



Health and Safety at Work

By Tony Rees MIOSH

This month we are going to look at Health & Safety (Consultation With Employees) Regulations 1996.

Specific provisions requiring employers to consult with employees on matters of health and safety are contained in four pieces of legislation:

- The Health & Safety At Work Act 1974
- Safety Representatives and Safety Committees Regulations 1977 (S I No 500)
- Management of Health & Safety At Work Regulations 1992 (S I No 2051)
- Health (Consultation with Employees) Regulations 1996 (S I No 1513)

HEALTH AND SAFETY AT WORK ACT 1974

Section 2(4) of this Act provided for Regulations to be made which allowed the appointment of safety representatives from 'recognised trade union' members - for the purpose of these Regulations a 'recognised trade union' is one that is accepted by the employer for 'collective bargaining' negotiations. These safety representatives are required to represent their particular group of employees in consultations with employers on health and safety matters, and undertake other prescribed duties. The Safety Representatives and Safety Committees Regulations 1977 implemented this particular provision.

In addition, employers have a specific duty under section 2(6) to consult safety representatives on the drawing up and maintaining of arrangements for the effective promotion, development and monitoring of measures to enable the health and safety at work of employees.

The Safety Representatives and Safety Committees Regulations 1977 detail the appointment, functions and rights of trade union safety representatives, including their right to consult with the employer on matters relating to the health and safety of the employees they represent.

An amendment to these Regulations made by the Management of Health and Safety at Work Regulations 1992 requires employers

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to consult with safety representatives, in good time, on matters concerning:

■ the introduction of any measure that will affect the health and safety of the employees represented by the safety representative

■ the persons nominated to provide health and safety assistance, and assist in emergency procedures (as required by regulations 6 and 7 of the 1992 Management Regulations)

■ any health and safety training or information the employer is required to provide to the employees, the safety representatives

■ the health and safety consequences of the planning and introduction of new technologies into the workplace.

As the 1977 Regulations only apply to safety representatives from recognised trade unions, many non-unionised workers did not have any rights of consultation with their employers on health and safety. This has now been re-addressed by the Health and Safety (Consultation with Employees) Regulations 1996 which require employers to consult with employees directly, or through elected 'representatives of employee safety'. The roles and functions of union safety representatives are not affected by these Regulations.

HEALTH & SAFETY (CONSULTATION WITH EMPLOYEES) REGS 1996

These Regulations came into

effect on September 1 '96 and implemented the consultation provisions of the 'Framework' Directive, which extend the rights of consultation on health and safety matters to all workers, not just those represented by trade union safety representatives.

Duty of employer to consult (regulation 3)

In workplaces where employees are not represented by trade union safety representatives, employers must consult with their employees in good time on health and safety matters, particularly with regard to:

■ the introduction of any measure that will affect the health and safety of employees

■ the arrangements for appointing/nominating persons to assist the employer in complying with relevant legislation, and to assist in emergency procedures (as required by regulation 6 and 7 of the 1992 Management Regs.)

■ the provision of relevant information as required under health and safety legislation

■ any planning and organisation of relevant training required to be provided to the employees under health and safety legislation

■ the health and safety consequences of introducing new technologies into the employees' workplace.

Persons to be consulted (regulation 4)

Employers may consult with their employees directly, or through 'representatives of employee

safety' (hereafter referred to as 'employee representatives') elected by a group of employees to represent them in consultations on health and safety matters with the employer.

Where consultation is through such employee representatives the employer must inform the employees of the names of these representatives, and the group of employees they represent. Employees must also be told when the employer discontinues consultation with these employee representatives. Such discontinuation may occur when: the employee representatives have informed the employer that they no longer intend to represent their group of employees in health and safety consultations; the employee representatives no longer work in the group of employees they represent; the period of election has elapsed without the employee representatives being re-elected, or the employee representatives have become incapacitated from performing the duties required under these Regulations.

Employees and their representatives must be informed by the employer if the employer decides to change from consulting with the employee representatives to consulting with the employees directly.

Provision of information (regulation 5)

Where employers consult directly with employees, they must provide all such information as the



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employees will require in order for them to participate fully in the consultations. The same applies to employee representatives who must be given all necessary information to enable them to perform their functions and participate in consultations. In addition these employee representatives must also be provided with information associated with the records to be kept under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) where information relates to the workplace of the employees they represent.

The employer is not obliged to disclose information that: does not relate to health and safety; is against the interest of national security; would contravene any prohibition imposed under any legislation; relates specifically to an individual (unless that individual has given consent); would damage the employer's undertak-

ing, or the undertaking of another person where that other person supplied the information, or, that has been obtained by the employer for the purpose of any legal proceedings.

Functions of representatives of employee safety (regulation 6)

Employee representatives may make representations to the employer on any hazards, dangerous occurrences and general health and safety matters, particularly in relation to the matters on which employers are obliged to consult (as defined in regulation 3 above), which may affect the health and safety of the employees they represent. They may also represent their group of employees in consultation with enforcing authority inspectors.

Training, time off and provision of facilities (regulation 7)

Employers must provide employee representatives with

appropriate and reasonable training and other relevant facilities so as to enable the representatives to perform their function. Employers must also meet all reasonable costs associated with the training, including travel and subsistence costs. In addition, the employee representatives must be given paid time off to perform their functions and to attend relevant training courses. Paid time off must also be provided for candidates standing for election as employee representatives, in order for them to perform their functions as such candidates.

Employers must pay employee representatives their normal work remuneration, where that remuneration does not vary with the amount of work carried out, or, at an average hourly rate where the remuneration does not vary with the work carried out. In the latter case if no fair estimate can be made within the workplace then an estimate from comparable external work may

be used. Full details relating to paid time off are contained in Schedule 1 of the Regulations.

If employers refuse to allow employee representatives time off with pay to fulfil their duties, the representatives may make a complaint to an Industrial Tribunal. Full details in relation to Industrial Tribunals are contained in Schedule 2 of the Regulations.

Miscellaneous provisions

Regulation 8 makes some amendments to the Employment Rights Act 1996 to protect employees who participate in consultations with employers, from suffering any detriment or unfair dismissal in health and safety cases.

Regulation 9 excludes these Regulations being used in civil proceedings for a breach of a duty under these Regulations.

■ Further information on training courses and consultancy contact ATB - Landbase Training Services (Jean John on 01282 617466 or Tony Rees on 01686 622799).

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