIS prefers the logic that improved I&C is likely to improve the impact restructuring has on employees. By introducing the 'definitions' as obligations on management the UK has ensured that they are effectively enforceable, but also that the impact on business is controlled by limiting their application to the information and consultation of EWCs or information and consultation representatives, as was the intention of the recast Directive.

Article 4: Responsibility for the establishment of an EWC

The undertaking must make available information relating to the number of its employees. The new text also states that the undertaking must obtain and provide information to enable the commencement of negotiations undertaken by the Special Negotiating Body (SNB); in particular to the structure of the undertaking and the structure of its workforce. The UK has implemented this provision by amending the current right for employees to receive information to decide if their company is within scope of the Regulations. The amended Regulations requires that central or local management obtain and provide information to employees or their representatives on the structure of the undertaking or group of undertakings and the structure of its workforce.

The amendment to this article amounts to the provision of more information, which could involve additional management time. Requests relating to information on number of employees can come from companies covered by the directive and haven't adopted a EWC along with new UK EWCs. We assume in this impact assessment that 50% of companies under scope that don't have a EWC receive information requests from employees, this amounts to 76 companies¹⁸. Given past growth in EWCs we predict four new UK EWCs per year.¹⁹ In total we estimate 80 companies per year receiving requests. As these companies will be large multinationals it is likely that they may receive more than one request so we assume that on average two requests are received per company per annum. Given the scale of these numbers the total cost will be relatively small. Even if five hours are devoted to such a responsibility, the additional burden would only be $(5 \times \text{£}22^{20} \times 80 \times 2) = \text{£}17,600$. At an estimated £220 per company, this is certainly a negligible cost, whatever the extent of aggregation.

Article 5: Special Negotiating Body (SNB)

A number of changes are proposed for this Article:

- *Introduction of a simplified method for composition of the SNB*
- *Informing other bodies about SNB composition and negotiations*
- *Entitlement for SNB to meet separately from central management*
- *Use of experts*

Introduction of a simplified method for composition of the SNB

¹⁸ Based on an estimated 265 companies in scope of the directive using take-up figures (113 companies) from the ETUI database (data extracted on November 2008) we estimate that a 152 companies don't take-up a EWC (265-113).

¹⁹ Taking into account the termination of certain agreements through mergers and acquisitions etc., there has been an average of four new EWCs established per year.

²⁰ Source: Annual Survey of Hours and Earnings (ASHE). ASHE 2009, managers and senior official code 1 Table 2.5a Hourly pay - Gross (£) - For all employee jobs: United Kingdom, 2009. 21 per cent was added to account for non-wage labour costs and then figures were rounded to the nearest pound.

The recast Directive introduces a simplified method for the composition of the SNB which means that one SNB seat will be allocated per portion of employees employed in that Member State amounting to 10 per cent, or a fraction thereof, of the total number of employees of the undertaking in the EEA.

The Commission IA (2008) states that the change to SNB composition is not controversial and that this Directive update would have 'minimal impact on set-up costs' and lead to a 'limited increase in the number of SNB members and therefore in the costs'. The UK agrees with this view.

Informing other bodies about SNB negotiations

There is currently a requirement that the central and local management must be informed about the composition of the SNB. This requirement has been expanded by article 5(2)(c) so that central and local management are also informed of the start of the negotiations and European workers' and employers' organisations are informed of both the SNB composition and the start of negotiations. The UK has applied this duty to the SNB as an extension of the SNB's requirement at Regulation 12(4) TICE 1999 to inform central and local management of the composition of the SNB.

The obligation to inform management and the European workers' and employers' organisations about the start of negotiations is likely to take very little additional employee representative time. Even if each EWC needed to devote two labour hours to the task, this would cost only £26 to the company (at £13²¹ per hour including non-wage labour costs) along with an upper-limit estimate of £200 for external goods and services. Retaining the logic that there are on average four new UK EWCs created per year, this gives an annual cost burden of only **£904**²² to UK companies; another negligible aggregated cost, at only **£226** per new EWC.

Entitlement for SNB to meet separately from central management

In order to enable employees' representatives to be able to cooperate together to define their positions in the negotiations, a new entitlement has been proposed to allow the SNB to meet before and after any meeting with the central management without the employers' representatives being present. In implementing this provision the UK has required that both meetings take place within a reasonable time of the main SNB meeting.

The entitlement for the SNB to meet separately will increase set-up costs of an EWC, by increasing the time and resources taken up by SNB negotiations. If it is assumed that, in addition to the one standard meeting with management there would be two additional meetings held solely by the SNB (one before meeting with management and one after). The requirement that these meetings take place within a reasonable time of the main SNB meeting may help to minimise additional costs to business by keeping costs associated with travel, accommodation and translation to a minimum.

Taking the cost break-down for setting up of an EWC, which in practice details the cost of the SNB meeting aimed to establish the EWC, the average daily cost of an SNB meeting of **£77,200** (excluding management time and costs of experts for management which are not relevant, and excluding ballot costs – which should not be duplicated), giving a total average costs per SNB of £154,400²³. For the estimated four newly established UK EWCs, this would give a total additional cost burden of **£0.62m**.

Use of experts

*Article 5(4) entitles the SNB to be assisted by experts of its choice; **the cost of one of which must be met by the undertaking**. The recast Directive introduces a further entitlement for the SNB's expert to attend the negotiating meeting. The Directive also states that an appropriate Community level trade union could fulfil the role of an expert, although it should be noted that the choice remains one for the SNB to make. In order to enable the monitoring of new EWCs being established and the promotion of best practice, European trade union organisations and European employers' organisations have also been added to bodies to be informed about these sorts of matters.*

²¹ Source: Annual Survey of Hours and Earnings (ASHE) ASHE 2009, all employees Table 2.5a Hourly pay - Gross (£) - For all employee jobs: United Kingdom, 2009. 21 per cent has been added to account for non-wage labour costs and figures have been rounded to the nearest pound.

²² (£200 + (2 x £13 per hour) = £226 per EWC = total of £904 (figures have been rounded)

²³ Assumed that SNB would meet without management twice.

The amendment only extends the amendment so that ‘an appropriate Community level trade union could fulfil the role of an expert’; ‘the choice remains one for the SNB to make.’ There is therefore little likely increase in costs related to the use of experts, rather a wider choice for the SNB.

Article 6: Content of the Agreement

EWC composition – size and representation

The current requirement, relating to the composition of the EWC, its size and how seats are allocated, has been expanded to include that, where possible, in the interest of the balanced representation of employees, its composition should also take into account the activities, category and gender of the employees of the undertaking. In implementing this requirement to the UK has required that this should be recognised where ‘reasonably practicable’.

It is unlikely that ensuring balanced member composition will involve any significant costs. Firms are only required to ‘take in account’ ‘where reasonably practicable’ the composition of representation in terms of activities, categories and gender, which should not involve more than a simple consideration in the case of setting up a new EWC and perhaps a minor redistribution of representative members in the case of established EWCs.

Linking national and transnational provisions

The establishment of arrangements for linking of the EWC procedures with national employee representation bodies. This Article is closely related to the amendments made at Article 12.

For this reason, the impact of linking of national and transnational provisions is detailed under Article 12.

Composition of the Select Committee

The number of members of the select committee permitted under the subsidiary requirements at Annex 1(1)(d) has been increased from three members to a maximum of five members.

The current average number of members in a UK EWC that has voluntarily set up a Select Committee is four,²⁴ and the GHK EU average estimate is five²⁵ so the amended article to limit the size of the Select Committee under the subsidiary requirements to a maximum of five is unlikely to have a large impact on set-up or operation costs.

Article 10: Role and Protection of Employees’ Representatives

There is a new duty on the members of the EWC to inform the employees of the content and outcome of an information and consultation procedure carried out in accordance with this Directive. Employees can complain to the CAC if the EWC does not do this, but it shall be a defence if the EWC was not provided with the means required from central management to enable it to fulfil its duty.

This duty to inform employees could take additional time of EWC members. However, as with the argument provided in Article 5, even if each EWC needed to devote two labour hours to the task, this would cost only £26 to the company (at £13 per hour including non-wage labour costs) along with an upper-limit estimate of £200 for external good and services. Retaining the logic that there are on average four new UK EWCs created per year, this gives an annual cost burden of only **£904**²⁶ to UK companies; another negligible aggregated cost, at only **£226** per new EWC.

Members of the SNB and EWC are to have access to training without loss of wages in so far this is necessary for their representational duties in an international environment. In implementing this provision the UK has required that the central management should pay for the necessary training and

²⁴ Average members in Select Committee of effective UK EWCs giving relevant data: ETUI – Database on European Works Councils Agreements: <http://www.ewcdb.eu>

²⁵ A Preparatory Study for an Impact Assessment of the European Works Council Directive: GHK Consulting, 2007, page 17.

²⁶ (£200 + (2 x £13 per hour) = £226 per EWC = total of £904

that the SNB and EWC members should be provided by their employer with paid time off to participate in the training.

The right of members of the SNB and EWC to training without loss of wages is likely to account for the largest increase in cost burden to UK EWCs, as both current and newly established EWCs will be affected.

Though evidence on current provision of training within EWCs is rather limited, the most recent study on EWCs (GHK, 2008) indicates that only around 36 per cent²⁷ of companies with EWCs currently provide training to all members. However, beyond this, another 43 per cent²⁸ of EWC companies provide training to at least one member of the EWC. Therefore, if an upper-limit estimation is taken by which 50 per cent of current UK EWCs do not provide any EWC members with training (and thus the remaining half provides full training: a simplification of the picture perceived by GHK), then 50 per cent x 113 = 56 UK EWCs would be obliged to provide training following the revision of the Directive. The GHK report (2007) on EWCs suggests that the European average that those who already provide training are spending is £38,371 (€43 800) per EWC.

If these 56 EWCs were to all immediately spend this average amount on training, then the total additional cost burden would be **£2.17m**, although this cost is divided amongst 56 transnational companies of more than 1,000 employees.

²⁷ 46 per cent (fraction which provided training) x 79 per cent (companies which provided at least some training within their EWCs)

²⁸ 54 per cent (of companies providing training to less than all EWC members) x 79 per cent (of all EWC companies providing training) = 43 per cent.

It should also be noted that:

- a) There is likely to be some additional deadweight within this estimation, as in reality some proportion of the 'remaining 50 per cent of EWCs' not currently reported to provide training are likely to do so to some extent, to all or some members of their EWC.
- b) The average training figure per EWC may overestimate the true average amount an EWC will spend on training, because the figure used is taken uniquely from firms which are providing training on initiative and therefore are more likely to have a strong culture of training.

In order to account for this issue, an alternative scenario, potentially closer to the true likely consequence of the Directive changes, could be added to the analysis above. If only 25 per cent of EWCs were to start fully training their EWC members following Directive amendments – taking into account the deadweight issue and the likelihood that there would not be a 100 per cent take-up of training, then only 28 EWCs will be subject to the training costs of £38,371. This would imply a cost burden of only **£1.08m**.

This amendment is not said to be controversial in the eyes of the social partners, who recognise the benefit to the EWC of having a well-trained representative body, which would be extended to include EWCs not currently offering training to their employees.²⁹

Article 12: Links between this Directive and Other Community and National Provisions

The SNB and management are required to establish the arrangements for linking the national and transnational arrangements on informing and consulting employees which exist within the company during the negotiating period. The implementing Regulations require that this link is related to timing of the start of information and consultation only and that it should not create new rights for national bodies to be informed and consulted.

Article 13: The Adaptation Clause

The recast Directive requires that unless provisions exist within existing agreements that allow for their modification, any *significant change to the structure* of an undertaking would result in the requirement for an EWC agreement to be renegotiated under the provisions of Article 5.

As the Directive does not define what constitutes a change in structure, we have assumed (on the basis of recital 40) here that this would relate to mergers and acquisitions (M&A). Using data from the ETUI EWC database, of the 28 UK-based EWC agreements that are no longer effective, 86 per cent - or 24 agreements - were because of mergers and acquisitions. Furthermore the results of these mergers and acquisitions indicate that a third of these re-located their headquarters outside of the UK. Therefore, overall, 16 of the 28 agreements that ended resulted in new UK-based EWCs. Since 1992 this averages at two UK-based EWCs a year that may undergo a merger or acquisition.

In the absence of detailed information concerning provisions for changes of structure within existing Article 6 or Article 13 provisions, we assume here that such provisions exist in half of all EWC agreements. From this we estimate therefore that the proposed changes to Article 13 would affect one UK-based EWC each year. Using the estimated set-up costs from table 1 above this would lead to an **increase in costs to business of around £0.1m a year**.

²⁹ Lessons learned on European Work Councils, 2005.

Table 4: Summary of estimated direct effect costs

	Estimated cost p.a £m
Article 1: Legal Clarity on EWC objectives and information & consultation.	Not quantified
Article 2: Definitions of Information & Consultation	Not quantified
Article 4: Responsibility for the establishment of an EWC	negligible*
Article 5: Special Negotiating Body	0.62
Article 6: Content of the Agreement	negligible*
Article 10: Role and protection of Employees' Representatives	1.08 - 2.17**
Article 12: Links between this Directive and Other Community and National Provisions	Not Quantified
Article 13: The Adaptation Clause	0.1
Total	1.70 - 2.79

Source: BIS estimates, 2010. **Depending on training scenario considered.

2. Indirect effect of new directive on take-up of EWCs

As noted above, the database of EWCs indicates that there are 113 effective UK headquartered EWCs and the most recent data available on the total number of companies covered by the Directive (ETUI-REHS, 2006) suggests there to be 265 with headquarters in the UK. This gives a UK take-up rate of 42.6 per cent, compared to the EEA average of 35.5 per cent, where 583 EWCs have been established from a potential 1,642.

One objective of the proposed amendments to the existing Directive is to increase the take-up rate. An addition to Article 4 of the Directive provides that the undertaking must obtain and provide information to enable the commencement of negotiations undertaken by the Special Negotiating Body, which seems to be the most direct attempt to encourage take-up. Proposed improvements to EWCs – through improved effectiveness of information and consultation, legal clarity and coherence – could also be seen as an indirect method for inciting eligible companies to establish a new EWC.

However, it seems unlikely that the 152 eligible UK companies are currently without an EWC agreement solely due to a lack of guidance on information provision; in other words it is questionable whether amendments of this nature are likely to greatly increase the current take-up of EWCs in the UK. As it is only 28 new UK-based EWCs have been created since 2001.

Further to this, evidence from the Commission Impact Assessment suggests that the establishment of an EWC depends upon factors such as the sector the company operates in (41 per cent average take-up rate in the metals sector compared to only 24 per cent in the services sector) and the presence of employees in certain EEA member states (for instance, over half of eligible companies operating in Sweden have established an EWC).

Perhaps most essentially, it will remain the case that the establishment of an EWC agreement is voluntary and company management are only obliged to do so at the request of at least 100 employees,

hence the proposed changes to the Directive are unlikely to have any marked impact on the take-up rate.

In light of this, it is worth considering the additional cost burden which would be borne if the UK take-up rate were to increase. For illustrative purposes we have assumed an increase in the take-up rate to 50 per cent from the current level of 42.6 per cent, which would result in 132 UK-based EWCs, or 19 new UK EWCs. It seems reasonable to assume that the creation of these new EWCs would be spread over a number of years following the amendment to the Directive. We assume here a 3-year period for creation of the 19 new EWCs with seven established in the year following the Directive amendment and six more established in each of the following two years. On this basis the estimated additional costs to the set-up and running of UK EWCs would be as follows:

Table 5: Indirect costs, per year, envisaged as a result of additional take-up of EWCs (current prices followed by Present Values)

Table 5: Indirect costs, per year (with Present Value prices)						
Discount Rate	3.50%					
Number of new EWCs	7	6	6	0		
					TOTAL	Average per
Year following change	1	2	3	4 etc.	over 10	year – over
					year	10 years
Set-up costs	£912,158	£912,158	£781,850	£0	£2,606,165	£260,617
Running costs	£1,224,357	£2,448,715	£3,498,164	£3,498,164	£31,658,383	£3,165,838
Set-up costs (PV)	£2,136,515	£3,360,873	£4,280,013	£3,498,164	£34,264,548	£3,426,455
Running costs (PV)	£912,158	£881,312	£729,865	£0	£2,523,335	£252,333

Source: Impact Assessment (1999) and BIS estimates.

Table 6: Summary of quantifiable costs

Table 6: Summary of additional quantifiable costs			
2010 Prices	Direct Costs £m	Indirect Costs £m	Total £m
One-off costs £m*	0	2.6	2.6
Running costs £m #	1.7-2.8	3.2	4.9-6.0

Source: Impact Assessment (1999) and BIS estimates. *One-off costs are spread over 3 years. # average running costs over 10 years. Figures have been rounded and totals may not sum to individual parts due to rounding.

F: Risks

The estimates of costs and benefits presented in this Impact Assessment are based upon actual data sources where they exist. Beyond this a number of assumptions have been made where there are gaps in the data. Furthermore there is inevitably a degree of uncertainty surrounding the indirect and direct effects of the changes introduced by the recast Directive.

G: Enforcement

The Central Arbitration Committee (CAC), the Employment Appeals Tribunal and the Employment Tribunal (ET) are currently responsible for the enforcement of the Transnational Information and Consultation of Employees Regulations 1999. The enforcement regime will be changed slightly so that the CAC will hear complaints and the EAT will issue penalties, whilst the ET will deal with issues relating to detriment, unfair dismissal and time-off. It is therefore likely that the enforcement of most of the amendments to the EWC Directive will fall to the CAC. The number of cases brought before the CAC under the Transnational Information and Consultation of Employees Regulations to date has been

minimal, suggesting that compliance is high. Therefore there is no reason to believe that these proposed changes are likely to have a significant impact.

In response to consultation responses the Government has increased the maximum penalty payable for a failure under the Regulations to £100,000 from £75,000. This was done partly to restore the real value of the penalty to the level first agreed in 1998, since when RPI inflation has totalled 36%.

H: Recommendation and summary table of costs and benefits

Table 7 below presents a summary of the estimated quantifiable costs and benefits. These costs and benefits reflect the policy option of implementing amendments set out by revised Community Directive 94/45/EC on European Work Councils.

Scope of law, £m	Annual Costs (ongoing)	One off costs	Annual Benefits (£m p.a.)
Direct Effect of Changes Proposed by Directive (i.e. on existing EWCs)	1.7 - 2.8	0	Not quantified – please refer to EWC Benefits description in Section E.
Indirect effect of increased take-up of EWCs	3.2	2.6	Not quantified – please refer to EWC Benefits description in Section E.

Source: BIS estimates. Figures have been rounded

I: Implementation

The changes to the EWC Directive will be implemented by way of the Transnational Information and Consultation of Employees (Amendment) Regulations 2010 which amend the Transnational Information and Consultation of Employees Regulations 1999. Following a consultation on draft regulations the Regulations have been laid in Parliament and will come into force on 5 June 2011.

J: Monitoring and evaluation

A review of the EWC Directive will be undertaken by the European Commission five years after the Directive comes into force.

The Government will continue to monitor the take up and use of EWCs through the Workplace Employment Relations Survey (WERS) (expected to be completed in 2011) which provides an integrated picture of employment relations, including information and consultation arrangements.

The Government monitors the cases brought before the CAC under the Transnational Information and Consultation for Employees Regulations 1999, which are published annually in the CAC's Annual Report. It will continue to do so following the implementation of the revised EWC Directive.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annexes

Annex A: SPECIFIC IMPACT TESTS

1. Competition Assessment

Business sectors affected

Table A1 below presents the distribution of currently effective EWC's with UK headquarters. All of these EWCs are in the private sector.

The initial analysis of the competition filter is that a detailed competition assessment is not considered necessary (see table A2 below). The proposed legislation will apply to all undertakings with at least 1,000 employees within EU member states and, given the relatively small magnitude of the costs, is unlikely to affect the competitiveness of any particular sector.

Table A1: Distribution of currently effective UK-based EWCs by sector

% distribution	Effective
Building and Woodwork	3%
Chemicals	20%
Food, hotel, catering and agriculture	15%
Graphical	5%
Metal	24%
Other services	10%
Public services	0%
Services Commerce	5%
Services Finance	7%
Services IBITS	2%
Textile	2%
Transport	7%

Source: EWC Database, ETUI**

**Online database accessible through <http://www.ecwdb.eu/>. Data accessed and retrieved on 20 August 2008

– Table A2. Competition assessment.

Question: <i>In any affected market, would the proposal..</i>	Answer
..directly limit the number or range of suppliers?	No
..indirectly limit the number or range of suppliers?	No
..limit the ability of suppliers to compete?	No
..reduce suppliers' incentives to compete vigorously?	No

Source: BIS

2. Small Firms Impact Test

Undertakings with fewer than 1,000 employees across the EEA and fewer than 150 employees in any member state are not affected by the provisions of this directive.

3. Equality Impact Assessment

In line with better regulation best practice and the Equalities Duties we have considered the impact of changing the law by gender, race and disability.

The Commission Impact Assessment has not identified any negative impacts on equality which would result as a consequence of a revision to this Directive.

In addition, the proposed amendment to Article 6, detailed in Section E, stipulates 'balanced representation of employees within the EWC', taking the 'activities, category and gender' of employees of the undertaking into account.

**The Transnational Information and Consultation of Employees
(Amendment) Regulations 2010: Transposition Note**

This Transposition Note, in tabular form, explains how the Transnational Information and Consultation of Employees (Amendment) Regulations 2010 (S.I. 2010/1088) (the Regulations) transpose Directive 2009/38/EC of 6 May 2009 on the establishment of a European Works Council for the purposes of informing and consulting employees (the EWC Directive) and Articles 7 and 8 of Directive 2008/104/EC of 19 November 2008 on temporary agency work (the Agency Workers Directive) in so far as those Articles are relevant to the transnational information and consultation of employees.

It should be noted that the EWC Directive is a recast of Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council for the purposes of informing and consulting employees, which was transposed in Great Britain by the Transnational Information and Consultation of Employees Regulations 1999 (S.I. 1999/3323). In the first transposition table relating to the EWC Directive, S.I. 1999/3323 is referred to as the “1999 Regulations”. Where the EWC Directive re-enacts some of the Articles in Directive 94/45/EC and they have therefore already been transposed by S.I. 1999/3323 and do not require fresh implementation, this is set out in the first table.

These Regulations do no more than is necessary to implement the EWC Directive.

These Regulations do more than is necessary to implement Articles 7 and 8 of the Agency Workers Directive in so far as those Articles are relevant to the transnational information and consultation of employees. This is because the Agency Workers Directive is required to be implemented by 5th December 2011 and the amendments relating to agency workers come into force on 1st October 2011, which is the common commencement date immediately preceding the date by which they are required to be implemented.

Transposition Tables

1) EWC Directive

Article	Objective	Implementation	Regulations Cross-reference
1.1	Sets out the purpose of the Directive.	This is a general provision which does not require specific implementation.	N/A.
1.2	Sets out how arrangements for informing and consulting employees are to be defined and implemented.	The Regulations reflect the objective of the Directive, but no specific implementation is required.	N/A
1.3	Information and consultation of employees is to occur at the relevant level of management and relate to transnational issues.	The Regulations insert new regulation 18A, which deals with information and consultation generally and provides that it is to take place at the appropriate level of management and must be limited to transnational issues.	Regulation 10.
1.4	Defines what is meant by “transnational”.	This definition is reproduced in new regulation 2(4A).	Regulation 3.
1.5 and 1.6	Provides for the establishment of a European Works Council at the level of the group which should cover all establishments or undertakings.	This re-enacts Article 1(3) and (4) of Directive 94/45/EC and is implemented by regulations 17(7) and (8) of the 1999 Regulations.	N/A
1.7	Possible derogation from the Directive for merchant navy crews.	This re-enacts Article 1(5) of Directive 94/45/EC and is implemented by regulation 46 of the	N/A

Article	Objective	Implementation	Regulations Cross-reference
		1999 Regulations.	
2.1	This provision contains various relevant definitions, including a new definition of information and an expanded definition of consultation.	Most of the definitions re-enact Article 2.1 of Directive 94/45/EC, which were implemented in regulation 2(1) of the 1999 Regulations. The new definition of information is reflected in new regulation 18A which sets out who is to provide information, to whom and how. The expanded definition of consultation, setting out how consultation is to take place, is included in new regulation 18A.	Regulation 10.
2.2	Prescribed thresholds are to be based on the average number of employees employed during the previous two years.	This re-enacts Article 2 of Directive 94/45/EC and is implemented by regulation 6 of the 1999 Regulations.	N/A
3.1 to 3.3	Defines and explains what is meant by a “controlling undertaking”.	These re-enact Articles 3.1 to 3.3 of Directive 94/45/EC and are implemented by regulations 3(1) to (3) of the 1999 Regulations.	N/A
3.4	Clarifies when an undertaking is not a “controlling undertaking” and updates a reference to a Council Regulation.	This Article re-enacts Article 3(4) of Directive 94/45/EC and is implemented by regulation 3(4) of the 1999 Regulations, as amended by regulation 2 and the Schedule, paragraph 4, S.I. 2004/1079.	N/A

Article	Objective	Implementation	Regulations Cross-reference
3.5 to 3.7	Clarifies when a dominant influence shall not be presumed, the law to be applied in determining whether an undertaking is a controlling undertaking and what happens where there is a conflict of laws.	These re-enact Articles 3.5 to 3.7 of Directive 94/45/EC and are implemented by regulations 3(5) to (8) of the 1999 Regulations.	N/A
4.1 to 4.3	Central management is responsible for creating the means necessary to set up a European Works Council. Clarifies what constitutes central management.	These re-enact Article 4 of Directive 94/45/EC and are implemented by regulation 5 of the 1999 Regulations.	N/A
4.4	Management is to obtain and transmit information required for commencing negotiations.	The amended regulation 7(3) expands on the content of the information which management must provide where an employee has requested information to determine whether an undertaking is a Community-scale undertaking.	Regulation 5.
5.1 and 5.2(a)	Provides for the initiation of negotiations for a European Works Council and for the setting up of a special negotiating body.	These re-enact Articles 5.1 and 5.2(a) of Directive 94/45/EC and are implemented by regulations 9 and 10 and 13 to 15 of the 1999 Regulations.	N/A
5.2(b)	Sets out method of	The requirements for	Regulation 7.

Article	Objective	Implementation	Regulations Cross-reference
	electing members of the special negotiating body.	the composition of the special negotiating body are set out in the amended regulation 12 of the 1999 Regulations, which sets out the formula for the number of members.	
5.2(c)	Extends the requirement for central and local managements to be informed of the composition of the special negotiation body to include European workers' and employers' organisations and extends the information requirement to include the start of negotiations.	These new information requirements are set out in the amended regulation 12 of the 1999 Regulations. Part of this requirement re-enacts Article 5.2(d) of Directive 94/45/EC and is implemented by regulation 12(4) of the 1999 Regulations.	Regulation 7.
5.3 and 5.4, para 1	Sets out the task of the special negotiating body and requirements on central management.	These re-enact Articles 5.3 and 5.4 of Directive 94/45/EC and are implemented by regulations 16(1) and 17 of the 1999 Regulations.	N/A
5.4, paras 2 and 3	Special negotiating body to be entitled to meet without central management representatives, using any necessary means of communication and is entitled to request assistance from experts for the purposes of negotiations.	This new entitlement for the special negotiating body to meet is set out in the new regulation 16(1A) of the 1999 Regulations and the new entitlement to have experts present at negotiation meetings is set out in the amended regulation 16(5) of the 1999 Regulations. Part of this requirement	Regulation 8.

Article	Objective	Implementation	Regulations Cross-reference
		re-enacts part of Article 5.4 of Directive 94/45/EC and is implemented by regulation 16(5) of the 1999 Regulations.	
5.5 and 5.6	Allows the special negotiating body to decide not to open negotiations or to terminate existing negotiations and makes provision for expenses relating to negotiations to be borne by central management.	These re-enact Articles 5.5 and 5.6 of Directive 94/45/EC and are implemented by regulation 16(3), (4) and (6) of the 1999 Regulations.	N/A
6.1 and 6.2(a)	Provides that the central management and special negotiating body must negotiate in a spirit of cooperation and that the European Works Council agreement should determine the undertakings or establishments to which it applies.	These re-enact Articles 6.1 and 6.2(a) of Directive 94/45/EC and are implemented by regulation 17(1), (2) and (4)(a) of the 1999 Regulations.	N/A
6.2(b) to (g)	These paragraphs expand on the content of the European Works Council agreement or agreement for an information and consultation procedure, setting out various matters which the agreement must take into account, including the need for balanced	<p>The new requirements are set out in amendments to regulation 17 of the 1999 Regulations.</p> <p>Parts of Article 6.2(b) to (g) re-enact Article 6.2 of Directive 94/45/EC, and those provisions are contained in regulation 17 of the 1999 Regulations.</p>	Regulation 9, amending regulation 17(4)(c) and (f) and regulation 17(5), and introducing a new regulation 17(4)(dd), 17(4A) and 17(9).

Article	Objective	Implementation	Regulations Cross-reference
	representation of employees on the European Works Council; linking with information and consultation of national employee representation bodies, various requirements as to the functioning of the select committee, and the coming into force and termination of the European Works Council agreement.		
6.3 to 6.5	Makes provision for the establishment of an information and consultation procedure.	These re-enact Articles 6.3 to 6.5 of Directive 94/45/EC and are implemented by regulations 16 and 17(3), (5) and (6) of the 1999 Regulations.	N/A
7, 8 and 9	Make provision for the application of the subsidiary requirements, the protection of confidential information and the central management and European Works Council to work in a spirit of cooperation.	These re-enact Articles 7, 8 and 9 of Directive 94/45/EC and are implemented by regulations 18, 19, 23 and 24 of the 1999 Regulations.	N/A
10.1	European Works Council members to have the means required to apply the rights arising from the Directive, to represent collectively the interests of	New regulation 19A of the 1999 Regulations requires central management to provide European Works Council members with the means necessary to fulfil their duties under the Regulations, and	Regulation 11.

Article	Objective	Implementation	Regulations Cross-reference
	employees.	requires the European Works Council members to represent collectively the employees.	
10.2	European Works Council members to inform employees of the content and outcome of the information and consultation procedure.	New regulation 19C of the 1999 Regulations requires the European Works Council to inform employees of the content and outcome of the information and consultation procedure.	Regulation 11.
10.3	Provides for protections for members of European Works Councils and special negotiating bodies, and employee representatives.	This re-enacts Article 10 of Directive 94/45/EC and is implemented by regulations 25 to 33 of the 1999 Regulations.	N/A
10.4	European Works Council members to be provided with training without loss of wages.	The new regulation 19B of the 1999 Regulations provides that European Works Council members and special negotiating body members are entitled to training and the central management must provide them with the means required to undertake such training. Under the amended regulation 25 of the 1999 Regulations, they are entitled to take reasonable time off during working hours. Regulation 25 of the 1999 Regulations provides for remuneration for time off.	Regulations 11 and 16.

Article	Objective	Implementation	Regulations Cross-reference
11	Provides that adequate administrative or judicial procedures are available to enable enforcement of the Directive's obligations.	The information and consultation obligations in new regulation 18A of the 1999 Regulations are enforced in amended regulation 21 of the 1999 Regulations. The following obligations are enforced in new regulation 21A of the 1999 Regulations: entitlement for special negotiating body members to meet under new regulation 16(1A); entitlement for European Works Council members to have the means required to fulfil their duties under new regulation 19A; entitlement for European Works Council members and special negotiating body members to have the means required to undertake training under new regulation 19B; and the obligation to link information and consultation of the European Works Council and national employee representation bodies under new regulation 19E. The obligation to allow for time off for training without loss of wages in new regulation 19B is enforced by regulation 27 of the 1999 Regulations.	Regulations 13 and 14.

Article	Objective	Implementation	Regulations Cross-reference
12.1, 12.2 and 12.3	Information and consultation of the European Works Council to be linked to that of national employee representation bodies.	New regulation 19E of the 1999 Regulations provides that where no arrangements have been made to link information and consultation at European and national level, information and consultation on circumstances likely to lead to substantial changes should begin at each level within a reasonable time of each other.	Regulation 11.
12.4	The Directive shall be without prejudice to the information and consultation procedures referred to in Directive 2002/14/EC (information and consultation of employees), Article 2 of Directive 98/59/EC (collective redundancies) or Article 7 of Directive 2001/23/EC (transfer of undertakings).	This does not require specific implementation in UK law.	N/A
12.5	Implementation of the Directive shall not be sufficient grounds for any regression in the general level of protection of workers in the areas to which it applies.	This is a general requirement which does not require specific implementation.	N/A
13	Negotiations for the establishment of a European Works	The requirements for negotiating the establishment of a	Regulation 11.

Article	Objective	Implementation	Regulations Cross-reference
	Council or an information and consultation procedure are to take place where the structure of an undertaking changes significantly.	European Works Council or an information and consultation procedure are set out in new regulation 19F of the 1999 Regulations. This also sets out the requirements for the composition of the special negotiating body and provides for the continued operation or adaptation of any existing agreements.	
14	Without prejudice to Article 13, the Directive does not apply to Community-scale undertakings with the agreements specified in this Article. Those agreements may be renewed or revised but where they are not, the Directive applies.	Amended regulations 44 and 45 and new regulation 45A of the 1999 Regulations set out the provisions of the 1999 Regulations and/or these Regulations which apply to, respectively, Article 3 and Article 13 agreements and agreements signed or revised on or after 5 June 2009 and before 5 June 2011.	Regulation 23.
Annex I, 1(a), para 1	Competence of European Works Council.	New paragraph (6)(3) of the Schedule to the 1999 Regulations requires information and consultation to take place between European Works Council members and the most appropriate level of management. Paragraphs 6(1) and (2) limit the competence of the European Works Council to transnational matters.	Regulation 25.

Article	Objective	Implementation	Regulations Cross-reference
Annex I, 1(a), para 2	Scope of information and information and consultation of European Works Council.	Amended paragraph 7(3) and new paragraph 7(4) of the Schedule to the 1999 Regulations set out requirements as to the content of the information to be provided to the European Works Council and the content of the information and consultation meeting.	Regulation 26.
Annex I, 1(a), para 3	Consultation to be conducted so that employees' representatives can meet with central management and obtain a response to any opinion they might express.	Amended paragraph 9(7) of the Schedule to the 1999 Regulations requires consultation to take place in such a way as to enable European Works Council members to meet with central management and obtain a reasoned response to any opinion.	Regulation 29.
Annex I, 1(b)	Makes provision for the composition of the European Works Council.	This re-enacts point 1(b) of the Annex to Directive 94/45/EC and is implemented by paragraphs 3 to 5 of the Schedule to the 1999 Regulations.	N/A
Annex I, 1(c)	Sets out method of electing members of the European Works Council and requires the European Works Council to elect a select committee.	The requirements for the composition of the European Works Council are set out in the amended paragraph 2 of the Schedule to the 1999 Regulations, which sets out the formula for the number of members. The requirements for the election of a select committee are set out in	Regulation 24.

Article	Objective	Implementation	Regulations Cross-reference
		the amended paragraph 2(4) of the Schedule to the 1999 Regulations, which limits its composition to five members.	
Annex I, 1(e) and (f)	Management is to be informed of the composition of the special negotiating body. Makes provision for an assessment of whether to open negotiations for a European Works Council agreement after four years.	This re-enacts points 1(e) and (f) of the Annex to Directive 94/45/EC and is implemented by paragraphs 2(5) and 10 of the Schedule to the 1999 Regulations.	N/A
Annex I, 2	European Works Councils to have the right to meet with central management annually, to be informed and consulted on the basis of a report drawn up by central management.	This requirement re-enacts point 2 of the Schedule to Directive 94/45/EC and is implemented by paragraph 7(1) and (2) of the Schedule to the 1999 Regulations.	N/A
Annex I, 3	Minor amendments to the provisions regarding the right to be informed where there are exceptional circumstances affecting employees' interests.	These minor amendments are made in the amended paragraph 8 of the Schedule to the 1999 Regulations. Part of this requirement re-enacts point 3 of the Schedule to Directive 94/45/EC and is implemented by paragraph 8 of the Schedule to the 1999 Regulations.	Regulation 27.
Annex	Makes provision in	These re-enact points	N/A

Article	Objective	Implementation	Regulations Cross-reference
I, 4 to 6	relation to the administration of European Works Councils, including the chairing of meetings and responsibility for operating costs.	4, 6 and 7 of the Annex to Directive 94/45/EC and are implemented by paragraph 9 of the Schedule to the 1999 Regulations.	

2) Agency Workers Directive, Articles 7 and 8 (in so far as those Articles are relevant to the transnational information and consultation of employees)

Article	Objective	Implementation	Regulations Cross-reference
7	Makes provision for agency workers to count towards employee number threshold under which representative bodies under Community and national law are to be formed at the temporary work agency or user undertaking.	Amended regulation 2 of the 1999 Regulations defines “agency worker”, “hirer” and “temporary work agency” and requires agency workers to count towards the thresholds for calculating the number of employees in a Community-scale undertaking.	Regulation 3, in so far as it inserts the definitions of “agency worker”, “hirer” and “temporary work agency” and paragraph (4C) into regulation 2 of the 1999 Regulations.
8	Makes provision for disclosure of information relating to use of agency workers to representative bodies under Community and national law.	Information relating to the use of agency workers must be disclosed under the following regulations of the 1999 Regulations: amended regulation 7, where an employee has requested information to determine whether an undertaking is a Community-scale undertaking; amended regulation 17, where information is disclosed under a European	Regulation 3 in so far as it inserts the definition of “suitable information relating to the use of agency workers”; regulation 5 in so far as it inserts paragraph (4) into regulation 7 of the 1999 Regulations; regulation 9 in so far as it inserts paragraph (9) into regulation 17 of the 1999 Regulations; regulation 10 in so far as it inserts a new regulation 18A(8) into the 1999

Article	Objective	Implementation	Regulations Cross-reference
		<p>Works Council agreement or an information and consultation procedure; new regulation 18A, where information is disclosed under an information and consultation procedure; new regulation 19F, where information is disclosed following a significant change in an undertaking; and new paragraph 8A of the Schedule, where information is disclosed at an annual or exceptional information and consultation meeting.</p>	<p>Regulations; regulation 11 in so far as it inserts a new regulation 19F(7) into the 1999 Regulations and regulation 28.</p>