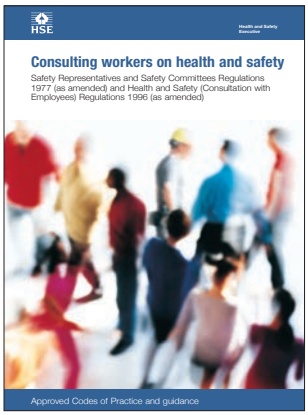
HSE
Health and Safety Executive

Consulting workers on health and safety

Safety Representatives and Safety Committees Regulations 1977 (as amended) and Health and Safety (Consultation with Employees) Regulations 1996 (as amended)

Approved Codes of Practice and guidance



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This book gives you the law and guidance on how to consult and involve your employees and their representatives on health and safety matters at work under the Safety Representatives and Safety Committees Regulations 1977 (as amended) and the Health and Safety (Consultation with Employees) Regulations 1996 (as amended). It explains the relationship between the two sets of regulations and how they affect you and your workforce; in some workplaces you may have to consult under both sets of regulations.

It should apply to the majority of workplaces. However, the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 apply to offshore workplaces. There are also specific requirements to consult your employees or their health and safety representatives in other health and safety legislation which applies to specific industries. Extensive details of further sources of information and industry-specific advice are provided.

It will be of help to employers, trade unions, appointed health and safety representatives, representatives of employee safety, and members of health and safety committees. This second edition, originally published in 2012, has been subject to some minor amendments and corrections to reflect changes to linked HSE guidance and revisions/revocations to other, related pieces of legislation. The guidance remains substantially the same.

The book complements *Involving your workforce in health and safety* (HSG263). There is also a free leaflet, *Consulting employees on health and safety: A brief guide to the law* (INDG232(rev1)), and advice on HSE's website at: www.hse.gov.uk/involvement.

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In this second edition with amendments, references to the Health and Safety Commission have been amended to the Health and Safety Executive, as per the Legislative Reform (Health and Safety) Order 2008.

Approved Code of Practice

This Code has been approved by the Health and Safety Executive, with the consent of the Secretary of State. It gives practical advice on how to comply with the law. If you follow the advice you will be doing enough to comply with the law in respect of those specific matters on which the Code gives advice. You may use alternative methods to those set out in the Code in order to comply with the law.

However, the Code has a special legal status. If you are prosecuted for breach of health and safety law, and it is proved that you did not follow the relevant provisions of the Code, you will need to show that you have complied with the law in some other way or a Court will find you at fault.

Guidance

This guidance is issued by the Health and Safety Executive. Following the guidance is not compulsory, unless specifically stated, and you are free to take other action. But if you do follow the guidance you will normally be doing enough to comply with the law. Health and safety inspectors seek to secure compliance with the law and may refer to this guidance.

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Preface

The law requires you to consult your employees on matters that affect their heath and safety. There are two sets of regulations that deal with this subject according to the circumstances in your workplace, so this book is split into two parts. Part 1 contains:

(a) the Safety Representatives and Safety Committees Regulations 1977 (SI 1977/500), as amended by the Employment Rights (Dispute Resolution) Act 1998 Chapter 8, the Management of Health and Safety at Work Regulations 1992 (SI 1992/2051), the Health and Safety (Consultation with Employees) Regulations 1996 (SI 1996/1513), the Fire Precautions (Workplace) Regulations 1997 (SI 1997/1840), the Police (Health and Safety) Regulations 1999 (SI 1999/860), the Quarries Regulations 1999 (SI 1999/2024), the Management of Health and Safety at Work Regulations 1999 (SI 1999/3242), the Serious Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2006 (SI 2006/594) and the Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541), the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (SI 2013/1471) and the Energy Act 2013 (Office for Nuclear Regulation) (Consequential Amendments, Transitional Provisions and Savings) Order (2014/469);
(b) the Code of Practice on safety representatives;
(c) the Code of Practice on time off for the training of safety representatives;
(d) guidance on the Regulations.

Part 2 contains:

(a) the Health and Safety (Consultation with Employees) Regulations 1996 (SI 1996/1513), as amended by the Employment Rights (Dispute Resolution) Act 1998 Chapter 8, the Fire Precautions (Workplace) Regulations 1997 (SI 1997/1840), the Management of Health and Safety at Work Regulations 1999 (SI 1999/3242), and the Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541);
(b) guidance on the Regulations.

The regulations are shown in *italics*, the Codes of Practice on the Safety Representatives and Safety Committees Regulations 1977 are shown in **bold**, and the guidance on regulations is in plain text. The relevant Code and guidance appear alongside each regulation.

The legal status of Approved Code of Practice and guidance text is given on page 2.

The Safety Representatives and Safety Committees Regulations were made under sections 2(4), 2(7), 15(1), 15(3)(b), 15(5)(b), 80(1) and 80(4) of the Health and Safety at Work etc Act 1974 (1974 Act), as amended by paragraphs 2, 6 and 19 of Schedule 15 to the Employment Protection Act 1975.

The Health and Safety (Consultation with Employees) Regulations were made under powers in section 2 of the European Communities Act 1972.

The Approved Codes of Practice were made under section 16 of the 1974 Act and under the Safety Representatives and Safety Committees Regulations 1977 by the then Health and Safety Commission to give some practical guidelines on those Regulations.

Background

The former Health and Safety Commission decided that it would be wrong to try and make regulations which cater in detail for the wide variety of circumstances in which they will have to be applied. Accordingly, the purpose of the Safety Representatives and Safety Committees Regulations and Codes of Practice is to provide a legal framework for employers and trade unions to reach agreement on arrangements for health and safety representatives and health and safety committees to operate in their workplace.

The Health and Safety (Consultation with Employees) Regulations set out the legal framework which will apply if employers have employees who are not covered by representatives appointed by recognised trade unions. It is possible therefore that in some workplaces employers may have to consult under both sets of regulations. The purpose of both sets of regulations is to provide a framework within which employers can develop effective working arrangements to suit their business.

To supplement the statutory framework, the revised guidance helps to clarify what the law means. The Health and Safety Executive (HSE) hope it will be of help to employers, trade unions, appointed and elected health and safety representatives, representatives of employee safety, and members of health and safety committees. This second edition, originally published in 2012, has been subject to some minor amendments and corrections to reflect changes to linked HSE guidance and revisions/revocations to other, related pieces of legislation. The guidance remains substantially the same.

Further good practice guidance for employers is available in *Involving your workforce in health and safety* (HSG263).[1]

Employers and employees can agree to alternative arrangements for joint consultation on health and safety at work as long as such arrangements do not detract from the rights and obligations created by the above regulations. Recognised trade unions can at any time invoke the rights given by the Safety Representatives and Safety Committees Regulations and the obligations on the employer would then apply.

Introduction

1 This book gives you advice on how to consult and involve your employees and their representatives on health and safety matters at work under the Safety Representatives and Safety Committees Regulations 1977 (as amended) and the Health and Safety (Consultation with Employees) Regulations 1996 (as amended).

2 It complements the guide *Involving your workforce in health and safety* (HSG263).[1] There is also a free leaflet, *Consulting employees on health and safety: A brief guide to the law* (INDG232(rev1)),[2] as well as advice on HSE's website at www.hse.gov.uk/involvement.

3 This book should apply to the majority of workplaces. However, the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989[3] apply to offshore workplaces. There are also specific requirements to consult your employees or their health and safety representatives in other health and safety legislation which applies to specific industries. Where it is more appropriate and relevant, you should refer to industry-specific guidance for your workplace.

4 The law sets out how you must consult your employees in different situations and the different choices you have to make. In some workplaces you may have to consult under both sets of regulations. There is more advice on the relationship between the two sets of regulations and how they affect you and your workforce in *Involving your workforce in health and safety* (HSG263).[1]

Consulting where both sets of regulations apply

5 A range of workforce structures and arrangements exist in workplaces so it is not unusual to have some parts of a business where employees are members of recognised trade unions and others where they are not. In this case, you may have to consult both:

(a) health and safety representatives (called 'safety representatives' in the Regulations) appointed by recognised trade unions under the Safety Representatives and Safety Committees Regulations 1977;
(b) the remainder of your workforce, either directly where practical, or through elected health and safety representatives (called 'representatives of employee safety' in the Regulations) under the Health and Safety (Consultation with Employees) Regulations 1996.

6 Where you already have existing consultation arrangements that satisfy health and safety law, there is no requirement to change them. However, you may want to review your arrangements to make sure that they are the right ones for your organisation now.

Resolving disputes

7 Disagreements that may arise between employers and trade unions or employees on the interpretation of these regulations should be settled through the normal machinery for resolving employment relations problems. The exceptions to this are matters covered by regulation 11 in the Safety Representatives and Safety Committees Regulations and regulation 7(3) Schedule 2 of the Health and Safety (Consultation with Employees) Regulations.

8 In certain circumstances, it may be helpful to involve the Advisory, Conciliation and Arbitration Service (Acas). Health and safety inspectors (from HSE and local authorities) can enforce for failure to comply with legal duties on procedural matters (eg failure to set up a health and safety committee where there is evidence that a request has been made in the correct fashion). They will apply HSE's *Enforcement policy statement*[4] in deciding what action to take (see www.hse.gov.uk/enforce).

9 There are two circumstances in which representatives may present a complaint to an employment tribunal – if employers have failed to allow time off, or if they have failed to pay health and safety representatives while carrying out their functions, or undergoing training. The time off with pay must be necessary and the training must be reasonable in all the circumstances (see paragraphs 42 and 43). Health and safety representatives are also protected against victimisation and dismissal by rights conferred under other employment legislation (for example part of the Employment Rights Act 1996).[5]

PART 1 Safety Representatives and Safety Committees Regulations 1977 (as amended)[a]

Regulation 1 Citation and commencement

Regulation 1

These Regulations may be cited as the Safety Representatives and Safety Committees Regulations 1977 and shall come into operation on 1 October 1978.

Code of Practice

10 The Safety Representatives and Safety Committees Regulations 1977 concern safety representatives appointed in accordance with section 2(4) of the Health and Safety at Work etc Act 1974 (the 1974 Act)[6] and cover:

(a) prescribed cases in which recognised trade unions may appoint safety representatives from among the employees;
(b) prescribed functions of safety representatives.

11 Section 2(6) of the Act requires employers to consult with safety representatives with a view to the making and maintenance of arrangements which will enable them and their employees to co-operate 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. Under section 2(4) safety representatives are required to represent the employees in those consultations.

12 This Code of Practice was approved by the Health and Safety Commission (now the Health and Safety Executive) with the consent of the Secretary of State for Employment. It relates to the requirements placed on safety representatives by section 2(4) of the Act and on employers by the Regulations and takes effect on the date the Regulations come into operation.

13 The employer, the recognised trade unions concerned and safety representatives should make full and proper use of the existing agreed industrial relations machinery to reach the degree of agreement necessary to achieve the purpose of the Regulations and in order to resolve any differences.

Guidance 1

Consulting employees if you recognise a trade union

14 The Safety Representatives and Safety Committees Regulations 1977 (as amended) prescribe the cases in which recognised trade unions may:

(a) appoint health and safety representatives;
(b) specify the functions of such health and safety representatives;
(c) set out the obligations of employers towards them.

(a) Safety Representatives and Safety Committees Regulations 1977 (SI 1977/500) as amended by 1998 c.8, SI 1992/2051, 1996/1513, 1997/1840, 1999/860, 1999/2024, 1999/3242, 2006/594, 2005/1541, 2013/1471 and 2014/469.

Guidance 1

15 When appointing health and safety representatives, the trade union should inform the employer of the group or groups of employees represented. For example, they may say a health and safety representative will represent:

(a) only their own members;
(b) all the employees in a particular category; or
(c) employees who are not members of a trade union recognised by the employer, but are part of a group of employees for which a union is recognised.

16 If union health and safety representatives cover only their own members, or employees are not members of a group that unions have agreed to cover, then the employer needs to make arrangements to consult these employees either directly or through representatives elected by them for this purpose under the Health and Safety (Consultation with Employees) Regulations 1996. For more information see Part 2 of this publication.

17 Disagreements between employers and employees about the interpretation of these Regulations – with the exception of matters covered by regulation 11 – should be addressed through the normal machinery for resolving employment relations disputes. In certain circumstances, it may be helpful to involve Acas.

Regulation 2 Interpretation

Regulation 2

(1) In these Regulations, unless the context otherwise requires –

"the 1974 Act" means the Health and Safety at Work etc Act 1974;

"the 1975 Act" means the Employment Protection Act 1975;

"employee" has the meaning assigned by section 53(1) of the 1974 Act and "employer" shall be construed accordingly;

"recognised trade union" [..][(a)] means an independent trade union as defined in section 30(1) of the Trade Union and Labour Relations Act 1974[(b)] which the employer concerned recognises for the purpose of negotiations relating to or connected with one or more of the matters specified in section 29(1) of that Act in relation to persons employed by him or as to which the Advisory, Conciliation and Arbitration Service has made a recommendation for recognition under the Employment Protection Act[(c)] which is operative within the meaning of section 15 of that Act;

(a) Inserted by the Police (Health and Safety) Regulations 1999 and revoked by the Serious Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2006.

(b) 1974 c.52. The relevant law is now found in the Trade Union and Labour Relations (Consolidation) Act 1992. Section 178(3) defines recognition as 'recognition of the union by an employer, or two or more associated employers, to any extent, for the purpose of collective bargaining'. Collective bargaining is defined by reference to the matters listed in section 178(1). These include, for example, negotiations on terms and conditions of employment, allocation of work and duties of employment between workers or groups of workers, and disciplinary matters.

(c) This refers to former procedure and is now irrelevant. See section 70A and Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992.

Regulation 2

"safety representative" means a person appointed under Regulation 3(1) of these Regulations to be a safety representative;

"welfare at work" means those aspects of welfare at work which are the subject of health and safety regulations or of any of the existing statutory provisions within the meaning of section 53(1) of the 1974 Act;

"workplace" in relation to a safety representative means any place or places where the group or groups of employees he is appointed to represent are likely to work or which they are likely to frequent in the course of their employment or incidentally to it.

(2) The Interpretation Act 1889[a] shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(3) These Regulations shall not be construed as giving any person a right to inspect any place, article, substance or document which is the subject of restrictions on the grounds of national security unless he satisfies any test or requirement imposed on those grounds by or on behalf of the Crown.

[Regulation 2A Bodies to be treated as recognised trade unions][b]

(a) 1889 c.63. The Interpretation Act 1978 (1978 c.30) is now in force.

(b) Regulation 2A inserted by the Police (Health and Safety) Regulations 1999 and revoked by the Serious Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2006.

Code of Practice

18 In this Code:

(a) 'the 1974 Act' means the Health and Safety at Work etc Act 1974 and 'the Regulations' means the Safety Representatives and Safety Committees Regulations 1977 (SI 1977 No 500);*

(b) words and expressions which are defined in the Act or in the Regulations have the same meaning in this Code unless the context requires otherwise.

*** As amended by 1998 c8, SIs 1992/2051, 1996/1513, 1997/1840, 1999/860, 1999/2024, 1999/3242, 2006/594, 2005/1541, 2013/1471 and 2014/469.**

Regulation 3 Appointment of safety representatives

Regulation 3

(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.

Regulation 3

(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 sub-paragraph to be a safety representative so long as he continues to be employed at anyone 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.

Guidance 3

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[7] 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, HSE 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, 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, in relation to their experience and skills.

Guidance 3

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 prevent 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 Additionally, 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 prevent 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

Guidance 3

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 such as 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

Regulation 4

(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

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provisions of a code of practice relating to time off for training approved for the time being by the Health and Safety Executive under section 16 of the 1974 Act.

In this paragraph "with pay" means with pay in accordance with [Schedule 2][a] to these Regulations.

(a) Words in square brackets substituted by SI 19991860, regulation 3(1),(4).

Regulation 4A Employer's duty to consult and provide facilities and assistance[a]

Regulation 4A

(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;[b]
(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.

(a) This regulation was added by a schedule to the Management of Health and Safety at Work Regulations 1992, now replaced by the Management of Health and Safety at Work Regulations 1999.
(b) This is now in accordance with regulations 7(1) and 8(1)(b) of the Management of Health and Safety at Work Regulations 1999, or article 13(3)(b) of the Regulatory Reform (Fire Safety) Order 2005.

Schedule 2 Pay for time off allowed to safety representatives

Regulation 4(2)

Schedule 2 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 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.

Code of Practice

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 people 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;
(iii) the health and safety policy of their employer and the organisation and arrangements for fulfilling that policy;
(b) encourage co-operation between the employer and their employees in promoting and developing essential measures to ensure the health and safety of employees and in checking the effectiveness of these measures;

Code of Practice

(c) bring to the employer's notice (normally in writing) any unsafe or unhealthy conditions, 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 prevent bringing such matters to the attention of the employer or his representative by speaking to them directly in the first instance, particularly in situations where speedy remedial action is necessary. It will also be appropriate for minor matters to be handled through this sort of direct 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 1974 Act, 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 Trades Union Congress (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 those at work, particularly the group or class of people 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.

* As amended.

Code of Practice

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. When the trade union wishes a safety representative to receive training relevant to their 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 to attend. 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 employers' operational requirements. Unions and managers should endeavour to reach agreement on the appropriate numbers and arrangements and resolve any problems that may arise using the relevant agreed procedures.

Guidance 4

What must you consult health and safety representatives about?

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

(a) introducing any measure in the workplace that may substantially affect the health and safety of those employees that 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')[8] 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, ie evacuating people at work from the premises. There are also provisions in the Regulatory Reform (Fire Safety) Order 20059 requiring 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) information they must give their employees on risks to health and safety, and preventive measures, including information they are already required by other regulations to give their employees. Appendix 1 sets out some relevant details. For example, under the Management Regulations, employers must tell their employees about risks identified by the risk assessment they have to carry out, and their preventive and protective measures. They must also tell their employees about the emergency procedures, and who will carry out evacuation procedures. 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;

Guidance 4

(e) the health and safety consequences of new technology employers plan to bring into the workplace if there could be implications for employees' health and safety, and for risks and hazards they are exposed to (eg moving from paper-based systems to new display screen equipment, or introducing new lifting aids instead of manually lifting parts).

Consulting health and safety representatives on risk assessments

38 Under the Management Regulations, you have a duty to assess the health and safety risks your employees are exposed to while they are at work. The risk assessment process needs to be practical. Seeking the views of employees and their health and safety representatives, who will have practical knowledge to contribute, will help to ensure you take account of all relevant information. Appendix 3 provides further information on requirements for employers to consult health and safety representatives and/or employees.

39 Consulting employees or their representatives about matters to do with their health and safety is good management, 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 to:

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

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

42 Regulation 4(2) requires employers to 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 employers to allow health and safety representatives paid time as is necessary to receive training in aspects of their

Guidance 4

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, bear in mind the guidance in the Code of Practice approved under regulation 4(2)(b) – see paragraphs 31–36. You can also refer to general principles of case law in this area. Case law is fact-specific and subject to change so you can check the current position as you must ensure your arrangements satisfy the law.

Rama v South West Trains (1997)*

The Claimant had applied to undertake a union-organised health and safety course in his capacity as a health and safety representative. His employers refused to pay him to attend, on the basis that the particular course was not necessary for him to carry out his functions as a health and safety representative under regulation 4 of the 1977 Regulations.

The Court agreed with the employer and held that attendance was not necessary. The Claimant appealed and the Employment Appeals Tribunal upheld the appeal. **It agreed that the Tribunal had equated what was reasonable with what was necessary. Necessity does not always determine all aspects of reasonableness, and there is no suggestion in the Code of Practice that the reasonableness** of training under regulation 4 is to be equated with, or limited to, what is necessary to fulfil his functions under the 1977 Regulations.

Whether attendance on the Stage 2 course was reasonable was referred back to the Tribunal to determine. When determining what is reasonable, each case should be decided on its own merits.

* EWHC Admin 976 5/11/1997.

Duthie v Bath and North East Somerset Council (2003)*

In determining whether to permit an employee paid time for training, the duty on an employer under regulation 4(2) is to permit such paid time as is 'necessary' for the purposes of undergoing training that is 'reasonable' in all the circumstances.

In determining what is **reasonable in all the circumstances**, the Employment Appeals Tribunal agreed with Counsel for the Claimant that it was necessary to **look at a number of features**, such as the contents of the course, whether it involved basic training, how it related to the particular functions that the employee was performing, whether the training would have helped him perform those particular functions, and considering whether the employer would be able to manage if the employee was permitted time to attend the particular course.

* LTL 1 /5/2003.

Davies v Neath Port Talbot County Borough Council (1999)*

A part-time employee, who was a union health and safety representative and who attended a full-time course, was entitled to be paid on the same basis as a full-time employee for time spent on the course. Attendance at such a course was 'work' within the meaning of Article 119 of the EC Treaty, and it followed that part-time workers should be paid on the same basis as their full-time counterparts when attending such courses away from work.

* LTL 26/10/99.

Guidance 4

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 those they may have as an employee under sections 7 and 8 of the 1974 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. HSE shall not institute criminal proceedings against any health and safety representative for any act or omission by them regarding 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 they represent informed on all matters significantly 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 be able to easily contact the employer or their representatives, whoever is appropriate depending on 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 Large, multi-site businesses will also need to have arrangements for communicating messages appropriately between health and safety representatives on sites and management centrally. This 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 1974 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 they might use, 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 27 and 28, and on the HSE website at www.hse.gov.uk/forms/incident/f2534.pdf and www.hse.gov.uk/forms/incident/f2533.pdf. A copy of each completed form should be given to the employer.

A suggested form to be used for recording that an inspection by a safety representative(s) has taken place – F2534

Number

Safety Representative: Inspection Form

Record that an inspection by a safety representative or representatives has taken place

Date of inspection

Time of inspection

Area of workplace inspected

Name(s) and signature(s) of safety representative(s) taking part in the inspection	Name(s) and signature(s) of employer (or his representative(s)) taking part in the inspection (if appropriate)

(This record does not imply that the conditions are safe and healthy or that the arrangements for welfare at work are satisfactory)

Record of receipt of form by the employer (or his representative)

Signature

Date

A suggested form to be used for notifying the employer, or their representative, about unsafe and unhealthy conditions and working practices and unsatisfactory arrangements for welfare at work – F2533

Number

Safety Representative: Report Form

Notification to the employer (or his representative) of conditions and working practices considered to be unsafe or unhealthy and of arrangements for welfare at work considered to be unsatisfactory.

		This column to be completed by the employer	
Date and time of inspection or matter observed	Particulars of matter(s) notified to employer or his representative (include location where appropriate)	Name(s) of safety representative(s) notifying matter(s) to employer (or his representative	Remedial action taken (with date) or explanation if not taken. This information to be relayed to the safety representative(s)

(This record does not imply that the conditions are safe and healthy or that the arrangements for welfare at work are satisfactory)

Signature(s) of safety representative(s) Date

Record of receipt of form by the employer (or his representative)

Signature Date

Regulation 5 Inspections of the workplace

Regulation 5

(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 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 [or regulation 40 of the Quarries Regulations 1999] shall count as an inspection under this Regulation.

Guidance 5

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 appointed health and safety representatives to 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 for providing 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 The formal inspection may take various forms, 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 to fulfil this function:

(a) safety tours – general inspections of the workplace;

Guidance 5

(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 agreed between the appointed health and safety representatives and their employer, depending on their 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 that may arise during 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 a way that ensures 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 want 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 28 and on the HSE website at 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.

Regulation 6 Inspections following notifiable accidents, occurrences and diseases

Regulation 6

(1) Where there has been an over-three-day injury,[a] a notifiable accident or dangerous occurrence in a workplace or a notifiable disease has been contracted there and –

(a) it is safe for an inspection to be carried out; and
(b) the interests of employees in the group or groups which safety representatives are appointed to represent might be involved,

those safety representatives may carry out an inspection of the part of the workplace concerned and so far as is necessary for the purpose of determining the cause they may inspect any other part of the workplace; where it is reasonably practicable to do so they shall notify the employer or his representative of their intention to carry out the inspection.

(2) 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.

(3) In this Regulation "notifiable accident or dangerous occurrence" and "notifiable disease" mean any accident, dangerous occurrence or disease, as the case may be, notice of which is required to be given by virtue of any of the relevant statutory provisions within the meaning of section 53(1) of the 1974 Act [or the relevant nuclear provisions][b]; and

"over-three-day injury" means an injury required to be recorded in accordance with regulation 12(1)(b) of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013.[c]

(a) Word substituted by Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013/1471 Schedule 4, para 1 (October 1, 2013).
(b) Words inserted by Energy Act 2013 (Office for Nuclear Regulation) (Consequential Amendments, Transitional Provisions and Savings) Order 2014/469 Schedule 3(3), para 35 (April 1, 2014).
(c) Substituted by Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013/1471 Schedule 4, para 1 (October 1, 2013).

Guidance 6

Purpose of inspections following an over-three-day injury or a notifiable incident

59 From 6 April 2012 RIDDOR changed. The over-three-day reporting requirement for people at work changed to more than seven days. This means that injuries that lead to a worker being incapacitated for more than seven consecutive days must be reported. A record must still be kept if a worker is incapacitated for more than three days, this can be done by keeping a record of the incident in the accident book. The 2013 RIDDOR Regulations clarified further, reportable accidents, occurrences and diseases.

60 The main purpose of an inspection following a reportable accident, dangerous occurrence or notifiable disease should be to determine the causes so that measures to prevent a recurrence can be considered. It is therefore important that the approach to the problem should be a joint one by the employer and health and safety representatives.

Guidance 6

61 Following an accident or dangerous occurrence, it may be necessary for the employer to take urgent steps to safeguard against further hazards. If this is the case, the employer should notify the health and safety representatives of the action taken and confirm this in writing. It may be appropriate to notify such actions to other sites if you are responsible for managing more than one, where the issue is relevant.

The functions of health and safety representatives in formal inspections following an over-three-day injury or a notifiable incident

62 In the event of an over-three-day injury, a reportable accident, dangerous occurrence, or notifiable disease, health and safety representatives may carry out an inspection of that workplace. They will need to examine any relevant machinery, plant, equipment or substance in the workplace. Their examinations may include visual inspection, and discussions with those likely to have relevant information and knowledge regarding the circumstances of the accident or occurrence. However, the examination must not interfere with any evidence or the testing of any machinery, plant, equipment or substance which could disturb or destroy the factual evidence before any inspector from the appropriate enforcing authority has had the opportunity to investigate the circumstances of the accident or occurrence as thoroughly as is necessary.

63 Health and safety representatives, when performing their functions, have rights under the Regulations to inspect and take copies of documents relevant to the workplace or to the employees they represent which the employer is required to keep in accordance with the 1974 Act and other relevant statutory provisions. This particularly applies to formal inspections of the workplace and examinations following over-three-day injuries, notifiable accidents, dangerous occurrences or notifiable diseases.

64 In exercising this right, health and safety representatives should give employers reasonable notice and bear in mind any other circumstances the employer may be faced with in producing such documents. There are certain documents which the employer does not have to provide (see regulation 7(2)).

65 Where technical matters are involved, the appointed health and safety representatives may find that the necessary expertise is not available within the business or organisation. The employer and the health and safety representatives may wish to seek external advice, for example from appropriate universities or colleges. They should agree on arrangements for calling upon people from such institutions. If the representatives need advice from their own technical advisers, they may be called in where this has been agreed in advance with the employer. A copy of any report specifically relating to health or safety matters made to the health and safety representatives should also be available to the employer.

Regulation 7 Inspection of documents and provision of information

Regulation 7

(1) Safety representatives shall for the performance of their functions under section 2(4) of the 1974 Act and under these Regulations, if they have given the employer reasonable notice, be entitled to inspect and take copies of any document relevant to the workplace or to the employees the safety representatives represent which the employer is required to keep by virtue of any relevant statutory

Regulation 7

provision within the meaning of section 53(1) of the 1974 Act except a document consisting of or relating to any health record of an identifiable individual.

(2) An employer shall make available to safety representatives the information, within the employer's knowledge, necessary to enable them to fulfil their functions except –

(a) any information the disclosure of which would be against the interests of national security; or
(b) any information which he could not disclose without contravening a prohibition imposed by or under an enactment; or
(c) any information relating specifically to an individual, unless he has consented to its being disclosed; or
(d) any information the disclosure of which would, for reasons other than its effect on health, safety or welfare at work, cause substantial injury to the employer's undertaking or, where the information was supplied to him by some other person, to the undertaking of that other person; or
(e) any information obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings.

(3) Paragraph (2) above does not require an employer to produce or allow inspection of any document or part of a document which is not related to health, safety or welfare.

Code of Practice

66 The Regulations require employers to make any information they are aware of available to safety representatives that is necessary for them to fulfil their functions. Such information should include:

(a) information about the plans and performance of their business and any changes proposed where they affect the health and safety at work of their employees;
(b) technical information about health and safety hazards and precautions needed to eliminate or minimise them, regarding machinery, plant, equipment, processes, systems of work and substances in use at work, including any relevant information provided by consultants or designers or by the manufacturer, importer or supplier of any article or substance used, or proposed to be used, at work by their employees;
(c) information the employer keeps relating to the occurrence of any accident, dangerous occurrence or notifiable industrial disease and any statistical records relating to such accidents, dangerous occurrences or cases of notifiable industrial disease;
(d) any other information specifically related to matters affecting the health and safety at work of their employees, including the results of any measurements taken by the employer or people acting on their behalf in the course of checking the effectiveness of their health and safety arrangements;
(e) information on articles or substances which an employer issues to homeworkers.

Guidance 7

Your duty to provide information

67 You have a duty under section 2(2)(c) of the 1974 Act to provide such information, instruction and training, and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of all your employees (see Appendix 1 and Appendix 2 for more information). Appointed health and safety representatives will need to be given appropriate and sufficient information and

Guidance 7

knowledge to enable them to play an informed part in promoting health and safety at work. The recognised trade unions responsible for appointing health and safety representatives will make their own arrangements for providing them with the information and guidance they need to carry out their functions.

68 Employers have duties under the Management Regulations to, among other things, provide information on:

(a) risks to their employees' health and safety identified by their risk assessment;
(b) preventive and protective measures designed to ensure employees' health and safety;
(c) procedures to be followed in the event of an emergency in the workplace;
(d) the identity of any 'competent person' or persons nominated by the employer to help with implementing those procedures;
(e) risks notified by another employer with whom a workplace is shared, arising out of, or in connection with, the conduct of the second employer's undertaking.

69 You should already have the relevant information you need to provide your health and safety representatives with as part of your health and safety management system. There is no need for you to present this information in a different format and provide it as a separate package, or to get hold of additional information you do not have specifically for your health and safety representatives. In providing this information, it can be useful to reflect the structure of your business. For example, if you manage a large, multi-site business, you should ensure good communication between those who make decisions in your business and your health and safety representatives.

Regulation 8 Cases where safety representatives need not be employees

Regulation 8

(1) In the cases mentioned in paragraph (2) below safety representatives appointed under Regulation 3(1) of these Regulations need not be employees of the employer concerned; and section 2(4) of the 1974 Act shall be modified accordingly.

(2) The said cases are those in which the employees in the group or groups the safety representatives are appointed to represent are members of the British Actors' Equity Association or of the Musicians' Union.

(3) Regulations 3(3)(b) and (4) and 4(2) of these Regulations shall not apply to safety representatives appointed by virtue of this Regulation and in the case of safety representatives to be so appointed Regulation 3(1) shall have effect as if the words "from amongst the employees" were omitted.

Regulation 9 Safety committees

Regulation 9

(1) For the purposes of section 2(7) of the 1974 Act (which requires an employer in prescribed cases to establish a safety committee if requested to do so by safety representatives) the prescribed cases shall be any cases in which at least two safety representatives request the employer in writing to establish a safety committee.

Regulation 9

(2) Where an employer is requested to establish a safety committee in a case prescribed in paragraph (1) above, he shall establish it in accordance with the following provisions –

(a) he shall consult with the safety representatives who made the request and with the representatives of recognised trade unions whose members work in any workplace in respect of which he proposes that the committee should function;
(b) the employer shall post a notice stating the composition of the committee and the workplace or workplaces to be covered by it in a place where it may be easily read by the employees;
(c) the committee shall be established not later than three months after the request for it.

Guidance 9

Setting up a health and safety committee

70 The detailed arrangements needed to fulfil this requirement of the 1974 Act should evolve from discussion and negotiation between employers and the appointed health and safety representatives, who are best placed to interpret the needs of the particular workplace or places concerned. For further guidance on setting up health and safety committees and making them work effectively, see *Involving your workforce in health and safety* (HSG263)[1] or refer to the worker involvement web pages on the HSE website: www.hse.gov.uk/involvement. Acas also provide useful guidance on employee communications and consultations.

71 Although the title 'safety committees' might suggest functions limited to purely safety matters, the functions of health and safety representatives comprise health, safety and welfare at work (see regulation 4), so safety committees should be concerned with all relevant aspects of these matters in the working environment.

72 Circumstances will vary greatly between one workplace and another. Health and safety committees will be set up to deal with work situations as varied as that between a construction site and a hospital. Each situation must be looked at carefully by those involved in it, and systems for safety, including health and safety committees, will need to be developed to take full account of all the relevant circumstances.

73 Although the relationship of the health and safety committee to other works committees is a matter for local organisation, ensure that the work of the health and safety committee has a separate identity, and that health and safety matters are not just added onto the agenda for other meetings, without enough time to consider them.

74 Health and safety committees are most likely to prove effective where their work is related to a single establishment rather than a collection of distinct places. There may be a place for health and safety committees at group or company level for larger organisations, particularly where relevant decisions are taken at a higher level. In general, an employer should not need to appoint duplicate committees for the same workplace, for example representing different levels of staff. In large workplaces, however, a single committee may either be too large, or if kept small, may become too remote. In these circumstances, it may be necessary to set up several committees with adequate arrangements for co-ordination between them.

Guidance 9

Objectives and functions of health and safety committees

75 Under section 2(7) of the 1974 Act, health and safety committees have the function of keeping measures taken to ensure the health and safety at work of the employees under review. In carrying out this function, health and safety committees should consider drawing up agreed objectives or terms of reference.

76 An objective should be the promotion of co-operation between employers and employees in instigating, developing and carrying out measures to ensure the employees' health and safety at work.

77 Within the agreed basic objectives, certain specific functions might include:

(a) studying accident and notifiable disease statistics and trends, so that reports can be made to management on unsafe and unhealthy conditions and practices, together with recommendations for corrective action;
(b) considering aggregated absence statistics and reasons for such absences on a similar basis;
(c) examination of management's safety audit reports;
(d) considering reports and factual information provided by inspectors of the enforcing authority appointed under the 1974 Act;
(e) considering reports which health and safety representatives submit following inspections;
(f) assistance in developing works safety rules and safe systems of work;
(g) a watch on the effectiveness of the health and safety content of employee training;
(h) a watch on the adequacy of safety and health communication and publicity in the workplace;
(i) providing a link with the appropriate enforcing authority.

78 The purpose of studying accidents is to stop them happening again; it is not the committee's business to allocate blame. Its job should be to:

(a) look at the facts in an impartial way;
(b) consider what sort of precautions might be taken;
(c) make appropriate recommendations.

79 There are advantages in looking at not only legally notifiable cases, but also at selected groups of minor injuries. The records of such injuries can yield valuable information if they are extracted and analysed.

80 The committee may also be able to:

(a) advise on the appropriateness and adequacy of the rules for safety and health proposed by management;
(b) draw attention to the need to establish rules for a particular hazardous work activity or class of operations.

81 Employees are more likely to follow the rules if they appreciate the reasons for having them, and know that their representatives have been consulted in making them.

82 Where written reports have been made by health and safety representatives following inspections, they may be brought to the attention of the health and safety committee. In such cases, the committee may suggest suitable publicity.

Guidance 9

83 In certain instances, health and safety committees may consider it useful to carry out an inspection by the committee itself. However, it is management's responsibility to take action, to have adequate arrangements for regular and effective checks of health and safety precautions, and to ensure that the declared health and safety policy is being fulfilled. The work of health and safety committees should supplement these arrangements; it cannot be a substitute for them.

Membership of health and safety committees

84 The membership and structure of health and safety committees ought to be settled in consultation between management and the trade union representatives concerned by using the normal processes. The aim should be to keep the committee as compact as possible, and compatible with the adequate representation of the interests of management and of all the employees, including health and safety representatives. The number of management representatives should not exceed the number of employee representatives.

85 Management representatives should not only include those from line management but others such as work engineers and personnel managers. The supervisory level should also be represented. Management representation should be aimed at ensuring:

(a) adequate authority to give proper consideration to views and recommendations;
(b) the necessary knowledge and expertise to provide accurate information to the committee on company policy, production needs, and on technical matters in relation to premises, processes, plant, machinery and equipment.

86 Where a company doctor, nurse, occupational health professional or safety officer/adviser is employed, it makes sense that they are members of the health and safety committee. Other company specialists, such as project engineers, chemists, organisation and methods staff and training officers, might be co-opted for particular meetings when subjects they have expertise in are to be discussed.

87 It should be fully understood that a health and safety representative is not appointed by the health and safety committee or vice versa. The relationship between health and safety representatives and the health and safety committee should be a flexible but close one. Neither is responsible to, or for, the other. The aim should be to form the most effective organisation appropriate to the particular workplace, especially in effective co-ordination between the work of the committee and the health and safety representatives.

88 Under regulation 4(2), an employer must permit health and safety representatives paid time as is necessary to perform their functions. This includes attending meetings of health and safety committees, where they attend as a health and safety representative in connection with any of the functions in regulation 4(1)(a) to (h), including investigating hazards and dangerous occurrences, investigating complaints about health, safety, or welfare at work and making representations to employers. Health and safety representatives should therefore suffer no loss of pay through attending health and safety committee meetings or other agreed activities, such as inspections carried out by, or on behalf of, such committees, provided the time away from normal duties is necessary to perform their functions.

Guidance 9

89 The effectiveness of a joint health and safety committee will depend on the pressure and influence it is able to maintain on all concerned. The following activities could assist in maintaining the impetus of a committee's work:

(a) regular meetings (with effective publicity) of the committee's discussions and recommendations;
(b) speedy decisions by management on the committee's recommendations, where necessary, promptly translated into action and effective publicity;
(c) participation by members of the health and safety committee in periodical joint inspections;
(d) development of ways of involving more employees.

The conduct of health and safety committees

90 An essential condition for the effective working of a health and safety committee is good communications between management and the committee, and between the committee and the employees. In addition, there must be a genuine desire on the part of management to tap the knowledge and experience of its employees and an equally genuine desire on the part of the employees to improve health and safety standards at the workplace.

91 Health and safety committees should meet as often as necessary. The frequency of meetings will depend on the volume of business, which in turn is likely to depend on local conditions, the size of the workplace, numbers employed, the kind of work carried out and the degree of inherent risk. Sufficient time should be allowed during each meeting to ensure full discussion of all business.

92 Meetings should not be cancelled or postponed except in very exceptional circumstances. Where postponement is absolutely necessary, an agreed date for the next meeting should be made and announced as soon as possible.

93 The dates of the meetings should be arranged well in advance as far as possible, even to the extent of planning a programme six months or a year ahead. In these circumstances all members of the committee should be sent a personal copy of the programme, giving the dates of the meetings. Notices of the dates of meetings should also be published where all employees can see them. A copy of the agenda and any accompanying papers should be sent to all committee members at least one week before each meeting.

94 Committees may wish to draw up additional rules for the conduct of meetings. These might include procedures by which committees might reach decisions.

95 In certain workplaces it might be useful for the health and safety committee to appoint subcommittees to study particular health and safety problems.

96 Agreed minutes of each meeting should be kept and a personal copy supplied to each member of the committee as soon as possible after the meeting, with a copy being sent to each health and safety representative appointed for workplaces covered by the committee. A copy of the minutes should be sent to the most senior executive responsible for health and safety; and arrangements should be made to ensure that the Board of Directors is kept informed generally of the work of the committee. An adequate number of copies of the minutes should be displayed, or made available by other means, along with any other information which the employer provides whether required by statute or not.

Regulation 10 Power of Health and Safety Executive to grant exemptions

Regulation 10

The Health and Safety Executive may grant exemptions from any requirement imposed by these Regulations and any such exemption may be unconditional or subject to such conditions as the Executive may impose and may be with or without a limit of time.

Regulation 11 Provisions as to [employment tribunals][a]

Regulation 11

(1) A safety representative may, in accordance with the jurisdiction conferred on [employment tribunals] by paragraph 16(2) of Schedule 1 to the Trade Union and Labour Relations Act 1974,[b] present a complaint to an [employment tribunal] that:

(a) the employer has failed to permit him to take time off in accordance with Regulation 4(2) of these Regulations; or
(b) the employer has failed to pay him in accordance with Regulation 4(2) of and the Schedule to these Regulations.

(2) An [employment tribunal] shall not consider a complaint under paragraph (1) above unless it is presented within three months of the date when the failure occurred or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.

(3) Where an [employment tribunal] finds a complaint under paragraph (1)(a) above well-founded the tribunal shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee which shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to permit time off to be taken by the employee and to any loss sustained by the employee which is attributable to the matters complained of.

(4) Where on a complaint under paragraph (1)(b) above an [employment tribunal] finds that the employer has failed to pay the employee the whole or part of the amount required to be paid under paragraph (1)(b), the tribunal shall order the employer to pay the employee the amount which it finds due to him.

(5) [amends the Trade Union and Labour Relations Act 1974, Schedule 1, paragraph 16 and is not set out here]

[Schedule 1 Regulation 2A Bodies to be treated as recognised trade unions][c]

(a) Reference to industrial tribunals was replaced by "employment tribunals" by the Employment Rights (Dispute Resolution) Act 1998.
(b) 1974 c.52 Jurisdiction is now conferred on tribunals by the Employment Tribunals Act 1996. Section 2 gives tribunals jurisdiction if that was conferred by any other Act. Although the Trade Union and Labour Relations Act 1974 has been repealed, tribunals do retain jurisdiction. (See Duthie v Bath and North East Somerset Council [2003] ICR 405 EAT, and White v Pressed Steel Fisher [1980] IRLR 176.)
(c) Schedule 1 Regulation 2A was inserted by the Police (Health and Safety) Regulations 1999 and revoked by the Serious Organised Crime and Police Act (Consequential and Supplementary Amendments to Secondary Legislation) Order 2006.

PART 2 Health and Safety (Consultation with Employees) Regulations 1996 (as amended)[a]

Regulation 1 Citation, extent and commencement

Regulation 1

These Regulations, which extend to Great Britain, may be cited as the Health and Safety (Consultation with Employees) Regulations 1996 and shall come into force on 1 October 1996.

Regulation 2 Interpretation

Regulation 2

(1) In these Regulations, unless the context otherwise requires –

"the 1974 Act" means the Health and Safety at Work etc Act 1974;[b]

"the 1977 Regulations" means the Safety Representatives and Safety Committees Regulations 1977;[c]

"employee" has the meaning assigned to it by section 53(1) of the 1974 Act but shall not include a person employed as a domestic servant in a private household; and "employer" shall be construed accordingly;

"the relevant statutory provisions" has the meaning assigned to it by section 53(1) of the 1974 Act;

"representatives of employee safety" shall be construed in accordance with regulation 4(1)(b);

"safety representative" has the meaning assigned to it by regulation 2(1) of the 1977 Regulations;

"workplace" means, in relation to an employee, any place or places where that employee is likely to work or which he is likely to frequent in the course of his employment or incidentally to it and, in relation to a representative of employee safety, any place or places where the employees he represents are likely so to work or frequent.

(2) Any reference in these Regulations to consulting employees directly or consulting representatives of employee safety is a reference to consulting them pursuant to regulation 3 and regulation 4(1)(a) or (b), as the case may be.

(a) As amended by 1998 c8, SIs 1997/1840, 1999/3242 and 2005/1541.
(b) 1974 c.37.
(c) SI 1977/500 as amended.

Regulation 2

(3) Unless the context otherwise requires, any reference in these Regulations to –

(a) a numbered regulation or schedule is a reference to the regulation or schedule in these Regulations so numbered; and
(b) a numbered paragraph is a reference to the paragraph so numbered in the regulation or schedule in which the reference appears.

Regulation 3 Duty of employer to consult

Regulation 3

Where there are employees who are not represented by safety representatives under the 1977 Regulations, the employer shall consult those employees in good time on matters relating to their health and safety at work and, in particular, with regard to –

(a) the introduction of any measure at the workplace which may substantially affect the health and safety of those employees;
(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;[(a),(b)]
(c) any health and safety information he is required to provide to those employees by or under the relevant statutory provisions;
(d) the planning and organisation of any health and safety training he is required to provide to those employees by or under the relevant statutory provisions; and
(e) the health and safety consequences for those employees of the introduction (including the planning thereof) of new technologies into the workplace.

(a) SI 1992/2051.
(b) This legislation has been superseded by the Management of Health and Safety at Work Regulations 1999 and now refers to regulations 7(1) and 8(1)(b) of those Regulations or article 13(3)(b) of the Regulatory Reform (Fire Safety) Order 2005.

Guidance 3

Who does this apply to?

97 These Regulations apply to all employers and employees in Great Britain, other than:

(a) those whose employees are all covered by health and safety representatives appointed by recognised trade unions under the Safety Representatives and Safety Committees Regulations 1977;
(b) domestic staff employed in private households; or
(c) the master or crew of a sea-going ship or to their employer in respect of the normal ship-board activities of a ship's crew under the direction of the master.

98 The Safety Representatives and Safety Committees Regulations 1977 provide for the appointment of health and safety representatives by recognised trade unions. Those Regulations specify the functions of such health and safety representatives and set out the obligations of employers towards them. They remain in force in their entirety – for more information see Part 1. The Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 apply offshore.

Guidance 3

Consulting employees if you recognise trade unions

99 These Regulations will only apply to any employees not represented by representatives under the Safety Representatives and Safety Committees Regulations 1977 if:

(a) their union is not recognised;
(b) recognised trade unions have not appointed representatives or they are not about to; or
(c) employees do not belong to a trade union.

100 You need to check which employees are represented by trade union health and safety representatives. In some circumstances, you may be obliged to consult under both sets of regulations. See *Involving your workforce in health and safety* (HSG263)[1] for more information.

101 You are not obliged to keep written records of your consultation. You may, however, need to convince health and safety inspectors that you have complied with these Regulations and they will also talk to health and safety representatives and/or employees.

The self-employed

102 These Regulations do not apply to the self-employed. However, you should bear in mind that employees who are categorised as self-employed for tax or other purposes may in fact still be employees in respect of health and safety law. This depends on individual circumstances (eg the employee's degree of independence, whether they are using their own tools etc).*

Non-employees

103 Seconded staff, long-term agency staff and other workers on your premises who are not your employees (for example who may be self-employed), must be provided with the information they need in order to work safely under the Management of Health and Safety Regulations 1999 (the 'Management Regulations') – see paragraph 106(d). You may voluntarily choose to include them in your arrangements for consulting your employees. This is particularly worthwhile if they have been working for you for a period of weeks or months or are exposed to particular risks and hazards at work.

Non-employed trainees

104 However, non-employed trainees such as student nurses and others participating in work experience schemes are covered by these Regulations as they are treated as employees under health and safety law.

* For a detailed review see *Harvey on Industrial Relations and Employment Law* 2007A[5] to A[209].[5]

Guidance 3

Construction industry

105 Construction is a special case, where firstly the employer may not be in control of all the risks and secondly there are self-employed people who are exposed to the risks. The Construction (Design and Management) Regulations 2007[10] address this situation by requiring the principal contractor to ensure all employees and self-employed people carrying out the construction work are able to discuss issues which affect their health and safety and to offer them advice. The principal contractor must ensure that there are arrangements in place for the co-ordination of site-specific consultation carried out by employers.

What must you consult your employees about?

106 The duties under regulation 3 were designed to implement article 11 of the EU Directive 89/391/EEC – OSH (Framework Directive), and allow employees to take part in discussions on all questions relating to health and safety at work. The Health and Safety (Consultation with Employees) Regulations 1996 require you to consult your employees on:

(a) the introduction of any measure at the workplace which may substantially affect their health and safety;
(b) your arrangements for getting a competent person* or persons to help you comply with health and safety requirements and to implement evacuation procedures. The Management Regulations require you to make such an appointment unless you are self-employed, and not in partnership with any other person and are competent through training, experience or knowledge to deal with these matters yourself. There are other provisions dealing with people in partnerships. Under these Consultation Regulations, you will need to consult your employees on how you plan to go about this;
(c) the information you must give them on risks to health and safety, and preventive measures. This will include the information you are already required by other regulations to give your employees (see (d)(i)–(v) below and Appendix 1 for examples) and these Regulations require you to consult your employees about these matters before you tell them what has been decided and before you make changes;
(d) requirements to provide information to your employees under the Management Regulations including information on:
    (i) the risks to their health and safety identified by your risk assessment;
    (ii) the preventive and protective measures designed to ensure their health and safety;
    (iii) the procedures to be followed in the event of an emergency in your workplace;
    (iv) the identity of any 'competent person' or persons nominated by you to help with the implementation of those procedures;
    (v) risks notified to you by another employer with whom you share a workplace, arising out of, or in connection with, the conduct of the second employer's workplace;

* The 'competent person' as specified under the Management Regulations is distinct from the elected 'representative of employee safety' defined under the Health and Safety (Consultation with Employees) Regulations 1996. In brief, the 'competent person' advises the employer; the 'representative of employee safety' represents the views of the employees.

Guidance 3

(e) the planning and organising of any health and safety training you 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, particularly where your employees are exposed to particular risks or hazards. You also have to ensure that any representatives of employee health and safety elected under these Consultation Regulations are provided with relevant training (see paragraphs 119 and 120);
(f) the health and safety consequences for them of new technology, including planned new technology being brought into the workplace. This will cover the introduction of any new technology if there could be implications for their health and safety, and for the risks and hazards to which they are exposed.

When must you consult?

107 Regulation 3 requires you to consult your employees 'in good time'. This 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 the employees, or their elected representatives, with information about what you propose to do;
(b) to give the employees, or their elected representatives, an opportunity to express their views about the matter in the light of that information; and then
(c) for you to take account of any response from employees or their elected representatives.

Regulation 4 Persons to be consulted

Regulation 4

(1) The consultation required by regulation 3 is consultation with either –

(a) the employees directly; or
(b) in respect of any group of employees, one or more persons in that group who were elected, by the employees in that group at the time of the election, to represent that group for the purposes of such consultation (and any such persons are in these Regulations referred to as "representatives of employee safety").

(2) Where an employer consults representatives of employee safety he shall inform the employees represented by those representatives of –

(a) the names of those representatives; and
(b) the group of employees represented by those representatives.

(3) An employer shall not consult a person as a representative of employee safety if –

(a) that person has notified the employer that he does not intend to represent the group of employees for the purposes of such consultation;
(b) that person has ceased to be employed in the group of employees which he represents;
(c) the period for which that person was elected has expired without that person being re-elected; or

Regulation 4

(d) that person has become incapacitated from carrying out his functions under these regulations;

and where pursuant to this paragraph an employer discontinues consultation with that person he shall inform the employees in the group concerned of that fact.

(4) Where an employer who has been consulting representatives of employee safety decides to consult employees directly he shall inform the employees and the representatives of that fact.

Guidance 4

Choose how to consult

108 When you consult employees under these Regulations you have a choice between consultation:

(a) through one or more elected representatives (and it is important that they are independent of you in conveying the views of their colleagues);
(b) directly with each employee;
(c) a combination of both (a) and (b) above.

109 You can choose whatever means suit you and your employees best. For example, if you run a very small firm, you may talk to your employees on a regular basis, and take account of what they say. If so, you may need to do no more if such informal arrangements are adequate for consultation on health and safety matters affecting the employees.

110 However, if your business is larger and you do not have the opportunity to talk to all your employees regularly, it may not be practical to consult employees directly. Therefore, you will have to consult using other more suitable methods such as meetings, employee quality circles, staff councils, notice boards, newsletters, email or surveys. For further advice and guidance, see *Involving your workforce in health and safety* (HSG263).[1]

111 Where elected representatives exist, there would be nothing to prevent you from consulting employees directly on particular matters. Similarly, you might consult on any particular issue both directly and indirectly. However, in some circumstances, proper consultation or providing information to the full workforce might be impractical, so you would be in breach of your obligations. If you have been consulting with representatives and you decide to consult employees directly, you must inform employees and representatives of this.

112 What matters is that your employees, or their representatives, are made aware of:

(a) when their views are being sought about health and safety;
(b) how they can give their views to you as their employer;
(c) their right to take part in discussions on all questions relating to their health and safety at work.

113 If you decide to consult via elected representatives but no candidates come forward for election, then you will have to consult directly. If only one candidate is nominated for a vacancy then there would be no need to hold a formal election.

Regulation 5 Duty of employer to provide information

Regulation 5

(1) Where an employer consults employees directly he shall, subject to paragraph (3), make available to those employees such information, within the employer's knowledge, as is necessary to enable them to participate fully and effectively in the consultation.

(2) Where an employer consults representatives of employee safety he shall, subject to paragraph (3), make available to those representatives such information, within the employer's knowledge, as is –

(a) necessary to enable them to participate fully and effectively in the consultation and in the carrying out of their functions under these Regulations;
(b) contained in any record which he is required to keep by regulation 7 of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995[(a)] and which relates to the workplace or the group of employees represented by those representatives.

(3) Nothing in paragraph (1) or (2) shall require an employer to make available any information –

(a) the disclosure of which would be against the interests of national security;
(b) which he could not disclose without contravening a prohibition imposed by or under any enactment;
(c) relating specifically to an individual, unless he has consented to its being disclosed;
(d) the disclosure of which would, for reasons other than its effect on health or safety, cause substantial injury to the employer's undertaking or, where the information was supplied to him by some other person, to the undertaking of that other person; or
(e) obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings;

or to provide or allow the inspection of any document or part of a document which is not related to health or safety.

(a) SI 1995/3163.

Guidance 5

What information do I have to provide?

114 You must provide enough information to allow your employees to participate fully and effectively in the consultation. So, if you are consulting about new measures to be introduced, for example, you may need to give information on:

(a) the health and safety risks arising from the new measures;
(b) the measures in place, or which will be introduced, to eliminate or reduce them;
(c) what employees should do when encountering risks and hazards.

115 You should already have the relevant information to provide your representatives with as part of your health and safety management system. There is no need for you to present this in a different format and provide it as a separate package, or to get hold of additional information you do not have specifically for your health and safety representatives. In providing this information, it can be useful

Guidance 5

to reflect the structure of your business. For example, if you manage a large multi-site business, ensure good communication of information between those who make decisions in your business and your health and safety representatives. But you do not have to provide information for consultation if the exemptions listed in regulation 5(3) apply to it.

116 Regulations 6 and 7, Schedules 1 and 2 and guidance paragraphs 117 to 124 relate specifically to consultation via elected representatives.

Regulation 6 Functions of representatives of employee safety

Regulation 6

Where an employer consults representatives of employee safety each of those representatives shall, for the period for which that representative is so consulted, have the following functions –

(a) to make representations to the employer on potential hazards and dangerous occurrences at the workplace which affect, or could affect, the group of employees he represents;
(b) to make representations to the employer on general matters affecting the health and safety at work of the group of employees he represents and, in particular, on such matters as he is consulted about by the employer under regulation 3; and
(c) to represent the group of employees he represents in consultations at the workplace with inspectors appointed under section 19(1) of the 1974 Act.

Guidance 6

Statutory functions of elected health and safety representatives

117 As long as a person holds office as an elected representative of employee health and safety and is being consulted by you, the law gives them the functions described in regulation 6. Health and safety representatives (and employees) can make representations to you on their own initiative – they are not restricted to the occasions when you consult them.

Regulation 7 Training, time off and facilities for representatives of employee safety and time off for candidates

Regulation 7

(1) Where an employer consults representatives of employee safety, he shall –

(a) ensure that each of those representatives is provided with such training in respect of that representative's functions under these Regulations as is reasonable in all the circumstances and the employer shall meet any reasonable costs associated with such training including travel and subsistence costs; and

Regulation 7

(b) permit each of those representatives to take such time off with pay during that representative's working hours as shall be necessary for the purpose of that representative performing his functions under these Regulations or undergoing any training pursuant to paragraph (1)(a).

(2) An employer shall permit a candidate standing for election as a representative of employee safety reasonable time off with pay during that person's working hours in order to perform his functions as such a candidate.

(3) Schedule 1 (pay for time off) and Schedule 2 (provisions as to industrial tribunals) shall have effect.

(4) An employer shall provide such other facilities and assistance as a representative of employee safety may reasonably require for the purpose of carrying out his functions under these Regulations.

Schedule 1 Pay for time off

Schedule 1
Regulation 7(3)

Regulation 7(3)

(1) Subject to paragraph 3 below, where a person is permitted to take time off in accordance with regulation 7(1)(b) or 7(2), his employer shall pay him –

(a) where the person'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 person'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).

(2) The average hourly earnings referred to in paragraph 1(b) are the average hourly earnings of the person 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 all the circumstances.

(3) Any payment to a person 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 sections 168 or 169 of the Trade Union and Labour Relations (Consolidation) Act 1992,[(a)] in respect of that period, shall also discharge his liability in respect of the same period under regulation 7(1)(b) or 7(2);
(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 7(1)(b) or 7(2);
(c) if it is a payment under regulation 7(1)(b) or 7(2), shall go towards discharging any liability of the employer to pay contractual remuneration in respect of the same period.

(a) 1992 c.52.

Schedule 2 Provisions as to industrial tribunals

Schedule 2 Regulation 7(3)

Regulation 7(3)

(1) An [employment tribunal][a] shall have jurisdiction to determine complaints in accordance with the following provisions of this Schedule.

(2) A person (referred to in this Schedule as the "complainant") may present a complaint to an industrial tribunal that –

(a) his employer has failed to permit him to take time off in accordance with regulation 7(1)(b) or 7(2); or
(b) his employer has failed to pay him in accordance with regulation 7(1)(b) or 7(2) and Schedule 1.

(3) An [employment tribunal] shall not consider a complaint under paragraph 2 unless it is presented within three months of the date when the failure occurred or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.

(4) Where an [employment tribunal] finds a complaint under paragraph 2(a) well-founded the tribunal shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the complainant which shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to permit time off to be taken by the complainant and to any loss sustained by the complainant which is attributable to the matters complained of.

(5) Where on a complaint under paragraph 2(b) an [employment tribunal] finds that the employer has failed to pay the complainant the whole or part of the amount required to be paid in accordance with regulation 7(1)(b) or 7(2) and Schedule 1, the tribunal shall order the employer to pay the complainant the amount which it finds due to him.

(a) Words in square brackets have been substituted by the Employment Rights (Dispute Resolution) Act 1998.

Guidance 7

Facilities for elected health and safety representatives

118 So that elected representatives of employee health and safety can carry out their functions properly, you must:

(a) provide them with facilities and assistance they may reasonably require to carry out their functions under these Regulations. What is needed in particular circumstances will vary widely. For example, it could involve access to:
  (i) lists showing the names and workplaces of employees in a representative's constituency;
  (ii) communications, distribution and photocopying facilities for the representative to communicate with represented employees;
  (iii) you or your senior management to discuss health and safety issues whenever the representative(s) might reasonably wish to do so;

Guidance 7

(b) give them time off with pay,* during working hours, as is necessary to perform the representative's functions under these Regulations, and for training as is reasonable in all the circumstances in respect of those functions. In practice, this means they should carry out their duties as part of their normal job, and you will need to take account of this in their workload;
(c) ensure they are provided with adequate training (see paragraphs 119 and 120);
(d) ensure they are protected against being penalised (see paragraph 126).

* When elected representatives are entitled to take time off under the Health and Safety (Consultation with Employees) Regulations 1996, you must give them the pay they would ordinarily receive for the work they would otherwise have been doing during that time. Schedule 1 to the Regulations sets out the requirements in detail.

Training for elected health and safety representatives

119 Individuals' abilities and needs will vary widely. Some may need to undertake a structured programme that will give them the necessary skills and knowledge. Others may already be sufficiently competent in respect of representational skills, knowledge of health and safety issues and current legislation so little or no initial special training will be required. Further training may be needed in the light of legislative changes, different working conditions, new hazards etc. You must pay any reasonable costs associated with such training, including any travel and subsistence costs.

120 The Management Regulations already require, among other things, that all employees are provided with adequate health and safety training when they are recruited and if they are to be exposed to new or increased risks. The need for further training must be considered when employees transfer or take on new responsibilities, and when there is a change in the work equipment or systems of work in use. Other regulations have more specific requirements. Details of many of these can be found on HSE's competence web pages at: www.hse.gov.uk/competence/industry-specific-competence.htm.

121 Once training needs are identified and agreed, you will have to identify sources. For information please see *Involving your workforce in health and safety* (HSG263)[1] and www.hse.gov.uk/involvement. There may be various possibilities, including:

(a) participation in health and safety training courses which trade unions run for the representatives they appoint under the Safety Representatives and Safety Committees Regulations 1977;*
(b) health and safety courses which may be offered by your trade association, specialist personnel organisations, the TUC, local Chambers of Commerce, colleges and similar institutions;
(c) distance learning materials.

* There are some differences in the legal functions of trade union safety representatives as compared with elected representatives of employee safety (the Safety Representatives and Safety Committees Regulations 1977 give trade union safety representatives the additional functions of undertaking inspections and investigations, for example). This means the training needed for them to carry out their statutory functions is not precisely the same.

Guidance 7

Preliminary arrangements for the election

122 When making the arrangements for electing representatives of employee health and safety, it may be useful to consider the following:

Constituencies

(a) The Regulations require that you consult those representatives elected by a group ('the constituency') in which the representative must be employed for the purposes of representation. There is no legal definition of the group. Constituencies may, for example, cover multiple sites if this is appropriate to your particular business. Elected representatives may well have to travel, for example, to consult dispersed or mobile constituents. The constituencies can be specified in the light of the circumstances that apply to your business – see paragraph (d) below for some factors you could bear in mind. There are no set rules on how the election must be organised, or which employees must be part of any particular constituency.

How often to hold elections

(b) In deciding what interval to allow between elections, you may take account of the benefits from giving any elected representative time to develop experience to improve the way they carry out the functions and responsibilities of the post. On the other hand, where your employees change quite frequently, someone elected a couple of years ago may no longer be the choice of the current workforce.*

Optional functions for elected representatives

(c) Elected representatives do not have to be confined to consultation on matters set out in these particular Regulations. For example, you might find it convenient to consult these representatives on matters other than health and safety. Alternatively, some employers have elected health and safety representatives who carry out investigations of accidents and complaints and sit on health and safety committees in the same way as representatives appointed under the Safety Representatives and Safety Committees Regulations 1977. It would need to be clear to all those taking part in the election that the elected representative(s) would include the particular functions and consultation rights provided for by these Regulations, as well as any others you wished to add.

Number of representatives

(d) When deciding how many representatives should be elected from a constituency, it may be useful to take into account:
   (i) the total numbers of employees to be represented;
   (ii) the variety of different groupings (eg by occupation, location, type of work or shift patterns) into which the employees might be divided;
   (iii) the nature of the work activities employees undertake and the degree and character of the health and safety risks to which some or all of them may be exposed.

* The Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 set out the requirements for offshore installations. These include that there must be at least two constituencies for every installation; limits are set for the size of constituencies (no fewer than three, no more than 40); and elections must be held at least every two years. But this model may not meet the health and safety needs of any other situation.

Guidance 7

Before the election

123 It is important that the election is properly conducted so that the result reflects the wishes of those in the constituency. In advance of the election, relevant employees should be aware of:

(a) which other employees or groups of employees are part of their constituency;
(b) the length of time the elected representative(s) will hold office;
(c) the nature of the health and safety functions of the elected representative(s).

How to conduct an election

124 Here are some general principles that may be followed, to make sure the election is fair and the representative(s) are independent of you:

(a) each of the employees to be represented must be able, if they wish, to stand as a candidate on an equal basis to any other, and without any cost or disadvantage to themselves;
(b) a candidate standing for election as a representative of employee health and safety must also be permitted reasonable time off with pay during working hours to perform their functions as a candidate;
(c) if the election is contested:
    (i) no one eligible to vote in the ballot is subjected to intimidation or interference from any source intended to influence the way in which they cast their vote;
    (ii) steps are taken to prevent the ballot papers from being tampered with at any stage (giving each one a serial number can be a useful further protection);
    (iii) as far as possible, each of the employees to be represented has an equal opportunity to cast their vote, without any cost or disadvantage to themselves, for the candidate or candidates of their choice;
    (iv) votes can be cast in secret;
    (v) the result is determined by the number of votes cast for each candidate;
(d) the election result is communicated, with sufficient information (eg on the number of votes cast for each candidate in a contested election), as soon as practicable, to all the candidates who stood and to the employees to be represented by the elected representative, eg through notices at relevant workplaces and/or company newsletters etc.

125 To make sure that the election is properly carried out, you might want to get help from an outside body. For more information about conducting elections and some organisations that help to organise workplace elections and provide independent scrutiny, see the worker involvement website at www.hse.gsi.gov.uk/involvement.

Regulation 8 Amendment of the Employment Rights Act 1996

Regulation 8

In sections 44(1) (health and safety cases: right not to suffer detriment) and 100(1) (health and safety cases: unfair dismissal) of the Employment Rights Act 1996, after paragraph (b) insert –

"(ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise),".

Guidance 8

Protection against detriment

126 None of your employees may suffer any detriment because of anything reasonable they do, or propose to do, in connection with consultation on health and safety matters. If you penalise an employee (for example, by denying them promotion or opportunities for extra earnings) or dismiss them for such a reason, they could complain to an employment tribunal.*

127 The same applies if you penalise an employee because:

(a) of participation in an election for a representative of employee health and safety;
(b) they are or have been a candidate in such an election; or
(c) because of the functions they perform as a representative of health and safety other than the duties they have under sections 7 and 8 of the 1974 Act, providing, of course, they are acting lawfully.

* These protections apply to any employee, regardless of the length of time they have been working for you.

Regulation 9 Exclusion of civil liability

Regulation 9

Breach of a duty imposed by these Regulations shall, subject to regulation 7(3) and Schedule 2, not confer any right of action in any civil proceedings.

Regulation 10 Application of health and safety legislation

Regulation 10

Sections 16 to 21, 23, 24, 26, 28, 33, 34, 36 to 39, 42(1) to (3) and 46 of the 1974 Act, the Health and Safety (Enforcing Authority) Regulations 1989 and the Health and Safety (Training for Employment) Regulations 1990 shall apply as if any references therein to health and safety regulations or to the relevant statutory provisions included references to these Regulations.

Guidance 10

128 This means that these Regulations are, regarding such matters as who enforces them and powers of inspection, the same as regulations made under the 1974 Act. In particular, they apply to non-employed trainees (see paragraph104).

Guidance 10

129 Health and safety inspectors (from HSE and local authorities) can advise on health and safety matters and enforce for failure to comply with legal duties on procedural matters (eg appointing representatives of employee health and safety rather than permitting employee elections where there are several candidates). They will apply HSE's *Enforcement policy statement*[4] in deciding what action to take. If there are any disagreements between employers and employees about the interpretation of these Regulations – with the exception of matters covered by Schedule 2, regulation 7(3) – they should be addressed through the normal process for resolving employment relations' disputes. In certain circumstances, it may be helpful to involve Acas.

Regulation 11 Application to the Crown and armed forces

Regulation 11

(1) Section 48 of the 1974 Act shall, subject to paragraph (2), apply in respect of these Regulations as it applies in respect of regulations made under Part I of that Act.

(2) These Regulations shall apply in respect of members of the armed forces of the Crown subject to the following –

(a) references to "representatives of employee safety" (in regulation 4(1)(b) and elsewhere) shall, in respect of any group of employees, be references to one or more persons in that group who were appointed by the employer to represent that group for the purposes of such consultation;
(b) references to "elected" and "re-elected" in regulation 4(3)(c) shall be, respectively, references to "appointed" and "re-appointed"; and
(c) regulation 7(1)(b), (2) and (3) shall not apply.

Regulation 12 Disapplication to sea-going ships

Regulation 12

These Regulations shall not apply to or in relation to the master or crew of a sea-going ship or to the employer of such persons in respect of the normal ship-board activities of a ship's crew under the direction of the master.

Regulation 13 Amendment of the 1977 Regulations

Regulation 13

In regulation 3(1) of the 1977 Regulations the words, "except in the case of employees employed in a mine within the meaning of section 180 of the Mines and Quarries Act 1954 which is a coal mine" shall be omitted.

Appendix 1 Requirements for information for employees in existing health and safety legislation

1 The following health and safety legislation requires employers to give information to their employees. It is for illustrative purposes only and is not intended to be exhaustive. You need to satisfy yourself of your obligations. Each entry contains a brief summary of what is required but you will need to find out your precise duties by checking the relevant legislation or from the publications listed in the 'References' section.

2 In addition to requirements for information for employees in health and safety legislation, there are broader requirements in Employment Law under the Information and Consultation of Employees (ICE) Regulations 2004, introduced on 6 April 2005.[12] They apply to all businesses with 50 or more employees. For more information about what the ICE Regulations require you to inform and consult your employees about, visit www.acas.org.uk for practical advice or www.berr.gov.uk/employment.

General health and safety

Health and Safety at Work etc Act 1974[6]

Section 2: General duties of employers to their employees

3 Every employer has a duty to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees, including the provision of information, instruction, training and supervision.

Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)[8]

4 Information including:

(a) risks to health and safety identified by risk assessments;
(b) preventive and protective measures;
(c) procedures for dealing with serious and imminent danger (including who is responsible for implementing the procedures such as dealing with evacuation);
(d) for temporary employees on fixed contracts, any special occupational skills or qualifications needed for the work and any requirements for health surveillance;
(e) where you employ a child, to provide a parent of the child with information on risks to health and safety and preventive and protective measures.

5 The employer must also ensure that any person working in their undertaking who is not their employee (and every self-employed person) is provided with appropriate instructions and comprehensible information regarding risks to their health and safety, and sufficient information to identify competent persons to implement evacuation procedures.

Employers' Liability (Compulsory Insurance) Act 1969[11]

6 Employers must display copies of the certificate of insurance for the information of their employees.

Health and Safety (First Aid) Regulations 1981 (SI 1981/917)[12]

7 First-aid arrangements: including facilities, responsible personnel and where first-aid equipment is kept.

Health and Safety (Safety Signs and Signals) Regulations 1996 (SI 1996/341)[13]

8 Each employee must be given comprehensible and relevant information on the measures to be taken in connection with safety signs.

Health and Safety Information for Employees Regulations 1989 (SI 1989/682)

9 Information about employees' health and safety welfare in the form of:

(a) an approved poster[14] to be displayed where it is reasonably accessible to the employee and in such a position where it can be easily seen and read by that employee as soon as is reasonably practicable after any employees are taken on; or
(b) an approved leaflet to be given to employees as soon as practicable after they start.

Health and Safety (Consultation with Employees) Regulations 1996 (SI 1996/1513)

10 Necessary information to enable those employees who are not represented by representatives under the Safety Representatives and Safety Committees Regulations 1977 to fully take part in consultation under those Regulations, any records to be kept under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995[15] and any health and safety information under any other statutory provision. See paragraph 106 of this book.

Safety Representatives and Safety Committees Regulations 1977 (SI 1977/500)

11 Necessary information to assist the work of safety representatives nominated in writing by a recognised trade union. (See also Railways and Other Guided Transport (Safety) Regulations 2006.[16])

Health hazards

Control of Asbestos Regulations 2012 (SI 2012/632)[17]

12 Information to those who are or who are liable to be exposed to asbestos, or supervise such employees and those who carry out work in connection with the employer's duties under these Regulations, on:

(a) the properties of asbestos and its effects on health (including interaction with smoking);
(b) the types of products likely to contain it;
(c) operations which could result in asbestos exposure and the importance of preventive controls to minimise exposure;
(d) safe work practices, control measures and protective equipment;
(e) the purpose, choice, limitations, proper use and maintenance of respiratory protective equipment;
(f) emergency procedures;
(g) hygiene requirements;

(h) decontamination procedures;
(i) waste-handling procedures;
(j) medical examination requirements;
(k) control limit and the need for air monitoring;
(l) the significant findings of risk assessments;
(m) the results of air monitoring, with an explanation of the findings.

13 The information and instruction must be given at regular intervals, adapted to take account of significant changes in the type or methods of work carried out and provided in a manner appropriate to the nature and degree of exposure identified by the risk assessment.

Control of Lead at Work Regulations 2002 (SI 2002/2676)[18]

14 Suitable and sufficient information to employees who are liable to exposure to lead. The information must be adapted to take account of significant changes in the type of work or methods of work used, and provided in a manner appropriate to the level, type and duration of exposure identified by the risk assessment. This includes information on:

(a) the form of lead (the risks it presents, any relevant occupational exposure limit, action level and suspension level, access to any relevant safety data sheet, and any other provisions concerning the hazardous properties of that form of lead);
(b) the significant findings of the risk assessment;
(c) appropriate precautions and actions to be taken by employees to safeguard themselves and other employees;
(d) the results of any monitoring of exposure to lead;
(e) the collective results of any medical surveillance (in a form so that they cannot be identified as relating to a particular person).

15 You also have to provide suitable and sufficient information, instruction and training to any person who carries out work under the Regulations whether or not they are your employee.

Control of Noise at Work Regulations 2005 (SI 2005/1643)[19]

16 Information, where there is exposure to noise at or above a lower exposure action value (daily or weekly personal noise exposure of 80 dB (A-weighted)), and a peak sound pressure of 135 dB (C-weighted), on:

(a) the nature of the risks from exposure to noise;
(b) the measures taken to comply with obligations to eliminate or control exposure to noise;
(c) exposure limit values and upper and lower exposure action values;
(d) the significant findings of risk assessments, any measurements taken and explanation of findings;
(e) the availability and correct use of personal hearing protectors;
(f) why and how to detect and report signs of hearing damage;
(g) the entitlement to health surveillance where there is a risk to health, and its purposes;
(h) safe working practices to minimise exposure to noise;
(i) the collective results of any health surveillance.

17 The information must be updated to take account of significant changes in the type of work carried out or the working methods you use. You must also provide suitable and sufficient information to anyone (not just your employees), who carry out work in connection with your duties.

Control of Substances Hazardous to Health Regulations 2002 (SI 2002/2677)[20]

18 Suitable and sufficient information must be given to employees who are liable to exposure to a substance hazardous to health. The information must be adapted to take account of significant changes in the type of work or methods of work used, and provided in a manner appropriate to the level, type and duration of exposure identified by the risk assessment. This includes information on:

(a) details of the substances (including names, the risks to health they present, any relevant workplace exposure limit or similar occupational exposure limit, access to the relevant data sheet, and other legislative provisions which concern the hazardous properties of those substances);
(b) the significant findings of risk assessments;
(c) appropriate precautions and actions to be taken by employees to safeguard themselves and others;
(d) the results of any required exposure monitoring, including providing information immediately if a workplace exposure limit has been exceeded;
(e) the collective results of any required health surveillance, provided they cannot be identified as relating to a particular person;
(f) written instructions for employees working with a Group 4 biological agent or material that may contain such an agent and if appropriate the display of notices which outline procedures for handling the material.

19 You also have to provide suitable and sufficient information, instruction and training to any person who carries out work under the Regulations whether or not they are your employee.

Control of Vibration at Work Regulations 2005 (SI 2005/1093)[21,22]

20 Where, as a result of health surveillance, an employee is found to have a disease or adverse health effect from exposure to vibration, employers must ensure that a suitably qualified person informs the employee and provides them with information and advice regarding any further health surveillance they should undergo.

21 Suitable and sufficient information and instruction must be given to employees and their representatives who are, or are liable to be, exposed to vibration if identified by risk assessment, or if employees are likely to be exposed to vibration at or above an exposure action value. The information must be adapted to take account of significant changes in the type or methods of work used by the employer. This includes information on:

(a) the measures taken to comply with regulation 6 to eliminate or reduce the risk of exposure to vibration at source;
(b) the exposure limit values and action values set out in regulation 4;
(c) the significant findings of the risk assessment, including any measurements taken, with an explanation of those findings;
(d) why and how to detect and report signs of injury;
(e) entitlement to appropriate health surveillance and its purposes;
(f) safe working practice to minimise exposure to vibration;
(g) the collective results of any required health surveillance, provided they cannot be identified as relating to a particular person.

22 Employers must ensure that any person, whether or not their employee, who carries out work in connection with the employer's duties under these Regulations has suitable and sufficient information and instruction.

Health and Safety (Display Screen Equipment) Regulations 1992 as amended by the Health and Safety (Miscellaneous Amendments) Regulations 2002 (SI 1992/2792)[23]

23 Health and safety information must be given about their workstations to both operators and users, and information on the measures taken to carry out an analysis of the workstations, and to ensure that the workstations meet the requirements set out in the Regulations. (The Regulations define who is an operator and who is a user.)

Ionising Radiations Regulations 1999 (SI 1999/3232)[24]

24 The Regulations require:

(a) suitable and sufficient information and instruction to enable employees working with ionising radiations to know:
  (i) the risks to health created by exposure;
  (ii) precautions which should be taken;
  (iii) the importance of complying with medical, technical and administrative requirements;
(b) adequate information to be given to other people who are directly concerned with ionising radiation work you are doing;
(c) information for female employees on the possible hazard to the unborn child and to a nursing infant and the importance of telling the employer as soon as they find out they are pregnant or if they are breastfeeding.

Radiation (Emergency Preparedness and Public Information) Regulations 2001 (SI 2001/2975)[25]

25 Where the risk assessment shows that it is reasonably foreseeable that a radiation emergency might arise, the operator must provide suitable and sufficient information and instruction for any employee who may be involved with or affected by arrangements in the operator's emergency plan.

Manual Handling Operations Regulations 1992 (SI 1992/2793)[26]

26 General indications to employees undertaking any manual handling operations and, where reasonably practicable, information on:

(a) the weight of loads for employees undertaking manual handling;
(b) the heaviest side of any load whose centre of gravity is not positioned centrally.

Safety hazards

Provision and Use of Work Equipment Regulations 1998 (SI 1998/2306)[27]

27 Adequate health and safety information and, where appropriate, written instructions must be given to employees and their supervisors or managers regarding the use of work equipment, including:

(a) conditions and methods of use of work equipment (including hand tools);
(b) foreseeable abnormal situations and what to do if such a situation were to occur;
(c) conclusions to be drawn from experience in using the work equipment.

Personal Protective Equipment at Work Regulations 1992 (SI 1992/2966)[28]

28 Employers must provide information to employees and ensure that such information is kept available to them on:

(a) the risk(s) that the personal protective equipment (PPE) will avoid or limit;
(b) the PPE's purpose and the way it must be used;
(c) what their employees need to do to keep the PPE in working order and good repair.

Special hazards

Borehole Sites and Operations Regulations 1995 (SI 1995/2038)[29]

29 An operator must ensure that the health and safety document is available to each employer at work at the site. The health and safety document must demonstrate that the risks to which people at the borehole site are exposed to have been assessed and that adequate measures concerning the design, use and maintenance of the borehole site and of its plant will be taken, and how these measures will be co-ordinated.

30 The health and safety document should, where appropriate, also include:

(a) an escape plan in the event of danger and an associated rescue plan;
(b) a plan for the prevention of fire and explosions including provisions for preventing blowouts and uncontrolled escape of flammable gases and for detecting the presence of flammable atmospheres;
(c) a fire protection plan detailing the likely sources of fire and the precautions to be taken;
(d) where hydrogen sulphide or other harmful gases are or may be present, a plan for the detection and control of such gases to protect employees from them.

31 Where the owner is not the operator of a borehole site, they must provide the operator with all information in his possession needed to perform his duties under these Regulations.

Construction (Design and Management) Regulations 2007 (SI 2007/320)[10]

32 There are detailed requirements on the information to be provided to HSE or the Office of Rail Regulation and obligations on the principal contractor to provide information to workers relating to the planning and management of the project, or which otherwise may affect their health, safety or welfare at the site (except in the conditions provided in the Regulations).

33 There are detailed regulations regarding information and training of construction workers. For example, every contractor shall provide every worker carrying out the construction work under their control with any information and training which they need for the particular work to be carried out safely and without risk to health, including:

(a) suitable site induction, where not provided by any principal contractor;
(b) information on the risks to their health and safety:
    (i) identified by their risk assessment under regulation 3 of the Management of Health and Safety at Work Regulations 1999; or
    (ii) arising out of the conduct by another contractor of their undertaking and of which they are, or ought reasonably to be, aware;
(c) the measures identified by the contractor in consequence of the risk assessment as the measures they need to take to comply with the

requirements and prohibitions imposed upon them by or under the relevant statutory provisions;
(d) any site rules;
(e) the procedures to be followed in the event of serious and imminent danger to such workers;
(f) the identity of the people nominated to implement those procedures.

34 In addition, the principal contractor has the duties to take all reasonable steps to ensure that every worker carrying out the construction work is provided with:

(a) a suitable site induction;
(b) the information and training required to be provided by a contractor;
(c) any further information and training needed for the particular work to be carried out without undue risk to health or safety.

Dangerous Substances and Explosive Atmospheres Regulations 2002 (SI 2002/2776)[30]

35 Suitable and sufficient information must be given to employees where a dangerous substance is present at the workplace. The information must be adapted to take account of significant changes in the type of work carried out or methods of work used by the employer, and provided in the manner appropriate to risk assessment:

(a) appropriate precautions and actions to be taken by the employee;
(b) the details of the substance including the name of the substance and the risk which it presents, access to any relevant safety data sheet and legislative provisions concerning the hazardous properties of the substance;
(c) the significant findings of the risk assessment.

36 Employers must also ensure that information on emergency procedures and arrangements, details of relevant hazards, hazard identification arrangements and specific hazards likely to arise at the time of an accident, incident or emergency, is displayed at the workplace unless the results of the risk assessment make this unnecessary.

Dangerous Substances in Harbour Areas Regulations 1987 (SI 1987/37)[31]

37 Information for employees handling dangerous substances to ensure their own health and safety (and that of others).

Mines and Quarries Act 1954[7]

38 Requirements for employers to provide a book containing information with respect to the Act and Orders and regulations thereunder to every person employed at the mine.

Management and Administration of Safety and Health at Mines Regulations 1993 (SI 1993/1897)[32]

39 A written statement of general policy regarding health and safety of employees, the organisation and arrangements to carry out the policy, and details of information to be provided to surveyors and to HSE.

Mines Miscellaneous Health and Safety Provisions Regulations 1995 (SI 1995/2005)[33]

40 The owner of a mine must ensure that no work is to be carried out at the mine unless the health and safety document has been prepared and was made available to each employer at work. The health and safety document must demonstrate that the risks to people at work have been assessed, and that adequate measures (including measures concerning the design, use and maintenance of the mine and

its equipment) have been taken to safeguard the health and safety of the people at work, and how the measures referred to will be co-ordinated.

41 The health and safety document shall, where appropriate, also include:

(a) a plan detailing the equipment and measures required to protect people at work at the mine from the risk of explosion;
(b) a fire protection plan detailing the likely sources of fire, and the precautions to be taken;
(c) where toxic gases are or may be present in the atmosphere in such concentration that it may be harmful to the health of people at work, a plan detailing the protective equipment and measures required;
(d) in any zone below ground where rockbursts or gas outbursts may occur, an operating plan setting out the susceptible zones and the measures necessary for the protection of people at work in, approaching or traversing such zones.

42 The owner must ensure that the health and safety document is kept up to date and revised where necessary.

Quarries Regulations 1999 (SI 1999/2024)[34]

43 The owner of every quarry must ensure that the health and safety document is made available to each employer of people at work at the quarry and to all people at work at the quarry. The health and safety document must:

(a) demonstrate that the risks to people at work at the quarry have been assessed;
(b) demonstrate that adequate measures, including measures concerning the design, use and maintenance of the quarry and of its plant, will be taken to safeguard the health and safety of the people at work at the quarry and people in the area immediately surrounding the quarry who are directly affected by its activities;
(c) includes a statement of how the measures referred to will be co-ordinated;
(d) gives details of the management structure and sets out the authority and duties of each person in the management structure;
(e) record the information concerning rules and systems in place and arrangements for the review of health and safety measures (as detailed in the Regulations).

44 The health and safety document shall where appropriate, also include:

(a) a plan detailing the equipment and measures required to protect people at work at the quarry from the risk of explosion;
(b) where toxic gases are or may be present in the atmosphere in such concentration that it may be harmful to the health of people at work, a plan detailing the protective equipment and measures required;
(c) a diagram of the quarry indicating those areas to which these Regulations do not apply.

45 The owner must ensure that the health and safety document is kept up to date and revised where necessary.

Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 (SI 2006/2183)[35]

46 Health and safety information and, where appropriate, written instructions relating to the use of work equipment for all workers who use the work equipment and those supervising or managing them, including:

(a) the conditions in which, and the methods by which, the work equipment may be used;
(b) foreseeable abnormal situations and the actions to be taken if such a situation were to occur;
(c) any conclusions to be drawn from experience in using the work equipment.

47 Employers also need to ensure that every worker is made aware of:

(a) any dangers relevant to them;
(b) work equipment present in the work area or site;
(c) any changes affecting them and work equipment situated in their immediate work area or site, even if they do not use such equipment directly.

48 The information must be readily available and comprehensible to a worker who is, or may be about to use, the work equipment and any worker supervising or managing them.

Nuclear Installations Act 1965 (as amended)[36]

49 Employers who hold site licences must give information on safety, and effective implementation of emergency arrangements.

Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 (SI 1989/971)[3]

50 The installation owner, the installation manager and the employer have a duty to make available to safety representatives the information relating to occupational health and safety within their knowledge to enable them to fulfil their functions (with the exception as detailed in the Regulations).

51 They must also make available to safety representatives and safety committees any documents relating to the occupational health and safety of the workforce required by statutory provisions to be kept on the offshore installation, except the health record of an identifiable individual.

52 The installation owner must ensure that at least one copy of these Regulations is readily available on the installation for inspection by the workforce.

Pressure Systems Safety Regulations 2000 (SI 2000/128)[37]

53 Operators (employees) of installed, or owners of, mobile pressure systems must be informed about safe operation of the system, and action to be taken in the case of an emergency.

54 There are also obligations for the information to be provided by designers or suppliers and those modifying or repairing a pressure system or part of it.

Railways and Other Guided Transport (Safety) Regulations 2006 (SI 2006/599)[38]

55 See the Regulations for details on the information to be provided in applications for safety certificates including how to ensure workers are carrying out work in accordance with relevant statutory provisions relating to safety. Safety representatives must be consulted on the preparation or revision of safety certificates or safety authorisations, or if an employer sends a notice to the Office of Rail Regulation under regulation 13 (Notice of changes), or under paragraph 9, Schedule 5 (Notices where the safety case is materially different).

Work in Compressed Air Regulations 1996 (SI 1996/1656)39

56 The compressed air contractor must ensure that adequate information has been given to any person who works in compressed air so that they are aware of the risks arising from such work and the precautions to be taken.

Appendix 2 Requirements for instruction and training for employees in existing health and safety legislation

1 The following are examples of health and safety legislation which require employers to instruct and train their employees. This list is for illustrative purposes only and is not intended to be exhaustive. You need to satisfy yourself of your obligations. Each entry contains a brief summary of what is required but you will need to find out your precise duties from the publications listed in the 'References' section.

General health and safety

Health and Safety at Work etc Act 1974[6]

Section 2: General duties of employers to their employees

2 Every employer has a duty to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees, including the provision of information, instruction, training and supervision.

3 Health and safety training:

(a) on recruitment of new employees;
(b) on being exposed to new or increased risks because of:
  (i) a transfer or change of responsibility;
  (ii) new work equipment or a change to existing equipment;
  (iii) new technology;
  (iv) new system of work or change to the existing system;
(c) the training must be repeated periodically as appropriate and adapted to take account of new or changed risks to health and safety and takes place during working hours.

Health and Safety (First Aid) Regulations 1981 (SI 1981/917)[12]

4 First -aiders provided under the Regulations must have appropriate training and qualifications.

Health and Safety (Safety Signs and Signals) Regulations 1996 (SI 1996/341)[13]

5 Each employee must be given suitable and sufficient instruction and training on:

(a) the meaning of safety signs;
(b) measures to be taken in connection with safety signs.

Health and Safety (Consultation with Employees) Regulations 1996 (SI 1996/1513)

6 Training for employee representatives in their functions as representatives (as is reasonable in the circumstances). You are required to meet the reasonable costs of this training, including travel and subsistence and giving such time off with pay as is necessary to perform the functions of a health and safety representative or for training. See paragraphs 119 and 120 of this book.

Safety Representatives and Safety Committees Regulations 1977 (SI 1977/500)

7 Employers must allow such time off with pay as is necessary for safety representatives to perform their functions and to undergo training in aspects of their functions as may be reasonable in all the circumstances.

Health hazards

Control of Asbestos Regulations 2012 (SI 2012/632)[17]

8 Adequate instruction and training to employees who are, or who are liable to be, exposed to asbestos, or supervise such employees, and those who carry out work in connection with the employer's duties on:

(a) the properties of asbestos and its effects on health (including interaction with smoking);
(b) the types of products likely to contain it;
(c) operations which could result in asbestos exposure and the importance of preventive controls to minimise exposure;
(d) safe work practices, control measures and protective equipment;
(e) the purpose, choice, limitations, proper use and maintenance of respiratory protective equipment;
(f) emergency procedures;
(g) hygiene requirements;
(h) decontamination procedures;
(i) waste-handling procedures;
(j) medical examination requirements;
(k) control limit and need for air monitoring;
(l) the significant findings of risk assessments;
(m) the results of air monitoring with an explanation of the findings.

9 The instruction and training must be given at regular intervals, adapted to take account of significant changes in the type or methods of work and provided in a manner appropriate to the nature and degree of exposure identified by the risk assessment.

Control of Lead at Work Regulations 2002 (SI 2002/2676)[18]

10 Training for employees who are liable to be exposed to lead. The information must be adapted to take account of significant changes in the type of work or methods of work used, and provided in a manner appropriate to the level, type and duration of exposure identified by the risk assessment. This includes information on:

(a) the form of lead (the risks it presents, any relevant occupational exposure limit, action level and suspension level, access to any relevant safety data sheet, and any other provisions concerning the hazardous properties of that form of lead);
(b) the significant findings of the risk assessment;
(c) appropriate precautions and actions to be taken by employees to safeguard themselves and other employees;
(d) the results of any monitoring of exposure to lead;
(e) the collective results of any medical surveillance (in such a format that they cannot be identified as relating to a particular person).

11 You also have to provide suitable and sufficient information, instruction and training to any person who carries out work under the Regulations, whether or not they are your employee.

Control of Noise at Work Regulations 2005 (SI 2005/1643)[19]

12 Instruction and training for employees (and their representatives) who are exposed to noise likely to be at or above a lower exposure action value, including:

(a) the nature of the risks from exposure to noise;
(b) organisational and technical measures taken to eliminate or control exposure to noise;
(c) exposure limit values and upper and lower exposure action values (set out in the Regulations);
(d) the significant findings of a risk assessment, including any measures taken, with an explanation;
(e) the availability and provision of personal hearing protectors and their correct use;
(f) why and how to detect and report signs of hearing damage;
(g) entitlement to health surveillance and its purposes;
(h) safe working practices to minimise exposure to noise;
(i) the results of any health surveillance.

13 The training must be updated to take account of significant changes in the type of work carried out or the working methods you use. You must also provide suitable and sufficient training to anyone (not just your employees), who carries out work in connection with your duties.

Control of Substances Hazardous to Health Regulations 2002 (SI 2002/2677)[20]

14 Instruction and training for people who may be exposed to substances hazardous to health in:

(a) the details of the substances (as set out in the Regulations);
(b) the significant findings of a risk assessment;
(c) the precautions and actions to be taken by employees to safeguard themselves and other employees;
(d) the results of any monitoring of exposure, particularly if a workplace exposure limit is exceeded;
(e) the collective results of any required health surveillance;
(f) written instructions and, if appropriate, the display of notices outlining the procedures for handling a Group 4 biological agent or material containing it.

15 The instruction and training must be adapted to take account of significant changes in the type or methods of work and provided in a manner appropriate to the level, type and duration of exposure identified by the risk assessment. Employers must ensure that any person (whether or not their employee) who carries out work in connection with the employer's duties under these Regulations has suitable and sufficient instruction and training.

Control of Vibration at Work Regulations 2005 (SI 2005/1093)[21,22]

16 Suitable and sufficient instruction and training to employees and their representatives who are liable to be exposed to vibration if identified by risk assessment, or if employees are likely to be exposed to vibration at or above an exposure action value. The instruction and training must be adapted to take account of significant changes in the type or methods of work and comprehensible to employees. This includes:

(a) the measures taken to comply with the requirements of regulation 6 to eliminate or reduce the risk of exposure to vibration at source;
(b) the exposure limit values and action values set out in regulation 4;

(c) the significant findings of the risk assessment, including any measurements taken, with an explanation of those findings;
(d) why and how to detect and report signs of injury;
(e) entitlement to appropriate health surveillance and its purposes;
(f) safe working practice to minimise exposure to vibration;
(g) the collective results of any required health surveillance, provided they cannot be identified as relating to a particular person.

17 The employer must ensure that any person, whether or not his employee, who carries out work in connection with the employer's duties under these Regulations has suitable and sufficient instruction and training.

Genetically Modified Organisms (Contained Use) Regulations 2014 (SI 2014/1663)[40]

18 Training and formulating local codes of practice for the safety of employees whose work involves genetically modified organisms.

Health and Safety (Display Screen Equipment) Regulations 1992 (SI 1992/2792)[23]

19 Adequate health and safety training in the use of any workstation to be used, including if the workstation is substantially modified.

Ionising Radiations Regulations 1999 (SI 1999/3232)[24]

20 Appropriate training on radiation protection and suitable and sufficient instructions to enable employees working with ionising radiations to meet the requirements of the Regulations. For example, to know the risks to health created by exposure, precautions to take, the importance of complying with medical, technical and administrative requirements of the Regulations, together with training under the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005.

Radiation (Emergency Preparedness and Public Information) Regulations 2001 (SI 2001/2975)[25]

21 Where the risk assessment shows that it is reasonably foreseeable that a radiation emergency might arise, the operator must ensure that any employee who may be involved with or affected by arrangements in the operator's emergency plan is provided with suitable and sufficient information, instruction and training.

Registration, Evaluation, Authorisation of Chemicals Regulation (REACH)[44]

22 Safety data sheets or the information they contain to be made available to employees (or their appointed representatives).

Safety hazards

Provision and Use of Work Equipment Regulations 1998 (SI 1998/2306)[27]

23 Written instructions to employees and for those who manage or supervise them regarding the use of work equipment where appropriate, including:

(a) conditions and methods of use of work equipment (including hand tools);
(b) foreseeable abnormal situations and what to do if such a situation were to occur;
(c) conclusions to be drawn from experience in using the work equipment.

24 Adequate training for employees who use work equipment (including hand tools) and those who manage or supervise them in:

(a) methods which must be used;
(b) any risks from use and precautions to be taken.

Personal Protective Equipment at Work Regulations 1992 (SI 1992/2966)[28]

25 Employees who must be provided with personal protective equipment (PPE) need instruction and training in:

(a) risk(s) the PPE will avoid or limit;
(b) the PPE's purpose and the way it must be used;
(c) how to keep the PPE in an efficient state and working order and good repair;
(d) how to wear it (with demonstrations).

Work at Height Regulations 2005 (SI 2005/735)[41]

26 You should make sure that people with sufficient skills, knowledge and experience are employed to perform the task or, if they are being trained, that they work under the supervision of somebody competent to do it.

Special hazards

Borehole Sites and Operations Regulations 1995 (SI 1995/2038)[29]

27 Written instructions for employees who may be affected where borehole operations are carried out, containing:

(a) rules necessary for ensuring the health and safety of their employees;
(b) the use of emergency equipment and the action to be taken in an emergency.

Construction (Design and Management) Regulations 2007 (SI 2007/320)[10]

28 There are detailed regulations regarding information and training of construction workers. For example, every contractor shall provide every worker carrying out the construction work under their control with any information and training which they need for the particular work to be carried out safely and without risk to health, including:

(a) suitable site induction, where not provided by any principal contractor;
(b) information on the risks to their health and safety:
    (i) identified by risk assessment under regulation 3 of the Management of Health and Safety at Work Regulations 1999; or
    (ii) arising out of the conduct by another contractor of their undertaking and of which they are, or ought reasonably to be, aware;
(c) the measures identified by the contractor in consequence of the risk assessment as the measures they need to take to comply with the requirements and prohibitions imposed upon them by or under the relevant statutory provisions;
(d) any site rules;
(e) the procedures to be followed in the event of serious and imminent danger to such workers;
(f) the identity of the people nominated to implement those procedures.

29 Every contractor must also provide employees with any health and safety training which they are required to provide to them in respect of the construction work under the Management of Health and Safety at Work Regulations 1999.

30 In addition, the principal contractor has the duties to ensure that every worker carrying out the construction work is provided with:

(a) a suitable site induction;
(b) the information and training which was to be provided by a contractor; and
(c) any further information and training needed for the work to be carried out without undue risk to health or safety.

Control of Major Accident Hazards Regulations 1999 (SI 1999/743)[42]

31 There is a general duty to take all measures necessary to prevent accidents and limit their consequences to people and the environment. This will include training.

Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007 (SI 2007/1573)[43]

32 There are detailed requirements on the carriage of dangerous goods and the use of transportable pressure equipment, including training to be provided.

Dangerous Substances and Explosive Atmospheres Regulations 2002 (SI 2002/2776)[30]

33 Suitable and sufficient instruction and training to employees where a dangerous substance is present at the workplace. The instruction and training must be adapted to take account of significant changes in the type of work carried out or methods of work, and provided in the manner appropriate to the risk assessment:

(a) appropriate precautions and actions to be taken by the employee;
(b) the details of the substance including the name of the substance and the risk presented, access to any relevant safety data sheet and legislative provisions concerning the hazardous properties of the substance;
(c) the significant findings of the risk assessment.

Dangerous Substances in Harbour Areas Regulations 1987 (SI 1987/37)[31]

34 Employees handling dangerous substances to be instructed and trained to ensure their own health and safety (and that of others).

Management and Administration of Safety and Health at Mines Regulations 1993 (SI 1993/1897)[32]

35 No person to do any work unless:

(a) they have received adequate instruction in, and training for, the doing of that work and is competent;
(b) they do so under the instruction and supervision of someone who is competent to give instructions in and supervise the work for training purposes.

Quarries Regulations 1999 (SI 1999/2024)[34]

Training and competence

36 The operator must ensure that any person who undertakes any work at the quarry is competent to do that work or being under the instruction and supervision of a competent person for the purpose of training them.

Instructions, rules and schemes

37 The operator must ensure that copies of all current instructions, rules and schemes required under these Regulations to secure the safe use of equipment and the health and safety of people at work at the quarry and immediately surrounding areas are kept at the quarry and given to any person at work who has duties under these Regulations. They must be comprehensible to all people at

work. The operator must ensure that each person at work at the quarry understands any rules required under these Regulations relevant to them.

Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 (SI 2006/2183)[35]

38 Written instructions on the use of work equipment, where appropriate, for employees who use the work equipment and those supervising or managing them, including:

(a) conditions and methods of use of work equipment (including hand tools);
(b) foreseeable abnormal situations and what to do if such a situation were to occur;
(c) conclusions to be drawn from experience in using the work equipment.

Nuclear Installations Act 1965 (as amended) – Nuclear Site License Conditions[36]

39 The licensee must ensure that every person to be authorised to be on the site receives adequate instruction about the risks and hazards associated with the plant and its operation. These instructions should cover the actions to be taken in the event of an accident or emergency on the site.

Training requirements

40 The licensee must make and implement adequate arrangements for suitable training for those who have responsibility for any operations which may affect safety.

Operating instructions

41 The licensee must ensure that all operations which may affect safety are carried out in accordance with operating instructions.

Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 (SI 1989/971)[3]

42 Training for safety representatives in their functions as safety representatives (as reasonable in the circumstances). The employer must meet any reasonable costs associated with the training including travel and subsistence.

Pressure Systems Safety Regulations 2000 (SI 2000/128)[37]

43 Operators of installed or mobile pressure systems to be instructed on:

(a) safe operation of the system;
(b) action to be taken in the case of an emergency.

Work in Compressed Air Regulations 1996 (SI 1996/1656)[39]

44 Adequate information, instruction and training for any person who works in compressed air so that they are aware of the risks and the precautions that need to be taken.

Appendix 3 Requirements to consult health and safety representatives and/or employees in existing health and safety legislation

1 The following are examples of health and safety legislation which contain specific requirements for employers to consult health and safety representatives and/or employees. This list is for illustrative purposes only and is not intended to be exhaustive. You need to satisfy yourself of your obligations. Each entry contains a brief summary of what is required but you will need to find out your precise duties from the publications listed in the 'References' section.

General health and safety

Health and Safety (Consultation with Employees) Regulations 1996 (SI 1996/1513)

2 Requirements for employers to consult their employees, either directly or through their representatives, in good time on matters relating to their health and safety at work.

3 See regulation 3 of the Health and Safety (Consultation with Employees) Regulations 1996 and guidance notes.

Safety Representatives and Safety Committees Regulations 1977 (SI 1977/500)

4 Employers must consult safety representatives in good time with regard to matters concerning their health and safety at work.

5 See regulation 4(A) of the Safety Representatives and Safety Committees Regulations 1977 and accompanying guidance.

Health hazards

Control of Asbestos Regulations 2012 (SI 2012/632)[17]

6 The introduction to HSE's guidance on the Regulations states that proper consultation with those who do the work, including all those who may be affected by the presence of asbestos in their workplace, is crucial in helping to raise awareness of the importance of health and safety.

Control of Noise at Work Regulations 2005 (SI 2005/1643)[19]

7 Requirements for employers who carry out work which is liable to expose any employees to noise at or above a lower exposure action value to consult the employees concerned or their representatives on:

(a) risk assessment;
(b) the measures to be taken to eliminate or reduce the exposure to noise at the workplace to as low a level as is reasonably practicable.

Control of Substances Hazardous to Health Regulations 2002 (SI 2002/2677)[20]

8 The Approved Code of Practice makes clear that employers should consult their employees and their safety representatives on any measures introduced as a result of a risk assessment

9 The guidance suggests that employers may wish to involve employees and/or safety representatives when carrying out and reviewing risk assessments as it's a good way of helping to manage health and safety risk.

Control of Vibration at Work Regulations 2005 (SI 2005/1093)[21,22]

10 The guidance on these Regulations suggests that employers should discuss with employees and/or their representatives any proposed changes in the workplace which might affect their health and safety and consult safety or employee representatives on the proposal for controlling the risk from vibration exposure following risk assessment findings.

Ionising Radiations Regulations 1999 (SI 1999/3232)[24]

11 Employers must consult any affected employees before putting into effect a system of dose limitation, and inform any employees affected and the approved dosimetry service in writing of the decision and the reasons for that decision.

12 The Approved Code of Practice makes clear that employers should consult the appointed safety representatives or employees and, where appropriate, any established safety committee about the introduction of new measures at the workplace which may affect the health and safety of the employees.

Radiation (Emergency Preparedness and Public Information) Regulations 2001 (SI 2001/2975)[25]

13 Operators must consult their employees, and any person carrying out work on their behalf, on the preparation and review of the operator's emergency plan to secure the restriction of exposure to ionising radiation and the health and safety of people who may be affected by such emergencies, as are identified by the risk assessment.

Special hazards

Construction (Design and Management) Regulations 2007 (SI 2007/320)[10]

14 The principal contractor must:

(a) make and maintain arrangements to enable them and the workers engaged in the construction work to co-operate effectively in promoting and developing measures to ensure the health, safety and welfare of the workers and in checking the effectiveness of those measures;
(b) consult workers or their representatives in good time on matters connected with the project which may affect their health, safety or welfare, unless they or their representatives are consulted on those matters by their employers;
(c) ensure that workers or their representatives can inspect and take copies of any information which the principal contractor has, or which these Regulations require to be provided to them relating to the planning and management of the project, or which otherwise may affect their health, safety or welfare at the site (with the exception as detailed in the Regulations).

Control of Major Accident Hazards Regulations 1999 (SI 1999/743)[42]

15 Requirements for the operator to consult workers on the preparation of the on-site emergency plan.

Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 (SI 1989/971)[3]

16 Installation owners and installation managers must consult safety representatives on the arrangements for effective co-operation in promoting and developing measures to ensure the health and safety of people working on or from the installation, and in checking the effectiveness of such arrangements.

17 Requirements for the dutyholder (the installation owner/operator) to consult safety representatives in good time on:

(a) the revision, review or preparation of a safety case relating to the installation under the Offshore Installations (Safety Case) Regulations 1992;
(b) the introduction of any measure which may substantially affect the health and safety of the workforce;
(c) the health and safety consequences arising from the introduction of new technologies to the installation;
(d) the arrangements for the appointment of competent persons to undertake emergency duties.

18 Requirements for the dutyholder (the installation owner/operator) and employer to consult safety representatives in good time on:

(a) any health and safety information they are required to provide to members of a workforce by or under the relevant statutory provisions;
(b) the planning and organisation of any health and safety training they are to provide to members of a workforce by or under the relevant statutory provisions.

19 In addition, employers must consult safety representatives about the arrangements for appointing competent persons to assist them in complying with the Regulations.

20 See the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 for more details.

Quarries Regulations 1999 (SI 1999/2024)[34]

21 Operators must make and maintain arrangements which will enable them and people who regularly work at the quarry to co-operate effectively in promoting and developing measures to ensure the health, safety and welfare of those people and in checking the effectiveness of such measures.

22 A committee of people with suitable practical experience of quarrying operations may be appointed for this purpose. The functions of the members of this committee include inspections, scrutiny of documents kept at the quarry in compliance with the statutory provisions, review of risk assessment and measures to safeguard the health and safety of people working at the quarry, and to suggest improvements to the risk assessment, to which the operator must respond. If suggested improvements are not accepted, the operator must give written reasons to the members of the committee who made the inspection.

Railways and Other Guided Transport Systems (Safety) Regulations 2006 (SI 2006/599)[38]

23 Safety representatives or such other employees must be consulted on the preparation or revision of safety certificates or safety authorisations, an amended safety certificate or safety authorisation or if an employer sends a notice to the Office of Rail Regulation under regulation 13 (Notice of changes), or under paragraph 9, Schedule 5 (Notices where the safety case is materially different).

24 There are also requirements for the operator's safety management system to describe how people carrying out work or voluntary work and their representatives on all levels are involved with the safety management systems.

Confined Spaces Regulations 1997 (SI 1997/1713)[45]

25 The guidance on the Regulations states that employees and their representatives should be consulted when assessing the risks connected with entering or working in a confined space.

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