



I N F O R M A T I O N & C O N S U L T A T I O N





Agreement

between the health services management and trade unions,
working under the auspices of the Health Services National
Partnership Forum

1st September 2006



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1 Introduction: Context and Background

1.1 The EU directive 2002/14/EC of March 2002 (hereafter referred to as the EU Directive) was transposed into national Irish legislation in the "Employees (Provision of Information and consultation) Act 2006", referred to as the Act throughout this document. Together, they set out the basis and obligations for organisations to put in place procedures, processes and practices to enable effective information sharing and consultation between employers, employees and employees' representatives.

1.2 This agreement has been approved by the management and trade unions within the health services, working under the aegis of the Health Services National Partnership Forum (HSNPF), with the following context in mind:

- We operate in a highly unionised sector
- A comprehensive, structured partnership process, underwritten by a formal partnership agreement and supported through HSNPF, is in place within the Health Sector since 1999, the purpose of which is to enable a new active relationship in managing change characterised by employee participation and consultation, the development of joint objectives, co-operation and trust and the delivery of patient-focused quality health services
- Centralised, collective bargaining Industrial Relations (IR) mechanisms are used within the health sector.

1.3 Parties to this agreement

The parties to this agreement are set out in the signature block at the end of the document. Hereafter, they will be referred to collectively as 'the parties'.

1.4 The parties' interests

This agreement is intended to provide support for meeting the common interests of the parties, through the establishment of agreed Information and Consultation processes, in accordance with the Act. Those interests fall within the following four categories:

- Developing better services for patients
- Creating a better working environment
- Achieving better value for money
- Better Management/Staff/Trade Union relationships

More specific interests under each category are set out in the Health Services Partnership Agreement, May 2006.

1.5 Values underpinned in this agreement

While the Act sets out the minimum legal responsibilities and obligations of the parties, this agreement is intended to support and promote the following values (as set out in the Health Services Partnership Agreement, May 2006), through the implementation of effective Information and Consultation:

- | | |
|---|-----------------------------------|
| ■ Efficiency & Effectiveness | ■ Developing Trust |
| ■ Caring & Commitment | ■ Communication & Listening |
| ■ Striving For Excellence | ■ Leadership |
| ■ Respect & Support for each other | ■ Focusing on Interests |
| ■ Integrity & Openness | ■ Seeking Win-Win solutions |
| ■ Loyalty to Partnership Goals and Values | ■ Accountability & Responsibility |



2 Purpose of this Agreement

The purpose of this agreement is to provide an Information & Consultation framework for the health sector, within which organisations (undertakings as defined in the Act) within the health services may fulfil their obligations under the Act.





3 Status of this Agreement

This is an agreement between the named parties, giving effect to the EU Directive and the Act, to set out the ways in which information sharing and consultation will be carried out within the health services.

The agreement meets the requirements of Section 9 of the Act, in respect of pre-existing agreements, and will be used by health services organisations as the basis for meeting their obligations under the Act.



4 Scope of this Agreement

This agreement sets out approaches necessary to:

- ensure employees and their trade union representatives receive the information to which they are entitled
- provide information to enable involvement of staff and their representatives in change processes
- implement arrangements that enable information and consultation to improve decision-making and organisational performance.

The agreement:

1. Elaborates the context in which information sharing and consultation take place within the Health services.
2. Sets out procedures compliant with the Act and the EU Directive on Information and Consultation.
3. Is applicable to all employees of the Health Service to whom it relates.
4. Provides agreed processes to enable and support optimum consultation arrangements within the health services. (The detailed application of these processes may need to be tailored to the specific circumstances in each organisation within the health sector and for consultation on specific issues.)
5. Provides guidelines for information and consultation processes (Appendix 2 & Appendix 3).
6. Complements and should be read in conjunction with the following existing agreements in the Health Service:
 - Health Services Partnership Agreement of May 2006.
 - Action Plan for People Management.
 - Framework for Dispute Resolution in the Health Services.
 - The current national agreement.

5 Information Sharing versus Consultation – Key Definitions

For the purpose of clarity, the definitions of Information and Consultation from Article 2 of the Directive will be adopted for the purpose of this agreement. The relevant extract is set out in Appendix 1.

The principles of partnership, as set out in the Health Services Partnership Agreement, suggest that all information, insights and perspectives available to all parties would be made available as early as possible to best inform the consultation process.

In the context of a partnership culture, it is accepted that consultation is not an isolated incidence of exchanging views on a specific issue. The exchange of views implicit in consultation is expected to take place at all stages during the implementation of change. However, this understanding of consultation as an on-going exchange of views is not intended to delay change implementation through endless exchange of views. The Protocol on Handling Significant Change through Partnership was developed with this in mind.

6 The Context of Consultation – Effective Change Management

It is acknowledged that change should be managed in the most effective and efficient way possible to serve the best overall interests of the Health Service, their staff and their broad client base. This agreement is based on the acceptance by the parties that effective change management is founded on the need:

1. To identify the parties likely to be affected by proposed change.
2. To provide information about the proposed change to those likely to be affected.
3. To consult with the parties likely to be affected by proposed change.
4. Where appropriate, to carry out a change impact analysis, the purpose of which is to identify the effects (both positive and negative) of introducing the proposed change.
5. To take due account of the possible impact of the proposed operational and/or strategic changes on established workplace practices and terms of employment, and the (associated) need to consult with employees' representatives.
6. For the parties and/or their representatives to fully engage with the preparation for and implementation of change.
7. To provide opportunities for staff and their representatives to contribute ideas, views and solutions within the change management process, adding value, improving the quality of decision making and outcomes.

7 Management/Unions' Responsibility to Make Decisions for their Constituents

It is accepted by all the parties that both management and unions are obliged and have a responsibility to make timely and effective decisions in the best interests of their respective constituencies. It is acknowledged that information giving and consultation are processes which seek to best inform decision making by the parties and are not a substitute for the decision making authority of any of the parties with regard to their respective constituents.

8 Communication

This agreement assumes that effective communications mechanisms are in place and will continue to be maintained by the parties, to allow information sharing and consultation to take place:

- Within each of the parties' group
- Between the parties' groups

9 Time to Engage in Consultative Processes

It is acknowledged that staff representatives require sufficient time and facilities to meaningfully engage in consultation processes. It is also acknowledged that staff representatives may require special training to understand and analyse information, to engage in meaningful consultation and to communicate as they are obliged to with their members. The provision of this time and/or training should be agreed and factored into their workload in their normal employment. The time and/or training required is likely to be proportional to the level of change being contemplated.

10 Right to Disagree on Specific Issues

While consultation will be entered into with a view to reaching agreement, it is acknowledged that consultation does not assume that all parties will reach agreement on all issues being discussed. Parties may disagree on issue(s) under consultation, may record such disagreement and pursue early resolution of those disagreements through appropriate channels. Every effort will be made by all the parties to prevent disagreements or resolve any disagreements at the earliest possible opportunity and as quickly as possible, using where appropriate, the facilities available through the agreed health services partnership and industrial relations processes.

11 Avoiding Unreasonable/Unnecessary Delays

11.1 Engaging in good faith

The parties to this agreement accept that information sharing and consultation will be entered into in good faith by the representatives of all parties concerned. It is accepted that the primary purpose of agreeing a formal approach to information and the consultation processes is:

- To keep all the parties fully informed, as early as possible, about developments of mutual interest which may involve substantial change in the organisation.
- To provide the best opportunity for the reasons for such change, the nature of change being considered and the means for implementing that change, to be discussed as early as possible by the parties.
- To ensure that there are no unreasonable and/or unnecessary delays in providing information, entering consultation or implementing desired change.
- To fulfil the requirements of the Act.

11.2 Dealing with log-jams and disagreement

The parties are committed to ensuring that delays do not occur in implementing change due to any perceptions of consultation as an endless process without decisions being made and implemented. The following guidelines should be used to avoid any log-jams or disagreement:

- Set out a draft time line at the start of the consultation process, identifying key target dates for activities such as exchanging information, starting consultation, completing negotiations, making concrete decisions, starting implementation of decisions, monitoring implementation progress etc.
- Make early use of an agreed third party acting in a facilitative role to overcome log-jams, as provided for in the Health Services Partnership Agreement 2006.
- Avoid making progress in one area conditional on progress in another, unless they are explicitly linked and dependent on each other.
- Always fix a delivery date for any action point in the overall consultation process – then honour the agreed delivery dates.
- Refer an issue to the appropriate partnership forum or appropriate IR process, as set out in agreements, if unable to progress it locally.

12 Dealing with Unexpected Circumstances

It is recognised that some change and associated decisions need to be made in an expeditious and timely fashion, in order to respond effectively to unexpected circumstances and compromise may be necessary on some of the rigour envisaged in this agreement. All employees and their union representatives should be informed of such circumstances at the earliest possible opportunity.



13 Commitment to Delivery of Agreed Courses of Action

Where the parties agree on a particular course of action, through application of consultation processes set out in this agreement, all parties will commit fully to the pursuit and full implementation of any such courses of action.



14 Traditional IR Negotiation

Collective bargaining is the process by which employers and recognised trade unions seek to reach agreement through negotiation, on issues such as pay and terms and conditions of employment. While it is expected that well implemented Information and Consultation procedures should support and strengthen existing IR processes, the existing processes and structures for addressing collective bargaining issues remain unaltered by the Directive and the Act.

15 Resources

The employer will meet the cost of expenses and providing resources to meet the terms of this agreement.

16 Handling Confidential Information

Employees participating in information and consultation procedures will be bound by a duty of confidentiality. Any staff representative, employee participant or expert providing assistance is not authorised to reveal to employees or third parties, any information which, in the legitimate interest of the health services, has been expressly provided to him/ her in confidence. A person as described above may disclose information which has been expressly provided to him/ her in confidence to employees and to third parties who are also bound by an obligation of confidentiality.

17 Methods of Consultation

The parties will ensure that the timing, method and content of information and consultation:

- are appropriate to the subject under discussion
- take place at the appropriate level of management and union representation.
- are done in such a way as to enable union representatives to obtain a response and the reasons for that response, to any opinion they might formulate on the change being consulted on.

Appendix 3 provides a range of methods for carrying out consultation. Existing organisation specific processes may also be added to this list. The check list should be used as an aid to identifying the most suitable process acceptable to the parties involved and appropriate to the organisation, and the issue in question.

18 Time Line for Effective Consultation

It is recognised by all the parties that adequate time is required to allow for full information sharing and consultation, before final decisions are taken and change implementation processes commence. Every effort should be made to exchange information and enter consultation at the earliest possible opportunity.

Implementation of this agreement to honour the interests and values set out in paragraphs 1.4 and 1.5 respectively is likely to require an exchange of information and ideas earlier than might previously have occurred. This will also require a willingness to accept and engage with any new information which comes to light during the consultation process.

19 Scope of Consultation

19.1 Subject of consultation

Consultation (meaning the exchange of views and establishment of dialogue between the employees' representatives and the employer) shall take place on all decisions relating to:

- probable developments of the activities of the relevant health service organisation(s)
- probable development of employment within the health service or any measures envisaged, in particular where there is a threat to employment
- all decisions likely to lead to substantial changes in work organisation or in contractual relations. (Ref Article 4.2 of the Directive, copied at Appendix 4)

Reflective of the intent of the EU Directive (Article 4.4) and the Act, such consultation shall be with a view to reaching an agreement on such decisions.

A more comprehensive list of areas for information and consultation is set out in Appendix 5.

19.2 Basis of consultation

Consultation shall be based on information/data exchanged between the employer and the (union) employee representatives in order to enable them (all participants) to:

- acquaint themselves with the subject matter, from each others' perspectives
- to examine the details (of it) and to formulate opinions (which they are each entitled to)
- to enable (union) employee representatives to meet the employer
 - to obtain a response
 - the reasons for that response
 - and any opinions they (the employer) might formulate about the employees' views on the issues under discussion.

20 Processes to Support Information and Consultation

The parties are committed to addressing any problems which may arise during the consultation process in a constructive manner, with a view to resolving difficulties where possible. This may involve the use of problem-solving processes, examples of which are set out in Appendix 6. The documents 'Tools for Change through Partnership' and 'Diagnostic Toolkit' as published by the HSNPF also provide appropriate processes to support Information and Consultation.

21 Appropriate Structures for Consulting

Mindful of our collective understanding of consultation as 'an exchange of views', 'with a view to reaching agreement', one of the expected outcomes of having and implementing this agreement is the on-going development of a consultative partnership culture at every level within the health services. In order to support and develop this culture, there is a need to acknowledge the various places, occasions or structures in which information and consultation currently take place. In doing so, it is also acknowledged that the structures envisaged in this agreement should not be taken as either prescriptive or exclusive. Equally, any of the parties may seek to use some particular structure(s) to deal with specific issues of concern to them.

Ideally, it is envisaged that consultation will take place within the following structures

1. Any statutory body or standing committee set up for the purpose of conducting industrial relations
2. Any partnership working group or committee set up on an agreed basis between the parties, for the specific purpose of engaging in a consultation process
3. Any normal operational structures in the health service within which the parties should share information and consult with each other as a normal part of effectively carrying out their work
4. Any partnership committees/groups set up in accordance with and under the auspices of the HSNPF.

Where there is a specific requirement to formally acknowledge that consultation has taken place on any given issue(s), a structure and/or process should be specified and agreed by the parties for that particular purpose. Appendix 3 provides a range of methods for consultation, depending on the issues and context in which consultation should take place.

22 Direct Involvement

It is the parties' intention that the existing practices and procedures for information and consultation already in place through IR and Partnership mechanisms will continue to be available to management, staff and unions within the health services. As such, consultation is by indirect involvement (i.e. through union representatives nominated for that purpose). Where any individual employee wishes to exercise their right to direct information and consultation under section 11 of the Act, the provisions of this agreement will apply and any processes established under this agreement will be accessible by individuals to meet their entitlements under the Act.

23 Agreement Availability

A copy of this agreement will be made available for inspection by any employee of the health services, through the HSNPF, Area Partnership fora or local Partnership committees.

24 Agreement Review Mechanism

24.1 Duration of agreement



This agreement will operate initially for a period of two years from the date of signing this agreement, after which the agreement will be reviewed.

24.2 Review

A review of this agreement and its operation will be carried out by the parties at the end of two years, with a view to agreeing and implementing any necessary improvements, and establishing a (revised) agreement for as long as the parties agree to retain the agreement in force.

25 The Parties

The parties to this agreement are the health services management and trade unions, working under the auspices of the Health Services National Partnership Forum

Signature	Name
	Aidan Browne, Joint Chair, Health Services National Partnership Forum
	Matt Merrigan, Joint Chair, Health Services National Partnership Forum

Date: 1st September 2006

For the purpose of approving this agreement, the provisions of section 9(3)(b) of the Act will apply (i.e. "where the result of employing any other procedure agreed to by the parties for determining whether the agreement has been so approved discloses that it has been so approved"). Also see paragraph 1.2 of this agreement. Accordingly, the standard rules of Section 10 and Schedule 1 of the Act will not apply.

Appendix 1 – Definitions*

Information – “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.

Consultation – ‘consultation’ means the exchange of views and establishment of dialogue between either or both –

- (a) one or more employees
- (b) the employees’ representatives or representatives and the employer.

* Reference: Employees (Provision of Information and Consultation) Act 2006

Appendix 2 – Principles of a Good Practice Approach to Information & Consultation

- Recognise that the key to more effective informing and consulting lies not so much in the bundle of practices that are adopted as in the context, manner and spirit in which they are introduced and progressed.
- Foster a culture of information sharing, joint problem solving and consultation in the organisation. Identify ‘champions’ who will advocate this approach. Ensure that all managers in the organisation have the necessary skills to inform and consult with employees and their representatives.
- Ensure that employee representatives have the skills necessary to engage in information and consultation activities on behalf of the organisation’s staff.
- Ensure that information and consultation arrangements are built on existing practices, not in addition to them, and that the arrangements are aligned with the objectives of the organisation’s HR and industrial relations approaches.
- Align information and consultation activities with the organisation’s strategy and business plan.
- Understand that information and consultation arrangements evolve as trust grows, and allow room for experimentation and innovation.
- Adhere to the spirit of the Directive, which is to ensure employees receive the information to which they are entitled, and to implement arrangements that enable information and consultation to improve decision-making and organisational performance.
- Recognise that there is no one model of good practice and that the key is to develop and customise practical arrangements that meet the needs and culture of the organisation and its employees.
- Adopt benchmarks of good practice when developing an information and consultation strategy. This will assist the organisation to measure the impact of information & consultation on its performance and profitability.
- Approach the implementation of the Directive with a commitment to openness and transparency.
- Be mindful of the need for confidentiality in today’s competitive environment.

Extract from NCPP “EU Directive on Information & Consultation: All you need to know” 2004

Appendix 3 – Checklist for Methods of Consultation

Direct information sharing checklist

Written	Yes/No	Electronic	Yes/No	Face To Face	Yes/No
Company handbook		Email		Employee briefings – individuals	
Employee handbook		Audio-conferencing (telephone)		Team briefings – team, business unit, department	
Memos and information notices		Web-based conferencing		Large scale staff meeting – interdepartmental, organisational wide	
Employee briefings		Video conferencing		Breakfast briefings	
Bulletin boards		Intranet/Internet postings		Working lunches	
Notice boards		Databases		Management chain briefings	
Organisational newsletter		Web casts		Information cascades	
Annual Reports				Shop floor briefings	
Staff circulars					
Quarterly business updates					

Direct Consultation checklist

Individual	Yes/No	Group	Yes/No
Employee surveys/attitude surveys		Temporary Groups – time limited and issue specific i.e. project groups, task forces or focus groups	
Employee appraisal/360 degree systems		Permanent groups – e.g. Quality Circles, or others that discuss work related issues on an on-going basis	
Training & Development Reviews			
One-to-one meetings			
Performance Reviews			
Suggestion boxes			

Indirect information and Consultation methods

	Yes/No
Industrial Relations Structures and Agreements	
Partnership-style arrangements	
European Works Councils	
Occupational Health and Safety	
Collective Redundancies	
Mergers and Acquisitions	
Pension Trustees	

Extract from “EU Information & Consultation directive: All you need to know” published by NCPP 2004

Appendix 4 – Article 4 of the Directive: Practical Arrangements for Information and Consultation

1. In accordance with the principles set out in Article 1 and without prejudice to any provisions and/or practices in force more favourable to employees, the Member States shall determine the practical arrangements for exercising the right to information and consultation at the appropriate level in accordance with this Article.
2. Information and consultation shall cover:
 - (a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;
 - (b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;
 - (c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the Community provisions referred to in Article 9(1).
3. Information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation.
4. Consultation shall take place:
 - (a) while ensuring that the timing, method and content thereof are appropriate;
 - (b) at the relevant level of management and representation, depending on the subject under discussion;
 - (c) on the basis of information supplied by the employer in accordance with Article 2(f) and of the opinion which the employees' representatives are entitled to formulate;
 - (d) in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate;
 - (e) with a view to reaching an agreement on decisions within the scope of the employer's powers referred to in paragraph 2(c).

Appendix 5 – Subjects for Information and Consultation

It is not possible to define precisely what constitutes a significant issue. Nevertheless, a number of issues have been suggested by managers and trade union representatives as falling into this category and they are listed here (this is not intended to be an exhaustive list):

- Changes in work organisation and structures;
- The further development of effective human resource policies and practices in areas such as recruitment and selection, induction, training and development, anti-bullying policies, gender equality policies, family friendly working arrangements, health awareness and testing practices, performance management systems etc.;
- The Policy Framework for Public Private Partnerships (section 4.22 of Sustaining Progress) & agreements between the Social Partners;
- Improvement of employee career paths to reward employees and increase motivation;

- Improvement in the conduct of industrial relations including the operation of grievance and disciplinary procedures and negotiation arrangements, separate and joint management and trade union training, so as to reduce conflict, improve relationships and create a climate conducive to organisational change;
- Employee involvement in the development of service plans and strategies;
- Issues relating to the job security of employees;
- The introduction of new organisation structures;
- The expansion of performance management systems;
- Development of agreed ways of introducing organisational changes and addressing the skills needs of those involved in the change process;
- The expansion of value for money initiatives;
- The development and further implementation of performance indicators;
- Improvement of the physical accommodation available to staff and service users.

(Extract from 'The Health Services Partnership Agreement, May 2006)

Appendix 6 – Synopsis of the Problem Solving Techniques

Joint problem solving (JPS)

This is a structured process, the purpose of which is to develop solutions with all interested parties, based on a shared analysis of the problem, joint exploration of solution options and agreeing the best solution to implement.

JPS prerequisites:

- All parties attend voluntarily
- All available information on the problem is given to all parties
- An open and engaging mindset to using the approach by all participants
- Participants to have been schooled in use of relevant techniques
- This process may require facilitation.

JPS approach:

- Agree the nature and scope of the problem to be solved
- Solve one problem at a time
- Structured problem solving steps (1. Identify problem. 2. Gather information. 3. Generate alternative solutions. 4. Select best solution. 5. Implement solution. 6. Review outcome)
- Use agreed problem solving techniques (e.g. 'Six hats', Brain storming, Flip charting, Three stage factor analysis, multi voting etc).

Intended outcome of JPS:

- An agreed set of proposals to resolve the problem.

Interest Based Bargaining (IBB)

Interest Based Bargaining is a form of negotiation in which the parties identify each others interests (i.e. the reasons why each party require whatever they are seeking from the negotiation process) and jointly seek ways to satisfy those interests.

IBB prerequisites:

- All parties attend voluntarily
- An open and engaging mindset to using the approach by all participants
- A willingness to satisfy the others interests as much as to have own interests satisfied
- Participants to have received training in the use of relevant techniques
- Active listening, pursuing a range of solutions to satisfy interests, rather than pursuing particular preferred (personal) solutions (positions)
- This process may require facilitation.

IBB approach:

- Identify the issue(s) to be negotiated
- Each party identify and declare their underlying interests (Why they see a problem and what concerns they have that any solution(s) would need to address)
- Identify common and separate interests
- Use structured techniques (as in JPS) to develop and select options
- Use a structured IBB sequence (1. Select and focus the issue. 2. Identify interests. 3. Develop options. 4. Evaluate options. 5. Reach consensus).

IBB expected outcome:

- An agreed resolution of the issue(s), which satisfies the interests of all parties involved.