

DRAFT

Annex to HSC/06/19

DRAFT CONSULTATIVE DOCUMENT

Improving worker involvement – Improving health and safety

This Consultative Document is issued by the Health and Safety Commission in compliance with its duty to consult under sections 16(2) and 50 of the Health and Safety at Work etc Act 1974.

Comments should be sent to:

Worker Involvement Consultation
Worker Involvement Programme
Health and Safety Executive
5th Floor, North Wing, Rose Court
2 Southwark Bridge
London SE1 9HS

or

worker.involvement@hse.gsi.gov.uk

to arrive no later than xxx 2006.

The Commission tries to make its consultation procedure as thorough and open as possible. Responses to this consultation document will be lodged in the Health and Safety Executive's Information Centres after the close of the consultation period where they can be inspected by members of the public or be copied to them on payment of the appropriate fees to cover costs.

Responses to this consultation document are invited on the basis that anyone submitting them agrees to their being dealt with in this way. Responses, or part of them, will be withheld from the Information Centres only at the express request of the person making them. In such cases a note will be put in the index to the responses identifying those who have commented as asked that their views, or part of them, be treated as confidential.

Many business e-mail systems now automatically append a paragraph stating the message is confidential. If you are responding to this consultation document by e-mail and you are content for your responses to be made publicly available, please make this clear in the body of your response that you do not wish any standard confidentiality statement to apply.

DRAFT CONSULTATIVE DOCUMENT

DRAFT

Summary	3
What is Worker Involvement?	4
<i>The Role of Trade Unions</i>	6
<i>How Can You Help?</i>	7
The Three Pillars.....	7
<i>Legislation</i>	8
<i>Guidance</i>	9
<i>Encouragement</i>	10
<i>General Questions</i>	11
Options for Strengthening the Pillars	11
<i>The Guidance Pillar</i>	11
<i>The Encouragement Pillar</i>	12
<i>The Legislation Pillar</i>	14
<i>A duty to consult safety representatives on risk assessments</i>	15
<i>A duty to respond to representations made by a safety representative.</i> .	17
<i>“Roving” safety representatives</i>	19
<i>Possible extension of the amendments to the Health and Safety</i> <i>(Consultation with Employees) Regulations 1996</i>	19
<i>Final Questions on All the Options</i>	21
Regulatory impact assessment	21
Annex A: Partial Regulatory Impact Assessment.....	23
Annex B: HSE’s Worker Involvement Programme	45
Annex C: The Current Legal Framework	46
Annex D: List of organisations and individuals to whom this Consultative Document has been sent (<i>DN: to be finalised</i>)	49
Annex E: Invitation to Comment.....	54
Reply form.....	56

DRAFT

Improving worker involvement – Improving health and safety.

Summary

In this Consultative Document the Health and Safety Commission (HSC) sets out options aimed at increasing the quality and quantity of worker involvement in health and safety risk management by voluntary initiatives or by strengthening the legal requirements for consultation.

The document argues that there are three pillars to a strategy for improving worker involvement:

- **Legislation**, setting standards on which to build;
- **Guidance** on good practice, helping employers and workers to reach at least the legal minimum standards; and
- **Encouragement** to strive continually towards best practice, where the biggest rewards are to be found.

We set out the current position in each of these three areas and then suggest options for strengthening them. The options we have considered so far are:

- Providing and promoting better good practice guidance;
- Developing a framework of voluntary standards of best practice; and
- Amending the legislation on worker consultation.

These options are **not** mutually exclusive. We are looking for the right **balance** between the three pillars. We could choose one, two or all of these options – or other options that you may be able to identify. The option of legislation is covered in some depth, not because the Commission attaches more importance to it than the others, but because we have a duty to consult on regulatory changes and we must make sure that we explain the implications of any changes thoroughly.

A partial regulatory impact assessment has been prepared and is attached at annex A.

The three key questions on which we are seeking your views are:

1. Have we got the right legislation, guidance and encouragement?
2. Have we got the balance between these three right? In particular, would further legislation bring improvements?
3. If we were to propose amendments to the regulations, how can we keep administrative burdens to a minimum and maximise the impact on improved health and safety?

There is a form after annex E that summarises all the questions we ask and which you can use to reply if you wish.

What is Worker Involvement?

1. In the Health and Safety Commission (HSC) and Executive (HSE), we believe that worker involvement is at the very heart of sensible health and safety management. A workforce fully involved in health and safety management, and a vibrant system of workplace health and safety representatives operating in partnership with management are an essential part of our vision in our *Strategy for Workplace Health and Safety in Great Britain to 2010 and beyond*.¹ Workers know the most about the jobs that they do, so they are in the best position to help managers develop safe systems of work that are effective in practice. We know that effective worker involvement can reduce accidents and ill health. So if we are successful in realising our vision, we will have healthier workers working in more competitive and successful organisations. This will happen because workers will have a real stake in the organisations they work in and be more committed to their success.

“...worker representation and consultation in the UK have a significant role to play in improving health and safety at work. They have the potential to raise health and safety awareness amongst both workers and managers, effect improvement in arrangements for managing health and safety, improve the practical implementation of these arrangements, and contribute to improved health and safety performance.

Most importantly they represent means by which workers' voice can be heard and acted upon to the benefit of those that experience the risks of the production process”.

David Walters et al.: HSE Research Report 363, “The role and effectiveness of safety representatives in influencing workplace health and safety”

“I don't think we could be where we are in performance without participation. We clearly have a better performance, less loss time accidents, less injuries, less absentees associated with illness. That's direct. You will see it indirectly in productivity. Quite frankly, a safe workplace and orderly workplace becomes the productive workplace.”

Large manufacturing company

“We recognise that our workers are the experts on the shop floor. They are the people doing the job. They, more than anyone, know the risks involved.”

Bob Mitchell, Operations Director, Geocel (small firm)

2. It may be helpful at this point to give some definitions, so that we are all clear about what we are talking about in this Consultative Document. We have borrowed some of these definitions from the Advisory, Arbitration and Conciliation Service (Acas):²
 - Employee **communications** means the provision and exchange of information and instructions that enable an organisation to function efficiently and employees to be properly informed about developments.

¹ HSC: *Strategy for Workplace Health and Safety in Great Britain to 2010 and beyond*, 2004

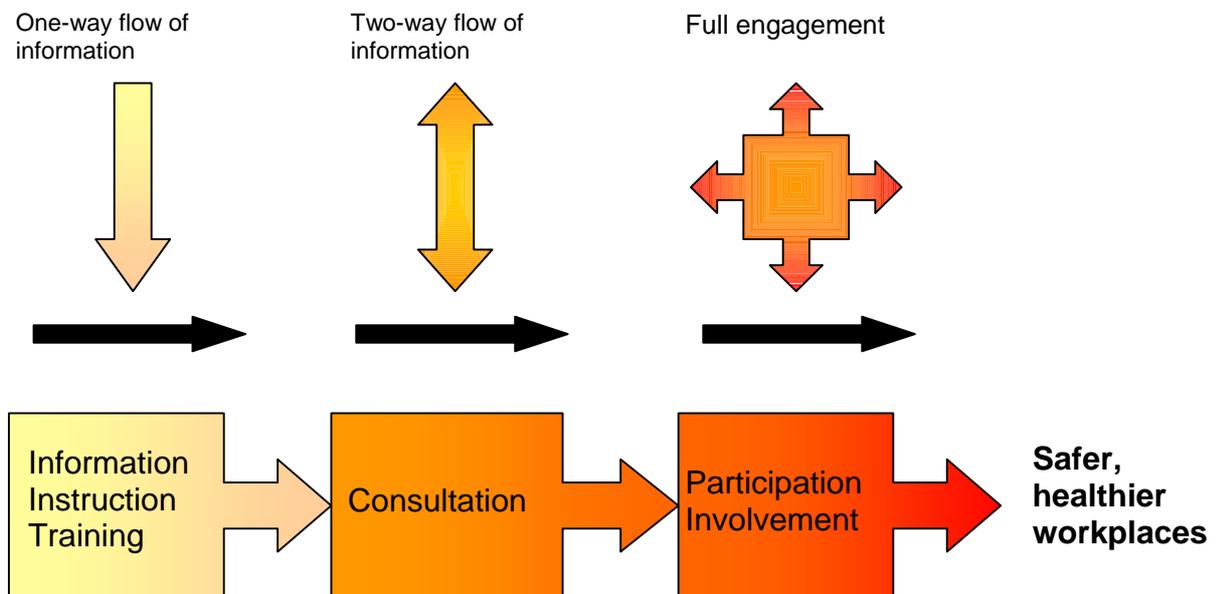
<http://www.hse.gov.uk/aboutus/hsc/strategy.htm>

² <http://www.acas.org.uk>

DRAFT

- **Consultation** is the process by which management and employees or their representatives jointly examine and discuss issues of mutual concern. It involves seeking acceptable solutions to problems through a genuine exchange of views and information. Consultation does not remove the right of managers to manage – they must still make the final decision – but it does impose an obligation that the views of employees will be sought and considered before decisions are taken. Consultation requires elements of two-way communication in good time.
- By **involvement** we specifically mean the development of relationships between workers and employers based on collaboration and trust and nurtured as part of the management of health and safety. This goes further than simply consulting workers. It involves a commitment to solving problems together.

3. We can represent these three types of activity in a diagram:



4. Current legislation³ sets a framework of fundamental standards of worker involvement in health and safety. It requires employers to give employees information, instruction and training (we termed this “employee communications” above) and to engage in consultation with employees. These are the most basic forms of worker involvement, but it is essential to get them right. They form the foundation for the final stage of worker involvement that, though not specifically required by law, involves the sorts of changes in behaviour in managers and workers that will lead to safer and healthier workplaces. But this final stage – full involvement or participation – is difficult to legislate for. It requires the development of relationships of collaboration and trust. We want to encourage organisations and their staff to push continually towards this goal, pointing

³ The Safety Representatives and Safety Committees Regulations 1977, SI 1977 No. 500; The Health and Safety (Consultation with Employees) Regulations 1996, SI 1996 No. 1513; and The Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989 No. 971.

DRAFT

to examples of such best practice and the benefits some organisations are gaining.

One manager in a large manufacturing company described the benefits of participation in the following way:

“It’s job enrichment, it’s employees identifying with the company. It’s them feeling that they matter in the scheme of things. You can see it when you walk through a place if people have their heads down and don’t look happy, as opposed to some people coming through and waving to you and wanting to share the things. So you do see the benefit in these ways.”

A worker recognised that training and education can have an important part to play in improving commitment to health and safety:

“I think the more information that you give people, or the better educated they are with health and safety, the more they are ready to accept. During the time that I’ve been here, I’ve received training, etc... If I hadn’t received that type of education I don’t know whether I would have the interest, and drive for safety as I have. A knowledge of why you’re putting something in place. To me that’s how you progress.”

5. We can put some numbers on how many employers are at what stage in the diagram above. From the Workplace Health and Safety Survey 2005 (WHASS)⁴ we know that 13% of employers as a whole undertake no worker consultation on health and safety at all. The picture is not wholly bad, however: 85% of employers with fewer than 25 employees say they regularly discuss health and safety issues with their workforce, and 52% of employers with more than 25 employees say they have a joint committee of managers and workers to discuss health and safety.
6. Nevertheless, only in around 37% of workplaces are workers fully involved when health and safety procedures, instructions and rules are developed or reviewed. Thus, even where employees are consulted, worker involvement seems to fall short of the full engagement that, we believe, will lead to the greatest rewards in terms of better health and safety.

The Role of Trade Unions

7. Trade unions share with employers and the Government an interest in keeping people at work safe and healthy. Indeed, developing better worker involvement in health and safety presents excellent opportunities for trade unions to work in partnership with employers. Clearly, trade unions are an important means by which workers can have a voice in the management of their health and safety. Trade unions train their safety representatives to a high standard and we know that safety representatives appointed by trade unions are particularly effective at ensuring safer and healthier workplaces.⁵

⁴ Workplace Health and Safety Survey Programme. “2005 Employer Survey First Findings Report”. <http://www.hse.gov.uk/statistics/pdf/whasse1.pdf>

⁵ HSE Contract Research Report RR363, “The role and effectiveness of safety representatives in influencing workplace health and safety”, <http://www.hse.gov.uk/research/rrpdf/rr363.pdf>

DRAFT

“It was a breath of fresh air to have a management that made it clear what it wanted, and then engaged with the employees to find the best way of delivering some very tough changes”

T&GWU Senior Shop Steward

“The Partnership approach between Transco and its employees demonstrates commitment and involvement, which helps to sustain focus and improvements in health and safety.”

GMB Chairperson, Transco Joint Industrial Council

8. We want to continue the good work of trade unions in actively involving employees in health and safety. Indeed, the Government’s *Health, Work and Well-being* strategy⁶ says that “we will seek to develop the constructive and supportive role of safety representatives” to help to create and maintain healthy workplaces. Where they exist, trade union safety representatives often represent the whole workforce and not just those who are trade union members. However, only about half of employees in Britain work in workplaces where there are trade union members (and this drops to only about one-third in the private sector).⁷ We also need to promote worker involvement where there is no trade union recognition, and in small businesses where safety representatives and committees may not be the most effective means of consultation.
9. The challenge we face is how to put in place arrangements to ensure more and better worker involvement in health and safety in **every** workplace. We need to expand the base of employee involvement in health and safety management to cover the whole workforce.

How Can You Help?

10. The purpose of this Consultative Document is to seek the views of business, the public sector, the not-for-profit sector and the workers who work in them, on how we can ensure that more workers are actively involved in health and safety risk management. We suggest a range of options including guidance, legislation and encouragement of more innovative approaches, but we would be glad to hear your ideas. Please let us know what you think. Annex E tells you how to get in touch.

The Three Pillars

11. Since the introduction of the Safety Representatives and Safety Committees Regulations 1977 (“SRSC”) and the Health and Safety (Consultation with Employees) Regulations 1996 (“HSCWE”) and their offshore counterparts there has been considerable debate about the best way to achieve full worker involvement in health and safety in the workplace. In 2000 we published a Discussion Document⁸ that explained why we believe that it is beneficial, and asked some broad questions on a

⁶ http://www.dwp.gov.uk/publications/dwp/2005/health_and_wellbeing.pdf

⁷ Grainger, H and Holt, H: “Trade Union Membership 2004”, DTI, 2004

⁸ HSC, “Employee consultation and involvement in health and safety”, 2000, <http://www.hse.gov.uk/consult/disdocs/dde12.htm>

DRAFT

range of options for promoting wider employee involvement. As a result we have developed some new initiatives, which are being taken forward through HSE's Worker Involvement Programme (see annex B). However, we also said in 2000 that we would consult you separately on specific proposals including legislative changes, and this document now fulfils that commitment.

12. We believe there should be three main pillars in our strategy to achieve full worker involvement:
- **Legislation**, setting standards on which to build;
 - **Guidance** on good practice, helping employers and workers to reach at least these standards; and
 - **Encouragement** to strive continually towards best practice, where the biggest rewards are to be found.
13. We will briefly discuss these three pillars in turn and our first thoughts on how they might be strengthened. The next section will then consider in more detail our options for strengthening them. What we are trying to do is to make sure that we have the best combination of things in place to encourage worker involvement. That may involve strengthening more than one pillar, or indeed, all of them. The options we suggest below are not "either/or" choices: we're not saying we should **only** produce guidance on good practice, or that we should **only** amend the legislation. We could do one, both or neither.

Legislation

14. The purpose of the current legislation (see annex C) is to provide a broad framework of fundamental standards for consultation with employees and safety representatives, within which organisations can develop effective working arrangements. But the principal regulations (the SRSC) date from the 1970's when the world of work was very different. They may not reflect modern-day work practices and workplaces. And even though the legal requirements exist, we know that many workers are still not consulted. Strengthening the regulations may be one of the triggers that are needed to increase worker involvement and consultation. In 2003, we considered the case for merging the SRSC and HSCWE Regulations, to produce a single set of regulations for the modern world of work. However, the resulting regulations would, we believe, have been extremely complicated and bureaucratic. We therefore decided not to pursue this option further. However, we believe it is possible that smaller changes may help deliver the improvements we seek.
15. We are therefore consulting on the possibility of amendments to the SRSC Regulations 1977 and the other consultation regulations that would create new duties to:
- a) Consult safety representatives or representatives of employee safety on risk assessments; and
 - b) Respond to representations made by a safety representative or representative of employee safety.

DRAFT

We also considered an amendment to clarify the circumstances in which safety representatives need not be employed at the workplace of the employees they represent, but we have concluded that such a change is unnecessary onshore. The law onshore does not currently prevent safety representatives being appointed (or representatives of employee safety being elected) to cover more than one workplace. We discuss the position offshore below.

16. We have not included any draft amending regulations for your consideration at this stage. We are asking about the principle, not about the detail.
17. The costs these amendments will impose on business could be high and the benefits are currently intangible and largely unquantifiable. We will need further evidence from you to be satisfied that the benefits of the amendments would outweigh their costs. In addition, we do not believe that this sort of compliance-led approach alone will secure the changes in “hearts and minds” that are essential to long-term improvements in worker involvement. There are other tools for persuading employers and employees to work together, and we need to consider what is the right balance between them.

Guidance

18. We have published an Approved Code of Practice (“the Brown Book”)⁹ and guidance on the SRSC Regulations. HSE has published guidance on consulting employees in “Consulting employees on health and safety – A guide to the law”,¹⁰ and specific guidance on the HSCWE Regulations¹¹ and their offshore counterparts.¹² However, much of this guidance is about what the law requires, rather than saying what practical things can be done. HSE’s Worker Involvement Programme is therefore developing additional guidance for employers and safety representatives.¹³ This includes case studies showing examples of good practice and successful worker involvement initiatives – examples of “what works”. Producing and promoting better guidance may help organisations and their workers take steps towards more and better worker involvement. But just giving organisations guidance on how to consult workers better – while it is probably a necessary first step – is not going to be sufficient to move organisations on towards full participation, that third step in the process of worker involvement where organisations and their workers reap the greatest benefits.

⁹ HSC, “Safety Representatives and Safety Committees”, third edition, 1996.

¹⁰ HSE “Consulting employees on health and safety: A guide to the law”, INDG232
<http://www.hse.gov.uk/pubns/indg232.pdf>

¹¹ HSE, “A guide to the Health and Safety (Consultation with Employees) Regulations 1996”, L95, 1996.

¹² HSE, “A guide to the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989”, second edition, L110, 1998.

¹³ <http://www.hse.gov.uk/workers/index.htm>

DRAFT

Encouragement

19. As well as giving guidance on good practice in consultation, HSE's Worker Involvement Programme is seeking to encourage all organisations and their workers to adopt best practice in worker involvement, going beyond simply what the law requires in search of the benefits that many modern organisations are starting to reap from involving their workers.
20. We think part of this will require improving access for employers and workers to ways in which they can improve their communication and other "soft" or "people" skills. If they improve their skills in these areas, they will be better able to develop effective partnerships, based on trust and cooperation. HSE is looking into what can be done in this area through a research project within its Worker Involvement Programme. Once the results of that research are available, we will develop a strategy for putting them into effect.
21. Our Workers' Safety Adviser Challenge Fund has, for the past two years, been giving funding to groups of organisations who want to stimulate better worker involvement in health and safety through the intervention of a Workers' Safety Adviser ("WSA"). WSAs visit participating organisations at the invitation of the employer and work with both managers and workers on producing sustainable improvements in health and safety through better worker involvement. It is now in its final year and we have seen some notable successes. We will be considering whether and how we should continue the WSA initiative during 2006. You can find out more about the WSA Challenge Fund at <http://www.wsa-cf.org>.
22. The Worker Involvement Programme's counterpart, the Business Involvement Programme, has developed two indicators (the Corporate Health and Safety Performance Index, CHASPI, for larger organisations and the Health and Safety Performance Indicator for smaller ones) that organisations can use to measure and benchmark their health and safety performance. Both of these indicators involve consideration of the degree to which workers are involved in health and safety management. For smaller organisations, HSE is encouraging insurers to consider using the SME indicator when determining insurance terms. Our hope is this will act as an incentive to such organisations to improve the quantity and quality of the worker involvement they do. For more information on the indicators, see <http://www.chaspi.info-exchange.com> and <http://www.businesslink.gov.uk/bdotg/action/haspi>.
23. Workplace Health Connect, the pathfinder occupational health and return to work service launched in February this year, is another way in which we are encouraging employers and workers to work better together. Workplace Health Connect advisers will, as a matter of course, discuss the importance of working together towards solutions to health problems at work.
24. We think that another way we can strengthen this pillar is by developing a framework of voluntary standards of best practice for worker participation in health and safety. This type of initiative is already being tried in some sectors such as construction and the oil and gas industries, and in dealing

DRAFT

with issues such as stress. We could look to develop standards suitable for different industry sectors, employment patterns or size of organisation, through partnerships between HSE, trade unions and industry sectors or trade associations.

25. In doing all of these things, we need to remember that organisations rarely see worker involvement in health and safety as a distinct subject on its own. First, worker involvement in health and safety is a means to an end – less ill health and fewer injuries – not an end in itself. It is only one part of developing and maintaining sensible health and safety risk management systems. Second, many organisations recognise the benefits of worker involvement in lots of areas of decision-making, not just health and safety risk management. We therefore need to integrate what we do on worker involvement with other aspects of our own work and that of other Government departments, such as the Department of Trade and Industry, and of the Scottish Executive and Welsh Assembly.

General Questions

26. We first need your views on whether you think we have the right basic framework of employee communications and consultation on which cooperation and partnerships can build. We then want your views on how we can extend this to full participation and involvement. So, first we have two broad questions:

Q1: Have we got the right legislation, guidance and encouragement?

Q2: Have we got the balance between these three right?

Options for Strengthening the Pillars

27. We want to find a way forward which will fulfil our aim of ensuring that employers and workers are ready, willing and able to work in partnership and engage in sensible health and safety management together. As we have said, we are looking for the right balance of legislation, guidance and encouragement. We have thought of a number of options we can consider to persuade people to take further action in each of the three areas suggested by the “pillars”. It is possible that some or all of the aims of improved worker involvement could be achieved by one, two or a combination of all the options suggested, but if you have other ideas that you think will help or work better, please tell us about them. We are always willing to listen.

The Guidance Pillar

Option A – Better guidance. HSE could produce new guidance on consultation to replace or supplement the existing guidance on the regulations.

28. Since the current regulations and guidance were formulated, health issues such as work-related stress and musculoskeletal disorders have become better recognised as major contributors to ill health at work. In the same

DRAFT

period there have been major changes in the way we work, such as lean production systems, and an increase in agency working and flexible work patterns such as part-time and homeworking. It is arguable that existing guidance on consultation, does not promote a flexible, innovative approach to securing employee involvement in risk management – involvement that is vital to maintaining safe, healthy and productive workplaces. HSE could work with employers, trade associations and trade unions to revise and improve the existing guidance. We know that smaller organisations think that having high quality guidance is particularly important.

Possible benefits

29. Revising existing guidance, or producing comprehensive new advice, would give us the opportunity to provide practical help and examples on issues that are not well covered at present, such as arrangements and facilities to enable workplace health and safety representatives to perform their functions. We would also be able to clarify the existing guidance on issues that can sometimes be misunderstood, such as aspects of time off for safety representatives' training. This could help employers devise more effective risk control measures – through cooperation with their employees – that are better implemented and better used. This could lead to reductions in ill health, injuries and sickness absence. The costs of reading the guidance and putting it into practice could easily be outweighed if it helped prevent just one serious injury or case of ill health.¹⁴
30. The advantages of new or revised guidance are that it could be produced relatively quickly.

Possible drawbacks

31. We cannot be sure that new guidance alone will result in significant changes in current consultation practices.

Q3: Do you think the existing guidance should be improved? If so, in what way? (For example, do you think case studies are helpful?) What other sort of guidance would you find helpful?

The Encouragement Pillar

32. We are already encouraging best practice in the ways we outlined above. Matters are not yet far enough advanced on the issue of “soft” skills for us to make any proposals in that area yet, but there are two other issues on which we would welcome your views.
33. First, an evaluation of the WSA Challenge Fund is under way. So far, the results have been promising, although we need to see whether the positive changes seen in workplaces that WSAs visited in the first year of the fund are sustained over time. If the results continue to be positive, we

¹⁴ HSE's website gives information on the business and economic costs from not managing health and safety adequately: <http://www.hse.gov.uk/costs/index.asp>

DRAFT

may wish to undertake another initiative using WSAs, though simply repeating the Challenge Fund may not be the best way forward.

Q4: Based on what we know so far, do you think that we should promote a further voluntary initiative like the WSA Challenge Fund, once it ends in March 2007? If so, what form should such an initiative take?

34. Second, we would like your views on another option.

Option B – A modern framework for worker involvement using voluntary standards

35. HSE could work in partnership with industry groups or sectors and trade unions to produce a framework of standards of best practice in worker involvement on health and safety that would give organisations and, where they are recognised, trade unions, objectives to achieve and specific areas to be addressed. The standards would be voluntary, but could be used as an example of best practice against which to benchmark or assess progress.

36. The intention is that employers and workers would choose to adopt them to provide a:

- Starting point, based on best practice, for discussions about local worker involvement agreements;
- Way of benchmarking organisations' performance in worker involvement in health and safety;
- Spur to continuous improvement in health and safety risk management; and
- Demonstration to potential customers and potential employees that the organisation is serious about good people management.

37. HSE is already working with some industry sectors such as construction to help them develop their own campaigns and guidance on worker involvement, with examples of consultation schemes from their own industry. The oil and gas industries have developed their "Step Change" programme offshore which has important elements of worker involvement, too.¹⁵

37. So, for example, in the construction industry, our Construction Industry Advisory Committee (CONIAC), which includes trade union and employer representatives, has developed a "Declaration on Workforce Engagement" to promote change in the industry. A range of methods of engaging the workforce are being taken forward by major contractors, allied to a growth in adoption of behavioural techniques to reduce unsafe actions as precursors to accidents. The construction sector has one of the lowest rates of trade union membership, at around 12%, and so voluntary, employer-led initiatives supported through CONIAC are a significant part of current improvements in worker participation in health and safety

¹⁵ Step change in the oil and gas industry http://step.steel-sci.org/publications/main_publications_fs.htm

DRAFT

management. Case studies published on the HSE website¹⁶ demonstrate the progress that major projects such as Heathrow Terminal 5 and the Channel Tunnel Rail Link have made in the last two years.

38. We could extend this type of initiative by developing standards of best practice for different industry sectors, employment patterns or size of organisation. We know that employers are willing in principle to involve workers, but they are unsure how to do it and what the benefits are. A framework of voluntary standards could provide what employers and workers need to do more. Evidence of the standards' effectiveness will be vital to persuade other employers and workers to take them up.
39. We're not sure whether a voluntary standards approach will be right for smaller organisations. We will want to test out the ideas with small firms and see how we can make sure that the standards are as relevant to them as they are to larger organisations.

Possible benefits

39. This approach has been welcomed in other "people management" areas such as stress, through the adoption of HSE's stress management standards.¹⁷ Voluntary standards could provide a means to develop best practice models of worker involvement, while offering flexibility for the wide range of industries, management systems and patterns of employment that make up the modern world of work.

Possible drawbacks

40. The standards approach is voluntary and might not influence those employers who are less willing to engage in worker involvement.

Q5: Do you believe that a framework of standards of best practice would be a useful and effective tool to encourage worker involvement? Would you – as an employer or a safety representative – use such a tool in your own workplace?

The Legislation Pillar

Option C - Legislative changes. These proposals relate to possible amendments to the Safety Representatives and Safety Committees Regulations 1977 and other consultation regulations.

*This section is long because we have to explain and ask you about the detailed impact of potential changes to the legislation. Its length does **not** mean we necessarily attach any more importance to it than the other options.*

41. We have considered two amendments to the legislation on worker consultation on health and safety, specifically in relation to:
- a) A new duty to consult safety representatives on risk assessments;
 - and

¹⁶ <http://www.hse.gov.uk/construction/engagement/index.htm>

¹⁷ Management standards for work related stress <http://www.hse.gov.uk/stress/standards/index.htm>

DRAFT

- b) A new duty to respond to representations made by a safety representative.

42. As we have said, existing consultation legislation dates from the 1970's when the world of work and employment was very different, and may not reflect modern day work practices and workplaces. The term "consultation" is interpreted widely. Introducing some additional specific areas for involvement of safety representatives could strengthen the regulations and lead to changes in behaviour.
43. We believe that, as far as possible, employees and safety representatives in all workplaces should be given the same opportunities, and therefore that the possible amendments would apply both onshore and offshore. We consider the amendments in relation to SRSC and their offshore equivalents first, and then consider their possible extension to the 1996 consultation regulations.

A duty to consult safety representatives on risk assessments

44. Our Approved Code of Practice on the Management of Health and Safety at Work Regulations 1999 states that "The risk assessment needs to be practical and take account of the views of employees and their safety representatives who will have practical knowledge to contribute." However, there is no **specific** duty in regulations for employers to consult safety representatives on risk assessments.
45. Nevertheless, risk assessment is at the heart of sensible health and safety risk management and if employers assess risks without involving employees in the process, then the employees' contribution to health and safety risk management can be only superficial at best. Organisations that are good at managing health and safety create an effective framework to maximise the contributions of individuals and groups. Consultation with workers and their representatives over health and safety risk assessments in such modern workplaces is the norm.

"We've got a good set of managers and they are working to bring their staff into the risk assessment process so they're as involved as possible...staff get a lot out of it because it gets them into the swing of health and safety...some of them even enjoy it!"

Large manufacturer, senior manager

46. We could therefore introduce a specific duty in the regulations to require the employer to consult safety representatives on health and safety risk assessments to stimulate them to involve their staff more actively in health and safety, where adequate worker consultation mechanisms are not already in place.

Possible benefits

47. The possible benefit of such a duty would be that it should ensure that risk assessments are more accurate and lead to the development of practical and practicable systems of work, which would have better buy-in from workers. This would lead to their more effective use and consequent better risk control.
48. We know that many organisations already involve their employees in the risk management process, and such a duty will not affect the way they

DRAFT

already conduct their risk assessments. This change to the legislation would act as a trigger for more consultation by those employers who are reluctant to involve employees.

Possible drawbacks

49. A duty to consult safety representatives on risk assessments could be seen as an additional administrative burden, particularly if it is associated with additional record-keeping requirements. Additional guidance may be necessary to ensure that this duty results in effective consultation and practical outcomes on significant issues. Some stakeholders are concerned that legislative changes would only increase bureaucracy, and do nothing to promote the spirit of trust and cooperation that is needed to secure true involvement and partnership.
50. Because the new duties apply to dealings with safety representatives and representatives of employee safety, an effect of these changes may be to encourage employers to try to consult employees directly, rather than through representatives. This would be self-defeating because consulting all employees directly could be expensive and time-consuming for many organisations. Employers may therefore consult only superficially in this way, reducing the effectiveness of the consultation process.
51. An unintended effect of the changes may be to encourage employers to think just about what the law requires and focus on the *process* of consultation, rather than concentrating on the *outcome* (better relationships and so, better control of risks). So consultation may become an ineffective “box-ticking” exercise, perhaps just to be able to demonstrate compliance, but without any of the behavioural changes needed.

Issues for consideration

52. Particularly in large organisations, people carry out risk assessments almost daily, as people and processes change. Such assessments may not need to be recorded, depending on how significant the changes are. We need to make sure that any duty to consult safety representatives on risk assessments is proportionate. Neither managers nor safety representatives will wish to be swamped by carrying out and responding to consultations on every single risk assessment in the organisation. Moreover, in some cases, the risk assessment will involve needing to know personal information about a particular employee. There may, therefore, be issues about permitting disclosure of personal information to safety representatives.
53. It is envisaged that the duty to consult safety representatives on risk assessments will apply to any risk assessments **specifically** required under health and safety law, such as the Management of Health and Safety at Work Regulations 1999, the Manual Handling Operations Regulations 1992, and the Control of Substances Hazardous to Health Regulations 2002.
54. The consultation process should be fit for purpose and will depend on the size of the organisation and the complexity of their operations. We do not want to insist on “one size fits all” procedures that could impose a

DRAFT

bureaucratic burden. While involvement of employees in risk assessment would be beneficial, this does not necessarily mean that there has to be lengthy consultation on every individual assessment – this would be impractical.

55. The aim is, therefore, that there should be involvement in the **overall mechanism** of risk assessment and in **significant** assessments, updates or amendments. Consultation with safety representatives on risk assessments which affect only an individual, such as an individual display screen equipment assessment on a computer work station, would not usually be desirable or beneficial. However, where it is considered to be beneficial, the employee affected should be asked if they consent to their personal information being shared with safety representatives. If they withhold their consent, the employer would not be obliged to consult safety representatives on that assessment.
56. What counts as “significant” in a particular instance should be subject to agreement between the employer and safety representatives. HSE would produce guidance to help organisations and their workers jointly decide the sorts of assessment that are significant.

Q6: Do you agree that a duty on employers to consult safety representatives on the overall mechanism of risk assessment and on significant assessments would be helpful? Are our proposals practical?

Q7: What other measures do we need to take to make sure this does not become bureaucratic or simply a paper exercise?

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

57. Statutory safety representatives have the function of making representations to the employer on hazards, dangerous occurrences, accidents, complaints or other matters affecting health, safety and welfare at work. In addition, employees are required to cooperate with their employer on health and safety matters. However, there is no corresponding duty on employers to respond to safety representatives’ representations and we know that some safety representatives are concerned that their representations are not dealt with adequately.
58. In some organisations, systems of communication are already in place to provide feedback to workers on health and safety matters. The introduction of a duty on employers to consider representations in good time, and to address in a reply the substance of the representation, could help ensure that such communication systems are established where they do not currently exist.

Possible benefits

59. The benefit of such a duty would be that it could encourage a better dialogue between employer and workers, and ensure active engagement in the health and safety system. Workers might feel that they can have a real influence on how their health and safety is being managed, and so be more willing to be engaged.

DRAFT

Possible drawbacks

60. A duty to respond to representations could result in bureaucracy if it is not handled sensibly. In addition, there is a risk of formalising (and therefore making less effective) what may already be a healthy working relationship between managers and safety representatives.

Issues for consideration

61. 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. To avoid excessive bureaucracy in dealing with what may be relatively minor matters, we would expect managers and workers to cooperate sensibly. Organisations would be expected to develop their own systems of records that suit their own situation and nothing would be prescribed in the legislation.
62. Issues could be raised by detailed written representations or through other avenues such as Safety Committees, where the request could be recorded in the minutes. Alternatively, a specific written response could be required only where the safety representative has requested such a response. Something as simple as a book in which safety representatives or employees could note their concerns, and employers note their response and action taken might be enough. Other means of recording representations and responses would be possible, where disability, language or cultural issues make this preferable.
63. Guidance would set out how to judge whether a response is a suitable and sufficient reply to the substance of the representation and what is a reasonable time to wait for a response, though we would expect managers and safety representatives to set up a process to resolve any such disagreements. There are already established procedures for consultation in considering and responding to requests from employees in different situations, such as an application to work flexibly, outlined in guidance from the DTI.¹⁸ The guidance and procedures may be applicable or adaptable to situations where representations are received from safety representatives on health and safety matters.

Q8: Do you agree that employers should have a duty to respond to representations from safety representatives? Do you consider that written representations and responses would be necessary? What sort of systems do you think would work?

Q9: What do you consider to be a “reasonable” time for a response?

64. As discussed above, we do not intend to introduce formality into what might be a good working relationship, and thereby defeat the aims of the legislation. We would prefer to set the principles in legislation and develop guidance on how to operate systems in practice. There is no one best way

¹⁸ DTI, “Flexible working. The right to request and the duty to consider. A guide for employers and employees.” <http://www.dti.gov.uk/er/individual/flexwork-pl520.pdf>

DRAFT

to suit all situations, so guidance would offer a better all round solution than an Approved Code of Practice.

“Roving” safety representatives

65. It has been suggested to us that we consider amending the regulations to permit the appointment of “roving” safety representatives. These are safety representatives who fulfil one of the following criteria. They are:
- a) Employed by the same employer but do not work at the same place as the people they represent; or
 - b) Not employed by the same employer but do work at the same place as the people they represent; or
 - c) Neither employed by the same employer nor work at the same place as the people they represent.
66. Currently, the SRSC Regulations permit the appointment of representatives of type (c) only by the actors’ union Equity and by the Musician’s Union, to allow for the fact that actors and musicians rarely work for the same employer or at the same premises for any substantial period of time. Elected safety representatives offshore are appointed to specific constituencies only and are specifically precluded from holding such a position on more than one installation at a time.
67. Permitting the appointment of roving representatives of types (b) and (c) above more widely raises difficult issues such as who pays the representative, entry into third-parties’ premises and trade union recognition. There is no consensus on how to solve these problems and we are making no proposals on them in this document.
68. However, it has been suggested to us that we should change the law to permit roving representatives of type (a) in any workplace where trade unions are recognised. HSE has looked at this suggestion and has concluded that the law **already** permits this type of “roving” safety representative. Changing the law is therefore unnecessary. We do believe, however, that improvements should be made to the guidance to the regulations to ensure that this is made clear. We believe that clearer guidance will help both employers and workers to ensure that the best arrangements for representation can be made.

Possible extension of the amendments to the Health and Safety (Consultation with Employees) Regulations 1996

69. The HSCWE Regulations apply where there are employees who are not represented by trade union-appointed safety representatives. The regulations require the employer to consult every such employee on matters relating to their health and safety either directly or through “representatives of employee safety” elected from among and by the employees. The law does **not** permit the appointment of “representatives” by managers.
70. Like trade union safety representatives, representatives of employee safety have the function of making representations to the employer on health and safety matters that affect the group of employees he or she

DRAFT

represents. Extension of the proposed amendments to HSCWE would mean that employers would be under a duty to consult elected representatives of employee safety, where they exist, on risk assessments, and also to respond to representations from them.

70. The duties would apply **only** if there were elected representatives. There would be no corresponding duty to consult individual employees on risk assessments, nor to respond to any issues raised by individual employees.
71. The HSCWE Regulations allow for the election of representatives of employee safety to represent groups of employees. There is nothing to preclude representation of employees at more than one site, providing these are part of a specified “group”. The employer can decide whether to consult directly with employees or with representatives of employee safety. They will therefore have to consult with all workers at all sites by one means or the other and they can decide on the best way to do this. It is therefore within the employer’s control whether representatives represent fellow employees at other sites, and within the employees’ control to elect their representatives. There is, therefore, no need to change the law to clarify whether representatives of employee safety can represent workers at workplaces other than the one where they work. Again, we do believe that improvements could be made to the guidance on the regulations to ensure that this is made clear. We believe that clearer guidance will help both employers and workers to ensure that the best arrangements for representation can be made.

Possible benefits

72. If a trade union is not recognised or has not appointed safety representatives, extension of the amendments to the HSCWE Regulations would give representatives of employee safety in such situations equal rights to trade union safety representatives, and further encourage employee consultation.

Possible drawbacks

73. Because the new duties apply to dealings with safety representatives, an effect of these changes may be to encourage employers to try to consult directly with employees, rather than through elected safety representatives. This would be self-defeating because consulting directly with all employees could be expensive and time-consuming in all but the smallest organisations. Employers may therefore consult only superficially in this way, reducing the effectiveness of the consultation process.

<p>Q10: Do you agree that both the proposed duties should be extended to include consulting and responding to representatives of employee safety under the HSCWE Regulations? If not, why not?</p>

DRAFT

Final Questions on All the Options

74. We have some final questions about all the options.

Q11: First, we would like to know whether the options suggested (in whatever combination) will, in your opinion, achieve the aim of also including those who do not have access to a safety representative (whether appointed by a trade union or elected by the workforce) – for example, people who work in very small organisations. If not, what do you think would work better for such people?

Q12: Second, if we were to propose legislative amendments, how can we keep administrative burdens to a minimum and maximise the impact on improved health and safety?

Q13: Third, our resources are always limited, and we may not be able to do everything we need to do straight away. We will need to make choices about what options to carry forward first. So, please would you tell us which option (whether it is one of ours, or a suggestion of your own) will, in your opinion, be the single most effective thing we can do, and why.

Regulatory impact assessment

75. When preparing proposals for regulations or other kinds of regulatory activity, HSC is required to submit to Ministers for their approval a document known as a Regulatory Impact Assessment or RIA. An RIA: describes the issue that has given rise to the need for regulation; compares various options; and identifies costs and benefits, to assist informed public debate about regulation. At this stage, where we are consulting on options, we have to prepare what is called a “partial” RIA for this proposal, which is reproduced at annex A. We would be grateful for your views on it, and for any information you have that would help to improve it. As we said earlier, we need more evidence to be convinced that benefits will outweigh costs.

76. There are gaps in the information available to help us quantify the costs and benefits of the regulatory activity we are considering. We have therefore had to make some assumptions, based on what we do know. If the assumptions we have made are borne out in practice, costs and benefits will be around:

	Option 2A (guidance)	Option 2B (standards)	Option 2C(1) (risk ass't)	Option 2C(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 2C are likely to fall more on larger organisations than smaller ones, because they are more likely to have safety representatives.

DRAFT

Q14: The Commission would welcome comments on the assumptions made in compiling the partial RIA and on its conclusions. Do you have any additional evidence to convince us that the benefits will outweigh costs?

Q15: We would be particularly interested to hear from local authorities about what would be the impact on them of enforcing additional regulations on worker involvement.

Your views on this consultation exercise

77. We are always trying to improve how we conduct consultation exercises. We would be grateful for your feedback on the quality of this Consultative Document. Please would you answer the following questions:

Q16: In your view, how well does this Consultative Document represent the different policy issues involved in this matter?

Q17: Is there anything you particularly liked or disliked about this consultation exercise?

Annex A: Partial Regulatory Impact Assessment

Proposals for strengthening the culture of worker involvement in health and safety, including amendments to the Safety Representatives and Safety Committees Regulations 1977 and related legislation

Partial Regulatory Impact Assessment

PURPOSE AND INTENDED EFFECT

Objectives

1. The ultimate objective of the proposals is to reduce the ill health incidence rate, the number of days lost to sickness absence and the injury rate of workers in Great Britain by 2010. The intermediate objective of the proposals is to encourage better dialogue between workers and employers on health and safety matters, and so improve health and safety standards at work.
2. The intermediate objectives will be achieved if:
 - Measurably more employers set up effective worker involvement and consultation mechanisms, such as a system of safety representatives and safety committees;
 - Measurably more employers consult workers on risk assessments, and involve them in deciding risk control measures and in monitoring their effectiveness; and
 - Measurably more workers get involved in health and safety risk management, for example by becoming safety representatives¹⁹ or by participating directly.

Background

Worker involvement and participation

3. There is a growing body of evidence²⁰ that worker involvement and participation in health and safety risk management in Great Britain have a significant role to play in improving standards of health and safety at work, thus reducing ill health, accidents and sickness absence. HSE's Worker Involvement Programme seeks to encourage workers to get involved in health and safety at work, emphasising the need for working in partnership with employers, and encouraging employers to involve their workers, mainly by promoting voluntary

¹⁹ Increasing the number of safety representatives does not imply encouraging more workers to join trade unions or encouraging more employers to recognise trade unions so that safety representatives can be appointed. The term is used in a general sense, to refer to both trade union safety representatives and non-trade union representatives of employee safety.

²⁰ HSE Contract Research Report RR363, "The role and effectiveness of safety representatives in influencing workplace health and safety", <http://www.hse.gov.uk/research/rrpdf/rr363.pdf>

action. There are three pillars to the strategy to achieve full worker involvement – encouraging best practice, providing and promoting good practice guidance for employers and workers alike, and the legislative framework.

4. The Health and Safety Commission is seeking the views of the business and working communities on striking the right balance between these three elements. Some stakeholders believe that, to secure the cultural change we need, more emphasis should be placed on promoting good and best practice. Others consider that adjustments to the existing legislative framework are also needed. The Commission recognises this plurality of views and wishes to test out some options for securing the best combination of factors that will influence business and its workforce to work more closely in partnership for improved health and safety at work.

The role of trade unions and safety representatives

5. One key element of worker involvement is the role played by trade union and other “safety representatives”: volunteer, front-line workers chosen by their colleagues to represent their views in discussions with managers about health and safety at work. Safety representatives can raise awareness of health and safety issues among both workers and managers, effect improvement in arrangements for managing health and safety, improve the practical implementation of these arrangements, and thus contribute to improved health and safety performance.
6. One research study²¹ suggested that where there is a union presence in the workplace, the injury rate is 24% lower than in workplaces where there is no union presence. One reason why this may be so is the presence of safety representatives, or it may be that unions tend to be recognised in lower risk workplaces. Another study²² suggested that manufacturing organisations with trade union safety representatives on safety committees have injury rates 50% lower than those without such arrangements. Although the quantitative details of these findings have been questioned, their broad thrust has been confirmed: safety representatives make an important contribution to protecting their colleagues’ health and safety at work.
7. The principles of worker consultation (a necessary part of wider involvement) are set out in legislation²³ and in guidance on health and safety management. The legislation seeks to give a broad framework for action rather than setting prescriptive requirements. There are three different regimes, depending on whether the workplace is onshore or offshore and, if onshore, whether the employer recognises trade unions. If trade unions are recognised, they can appoint “safety

²¹ Litwin, A S: “Trade Unions and Industrial Injury in Great Britain”, LSE, 2000.

²² Paci, P, Reilly, B and Holl, P: “Unions, Safety Committees and Workplace Injuries”, City University Department of Economics and Applied Econometrics Research Unit, Discussion Paper 31, 1994.

²³ The Safety Representatives and Safety Committees Regulations 1977, SI 1977 No. 500 as amended; The Health and Safety (Consultation with Employees) Regulations 1996, SI 1996 No. 1513 as amended; The Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989 No. 971 as amended.

DRAFT

representatives”. Where trade unions are not recognised, or if the union has not appointed a safety representative, the employer can choose either to:

- Consult with each employee individually; or
 - Arrange for the election of “representatives of employee safety” from the workforce with whom to consult.
8. The main duties on employers are to consult safety representatives with a view to making and maintaining arrangements for employer-employee cooperation and to consult them on the introduction of any measure that may substantially affect the health and safety of employees. They must also permit safety representatives to take time off with pay for training and to discharge their functions. There are some differences in employers’ duties and representatives’ functions under the three regimes.

Rationale for Government Intervention

9. The table below sets out the injury rates of employees over recent years:

Year	Rate of reported fatal injuries (per 100,000 employees)	Rate of reported Non-fatal injuries (per 100,000 employees)
2001/02	0.8	624
2002/03	0.7	618
2003/04	0.7	635
2004/05	0.7	587

10. The table below shows the estimated number of working days lost (full day equivalent) due to work related ill health and injuries, over recent years:

	Days lost (thousands)	Days lost per employee
2001/02	39,817	1.8
2002/03	(n/a)	(n/a)
2003/04	38,551	1.7
2004/05	35,426	1.5

11. The table below shows the estimated incidence and rates of self-reported work-related illness over recent years:

	Incidence (thousands)	Incidence rate per 100,000 employed
2001/02	662	2,200
2002/03	(n/a)	(n/a)
2003/04	609	2,000
2004/05	576	1,800

DRAFT

12. If there is no Government intervention on encouraging more and better worker involvement in health and safety, we might expect these figures to improve owing to the other Government activity underway in the area, although we do not yet know by how much. HSE is developing methods to set target trajectories and monitor progress against them. However, without improvements in worker involvement it is likely to be more difficult to reach the targets the Government has set,²⁴ of:

- Reducing the incidence rate of work-related fatal and major injuries by 3%;
- Reducing the incidence rate of work-related ill health by 6%; and
- Reducing the number of days lost due to injuries and ill health by 9%,

all by 2007-08. For this reason, HSE has set up a Worker Involvement Programme, aiming to secure more and better worker involvement in health and safety at work, mainly by promoting voluntary action by employers and workers alike. The proposals in this document would not come into effect early enough to have a significant impact on these targets, but would contribute to any targets set beyond 2008.

13. We know that about 90% of employers would like to involve staff more in health and safety and that 45% of employees would personally like to be more involved. However, research carried out for HSE²⁵ found that managers do not believe that workers are interested in being involved and that workers do not think that managers want to hear their views. Without Government intervention, it seems likely that this impasse will continue.

14. The Consultative Document of which this RIA forms part seeks the views of business, the public and voluntary sectors and their workers, about what balance of activities in this programme will best secure the benefits of greater worker involvement. Part of this is a suggestion for additional legal duties on employers to consult and respond to safety representatives, which only the Government can bring about.

OPTIONS, INCLUDING COSTS AND BENEFITS

Option 1

15. Do nothing except maintain the existing Worker Involvement Programme. With this option we expect to make a contribution to reductions in injury, ill health incidence and lost days rates. However, it is not possible to quantify these reductions on the evidence currently available. An essential part of the Programme is gathering evidence to evaluate its impact.

²⁴ <http://www.hse.gov.uk/aboutus/plans/sr2004.htm>

²⁵ thepeoplepartnership, *Worker involvement in the management of health and safety risk at work – qualitative research findings* (2005)

DRAFT

Health and Safety Benefits

16. There are no additional health and safety benefits associated with doing nothing more than is already planned.

Costs to Businesses

17. There are no additional costs to business associated with doing nothing more than is already planned.

Other Options

18. The Consultative Document of which this RIA forms part outlines three main options to increase and improve worker involvement in health and safety. These options are **not** mutually exclusive choices. The consultation is about striking the right balance between them. The options are as follows. We label them 2A, 2B and 2C to correspond to how they are labelled (A, B and C) in the Consultative Document:

- Option 2A: Improving existing good practice **guidance** on worker consultation.
- Option 2B. Develop a modern framework of **voluntary standards**, setting out best practice in modern worker involvement and participation.
- Option 2C: Make amendments to the existing **legislation** on worker consultation on health and safety matters (the Safety Representatives and Safety Committees Regulations 1977, “SRSC”, and the Health and Safety (Consultation with Employees) Regulations 1996, “HSCWE”):
 - Proposed Amendment 1 - A duty to consult safety representatives on significant risk assessments.
 - Proposed Amendment 2 - A duty to respond to representations made by safety representatives

19. First, we estimate the benefits of these options. We then go through the options in turn, setting out the issues and considering their costs. We then summarise the costs and benefits of each option at the end. We have tried to keep as much technical information as possible in an appendix.

Health and Safety Benefits

20. The table below sets out the cost of accidents to employees, by type, at 2004 prices.

Accident Type	Number of accidents ²⁶	Corrected for underreporting	Cost per accident (£thousands)	Total Cost (£millions)
Fatal	169	169	1,381	233
Major	30,213	59,564	37	2,214
Over three day	120,346	216,928	5	1,147
Totals	150,728	276,661		3,595

Source: Health and Safety, Statistical Highlights, 2005

21. The total cost of accidents given above excludes costs of accidents to the self-employed, members of the public, accidents that result in less than 3 days being taken off work and accidents that do not result in injury. This restriction is due to a lack of reliable information. We can assume that less serious accidents also lead to considerable costs for firms.
22. Work-related ill health cost society £11.3 to £17.3 billion per year in 2001/02.²⁷ Of this it is estimated that £8 billion are costs to employers. This includes the cost of time lost away from work. Studies have shown that worker involvement can be instrumental in developing and implementing arrangements that facilitate earlier return to work following injury or ill-health.²⁸
23. We assume that each of the three options will have an impact on the number of injuries but that, overall, the impact will be small. Any figures given are only rough estimates of the reduction of injuries and ill health and can only give an indication as to the potential benefits a measure can have. We would welcome consultees' views on whether these estimates are realistic.
24. We assume that the impact will be largest for the regulatory option (option 2C) in those firms that have safety representatives or representatives of employee safety.
25. We use the number of working days lost due to injury and ill health as the benchmark to calculate potential benefits. The calculation only includes firms that have safety representatives. We assume that the improved dialogue will reduce the number of working days lost in these companies by 0.1%. Overall, this estimated reduction leads to benefits of about £ 0.3 million per year. We believe that this estimate is at the lower end of the potential benefits and would be interested in your views.

Option 2A (Good Practice Guidance)

²⁶ In 2004/05, employees only

²⁷ Interim update of the "Costs to Britain of Workplace Accidents and Work Related Ill Health". New Update by end of January 2006

²⁸ <http://www.hse.gov.uk/sicknessabsence/index.htm>

DRAFT

26. Since the current Regulations and guidance were formulated, health issues such as stress-related illness and musculoskeletal disorders have become better recognised as major contributors to ill health at work. In the same period there have been major changes in the economy and in the way we work, such as lean production systems, and an increase in agency working and flexible work patterns such as part-time and homeworking. It is possible that existing guidance, as it stands, does not reflect these changes, which require a more flexible, innovative approach to securing employee involvement in risk management. HSE could work with employers, employers' associations, employees and trade unions to revise and improve the existing guidance. The guidance would apply to **all** employers, not just those with safety representatives or representatives of employee safety.

Risks

27. The main risk identified for this option is that, by itself, such guidance is likely to be only partly effective, thus frustrating the policy objective. This risk will be minimised by piloting the guidance in draft, promoting the final version effectively and improving it over time by acting on feedback from users.
28. A smaller risk is that employers may be confused by the requirements for consultation on health and safety and other requirements such as the Information and Consultation of Employees ("ICE") Regulations 2005 and so not read or follow the guidance. We will minimise this risk by careful drafting, emphasising that arrangements put in place to comply with the ICE Regulations need not be duplicated for health and safety purposes.

Compliance and enforcement issues

29. We know that most employers are willing in principle to involve workers and that many workers want to be more involved, but they are unsure how to do it and what the benefits are. The principal use for the good practice guidance would be to help employers and employees develop effective partnership working arrangements. Following the guidance would be voluntary. Indeed, employee consultation on health and safety is an employment relations matter: what is right for a particular organisation needs to be agreed by both the employer and the employees. Intervention by a health and safety inspector to impose an enforcing authority's own view of what health and safety consultation arrangements should be adopted in a workplace is not regarded as a practical solution. Enforcement may be more practical (though not without challenges) on procedural issues, for example setting up a safety committee when two or more safety representatives have requested it.
30. A stronger focus on worker involvement will require HSE and local authorities to ensure that field staff are equipped to respond to requests

DRAFT

for help in implementing the guidance and to know when to pass on more difficult queries to employment relations experts such as Acas.

Unintended consequences

31. We have not identified any unintended consequences for this option.

Outline implementation plan

32. HSE has some existing guidance on worker involvement already. This is being improved continually and stepping up activity to implement this option would not cause difficulties for HSE. Arrangements are in hand to brief HSE and local authority field staff on worker involvement in autumn 2006. Further guidance for field staff could be prepared relatively easily.

Costs to Businesses

33. The costs to business of the implementation of guidance are mainly costs of familiarising managers with what the guidance suggests. If a firm decides to act on the advice given in the guidance this will be based on the belief that this decision will improve the performance of the business in one form or another. We do not consider these to be costs caused by government intervention.²⁹

	Existing medium company (50 to 249) ³⁰	Existing large company (250+)	Total
Number of companies in every category	29,000	8,000	37,000
Estimated number of companies reading the guidance	1,500 – 2,900	800 – 1,600	2,300 – 4,500
Costs per hour	£ 68	£ 28	n.a.
Total costs	£ 0.1–0.2 m	£ 0.02–0.04 m	£ 0.12–0.24m

34. These figures assume that every business in Great Britain reads the guidance. We think that it is more appropriate to use a smaller figure, based on the assumption that 10-20% of large firms, 5-10% of medium-sized firms and no small firms will read the guidance. These assumptions are based on HSE's experience with the use of guidance

²⁹ We estimate that within each business a member of staff spends one hour reading the guidance. The hourly wage used for these calculations are based on the earnings survey ASHE whereby we assume that in very small businesses with between one and five employees nobody will read the guidance. In a medium sized business a member of the middle management team will read the guidance, while large companies will have personnel officers reading these types of guidance.

³⁰ The size bands used in this table are not fully consistent with the usual way of defining a small, medium or large business. They are, though, the only size bands which allowed the consistent use of the SBS data base, the WHASS survey and other data sources used.

DRAFT

by business. We invite you to let us know whether you agree with these assumptions.

Option 2B (Best Practice Voluntary Standards)

35. As well as giving guidance on good practice in consultation, we wish to encourage all organisations and their workers to adopt best practice in worker involvement, going beyond simply what the law requires in search of the benefits that many modern organisations are starting to reap from involving their workers. This option would therefore use partnerships between HSE, trade unions and employers' associations to extend the type of initiative already being taken forward in the construction industry, and in dealing with issues such as work-related stress. It would entail developing a framework of standards for worker consultation on health and safety suitable for different industry sectors, employment patterns or size of organisation. The standards would apply to **all** employers, not just those with safety representatives or representatives of employee safety. However, we would not expect them to be very relevant to very small organisations, and so we would expect them to be adopted mainly by larger organisations.
36. Although it is still too early to know what effect the construction industry initiative has had in quantitative terms, anecdotal evidence suggests such approaches can work well. For example, here is an extract from a case study of Heathrow Airport Terminal 5. The full case study is on HSE's website:

"There is a huge benefit in having the management team co-located and integrated with the client, designers and the workforce. This is a truly collaborative environment. The workforce do raise their concerns and with support from the management team, we deal with their concerns and suggestions."

Martin Quaid, Production Leader for T5B

Terminal 5 has reaped the benefits from this approach with:

- a safety record four times better than the industry average;
- a working environment that attracts skilled workers;
- positive feedback from their insurers; and
- a project that is currently on budget and ahead of schedule.

Risks

37. The main risks for this option are:
- Failing to secure the agreement of employers and trade unions to work together towards establishing such standards; and
 - Failing to secure the agreement of employers, workers and trade unions to use such standards.
38. It is not yet clear that there will be enthusiasm for the standards proposed in the Consultative Document. The Commission wishes to

DRAFT

test out the idea with employers and workers to see whether there is an appetite for this sort of non-legislative action.

39. As for option 2A, there is a risk that such standards will, by themselves, be likely to be only partly effective, particularly as they will be voluntary. The standards will need to be evaluated to gather robust evidence of their effectiveness and so provide greater stimulus for their take-up.

Compliance and enforcement issues

40. As best practice, it is not intended that the standards would be enforceable by health and safety inspectors. They would instead provide a voluntary basis for local agreement between employers and workers about full worker participation in health and safety risk management.
41. The intention is that employers and workers would choose to adopt them to provide:
- A starting point, based on best practice, for discussions about local worker involvement agreements;
 - A way of benchmarking organisations' performance in worker involvement in health and safety;
 - A spur to continuous improvement in health and safety risk management; and
 - A demonstration to potential customers and potential employees that the organisation is serious about good people management.
42. We know that employers are willing in principle to involve workers, but they are unsure how to do it and what the benefits are. A framework of voluntary standards could provide what employers and workers need to do more. Evidence of the standards' effectiveness will be vital to persuade other employers and workers to take them up.

Unintended consequences

43. Employers might believe (or be persuaded by over-zealous consultants that) the standards as compulsory, thus putting on themselves more action than was necessary. This would be minimised by clear statements about the standards' status and prompt action to set the record straight if overselling of them came to light.

Outline implementation plan

44. The voluntary standards could be developed on a sector-by-sector basis: what is appropriate for, say, financial institutions may not be appropriate for the construction industry even if the principles underlying the standards are identical. If the results of consultation showed that there was significant support for developing the standards, initial discussions with interested employers' organisations and trade

DRAFT

unions would begin in autumn 2006. This would provide the basis for developing a programme of standards discussions between employer organisations and trade unions, to roll out in 2007. Once the standards had been agreed, we would look to employers' organisations and trade unions to help implement them, and their effectiveness would be evaluated independently.

Costs to Businesses

45. We estimate that the costs of this option will be the same as those in option 2A, though we do not expect many of the smallest firms to want to adopt the voluntary standards and have therefore reduced the familiarisation costs accordingly.

Option 2C (Legislative changes)

46. Worker stakeholders consider that adjustments to the worker health and safety consultation legislation, to add two new duties on employers to consult and respond to safety representatives, will make a significant contribution to improving the culture of workforce involvement and so reaching the objectives set out above. The current regulations contain no specific duties on employers **either** to consult safety representatives on the process at the core of sensible risk management, risk assessment, **or** to respond to dialogues initiated by safety representatives by making representations on health and safety matters. If there were such duties, they argue it would make safety representatives even more effective and more people want to be safety representatives because they would see that they had a real chance of making a difference. This would therefore contribute to increasing the quality and quantity of worker involvement. However, the changes to the legislation would apply **only** to those organisations that have safety representatives or representatives of employee safety. From WHASS, we estimate that between 12 and 20% of employers with more than 25 employees have safety representatives.

Risks

47. The main risks for this option are:

- The risk of swamping safety representatives and managers with consultation on a vast array of risk assessments.
- The risk of creating a bureaucratic burden surrounding proving that a representation had been made and had been responded to.

48. We suggest that the organisations and workers themselves would best manage these risks. They should agree between themselves what types of risk assessments need consultation and what counts as a response to a representation, based on guidance from HSE.

Compliance and enforcement issues

49. Once employers are made aware of the proposed new duties, most would comply voluntarily. As with all regulations, it is not expected that full compliance would be achieved. For example, from the WHASS employer survey³¹ we know that 87% of employers already consult their staff on health and safety in some form. A TUC survey of safety representatives³² suggests that only 29% of employers consult trade union safety representatives on risk assessments. We might expect this figure to rise if the proposals were put into effect. From the TUC survey we know that 7% of employers do not consult safety representatives even when they ask to be consulted. We might take this as an estimate of the number of employers who do not respond to representations made by a safety representative. We expect this to be higher in organisations with representatives of employee safety rather than trade union safety representatives. We might expect this to rise close to 100% if it was made a legal duty to respond, because safety representatives would be able to point to what the law requires. As duties on employers, the proposed new duties would in principle be enforceable by health and safety inspectors. However, as mentioned for option 2A above, enforcement of the detailed requirements of worker consultation legislation is very much an option of last resort. Compliance would be more effectively secured by trade unions discussing their grievances with the employer and reaching a mutually agreeable settlement.
50. In organisations where no trade unions are recognised, the threat of enforcement would be the only means to secure compliance. It is therefore expected that compliance will be less complete in such organisations.
51. HSE and local authority field staff would need to be briefed on the new duties, what to expect to see and how to help resolve difficulties.

Unintended consequences

52. Because the new duties apply to dealings with safety representatives and representatives of employee safety, an effect of these changes may be to encourage employers to try to consult employees directly, rather than through representatives. This would be self-defeating because consulting all employees directly could be expensive and time-consuming in all but the smallest organisations. Employers may therefore consult only superficially in this way, reducing the effectiveness of the consultation process. We would point out to employers the disadvantages of consulting individually in larger organisations to seek to avoid this unintended consequence. We would be interested in your opinion about this potential unintended consequence.
53. A further unintended effect of the changes may be to encourage employers to think just about what the law requires and focus on the

³¹ Workplace Health and Safety Survey Programme. "2005 Employer Survey First Findings Report". <http://www.hse.gov.uk/statistics/pdf/whasse1.pdf>

³² TUC: "Focus on health and safety", TUC biennial survey of safety representatives, 2004.

DRAFT

process of consultation, rather than concentrating on the *outcome* (better relationships and so, better control of risks). So consultation may become an ineffective “box-ticking” exercise, perhaps just to be able to demonstrate compliance, but without any of the behavioural changes needed. Guidance would encourage employers to guard against this possibility.

Outline implementation plan

54. If the results of consultation were that there was a consensus that the proposed amendments would be worthwhile, the Commission would make formal proposals to Ministers to make Regulations in time for them to come into force at the common commencement date in April 2007. HSE and local authority enforcement staff would be briefed on the new requirements in time for this date and we would seek wide publicity for the measures through employers’ associations and trade unions. We might expect any impact on health and safety outcomes to start to be seen in 2008/09.

Health and Safety Benefits

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

55. It is expected that the first proposed amendment will increase the accuracy of risk assessments, thus leading to lower injury and ill health rates.
56. The WHASS survey⁵ found 12% of workplaces with 25 or more employees already have an employee health and safety representative. It is assumed here that this rate applies to firms of all sizes. TUC research suggests 29% of firms with a safety representative currently consult them on risk assessment and WHASS suggests that 87% of those firms where there is a joint committee between workers and employers meet regularly, indicating a high rate of usage of consultation procedures once they are put in place. Where there is a worker representative the majority (77%) receives training relevant to health and safety issues. Both these figures suggest a strong commitment of employers to the structures for worker involvement that they have set up.
57. A majority (85%) of smaller workplaces regularly discuss health and safety with their workforce whether they have a representative or not. For the assessment of the impact of this regulation we assume that none of the smallest workplaces with up to 5 employees have a formally appointed or elected safety representative in the sense of the regulations. For small companies with between 5 and 20 employees we assume that between 5% and 10% have safety representatives.
58. Table 2 in the technical appendix sets out the assumptions we make with respect to the share of workplaces with a safety representative and whether they are consulted or not. Overall we assume that the

DRAFT

proposed amendment 1 will increase the percentage of firms that consult their safety representatives from an estimated current of 29% to 90%. This leads to an overall increase of firms who consult on risk assessments by between about 10,000 and 15,000 enterprises.

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

59. This proposal is expected to lower the rate of work related injuries and illness but the benefits from a better dialogue and a better control of health and safety risks are intangible and therefore difficult to estimate. TUC research suggests that 90% of firms with safety representatives already respond to their representations. Therefore, considering only 12% of firms are estimated to have safety representatives it is estimated that approximately 1% of all organisations with a safety representative are not in compliance with the proposal at present. We assume that the introduction of the proposed amendment will lead to a 100% compliance rate. Applying these rates to the figures in table 2 in the technical appendix, we estimate that an additional 3,000 to 4,500 enterprises will respond to representations made by the safety representatives.

Costs to Businesses

Proposed amendment 1: A duty to consult safety representatives on significant risk assessments

60. The cost of consulting safety representatives on significant (but not all) risk assessments has been calculated by estimating up to 12%³³ of firms have safety representatives and 29% of those firms already consult representatives, with 90% complying after implementation.³⁴ Table 2 in the technical appendix shows the increase in the number of firms that will consult their safety representatives. The time taken for consulting on a risk assessment is assumed to be two hours for the safety representative and one hour for a middle manager who is consulting. This also **includes** time for familiarisation with the new regulation. The safety representative is earning the average wage of a union member (£14.79 per hour including non-wage labour costs)³⁵ and the middle manager earns £23.14 per hour (including non-wage labour costs).³⁶

61. The costs are calculated for the additional number of firms who will consult with their representatives. These are based on the assumptions and calculations set out in table 2 in the technical appendix. The total costs of the additional consultations are between £0.9 and £1.4 million per year.

³³ Data from the WHASS survey, Assumption of 90% to reflect a non-compliance rate of 10%. This may be an underestimate.

³⁴ Data from TUC

³⁵ DTI: Employment market analysis and research – Trade Union Membership 2004

³⁶ New Earnings Survey 2003

DRAFT

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

62. The cost of the duty to respond by employers is calculated by allocating half an hour to each response by the middle manager. Safety representatives in small firms (between 5 and 20 employees) are assumed to make one representation every two months, and in all other firms once a month. The safety representative will also spend 30 minutes on each of these representations. The familiarisation costs are included in the cost calculation for option 2C proposal 1 and **not repeated** here. Based on TUC and WHASS data we have estimated that currently 55% of representations by safety representatives are responded to and 12% of firms have safety representatives. We assume compliance of 100% after the introduction of proposal 2. This full compliance rate is based on the fact that once employers have consulted and spent time on the consultation process they are likely to respond to any representation.

63. The total costs are estimated between £ 2 and £ 2.8 million per year.

BUSINESS SECTORS AFFECTED

64. The proposals will affect all business sectors that employ people, including the public and not-for-profit sectors, but not the self-employed if they are the only person they employ. However, while the guidance and encouragement options could affect all employers, the legislative changes will affect only those organisations that have safety representatives or representatives of employee safety. From WHASS, we estimate that this is about 12% of organisations, most of which will be larger employers.

65. We do not expect that there will be sectoral biases in the application of the regulation but invite you to let us know if this is not the case.

EQUITY AND FAIRNESS

66. We have not identified any disproportionate impacts on any particular group except that larger firms, who are more likely to have safety representatives, are more likely to incur the costs of option 2C.

COSTS TO HSE

67. The costs to HSE are uncertain. There will be one-off costs of familiarising staff in the new requirements. Recurring costs will include time spent responding to additional casework.

ENVIRONMENTAL IMPACT

68. No environmental impacts are expected from any option.

TOTAL COSTS TO SOCIETY

DRAFT

69. Apart from the costs already mentioned there are no other significant costs to society from any option.

IMPACT ON SMALL- AND MEDIUM-SIZED BUSINESSES

70. The proposals have been put before the HSE Small Business Trade Association Forum. The general consensus was that there are no costs likely to arise from either option that would represent an unreasonable, or disproportionate, burden on small and medium-sized businesses. Worker involvement in health and safety was thought to be desirable and beneficial. However, their view was that excessive regulatory bureaucracy on undertaking and recording consultations would impose a disproportionate burden on small businesses.
71. About 140 small firms and 100 medium-sized firms were also consulted by telephone as part of research on the impact of the proposals undertaken for HSE by Momenta. This indicated that the great majority of SMEs do not consider that the proposed regulatory changes would impose an unacceptable burden, providing the stated intention of avoiding bureaucracy and allowing flexibility is maintained.
72. We will continue to seek the views of small and medium-sized firms on the proposals through the Consultative Document of which this RIA forms part, primarily through representative organisations.

COMPETITION ASSESSMENT

Option 1, 2A and 2B

73. There are no competition issues arising from these options as none of them requires any compulsory action.

Option 2C

74. This option will affect firms across all markets. Some markets are oligopolistic with a few businesses controlling large shares of them, while others are highly competitive. No market has been identified where competition effects are likely to be of particular concern.
75. In each market the effect of this option will be asymmetrical, as only firms with safety representatives or representatives of employee safety will have to comply with the new requirements while those without such representatives will have no new burden imposed on them. Given the relatively low cost per business affected of the proposal, this asymmetry is not expected to have any substantial adverse impact on competition in any market.
76. Disparities are likely to arise across sectors. The costs to organisations that undertake more hazardous processes (e.g., the chemical industry) will probably be larger, as their risk assessments will be more complicated and therefore will take more time to discuss with safety representatives. This, however, is unlikely to have an impact on

DRAFT

competition as these disparities are across different markets and not within individual markets.

77. No adverse effect on new firms in any of the market has been identified and no impact on market structures or firms' ability to choose the price, quality, range or location of their product is expected.

78. The overall conclusion is that this option will have little or no effect on competition.

COMPARISON OF COSTS AND BENEFITS

Option 1

79. There are no costs or benefits associated with doing nothing more than is already planned.

Options 2A and 2B

80. These options involve voluntary action and therefore impose no additional regulatory or compulsory cost burden to industry other than familiarisation costs.

Option 2C

81. The table below sets out the costs and benefits of the proposed amendments to regulations and compares them with the other options (which are not mutually exclusive alternatives):

	Option 2A (guidance)	Option 2B (standards)	Option 2C(1) (risk ass't)	Option 2C(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		

UNCERTAINTIES

82. There are many uncertainties in this assessment of costs and benefits. The quantification of this assessment is based on limited data and some assumptions that have not been tested with stakeholders. It should only be regarded as indicative. The impact that worker involvement (and safety representatives in particular) has upon injury, ill health and days lost rates in their places of work is not known precisely. Nevertheless, we have case study information that strongly suggests that effective worker involvement has a positive impact on health and safety outcomes.

83. For example, St Regis Paper (part of D S Smith plc) instigated a series of health and safety action plans to:

DRAFT

- Improve management systems and procedures;
- Improve machinery guarding;
- Re-focus the regular site health and safety meetings between site managers, safety advisors and safety representatives;
- Provide all employees and managers with health and safety knowledge and skills; and
- Actively involve all employees.

As a result, they saw a **64% reduction** in the overall accident rate and a corresponding **73% reduction** in employee insurance claims (from 833 to 222 per 100,000 employees) together with an **18% reduction** in the number of days lost to injuries. They benefited from a reduction in the rate of increase of employers' liability insurance premiums.

ENFORCEMENT AND SANCTIONS

84. Non-compliance will be identified by responding to queries raised, investigating accidents and incidents, and routine checks by HSE and LA inspectors. Where appropriate, enforcement action may be taken in accordance with the HSC Enforcement Policy Statement. Options available include giving advice and issuing an improvement notice, though since a failure to comply with a duty imposed under health and safety regulations is a criminal offence, prosecution is also a possibility.
85. The Health and Safety at Work Act 1974, section 33 (as amended) sets out the offences and maximum penalties under health and safety legislation.

CONSULTATION

86. The Department of Trade and Industry, the Small Business Service, the Federation of Small Businesses, the Institute of Directors, the CBI and the TUC have been consulted informally at this preliminary stage.

ARRANGEMENTS FOR MONITORING AND EVALUATION

87. To be completed after consultation.

SUMMARY AND RECOMMENDATION

88. To be completed after consultation.

MINISTERIAL DECLARATION – to be completed when finalised

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

[Signature]

DRAFT

Contact: Stuart Bristow
Worker Involvement Programme Manager
HSE, 5 North, Rose Court,
2 Southwark Bridge
London, SE1 9HS

Technical appendix

INFORMATION SOURCES AND BACKGROUND ASSUMPTIONS

1. The base year used in this RIA is 2003/04.
2. We have used data from the TUC³⁷ and HSE's *Workplace Health and Safety Survey (WHASS)*³⁸ in calculating costs and benefits. Other information on the costs of the proposed changes has been obtained from relevant industry sources, sources within HSE³⁹, the Annual Survey of Hours and Earnings 2005 and New Earnings Survey 2003, "The costs to Britain of workplace accidents and work-related ill health in 1995/96" (HSE, 1999) and DTI statistics.^{40, 41}
3. 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).
4. Both costs and benefits have been discounted in line with Treasury guidance. Discounting is a method used to convert future costs and benefits to present values using a 'discount rate'. Costs have been discounted at a rate of 3.5%, meaning the present value of a future pound is assumed to decrease by 3.5% per year. Health and safety benefits have been up rated by 2%, then discounted at 3.5%, giving an effective discount rate of 1.5%. Costs and benefits are calculated over an appraisal period of ten years and expressed in present value terms so that future costs and benefits can be compared.
5. To estimate the costs and benefits of the proposed regulations it has been assumed that there will be full compliance with the amendments unless otherwise stated.
6. Costs and benefits are based around private firms and may therefore be underestimated because the public and not-for-profit sectors will also be affected but are not included.
7. WHASS is a survey of employers and employees. The employers' survey is of employers with 5 or more employees. Employers are split into the following size groups: 5–10, 11–49, 50–299, 300+.
8. "Small" workplaces are workplaces with less than 50 employees, "medium" have between 50 and 299 and "large" workplaces more than 300 employees. This definition differs slightly from the usually used definition of large firms with 250 and more employees. This RIA uses the definition used by the Small Business Service. The table below

³⁷ TUC, *Focus on Health and Safety*, TUC Biennial Survey of Safety Reps 2004.

³⁸ Workplace Health and Safety Survey Programme. "2005 Employer Survey First Findings Report".
<http://www.hse.gov.uk/statistics/pdf/whasse1.pdf>

³⁹ Health and Safety Statistics 2004/05 - <http://www.hse.gov.uk/statistics/overall/hssh0405.pdf>

⁴⁰ Grainger, H and Holt, H: "Trade Union Membership 2004", DTI, 2004

⁴¹ Small Business Service Analytical Unit

DRAFT

gives the distribution of employers by size and number of employees employed in each size group:

Table 1: Distribution of employers by size and number of employees employed

	Number of enterprises*	Number of employees in size band, in millions
All employers	1,236,000	25.1
1-4	809,000	2.3
5-9	219,000	1.5
10-19	111,000	1.6
20-49	60,000	1.8
50-99	18,000	1.3
100-199	9,000	1.2
200-249	2,000	0.4
250-499	4,000	1.3
500 or more	4,000	13.7

Source: SBS statistics,

*Rounded to the nearest thousand

Table 2: Number of businesses affected

	Less than 5 employees	Between 5 and 20 minimum	Between 5 and 20 maximum	Between 20 and 249	250 and above
Rate of enterprises with SR	0%	5%	10%	12%	12%
Total number of enterprises	0	16,000	33,000	11,000	1,000
Enterprises with SR who consult (29%)	n/a	5,000	10,000	3,000	300
Increase to 90%		15,000	30,000	10,000	900
Difference between pre and post regs		10,000	20,000	6,000	600
Number of employers responding to their representatives					
Current		9,000	18,000	6,000	500
Post regulation		16,000	33,000	11,000	1,000
Difference pre and post regulation		7,000	15,000	5,000	400

Table 3

Costs of consulting with safety reps				
	Between 5 and 20 minimum	Between 5 and 20 maximum	Between 20 and 249	250 and above
0.5 hours of middle management @ £23.14	233,000	465,000	150,000	14,000

DRAFT

1.5 hours of representative @ £14.79 per hour	297,000	595,000	192,000	18,000
Total	530,000	1,060,000	342,000	32,000
Costs of replying to representations				
0.5 hours of middle management @ £23.14	515,000	1,030,000	663,000	61,000
1.5 hours of representative @ £14.79 per hour	329,000	658,000	424,000	39,000
Total	844,000	1,688,000	1,087,000	100,000

Table 4: Benefits: Reduction in working days lost due to injury and ill health

Companies by size band	Reduction in costs due to injury and ill health	total max	total min
Between 20 and 249 min	£36,000	£341,000	£305,000
Between 20 and 249 max	£71,000		
more than 250	£270,000		

Annex B: HSE's Worker Involvement Programme

HSE's Worker Involvement Programme (WIP) aims to promote greater worker involvement in workplace health and safety risk management and return to work, emphasising the need for working in partnership with employers, and encouraging employers to involve their workers, mainly by promoting voluntary action. We can expect to do this only through effective communication that changes people's attitudes. We believe that more widespread constructive dialogue between employers and employees will lead to better cooperation, which in turn will lead to more productive, safer and healthier workforces.

We reiterated and expanded on these views in our *Collective Declaration on Worker Involvement* in March 2004.

The programme's strategy is centred on identifying what works and how, and encouraging more worker involvement by making information and guidance available, including:

- Raising awareness and gaining commitment from all stakeholders that worker involvement is a key component of sensible health and safety management;
- Providing better guidance and web-based resources for employers, safety representatives, workers who are not union members and enforcement officers;
- 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;
- Working with the TUC, STUC and trade unions to encourage and promote existing consultation arrangements;
- Identifying the skills needed for effective worker involvement and working to stimulate the provision and take-up of training by both managers and workers in appropriate skills for effective worker engagement, including but not limited to the 10,000 safety representatives who undertake training each year;
- Piloting and promoting innovative ideas for encouraging more worker involvement in risk management and return to work, for example, through the intervention of a Workers' Safety Adviser and the Workers' Safety Adviser Challenge Fund;
- Working with industry sectors such as construction that have projects dedicated to improving worker involvement.
- Working with other parts of HSE to deliver the worker involvement message through campaigns and promotion work such as the "Backs 2005" and "Watch Your Step" campaigns.

Annex C: The Current Legal Framework

1. By law, employers must provide information, instruction and training and must consult all of their employees on health and safety matters. These duties were established under the health and safety Framework Directive 89/391, though many of the duties existed already in British law.

Information, instruction and training

2. Section 2(2)(c) of **Health and Safety at Work etc Act 1974** (HSWA) requires the employer to provide such information, instruction and training as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of employees. This is expanded by the **Management of Health and Safety at Work Regulations 1999**, which identify situations where health and safety training is particularly important.
3. In addition, there are a number of regulations dealing with particular hazards or industries which include specific health and safety training requirements, such as the Construction (Design and Management Regulations) 1994, Control of Substances Hazardous to Health Regulations 2002 and the Manual Handling Operations Regulations 1992.

Consultation

4. Section 2(6) of the HSWA requires every employer to consult safety representatives appointed by recognised trade unions “with a view to the making and maintenance of arrangements which will enable him and his employees to cooperate 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.”
5. Section 2(7) of the HSWA also requires employers to set up a safety committee if requested to do so by such safety representatives.
6. Where there are recognised trade unions, the basis for the appointment of safety representatives, their statutory functions and other aspects of consultation between them and employers is set out in the **Safety Representatives and Safety Committees Regulations 1977**, and the Approved Code of Practice to the Regulations.
7. If there are no trade union safety representatives (whether because the employer does not recognise trade unions, or because recognised trade unions have not appointed safety representatives), the **Health and Safety (Consultation with Employees) Regulations 1996** apply. The employer can choose either to:
 - Consult each employee individually; or
 - Arrange for the election of “representatives of employee safety” from the workforce with whom to consult.
8. Offshore workers are covered by the **Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989**. These provide for the election of safety representatives, with functions broadly the same as those for safety representatives under the SRSC.

DRAFT

9. There are some differences in employers' duties and representatives' functions under the three regimes, but broadly, the main duties on employers are to consult safety representatives with a view to making and maintaining arrangements for employer-employee cooperation and to consult them on the introduction of any measure that may substantially affect the health and safety of employees. They must also permit safety representatives to take time off with pay for training and to discharge their functions.
10. There are specific arrangements for consultation with workers in the construction, quarries and major hazard industries:
 - Consultation and involvement of workers are subjects included in the **Construction (Design and Management) Regulations 1994** (as amended), which require arrangements for cooperation between contractors, and provision for workers to discuss and offer advice on health and safety matters. This is intended to cover the specific problems associated with multi-site and temporary workplaces and the involvement of sub-contract and self-employed workers. We have recently consulted stakeholders on revised regulations, including proposals to improve worker consultation on construction sites.
 - The **Quarries Regulations 1999** include duties on the operator to ensure that there are suitable arrangements in place to enable effective cooperation between all those who work at the quarry. Appointed members of a committee are permitted to review the risk assessment for the health and safety document and suggest improvements, to which the operator must respond.
 - Premises subject to the **Control of Major Accident Hazards Regulations 1999** also have specific requirements for consultation with workers on the preparation of emergency plans.
11. Outside the health and safety field there is well-established guidance on wider issues of consultation in the workplace, including guidance supporting the **Information and Consultation of Employees Regulations 2004**.⁴² While these regulations do not apply specifically to consultation on health and safety, there is no reason why larger organisations should not include it in their wider consultation arrangements, providing this fulfils the specific requirements of the relevant health and safety legislation.

Risk assessment

12. The Management of Health and Safety at Work Regulations 1999 (MHSW) require every employer to make a suitable and sufficient assessment of risks to health and safety of employees to identify measures to take to reduce risks and comply with the law. Other regulations (too numerous to mention individually here) amplify this duty in specific cases.
13. The general principles and purpose of risk assessments are laid out in the Approved Code of Practice to the MHSW Regulations. Assessments

⁴² The Information and Consultation of Employees Regulations 2004, http://www.dti.gov.uk/er/consultation/i_c_regs_guidance.pdf

DRAFT

should be practical and take account of the views of employees and their representatives (where they exist) who will have practical knowledge to contribute.

DRAFT

Annex D: List of organisations and individuals to whom this Consultative Document has been sent (*DN: to be finalised*)

Government Departments and Non-Departmental Public Bodies

Acas
Cabinet Office – Office of Public Service
Cabinet Office – Better Regulation Executive
Central Office of Information
Civil Aviation Authority
Crown Estate Commissioners
Department for Constitutional Affairs
Department for Culture, Media and Sport
Department for Education and Skills
Department for Environment, Food and Rural Affairs
Department of Health
Department for International Development
Department of Trade and Industry
Department for Transport
Department for Work and Pensions
Foreign and Commonwealth Office
Health and Safety Executive Northern Ireland
Health Protection Agency
HM Revenue and Customs
HM Prison Service
HM Treasury
Home Office
Law Officers' Department
Ministry of Defence
Northern Ireland Office
Office of the Deputy Prime Minister
Office of the Secretary of State for Wales
Scotland Office
Small Business Service

Devolved Administrations

Scottish Executive
National Assembly for Wales

Local Government Organisations

Association of London Authorities
Convention of Scottish Local Authorities
LACORS
Local Government Association
London Boroughs Association
National Association of Local Councils

Employers' Organisations and Small Firms' Representatives

Alliance of Independent Retailers
Association of British Chambers of Commerce

DRAFT

Building Employers Federation
Confederation of British Industry
Engineering Employers' Federation
Federation of Small Businesses
Institute of Directors
National Federation of Self-Employed and Small Businesses
Union of Independent Companies

Trade Unions and Employee Organisations

Amicus
Association of Teachers and Lecturers
Bakers Food and Allied Workers Union
BALPA
BECTU
BIFU
British Medical Association
Ceramic and Allied Trades Union
Chartered Society of Physiotherapy
Communications Workers' Union
Community
Confederation of Shipbuilding and Engineering Unions
Equity
Fire Brigades Union
GMB
National Association of Colliery Overmen, Deputies and Shotfirers
National Association of Fire Officers
National Association of Schoolmasters / Union of Women Teachers
National Union of Miners
National Union of Teachers
National Union of Rail, Maritime and Transport Workers
NUMAST
Musicians' Union
Offshore Industry Liaison Committee
Police Federation of England and Wales
Prospect
Public and Commercial Services Union
Royal College of Nursing
Scottish Police Federation
Scottish Trades Union Congress
Society of Radiographers
Trades Union Congress
Transport and General Workers' Union
UCATT
Union of Democratic Mineworkers
UNISON
USDAW

Trade and Other Associations

Association of British Pharmaceutical Industry
Brick Development Association

DRAFT

British Aerosol Manufacturers Association
British Aggregate Construction Materials Industries
British Aggregates Association
British Agrochemicals Association
British Apparel and Textile Confederation
British Association of Chemical Specialities
British Battery Manufacturers Association
British Cast Iron Research Association
British Ceramic Confederation
British Chemical Distributors and Traders Association
British Coatings Federation
British Concrete Association
British Drilling Association
British Foundry Association
British Glass
British Metal Castings Council
British Metal Finishing Suppliers Association
British Non-Ferrous Metals Federation
British Pest Control Association
British Retail Consortium
BROA
Chemical Industries Association
Confederation of Paper Industries
Confederation of UK Coal Producers (CoalPro)
Construction Confederation
Farmers Union of Wales
Federation of Building Specialist Contractors
Federation of Civil Engineering Contractors
Federation of Master Builders
Food and Drink Federation
Freight Transport Association
IADC
IMCA
Law Society of England and Wales
Law Society of Scotland
Mining Association of the UK (MUAK)
National Farmers Union
National Farmers Union of Scotland
National Federation of Demolition Contractors
National Specialist Contractors' Council
Natural Slate Quarries Association
NHS Federation
Offshore Contractors Association
Paper Federation of Great Britain
Quarry Products Association
Retail Motor Industry Federation
Road Haulage Association
Royal Agricultural Society of England
Royal Highland and Agricultural Society of Scotland
Scottish Pharmaceutical Federation

DRAFT

Shoe and Allied Trades Research Association
Society of British Aerospace Companies
Society of British Gas Industries
Society of Chemical Industry
Solvents Industry Association
Tank Storage Association
Timber Trade Federation
UK Offshore Operators' Association
Universities and Colleges Employers' Federation
Water Companies Association
Water Services Association of England and Wales
Well Services Contractors Association

Police and Emergency Services Bodies

Association of Chief Police Officers of England, Wales and Northern Ireland
Association of Chief Police Officers of Scotland
Association of Scottish Police Superintendents
Chief and Assistant Chief Fire Officers' Association
Police Superintendents' Association of England and Wales

Health and Safety Specialists

Association of Port Health Authorities
British Occupational Hygiene Society
British Safety Council
Chartered Institute of Environmental Health Officers
Institute of Occupational Medicine
Institution of Occupational Safety and Health
Royal Environmental Health Institute of Scotland
Royal Society for the Prevention of Accidents
Society/Faculty of Occupational Medicine

Academic Institutions and Staff

University of Birmingham – Institute of Occupational Health
University of Dundee – Wolfson Institute of Occupational Health
University of Manchester – Department of Occupational Health
University of Newcastle-upon-Tyne – Department of Occupational Health
University of Sheffield – Institute of Work Psychology
University of Warwick Business School
Professor David Walters, Cardiff University
Professor Philip James, Middlesex University

People Management and Related Organisations

Chartered Institute of Personnel and Development
Chartered Management Institute
Involvement and Participation Association
The Work Foundation

Other Organisations

Hazards Campaign
The Consumers Association

Annex E: Invitation to Comment

1. We would welcome your comments on all the issues raised in this Consultative Document, but we would particularly like you to answer the questions we have asked. We would prefer you to reply using our interactive service at <http://www.hse.gov.uk/xxxx>, but if this is not possible, you may wish to use the reply form on the next page. Please attach additional pages if necessary.
2. The Commission tries to make its consultation procedure as thorough and open as possible. Responses to this Consultative Document will be lodged in the Health and Safety Executive's Information Centres after the close of the consultation period, where they can be inspected by members of the public or be copied by them on payment of the appropriate fee to cover costs.
3. Responses to this Consultative Document are invited on the basis that anyone submitting them agrees to their being dealt with in this way. Responses, or parts of them, will be withheld from the Information Centres only at the express request of the person making them. In such cases a note will be put in the index to the responses identifying those who have commented and have asked that their views, or part of them, be treated as confidential.
4. Many business e-mail systems now automatically append a paragraph stating the message is confidential. If you are responding to this Consultative Document by e-mail and you are content for your responses to be made publicly available, please make this clear in the body of your response that you do not wish any standard confidentiality statement to apply.
5. If you reply to this Consultative Document in a personal capacity, rather than as a postholder of an organisation, you should be aware that information you provide may constitute "personal data" in the terms of the Data Protection Act 1998. For the purposes of this Act, HSE is the "data controller" and will process the data for health, safety and environmental purposes. HSE may disclose the data to any person or organisation for the purposes for which it was collected, or where the Act allows disclosure. You have the right to ask for a copy of the data and to ask for inaccurate data to be corrected.
6. If you wish to respond in writing, please send your reply to:

Worker Involvement Consultation
Worker Involvement Programme
Health and Safety Executive
5th Floor, North Wing, Rose Court
2 Southwark Bridge
London SE1 9HS

or you can email your response to worker.involvement@hse.gsi.gov.uk

DRAFT

We should like all replies to arrive **no later than xxx 2006**.

7. We will publish the results of this consultation on HSE's website in due course.
8. If you are not satisfied with the way this consultation exercise has been conducted, we want to know, and we want to put things right. Please write to Stuart Bristow, Worker Involvement Programme Manager at the address or email address above. He will investigate your complaint and tell you what he is going to do about it. We aim to reply to all complaints within 10 working days. If you are not satisfied with the reply you receive, you can raise the matter with the Chief Executive of HSE, Geoffrey Podger, at the same address.
9. You can also write and ask your MP to take up your case with us or with Ministers. Your MP may also ask the independent Parliamentary Commissioner for Administration (the Ombudsman) to review your complaint.

Health and Safety Commission

**Worker consultation on health and safety:
Improving worker involvement – Improving health and safety**

Reply form

(Please type, or write in block capitals)

Name of organisation or individual
Address

Postcode

Name of contact
Telephone
E-mail

If you are replying on behalf of an organisation that is not on our original list of consultees (see annex D), please say what it does

How many people does it employ?

[DN: to be reformatted]

General questions

Q1: Have we got the right legislation, guidance and encouragement?

Q2: Have we got the balance between these three right? If not, which pillar or pillars need adjusting and how?

Guidance pillar

Q3: Do you think the existing guidance should be improved? If so, in what way? (For example, do you think case studies are helpful?) What other sort of guidance would you find helpful?

Encouragement pillar

Q4: Based on what we know so far, do you think that we should promote a further voluntary initiative like the WSA Challenge Fund, once it ends in March 2007? If so, what form should such an initiative take?

Q5: Do you believe that a framework of standards of best practice would be a useful and effective tool to encourage worker involvement? Would you – as an employer or a safety representative – use such a tool in your own workplace?

Legislation pillar

Q6: Do you agree that a duty on employers to consult safety representatives on the overall mechanism of risk assessment and on significant assessments would be helpful? Are our proposals practical?

Q7: What other measures do we need to take to make sure this does not become bureaucratic or simply a paper exercise?

Q8: Do you agree that employers should have a duty to respond to representations from safety representatives? Do you consider that written

DRAFT

representations and responses would be necessary? What sort of systems do you think would work?

Q9: What do you consider to be a “reasonable time” for a response?

Extension to non-trade union representatives of employee safety

Q10: Do you agree that both the proposed duties should be extended to include consulting and responding to representatives of employee safety under the HSCWE Regulations? If not, why not?

Final questions

Q11: Will, in your opinion, the options suggested (in whatever combination) achieve the aim of also including those who do not have access to a safety representative (whether appointed by a trade union or elected by the workforce) – for example, people who work in very small organisations. If not, what do you think would work better for such people?

Q12: If we were to propose legislative amendments, how can we keep administrative burdens to a minimum and maximise the impact on improved health and safety?

Q13: Please would you tell us which option (whether it is one of ours, or a suggestion of your own) will, in your opinion, be the single most effective thing we can do, and why.

Regulatory Impact Assessment

Q14: The Commission would welcome comments on the assumptions made in compiling the partial RIA and on its conclusions. Do you have any additional evidence to convince us that the benefits will outweigh costs?

Q15: We would be particularly interested to hear from local authorities about what would be the impact on them of enforcing additional regulations on worker involvement.

This Consultation Exercise

Q16: In your view, how well does this Consultative Document represent the different policy issues involved in this matter?

Q17: Is there anything you particularly liked or disliked about this consultation exercise?