

# IMPLEMENTATION OF THE REGULATIONS ON EUROPEAN WORKS COUNCILS - REGULATORY IMPACT ASSESSMENT

## SUMMARY

The extension of the Council Directive on European Work Councils to include the UK is estimated to affect up to 111 UK based undertakings, giving rise to an estimated compliance cost of **£14.5 million per year in recurring costs** with **£8.4 million in non-recurring costs**. As the compliance costs are likely to vary widely between undertakings, we have drawn a few illustrative examples, which may give a more useful picture of the expected effects of the Directive on individual undertakings. Recurring costs in the illustrative undertakings range from £46,600 to £174,950 with non-recurring costs ranging from £51,000 to £97,000. The estimate of total cost is an upper estimate which assumes that all UK managed undertakings that come under the scope of the Directive will set up an EWC; they are only obliged to do so if they receive a request to have one and in fact of the UK undertakings that are already covered by the scope of the Directive, about a third do not have an EWC agreement.

## TITLE

1. These Regulations implement Directive 97/74/EC which extends 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. The original Directive is hereafter referred to as “the Directive” or “the EWC Directive”.

## PURPOSE AND INTENDED EFFECT

### *Objective*

2. The Government wishes to promote a partnership approach between employers and employees, of which sharing information and consulting is a part. The Government stated in the *Fairness at Work* White Paper that improving information and consultation is a primary objective of collective arrangements.<sup>1</sup> This is particularly important in large multinational companies, where management decisions may be taken far away from the employees affected. Information and consultation practices have evolved nationally but will not necessarily develop naturally at the European level. The Government therefore welcomes the extension to the UK of the directive, which sets out sensible minimum standards for informing and consulting employees at the European level.

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<sup>1</sup> Fairness at Work White Paper p21

3. The purpose of the Regulations is to implement the European Works Councils (EWC) Directive in the UK. The EWC Directive sets out minimum requirements for informing and consulting employees on transnational issues at the European level in undertakings which operate in more than one member state and are above a specified size.

#### *Scope*

4. The EWC Directive currently covers all member states of the European Economic Area except the UK. It affects all undertakings and groups of undertakings which have more than 1000 employees across the countries covered and at least 150 employees in two or more of them.

5. The Directive already applies to many businesses operating in the UK because of their operations in other countries. However, before implementation in the UK, undertakings (both UK and non-UK based) were able to exclude their UK employees when calculating whether the directive applied to them, and if it did, from any subsequent EWC or article 13 agreement. They will have to include them after implementation in the UK. This means that those undertakings coming within the scope of the directive for the first time, and some of those which were already within its scope, will have to include UK employees within an existing EWC if they have not already done so on a voluntary basis, or, where no EWC exists, may have to establish one if they receive a valid request involving the UK employees.

6. The EWC can be established in one of two ways:

a) Under Article 3 of the Extension Directive, undertakings that establish voluntary agreements on transnational information and consultation prior to the implementation date of 15 December 1999 do not have to comply with the detailed provisions of the EWC Directive, provided that the agreement they reach covers the entire workforce and that it remains valid. These are known as "Article 13" agreements after the relevant Article in the original directive.

b) After 15 December 1999, the central management of undertakings which do not have an Article 13 agreement can opt to follow the Special Negotiating Body (SNB) procedure outlined in Articles 5 and 6 of the Directive with the intention of reaching an agreement on an EWC or an information and consultation procedure. Alternatively, those undertakings which receive a valid request (i.e. a written request from at least 100 employees or their representatives in at least two member states) are required to follow the SNB procedure. In this case, central management will be obliged to enter into negotiations on the establishment of an EWC or an information and consultation procedure within 6 months of receiving the request. Failure to begin negotiations within 6 months or failure to reach an agreement within 3 years of a request to negotiate will result in the imposition of a "statutory" EWC, the default model specified in the annex to the directive. If the central management does not receive a request for an SNB

procedure, and does not opt of its own accord to set one up, then it is not obliged to have an EWC.

## **OPTIONS**

7. Whatever practices are adopted will need to comply with the minimum requirements set out in the Directive. The Regulations will place the minimum burdens on business and will allow undertakings as much freedom as possible to develop systems which respond to their circumstances and the national framework in which they operate in their agreements.

## **EXPECTED BENEFITS**

8. The Government believes that informing and consultation employees is good management practice which can help to improve both business and overall economic performance. The EWC Directive sets sensible minimum standards for employee information and consultation in the particular circumstances of firms operating in more than one Member State. It allows flexibility to management and employees to determine arrangements that suit their circumstances.

*Employees:* While many UK undertakings already have effective domestic arrangements for informing and consulting employees, European Works Councils (or equivalent arrangements) may increase consultation and the flow of information about transnational issues affecting employees' interests. The inclusion of the UK under the Directive will prevent UK employees from being at a disadvantage compared with their EEA work colleagues in terms of information and consultation on matters that could affect their working lives.

*Employers:* European Works Councils (or equivalent arrangements) can help promote a better understanding among the UK workforce of an undertaking's overall situation seen in a wider European context. This in turn may prevent unnecessary conflict and foster a constructive dialogue between management and employees. This may enable organisations to introduce change and respond more flexibly to changes in economic circumstances.

*Economy:* The benefits identified above for both employees and employers depend on the effective functioning of the EWC, but to the extent they foster better employment relations they will benefit the economy as a whole. For instance if they lead to less resistance to change, that would facilitate more rapid adjustment in the economy with consequently higher output and lower unemployment. The benefits are, however, conditional on the successful working of the EWC.

### *Quantifying the Benefits*

9. The measures in the Directive may be expected to affect the quality and climate of industrial relations, prompting greater co-operation. These may improve productivity and facilitate change but the effects would be felt in

the longer term (as relationships develop) and it will not be possible to separate out and quantify the specific effects of EWC.

## ESTIMATED COMPLIANCE COSTS

### *Number of undertakings affected*

10. There is no definitive measure of the number of undertakings that will be brought under the scope of the Directive - indeed, it is a fluctuating number as firms grow, open new establishments, merge, die. In its General Council Report of 1998, the TUC included an estimate of the numbers of undertakings that have or will be affected by the EWC Directive. Table 1 summarises their estimates.

11. The implementation of the EWC Directive in the UK could potentially affect undertakings presently in four different situations in relation to the directive:-

- a) those already within the scope of the Directive (wave 1) *without an existing EWC* where the inclusion of the UK workforce leads to a valid request for an EWC. We do not believe that this group will be significant and have therefore not included them in our estimates;
- a) those already within the scope of the directive *which have an existing EWC* from which the UK workforce has been excluded (subset of wave 1, approximately 26 non-UK based undertakings<sup>2</sup>). We do not believe that this group will be significant for UK based undertakings and have therefore only estimated the cost for non-UK based undertakings;
- b) UK managed undertakings which will be brought within the scope of the directive for the first time (UK based wave 2);
- c) non-UK undertakings which will be brought within the scope of the directive for the first time (non-UK based wave 2).

12. For the purposes of compliance costs we are concerned only with the cost to British businesses. The rest of the RIA therefore concentrates on those undertakings with UK based management brought under the scope of the Directive for the first time. The costs of undertakings based outside the UK are considered under "other costs".

Table 1: Undertakings operating in the UK covered by the EWC Directive

	Wave 1	Wave 2	Total
UK based	116	111	227
Non-UK based	518	140 <sup>1</sup>	658
Total	634	251	885

Source: TUC General Council Report 1998 p94

<sup>1</sup> More recent TUC estimates given in the European Works Council Bulletin (Issue 20 March/April 99) suggest that there are now only 35 non-UK based undertakings which come under "wave 2". This could prove to be an underestimate.

<sup>2</sup> See paragraph 43.

13. The TUC estimates suggest that 111 UK based undertakings will be brought under the scope of the Directive for the first time. They face the larger compliance costs of setting up and running the EWC, which are discussed below. The estimated compliance costs have been calculated using figures based on a study carried out by ECOTEC Research and Consultancy on behalf of the DTI<sup>3</sup>.

### **Recurring Costs**

14. There are three elements to the recurring costs:

- a) the running costs of "*ordinary*" meetings (These are annual meetings which provide European employee information and consultation on general issues and matters arising);
- b) the running costs of "*extra-ordinary*" meetings (These are emergency meetings which are held to discuss a particular issue which has arisen and requires immediate consultation);
- c) the provision of a "*select committee*" (The meetings tend to consist of 3-4 employee representatives who liaise with management on agenda items for the full meetings, discuss urgent issues affecting employees in more than one Member State, and consult on the need to call extra-ordinary meetings).

#### *Running costs of meetings*

15. The ECOTEC study found a wide range of running costs per "ordinary meeting" from £15,500 to £88,900. On average, we estimate the companies they interviewed spent a total of £63,708 per "ordinary meeting". This includes both financial costs (e.g. travel, rent of venue) and opportunity costs (e.g. staff time, use of own venue). A summary of the elements of the average costs per meeting is given in the Annex.

16. Assuming that the companies interviewed by ECOTEC are representative of the undertakings that will be newly covered by the scope of the Directive, an undertaking would be expected to spend in the region of £63,700 per meeting. Most of the companies interviewed had one ordinary meeting each year. This implies that the aggregate annual running costs will be in the region of £7.1 million for UK based undertakings<sup>4</sup>.

17. However, in practice all agreements allowed for extraordinary meetings to be called, usually relating to large scale restructuring of the undertaking. The cost of such meetings was found to be in the same region as the cost of ordinary meetings. If we assume that half of the undertakings hold two extra meetings per year<sup>5</sup>, this will double the aggregate running cost

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<sup>3</sup> See the annex for details of the study which will be published by the DTI shortly.

<sup>4</sup> 111 x £63,700

<sup>5</sup> ECOTEC report that four companies held one or two such meetings and one company held 8 such meetings.

of holding meetings. The aggregate annual running costs would therefore be in the region of £14.2 million for UK based undertakings<sup>6</sup>.

### *Select Committees*

18. The ECOTEC study found that eight out of the ten companies interviewed made provisions for a “select committee” which usually consisted of 3 to 4 employee representatives who liaised with management on agenda items for the full meetings. These Committees cost between £1,500 and £2,000 per meeting and usually took place a couple of months before the full meeting. Assuming that 80% of the undertakings that will be brought into the scope of the Directive hold two select committees a year at an average cost of £1,750, this will add a total of £310,800<sup>7</sup> to UK based undertakings to the annual aggregate compliance costs. These costs may be in part offset as select committees were noted to have improved the quality of the ordinary meetings.

### *Total Recurring Costs*

19. The total recurring costs faced by undertakings that will be brought under the scope of the Directive is summarised in table 2 below. This is an upper estimate as experience to date suggests that more than a third of undertakings which are brought under the scope by the Extension of the Directive may not be required by their employees to set up an EWC.

Table 2: Total Recurring Costs

	Ordinary Meetings (£m)	Extra-ordinary meetings (£m)	Select Committees (£m)	<b>Total<sup>1</sup> (£m)</b>
UK based	7.07	7.07	0.31	<b>14.45</b>

<sup>1</sup> Rounded to nearest half million

### **Non-Recurring Costs**

20. The setting up of an EWC is a non-recurring cost, that the 111 UK based undertakings will face. This includes meetings, management time and the administration of ballots. The ECOTEC study found setting-up costs ranged from between £3,600 to £104,900, with an average setting-up cost of £75,380<sup>8</sup>.

21. Again, assuming that the companies interviewed by ECOTEC are representative of the 111 UK based undertakings, an undertaking may be expected to spend in the region of £75,500. This implies that the aggregate

<sup>6</sup> “Ordinary meetings” @ £7.1 m + “extra-ordinary meetings” @ 111/2 x 63,700 x 2 = £14.2 m

<sup>7</sup> 111 x 0.8 x £1,750 x 2

<sup>8</sup> This estimate includes the cost of ballots. A summary of the elements of the average setting-up costs is given in the annex.

non-recurring costs will be in the region of **£8.4 million** for UK based undertakings. In later years other undertakings may have to set up EWCs as they grow or expand overseas. We assume that this number will be fairly small. Again, this assumes that all of the undertakings which will come under the scope of the Directive will establish an EWC. Based on current patterns, it is unlikely that more than 75% of UK undertakings will set up an EWC, implying aggregate non-recurring costs of around £6 million.

### **Costs to the “typical” employer and illustrative examples**

22. The undertakings affected cut across the entire range of business and industrial sectors. The diversity of their activities, their differing corporate and organisational structures and the fact that a proportion of their employees are employed outside the UK, mean that it is not possible to identify a "typical" employer or identify a sector that is particularly affected.

23. For this reason and, given that the elements of both the setting-up costs and the costs of running the meetings vary widely between undertakings, it may be more useful to look at illustrative costs for four different undertakings rather than looking at the average. The ECOTEC study found that the three most significant factors in determining the cost of setting up and running EWCs were:

- a) number of employee representatives (on average 25);
- b) how many languages procedures needed translating into (on average 3);
- c) whether or not the company has its own venue available to hold meetings (four out of the ten companies had their own venue).

24. The size of the European workforce also varied greatly between the companies interviewed. However, this was not found to be a significant factor in the total costs and our estimates are therefore not based on costs per employee. Difference in costs between Article 6 and Article 13 agreements were also found not to be significant (see annex). Our illustrative undertakings therefore vary on the factors listed in paragraph 23 above. We can assume that in most cases, the largest part of the workforce of undertakings brought into scope will be in the UK (as in Undertaking C). Obvious exceptions would be where an undertaking operates only in one other country (as in Undertaking A) or where an undertaking operates in several countries but on a small scale in all except one (as in Undertaking D, see table 3 below). The annex provides a full explanation of the assumptions on costs used in this section.

#### Undertaking A

25. Undertaking A is an example of a small undertaking that will only just be brought into the scope of the Directive. It has 4,000 employees, 900 working in France, and 200 in the UK. The rest work outside the EEA. It has 15 employee representatives. Its own venue is not large enough to hold ordinary meetings, but extra-ordinary meetings could be held there.

26. Undertaking A holds, on average, 1 ordinary meeting per year, which we estimate costs around £46,600 and no extra-ordinary meetings<sup>9</sup>. It holds no select committee meetings.

27. This implies that undertaking A faces total recurring costs of **£46,600** (£11.70 per employee). We estimate that undertaking A also has non-recurring costs of **£51,000**<sup>10</sup> (£12.80 per employee).

### Undertaking B

28. Undertaking B is the same as undertaking A in all respects except that its workforce is spread over more plants so that it has 20 not 15 employee representatives. The one ordinary meeting it holds per year is estimated to cost around £58,000.

29. This implies that undertaking B has total recurring costs of **£58,000** (£14.50 per employee). We estimate that the non-recurring costs are **£56,800** (£14.20 per employee). Thus the extra 5 employee representatives cost undertaking B £11,400 per year in recurring costs and £5,800 in setting up costs.

### Undertaking C

30. Undertaking C is a fairly “typical” example of the kind of undertakings we expect will be brought under the scope of the Directive because of its UK employees. It has 20,000 employees, 19,400 of them working in the UK. The undertaking has small outlets in six other EEA countries, where it employs a total of 600 employees, 150 of which are based in the Netherlands. It has 25 employee representatives. Undertaking C does not have its own venue for meetings.

31. Undertaking C holds one ordinary meeting per year at an estimated cost of £99,700 and one extra-ordinary meeting at an estimated cost of £73,500. It has a select committee meeting before the ordinary meeting, at an estimated cost of £1,750.

32. This implies that its total recurring cost is **£174,950**<sup>11</sup> (£8.70 per employee). We further estimate that setting up costs are **£97,000** (£4.90 per employee).

### Undertaking D

33. Undertaking D is an example of a fairly large undertaking which although having a large number of employees in countries already covered

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<sup>9</sup> See the annex for full calculation.

<sup>10</sup> see the annex

<sup>11</sup> £99,700 + £73,500 + £1,750 = 174,950.

by the Directive, is not required to have an EWC when UK employees are excluded from the scope of the Directive. It has 50,000 employees, 40,000 of which are based in the UK. It has 9,900 employees in Germany and 100 in the Netherlands. It has 30 employee representatives. Undertaking D has its own venue in which it holds all meetings.

34. Undertaking D holds one ordinary meeting per year and one extra-ordinary meeting at an estimated cost of £57,500 each. It holds two select committee meetings per year at an estimated cost of £1,750 each. We estimate that it costs undertaking D £76,000 to set up the EWC.

35. This implies total recurring costs of **£118,500**<sup>12</sup> (£2.40 per employee) and non-recurring costs of **£76,000** (£1.50 per employee).

**Table 3: Summary of Illustrative Undertakings' Costs**

	Undertaking A	Undertaking B	Undertaking C	Undertaking D
<b>Recurring Costs</b>				
Ordinary Meetings	£46,600	£58,000	£99,700	£58,500
Extra-Ordinary Meetings	nil	nil	£73,500	£57,500
Select Committees	nil	nil	£1,750	£3,500
<b>Total Recurring Costs (total)</b>	<b>£46,600</b>	<b>£58,000</b>	<b>£174,950</b>	<b>£118,500</b>
<b>Total Recurring Costs (per employee)</b>	<b>£11.70</b>	<b>£14.50</b>	<b>£8.70</b>	<b>£2.40</b>
<b>Non Recurring Costs</b>				
Setting up costs (total)	£51,000	£56,800	£97,000	£76,000
Setting up costs (per employee)	£12.80	£14.20	£4.90	£1.50

### **Non-quantifiable costs**

36. The ECOTEC study identified some other costs that might arise as a result of implementing the Directive. Of these, the most significant were that the setting up of the EWC could raise the expectations of employees, particularly in terms of influencing management decisions and that there would be an increase in bureaucracy.

37. A slowing down of the decision making process may not only be a cost to business but also a cost to employees if important decisions regarding their working lives are delayed, potentially causing confusion in the interim period. While these costs might be expected to be substantial, it is not possible to estimate a figure as they will vary greatly between undertakings. In fact, only two out of the ten companies interviewed by ECOTEC felt that

<sup>12</sup> £57,500 x 2 + £1,750 x 2 = £118,500.

the EWC would lead to any delay in decision making, indicating that the aggregate cost of delays should be relatively small, and is unlikely to be felt immediately. These are not necessary costs - they depend very much on the workings of the EWC.

## **CONSULTATION WITH SMALL BUSINESS**

38. Undertakings with less than 1,000 employees will not be covered by the scope of this Directive. For this reason, consultation with small business was not needed.

## **OTHER COSTS**

### *Introducing Legislation*

39. The provisions will be implemented in the UK through secondary legislation. This implies manpower costs to the government.

40. Assuming that the Directive will take 4 government employees to implement the Directive through secondary legislation, we estimate that the cost of amending legislation is approximately **£144,000**.

### *Compliance costs to undertakings based in other EC countries*

41. Applying the same method for calculating the aggregate compliance costs to 100 non-UK undertakings in “wave 2”<sup>13</sup> as used for UK based undertakings, we estimate that aggregate recurring costs will total **£13.0 million**<sup>14</sup> per year, and non recurring costs **£7.6 million**<sup>15</sup>. This takes into account all their workforce - most of which is not in the UK.

42. A small group of non-UK undertakings which already have an EWC but have excluded their UK employees (“wave 1” undertakings), will face a small compliance cost. It is estimated that, despite the UK’s opt-out from the original Directive, the overwhelming majority of those undertakings that are already required to have an EWC already include their UK employees. A study by Paul Marginson, Mark Gilman et al found that of the 400 multinational undertakings which opted for the voluntary article 13 agreement, there are only seven cases where UK employees are not covered by such arrangements<sup>16</sup>. Applying this proportion to the 518 non-UK based undertakings that are already required to have an EWC implies that less than 2% would be likely to face any compliance costs due to this Directive. However, the study only covered undertakings with article 13 agreements,

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<sup>13</sup> We have costed 100 non-UK undertakings. The latest TUC figures (35 undertakings) are much lower than previous estimates (140) and may be an under-estimate.

<sup>14</sup> “Ordinary meeting” 100 x £63,700 + “extra-ordinary meeting” 100/2 x £63,700 x 2 + select committee meetings 100 x 0.8 x £1,750 x 2 = £13.02 million

<sup>15</sup> setting up costs = 100 x £75,500 = £7.55 million

<sup>16</sup> P. Marginson, M.Gilman, O.Jacobi and H. Krieger, “Negotiating European Works Councils: *An analysis of Agreements under Article 13*” - Warwick Business School

who may be more likely to include UK employees than undertakings with article 6 agreements.

43. It is unlikely that more than 5% exclude their UK employees in their EWCs. We have therefore included only 26 undertakings. We would expect any compliance costs associated with including UK employees arise mainly from holding a ballot. If we assume that on average, holding a ballot costs £13,650<sup>17</sup>, the aggregate compliance cost for all such undertakings will be **£354,000**<sup>18</sup>.

#### COMPARISON WITH EARLIER COSTING

44. A Compliance Cost Assessment (CCA) of extending the Directive carried out in October 1997 estimated the compliance costs for UK based undertakings to be £18 million in recurring costs and £49 million in non-recurring costs (1997 prices). The earlier costing made use of a consultation exercise, before EWCs had been established, in which companies were asked what costs might be. These estimates were speculative and actual costs, as revealed in the sample tested, have turned out to be lower than employers previously indicated. Our present estimates for UK based undertakings are based on better quality cost data which is more up-to-date and more detailed than that used in the previous CCA and can be considered more robust.

#### RESULTS OF CONSULTATIONS

45. Informal consultations have been undertaken with representatives of the main interested parties in advance of the publication of draft Regulations. A formal consultation on the draft regulations will be carried out before the implementation of the directive.

#### SUMMARY AND RECOMMENDATIONS

Table 4: Total Compliance Costs for Undertakings based in the UK

£m	
<b>Recurring Costs</b>	
Ordinary Meetings	7.1
Extra-ordinary Meetings	7.1
Select Committees	0.3
<b>Total recurring costs</b>	<b>14.5</b>
<b>Non-Recurring Costs</b>	
Setting-up Costs	8.4

All 1998 Prices.

<sup>17</sup> Based on figures given in the ECOTEC study (see table 3 of the annex).

<sup>18</sup> £13,650 x 518 x 0.05

46. There may be additional costs from possible delay to decision making, to be offset against the wider benefits to the undertaking, workers and the economy. Neither the additional costs nor the benefits can be quantified. It should also be noted that, given they are based on only a small sample of companies (and which were not operating under the UK regulations), the quantified costs will have a substantial margin of error surrounding them. Care must also be taken particularly the non-recurring costs, as they are based on companies who have set up voluntary article 13 agreements or EWCs under the laws of another member state. Costs may be different for those undertakings who set up an EWC under the UK regulations.

47. The extension of the European Works Council Directive to include the UK will affect a relatively small number of undertakings. It is estimated to cost UK based businesses a total of £14.5 million per year in recurring costs and £8.4 million in non-recurring costs. However, this cannot be viewed as the net cost to business. Businesses will benefit to the extent that EWC creates dialogue and bring about an improved culture of trust and understanding of management decisions. This will facilitate change and enable organisations to respond more flexibly to changes in economic circumstances.

#### **ENFORCEMENT**

48. The Government's intention is that sanctions should be kept to the minimum possible to ensure proper compliance with the directive. Given the relatively small number of UK undertakings affected by the directive, the Government does not believe it is necessary to create a new body specifically for enforcement purposes. Enforcement measures will be required in respect of the following broad areas:

- i. Disputes concerning matters leading up to the establishment of an EWC, which will be partly procedural in nature. These will be considered by the CAC, which would issue a declaration, where appropriate, requiring the undertaking to move to the next stage in the process of establishing the EWC, or to remedy failures in respect of matters such as the conduct of a ballot.
- ii. Disputes about the operation of an existing EWC or the non-establishment of a statutory EWC where this is required, are to be heard by the Employment Appeal Tribunal, which is well placed because of its experience of employment matters, and its relative accessibility and flexibility.
- iii. Disputes over confidentiality requirements and the withholding of information will be heard by the CAC, which already has a similar role in respect the disclosure of information pursuant to collective bargaining.

iv. Disputes concerning the statutory protection against victimisation afforded to EWC members would be handled by the employment tribunals who already enforce similar rights in other legislation.

49. Further details can be found in the Enforcement Chapter of the Consultation Document.

#### **MONITORING**

50. There will be a review of the EWC Directive undertaken by the European Commission by September 1999.

51. The DTI will monitor the take up and use of EWC - though there is no requirement to notify the government of agreements. It is expected that the EWC will contribute to improvements in industrial relations along with measures introduced in the Employment Relations Bill and these will be monitored as far as is practicable.

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