

Consulting the workers

The government's green paper on employee involvement in the modern economy asks for evidence and comments by 11 December. Howard Gospel and Paul Willman offer their commentary on its implications in the context of the EU's new directive on employee information and consultation.

At the beginning this year, the European Union approved a major piece of industrial relations law – the Directive on Information and Consultation (2002/14/EC). Its provisions are due to cover all enterprises with 150 or more employees by early 2005 and all with 50 or more employees by 2008. This summer the government produced a green paper in response entitled “High Performance Workplaces: The Role of Employee Involvement in a Modern Economy: A Discussion Paper”.

This means that, in less than five years' time, three quarters of the entire UK labour force will be affected by the directive. It will certainly start immediately to have an impact, as managements and unions plan for its implementation. The question is whether this opportunity will be used to establish an effective system of information sharing and joint consultation in British industry or whether it will become another of the long list of historically missed opportunities in this area.

The box opposite gives a summary of some of the main

provisions of the directive. It is clear that these are far-reaching, so far as British industrial relations are concerned. Exactly how the directive will be incorporated into UK law will depend on political circumstances. However, some outcomes are reasonably certain. Forms of consultation based on direct participation will not qualify. Equally, *ad hoc* and issue-specific arrangements will not qualify, since the directive talks about a “permanent” and “general” system of consultation (Article 10). Many other existing systems of consultation will also not qualify, such as those where representatives are appointed by management. Trade union collective bargaining *will* qualify, provided that non-members are not disenfranchised. In addition, it seems likely that arrangements will have to be created at multiple levels within enterprises.

Other elements are still unclear. For example, how, in the absence of an employer initiative, will a request for a council or committee be instigated? Will there be a process of balloting? Who will be deemed to be representatives and how will such persons emerge? What exact sanctions will there be? However, as with all EU-derived law, the domes-



tic version will be subject to interpretation by the European Court of Justice. In the past, in areas such as representation, sex discrimination, and working time, the Court has rendered Directives far-reaching.

British trade unions and employers come to the directive with traditional attitudes and historical experiences that differ from those of their continental counterparts. Historically, British employers made most decisions on work matters unilaterally.

During the First World War, both collective bargaining and joint consultation developed significantly at national and workplace levels. In 1918 the Whitley Committee recommended that both should be further elaborated, with collective bargaining concentrated on pay and conditions and joint consultation on other matters, especially at the workplace. At the time, however, strong unions showed little interest. Weaker unions accepted the proposals on multi-employer bargaining, but again showed little interest in joint consultation. Equally, most employers were reluctant to accept workplace level representation, either by shop stewards or other worker representatives. At that time it was Germany that introduced by law a system of combined collective bargaining and joint consultation.

In the thirty years after 1945, as they saw their membership and power grow, British unions demanded collective bargaining in preference to joint consultation. This contrasted with the situation in continental Europe, where employee consultation was firmly established by statute in Germany, France, and other countries, and operated alongside collective negotiations. This difference was reflected in the 1968 report of the Donovan Royal Commission: "Collective bargaining is the most effective means of giving workers the right to representation in decisions affecting their working lives". Approvingly, it quoted Bill McCarthy's research paper for the Royal Commission as saying that consultative committees "cannot survive the development of effective shop floor organisation: either they must change their character and

Main principles in the Directive

1. Consultation is defined as "an exchange of views and the establishment of dialogue" (Article 2), which implies an ongoing process.
2. Article 4 outlines the minimum obligations created: (a) an obligation to provide information on the general business situation of the undertaking; (b) an obligation to inform and consult on the likely development of employment and on "anticipatory measures" that might threaten employment; and (c) an enhanced obligation to inform and consult on decisions likely to lead to substantial changes in work organisation or in contractual relations. Consultation must take place at an "appropriate" time, with employee representatives able to study the information adequately in advance and to prepare for it properly. It must also be "at the relevant level of management and representation depending on the subject under discussion", which implies that there should be different levels of representation and consultation within an undertaking. Consultation under (c) above shall be "with a view to reaching an agreement", which implies an ongoing process of give-and-take. Management is obliged in all consultation to provide a reasoned response to representatives' opinions.
3. Employers and employee representatives may negotiate different arrangements before and after the directive comes into force, but these would have to respect its principles (Article 5).
4. Representatives must have adequate "protection and guarantees" to enable them to perform their duties (Article 7).
5. Employers may withhold information that they consider would seriously damage their undertaking, while representatives and "any experts who assist them" may be made subject to an obligation of confidentiality.
6. Sanctions for failure to comply shall be "effective, proportionate, and dissuasive" (Article 8).

become essentially negotiating committees... or they will be boycotted by shop stewards and fall into disuse".

Some interim conclusions may be drawn from this brief historical survey. First, the paradox of "free" collective bargaining in Britain was that it relied heavily on a framework of legal immunities and state support. It provided neither much of a ceiling on union aspirations in good times, nor much of a floor in bad times. Second, collective bargaining and joint consultation grew up in an interrelated and complex relationship. At times, they complemented each other; at other times, the one subsumed the other. Third, unions and employers missed a number of opportunities to build a system of employee representation based on interlocking collective bargaining and joint consultation. In the case of the unions, they missed the opportunity to secure positive legal rights when they were strong. From the late 1970s onwards, the coverage of collective bargaining shrank quickly.

From the 1970s, a number of factors shaped the practice of representation in Britain. First, legal intervention steadily increased. Some of this was initially auxiliary to collective bargaining, such as the provisions in the early 1970s for union recognition and for information disclosure. Some of it mandated forms of representation on specific issues, such as health and safety and, as a result of EU membership, collective redundancies and transfer of undertakings. These procedures initially gave legal priority to union representatives, but, in their absence, allowed for non-union representation. Second, the favourable political and legal context changed with the election of the Thatcher government in 1979. Through the subsequent years, immunities were removed and restrictions were placed on unions and their collective bargaining activities. Third, union membership and the coverage of collective bargaining began to shrink, undoubtedly in part as a result of an increasingly hostile legal and political environment. Fourth, from the 1980s onwards, employers increasingly looked to alternative voice mecha-



nisms, based in part on indirect representation via joint consultation, but based more on direct communication and participation via direct workforce meetings, briefing groups, and problem-solving circles.

The election of a Labour government in 1997 led to new legislation on union recognition. It also led to the reformulation of law deriving from European directives on representation in collective redundancies and transfer of undertakings, where priority in the choice of representatives is now vested in a descending order of, first, union stewards, then representatives of standing consultative committees, and, last, representatives chosen ad hoc for the specific purpose. In the case of multinational corporations, the government also implemented the European Works Councils Directive. This created two precedents: it established legally-based, standing, general consultative arrangements in Britain, albeit for a particular group of employees; and it introduced the idea of representation that is inclusive rather than exclusive, giving priority in the choice of representatives to the entire workforce and not just to union members. When this is combined with the acceptance of the EU directive on information and consultation rights in national level undertakings, it is clear that, in terms of the law and practice, Britain has moved decisively down a multi-channel road, but has still been left with a fragmented system of information, consultation and representation.

So let us look at the state of employee representation in

Britain today and how it has changed over the past two decades. We use here successive Workplace Industrial Relations Surveys (WIRS) for 1980, 1984 and 1990, the Workplace Employment Relations Survey (WERS) for 1998, and the CEP's British Workplace Representation and Participation Survey (BWRPS) for 2001.

In 1998 unions were recognised in 42% of all workplaces with 25 or more employees and had a presence (i.e. membership but no recognition) in another 12%. In other words, almost half of all such workplaces had no union presence at all. In the private sector, unions were recognised in only 25% of these workplaces. However, recognition is not representation. In 1998, 28% of these workplaces had union representatives, 7% had non-union representatives, and 4% had both. On the whole, non-union representatives were slightly more likely to be found in workplaces where there was a union presence, but no union recognition. Overall it should be kept in mind that a majority of workplaces had no representatives of any kind.

In 1998, the coverage of joint consultative committees was not very different from that of collective bargaining, with 29% of all workplaces having a workplace consultative committee. In the private sector, this was true of 20% of all workplaces. (Some of these consultative committees, however, were not always "functioning" i.e. meeting at least three times a year.) Equally, there was evidence of a similar "hollowing out" of collective bargaining institutions. Consultative committees can exist at various levels. Thus, in

Table 1. % scope of negotiation, information, and information-provision, by type of worker representatives, 1998

Issue	Negotiates %	Consults %	Informs %	None%	Note. All establishments with 25 or more employees. The figures for union representatives are weighted and based on responses from 923 managers in workplaces with 25 or more employees, union recognition and a union representative on site. The figures for non-union representatives are weighted and based on responses from 134 managers in workplaces with 25 or more employees and without union recognition, but with non-union representative. Source: WERS 98.
Union representatives					
Pay or conditions of employment	38	13	17	32	
Recruitment or selection	3	15	30	52	
Training	5	29	24	42	
Systems of payment	12	16	26	46	
Handling grievances	18	54	13	15	
Staffing or manpower planning	6	33	24	37	
Equal opportunities	7	41	17	35	
Health and safety	13	62	11	14	
Performance appraisals	6	25	16	53	
Non-union representatives – workplaces with no recognition					
Pay or conditions of employment	16	33	36	15	
Recruitment or selection	2	33	32	33	
Training	3	46	24	27	
Systems of payment	4	20	48	28	
Handling grievances	14	50	16	20	
Staffing or manpower planning	3	36	40	21	
Equal opportunities	10	45	23	22	
Health and safety	18	62	19	1	
Performance appraisals	2	48	19	31	

the private sector, 16% of workplaces had a committee at workplace level and 18% at a higher level, but only 8% had both. Size effects here are complicated. Workplace size is positively associated with the existence of a workplace committee, but negatively associated with the use only of a higher-level committee. Organisational size is negatively associated with workplace committees, but positively associated with higher-level committees or a combination of the two. Union recognition and consultative committees appear to be associated. Thus, overall, 74% of workplaces with a recognised union had a committee, compared with 34% those without one.

Overall, the scope of joint regulation is modest. Table 1 shows the balance of negotiation, consultation, and information sharing by issue in the minority of workplaces where there is on-site representation. In workplaces where there are union representatives, bargaining is clearly dominated by pay and, to a lesser extent, by grievance handling. In these workplaces, aside from “pay bargaining” and “grievance handling”, consultation and information sharing is the dominant joint process. In workplaces where there are non-union representatives and no union recognition, information and consultation are the dominant processes, but a surprising amount of negotiation is reported on “health and safety” and on “pay and conditions”. Again, unilateral management regulation is a large category, but less so than in workplaces where there are union representatives.

A final point here is that, in the private sector at least, the

main form of workplace communication and participation is of the direct kind. Thus, 35% of workplaces have problem-solving groups, 35% regular workplace meetings and 43% briefing groups. Taking these three practices together, 75% of all workplaces and 72% of private sector workplaces had one or more of them.

The main changes over the past two decades are encapsulated in Table 2. First, there is a major decline in union density and presence, in particular in the private sector, where both density and recognition halved in 18 years. The



Will this become
another in the
long list of
historically
missed
opportunities?



Table 2. Union presence, density, and recognition, collective bargaining, and joint consultative arrangements, 1980 to 1998

	1980 %	1984 %	1990 %	1998 %
Union presence – by workplace				
All	73	73	64	54
Private manufacturing	77	67	58	42
Private services	50	53	46	35
Union density – percentage of employees				
All	65	58	47	36
Private	56	43	36	26
Union recognition – by workplace				
All	64	66	53	42
Private	50	48	38	25
Collective bargaining predominant form of pay determination – by workplace				
All		60	42	29
Private manufacturing		50	33	23
Private services		36	29	14
Consultation – incidence of joint consultative committee – by workplace				
All – any consultative committee	34	34	29	29
All – any functioning consultative committee	30	31	26	23
Private	26	24	18	20
Union recognition	37	36	34	30
No recognition	17	20	17	18

Source. Adapted from Millward et al. (2000), pp. 85-87, 96, 109, 186-191, 197

proportion of workplaces where collective bargaining was the dominant form of pay determination fell overall from 60 to 29% between 1984 and 1998. In private sector manufacturing, it fell from 50 to 23% and in private sector services from 36 to 14%.

Second, the pattern of change in consultation is different. Overall, the decline is less marked than for the union-related variables. The overall and private sector trends on consultation coverage are not as divergent as those on union variables. In fact, there is a slight rise in private sector consultation coverage between 1990 and 1998. Third, the percentage of workplaces with union representatives fell from 53% to 33% between 1980 and 1998, whereas those with a non-union representative (where no union representative) increased from 16% to 41%.

Third, one of the main developments over the last 20 years has been the growth of "direct voice" arrangements. Thus, regular meetings between senior managers and the workforce, problem-solving groups, and briefing groups increased significantly in the private sector. Between 1984 and 1998, the proportion of workplaces where there was union-only voice fell from 24% to 9%; the proportion where there was both indirect voice (union and non-union) and direct voice fell from 45% to 39%; but those where managers relied solely on direct arrangements rose from 11% to 30%. In the case of briefing groups, the increase was confined to workplaces without a union and those without a consultative committee. Regular meetings and problem-solving groups were more common where there was union representation and where there was joint consultation. Overall, direct communication practices do not seem to have been used to supplant indirect representation via trade unions, but there is some weak evidence that they may be used to exclude unions.

Faced with the opportunities offered by the new directive, what is it that British workers want? There are substantial difficulties involved in answering this question. Not least is the fact that, with surveys, workers may say they want one thing in everyday circumstances, but may want something very different in other circumstances, as when confronted with a major change in contractual arrangements or collective redundancies. However, the BWRPS survey indicates some answers. Its main findings here are summarised in Table 3.

A majority of British workers report reasonably high levels of satisfaction in their jobs and of commitment to their employing organisation. However, they are often critical of management and a majority desire more say in decisions about work tasks, pay levels and organisational governance. A high 38% identify current problems with unfair and arbitrary treatment, in areas such as rewards and discipline and report favouritism and bullying. Despite this, 50% per cent of workers reported that they did not go to anyone for help with work difficulties. There would, therefore, seem



**British
employers
made most
decisions on
work matters
unilaterally**



to be a fairly high flow of problems in British workplaces, which is borne out by the rapid increase in recent years in enquiries to the Advisory Conciliation and Arbitration Service and to Citizens Advice Bureaus and cases to Industrial Tribunals.

Table 3 also suggests that most workers would prefer to deal with problems collectively, rather than individually. The only area where there is a clear preference for individual remedies is promotion. However, it should be noted that in most cases the preference is for dealing with issues via a group of fellow workers, rather than via a trade union or staff association representative. Perhaps not surprisingly, union members show a stronger preference for collective solutions and prefer union representation, rather than working through a group of fellow workers. The exceptions are again on matters of promotion and training, where union members would look more to a group of fellow workers. Non-union employees prefer fellow workers to unions as the preferred method of collective action on all issues. It is notable that workers in situations where there is a recognised union (and where there is both a union presence and a consultative committee) would seem to have the highest preference for collective solutions.

Table 4 explores this further and shows that a large majority (72%) of employees think their workplaces would be better with some form of collective representation. This breaks down as 92% of union members and 61% of non-union members. However, in the case of union members, it is striking that only 11% favour a union on its own, whereas 74% favour both a union and a joint consultative committee or works council. The wishes of non-union members are more dispersed: 34% cent want no form of representation; 29% favour a joint consultative committee on its own; 27% favour a joint consultative committee and a trade union; but only 5% favour a union on its own. Workers who are in

Table 3 % preferences of employees for dealing with workplace issues

Would you prefer to deal with this problem on your own or with...	All employees	Union membership status		Only workplace with union presence	Only Workplaces with recognised unions	Only workplaces with WC or JCC	Both WC/JCC and union presence at workplace	Neither WC/JCC or union presence at workplace
		Member	Non-member					
Sexual or racial discrimination at work								
Group of fellow workers	72	78	68	78	78	70	76	63
Union or staff association rep.	67	84	58	72	77	56	83	54
Negotiating salary								
Group of fellow workers	65	81	56	73	74	60	82	44
Union or staff association rep.	53	80	38	73	77	38	72	31
Negotiating hours and conditions								
Group of fellow workers	71	81	65	73	75	67	80	62
Union or staff association rep.	52	76	38	69	73	39	68	34
Promotion issues								
Group of fellow workers	46	50	43	39	37	54	50	38
Union or staff association rep.	27	36	23	34	35	21	33	20
Workplace bullying								
Group of fellow workers	69	72	68	70	71	74	74	60
Union or staff association rep.	58	80	46	65	69	46	75	41
Training and skill development								
Group of fellow workers	67	73	65	66	63	73	71	59
Union or staff association rep.	30	36	26	40	41	28	30	23

Note: Sample was divided at random into two variants. One variant asked if the respondent preferred to solve specific problems on their own or with the help of a group of colleagues or fellow workers. The other variant asked if respondents preferred to solve problems on their own or with the help of a trade union or staff association representative. Each respondent could only choose either an individual or collective solution.

Source: BWRPS (2001) Q35



Table 4 Do you think your workplace would be better with...?
%

Do you think your workplace would be better with...	All employees %	Union membership status		Only workplace with union presence %	Only Workplaces with recognised unions %	Only workplaces with WC or JCC %	Both WC/JCC and union presence at workplace %	Neither WC / JCC or union presence at workplace %
		Member	Non-member					
Trade Union on its own	7	11	5	14	16	2	9	6
Works Council on its own	21	6	29	11	10	40	9	27
Works Council and Trade Union	44	74	27	60	63	24	72	20
Neither	24	5	34	11	8	31	9	43
Don't Know	4	3	5	3	3	3	2	4

Source: BWRPS (2001), Q51.

situations where there is already a union and a consultative committee are the most in favour of dual representation (72%), but it is also striking that workers in situations where there is a recognised union or a union presence are also well disposed to dual representation. There is little preference for a consultative committee on its own, except where there is already the situation. All this suggests both union and non-union members see these unions and consultative committees as complementary.

Taking this further, the BWRPS survey shows that 82% of workers would be in favour of legislation that required management to meet with employee representatives. Overall, union members are more favourably inclined to statutory works councils than non-members (89% as opposed to 77%). However, support for legislation is strongest (92%) where there are already dual channels. In addition, there is a strong feeling that works councils should be elected by workers (72%), have legal protections from possible discrimination by employers (75%), and meet on a regular basis and not just at management discretion (89%). On the other hand, the proportion favouring confidential information for employee representatives is relatively low (40% in the case of union members and 33% cent in the case of non-members).

Experience on the Continent has been very different. Germany went down the road of multi-channel representation – collective bargaining outside the firm, alongside legally based joint consultation at the workplace and company levels, and representation on the supervisory boards of companies. German unions have benefited from their relationship with works councils and vice versa. Works councillors tend to be union members; the union provides advice to the council, and this in turn gives the

union salience. Employees through their works councils receive more information and experience more consultation than their British counterparts. However, in recent years, some works councils have come to supersede unions, in terms of the issues being discussed through the consultation process and of agreed deviations from nationally bargained agreements.

In union terms, the German story is usually seen as a positive one. Union membership has only fallen from 35 to 29% of the workforce over the last 20 years. The coverage and scope of collective bargaining and joint consultation remain high, though with some shift towards decentralised dealings via works councils.

By contrast, the French story might be seen as a more negative one. Historically, France also went down the road of multi-channel representation, with legally based joint consultation alongside collective bargaining. Periodically, French governments have intervened in industrial relations to support consultative arrangements. Since 1945, the law has mandated the election of a *comité d'entreprise*. Buttressed by further legislation in the early 1980s, the purpose of the *comités d'entreprise* is to ensure expression of the views of employees and to allow their interests to be taken into account in decisions. French employers are legally obliged to inform and consult employees over a wide range of matters.

However, in France, for a number of reasons, this has not worked as well as in Germany. In part, this has been because French *comités d'entreprise* have less extensive rights and are more employer-led than German works councils. In larger part, it is because French unions are more fragmented, have less presence at the workplace and, consequently, have been less able to use the law and institutions. In France, union membership has fallen from 18 to 9% of the workforce over the last 20 years and the scope of collective bargaining at workplace level has narrowed. There is evidence that joint consultation and collective bargaining have not complemented one another and the former has often come to substitute for the latter. On the other hand, French workers would undoubtedly obtain less in the absence of the *comité d'entreprise* and, arguably, French unions have been able to maintain a foothold in many companies largely because of the role they play in these arrangements.

What, then, are British workers likely to get out of the process being set in train by the new impetus that the new directive will give to indirect representation via joint consultation?

Employers have the advantage that they have come to control employee relations and that, in many cases, they have introduced more sophisticated human resource policies than in the past. On the other hand, they are faced with constraints, quite apart from the new directive.



**British unions
demanded
collective
bargaining in
preference
to joint
consultation**



Employees seem to want a more representative voice at work and employers now confront unions that are more confident than they have been for many years. Undoubtedly, some employers will seek to avoid new arrangements, arguing either that they already have adequate mechanisms or that their employees do not want arrangements on these lines. This strategy clearly has dangers in that it may be challenged in all or in parts of an enterprise. For other employers, there is an opportunity to establish arrangements, either wholly or partially new, either with or without trade unions.

Unions must fear that employers may use the directive to exclude or eject them and that they may have neither the leverage nor the capability to mobilise workers to achieve and operate new information and consultation arrangements. On the other hand, there is evidence that employees desire more voice at work; that many workplaces have a union presence, which can be built on; and that unions now have legal supports, which they can potentially turn to their advantage. At one end of the spectrum, where unions already have a high level of membership and bargaining coverage, they may eschew new arrangements, but use the law to capitalise on what they already have and expand the scope and level of consultation and bargaining.

At the other end of the spectrum, where unions have no presence, they will have little choice but to accept what employers may put into place. Here unions will have mixed motivations as to whether they wish to see such arrangements succeed. Where arrangements are successful, this may mean permanent union exclusion; where they are less successful, this may mean new opportunities to intervene. It is in situations at the middle of the spectrum, where there is hollow recognition or a partial presence at some levels or in some parts of an undertaking, that unions will confront challenges and have real opportunities to increase their membership and activities.

Howard Gospel is Professor of Management at King's College, London; a Fellow at the Said Business School, University of Oxford; and a Research Associate at the CEP.

Paul Willman is Ernest Button Professor of Management Studies at the University of Oxford; a Fellow of Balliol College, Oxford; and a researcher on the CEP's Leverhulme research project on the Future of Unionism in Modern Britain.

This article is based on a chapter in a forthcoming book, *Representing Workers: Trade Union Recognition and Membership in Britain*, edited by Howard Gospel and Stephen Wood, to be published by Routledge in spring 2003



The main form
of workplace
communication
and participation
is of the
direct kind



References & further reading

- Cully, M., Woodland, S., O'Reilly, A, Dix, G. (1999) *Britain at Work*, Routledge, London.
- Feldman, G. (1992) *Army, Industry, and Labor in Germany 1914-1918*. Berg, Leamington Spa.
- Forth, J. and Millward, N. (2002) *The Growth of Direct Communication*. CIPD, London.
- Freeman, R. and Pelletier, J. (1990) "The impact of industrial relations legislation on British union density", *British Journal of Industrial Relations*. 28, 2. 141-164.
- Hinton, J. (1994) *Shop Floor Citizens: Engineering Democracy in 1940s Britain*. Edward Elgar, Aldershot
- Howell, C. (1992) *Regulating Labor: The State and Industrial Relations Reform in Postwar France*. Princeton University Press, Princeton.
- Jenkins, A. (2000) *Employment Relations in France*, New York, Kluwer / Plenum.
- McCarthy, W. (1967) *The Role of Shop Stewards in Industrial Relations*, Research Paper Number 1, Donovan Royal Commission.
- Millward, N., Bryson, A. and Forth, J. (2000) *All Change at Work*, Routledge, London.
- Report of the Royal Commission on Trade Unions and Employers' Associations 1965-1968*. (1968) (Chairman: Lord Donovan). Cmnd 3623. HMSO, London.
- Report of the Committee of Inquiry on Industrial Democracy* (1977) (Chairman: Lord Bullock). Cmnd. 6702. HMSO, London.
- Wedderburn, W. (1997) "Consultation and collective bargaining in Europe: success or ideology?", *Industrial Law Journal*, 26 (1): 1-34.
- Whitley Committee. (1918) *Ministry of Reconstruction, Interim Report of the Committee on Relations between Employers and Employed* (Cd. 8606, 1917-1918) and Final Report (Cd. 9153).