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HEALTH AND SAFETY COMMISSION

Plans for the Worker Involvement Programme

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Issue

1. This paper seeks: (a) the Commission's approval in principle of an enhanced worker involvement programme and (b) views on a proposal to make relatively minor amendments to the worker consultation regulations.

Timing

2. For this meeting. The programme needs to get properly under way soon.

Recommendation

3. That the Commission approves in principle the initial programme of work outlined, and that it gives its views on whether the programme should include a project to make relatively minor amendments to the worker consultation regulations.

Background

4. The Commission issued its "Collective Declaration on Worker Involvement" in March 2004. This set out the Commission's belief that more and better worker involvement in health and safety is essential to delivering the strategy, and listed a series of activities that the Commission intended to pursue.

Argument

5. While many employers involve their workers in decisions about health and safety, HSE estimates that approximately six out of ten workers in Great Britain are not consulted (whether directly or indirectly through safety representatives) on health and safety matters that affect them. The Commission will realise that the problem is not one-sided. HSE does not suggest that the exclusion of workers from joining in decision-making is

entirely the responsibility of employers. Workers can also be excluded because they do not have the skills to engage with their employer on a level playing field, or because they do not have the inclination to get involved.

6. If we are to secure more and better worker involvement in health and safety, it seems clear that we need to change the attitudes and beliefs that underpin the behaviour of both:

(a) employers who do not involve their staff in health and safety; and

(b) workers who do not get involved in health and safety,

so that both parties are ready, willing and able to engage in sensible health and safety management together.

7. We do not have conclusive evidence on what aspects of worker involvement reduce health and safety risks, or of what activities most effectively stimulate greater involvement. We therefore think it is sensible to improve our evidence base and to try out a number of different approaches in specific areas. We also propose a focus on working with the constituent elements of the “Fit for work, fit for life, fit for tomorrow” strategic programme to help deliver their targets. Gathering more information about what works in specific situations will help us make more efficient use of resources, rather than spreading our effort too thinly across the piece. Activities will be aimed at:

- Promoting innovative ideas for encouraging more worker involvement through the intervention of a Workers’ Safety Adviser, in the first place through administering the Workers’ Safety Adviser Challenge Fund;
- Securing widespread stakeholder commitment to the idea of worker involvement as a key component of sensible health and safety management; while in parallel
- Commissioning research to improve the evidence base for the impact of worker involvement on health and safety outcomes;
- Capturing, publishing and promoting case studies of effective worker involvement that demonstrate practical business benefits (not just health and safety benefits) and practical benefits for individuals;
- Communications activity to stimulate changes in attitudes and beliefs so that people feel that health and safety is worthwhile, worker involvement in health and safety is sensible and getting involved is the right thing to do;
- Stimulating the provision and take-up of training in appropriate skills and knowledge (including but not limited to the 10,000 safety representatives who undertake training each year);
- Providing better guidance and web-based resources for inspectors, employers, safety representatives and workers who are not union members; and
- Showing leadership from HSE and local authorities.

8. **A fuller outline and rationale for the proposed programme is at annex 1.** The Commission will note that it does not include any regulatory changes. Some

stakeholders have argued that strengthening safety representatives' powers would encourage more people to become safety representatives, which would improve worker involvement. An alternative view is that you cannot legislate to change attitudes. And changing attitudes seems to HSE to be key to improving worker involvement.

9. To respond to the range of views, HSE suggests that the Commission consider a project to develop proposals for four amendments to the worker involvement regulations.¹ These would not go as far as some stakeholders wish, but considering them might at least demonstrate HSC's willingness to listen. The proposals are:
 - A new duty to consult safety representatives on risk assessments;
 - A new duty to respond to representations made by a safety representative;
 - Clarifying the circumstances in which safety representatives need not be employed at the workplace of the employees they represent; and
 - Extending the circumstances in which a safety representative need not be an employee of the employer.
10. A preliminary analysis of the proposed amendments and their impact is at annexes 2 and 3. A fuller analysis would of course be necessary if the Commission decided to proceed with them in principle. HSE's conclusions are that the first three of the amendments are feasible, that there may be some benefit and they might improve working relations. However, the proposals would require considerable work. They are not simple. The last amendment would be very difficult to implement. There would probably also need to be consequential amendments of the ACoP on the Safety Representatives and Safety Committees (SRSC) Regulations 1977 (the so-called "brown book"), but HSE has not considered this in detail.

Consultation

11. Only informally at this stage. The proposal awaits the Commission's approval in principle. LACORS and representatives from two local authorities (one rural and one urban) have been involved with FOD from an early stage in designing the programme of activities.

Presentation

12. A key challenge of the programme will be to contribute to changing the image of both health and safety and of worker involvement in it. While trade unions are an important component of worker involvement, many workers choose not to join unions. We will need to ensure that the programme reflects (good) modern business practices and therefore the programme will work closely with the parallel Business Involvement Programme and other Government Departments with an interest in business, such as DTI.

Costs and Benefits

13. There is some evidence which suggests that fully involved workforces (covered by trade union safety representatives) can see a 25% reduction in the risk of accidents in

¹ The Safety Representatives and Safety Committees Regulations 1977, the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 and the Health and Safety (Consultation with Employees) Regulations 1996

unionised workplaces, with other forms of representation likely to deliver a somewhat lower benefit. Extrapolating this to universal coverage by safety representatives would imply 1500 fewer fatal or major injuries in unionised workplaces and about 800 fewer in non-unionised workplaces each year.

Financial/Resource Implications for HSE

14. HSE proposes to make worker involvement a separate programme in its own right and to report on progress to the Commission on a quarterly basis. Decisions on the amount of resource to be devoted to the programme will be made as part of setting up the programme. Current staff resource allocated is approximately £235k per year. For the sorts of activity planned, we would expect to require a research budget of up to £1m (over three years) and significant resources for communications activity, but it is too early to put a precise figure on this.
15. If the Commission agrees to consult on making regulatory amendments, HSE will redeploy staff (annual cost about £50k) from elsewhere in Policy Group to resource the project.

Environmental Implications

16. None

Other Implications

17. None

Action

18. The Commission is invited to approve in principle the programme of work described in this paper and to give its views on whether the programme should include a project to make relatively minor amendments to the worker consultation regulations.

Outline of and rationale for the proposed programme of work

1. HSE has been working closely with trade unions on several issues relating to worker involvement. This includes revising the accident book so that those injured at work can give consent to disclosure of information about their accident to safety representatives, publishing information about workers' health and safety rights in 22 languages, guidance for safety representatives on sickness absence and permitting the TUC to reproduce the ACoP on the SRSC for safety representative training purposes. However, these initiatives have developed in response to specific problems, rather than being part of a proactive programme of work.
2. There are two broad options for further work. The Commission could decide to keep under review the climate of opinion on worker involvement and work to persuade key stakeholders of its benefits as set out in the Collective Declaration. This would be unlikely to secure any significant benefits. The second option is a programme of activities to start to change employers' and workers' perceptions of health and safety and worker involvement in it.
3. HSE recommends the second option. Although the Commission's Declaration set out some evidence for a positive impact of worker involvement on health and safety, we cannot be sure we will be able to realise the benefits because:
 - the evidence base is narrow and often contradictory; and
 - the only model with any significant evidence of success is the trade union safety representative. We do not know if we can translate this model or its benefits to the majority of workplaces, where there are no unions.
4. However, we are convinced that, without more effective worker involvement and a health and safety climate where trust and cooperation is the norm, we will not be able to achieve our targets on issues such as stress, MSDs and sickness absence.
5. We do not know in detail why some employers are unwilling to engage with their staff, although we propose to fund some research to find out. However, initial research indicates that employers may be unwilling because of factors such as:
 - Fear of opening up a "can of worms";
 - Fear it will take a lot of time and effort and the costs will outweigh the benefits;
 - They do not know how to go about doing it; or
 - They feel it is a slippery slope to union recognition, with which they disagree.
6. Similarly, we have at this stage only a sketchy idea of why workers are unwilling to get involved, but initial research suggests that the reasons include:
 - Thinking that health and safety is boring, or stops them working efficiently;
 - Thinking that if they raise health and safety issues, their job will be at risk;
 - Thinking health and safety is complicated and they don't know much about it;

- Lack of skills such as how to negotiate; or
 - They do not know how to go about doing it.
7. The aim of the programme will be to change these perceptions, allay some of the fears, provide practical guidance, ensure that the parties have access to training to help them acquire new knowledge and skills and, perhaps most importantly, show leadership and commitment. We do not have conclusive evidence on what aspects of worker involvement reduce health and safety risks, or of what activities most effectively stimulate greater involvement. We therefore think it is sensible to improve our evidence base and to try out a number of different approaches in specific areas. We also propose a focus on working with the constituent elements of the “Fit for work, fit for life, fit for tomorrow” strategic programme to help deliver their targets. Gathering more information about what works in specific situations will help us make more efficient use of resources, rather than spreading our effort too thinly across the piece. Activities will be aimed at:
- Promoting innovative ideas for encouraging more worker involvement through the intervention of a Workers’ Safety Adviser, in the first place through administering the Workers’ Safety Adviser Challenge Fund;
 - Securing widespread stakeholder commitment to the idea of worker involvement as a key component of sensible health and safety management; while in parallel
 - Commissioning research to improve the evidence base for the impact of worker involvement on health and safety outcomes;
 - Capturing, publishing and promoting case studies of effective worker involvement that demonstrate practical business benefits (not just health and safety benefits) and practical benefits for individuals;
 - Communications activity to stimulate changes in attitudes and beliefs so that people feel that health and safety is worthwhile, worker involvement in health and safety is sensible and getting involved is the right thing to do;
 - Stimulating the provision and take-up of training in appropriate skills and knowledge (including but not limited to the 10,000 safety representatives who undertake training each year);
 - Providing better guidance and web-based resources for inspectors, employers, safety representatives and workers who are not union members; and
 - Showing leadership from HSE and local authorities.
8. But we need to recognise that in the real world, employers will not change their behaviour on involvement solely on health and safety. We need to ensure that HSC/E and LA activity dovetails with wider developments in the changing workplace, such as DTI’s proposed Employee Information and Consultation Regulations.
9. We believe that inspectors in HSE and LAs have an important role to play in changing attitudes and beliefs about worker involvement. We ran a project that set out to examine inspectors’ and policy staff’s attitudes and beliefs. This found that the main barrier to field and policy staff doing more to encourage worker involvement in health

and safety was a culture – originally stemming from Commission guidance about enforcement of the SRSC 1977 – that:

- Sees worker involvement as synonymous with trade union safety representatives;
- Does not reward expertise or activity in the area;
- Perceives the subject as difficult, because of being drawn into non-health and safety issues and the different expectations of employers and workers.

10. This culture has been reinforced by a wider “deregulatory” climate, which has focused regulators’ attention on the needs of business. There is perhaps a tendency to think rather more about the impact of regulatory activity on employers, than the needs of workers.
11. LACORS also carried out a survey of LAs, which showed very little work is going on in the area. It is not entirely clear why, but LACORS consider it may be a reflection of a lack of understanding of the regulations and a lack of historical guidance on the issue.
12. Changing this culture will be a long and difficult process. A first step will be to ask the Commission to review its guidance to enforcing authorities on enforcement of the SRSC. But in addition, we need to help inspectors define an appropriate boundary between what is right for them to do on worker involvement and what is more properly for employment relations specialists. We also need to help them be able to identify good worker involvement and consultation and to be able to compare existing practice with good practice.
13. We do not believe that asking inspectors to enforce the regulations will change employers' fundamental attitudes towards worker involvement – and of course, it does nothing about workers' responsibility to get involved. The onshore regulations set out two frameworks for consultation (one where there are recognised TUs and one where there are none), but say nothing about involvement more widely, and do little to encourage a cooperative atmosphere. Enforcement on worker involvement could form part of a wider intervention strategy with an employer, for example where there was a poor health and safety culture, but enforcement of the regulations for their own sake is likely to be ineffective.
14. Workers who are members of a trade union which is recognised and which has appointed safety representatives are already involved. We do not propose to concentrate activity here, but neither do we propose to ignore the unionised sector. We very much want to work with trade unions to further improve the effectiveness of safety representatives. For example, the TUC has suggested that there may be a place for a "mini" safety representative in smaller, lower risk workplaces. Such representatives would have the same functions as other safety representatives, but have a lower level of training, appropriate to their role. We also propose to provide more support for safety representatives through the HSE website – clearer guidance, more information and other resources. A priority area for developing better guidance will be in the area of time off for training of safety representatives, which stakeholders tell us is the source of most confusion. In the musculoskeletal disorders programme, we are exploring with the TUC options for taking forward the MSD skills workstream by involving safety representatives. In particular, we are discussing the possibility of:

- (a) Feeding into their forthcoming revision of the MSD training material for safety representatives; and
 - (b) Surveying safety representatives attending TUC training courses to gauge their perceptions of the major MSD issues in the workplace.
15. We expect to create a Programme Board to help manage the programme. This would ideally have representation from the social partners. We have already gathered the nucleus of a steering group for the HSE/LA leadership element of the programme, with representatives from LACORS and two local authorities. This has provided helpful insights into the challenges we need to overcome. Working with others is an essential philosophy of the programme and we hope all actors will engage fully.

Preliminary analysis of possible amendments to SRSC 1977

(This analysis would need to be extended to the other worker consultation regulations)

1. A duty to consult safety representatives on risk assessments

Some stakeholders want a specific duty inserted in the Regulations to require an employer to consult safety representatives on the findings of any health and safety risk assessment before the control measures shown to be necessary are implemented. The degree of consultation required will depend on the complexity of the assessment. In many cases, risk assessment consists of identifying and following good practice; consultation in such cases will be straightforward and might consist simply of asking the safety representatives whether they agree that the good practice identified is relevant and that the control measures proposed are practical and indeed meet the requirements of the good practice. However, in more complicated cases, there might need to be consultation on all four stages of risk assessment (hazard identification, risk analysis, risk evaluation and risk management).

The benefit of such a duty would be that it should ensure that risk assessments were more accurate and therefore lead to better risk control, and would have better buy-in from workers.

HSE has concluded that if the Commission was minded to make this change, this duty could be included in the Regulations without much difficulty.

2. A duty to respond to representations made by a safety representative

Safety representatives have the statutory function of making representations to the employer on hazards, dangerous occurrences, accidents, complaints or other matters affecting health safety and welfare at work. However, there is no corresponding duty on the employer to respond to such representations. Some stakeholders want there to be a duty on employers to respond to representations in good time, and the response would have to address the substance of the representation – a holding reply, or a reply declining to provide a substantive response would not be satisfactory. Although in principle the representation and response would not need to be in writing, it is difficult to see how employers could easily prove that they had discharged their duty without a written record and so that everyone is clear what the representation was, it might be better if the representation had to be in writing too. We would need to make provision for issues such as what counts as a response and what is a reasonable time to wait for a response.

The benefit of such a duty would be that it could encourage a better dialogue between employer and workers.

HSE's analysis is that introducing this duty would be a substantial piece of work. There is some concern that it risks introducing formality into what might be a good working relationship, and thereby defeat its aims. It might be possible to overcome some of these risks through guidance, and it could secure some benefits, though it has not been possible to quantify these.

3. Clarifying the circumstances in which safety representatives need not be employed at the workplace of the employees they represent

Some stakeholders want a specific right for a safety representative to be able to represent the employees of an employer, wherever they work. Thus, if an employer has several sites that he occupies, the stakeholders want one safety representative to be able to cover all the sites. They believe that this is currently not clear in the Regulations. It is not intended that safety representatives would have the right to enter the premises of third parties to represent employees who work there (such as cleaners). (For example, in the case of HSE, a safety representative appointed from the workforce at Rose Court would be permitted to represent the workforce at all HSE's offices, from Plymouth to Aberdeen.)

The benefit of such a duty would be that there could be economies of scale. Such safety representatives might also become more experienced and so be more effective.

HSE's conclusion is that this right is already in the SRSC. If stakeholders feel it is necessary to have this spelled out in the Regulations, it should be straightforward.

4. Extending the circumstances in which a safety representative need not be an employee of the employer

A safety representative can represent only fellow-employees (section 2(4) of the HSWA 1974), although this is modified in the case of actors and musicians through regulation 8 of SRSC 1977. In these cases, a safety representative can be appointed to cover workforces where s/he is not an employee. To reflect the modern world where employers share workplaces and where employees may work in several workplaces, some stakeholders want a right for safety representatives employed by an employer who recognises trade unions (employer A) who shares a workplace with another employer (employer B) who does not recognise trade unions, to be able to represent all the employees at the workplace to both employer A and employer B. (For example, in the case of Rose Court, PCS, Prospect or FDA safety representatives would be able to represent canteen staff, to both HSE and the canteen contractor.)

It is not intended that employer B would have to recognise the trade union(s) that appointed the safety representatives. Similarly, the employees of employer B would not need to be a member of the same trade union as the safety representatives (or, indeed, any trade union). It may be desirable to include a test that the employees of employer B want the safety representative from employer A to represent them. This might be achieved through, for example, a secret ballot. We might also need to require employer B to permit the safety representative to speak to his employees.

The benefit of such a duty would be that the improvements in health and safety that accrue from having a trade union safety representative could also be spread to the other workforce, which does not.

The risks of introducing such a duty include the chance that it may lead to disputes between employer B and the safety representative for which there is no negotiating system to resolve. We would need to consider how such disputes would be resolved, by whom and at what cost.

The first three amendments are relatively straightforward. However, the fourth would change two policies currently enshrined in SRSC and the Health and Safety (Consultation with Employees) Regulations 1996:

- It is for the employer to choose how to consult his staff (employer B would be forced to consult and respond to safety representatives of employer A, whether or not he recognised trade unions); and
- Safety representatives represent employees' views to their own employer, not other employers.

The Commission will need to consider whether it is right:

- If an employer chooses not to recognise a trade union, that he should have to deal with a union by virtue simply of sharing a workplace with someone who does recognise unions?
- That an employer should have to consult and respond to the representations of a third party, instead of his employees directly, if he chooses to do so?

Where two employers share a workplace, there are already duties in the Management of Health and Safety at Work Regulations 1999 requiring them to cooperate and share information. It is not clear what the proposed function would add beyond this existing duty. Moreover, it is not clear how requiring employer B to respond to employer A's employees encourages greater worker involvement of employer B's employees. There are also costs to employer A: A will essentially be subsidising B, because the costs of the time taken by A's safety representatives representing B's employees will come from A's pocket, not B's.

The HSE Legal Adviser is somewhat concerned about the proposal. Although there are broad powers in HSWA allowing for the modification by regulation of ss 2 – 9, the Legal Adviser is concerned that extending the powers in s 2(4) to allow employees of employer A to act as safety representatives to employees of employer B could be viewed as an unusual use of the vires by the Joint Committee on Statutory Instruments. Section 2(4) is extended for musicians and actors, but in those cases the groups represented are from two specific unions and it is the link with the employer that is missing. The proposal here is to allow safety representatives to represent those who not only are not employees of the same employer, but also are not members of the same union or any union at all. This could overlap quite substantially with the 1996 Regulations.

HSE's analysis is that it is likely to be extremely difficult to make this proposal work in practice. Although it may secure benefits to health and safety in theory, there are issues of equity and fairness and there is a risk that it will be self-defeating because disputes may arise between the employer and the safety representative. It may not be possible to overcome the legal difficulties.

Overall, cross-Government support is only likely to be forthcoming if the amended Regulations command the support of all stakeholders, are not overly prescriptive or bureaucratic and secure significant benefits. The proposals will be significant in better regulation terms and will need clearance by the Prime Minister's Panel for Regulatory Accountability. The proposals could also be deemed to increase the administrative burden on employers just when the Better Regulation Task Force (BRTF) has been asked to consider this issue. The BRTF is currently examining the Dutch approach of measuring and reducing administrative burdens. One of the latter has been to deregulate the requirement to consult employees on certain matters.

Proposal for Amendments to the Safety Representatives and Safety Committees Regulations 1977

DRAFT Regulatory Impact Assessment (Initial)

Purpose and Intended Effect

Issue

1. Stakeholders have suggested to HSE that the Commission should consider four amendments to the Safety Representatives and Safety Committees Regulations (SRSC) 1977:

- A new duty on employers to consult safety representatives on risk assessments;
- A new duty on employers to respond to representations made by a safety representative;
- Clarifying the circumstances in which safety representatives need not be employed at the workplace of the employees they represent; and
- Extending the circumstances in which a safety representative need not be an employee of the employer.

It believes these amendments would improve worker involvement and hence improve health and safety at work.

Risk Assessment

2. The table below sets out the injury rates of workers over the past ten years.

Year	Rate of Reported fatal injuries (per 100,000 employees)	Rate of Reported Non-fatal injuries (per 100,000 workers)
94/95	0.9	738
95/96	1.0	684
96/97	0.9	708
97/98	0.9	717
98/99	0.8	689
99/00	0.7	667
00/01	0.9	647
01/02	0.8	624
20/03	0.7	618
03/04 (prov)	0.7	629

3. Increased rights for safety representatives and new duties on employers to consult and respond to safety representatives are intended to reduce the injury rates in workplaces by creating better risk assessment procedures and encouraging a dialogue between employers and workers.

4. One research study has shown that where there is a union presence the workplace injury rate is 24% lower than where there is no union presence². Stakeholders believe that increased rights for safety representatives and new duties on employers to consult and respond to safety representatives will enable a reduced injury rate to be conferred on all workplaces.

Objectives

5. The objective of the proposals are to encourage better dialogue between workers and employers on health and safety matters, and so improve health and safety standards at work.

Options

6. At this stage the options considered are to do nothing, or to make the changes suggested. However, each of the proposals could be considered as a separate option.

Background Information and Assumptions

7. Information on the costs of the proposed changes has been obtained from relevant industry sources, sources within HSE³, the TUC, the New Earnings Survey 2003, 'The costs to Britain of workplace accidents and work-related ill health in 1995/96'⁴ (HSE, 1999) and DTI statistics.

8. All the costs to businesses are opportunity costs reflected by lost output as a result of carrying out new duties. It is assumed that the value of this lost output is equal to the time spent carrying out the new duties multiplied by the average wage (adding 30% for non-wage labour costs including superannuation and employers' National Insurance contributions).

9. Both costs and benefits have been discounted in line with Treasury guidance. Costs have been discounted at a rate of 3.5%. Health and safety benefits have been uprated by 2%, then discounted at 3.5%, giving an effective discount rate of 1.5%. Costs and benefits are calculated over a period of ten years and expressed in present value terms.

10. To estimate the costs and benefits of the proposed regulations it has been assumed that there will be full compliance.

BENEFITS

Health and Safety Benefits

Proposed amendment 1: A duty to consult safety representatives on risk assessment.

11. It is likely that the first proposed amendment will increase the accuracy of risk assessments, thus leading to lower injury and ill health rates. It is assumed that 10% of firms that have a safety representative already comply with the amendment. The amount by which injury rates of employees would be lowered is not known, if we assume (conservatively) the rates are lowered by 4 to 8%⁵, solely in firms with safety representatives, then the benefits would be £38.7m to £77.4 annually. This gives a present value over the appraisal period of £329m to £657m.

Proposed amendment 2: A duty to respond to representations made by safety representatives.

12. The benefits that arise owing to a better dialogue and a better control of health and safety risks are unquantifiable but may be substantial.

Proposed amendment 3: Clarifying the circumstances in which safety representatives need not be employed at the workplace of the employees they represent

² Litwin, Trade Unions and Industrial Injury in GB, LSE, 2000

³ <http://www.hse.gov.uk/statistics/overall/hssh0304.pdf>

⁴ ISBN 0717617092

⁵ This range accounts for the fact that Trade Unions have a large effect on safety in the workplace and while safety representatives contribute to this they cannot contribute for more than half the reduction. Therefore 4-8% seems a reasonable estimate.

13. This proposal – to enable a safety representative to represent the employees of a company in various sites – is a clarification of an already existing right and so yields no benefits.

Proposed amendment 4: An extension of the rights of safety representatives to represent all workers in premises, regardless of employer.

14. This proposal to extend safety representatives' duties to cover all employees who share the premises of the representative's employer does confer benefits to all employers. The employer (A) who employs the Safety Representative may receive some benefit from a unified process of health and safety management throughout the premises. The employer (A) could also gain from the breadth of experience the safety representative may be exposed to. The benefit to employer (A) is minimal.

15. The employer (B) whose employees will benefit from employer (A)'s Safety Representative will see the benefit of lower ill health and accident rates but the main benefits are to society. It is assumed that employer (B) has the same injury rates as those companies who do not recognise Trade Unions and the regulation improves these so that they meet the lower injury rates in companies who do recognise Trade Unions. A study of 1998 figures showed that where there is a union presence the workplace injury rate is 24% lower than where there is no union presence⁶. If we assume that Trade Unions confer lower rates of injury upon members then the safety representatives will not account for the full 24% reduction in benefit. If it is assumed that a safety rep is only half as beneficial in another employer's environment than in his own⁷ and confers a reduction in accident and injury rates of 2 – 4%, the benefit to society would be in the range of £72 million to £144 million per annum, which is a present value over the period of £676 million to £1351 million.

COSTS

Business Sectors Affected

16. The proposed regulations will affect all sectors.

Total Costs to Businesses

Proposed amendment 1: A duty to consult safety representatives on risk assessment.

17. The cost of consulting safety rep on all risk assessments has been calculated assuming 10% of firms currently consult representatives already. The time taken for consulting on a risk assessment is estimated as one hour for the safety rep and 0.25 hours for a middle manager who is consulting. The safety rep is earning the average wage of a union member (£14.38 per hour including non-wage labour costs) and the middle manager earns £23.14 per hour (including non-wage labour costs)⁸.

Type of Firm	Present Value (£millions)	Annual cost (£millions)
Small/Medium (<250 employees)	352 to 430	41 to 50
Large (>250 employees)	5.8 to 7.4	0.68 to 0.86
Total	541 to 687	62.8 to 79.8

18. The present value of the cost of the regulations to business is £541million to £687million over the appraisal period. The cost to businesses of complying with the proposed regulations is estimated to be £62.8 to 79.8 million per annum.

Proposed amendment 2: A duty to respond to representations made by safety representatives.

19. The cost of the duty to respond by employers is calculated by allocating 20 minutes to each response by the middle manager. Safety representatives in small firms are assumed to make one representation every two months, large firms one a month. It is assumed that currently 25% of representations are already responded to in accordance with this amendment.

Type of Firm	Present Value (£ millions)	Annual cost (£ millions)

⁶ Litwin, Trade Unions and Industrial Injury in GB, LSE, 2000

⁷ It is assumed that a safety rep operating in unfamiliar surroundings and dealing with a previously unknown manager and business will only be half as effective at reducing injury rates as they would be in their own employer's work place.

⁸ New Earnings Survey 2003

Small/Medium (<250 employees)	1,065	124
Large (>250 employees)	14.4	1.7
Total	1,079	125

Proposed amendment 4: An extension of the rights of safety representatives to represent all workers in a workplace, regardless of employer.

20. Only one scenario has been considered at this stage: one (large) employer sharing a workplace with one (small) employer. However, the proposal would apply to many other types of situation, such as a construction site where there are often several employers. If the Commission decides to proceed with the project, this section will need considerable further work.

21. In calculating the costs of this scenario employer (A) is assumed to be a medium-sized to large firm with over 250 employees and employer (B) is a small firm with fewer than 250 employees. As a proxy for the amount of firms with a safety rep, the percentage of firms that recognise trade unions and have a union representative has been used.⁹ It is assumed that every large firm¹⁰ that has a safety rep is in a shared workplace with an average of four small businesses. In calculating the costs the amount of time a safety representative spends carrying out the role is 3.7 hours a week, this is increased to 4 hours once the regulations are in place. The middle manager in the firm will now have to deal with the safety representative, this is assumed to be 15 minutes. The annual cost of this amendment is estimated to be £22.2 million and the present value over the appraisal period is £191 million.

Costs to a Typical Business

Proposed amendment 1: A duty to consult safety representatives on risk assessment.

22. The regulations cover all industries so costs have been calculated for three types of business – a small/medium business, a large business and an average of all businesses.

Type of Firm	Present Value (£)	Annual cost (£)
Small/Medium (<250 employees)	1,562 to 1,909	181 to 222
Large (>250 employees)	3,818 to 4,860	444 to 565
Average	2,332 to 2,960	271 to 344

23. The present value cost of the proposed regulations for an average business is £2,161 to 2,743 over the appraisal period.

Proposed amendment 2: A duty to respond to representations made by safety representatives.

24. The costs to typical businesses are given in the table below:

Type of Firm	Present Value (£)	Annual cost (£)
Small/Medium (<250 employees)	1,165	135
Large (>250 employees)	2,330	270
Average	1,853	215

Proposed amendment 4: An extension of the rights of safety representatives to represent all workers in a workplace, regardless of employer.

⁹ The DTI Trade Union Membership Statistics July 2003 shows that 30.7% of firms with fewer than 50 workers and 66% of firms with over 50 workers recognise Trade Unions. The Workplace Employment Relations Survey (WERS) 1998 found that 64% of workplaces where trade unions are recognised have a union representative.

¹⁰ Small Business Service Statistics show there are 37,005 businesses with over 50 employees and 1.2 million with fewer than 50, but more than 0.

<http://www.sbs.gov.uk/content/analytical/statistics/smestats2003.xls>

25. The additional 0.3 hours that a safety representative uses to carry out duties that will cover other employers' workplaces costs £224 per annum for each business that has a safety rep that now represents another employer's staff in the same workplace.

26. The firms that were previously not covered by a safety rep will incur a cost of £301 per annum in the manager's labour costs.

Costs to HSE

27. The costs to HSE are uncertain. There will be one-off costs of training staff in the new requirements. Recurring costs will include time in responding to additional complaints. Proposal 3 in particular has potential to give rise to disputes. These will need to be resolved either through HSE intervention, by involving ACAS or an Employment Tribunal.

Environmental Impact

28. No environmental impacts are expected from these proposals.

Equity and Fairness

29. For the first two proposed amendments there are no disproportionate impacts on any particular group.

30. The third proposed amendment, whereby safety representatives would represent all workers in a premises, does raise an equity and fairness issue as all the wage cost of the safety rep is borne by the employer of the safety representative (employer A) and most of the benefits are yielded by the employer without a safety representative (B). Employer A would pay for the training and time spent by the safety representative for all duties (including those carried out for employer B) whilst receiving little benefit. Employer B will receive the benefit of an improved safety record but will only have to pay for the manager's time, not the safety rep's time. Employer A is effectively subsidising the improvements in Employer B's health and safety that arise as a result of the safety representative.

31. Employer B could have a consultation structure imposed on him that is not suitable for his business.

Impact on Small and Medium Sized Businesses

32. There are no costs likely to arise from these proposals that would represent an unreasonable, or disproportionate, burden on small and medium-sized businesses. It is the case with the third proposed amendment that small and medium-sized businesses may receive disproportionate benefits as they are likely to be the beneficiaries of a larger employer's safety representative (as explained above the small and medium-sized business are likely to be employer B).

Competition Assessment

33. There is little impact upon competition from these amendments.

Comparison of Costs and Benefits

34. The table below sets out the costs and benefits of the proposed amendments to regulations:

<u>Benefits</u>	Present Value (£ millions)	Annual value (£ millions)
Proposed Amendment 1	329 to 657	38.7 to 77.4
Proposed Amendment 2	Unquantified	Unquantified
Proposed Amendment 4	676 to 1351	72 to 144
Total Benefit	1004 to 2008	111 to 222
<u>Costs</u>		

Proposed Amendment 1	541 to 687	62.8 to 79.8
Proposed Amendment 2	1,079	125
Proposed Amendment 4	191	22.2
Total Cost	1811 to 1957	210 to 227
<u>Net Costs</u>	-51.4 to 807	5.6 to 99.5

35. As we can see from the table above the cost net of benefits is £-51.4to £807 million per year and this gives a net present value of £5.6 to £99.5 million over the appraisal period. For costs to balance with benefits there would have to be a -0.3% to 4.5% reduction in the injury rate of employees above the 4 to 8% already assumed to occur when calculating the benefits.

Uncertainties

36. There are many uncertainties in this assessment of costs and benefits. The quantification of this assessment is based on little data and assumptions that have not been tested with stakeholders. It can only be regarded as indicative. The current level of compliance with the proposals is not known but assumptions have been made after consulting industry representatives. The impact that safety representatives have upon the injury rates in their places of work (and in other employers' places of work) is not known precisely.

Consultation

37. The Department of Trade and Industry has been consulted only informally at this preliminary stage.

Arrangements for Monitoring and Evaluation

38. To be completed.

Enforcement and Sanctions

39. Non-compliance will be identified by responding to queries raised, investigating accidents and incidents, and routine checks by inspectors. Where appropriate, enforcement action may be taken in accordance with the HSC Enforcement Policy Statement.

40. The Health and Safety at Work Act 1974, section 33 (as amended) sets out the offences and maximum penalties under health and safety legislation.

Summary and Recommendation

41. With the assumptions made, costs and benefits for proposal 1 are roughly in balance. Benefits for proposal 2 are unquantifiable, but costs would be balanced if the proposal reduced injury rates by 6%. This does not seem outwith the bounds of possibility. There are no costs or benefits associated with proposal 3 because it only clarifies the existing law. Benefits outweigh costs for proposal 4, but the scenario considered so far may not be entirely representative of real life.

42. We conclude that the proposals may result in benefits outweighing costs. In coming to a decision the issues of equity and fairness above should be considered.

Ministerial Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

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