



# **Safety representatives and safety committees**

The Regulations, Codes of Practice and guidance relating to safety representatives and safety committees. These are the Safety Representatives and Safety Committees Regulations 1977 and the Health and Safety Consultation with Employees Regulations 1996.

These regulations apply to England, Scotland and Wales.

# Contents

Introduction		3
Preface		4
<b>Regulation 1</b>	<b>Citation and commencement</b>	<b>5</b>
	Code of Practice	6
	Guidance Notes	7
<b>Regulation 2</b>	<b>Interpretation</b>	<b>8</b>
	Code of Practice	9
<b>Regulation 3</b>	<b>Appointment of safety representative</b>	<b>10</b>
	Guidance Notes	11
<b>Regulation 4</b>	<b>Functions of safety representatives</b>	<b>13</b>
	Code of Practice	16
	Guidance Notes	18
<b>Regulation 5</b>	<b>Inspections of the workplace</b>	<b>22</b>
	Guidance Notes	23
<b>Regulation 6</b>	<b>Inspections following notifiable accidents, occurrences and diseases</b>	<b>25</b>
	Guidance Notes	26
<b>Regulation 7</b>	<b>Inspections of documents and provision of information</b>	<b>27</b>
	Code of Practice	28
	Guidance Notes	29
<b>Regulation 8</b>	<b>Cases where safety representatives need not be employees</b>	<b>30</b>
<b>Regulation 9</b>	<b>Safety committees</b>	<b>31</b>
	Guidance Notes	32
	Objectives and functions of safety committees	32
	Membership of safety committees	33
	The conduct of safety committees	35
<b>Regulation 10</b>	<b>Power of Health and Safety Commission to grant exemptions</b>	<b>36</b>
<b>Regulation 11</b>	<b>Provision as to industrial tribunals</b>	<b>37</b>

# Introduction

This booklet has been published by the TUC to ensure that all safety representatives are aware of their rights and responsibilities.

It reproduces the text of the two main pieces of legislation relating to safety representatives, although in a clearer way than in the official government publications. It also gives the Codes of Practice on safety representatives and the guidance notes for both the regulations.

The regulations are legally binding. However the Code of Practice and guidance give additional official advice on the Regulations. The Code of Practice has been approved by the Health and Safety Commission so that, if an employer is prosecuted under the Regulations, they have to show they have either followed the Code of Practice, or that they have alternative arrangements that are either the same or better.

The legislation refers to 'industrial tribunals', as they were known at the time. These have since been renamed 'employment tribunals'.

# Preface

This booklet contains:

- (a) The Regulations on Safety Representatives and Safety Committees (SI 1977 No 500), as amended by the Management of Health and Safety at Work Regulations (SI 1992 No 2051) and the Health and Safety (Consultation with Employees) Regulations (SI 1996 No 1513).
- (b) The Code of Practice on Safety Representatives.
- (c) The Code of Practice on Time Off for the Training of Safety Representatives.
- (d) The guidance notes.

**The booklet is arranged so that the relevant Code and Guide references appear alongside each Regulation.** The Safety Representatives and Safety Committees Regulations were made under section 15 of the Health and Safety at Work etc Act 1974. The Codes of Practice and the guidance notes give practical guidance on the Regulations.

The Regulations and Codes of Practice provide a legal framework for employers and trade unions to reach agreement on arrangements for safety representatives and safety committees to operate in their workplace. There is nothing to stop employers and employees agreeing to alternative arrangements for joint consultation on health and safety at work. But such arrangements cannot detract from the rights and obligations created by the Regulations. Recognised trade unions can at any time invoke the rights given by the Regulations and the obligations on the employer would then apply.

Disagreements which might arise between employers and trade unions on the issues should be settled through the normal machinery for resolving industrial relations problems. There are two circumstances in which safety representatives may present a complaint to an industrial tribunal – if employers have failed to allow time off or failed to pay safety representatives while carrying out their functions or undergoing training.

# Regulation 1

## Citation and commencement

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

- 1 The Safety Representatives and Safety Committees Regulations 1977 concern safety representatives appointed in accordance with section 2(4) of the 1974 Act (The Act) and cover:
  - (a) prescribed cases in which recognised trade unions may appoint safety representatives from among the employees;
  - (b) prescribed functions of safety representatives.

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 him and his 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.

- 2 This Code of Practice has been approved by the Health and Safety Commission 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.
- 3 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 Notes

- 1 The Safety Representatives and Safety Committees Regulations 1977, made under section 2(4) of the Health and Safety at Work etc Act 1974, prescribe the cases in which recognised trade unions may appoint safety representatives, specify the functions of such safety representatives, and set out the obligations of employers towards them.
- 2 When appointing safety representatives the trade union will inform the employer of the group or groups of employees represented. They may for example say that all the employees in a particular category are represented or, alternatively, only their own members. If some employees 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, they may be covered by the consultation arrangements with the union safety representative. If they are not members of such a group, or if the union safety representative(s) cover only their own members, 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.
- 3 The Commission have 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 Regulations and the Code of Practice is to provide a framework within which each undertaking can develop effective working arrangements. To supplement this statutory framework these guidance notes are being issued which the Commission hope will be of help to employers, to trade unions, to safety representatives and to members of safety committees. Disagreements between employers and employees about the interpretation of these Regulations – with the exception of matters covered by Regulation 11 – should be resolved through the normal machinery for resolving industrial relations disputes. In certain circumstances it may be helpful to involve the Advisory, Conciliation and Arbitration Service (ACAS).
- 4 This part of the guidance notes offers advice to all who are concerned with the appointment and functioning of safety representatives. Advice regarding safety committees is given on page 31.

# Regulation 2

## Interpretation

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” means an independent trade union as defined in section 30(1) of the Trade Union and Labour Relations Act 1974<sup>1</sup> 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<sup>2</sup> which is operative within the meaning of section 15 of that Act;

“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<sup>3</sup> 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.

<sup>1</sup> 1974 c.52

<sup>2</sup> The Employment Act 1980 repealed those Sections of the EP Act 1975 which empowered ACAS to make a recommendation for recognition.

<sup>3</sup> 1889 c.63



## Code of Practice

- 4 (a) In this Code “the 1974 Act” means the Health and Safety at Work etc Act 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.

# Regulation 3

## Appointment of safety representatives

- 3(1) For the purposes of section 2(4) of the 1974 Act, a recognised trade union may appoint safety representatives from among the employees in all cases where one or more employees are employed by an employer by whom it is recognised.
- (2) Where the employer has been notified in writing by or on behalf of a trade union of the names of the persons appointed as safety representatives under this Regulation and the group or groups of employees they represent, each such safety representative shall have the functions set out in Regulation 4 below.
- (3) A person shall cease to be a safety representative for the purposes of these Regulations when:
  - (a) the trade union which appointed him notifies the employer in writing that his appointment has been terminated; or
  - (b) he ceases to be employed at the workplace but if he was appointed to represent employees at more than one workplace he shall not cease by virtue of this sub-paragraph to be a safety representative so long as he continues to be employed at any one of them; or
  - (c) he resigns.
- (4) A person appointed under paragraph (1) above as a safety representative shall so far as is reasonably practicable either have been employed by his employer throughout the preceding two years or have had at least two years' experience in similar employment.

## Guidance Notes

- 5 Regulation 3 of the SRSCR has been amended by 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 (MQA) for the appointment of workers' inspectors. Although there is some overlap between that provision and Regulation 5 of the SRSCR, the Health and Safety Commission believes that in practice employers and trade unions will be able to reach agreement on arrangements which will meet the requirements of both the MQA and SRSCR.
- 6 The Regulations provide that recognised trade unions may appoint safety representatives to represent the employees. Recognition for this purpose is as defined in the appropriate employment legislation (currently the Trade Union and Labour Relations (Consolidation) Act 1992). Any disputes between employers and trade unions about recognition should be dealt with through the normal industrial relations machinery. The Advisory, Conciliation and Arbitration Service (ACAS) is able to offer advice and guidance relating to trade union recognition issues, and where there is a dispute may provide conciliation where appropriate.
- 7 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. The limitation of representation to a particular group or groups should not, however, be regarded as a hindrance to the raising by that representative of general matters affecting the health and safety of employees as a whole.
- 8 Equally, these general principles do not preclude the possibility of a 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).
- 9 When consideration is being given to the numbers of safety representatives to be appointed in a particular case the guidance given by the Commission in paragraph 3 of the Code of Practice should be borne in mind. 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.

- 10 At certain undertakings there will be a particular need for flexibility of approach both to the question of the group or groups of the employees the safety representative represents and to the number of safety representatives which 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, docks.
  - (b) workplaces from which the majority of employees go out to their actual place of work and subsequently report back, eg goods and freight depots, builders' yards, service depots of all kinds.
  - (c) workplaces where there is a wide variety of different work activities going on within a particular location.
  - (d) workplaces with a specially high process risk, eg construction sites at particular stages – demolition, excavations, steel erection, etc and some chemical works and research establishments.
  - (e) workplaces where the majority of employees are employed in low risk activities, but where one or two processes or activities or items of plant have special risks connected with them.
- 11 The Regulations require that appointed safety representatives 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 that those who are appointed have the kind of experience and knowledge of their particular type of employment necessary to enable them to make a responsible and practical contribution to health and safety in their employment. Circumstances may, however, arise where it will not be reasonably practicable that the appointed safety representative shall possess such experience (eg where the employer or workplace location is newly established, or where work is of short duration, or where there is a high labour turnover.)

# Regulation 4

## Functions of safety representatives

- 4(1) In addition to his function under section 2(4) of the 1974 Act to represent the employees in consultation 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 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), 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 subparagraphs (a) and (b) above;
  - (d) to make representations to the employer on general matters affecting the health, safety or welfare at work of the employees at the workplace;
  - (e) to carry out inspections in accordance with Regulations 5, 6 and 7 below;
  - (f) to represent the employees he was appointed to represent in consultations at the workplace with inspectors of the Health and Safety Executive and of any other enforcing authority;
  - (g) to receive information from inspectors in accordance with section 28(8) of the 1974 Act;
- and
- (h) to attend meetings of safety committees where he attends in his capacity as a safety representative in connection with any of the above functions;
- but, without prejudice to sections 7 and 8 of the 1974 Act, no function given to a safety representative by this paragraph shall be construed as imposing any duty on him.

- (2) An employer shall permit a safety representative to take such time off with pay during the employee's working hours as shall be necessary for the purposes of:
- (a) performing his functions under section 2(4) of the 1974 Act and paragraph (1) (a) to (h) above;
  - (b) undergoing such training in aspects of those functions as may be reasonable in all the circumstances having regard to any relevant provisions of a code of practice relating to time off for training approved for the time being by the Health and Safety Commission under section 16 of the 1974 Act.

In this paragraph "with pay" means with pay in accordance with the Schedule to these Regulations.

## Regulation 4A

### Employer's duty to consult and provide facilities and assistance

- 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;
  - (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.

# THE SCHEDULE Regulation 4(2)

## Pay for time off allowed to safety representatives

- 1 Subject to paragraph 3 below, where a safety representative is permitted to take time off in accordance with Regulation 4(2) of these Regulations, his employer shall pay him:
  - (a) where the safety representative's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, as if he had worked at that work for the whole of that time;
  - (b) where the safety representative's remuneration for that work varies with the amount of work done, an amount calculated by reference to the average hourly earnings for that work (ascertained in accordance with paragraph 2 below).
- 2 The average hourly earnings referred to in paragraph 1(b) above are the average hourly earnings of the safety representative concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.
- 3 Any payment to a safety representative by an employer in respect of a period of time off:
  - (a) if it is a payment which discharges any liability which the employer may have under section 57 of the Employment Protection Act 1975<sup>4</sup> in respect of that period, shall also discharge his liability in respect of the same period under Regulation 4(2) of these Regulations;
  - b) if it is a payment under any contractual obligation, shall go towards discharging the employer's liability in respect of the same period under Regulation 4(2) of these Regulations;
  - (c) if it is a payment under Regulation 4(2) of these Regulations shall go towards discharging any liability of the employer to pay contractual remuneration in respect of the same period.

<sup>4</sup> 1975 c.71.

## Code of Practice

- 5 In order to fulfil their functions under section 2(4) of the Act safety representatives should:
- (a) take all reasonably practicable steps to keep themselves informed of:
    - (i) the legal requirements relating to the health and safety of persons at work, particularly the group or groups of persons they directly represent,
    - (ii) the particular hazards of the workplace and the measures deemed necessary to eliminate or minimise the risk deriving from these hazards, and
    - (iii) the health and safety policy of their employer and the organization and arrangements for fulfilling that policy;
  - (b) encourage cooperation between their employer and his employees in promoting and developing essential measures to ensure the health and safety of employees and in checking the effectiveness of these measures.
  - (c) bring to the employer's notice normally in writing any unsafe or unhealthy conditions or working practices or unsatisfactory arrangements for welfare at work which come to their attention whether on an inspection or day to day observation. The report does not imply that all other conditions and working practices are safe and healthy or that the welfare arrangements are satisfactory in all other respects.

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

### **Code of Practice approved under Regulation 4(2)(b) of the Regulations on Safety Representatives and Safety Committees (SI 1977 No 500)**

- 1 The function of safety representatives appointed by recognised trade unions as set out in section 2(4) of the Health and Safety at Work etc Act 1974, is to represent employees in consultations with employers about health and safety matters. Regulation 4(1) of the Safety Representatives and Safety Committees Regulations (SI 1977 No 500) prescribes other functions of safety representatives appointed under those Regulations.
- 2 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'.
- 3 As soon as possible after their appointment safety representatives should be permitted time off with pay to attend basic training facilities approved by the TUC or by the independent union or unions which appointed the safety representatives. Further training, similarly approved, should be undertaken where the safety representative has special responsibilities or where such training is necessary to meet changes in circumstances or relevant legislation.



- 4 With regard to the length of training required, this cannot be rigidly prescribed, but basic training should take into account the functions of safety representatives placed on them by the Regulations. In particular, basic training should provide an understanding of the role of safety representatives, of safety committees, and of trade unions' policies and practices in relation to:
- (a) the legal requirements relating to the health and safety of persons at work, particularly the group or class of persons they directly represent;
  - (b) the nature and extent of workplace hazards, and the measures necessary to eliminate or minimise them;
  - (c) the health and safety policy of employers, and the organisation and arrangements for fulfilling those policies.

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.

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

## Guidance Notes

- 12 Regulation 4A specifically requires employers to consult safety representatives on:
- (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) 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 1992 (“the Management Regulations”) require employers to make such an appointment unless they are competent to deal with these matters themselves; Regulation 4A requires employers to consult safety representatives on how they plan to go about this;
  - (c) the information they must give their employees on risks to health and safety, and preventive measures. This will include the information they are already required by other regulations to give their employees. Appendix A of *A guide to the Health and Safety (Consultation with Employees) Regulations 1996* (ISBN 0 7176 1234 1) sets out the details. Under the Management Regulations, for example, among other things, employers have to tell their employees about the risks identified by the risk assessment they must carry out, and their preventive and protective measures. Employers must also tell their employees about the emergency procedures, and who will carry out procedures for evacuation. Regulation 4A requires employers to consult 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 when employees are first recruited and when they are to be exposed to new or increased risks (as required by the Management Regulations). Other Regulations are relevant where employees are exposed to particular risks or hazards. Appendix B of the guide for employers on the Employee Consultation Regulations sets out what applies.
  - (e) the health and safety consequences for employees of new technology that they plan to bring into the workplace. This will cover the introduction of any new technology if there could be implications for employees’ health and safety, and for the risks and hazards to which they are exposed;
- 13 Regulation 4A requires that employers consult safety representatives “in good time”. That means that wherever a decision involving work equipment, processes or organisation could have health and safety consequences for employees, before making that decision they should allow time:
- (a) to provide the safety representatives with information about what they, the employer, propose to do;
  - (b) to give the safety representatives an opportunity to express their views about the matter in the light of that information;
- and then
- (c) to take account of any response.

- 14 It is provided in the Regulations that no function given to a safety representative shall be construed as imposing any duty on him other than duties he may have as an employee under sections 7 and 8 of the Act. For example, a 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 himself any legal responsibility for that course of action. In addition, the Commission have directed that the Health and Safety Executive shall not institute criminal proceedings against any safety representative for any act or omission by him in respect of the performance of functions assigned to him by the Regulations or indicated by the Code of Practice. Similar arrangements have been made with the other enforcing authorities.
- 15 Recognised trade unions will have well established methods of communications within a workplace, or within a particular employer's undertaking. These will be the appropriate channels by which the appointed safety representatives can keep the members of the group or groups which they represent informed on all matters of consequence affecting their health, safety and welfare at work. Appointed safety representatives will also need to establish close relationships with the other appointed safety representatives, including those appointed by trade unions other than their own, for example, in order to look at hazardous situations, and to develop a common approach to carrying out their responsibilities.
- 16 It is important that safety representatives should be able to take matters up with management without delay. They must therefore have ready access to the employer or his representatives; who those should be, will be determined in the light of local circumstances. It may not be desirable to specify one individual for all contacts, bearing in mind that hazards could involve differing degrees of urgency and importance. The need is to ensure that safety representatives have a clear idea as to who is authorised to act as the employer's representative for the purpose of these Regulations.
- 17 Safety representatives should record when they have made an inspection. Specimens of the kinds of PRO FORMA which might be adopted by safety representatives both to record that an inspection has been made and to draw the employer's attention to an unsafe or unhealthy condition, etc are given on pages 20 and 21. A copy of each completed form should be given to the employer. These forms may be purchased from HSE Books.
- 18 Section 28(8) of the HSW Act requires inspectors to give certain types of information to employees and employers. Where safety representatives have been appointed under the Regulations, they are the appropriate persons to receive this information on behalf of the employees.

## Examples of report forms

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

Number

### Safety Representative: Inspection form

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

Date and time of inspection:

Area or workplace inspected:

Name(s) and signature(s) of safety representatives taking part in the inspection

Name(s) and signature(s) of employer (or his representative) 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 inspection form by the employer (or his representative)

Signature

Date

**B** Sample of suggested form to be used for notifying to the employer, or his representative, unsafe and unhealthy conditions and working practices and unsatisfactory arrangements for welfare at work.

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	Particulars of matters(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 safety representative(s)
[This report does not imply that the conditions are safe and healthy or that the arrangements for welfare at work are satisfactory in all other respects]			Signature of employer or representative
Signature(s) of safety representative(s):			Date:
Record of receipt of form by the employer, or his representative(s):			Date:
Signature:			Date:

# Regulation 5

## Inspection of the workplace

- 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 Commission or the Health and Safety Executive relevant to the hazards of the workplace since the last inspection under this Regulation the safety representatives after consultation with the employer shall be entitled to carry out a further inspection of the part of the workplace concerned notwithstanding that three months have not elapsed since the last inspection.
- (3) The employer shall provide such facilities and assistance as the safety representatives may reasonably require (including facilities for independent investigation by them and private discussion with the employees) for the purpose of carrying out an inspection under this Regulation, but nothing in this paragraph shall preclude the employer or his representative from being present in the workplace during the inspection.
- (4) An inspection carried out under section 123 of the Mines and Quarries Act 1954<sup>5</sup> shall count as an inspection under this Regulation.

<sup>5</sup> 1954 c.70.

## Guidance Notes

- 19 The Regulations deal with the frequency of formal inspection by the appointed 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.
- 20 In providing for formal inspection of the workplace by the appointed safety representatives the Regulations require that they shall give reasonable notice to the employer of their intention to do so. In the Commission's view it is desirable that the employer and the safety representatives should plan a programme of formal inspections in advance, which will itself fulfil the conditions as to notice. Variations in this planned programme should of course be subject to agreement.
- 21 The Commission see advantages in formal inspections being jointly carried out by the employer or his representatives and safety representatives, but this should not prevent safety representatives from carrying out independent investigations or private discussion with employees. The safety representatives should co-ordinate their work to avoid unnecessary duplication. It will often be appropriate for the safety officer or specialist advisers to be available to give technical advice on health and safety matters which may arise during the course of the inspection.
- 22 There are various forms which the formal inspection may take and it will be for the appointed safety representatives to agree with their employer about this, but the Commission consider that the following types of inspection, or a combination of any or all of them over a period of time, may be appropriate in the fulfilment of this function.
- (a) *safety tours* – general inspections of the workplace;
  - (b) *safety sampling* – systematic sampling of particular dangerous activities, processes or areas;
  - (c) *safety surveys* – general inspections of the particular dangerous activities, processes or area.

The numbers of safety representatives taking part in any one formal inspection should be a matter for agreement between the appointed safety representatives and their employer in the light of their own particular circumstances and the nature of the inspection.

- 23 At large workplaces it may be impracticable 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 safety representatives. In these circumstances arrangements may be agreed between the employer (or his representative) and the appointed 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 safety representatives to carry out inspections in different parts of the workplace either simultaneously or at different times but in such a manner as to ensure complete coverage before the next round of formal inspections becomes due. There may be special circumstances in which appointed safety representatives and their employer will wish to agree a different frequency of inspections for different parts of the same workplace (eg where there are areas or activities of especially high risk).
- 24 Where safety representatives have made a written report to the employer in accordance with paragraph 5(c) of the Code of Practice, appropriate remedial action will normally be taken by the employer. Where remedial action is not considered appropriate or cannot be taken within a reasonable period of time, or the form of remedial action is not acceptable to the safety representatives, then the employer or his representative should explain the reasons and give them in writing to the safety representatives. A suggested method for this is to record it in Form B (page 21). Where remedial action has been taken, the safety representatives who notified the matter(s) should be given the opportunity to make any necessary reinspection in order to satisfy themselves that the matter(s) notified have received appropriate attention and they should also be afforded the opportunity to record their views on this aspect.
- 25 Such action should be publicised throughout the workplace and to other appropriate parts of the employer's organisation – if necessary the whole – by the normal channels of communication. It may also be appropriate that it should be brought to the specific attention of the safety committee, if one exists.



# Regulation 6

## Inspections following notifiable accidents, occurrences and diseases

- 6(1) Where there has been 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.

## Guidance Notes

- 26 For the purpose of ascertaining the circumstances of a notifiable accident, dangerous occurrence, or notifiable disease, it will be necessary for the representatives to examine any relevant machinery, plant, equipment or substance in the workplace. It is the Commission's view that the main purpose of the examination should be to determine the causes so that the possibility of action to prevent a recurrence can be considered. For this reason it is important that the approach to the problem should be a joint one by the employer and the safety representatives.
- 27 It may be necessary, following an accident or dangerous occurrence for the employer to take urgent steps to safeguard against further hazards. If he does this he should notify the safety representatives of the action he has taken and confirm this in writing.
- 28 Such examinations may include visual inspection, and discussions with persons who are likely to be in the possession of relevant information and knowledge regarding the circumstances of the accident or occurrence. The examination must not, however, include interference 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 as thoroughly as is necessary the circumstances of the accident or occurrence.
- 29 In the course of the performance of their functions, in particular concerning formal inspections of the workplace and examinations following notifiable accidents, dangerous occurrences, or notifiable diseases, safety representatives have rights under the Regulations to inspect and take copies of relevant documents which the employer is required to keep in accordance with the Act and other relevant statutory provisions.
- 30 Safety representatives should in exercising this right have regard to the reasonableness of time as well as any other circumstances with which the employer may be faced in producing such documents.
- 31 Where technical matters are involved the appointed safety representatives may find that the necessary expertise is not available within the undertaking. The employer and the safety representatives may wish to seek advice from outside the undertaking, for example from appropriate universities or polytechnics. The Commission considers that arrangements should be agreed as to the persons from such institutions who may be called upon. If the representatives wish to have advice from their own technical advisers, such advisers 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 safety representatives should also be available to the employer.

# Regulation 7

## Inspection of documents and provision of information

- 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 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

- 6 The Regulations require employers to make information within their knowledge available to safety representatives necessary to enable them to fulfil their functions. Such information should include:
  - a) information about the plans and performance of their undertaking and any changes proposed insofar as they affect the health and safety at work of their employees;
  - b) information of a technical nature about hazards to health and safety and precautions deemed necessary to eliminate or minimise them, in respect of 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 which 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 his employees, including the results of any measurements taken by the employer or persons acting on his behalf in the course of checking the effectiveness of his health and safety arrangements;
  - e) information on articles or substances which an employer issues to homeworkers.

## Guidance Notes

- 32 Employers have a duty under section 2(2)(c) of the 1974 Act to provide such information, instruction and training as is reasonably practicable, to ensure the health and safety at work of all their employees. Appointed safety representatives will need to be given information and knowledge over and above that necessary for employees generally to enable them to play an informed part in promoting health and safety at work. The recognised trade unions responsible for appointing safety representatives will make their own arrangements for the information and guidance of their appointed safety representatives as to how they will carry out their functions.
- 33 Employers also have duties under the Management of Health and Safety at Work Regulations 1992 to provide information on: the risks to their employees' health and safety identified by their risk assessment; the preventive and protective measures designed to ensure employees' health and safety; the procedures to be followed in the event of an emergency in the undertaking; the identity of any "competent person" or persons nominated by the employer to help with the implementation of those procedures; and 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.

## Regulation 8

### Cases where safety representatives need not be employees

- 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

- 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.
- (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 Notes

- 34 The Safety Representatives and Safety Committees Regulations 1977 prescribe the cases in which an employer shall establish a safety committee. The guidance notes are concerned with such committees.
- 35 The Commission believe that the detailed arrangements necessary to fulfil this particular requirement of the Act should evolve from discussion and negotiation between employers and the appointed safety representatives who are best able to interpret the needs of the particular workplace or places with which the committee is to concern itself. These guidance notes are, however, issued by the Commission to provide background advice to those involved in the setting up and functioning of such committees. Although the title 'Safety Committees' might suggest functions limited to purely safety matters, the functions of safety representatives comprise health, safety and welfare at work (see Regulation 4) and so safety committees should therefore be concerned with all relevant aspects of these matters in the working environment.
- 36 Circumstances will vary greatly between one workplace and another. Safety committees will be set up to deal with work situations as varied as that between a foundry and forest or a construction site and a general hospital. Each situation must be looked at carefully by those involved in it and systems for safety, including safety committees, will need to be developed to take full account of all the relevant circumstances.
- 37 Although the relationship of the safety committee to other works committees is a matter for local organisation, it is necessary to ensure that the work of the safety committee has a separate identity, and that safety matters do not become interposed in the agenda for other meetings.
- 38 Safety committees are most likely to prove effective where their work is related to a single establishment rather than to a collection of geographically distinct places. There may be a place for safety committees at group or company level for larger organisations; this will apply where relevant decisions are taken at a higher level than the establishment. In general, it should be unnecessary for an employer to appoint duplicate committees for the same workplace, eg 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.

### Objectives and functions of safety committees

- 39 Under Section 2(7) of the HSW Act, safety committees have the function of keeping under review the measures taken to ensure the health and safety at work of the employees. In carrying out this function safety committees ought to consider the drawing up of agreed objectives or terms of reference.
- 40 An objective should be the promotion of co-operation between employers and employees in instigating, developing and carrying out measures to ensure the health and safety at work of the employees.



- 41 Within the agreed basic objectives certain specific functions are likely to become defined. These might include:
- (a) The study of 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) Examination of safety audit reports on a similar basis;
  - (c) Consideration of reports and factual information provided by inspectors of the enforcing authority appointed under the Health and Safety at Work Act;
  - (d) Consideration of reports which safety representatives may wish to submit;
  - (e) Assistance in the development of works safety rules and safe systems of work;
  - (f) A watch on the effectiveness of the safety content of employee training;
  - (g) A watch on the adequacy of safety and health communication and publicity in the workplace;
  - (h) The provision of a link with the appropriate enforcing authority.
- 42 In certain instances safety committees may consider it useful to carry out an inspection by the committee itself. But it is management's responsibility to take executive action and to have adequate arrangements for regular and effective checking of health and safety precautions and for ensuring that the declared health and safety policy is being fulfilled. The work of the safety committees should supplement these arrangements; it cannot be a substitute for them.

### Membership of safety committees

- 43 The membership and structure of safety committees should be settled in consultation between management and the trade union representatives concerned through the use of the normal machinery. The aim should be to keep the total size as reasonably compact as possible and compatible with the adequate representation of the interests of management and of all the employees, including safety representatives. The number of management representatives should not exceed the number of employees' representatives.
- 44 Management representatives should not only include those from line management but such others 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.

- 45 In undertakings where a company doctor, nurse, occupational hygienist or safety officer/adviser is employed, they should be ex-officio members of the safety committee. Other company specialists, such as project engineers, chemists, organisation and methods staff and training officers might be coopted for particular meetings when subjects on which they have expertise are to be discussed.
- 46 It should be fully understood that a safety representative is not appointed by the safety committee or vice versa, but the relationship between safety representatives and the safety committee should be a flexible but intimate one. Neither is responsible to, or for, the other. The aim should be to form the most effective organisation appropriate to the particular undertaking, and in particular effective co-ordination between the work of the committee and the safety representatives.
- 47 It should be the practice for membership of safety committees to be regarded as part of an individual's normal work. As a consequence he or she should suffer no loss of pay through attendance at meetings of safety committees or at other agreed activities such as inspections undertaken by, or on behalf of, such committees.
- 48 The purpose of studying accidents is to stop them happening again; it is not the committees' business to allocate blame, its job should be:
- (a) to look at the facts in an impartial way;
  - (b) to consider what sort of precautions might be taken;
  - (c) to make appropriate recommendations.
- 49 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 it is extracted and analysed.
- 50 The committee may well be able to:
- (a) advise on the appropriateness and adequacy of the rules for safety and health proposed by management and/or
  - (b) draw attention to the need to establish rules for a particular hazardous work activity or class of operations.
- Adherence to these rules will also be secured more easily if employees appreciate the reasons for having them and know that their representatives have been consulted in the making of them.
- 51 Where written reports have been made by safety representatives following inspections, they may be brought to the attention of the safety committee. In such cases the committee may suggest suitable publicity.
- 52 An essential condition for the effective working of a 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 the standards of health and safety at the workplace.

- 53 The effectiveness of a joint 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 safety committee in periodical joint inspections;
  - (d) development of ways of involving more employees.

### The conduct of safety committees

- 54 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 risk inherent. Sufficient time should be allowed during each meeting to ensure full discussion of all business.
- 55 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.
- 56 The dates of the meetings should as far as possible be arranged well in advance, 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.
- 57 Committees may wish to draw up additional rules for the conduct of meetings. These might include procedures by which committees might reach decisions.
- 58 In certain undertakings it might be useful for the safety committee to appoint sub-committees to study particular health and safety problems.
- 59 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 to which they relate and a copy sent to each 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 Commission to grant exemptions

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

# Regulation 11

## Provisions as to industrial tribunals

- 11(1) A safety representative may, in accordance with the jurisdiction conferred on industrial tribunals by paragraph 16(2) of Schedule 1 to the Trade Union and Labour Relations Act 1974<sup>6</sup>, present a complaint to an industrial 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 industrial 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 industrial 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 industrial 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) Paragraph 16 of Schedule 1 to the Trade Union and Labour Relations Act 1974 (jurisdiction of industrial tribunals)<sup>7</sup> shall be modified by adding the following subparagraph:
- “(2) An industrial tribunal shall have jurisdiction to determine complaints relating to time off with pay for safety representatives appointed under regulations made under Health and Safety at Work etc Act 1974.”

<sup>6</sup> 1974 c.52.

<sup>7</sup> Now superseded by section 2 of the Industrial Tribunals Act 1996.







Published by  
Trades Union Congress  
Congress House  
Great Russell Street  
London WC1B 3LS

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Design RIMA  
Print Ancient House Printing Group

March 2005

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