

Consulting employees on health and safety

A brief guide to the law



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Introduction

Employers have a duty to consult with their employees, or their representatives, on health and safety matters. This leaflet is aimed at employers and discusses what they need to do to ensure they are complying with the law.

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

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

These regulations will apply to most workplaces.

In workplaces where the **employer recognises trade unions** and **trade unions are recognised for collective bargaining purposes**, the Safety Representatives and Safety Committees Regulations 1977 (as amended) will apply.

In workplaces where **employees are not in a trade union** and/or **the employer does not recognise the trade union**, or **the trade union does not represent those employees not in the trade union**, the Health and Safety (Consultation with Employees) Regulations 1996 (as amended) will apply.

How the regulations apply

Key to colour-coded material

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

■ The Safety Representatives and Safety Committees Regulations 1977.

■ The Health and Safety (Consultation with Employees) Regulations 1996.

Depending on the circumstances within your workplace, you may only have to consult under one set of regulations, or you may have to consult under both.

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 on a regular basis to make sure that they continue to work for your organisation.

This leaflet uses the term 'health and safety representative' to apply to representatives under both sets of regulations.

This leaflet only applies to onshore workplaces. For information about offshore workplaces, see *A guide to the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989*.

Why should I consult employees on health and safety?

Consulting with employees can have real benefits for your business, including:

- increased productivity – businesses with good workforce involvement in health and safety tend to have a better productivity rate;
- improvements in overall efficiency and quality; and
- higher levels of workforce motivation.

Consulting employees about health and safety can result in:

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

By law, you must consult all employees on health and safety matters. Some workers, who are self-employed, are still classed as employees under health and safety law.

What must I consult about?

You must consult with employees or their representatives about the following:

- the introduction of any measure which may substantially affect their health and safety at work, eg the introduction of new equipment or new systems of work, such as the speed of a process line or shift-work arrangements;
- arrangements for getting competent people to help them comply with health and safety laws (a competent person is someone who has the necessary knowledge, skills and experience to help an employer meet the requirements of health and safety law);
- the information you must give your 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 I make available to my employees?

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

Information should include any risks arising from employee work activities, 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.

You should already have the relevant information needed for employees as part of your health and safety management system, such as copies of risk assessments or accident records. There is no need for you to present this information in a different format and provide it as a separate package, or get hold of additional information for your employees or their representatives.

You do not have to provide information if:

- it would be against the interests of national security or against the law;
- it is about someone who has not given their permission for it to be given out;
- it 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
- you have obtained the information for the purpose of any legal proceedings.

What does consultation with employees involve?

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

The law does not state when you must consult, or for how long, but does say it must be 'in good time'. In practice, this means you have to allow enough time for your employees to consider the matters being raised and provide them with informed responses.

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

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

What are the functions of health and safety representatives?

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

Table 1 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.
Title/position:	
Safety representatives.	Representatives of employee safety.
Functions:	
Investigate potential hazards and dangerous occurrences at the workplace, 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 the 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 the 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.	

What help and training must health and safety representatives receive?

Appointed representatives

You 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 Trades Union Congress (TUC), or the trade union concerned, will offer training for trade union health and safety representatives and usually meet the costs.

Elected representatives

You must 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.

You must also give them the 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, as well as time to consult employees on health and safety.

Facilities and assistance

You must provide the facilities and any assistance reasonably required for health and safety representatives to carry out their role. This may include access to:

- a telephone and quiet area where they can have private conversations;
- 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 you do not comply with the regulations, you 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 the regulations if you fail to comply with your legal duties on procedural matters, eg if, in the case of the 1996 Regulations, there is more than one candidate for the role of health and safety representative and you appoint representatives of employee safety rather than permitting employee elections.

Resolving disputes

If there are any disagreements between you and your employees about the interpretation of the regulations, with the exception of matters dealing with paid time for carrying out their role, they should be addressed through the normal procedure 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 www.gov.uk/courts-tribunals/employment-tribunal.

Further reading

A guide to the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989. Guidance on Regulations L110 (Third edition)
HSE Books 2012 ISBN 978 0 7176 6493 1 www.hse.gov.uk/pubns/books/L110.htm

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 (Second edition) HSE Books 2012 ISBN 978 0 7176 6461 0
www.hse.gov.uk/pubns/books/L146.htm

Involving your workforce in health and safety: Good practice for all workplaces
HSG263 HSE Books 2008 ISBN 978 0 7176 6227 2
www.hse.gov.uk/pubns/books/hsg263.htm

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.htm

Consulting and involving your workers www.hse.gov.uk/involvement

Managing for health and safety www.hse.gov.uk/managing

Further information

For information about health and safety, or to report inconsistencies or inaccuracies in this guidance, visit www.hse.gov.uk/. You can view HSE guidance online and order priced publications from the website. HSE priced publications are also available from bookshops.

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.

This document is available at: www.hse.gov.uk/pubns/indg232.htm.

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