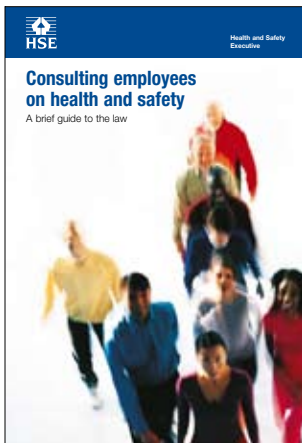


Consulting employees on health and safety

A brief guide to the law



This is a web-friendly version of leaflet INDG232(rev1)

Introduction

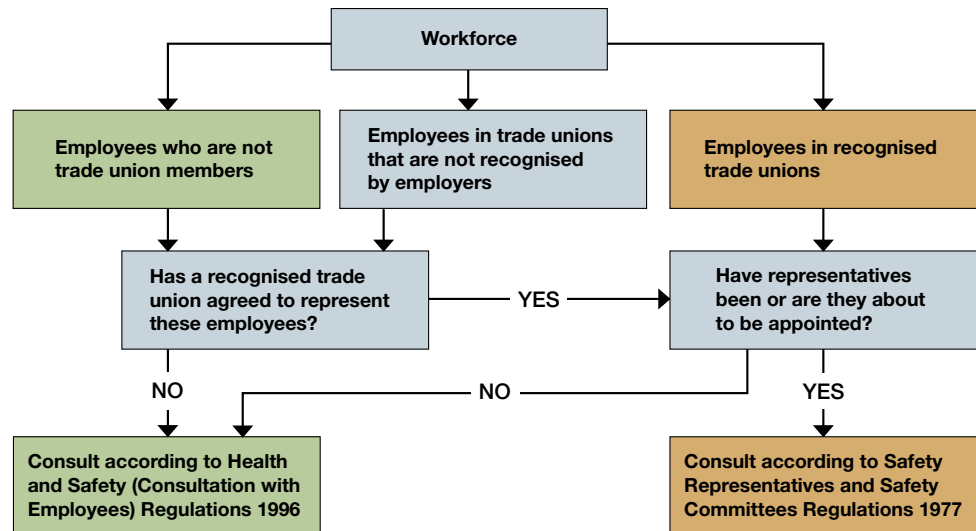
This leaflet provides an overview of employers' duties to consult with their employees or their representatives on health and safety matters.

The law sets out how employees must be consulted in different situations and the different choices employers have to make. There are two sets of general regulations about employers' duty to consult their workforce about health and safety:

- the Safety Representatives and Safety Committees Regulations 1977 (as amended);
- the Health and Safety (Consultation with Employees) Regulations 1996 (as amended).

These regulations will apply to most workplaces. Figure 1 shows the relationship between the two sets of regulations and how they affect your workplace.

Figure 1 The law on consulting employees about health and safety in your workplace



Key to colour-coded material

References to the regulations are colour-coded to help you find the parts that are most relevant to you:

- For workplaces where the Safety Representatives and Safety Committees Regulations 1977 apply.
- For workplaces where the Health and Safety (Consultation with Employees) Regulations 1996 apply.

Depending on the circumstances in their workplace, the employer may only have to consult under one set of regulations, or they may have to consult under both.

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

This leaflet only applies to onshore workplaces. For information on offshore workplaces, see 'Find out more'.

Consulting where the Safety Representatives and Safety Committees Regulations 1977 apply

If an employer recognises trade unions in any part of the business then:

- the Safety Representatives and Safety Committees Regulations 1977 will apply if that trade union **has appointed**, or is **about to appoint**, safety representatives; and
- the employer must consult the union-appointed health and safety representatives on health and safety matters affecting the employees they represent.

If at least two health and safety representatives request in writing that a safety committee be formed within the workplace, the employer must establish such a committee within three months of the request.

Consulting where the Health and Safety (Consultation with Employees) Regulations 1996 apply

The law is different if there are employees who are not represented under the Safety Representatives and Safety Committee Regulations 1977, for example if:

- the employer does not recognise trade unions;
- the employer does recognise trade unions but representatives have not been appointed or are not about to be appointed; or
- there are any employees who do not belong to a trade union and recognised trade unions have not agreed to represent them.

Where employees are not represented under the Safety Representatives and Safety Committees Regulations 1977, the Health and Safety (Consultation with Employees) Regulations 1996 will apply.

The employer can choose to consult employees directly as individuals, or through **elected** health and safety representatives (known as 'representatives of employee safety' in the Regulations), or a combination of the two. See www.hse.gov.uk/involvement for more information.

If the employer decides to consult their employees through an elected representative, then employees have to elect one or more people to represent them. The elected health and safety representative must be employed in the group that elects them.

This leaflet uses the term 'health and safety representative' to apply to both appointed and elected representatives.

Why consult employees on health and safety?

Consulting employees about health and safety can result in:

- healthier and safer workplaces – because employee input is valuable to identify hazards, assess risks and develop ways to control or remove risks;
- better decisions about health and safety – because they are based on the input and experience of a range of people in the organisation, including employees who have extensive knowledge of their own job and the business;
- stronger commitment to implementing decisions or actions – because employees have been actively involved in reaching these decisions;
- greater co-operation and trust – because employers and employees talk to each other, listen to each other and gain a better understanding of each other's views;
- joint problem-solving.

By law, employers must consult all their employees on health and safety matters. Some workers who are self-employed, for example for tax purposes, are classed as employees under health and safety law.

What must employers consult about?

They must consult with employees or their representatives on the following:

- the introduction of any measure which may substantially affect their health and safety at work, for example the introduction of new equipment or new systems of work (such as the speed of a process line and shift-work arrangements);
- arrangements for getting competent people to help them comply with health and safety laws (a competent person is someone who has sufficient training and experience or knowledge and other qualities that allow them to help an employer meet the requirements of health and safety law);
- the information they must give their employees on the risks and dangers arising from their work, measures to reduce or get rid of these risks and what employees should do if they are exposed to a risk;
- the planning and organisation of health and safety training; and
- the health and safety consequences of introducing new technology.

What information should be available to employees?

An employer must give employees or their representatives the information necessary to allow them to participate fully and effectively in the consultation. When consulting representatives, the employer must provide them with the information necessary to enable them to fulfil their functions.

Information should include the risks arising from their work, the measures in place or proposals to control these risks, and what they should do if they are exposed to a risk, including emergency procedures.

Employers should already have the relevant information needed for employees as part of their health and safety management system. There is no need for employers to present this information in a different format and provide it as a separate package, or get hold of additional information for their employees or their representatives.

An employer does not have to provide information if it:

- would be against the interests of national security or against the law;
- is about someone who has not given their permission for it to be given out;
- would – other than for reasons of its effect on health and safety – cause substantial injury to the organisation, or if supplied by someone else, to the business of that person; or
- if they have obtained the information for the purpose of any legal proceedings.

What does consultation with employees involve?

Consultation involves employers not only giving information to employees but also listening to and taking account of what they say before making any health and safety decisions.

The law does not set down when employers must consult, or for how long, but does say it must be ‘in good time’. In practice, this means they have to allow enough time for employees to consider the matters being raised and provide informed responses.

Consultation does not remove the employer’s right to manage. They will still make the final decision, but talking to employees is an important part of successfully managing health and safety.

What are the functions of health and safety representatives?

Health and safety representatives under both sets of regulations have a similar range of functions, but there are some differences. A comparison of their functions is shown in Table 1.

Table 1 A comparison of the functions of health and safety representatives

Safety Representatives and Safety Committees Regulations 1977	Health and Safety (Consultation with Employees) Regulations 1996
Representatives	
Appointed in writing by a trade union recognised for collective bargaining purposes.	Elected by the workforce, where the employer has decided not to consult directly.
Known as	
Safety representatives.	Representatives of employee safety.
Functions	
Investigate potential hazards and dangerous occurrences at the workplace, and complaints by an employee relating to health, safety and welfare at work, and examine causes of workplace accidents.	

Representation to the employer on the above investigations, and on general matters affecting the health and safety of employees they represent.	Representation to the employer on: <ul style="list-style-type: none"> ■ potential hazards and dangerous occurrences; ■ general matters affecting the health and safety of employees they represent; and ■ specific matters on which the employer must consult.
Inspect the workplace.	
Represent employees in dealings with health and safety inspectors.	Represent employees in dealings with health and safety inspectors.
Receive certain information from inspectors.	
Attend health and safety committee meetings.	

It is good practice for employers to give health and safety representatives elected under the 1996 Regulations extra functions equivalent to those carried out by union-appointed representatives, where they agree to them. These include carrying out inspections of the workplace, investigating incidents, and attending health and safety committee meetings.

What help and training must health and safety representatives receive?

Appointed representatives
Employers must give appointed safety representatives the paid time necessary to carry out their functions, and paid time as is necessary to undergo training in those functions, as is reasonable in the circumstances. The TUC or the trade union concerned will offer training to trade union health and safety representatives and usually meet the costs.

Elected representatives
Employers must: <ul style="list-style-type: none"> ■ ensure that elected representatives receive the training they need to carry out their roles, as is reasonable in the circumstances, and pay any reasonable costs to do with that training, including travel and subsistence costs; ■ give them paid time necessary to carry out their functions; and ■ allow candidates reasonable time with pay to carry out their functions as a candidate in an election.

Facilities and assistance

Employers must provide facilities and assistance that the health and safety representatives may reasonably require to carry out their role. This may include access to:

- a telephone and quiet area where they can have private conversations as part of their role;
- a lockable cabinet or desk for paperwork, records or reference material;
- intranet and internet facilities (if available);
- a photocopier and a notice board to circulate information to the employees they represent; and
- time with the employer to discuss health and safety issues.

How are the regulations enforced?

If an employer does not comply with the regulations, they will be committing an offence. Health and safety inspectors (from HSE and local authorities) may enforce the regulations where there is no evidence of consultation. They may also enforce if an employer fails to comply with legal duties on procedural matters (for example where the 1996 Regulations apply and there is more than one candidate for the role of health and safety representative, and the employer appoints representatives of employee safety rather than permitting employee elections).

Inspectors will apply HSE's *Enforcement policy statement* HSE41 (see 'Find out more') when deciding what action to take.

Resolving disputes

If there are any disagreements between an employer and their employees about the interpretation of the regulations – with the exception of matters dealing with paid time – they should be addressed through the normal machinery for resolving employment relations disputes. In certain circumstances, it may be helpful to involve the Advisory, Conciliation and Arbitration Service (Acas).

Health and safety representatives who have not been permitted to take paid time to carry out their roles (including for representatives under the 1996 Regulations, paid time to perform their functions as a candidate in an election), or be trained, or who have not been paid to do so, can apply to an employment tribunal. HSE inspectors will not intervene in these cases.

Could employees suffer because of taking part in consultation?

No. The law protects employees from being penalised because they have taken part in health and safety consultation (whether as an individual or a representative). This includes taking part in electing a health and safety representative or being a candidate.

Any employee can apply to an employment tribunal if they feel they have been penalised for taking part in consultation. Further information about the employment tribunal system can be found at the employment tribunals website (see 'Find out more').

Find out more

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 L146 HSE Books 2008 ISBN 978 0 7176 6311 8

Involving your workforce in health and safety: Good practice for all workplaces HSG263 HSE Books 2008 ISBN 978 0 7176 6227 2

Involving your workers in health and safety: A guide for small businesses Available on HSE's website at www.hse.gov.uk/pubns/books/hsg263.htm

Leading health and safety at work: Leadership actions for directors and board members Leaflet INDG417 HSE Books 2007 (single copy free or priced packs of 5 ISBN 978 0 7176 6267 8) www.hse.gov.uk/pubns/indg417.pdf

A guide to the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989. Guidance on Regulations L110 (Second edition) HSE Books 1998 ISBN 978 0 7176 1549 0

Safety representatives and safety committees on offshore installations: A brief guide for the workforce Leaflet INDG119(rev1) HSE Books 1999 www.hse.gov.uk/pubns/indg119.pdf

Enforcement policy statement HSE41 HSE Books 2008 (www.hse.gov.uk/pubns/hse41.pdf)

Employment tribunals website: www.employmenttribunals.gov.uk

Further information

HSE priced and free publications are available by mail order from HSE Books, PO Box 1999, Sudbury, Suffolk CO10 2WA Tel: 01787 881165 Fax: 01787 313995 Website: <http://books.hse.gov.uk/hse/public/home.jsf> (HSE priced publications are also available from bookshops and free leaflets can be downloaded from HSE's website: www.hse.gov.uk.)

For information about health and safety ring HSE's Infoline Tel: 0845 345 0055 Fax: 0845 408 9566 Textphone: 0845 408 9577 e-mail: hse.infoline@natbrit.com or write to HSE Information Services, Caerphilly Business Park, Caerphilly CF83 3GG.

This leaflet contains notes on good practice which are not compulsory but which you may find helpful in considering what you need to do.

This leaflet is available in priced packs of 15 from HSE Books, ISBN 978 0 7176 6312 5. Single copies are free and a web version can be found at: www.hse.gov.uk/pubns/indg232.pdf

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