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HEALTH AND SAFETY COMMISSION

Proposed Consultative Document on Worker Involvement

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Cleared by Jonathan Rees on 27 January 2006

Issue

1. To decide whether to issue a Consultative Document on worker involvement that includes proposals for amendments to regulations.

Timing

2. Routine.

Recommendation

3. That the Commission agrees to issue the annexed Consultative Document, subject to editorial amendments, for a period of four months.

Background

4. In February 2005, the Commission considered the programme plan for the Worker Involvement Programme (HSC/05/16). One of the issues for decision then was whether to include in that programme a project to consider amendments to the worker health and safety consultation legislation. The Commission asked the Executive to work up proposals as part of the wider package of measures in the programme. We now present the worked-up proposals for the Commission's views.

Argument

5. Improving the quantity and quality of worker involvement in health and safety is a vital component of the Commission's strategy for health and safety. The Worker Involvement Programme that the Commission approved in February 2005 set out five elements to achieve this: **persuading** employers and workers of the benefits through communications activity; building the **evidence** base to support this; ensuring employers and workers have access to the means of gaining the **skills** necessary; ensuring workers have equal access to **knowledge**; and ensuring **stakeholders** support the programme.
6. The law's role in worker involvement is confined to providing a basic framework within which organisations can develop effective working arrangements. It imposes general duties on employers to provide employees with **information, instruction and training**,

and to **consult** employees, either directly with each employee or through trade union-appointed or workforce-elected safety representatives. However, simply doing this alone is unlikely to achieve the Commission's strategic aims. It is impossible to legislate to require employers and employees to go beyond simple consultation and work in a spirit of cooperation and mutual trust, but it is these attitudes that will lead to full participation and the changes in behaviour we seek.

7. Therefore, in working up these proposals, the Executive has sought to embed the proposed legislative changes in a matrix of other activities. The draft Consultative Document (CD) at the annex suggests there are three "pillars" of activity: **legislation**, **guidance** on good practice in consultation and **encouragement** to strive for best practice in full participation. It emphasises that it is in the adoption of best practice that we will find the greatest benefits, but the draft CD seeks views on what is the right **balance** between the three pillars and, indeed, if there are other options for improving worker involvement that we have not yet identified. It also takes the opportunity to invite comments on any future voluntary initiatives to follow up the Workers' Safety Adviser Challenge Fund.
8. The options for strengthening the pillars identified so far are to:
 - a) Issue better **guidance** on good practice in consultation;
 - b) Develop **voluntary standards** of best practice in worker participation; and
 - c) Strengthen the existing **legislation** on employee consultation on health and safety.
9. Although the options are not mutually exclusive, the issue that will attract most attention from consultees (should the Commission decide to go ahead) is that of legislative change. The Commission asked the Executive to consider three legislative changes to impose new duties on employers to:
 - a) Consult safety representatives on risk assessments; and
 - b) Respond to representations made by a safety representative;and
 - c) To clarify the circumstances in which safety representatives need not be employed at the workplace of the employees they represent.
10. Details of our proposals for changes (a) and (b) are at the annex, but in summary, they are to set the objective in legislation and leave it to employers and employees to work out the detail of what is best for their organisation through the usual employment relations machinery, based on guidance. Only in this way will we avoid imposing bureaucratic structures. We propose to treat trade union and non-trade union safety representatives (whether onshore or offshore) equally.
11. On (c), we have taken legal advice. The substance of that advice is that the existing law onshore does not prevent safety representatives being appointed (or representatives of employee safety being elected) to cover more than one workplace. No legal change is needed, although better guidance would make it clearer what the law permits. Offshore, there are practical difficulties with representatives representing workers on more than one installation and we do not propose any change to the existing requirements. The draft Consultative Document (at paragraph 65) notes the demands for "roving" safety representatives (of which (c) above is one example), explains the challenges they present and concludes that the Commission should not make any proposals because there is no consensus on the best way forward.

12. HSE's Regulatory Challenge Panel considered the proposals and found the case for regulation was not made. Nevertheless, the Commission may wish to consider consulting on the proposals, to test wider views on the balance between the three pillars. The Commission is aware that the trade union movement has been asking for more substantial regulatory change than that proposed here. It would be a strong indication to trade unions that the Commission is listening to their opinions if a Consultative Document was issued.
13. If the Commission agrees to consult, we would propose issue the document on HSE's website and gather as many responses as possible through that. Large print copies would be made available for people with visual impairment. We will seek the views of smaller organisations through their representative bodies and trade associations. We would also propose to hold public meetings for individual workers (especially safety representatives) and organisations, who might wish to hear a personal explanation of the proposals and offer their views in person. A slightly longer consultation period may therefore be appropriate than the usual three months, especially if it runs into the summer holidays. We suggest a consultation period of four months.

Consultation

14. With LACORS, DTI, Small Business Service, Better Regulation Executive, CBI, IOD, FSB, EEF and TUC. HSE's Small Business Trade Association Forum has also considered the proposals. It concluded that, while employee consultation was worthwhile, it would not wish to see regulatory bureaucracy on undertaking and recording consultations with safety representatives.

Presentation

15. It is a consistent theme of HSE communications that the people best placed to make workplaces safer from harm are the staff and managers who work in them, working together. We have sought to explain the role of legislation in the CD, noting its possible place as part of a range of approaches. But we can expect some business critics to question costs. Equally, some TUs will have wanted us to go much further. We will want to position our approach as being even-handed, seeking a wider view and more evidence on the best balance between the options for action.
16. There are some good examples of worker involvement in public service, such as the Ministerial Task Force on Health, Safety and Productivity, whose exemplary consultative practices were praised by the Council of Civil Service Unions. We can publicise such examples and hope to spread it more widely, to reach front-line managers and workers.

Costs and Benefits

17. A partial regulatory impact assessment has been prepared and is at annex A of the annex to this paper. If the assumptions we have made are borne out in practice, costs and benefits to business will be around:

	Option A (guidance)	Option B (standards)	Option C(1) (risk ass't)	Option C(2) (responding)
Benefits	Nk	Nk	£0.3m	
Costs				
Familiarisation	£0.12–0.24m (one-off)	£0.12–0.24m (one-off)	£0.9–1.4m (per year)	£2–2.8m (per year)
Compliance	Voluntary	Voluntary		

Costs of option C (legislation) are likely to fall more on larger organisations than smaller ones, because they are more likely to have safety representatives.

Financial/Resource Implications for HSE

18. The options under the guidance and encouragement pillars can be accommodated within the resources already allocated to the Worker Involvement Programme. If the legislative proposal is adopted, there will be staff familiarisation costs of about £100k (including LA costs) and costs of amending guidance estimated at £1k (low because reprints of existing guidance would be needed by 2007 anyway). As the regulations bedded in, we could expect some additional casework for field staff in responding to enquiries and in helping employers comply, but this is expected to be only small and could be accommodated within existing resources.

Environmental Implications

19. None.

Other Implications

20. None.

Action

21. The Commission is invited to agree to issue the annexed Consultative Document, subject to editorial amendments, for a period of four months.