



An Roinn Fiontar, Trádála agus Fostaíochta
Department of Enterprise, Trade and Employment

EMPLOYEES (PROVISION OF INFORMATION AND CONSULTATION) ACT 2006

Explanatory Booklet for Employers and Employees

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Department of Enterprise, Trade and Employment

EMPLOYEES (PROVISION OF INFORMATION AND CONSULTATION) ACT 2006

Explanatory Booklet for Employers and Employees

The purpose of this booklet is to provide general guidance on the Act to employees and employers in non-legal language. The booklet outlines the rights and obligations under the Act. It is important to note that this is an information booklet and does not constitute a legal interpretation of the Act.

In cases of doubt or where further information is required, interested parties should refer to the Act or contact:

The Employment Rights Information Unit, Department of Enterprise, Trade and Employment, Davitt House, 65A Adelaide Road, Dublin 2.

Telephone: (01) 6313131. Lo-call 1890 201615.

Fax: (01) 6313329.

E-mail: erinfo@entemp.ie. Website: www.entemp.ie.

Copies of this booklet may be obtained from the Information Unit.

Other useful telephone numbers:

Department of Enterprise, Trade & Employment:

(01) 6312121 Lo-Call 1890 220222

Labour Court:

(01) 6136666 Lo-Call 1890 220228

Labour Relations Commission

(01) 6136700 Lo-Call 1890 220227

Rights Commissioner Service

(01) 6136700 Lo-Call 1890 220227

Note: The Lo-Call numbers may be used by callers from outside the 01 area.

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Note: Section references in this Guidance Booklet relate to sections of the Employees (Provision of Information and Consultation) Act 2006. On the other hand, paragraph references relate to the paragraphs of this Booklet (see Paragraphs 1-20 listed above).

1. PURPOSE OF THE ACT

The Employees (Provision of Information and Consultation) Act 2006 came into operation on 24 July 2006 (see S.I. No. 382 of 2006).

The purpose of the Act, which implements EU Directive 2002/14/EC of the 11 March 2002, is to provide for the establishment of a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings with at least 50 employees. It provides a general right to information and consultation for employees from their employer on matters which directly affect them.

Another purpose of the Act (as provided for in Section 21) is to transpose into Irish law an optional provision of EU Council Directive 2001/23/EC of 12 March 2001 dealing with the safeguarding of employees' rights in the event of transfers of undertakings, businesses, or parts of undertakings or businesses (see paragraph 20 for more details).

2. APPLICATION OF THE ACT

Timetable for Application

Section 4 of the Act sets out a timetable for application of the legislation on a phased basis. The Act applies to:

- undertakings with at least 150 employees from 4 September 2006 (see S.I. No. 383 of 2006).
- undertakings with at least 100 employees from 23 March 2007.
- undertakings with at least 50 employees from 23 March 2008.

Calculating the Number of Employees

Section 5 of the Act sets out how to calculate the number of employees in the undertaking for the purpose of determining whether the undertaking has at least 50, 100 or 150 employees (a “relevant workforce threshold”). The calculation

is based on an average of the number of employees employed in the undertaking during a two year period. Employee(s) and/or their representatives can ask the employer directly for details of the employee numbers in the undertaking. They are also given the option of requesting the Labour Court to ask the employer for these details.

3. DEFINITIONS

Section 1 of the Act provides for the definition of certain terms that are mentioned later in the Act. The main definitions are as follows:

Appointed means, in the absence of an election, appointed by the employees and the basis on which that appointment is made may, if the employees so determine, be such as is agreed by them with the employer.

Consultation means the exchange of views and establishment of dialogue between either or both -
(a) one or more employees,
(b) the employees' representative or representatives, and the employer.

Employee means a person who has entered into or works under a contract of employment and references, in relation to an employer, to an employee shall be read as references to an employee employed by that employer.

Employees' Representative has the meaning assigned by section 6 (see paragraph 10 *Representative* below).

Employer in relation to an employee, means the person by whom the employee is employed under a contract of employment.

Information means transmission by the employer to one or more employees or their representatives (or both) of data in order to enable them to acquaint themselves with the subject matter and to examine it and cognate words shall be read accordingly.

Information and Consultation Forum means a Forum established in accordance with Schedule 1 for the purpose of informing and consulting employees.

Undertaking means a public or private undertaking carrying out an economic activity, whether or not operating for gain.

4. TYPES OF AGREEMENTS

The Act provides for three types of information and consultation agreements: pre-existing agreements, negotiated agreements and the Standard Rules. These are explained at paragraphs 5, 6 and 7 below.

It is possible to establish more than one agreement or more than one Information and Consultation Forum if it suits the particular circumstances and structure of the undertaking.

5. PRE-EXISTING AGREEMENTS

Specified Dates

The Act provides an opportunity for the parties to develop customised information and consultation arrangements – either through the retention of existing arrangements or the establishment of new arrangements. Such “pre-existing agreements” must be in line with the provisions of section 9 of the Act and must be in place on or before certain dates, as follows:

- a) in undertakings with at least 150 employees on or before 4 September 2006 (see S.I. No. 383 of 2006).
- b) in undertakings with at least 100 employees on or before 23 March 2007.
- c) in undertakings with at least 50 employees on or before 23 March 2008.

Conditions and Limitations

The conditions and limitations attached to such agreements are set down in Section 9 of the Act. Pre-existing agreements must be: in writing and dated; signed by the employer; approved by the employees (either a majority of employees can approve the agreement or the parties can agree another procedure to demonstrate approval); applicable to all employees to whom the agreement relates, and available for inspection as agreed by the parties.

In addition, pre-existing agreements must include reference to the following: the duration of the agreement and any review procedures; the subjects for information and consultation and the method by which information is to be provided or consultation to be conducted (this must include reference as to whether information and consultation is to be provided directly to employees or through representatives - see paragraph 9 for further information).

Link to Section 7

Where a pre-existing agreement exists within an undertaking on or before the specified dates, the employer is not obliged to comply with a request from employees for negotiations under Section 7 (see paragraph 8). However, where a pre-existing agreement has expired for 6 months or more, employees may make a request for negotiations.

6. NEGOTIATED AGREEMENTS

Section 8 provides the employer and the employees and/or their representatives with the opportunity to devise their own tailor-made information and consultation agreement through negotiations.

Conditions and Limitations

The conditions and limitations attached to such agreements are set down in the Act. Negotiated agreements must be: in writing and dated; signed by the employer; approved by the employees (either a majority of employees can approve the agreement, or a majority of employee representatives can approve the

agreement in writing, or the parties can agree another procedure to demonstrate approval); applicable to all employees to whom the agreement relates; and available for inspection as agreed between the parties.

In addition, negotiated agreements must include reference to the following: the duration of the agreement and any renegotiation procedure; the subjects for information and consultation; the method and timeframe by which information is to be provided or consultation to be conducted (this must include reference as to whether information and consultation is to be provided directly to employees or through representatives - see paragraph 9 for further information); and the procedure for dealing with confidential information.

Renewal of a Negotiated Agreement

At any time before a negotiated agreement expires or within 6 months after its expiry, the parties to the agreement may renew it for any further period they think fit.

7. THE STANDARD RULES

The Standard Rules are set out in Section 10, Schedule 1 and Schedule 2 of the Act. They are essentially a fallback position for setting up an information and consultation arrangement.

When do the Rules apply?

The Rules apply in the following circumstances:

- where the parties have entered into negotiations under section 7 and agree to adopt the Rules,
- where the employer refuses to enter into negotiations within 3 months of receiving a request from employees or notification of a valid request from the Labour Court under section 7, or
- where the parties have entered into negotiations under section 7 but

cannot reach agreement within the specified time limit of 6 months (this period of 6 months may be extended by agreement of the parties).

In cases where employees do not approve a negotiated agreement, the Standard Rules do not apply to the undertaking until 2 years have passed. This gives the parties the opportunity to re-enter negotiations and try and reach agreement.

Compliance with the Rules

The key element in the Standard Rules is the establishment of an Information and Consultation Forum. Where the Standard Rules apply to an undertaking the employer has up to 6 months to comply with them.

Renewal and Review of the Rules

The Standard Rules can be reviewed by the Forum and the employer once 2 years have elapsed from the establishment of the Forum. After that, both parties must agree the basis on which the Rules may be reviewed. The parties can enter into negotiations to change the Rules or procedures for the Forum. If the number of employees in the undertaking falls and remains below the relevant workforce threshold (i.e. 50, 100 or 150 employees) for 12 months then the Information and Consultation Forum, at the request of either the employer or a majority of the employees, will be disbanded unless both parties agree that it should continue to operate.

The Content of the Rules – Schedule 1.

The detail of the Rules is set out in Schedule 1 of the Act. The main points are as follows:

The Standard Rules

Size and Structure of Forum

The Forum must be comprised of employees' representatives and have at least 3 but not more than 30 members. The employees' representatives must

be elected in accordance with Schedule 2 of the Act, or in the absence of elections, appointed by the employees. It is the employer's responsibility to arrange the election process.

Rules of Procedure

The Forum must adopt its own rules of procedure, subject to some requirements. These include the right of the Forum to meet with the employer twice a year and the right to request an additional meeting with the employer in exceptional circumstances. Before any meeting with the employer, the Forum is entitled to meet without the employer concerned being present. Without prejudice to confidential information provisions in the Act, the members of the Forum shall inform the employees of the content and outcome of the meetings of the Forum.

Competence

For the purpose of the Standard Rules, information and consultation includes:

- a) information on the recent and probable development of the undertaking's activities and economic situation,
- b) information and consultation on the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular where there is a threat to employment, and
- c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by legislation dealing with transfer of undertakings and collective redundancies.

Practical arrangements for Information and Consultation

The employer must give information in a timely manner and with the appropriate content to enable the Forum, in particular, to carry out an adequate study and, where necessary, prepare for consultation.

Consultation must take place at the relevant level of management and representation, depending on the subject under discussion. The method, content and timeframe must be appropriate. Consultation must take place on the basis of information supplied by the employer and on the basis of the opinion which the employees' representatives are entitled to formulate; in such a way as to enable the Forum to meet the employer and obtain a response and the reasons for that response, to any opinion they might form; and with a view to reaching an agreement on decisions referred to at point (c) above that are within the scope of the employer's powers.

Expenses

The employer is obliged to pay expenses incurred in the operation of the Forum. The employer must provide the members of the Forum with any financial resources that are necessary and reasonable to enable them to perform their duties in an appropriate manner.

Election of Employees' Representatives – Schedule 2

Schedule 2 details the requirements for the election of employees' representatives to the Information and Consultation Forum. This Schedule only relates to the Standard Rules. There are no rules provided for the election of other employees' representatives under the Act.

Election of Employees' Representatives

The Schedule sets out who is entitled to vote in an election, namely an employee who is employed by the undertaking on the day on which the date(s) for an election of members of the Information and Consultation Forum is fixed and who is, on the election day or days, an employee of the undertaking.

An employee who is employed by the undertaking for a continuous period of not less than one year on the nomination day is eligible to stand as a candidate for election as a member of the Forum, provided that he or she is nominated by at least two employees, or a trade union or excepted body

with whom it is the practice of the employer to conduct collective bargaining negotiations.

Where the number of candidates on the nomination day exceeds the number of members to be elected to the Forum, a poll shall take place by secret ballot on a day or days to be decided by the returning officer and according to the principle of proportional representation.

The employer in consultation with existing employees shall appoint a returning officer. The cost of the nomination and election procedure shall be borne by the employer.

8. PUTTING IN PLACE INFORMATION AND CONSULTATION ARRANGEMENTS

Negotiations

If a pre-existing agreement is not put in place on or before the specified dates in paragraph 5 or has expired for a period of 6 months or more, then Section 7 provides that the employer may initiate negotiations or employees may request negotiations with the employer to establish information and consultation arrangements. The employer is obliged to comply with such a request. Negotiations take place between the employer and the employees and/or their representatives. Once negotiations are entered into then there are two possible outcomes - either a negotiated agreement or the Standard Rules.

Parties are given six months from the time of commencing negotiations to agree an information and consultation arrangement. However, the period of six months can be extended by agreement of the parties.

Making an Employee Request

Employees can make a request for negotiations either directly to the employer or in confidence to the Labour Court (or a nominee of the Labour Court).

The address for the Labour Court is:

The Labour Court
Tom Johnson House
Haddington Road
Dublin 4.

The request must be made in writing by 10% of employees - subject to a minimum of 15 and a maximum of 100 employees. This is referred to in the Act as the “employee threshold”.

Examples of Employee Threshold

- 1) Undertaking A has 3,000 employees. While 10% of the workforce is 300 employees, the maximum threshold set down in the Act means that 100 employees is a sufficient number to make a valid request.
- 2) Undertaking B has 110 employees. While 10% of the workforce is 11 employees, the minimum threshold means that 15 employees are required to make a valid request.

Labour Court Procedures under the Act

Where the Labour Court (or a nominee of the Labour Court) receives a request from employees, the employer will be informed as soon as possible that a request has been made. The Court will then request from the employer the information that it (or its nominee) needs to check the number and names of the employees who have made the request. The employer is obliged to provide the requested information as soon as possible. Finally, the Court will issue a written notification to the employer and the employees who have made the request confirming whether or not a valid request has been made.

Further Requests for Negotiations

Where employees make a written request for negotiations, but do not have sufficient numbers to do so (i.e. the “employee threshold” is not met), the employees of the undertaking cannot make a further request for negotiations

until two years have passed from the date on which the initial or previous request was received by the employer or from the date that the employer received notification from the Labour Court that the request made was not valid.

9. PROVISION OF INFORMATION AND CONSULTATION BY DIRECT MEANS AND THROUGH REPRESENTATIVES.

In relation to negotiated agreements and pre-existing agreements, Section 11 provides that employees may receive information and consultation through one of two core methods - either directly or through representatives. The Act requires at section 8 and section 9 that both types of agreement explicitly state which method is to be used. In practice, this does not prevent a mixture of the two methods being used in one undertaking whereby some employees receive information and consultation directly and others receive information and consultation through representatives.

Requesting a Change

To make a change from a system of direct involvement to one involving representatives, at least 10% of employees who operate under the direct involvement system in the undertaking are required to make a written request to the employer, or directly in confidence to the Labour Court (or its nominee) seeking to exercise the right to information and consultation through employees' representatives.

Approval by Employees

Once a change has been requested by the required 10%, then the Act further requires that the change be approved by a majority of the employees who operate under the direct involvement system. It is only those employees who work under the direct involvement system who can effect such a change. The employer is obliged to ensure that any approval procedure used is confidential and capable of independent verification and of being used by all employees. Where a change has been approved, the employer must arrange for the election or appointment of representatives by the employees.

The Standard Rules

The Standard Rules provide for the establishment of an Information and Consultation Forum which comprises employees' representatives only. Direct involvement systems are not a feature of the Standard Rules as set out in the Act.

10. EMPLOYEES' REPRESENTATIVES

Section 6 defines employees' representatives. They must be employees of the undertaking, elected or appointed for the purposes of the Act. The employer is obliged to arrange for the election or appointment of representatives.

Where it is the practice of the employer to conduct collective bargaining negotiations with a trade union or excepted body that represents 10% or more of the employees in the undertaking, the Act provides that employees who are members of that trade union or excepted body are entitled to elect or appoint from amongst their members one or more than one employees' representatives. The number of such representatives (if any) elected or appointed will be determined on a pro-rata basis with other elected or appointed representatives.

The same definition applies throughout the Act wherever the term is used. The only place where the Act prescribes the number of representatives allowed is in relation to the Information and Consultation Forum. Elsewhere, the parties can determine the overall number of representatives.

11. PROTECTION OF EMPLOYEES' REPRESENTATIVES

Section 13 prohibits an employer from penalising an employees' representative for performing his or her functions in accordance with this Act.

What Constitutes Penalisation of an Employees' Representative?

The following constitutes penalisation by an employer of an employees' representative: dismissal; any unfavourable change in conditions of employment;

any unfair treatment (including selection for redundancy); and any other action that is prejudicial to his or her employment.

Redress – Schedule 3

Schedule 3 of the Act provides redress in cases where an employer is alleged to have penalised an employees' representative. Employees' representatives who believe they have been penalised can make a complaint to a Rights Commissioner. If penalisation of an employees' representative under this Act also constitutes a dismissal of the representative within the meaning of the Unfair Dismissals Acts 1977 to 2005, relief may not be granted to the representative under both the Unfair Dismissals legislation and this Act.

Summary of Schedule 3

Complaints to Rights Commissioner

An employees' representative ("the employee") may present a complaint in writing to a Rights Commissioner that his or her employer has penalised the employee for performing his or her functions in accordance with this Act. The complaint must be made within six months of the occurrence of the penalisation (there is limited scope for complaints being made within 12 months). A copy of the complaint will be given to the other party concerned by the Rights Commissioner. Where a complaint is made the Rights Commissioner will hear the parties and communicate a written decision to the parties. The employer may be required to take a specified course of action. The employer may have to pay compensation to the employee (not exceeding 2 years remuneration in respect of the employee's employment). Proceedings before a Rights Commissioner will be held in private.

Appeals from Decisions of Rights Commissioner

The employer or employees' representative can appeal the decision of the Rights Commissioner to the Labour Court. In normal circumstances such an appeal must be initiated by the party concerned within 6 weeks from the date on which the decision to which it relates was communicated to the party.

The Labour Court will determine a number of matters, or the procedures to be followed in relation to them including, for example, the times and places of hearings of such appeals and the representation of the parties to such appeals.

The Labour Court will make a determination in writing in relation to the appeal. The determination will either affirm, vary or set aside the decision and the determination will be communicated to the parties.

Facilities

The Act provides that employees' representatives must be afforded any reasonable facilities, including paid time off, that will enable them to perform their functions as employees' representatives promptly and efficiently. The granting of such facilities must take into account the needs, size and capabilities of the undertaking concerned and must not impair the efficient operation of the undertaking.

12. CONFIDENTIAL INFORMATION

Section 14 of the Act provides that an individual who at any time is or was -

- a) a member of an Information and Consultation Forum (established under the Standard Rules),
- b) an employees' representative who is party to an information and consultation arrangement,
- c) an employee participant in an information and consultation arrangement, or,
- d) an expert providing assistance,

is not permitted to disclose confidential information to employees or to third parties, unless those employees or third parties are subject to a duty

of confidentiality under this Act. An employer may refuse to communicate information or undertake consultation where the nature of that information or consultation is such that it would seriously harm the functioning of the undertaking or be prejudicial to the undertaking. An employer shall refuse to disclose information where this is prohibited by any other legislation. The Labour Court, including any expert or mediator appointed by the Labour Court, is also bound by the confidentiality requirements of this section.

13. DISPUTE RESOLUTION

Disputes Regarding Negotiations or Agreements

Under section 15, disputes concerning:

- a) negotiations leading to a negotiated agreement or an agreement under the Standard Rules,
- b) the interpretation or operation of a pre-existing agreement or a negotiated agreement,
- c) the interpretation or operation of the Standard Rules or the procedures for the election of employees' representatives (Schedule 2), or
- d) the interpretation or operation of a system of direct involvement,

must go through the following stages in dispute resolution:

- internal dispute resolution procedure (if any),
- dispute referred to Labour Relations Commission,
- referral to Labour Court for investigation only after the Labour Relations Commission certifies to the Labour Court that no further efforts on its part will resolve the dispute. The dispute may be referred to the Labour Court by the employer, or one or more employees and/ or their representatives,

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- where the Labour Court makes a written recommendation which does not lead to a resolution of the dispute, the Labour Court may, at the request of an employer, or one or more employees and/or their representatives, and following a review of all relevant matters, make a written determination.

Disputes Regarding Confidential Information

Disputes regarding confidential information under section 15 may be referred by the employer, or one or more employees and/or their representatives to the Labour Court for determination.

In deciding what constitutes confidential information, the Labour Court may be assisted by a panel of experts.

Disputes under Section 6 (Employees' Representatives)

Section 6, which deals with employees' representatives, provides that disputes arising under that section may be referred by the employer, trade union, excepted body or one or more employees to the Labour Court for determination.

Labour Court Procedures under the Act

In relation to disputes under this legislation, certain procedures are set down for the Labour Court to follow. These include the hearing of evidence, the making of recommendations and determinations and the communication of these to the parties. The Labour Court itself will decide on certain other matters and procedures.

The High Court

In relation to disputes under section 15, a party may appeal from a determination of the Labour Court to the High Court on a point of law. The Labour Court may refer a question of law to the High Court for determination. The decision of the High Court in these matters is final.

14. LABOUR COURT POWER TO ADMINISTER OATHS AND COMPEL WITNESSES.

Section 16 of the Act provides that, in relation to disputes referred to it for recommendation or determination under section 6 or section 15 or the hearing of an appeal under Schedule 3, the Labour Court can take evidence on oath and have oaths administered to people attending as witnesses.

The Labour Court can issue a written notice, requiring a person to attend to give evidence. A witness in a Labour Court hearing in relation to a matter under this Act has the same privileges and immunities as a witness before the High Court.

15. ENFORCEMENT

Section 17 of the Act enables one or more of the parties to apply to the Circuit Court for an enforcement order regarding a Labour Court determination in relation to a dispute under section 6 or 15 or a decision of a Rights Commissioner or a determination of the Labour Court under Schedule 3. The Circuit Court will issue an order where the terms of such a determination or decision have not been carried out within the period specified in the determination or decision or, where no period has been specified, within 6 weeks from the date on which the determination or decision is communicated to the parties. The Circuit Court, if it considers it appropriate to do so, may also direct the employer to pay interest on compensation awarded by the Rights Commissioner under Schedule 3.

16. INSPECTORS

Section 18 of the Act empowers the Minister for Enterprise, Trade and Employment to appoint inspectors for the purposes of the Act.

The powers of the inspectors include the power to: make such examination or enquiry as may be necessary for ascertaining whether the legislation is being complied with; to enter certain premises; require certain individuals to produce information; and require certain records to be produced.

An inspector cannot enter a private dwelling without the consent of the occupier unless he or she obtains a warrant from the District Court. An inspector may be accompanied by a member of the Garda Síochána when exercising a power under Section 18.

17. PENALTIES AND OFFENCES

Section 16, section 18 and section 19 detail offences under the Act. Section 16 and section 20 set out the penalties for such offences.

Offences and Penalties Under Section 16 “Power of Court to Administer Oaths and Compel Witnesses”

<i>Offences Under Section 16</i>	<i>Penalties for Offences Under Section 16</i>
A person who knowingly makes a false statement to a Labour Court hearing is guilty of an offence.	Liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both.
A person who wilfully fails to attend or give evidence or produce documents as requested by the Labour Court is guilty of an offence.	Liable on summary conviction to a fine not exceeding €3,000.

Offences Under Section 18 “Inspectors” and Section 19 “Offences” and Penalties for those Offences

Offences Under Section 18

A person who -

obstructs or impedes an inspector in the exercise of any of the powers conferred on an inspector under section 18,

refuses to produce a record which an inspector lawfully requires the person to produce,

produces or causes to be produced, or knowingly allows to be produced, to an inspector a record which is false or misleading in a material respect, knowing it to be so false or misleading,

gives to an inspector information which is false or misleading in a material respect knowing to be so false or misleading,

fails or refuses to comply with a lawful requirement of an inspector under subsection (3),

is guilty of an offence.

Offences Under Section 19

A person who fails to comply with Section 7 (Process for establishing information and consultation arrangements), Section 8 (Negotiated agreements), Section 9 (Pre-existing agreements), Section 10 (Standard Rules on Information and Consultation) or Section 13 (Protection of employees’ representatives) is guilty of an offence.

It is an offence for an employer to refuse to provide the information referred to in section 5 (“Calculating Workforce Thresholds”) or to unreasonably or wilfully obstruct or delay the provision of such information.

It is an offence for an employer to fail to arrange for the election or appointment of one or more than one employees’ representative under section 6(2).

It is an offence for an employer to fail to put in place a system of representation through employees’ representatives where one has been requested and approved by employees under section 11.

It is an offence for an individual to whom section 14(1) applies to disclose information to employees or third parties not subject to a duty of confidentiality under this Act where that information is expressly provided in confidence to the individual concerned.

Penalties for Offences Under Section 18 and Section 19

Section 20 of the Act states that a person guilty of an offence under section 18 or 19 shall be liable -

- on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both, or,
- on conviction on indictment, to a fine not exceeding €30,000 or imprisonment for a term not exceeding 3 years or both.

If the offence under section 18 or 19 of which a person was convicted is continued after conviction, that person shall be guilty of a further offence on every day on which the act or omission constituting the offence continues, and for each such further offence the person shall be liable on summary conviction to a fine not exceeding €500 or on conviction on indictment to a fine not exceeding €5,000.

Proceedings for an offence under section 18 or 19 may be brought and prosecuted by the Minister.

18. LINK BETWEEN THIS ACT AND OTHER LEGISLATION

Section 3 of the Act provides that any obligations to inform and consult under the Act are in addition to existing statutory obligations to inform and consult employees. Relevant existing obligations include:

1. **Collective Redundancies**

The Protection of Employment Act 1977, as amended by the Protection of Employment Order 1996 (S.I. No. 370 of 1996), and the European Communities (Protection of Employment) Regulations 2000 (S.I. No. 488 of 2000).

2. **Transfer of Undertakings**

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003).

3. **Transnational Information and Consultation**

The Transnational Information and Consultation of Employees Act 1996 and the European Communities (Transnational Information and Consultation of Employees Act 1996) (Amendment) Regulations 1999 (S.I. No. 386 of 1999).

4. Any employee right to information, consultation or participation provided by any other legislation.

For the avoidance of doubt, the provision of information and consultation through a European Employees' Forum, an Information and Consultation procedure or a European Works Council established under the Transnational Information and Consultation of Employees Act 1996 or by an agreement under section 6 of that Act, is not sufficient compliance by the employer with this Act.

19. SPIRIT OF COOPERATION

Section 12 of the Act provides that when defining or implementing practical arrangements for information and consultation, the employer, employees and/or their representatives must work in a spirit of cooperation.

20. TRANSFER OF UNDERTAKINGS

Section 21 of the Employees (Provision of Information and Consultation) Act 2006 transposes into Irish law an optional provision of EU Council Directive 2001/23/EC of 12 March 2001 dealing with the safeguarding of employees' rights in the event of transfers of undertakings, businesses, or parts of undertakings or businesses. [The mandatory provisions of the Directive were transposed in 2003 by the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003)]. Typically, a transfer occurs where a business merges or is taken over by another company where the identity of the employer changes but the nature of the job remains the same.

The optional provision of the Directive implemented in Section 21 obliges the transferor (original employer) to notify the transferee (new employer) of all the

rights and obligations, arising from contracts of employment existing on the date of the transfer, which will be transferred to the new employer, so far as those rights and obligations are, or ought to have been, known to the original employer at the time of transfer. A failure by the original employer to notify the new employer of any such right or obligation shall not affect the transfer of that right or obligation and shall not affect the rights of any employees against the original employer or the new employer in respect of that right or obligation.

Failure of Transferor to Notify Transferee

In the event that the transferor (original employer) failed to notify the transferee (new employer) of all the rights and obligations that transferred over to the new employer under the employees' contracts of employment and, subsequent to the transfer, an employee took a case under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) which resulted in the new employer paying compensation to an employee on foot of a decision by a Rights Commissioner or the Employment Appeals Tribunal that the new employer had not fulfilled an obligation to the employee under the employment contract, then the new employer will have a right of action as described below.

Right of Action by Transferee

Under Section 21 of the Act, the transferee (new employer) has a right of action - based on the facts involved - in any court of competent jurisdiction to recover from the transferor (original employer) such proportion of the amount awarded by the Rights Commissioners or the Employment Appeals Tribunal as the Court determines to be attributable to the failure of the original employer to provide the information or documents concerned in the first place. Certain procedures must also be followed. The transferee (new employer) must:

- serve a notice in writing on the transferor (original employer) indicating the obligations which the new employer considers are owed to the employees under their contracts of employment, and
- request the transferor (original employer) to provide within a specified period (not being less than 21 days) the information or documentation

in relation to the contracts of employment in the possession of the original employer (and which is not also in the possession of the employees) which the new employer believes will enable him/her to fulfil the obligations under the contracts of employment.

The transferor (original employer), in turn, has the right to seek more information from the transferee (new employer) as to the exact nature of the information being sought.

An action can be taken by the transferee (new employer) against the transferor (original employer) as an action founded on quasi-contract. This means that the contract of transfer need not necessarily be in writing. A quasi-contract or implied contract (i.e. non-written) has the same basis in law as a written contract. The transferee will have six years within which to bring an action against the transferor.
