

**MIKE PITT, employment, company and commercial law specialist, of Oldham's Pearson Hinchliffe, examines important new rules on information and consultation in the workplace.**

A JOKE doing the rounds not so long ago was of companies run on the “mushroom principle” of keeping workers in the dark and feeding them lots of manure.

Never the most enlightened business practice – there is plenty of evidence to suggest that companies where employees are consulted and listened to perform better than those where they are not – it is also about to become illegal in a number of firms.

Rules that come into effect on 6 April give employees in larger organisations rights to be regularly informed and consulted about issues in the business they work for.

The Information and Consultation of Employees Regulations will initially apply to businesses with 150 or more employees, but will be extended to firms with 100 or more employees by April 2007, and to all organisations with 50 or more employees by April 2008.

The requirement to inform and consult employees will not operate automatically. It will be triggered either by employees making a formal request, or by employers choosing to start the process themselves.

Any agreement must set out how the employer will inform and consult employees or their representatives, but the legislation lets them tailor arrangements and structures to their circumstances. Where no agreement is reached following an employee request, certain “standard” provisions will apply.

An employee request to negotiate an agreement must be made by at least 10 per cent of the employees, subject to a minimum of 15 and a maximum of 2,500.

A negotiated agreement, which must be approved by the employees, must set out the circumstances in which the employer will inform and consult them. It must provide either for employee information and consultation representatives or for information and consultation directly with employees (or both). It must cover all the employees of the company.

More detailed issues – such as the method, subject matter, frequency and timing of information and consultation – will be for the parties to agree.

Where the standard provisions apply, employee representatives are to be elected. The employer must inform them about the recent and probable development of the company.

There must be information and consultation on the situation, structure and probable development of employment in the business and, in particular, on any measures envisaged where there is a threat to employment.

Finally, there must be “information and consultation with a view to reaching agreement” on decisions likely to lead to substantial changes in work organisation or in employers’ contractual relations with their employees. But the legislation recognises that agreement on these may not always be possible.

Employers are not obliged to follow information and consultation representatives' opinion. Decision-making remains the responsibility of management. Moreover, employers may withhold information where its disclosure could harm the company.