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HEALTH AND SAFETY COMMISSION

Worker Involvement – Outcome of Discussions with Social Partners

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Cleared by Jonathan Rees on 18 May 2007

Issue

1. The outcome of discussions with the social partners on whether there is any common ground on regulatory changes on worker consultation.

Timing

2. For this meeting, as requested.

Recommendation

3. The Commission is invited to consider the results of the discussions with the social partners and decide on next steps.

Background

4. The Commission considered the outcome of its consultation on worker involvement in March (HSC/07/12). The Commission asked HSE to explore the feasibility of revising the current Approved Code of Practice (ACoP) material to require employers to respond to representations made by safety representatives and to consult them on risk assessments. There was broad support for new guidance, which is projected to be ready early in 2008. It was agreed that HSE would bring its findings, together with an impact assessment, to this meeting.

Argument

5. HSE officials met staff from the CBI, EEF and TUC during April. Officials explained the Commission's request and sought their views on the Commission's proposal to consider changes to the two ACoPs supporting the Safety Representatives and Safety Committees Regulations 1977. These staff confirmed the views their organisations expressed during the consultation exercise on changes to the law. The CBI and EEF said that their memberships were strongly and firmly opposed to any changes to the ACoPs. The TUC said that it saw value in changes to the codes

and was prepared to discuss the nature and scope of any changes with employers' organisations.

6. Following these discussions, the Chair telephoned the Deputy Director-General of the CBI, the Director-General of the EEF and the General Secretary of the TUC. They confirmed their views. The employers' associations did not support new Regulations nor work to revise the ACoPs. However, they were keen that the work to revise the guidance should go forward in genuine partnership.
7. Given the outcome of these discussions, HSE officials met the Chair to consider the value of preparing a full impact assessment for proposals to amend the ACoPs. It was agreed that such work would be nugatory and a detailed impact assessment has not been prepared. However, annex 1 summarises some of the preliminary work undertaken and gives a broad indication of the likely costs and benefits that an impact assessment would need to examine, though of course in considerably more detail, if the Commission were to decide to revise the ACoPs.

Consultation

8. Internally and with CBI, EEF and TUC.

Presentation

9. If the Commission decides not to proceed with any regulatory change, it may wish to make clear that its decision at this point in time is based on a lack of consensus between the social partners on this issue. Further work by HSE on this question would be of limited value unless there were some change which made the prospect of agreement between the social partners more likely.

Costs and Benefits

10. None

Financial/Resource Implications for HSE

11. The cost of this immediate consultation exercise is estimated at approximately £4500 in HSE staff time. The greater financial and resource implications of amending the ACoPs are currently being estimated. Considerations include the staff resources required as well as communications research and development costs. These costs would be in addition to the costs of the worker involvement strategy already reported to the Commission in HSC/07/12, which included costs for revising the guidance, but not the ACoPs.

Environmental Implications

12. None

Other Implications

13. None

Action

14. The Commission is invited to consider the results of the discussions with the social partners and decide on next steps.

Outline of issues for an impact assessment on changes to the ACoPs on safety representatives

The impact of any changes to the Approved Codes of Practice (ACoPs) will necessarily depend on what changes are made. We consider here for purposes of illustration three different types of change, and the null option. However, the wording of any revised version could significantly alter the costs and benefits, for example if the code gave detailed guidance, compared to if it offered a more flexibility. The estimates given are necessarily approximate and the Commission should not base decisions on the precise figures quoted. However, in the view of HSE's economists, the ranking of the options is unlikely to change if the assessment were refined.

Option 1

1. **Do nothing.**

There are neither additional health and safety benefits nor costs associated with doing no more than is already planned.

Option 2

2. Make **minor amendments** to the ACoP 'The Code of Practice on Safety Representatives', based on the existing text of paragraph 15 of the ACoP 'Management of Health and Safety at Work' (consulting safety representatives on risk assessments) and the definition of consultation in the Information and Consultation of Employees Regulations 2004 (to make it clear that consultation involves a two-way dialogue and therefore that if a safety representative make a representation, it should receive a response).
3. Costs are associated with reading the new guidance and implementing new procedures. Benefits could result from any improvements in health and safety performance. HSE estimates costs (confined to employers who recognise trade unions) would be about £6 million, with no identified benefits. This is because we anticipate little improvement in compliance with such small changes.

Option 3

4. Withdraw the existing ACoPs and **draft a revised code** that gives authoritative practical guidance on **both** the Safety Representatives and Safety Committees Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996. The code and associated guidance would seek to place the detail of the law in the background and instead bring to the fore practical guidance on how to set up and operate an effective system of worker consultation on health and safety matters, whether or not the employer recognises trade unions. The new code would seek opportunities to give guidance on how to minimise administrative burdens arising from any misunderstanding of the legal duties. The new code would apply to all organisations, not just those recognising trade unions.
5. Without knowing the content of such an ACoP, it is difficult to assess costs and benefits. However, it is possible costs (extending to all employers) could range from £160 – 215 million, while benefits may be in the region of £54 – 63 million because of improvements in consultation in employers who were previously not complying.

Option 4

6. Withdraw the existing ACoPs and **draft a revised single code** that gives authoritative practical guidance on **only** the Safety Representatives and Safety Committees Regulations 1977. The new code would therefore apply only in those organisations that recognise trade unions. It would take the opportunity to update the existing guidance to take account of developments in law and practice since the 1970s. This is expected to bring more benefits than simply making the two small amendments suggested in option 2.
7. Costs are therefore estimated at between £39 – 43 million and benefits at between £39 – 48 million.

Summary

8. The four options are, in order of complexity:
 - a. Nothing: costs and benefits balance and are zero.
 - b. Minor amendments: costs are relatively small, but probably outweigh benefits.
 - c. New ACoP (TU only): costs are high but might roughly balance benefits.
 - d. New ACoP (all): costs are very high and probably greatly outweigh benefits.