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HEALTH AND SAFETY COMMISSION

Securing effective employee involvement : Draft consultative proposals for harmonised regulations and other measures to promote greater employee involvement to ensure health and safety at work

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Cleared by Sandra Caldwell, Director, Policy Group on 17 June 2003

Issue

1. To present draft consultative proposals for HSC consideration. These include harmonised regulations, the Health and Safety (Employee Consultation and Safety Representation) Regulations, and other non-regulatory measures designed to promote greater employee involvement to ensure health and safety at work (see diagram at Annex A).

Timing

2. Routine but fulfilling the commitment given to the Commission at its meeting on 13 May 2003.

Recommendation

3. That the Commission :
 - (a) considers the regulatory and non-regulatory measures in the draft consultative document (see Annex B);
 - (b) gives its views on specific issues that have been raised by stakeholders concerning the proposed harmonised Regulations (see paras. 9 – 18 below);
 - (c) agrees the publication of the draft consultative proposals and allows four months for the submission of views;
 - (d) notes progress on developing proposals for the establishment of sustainable and viable Workers' Safety Adviser arrangements and agrees that HSE should explore funding options for taking the approach forward.

Background

4. In 1998 Ministers asked HSC to seek ideas for promoting and encouraging greater employee involvement and consultation on health and safety including enhancing the role of safety representatives. HSC published a Discussion Document, *Employee consultation and involvement in health and safety* (DDE12) in November 1999 to promote debate and

seek ideas on regulatory and non-regulatory measures needed to achieve the goal of greater employee involvement. The Government and HSC, in the light of consultation, agreed a number of measures in 2000 that would make a valuable contribution to promoting greater employee involvement and developing partnership on health and safety in the workplace (letter from HSC Chair to Ministers detailing measures attached at Annex C).

5. The Commission identified an emerging consensus that :

- Employee involvement is important and a key element of effective health and safety management, and;
- Harmonising the Safety Representatives and Safety Committees Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996 would be beneficial.

6. The Commission considered two papers on employee involvement at its meeting on 13 May 2003, first, a progress report on the development draft consultative proposals for the Health and Safety (Employee Consultation and Safety Representation) Regulations (see HSC/02/120) and, secondly, a report examining the effectiveness of the Commission's Workers' Safety Advisor Pilot (see HSC/03/64). The Commission agreed that draft consultative proposals should be presented to its July meeting containing both regulatory and non-regulatory measures aimed at encouraging greater employee involvement. The Commission was keen to ensure that the measures being put forward for consultation took account of the bigger picture on health and safety and fitted in with HSC/E's strategic goals.

Argument

7. The draft consultative document (see Annex B attached) sets out both the regulatory and non-regulatory measures that are intended to produce greater employee involvement. These measures are set out in a diagram (see Annex A attached).

8. A number of issues have been raised in our discussions with stakeholders on which the Commission's views are sought.

9. Concerns have been expressed by Government Departments that the regulatory proposals are old-fashioned, unnecessarily bureaucratic and prescriptive and are likely to result in considerable burdens on business. It is important that we resolve these matters otherwise we face the real prospect of the proposals failing to secure Government support and a consequential harm to HSC/E's reputation.

10. As drafted the harmonised Regulations contain considerable detail, for example, on the arrangements for the setting up of constituencies to facilitate the election of employee safety representatives and for the election of employee safety representatives if employees choose to exercise their new rights to be represented (see Annex B, Chapter Two, para. 17). There is evidence that the goal setting approach adopted in the Health and Safety (Consultation with Employees) Regulations 1996 and specifically the right for employers to determine the method of consultation has not resulted in a significant increase in employee involvement nor in the number of safety representatives. The detailed provisions are intended to remedy this failing. An alternative approach would be to remove detailed provisions, on elections for example, and place in a supporting ACOP

or guidance. This approach may well meet the concerns of Government Departments. HSC is invited to consider whether the level of detail in the harmonised regulations is appropriate or over prescriptive.

11. The Chair in his letter to Ministers of 10 August 2000 (see Annex C) set out the measures the Commission were proposing to take forward to promote and encourage greater employee involvement. The Commission in its Press Release of 15 December 2000 (C072:00) reported that research would be undertaken to, “explore more practical and less resource-intensive alternatives to Provisional Improvement Notices (PINs), which are issued by safety representatives in some other countries, to notify employers of an alleged breach of the law.” Representations have been made to us that the effectiveness of safety representatives is currently curtailed as employers may disregard their advice. The ability to serve Provisional Improvement Notices (PINs) would be one way of remedying this. But this could be bureaucratic and difficult to match with the modern partnership approach. We are looking again at the possible benefits of research to explore more practical and less resource-intensive alternatives including non-statutory Union Improvement Notices. The draft harmonised Regulations include a new duty on employers to respond to safety representative’s representations. This provision may possibly meet the concerns voiced by safety representatives about their representations being ignored. We invite the Commission’s views on the need for this research.

12. The regulatory proposals as drafted are built on the employee/employer relationship model (see Annex B, Chapter Two, paras. 9 - 12). Some stakeholders have argued that we should develop a dynamic model of employee involvement that embraces all employers operating in a workplace and all employees, including atypical workers, working in that workplace. Atypical workers must be properly involved and consulted over health and safety matters that affect them. Most atypical workers are employees and will be covered by the harmonised Regulations. The HSC may wish to consider whether the model of employee involvement built around the workplace would fit better with its vision of health and safety in a changing world.

13. The proposed Regulations include a new power for recognised trade unions to appoint safety representatives who are not employees of the relevant employer (see Annex B, Chapter Two, para. 16). Under the Safety Representatives and Safety Committees Regulations 1977 this right is restricted to Equity and the Musicians’ Union. This new right was called for by a small number of stakeholders during the earlier consultation on employee involvement in 1999/2000 to facilitate in certain situations the provision of more effective and competent representation. Does the Commission agree the need for the proposed new right ?

14. During the Commission’s consideration of employee involvement in May 2003 Commissioners Donovan and Tudor raised questions about the proposed exemptions for certain small employers from the requirements concerning safety representatives and safety committees and inconsistency of thresholds with other Regulations. As drafted the proposals (see Annex B, Chapter Two, paras. 21 and 36) require all employers to consult their employees on matters of health and safety but exempt employers with twenty or fewer employees from consultation through safety representatives. The proposals also exempt employers with less than fifty employees from the requirements concerning the formation of safety committees. The approach adopted mirrored comments we received during the earlier consultation about the need to consider thresholds for small employers in

order to avoid unnecessary formality and bureaucracy and which we believe are right for this purpose. We invite the views of the Commission on the proposed exemptions.

15. The HSC will be considering a paper detailing progress on the ratification of ILO Convention 184 on Safety and Health in Agriculture at its meeting on 5 August 2003. Article 8(1)(b) of ILO 184 provides among other things rights for workers “to select safety and health representatives and representatives in safety and health committees”. Current law set out in the 1977 and 1996 Regulations and the proposals contained in the harmonisation Regulations do not satisfy the rights granted to workers set out in Article 8(1)(b). We wish to avoid putting in place requirements and thresholds that differ between industries. We invite the views of the Commission on the approach we should adopt and the proposal to address this issue as part of the planned consultation on employee involvement.

16. At its meeting in May 2003 the Commission asked HSE to develop proposals for the establishment of sustainable and viable Workers’ Safety Advisers and funding options for taking this approach forward. HSE is currently exploring funding options, examining how such an approach would be managed and by whom ensuring broad stakeholder support and seeking views on the capacity in terms of skilled, competent and available WSAs to take part. We are in discussions with DTI concerning the feasibility of support under the Partnership at Work Fund and the Work Life Balance Challenge fund. We are also keen to explore with DfES the cope for funding the work of WSAs under the Union Learning Fund scheme. EU and European Agency funding schemes designed to support social restructuring and improved health and safety in SMEs are also being explored. Consideration is currently being given for funding the WSA approach under HSE’s Small Firms Programme,

17. The Commission agreed the way forward for the Workers’ Safety Adviser approach was to roll it out gradually. There would be clear benefits both in terms of involvement in health and safety and likely improvements from rolling out in the voluntary sector first. Our next priority would be the hospitality sector although we recognise that there are significant organisational difficulties that have to be addressed. We have also considered the construction sector but we would like to have the results from the Occupational Health Support scheme being piloted in the sector first. We hope to have a clearer picture of feasible funding sources and options for taking the WSA approach forward in time for the Commission’s meeting on 15 July 2003. Does the Commission agree with this approach ?

18. The Commission has agreed that the Chair should write to Ministers with the report of the evaluation of the WSA Pilot. It is recommended that the report should now be sent to Ministers together with the Commission’s proposals for taking the scheme forward.

Consultation

19. Consultation has taken place extensively on the harmonised Regulations with external stakeholders including employers’ and trade associations, trades unions, Government Departments and health and safety bodies. With respect to Chapter Three of the consultative document we have informally tested the reactions of a smaller number of stakeholders.

20. Given the issues addressed in the planned consultation we recommend that a period of at least four months, commencing early September, be allowed for comment.

Presentation

21. If the Commission agree the proposals we need to consider arrangements for launching the consultative document and, possibly, for setting up focus groups to ensure wide-ranging discussion of these important issues.

Costs and Benefits

22. The draft Regulatory Impact Assessment (RIA) reveals that expected benefits of the harmonised Regulations over the ten year appraisal period of between £3,460 and £3,890 million outweigh expected costs of £2,496 million by £1,000 to £1,400 million. The assumption underlying the RIA is that the incidence of accidents and ill health in workplaces with new safety representatives will decrease by 15%. It is estimated that 2/3 of the costs over the appraisal period will be attributable to the time spent by new safety representatives on carrying out their functions. Further it is estimated that for the average small workplace costs over the ten-year appraisal period amount to £31.8k. The cost to the average larger workplace over the ten-year period amounts to £210k.

23. Preliminary consultation on the Partial Regulatory Impact Assessment (see Annex B) reveals divergent views on the estimates of costs and benefits. Our Economists have made assumptions on the improvements to health and safety the harmonised regulations will produce. We are proposing to seek the views of commentators during consultation on the accuracy of our assessment of the likely costs and benefits the harmonised regulations will bring.

Financial/Resource Implications for HSE

24. The resource implications of the measures set out in the draft consultative document are not possible to quantify at this time. Costs will be clearer once the Commission has agreed the results of consultation and the structure and content of the harmonised Regulations have been decided. Depending on how the Commission wishes to pursue the promotion of greater employee involvement our work in this area could lead to greater pressure on HSE's resources and re-direction of existing resources. It is unlikely to generate a need for new resources. This section has been cleared with PEFD

Environmental Implications

25. None.

Other Implications

26. None.

Action

27. That the Commission :

- considers the regulatory and non-regulatory measures in the draft consultative document (see Annex B);
- gives its views on specific issues that have been raised by stakeholders concerning the proposed harmonised regulations (in paras. 9 – 17 above);
- agrees the publication of the draft consultative proposals and allows four months for the submission of views;
- notes progress on developing proposals for the establishment of a sustainable and viable approach for Workers' Safety Advisers and agrees that HSE should explore funding options for taking the scheme forward.