

## **Appendix 3 – Extracts from Safety Representatives and Safety Committees Regulations (as amended) and Health & Safety (Consultation with employees) Regulations 1996**

### **Regulation 3 Appointment of safety representatives**

*(1) For the purposes of section 2(4) of the 1974 Act, a recognised trade union may appoint safety representatives from amongst the employees in all cases where one or more employees are employed by an employer by whom it is recognised.*

*(2) Where the employer has been notified in writing by or on behalf of a trade union of the names of the persons appointed as safety representatives under this Regulation and the group or groups of employees they represent, each such safety representative shall have the functions set out in Regulation 4 below.*

*(3) A person shall cease to be a safety representative for the purposes of these*

*Regulations when:*

- (a) the trade union which appointed him notifies the employer in writing that his appointment has been terminated; or*
  - (b) he ceases to be employed at the workplace but if he was appointed to represent employees at more than one workplace he shall not cease by virtue of this subparagraph to be a safety representative so long as he continues to be employed at any one of them; or*
  - (c) he resigns.*
- (4) A person appointed under paragraph (1) above as a safety representative shall so far as is reasonably practicable either have been employed by his employer throughout the preceding two years or have had at least two years experience in similar employment.

19 When the Safety Representatives and Safety Committees Regulations were introduced, employees in a mine were specifically excluded from the provision of section 3(1). This was amended by regulation 13 of the Health and Safety (Consultation with Employees) Regulations 1996, so that recognised trade unions can now appoint safety representatives to represent employees working at coal mines. This change does not affect the provision in the Mines and Quarries Act 1954 for the appointment of workers' inspectors.

20 Although there is some overlap between that provision and regulation 5 of the Safety Representatives and Safety Committees Regulations 1977, the Health and Safety Executive believes that, in practice, employers and trade unions will be able to reach agreement on arrangements which will meet the requirements of both the Mines and Quarries Act 1954 and the Safety Representatives and Safety Committees Regulations 1977.

### **Who appoints health and safety representatives?**

21 The Regulations mean that recognised trade unions may appoint health and safety representatives to represent the employees. Any disputes between employers and trade unions about recognition should be dealt with through the normal employment relations machinery. Acas can offer advice and guidance relating to trade union recognition issues, and may provide conciliation where there is a dispute.

### **Deciding who to appoint as a health and safety representative**

22 The Regulations require appointed health and safety representatives to normally have either worked for their present employer throughout the preceding two years or have had at least two years' experience in similar employment. This is to ensure they have the necessary experience and knowledge of their particular type of work to enable them to make a responsible and practical contribution to health and safety in their workplace. However, circumstances may arise where it will not be reasonably practicable for the appointed health and safety representative to possess such experience (eg where the employer or workplace location is newly established, or where work is of short duration, or where there is a high labour turnover). In such cases, trade unions will appoint the most appropriate representatives, having regard to their experience and skills.

## **Who do health and safety representatives represent?**

23 Normally, recognised trade unions will appoint representatives to represent a group or groups of workers of a class for which the union has negotiating rights. However, limiting representation to a particular group or groups should not be regarded as a hindrance to the representative raising general matters affecting the health and safety of employees as a whole.

24 Equally, these general principles do not preclude the possibility of a health and safety representative representing, by mutual agreement between the appropriate unions, more than one group or groups of employees (eg in a small workplace or within the organisation of a small employer when the number of recognised trade unions is high relative to the total numbers employed).

25 Furthermore, a health and safety representative employed by the same employer can represent employees who do not work at the same site as them. There is nothing in these Regulations to preclude a health and safety representative being appointed to represent a group of employees at more than one site. Therefore, if you have a multi-site business it may be appropriate for a representative to represent a group of employees across a number of sites, provided this is practical. This is to enable the best arrangements for representation to be made, although you should discuss and agree such arrangements with the recognised trade unions.

## **How many health and safety representatives should be appointed?**

26 When trade unions are considering the numbers of health and safety representatives to be appointed in a particular case, paragraph 13 of the Code of Practice should be borne in mind so that employers and the recognised trade unions can reach the degree of agreement necessary to achieve the purpose of the Regulations. Appropriate criteria would include:

- (a) the total numbers employed;
- (b) the variety of different occupations;
- (c) the size of the workplace and the variety of workplace locations;
- (d) the operation of shift systems;
- (e) the type of work activity and the degree and character of the inherent dangers.

27 In the case of a large employer with multiple sites, the number of representatives ought to reflect the structure of the business. There should be good communication between the health and safety representatives and the management team responsible for making health and safety decisions so that issues are promptly picked up and addressed.

28 There may be a need for flexibility of approach both to the question of the group or groups of the employees the health and safety representative represents, and to the number of safety representatives that might be appropriate in particular circumstances. Examples of such circumstances might include:

- (a) workplaces with rapidly changing situations and conditions as the work develops and where there might be rapid changes in the numbers of employees, eg building and construction sites, shipbuilding and ship repairing, and docks etc;
- (b) workplaces from which the majority of employees go out to their actual place of work and subsequently report back, eg goods and freight depots, builders' yards, service depots of all kinds;
- (c) workplaces where there is a wide variety of different work activities going on within a particular location;

- (d) workplaces with a specially high process risk, eg construction sites at particular stages – demolition, excavations, steel erection etc and some chemical works and research establishments;
- (e) workplaces where the majority of employees are employed in low-risk activities, but where one or two processes or activities or items of plant have special risks connected with them;
- (f) workplaces where work activities may be spread over several different, but linked, locations.

## **Regulation 4 Functions of safety representatives**

*(1) In addition to his function under section 2(4) of the 1974 Act to represent the employees in consultations with the employer under section 2(6) of the 1974 Act (which requires every employer to consult safety representatives with a view to the making and maintenance of arrangements which will enable him and his employees to cooperate effectively in promoting and developing measures to ensure the health and safety at work of the employees and in checking the effectiveness of such measures), each safety representative shall have the following functions –*

- (a) to investigate potential hazards and dangerous occurrences at the workplace (whether or not they are drawn to his attention by the employees he represents) and to examine the causes of accidents at the workplace;*
- (b) to investigate complaints by any employee he represents relating to that employee's health, safety or welfare at work;*
- (c) to make representations to the employer on matters arising out of sub-paragraphs (a) and (b) above;*
- (d) to make representations to the employer on general matters affecting the health, safety or welfare at work of the employees at the workplace;*
- (e) to carry out inspections in accordance with Regulations 5, 6 and 7 below;*
- (f) to represent the employees he was appointed to represent in consultations at the workplace with inspectors of the Health and Safety Executive and of any other enforcing authority;*
- (g) to receive information from inspectors in accordance with section 28(8) of the 1974 Act; and*
- (h) to attend meetings of safety committees where he attends in his capacity as a safety representative in connection with any of the above functions; but, without prejudice to sections 7 and 8 of the 1974 Act, no function given to a safety representative by this paragraph shall be construed as imposing any duty on him.*

*(2) An employer shall permit a safety representative to take such time off with pay during the employee's working hours as shall be necessary for the purposes of –*

- (a) performing his functions under section 2(4) of the 1974 Act and paragraph (1) (a) to (h) above;*
- (b) undergoing such training in aspects of those functions as may be reasonable in all the circumstances having regard to any relevant provisions of a code of practice relating to time off for training approved for the time being by the Health and Safety Commission under section 16 of the 1974 Act.*

## **Regulation 4A Employer's duty to consult and provide facilities and assistance<sup>(a)</sup>**

*(1) Without prejudice to the generality of section 2(6) of the Health and Safety at Work etc Act 1974, every employer shall consult safety representatives in good time with regard to –*

- (a) the introduction of any measure at the workplace which may substantially affect the health and safety of the employees the safety representatives concerned represent;*
- (b) his arrangements for appointing or, as the case may be, nominating persons in accordance with regulations 6(1) and 7(1)(b) of the Management of Health and Safety at Work Regulations 1992;<sup>(b)</sup>*

*(c) any health and safety information he is required to provide to the employees the safety representatives concerned represent by or under the relevant statutory provisions;*

*(d) the planning and organisation of any health and safety training he is required to provide to the employees the safety representatives concerned represent by or under the relevant statutory provisions; and*

*(e) the health and safety consequences for the employees the safety representatives concerned represent of the introduction (including the planning thereof) of new technologies into the workplace.*

*(2) Without prejudice to regulations 5 and 6 of these Regulations, every employer shall provide such facilities and assistance as safety representatives may reasonably require for the purpose of carrying out their functions under section 2(4) of the 1974 Act and under these Regulations.*

## **Schedule 2 Pay for time off allowed to safety representatives**

### **Regulation 4(2)**

*(1) Subject to paragraph 3 below, where a safety representative is permitted to take time off in accordance with Regulation 4(2) of these Regulations, his employer shall pay him –*

*(a) where the safety representative's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, as if he had worked at that work for the whole of that time;*

*(b) where the safety representative's remuneration for that work varies with the amount of work done, an amount calculated by reference to the average hourly earnings for that work (ascertained in accordance with paragraph 2 below).*

*(2) The average hourly earnings referred to in paragraph 1(b) above are the average hourly earnings of the safety representative concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.*

*(3) Any payment to a safety representative by an employer in respect of a period of time off –*  
*(a) if it is a payment which discharges any liability which the employer may have under section 57 of the Employment Protection Act 1975<sup>(a)</sup> in respect of that period, shall also discharge his liability in respect of the same period under Regulation 4(2) of these Regulations;*

*(b) if it is a payment under any contractual obligation, shall go towards discharging the employer's liability in respect of the same period under Regulation 4(2) of these Regulations;*

*(c) if it is a payment under Regulation 4(2) of these Regulations shall go towards discharging any liability of the employer to pay contractual remuneration in respect of the same period.*

29 In order to fulfil their functions under section 2(4) of the Act safety representatives should:

(a) take all reasonably practicable steps to keep themselves informed of:

(i) the legal requirements relating to the health and safety of persons at work, particularly the group or groups of persons they directly represent;

(ii) the particular hazards of the workplace and the measures deemed necessary to eliminate or minimise the risk deriving from these hazards; and

(iii) the health and safety policy of their employer and the organisation and arrangements for fulfilling that policy;

(b) encourage co-operation between their employer and his employees in promoting and developing essential measures to ensure the health and safety of employees and in checking the effectiveness of these measures;

(c) bring to the employer's notice normally in writing any unsafe or unhealthy conditions or working practices or unsatisfactory arrangements for welfare at work which come to their attention whether on an inspection or day to day observation. The report does not imply that all other conditions and working practices are safe and healthy or

that the welfare arrangements are satisfactory in all other respects.





30 Making a written report does not preclude the bringing of such matters to the attention of the employer or his representative by a direct oral approach in the first instance, particularly in situations where speedy remedial action is necessary. It will also be appropriate for minor matters to be the subject of direct oral discussion without the need for a formal written approach.

### **Code of Practice approved under regulation 4(2)(b) of the Regulations on Safety Representatives and Safety Committees (SI 1977/500)**

31 The function of safety representatives appointed by recognised trade unions as set out in section 2(4) of the Health and Safety at Work etc Act 1974, is to represent employees in consultations with employers about health and safety matters. Regulation 4(1) of the Safety Representatives and Safety Committees Regulations (SI 1977 No 500)\* prescribes other functions of safety representatives appointed under those Regulations.

32 Under regulation 4(2)(b) of those Regulations the employer has a duty to permit those safety representatives such time off with pay during the employee's working hours as shall be necessary for the purpose of 'undergoing such training aspects of those functions as may be reasonable in all the circumstances'.

33 As soon as possible after their appointment safety representatives should be permitted time off with pay to attend basic training facilities approved by the TUC or by the independent union or unions which appointed the safety representatives. Further training, similarly approved, should be undertaken where the safety representative has special responsibilities or where such training is necessary to meet changes in circumstances or relevant legislation.

34 With regard to the length of training required, this cannot be rigidly prescribed, but basic training should take into account the functions of safety representatives placed on them by the Regulations. In particular, basic training should provide an understanding of the role of safety representatives, of safety committees, and of trade unions' policies and practices in relation to:

- (a) the legal requirements relating to the health and safety of persons at work, particularly the group or class of persons they directly represent;
- (b) the nature and extent of workplace hazards, and the measures necessary to eliminate or minimise them;
- (c) the health and safety policy of employers, and the organisation and arrangements for fulfilling those policies.

35 Additionally, safety representatives will need to acquire new skills in order to carry out their functions, including safety inspections, and in using basic sources of legal and official information and information provided by or through the employer on health and safety matters.



36 Trade unions are responsible for appointing safety representatives and when the trade union wishes a safety representative to receive training relevant to his function it should inform management of the course it has approved and supply a copy of the syllabus, indicating its contents, if the employer asks for it. It should normally give at least a few weeks' notice of the safety representatives it has nominated for attendance. The number of safety representatives attending training courses at any one time should be that which is reasonable in the circumstances, bearing in mind such factors as the availability of relevant courses and the operational requirements of the employer. Unions and management should endeavour to reach agreement on the appropriate numbers and arrangements and refer any problems which may arise to the relevant agreed procedures.

### **What must you consult health and safety representatives about?**

37 Regulation 4A specifically requires employers to consult health and safety representatives on:

- (a) the introduction of any measure at the workplace which may substantially affect the health and safety of the employees the health and safety representatives concerned represent;
- (b) arrangements for getting a competent person or persons to help them comply with health and safety requirements. The Management of Health and Safety at Work Regulations 1999 ('the Management Regulations')<sup>8</sup> require employers to make such an appointment unless they are self-employed and not in partnership with any other person, and have sufficient training experience, knowledge or other qualities to deal with these matters themselves. The Management Regulations also require the nomination of competent people to implement procedures for dealing with serious and imminent danger, namely the evacuation from premises of persons at work. There are also provisions in the Regulatory Reform (Fire Safety) Order 2005<sup>9</sup> which require employers to take measures regarding fire fighting and nominating employees to implement those measures; regulation 4A requires employers to consult health and safety representatives on how they plan to go about this;
- (c) the information they must give their employees on risks to health and safety, and preventive measures. This will include the information they are already required by other regulations to give their employees. Appendix 1 sets out some of the relevant details for illustrative purposes only and is not intended to be exhaustive. For example, under the Management Regulations, one of the things employers have to tell their employees about is the risks identified by the risk assessment they must carry out, and their preventive and protective measures. Employers must also tell their employees about the emergency procedures, and who will carry out procedures for evacuation. Regulation 4A requires employers to consult health and safety representatives about these matters before telling them what has been decided and before they make changes;
- (d) the planning and organising of any health and safety training they must provide to employees under health and safety law. For example, the Management Regulations have a requirement to instruct and train employees when they are first recruited, and when they are to be exposed to new or increased risks. Appendix 2 sets out some of the other relevant regulations that apply for illustrative purposes only and it is not intended to be exhaustive;
- (e) the health and safety consequences for employees of new technology that they plan to bring into the workplace. This will cover the introduction of any new technology if there could be implications for employees' health and safety, and for the risks and hazards to which they are exposed (eg moving from paper-based systems to new display screen equipment, or introducing new lifting aids instead of manually lifting parts).

## **Requirements to consult health and safety representatives on risk assessments**

38 Under the Management Regulations you have a duty to assess the risks to the health and safety of your employees which they are exposed to while they are at work. In carrying out a risk assessment, the Approved Code of Practice for the Management of Health and Safety at Work Regulations 1999<sup>8</sup> makes clear that the risk assessment process needs to be practical and take account of the views of employees and their health and safety representatives who will have practical knowledge to contribute. Appendix 3 provides further information on requirements for employers to consult health and safety representatives and/or employees for illustrative purposes only and is not intended to be exhaustive.

## **Guidance from L21<sup>8</sup> Management of Health and Safety at Work Regulations 1999**

39 'Consulting employees or their representatives about matters to do with their health and safety is good management practice, as well as being a requirement under health and safety law. Employees are a valuable source of information and can provide feedback about the effectiveness of health and safety management arrangements and control measures. Where safety representatives exist, they can act as an effective channel for employees' views.

40 Safety representatives' experience of workplace conditions and their commitment to health and safety means they often identify potential problems, allowing the employer to take prompt action. They can also have an important part to play in explaining safety measures to the workforce and gaining commitment.'

## **When must you consult health and safety representatives?**

41 Regulation 4A requires that employers consult health and safety representatives 'in good time'. Good time is not defined. However, it means that before making decisions involving work equipment, processes or organisation which could have health and safety consequences for employees, you should allow time:

- (a) to provide health and safety representatives with information about what you propose to do;
- (b) to give the health and safety representatives an opportunity to express their views about the matter in the light of that information; and then
- (c) to take account of any response.

## **Your duty to permit paid time for health and safety representatives' training**

42 Regulation 4(2) requires that employers allow health and safety representatives paid time as is necessary, during working hours, to perform their functions. In practice, this means they should carry out their functions such as workplace inspections or attending health and safety committee meetings as part of their normal job, and employers will need to take account of this in their workload.

43 Regulation 4(2) also requires that employers allow health and safety representatives paid time as is necessary to undergo training in aspects of their functions that is 'reasonable in all the circumstances'. The important point is that what is reasonable in all the circumstances is not always just what is necessary. Training does not have to be the necessary bare minimum to fulfil the safety representatives' functions but it does have to be reasonable in all the circumstances (what must be necessary is time off with pay). When considering what is reasonable in the circumstances, the guidance given by the Commission in the Code of Practice approved under regulation 4(2)(b) should be borne in mind (see paragraphs 31-36). You may also wish to refer to general principles of case law in this area. Case law is fact-specific and subject to change so you must satisfy yourself of the current position and ensure your arrangements satisfy the law.

## **Functions of health and safety representatives**

44 The Regulations state that no function given to a health and safety representative shall be construed as imposing any duty on them other than duties they may have as an employee under sections 7 and 8 of the HSW Act. For example, a health and safety representative, by accepting, agreeing with or not objecting to a course of action taken by the employer to deal with a health or safety hazard, does not take upon themselves any legal responsibility for that course of action. The Health and Safety Executive shall not institute criminal proceedings against any health and safety representative for any act or omission by them in respect of the performance of functions assigned to them by the Regulations or indicated by the Code of Practice. Similar arrangements have been made with the other enforcing authorities.

### ***Representing***

45 Recognised trade unions will have well-established methods of communication within a workplace, or within a particular employer's undertaking. These will be the appropriate channels by which the appointed health and safety representatives can keep the members of the group or groups which they represent informed on all matters of consequence affecting their health, safety and welfare at work. Appointed health and safety representatives will also need to establish close relationships with other appointed health and safety representatives, including those appointed by trade unions other than their own. For example, they could look at hazardous situations, and develop a common approach to carrying out their responsibilities.

46 It is important that health and safety representatives can take matters up with management without delay if they need to. Therefore, they should have ready access to the employer or their representatives; who those should be will be determined in the light of local circumstances. It may not be desirable to specify one individual for all contacts, bearing in mind that hazards could involve differing degrees of urgency and importance.

47 Furthermore, large multi-site businesses will need to have arrangements for communicating messages appropriately between health and safety representatives on sites and management centrally. The need is to ensure that health and safety representatives have a clear idea as to who is authorised to act as the employer's representative for the purpose of these Regulations.

48 Section 28(8) of the HSW Act requires inspectors to give certain types of information to employees and employers. Where health and safety representatives have been appointed under the Regulations, they are the appropriate people to receive this information on behalf of the employees.

### ***Inspections***

49 Health and safety representatives should record when they have made an inspection. Examples of the kinds of forms which might be adopted by health and safety representatives, both to record that an inspection has been made (F2534) and to draw the employer's attention to an unsafe or unhealthy condition (F2533), are available on pages 22 and 23, and on the HSE website at [www.hse.gov.uk/forms/incident/f2534.pdf](http://www.hse.gov.uk/forms/incident/f2534.pdf) and [www.hse.gov.uk/forms/incident/f2533.pdf](http://www.hse.gov.uk/forms/incident/f2533.pdf). A copy of each completed form should be given to the employer.

## Regulation 5 Inspections of the workplace

*(1) Safety representatives shall be entitled to inspect the workplace or a part of it if they have given the employer or his representative reasonable notice in writing of their intention to do so and have not inspected it, or that part of it, as the case may be, in the previous three months; and may carry out more frequent inspections by agreement with the employer.*

*(2) Where there has been a substantial change in the conditions of work (whether because of the introduction of new machinery or otherwise) or new information has been published by the Health and Safety Commission or the Health and Safety Executive relevant to the hazards of the workplace since the last inspection under this Regulation, the safety representatives after consultation with the employer shall be entitled to carry out a further inspection of the part of the workplace concerned notwithstanding that three months have not elapsed since the last inspection.*

*(3) The employer shall provide such facilities and assistance as the safety representatives may reasonably require (including facilities for independent investigation by them and private discussion with the employees) for the purpose of carrying out an inspection under this Regulation, but nothing in this paragraph shall preclude the employer or his representative from being present in the workplace during the inspection.*

*(4) An inspection carried out under section 123 of the Mines and Quarries Act 1954<sup>(a)</sup> [or regulation 40 of the Quarries Regulations 1999]<sup>(b)</sup> shall count as an inspection under this Regulation.*

### Frequency and organisation of inspections

50 The Regulations deal with the frequency of formal inspection by the appointed health and safety representatives. In some circumstances where a high-risk activity or rapidly changing circumstances are confined to a particular area of a workplace or sector of an employee's activities it may be appropriate for more frequent inspections of that area or sector to be agreed.

51 The Regulations require that appointed health and safety representatives give reasonable written notice to the employer of their intention to conduct a formal inspection of the workplace. Where possible, the employer and the health and safety representatives should plan a programme of formal inspections in advance, which will itself fulfil the conditions as to notice. Variations in this planned programme should be subject to agreement.

52 HSE sees advantages in formal inspections being jointly carried out by the employer representatives and health and safety representatives, but this should not prevent health and safety representatives from carrying out independent investigations or private discussion with employees. The health and safety representatives ought to co-ordinate their work to avoid unnecessary duplication. There should also be co-ordination of inspections for large businesses responsible for managing multiple sites.



53 There are various forms which the formal inspection may take and it will be for the appointed health and safety representatives to agree with their employer about this. The following types of inspection, or a combination of any or all of them over a period of time, may be appropriate in the fulfilment of this function:

- (a) safety tours – general inspections of the workplace;
- (b) safety sampling – systematic sampling of particular dangerous activities, processes or areas;
- (c) safety surveys – general inspections of the particular dangerous activities, processes or areas.

54 The numbers of health and safety representatives taking part in any one formal inspection should be a matter for agreement between the appointed health and safety representatives and their employer in the light of their own particular circumstances and the nature of the inspection. It will often be appropriate for the safety officer or specialist advisers to be available to give technical advice on health and safety matters which may arise during the course of the inspection.

55 At large workplaces it may be not be practical to conduct a formal inspection of the entire workplace at a single session, or for the complete inspection to be carried out by the same group of health and safety representatives. In these circumstances, arrangements may be agreed between the employer (or their representative) and the appointed health and safety representatives for the inspection to be carried out by breaking it up into manageable units (eg on a departmental basis). It may also be appropriate, as part of the planned programme, for different groups of health and safety representatives to carry out inspections in different parts of the workplace either simultaneously or at different times but in such a manner as to ensure complete coverage before the next round of formal inspections is due.

56 There may be special circumstances in which appointed health and safety representatives and their employer will wish to agree a different frequency of inspections for different parts of the same workplace (eg where there are areas or activities of especially high risk).

### **Following an inspection**

57 Where health and safety representatives have made a written report to the employer in accordance with paragraph 29(c) of the Code of Practice, appropriate remedial action will normally be taken by the employer. Where remedial action:

- (a) is not considered appropriate;
  - (b) cannot be taken within a reasonable period of time; or
  - (c) the form of remedial action is not acceptable to the health and safety representatives,
- the employer or their representative should explain the reasons and give them in writing to the health and safety representatives. A suggested method for this is to record it in the Form F2533 available on page 23 and on the HSE website at [www.hse.gov.uk/forms/incident/f2533.pdf](http://www.hse.gov.uk/forms/incident/f2533.pdf).





58 Where remedial action has been taken:

- (a) the health and safety representatives who notified the matter(s) ought to be given the opportunity to make any necessary re-inspection to satisfy themselves that the matter(s) have received appropriate attention. They should also be given the opportunity to record their views on this;
- (b) it should be publicised throughout the workplace and to other appropriate parts of the business, if necessary the whole organisation, by the normal channels of communication;
- (c) it may be appropriate to bring it to the specific attention of the health and safety committee, if one exists.