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HEALTH AND SAFETY COMMISSION

Worker Involvement: Results of the consultation exercise and a proposed approach to current and future work

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Issue

1. Consideration of the results of the consultation exercise on worker involvement and agreement to a proposed approach to current and future work.

Timing

2. Routine.

Recommendation

3. That the Commission:
 - (a) **Notes** the achievements of HSE's worker involvement programme;
 - (b) **Reaffirms** the importance it attaches to strong promotion of worker involvement;
 - (c) **Notes** the results of the consultation exercise on worker involvement; and
 - (d) **Agrees** the proposed approach and prioritised workplan, set out in paragraphs 16 and 17, as offering a realistic but achievable way forward.

Background

4. Worker involvement forms a central element of the Commission's strategy. The strategy recognises that:
 - Workers are often best able to spot issues and bring about real improvements; and
 - Workers can influence health and safety through their own actions and by accepting personal responsibility.
5. The Commission's strategy outlines a commitment to promote greater workforce involvement in health and safety and to encourage a voluntary expansion of workplace health and safety representatives across all sectors of the economy.
6. To help deliver this strategy, HSE set up in early 2005 a worker involvement programme. The Commission approved the programme's initial plan of work in February 2005 (HSC/05/16). One element of this was a formal consultation exercise to seek wider views on what our approach to worker involvement should be.

Achievements of the worker involvement programme

7. The worker involvement programme has made an important contribution over the last two years. For example, for the first time, generic **guidance for employers** on involving workers has been published; we have expanded and **improved tools and information for safety representatives and workers** available on HSE's workers' web pages. We have made particular progress in **mainstreaming worker involvement** into HSE's wider activities, building on our **improved evidence base**. **Corporate campaigns** such as Better Backs! 2006 had a significant worker involvement element and included tools for safety representatives; and we have published a **topic pack** on worker consultation and involvement for HSE's field staff. These and other activities mean that HSE is far better placed now than in 2005 to implement the Commission's strategy as it relates to worker involvement. A summary of HSE's achievements is at **annex 1**, which the Commission is invited to note. In the light of these achievements, the Commission is invited to reaffirm the importance it attaches to strong promotion of worker involvement.
8. The impetus of being a programme has been immensely useful in kick-starting activity, but HSE now believes that further improvements can be secured by managing the work in a more traditional way. It has therefore decided to move the programme on to a 'benefits realisation' phase in which the learning from the programme is embedded into HSE and local authority (LA) practice.

Argument

Results of the Consultation Exercise

9. A summary of the consultation process and a breakdown of respondents are at **annex 2**. A summary of HSE's analysis of the responses is at **annex 3**, which the Commission is invited to note.
10. **The legislative pillar.** There were strong calls for legislation from trade unions, often going further than the Commission's proposals. There is no doubt that, of the three strategic 'pillars', trade unions and their appointed safety representatives believe that regulation is the most important and they further argued that there was a missing fourth pillar – enforcement.
11. Responses to the two suggested changes to the law do not, on a simple examination of the figures, appear to show strong opposition on the part of employers. 49% of employers and their representative organisations who offered an opinion answered that there should be a new duty to consult safety representatives on risk assessments and 72% that there should be a duty to respond to representations. However, a closer reading shows that where respondents have given a positive answer they are not always in favour of putting these changes into law. Employer organisations including the CBI, FSB and EEF said they were opposed to the changes. In response to general questions on the balance between the three pillars, employers did not express any enthusiasm for changing the law. The figures alone do not, therefore, fully reflect the views on regulation expressed by employers in their responses.
12. Our Regulatory Impact Assessment (RIA) estimated the total annual cost of the two changes to the law at £2.9-£4.2m, while benefits were £0.3m. At its February 2006 meeting, the Commission agreed that it would need to see further evidence of the benefits if consideration was to be given to regulatory change. As we reported in HSC/06/88 in November 2006, respondents did not produce information to show that the benefits of legislative change – even on the relatively small scale proposed – would

outweigh the costs. In spite of the question expressly seeking such evidence, there was no substantive additional information in reply (see annex 3, p.22).

13. **The guidance pillar.** There was near-universal support for improved guidance, using case studies to illustrate particular points.
14. **The encouragement pillar.** There was only lukewarm support for activities that sought to encourage striving for best practice, as opposed to compliance with good practice. Nevertheless, there was recognition that worker involvement is not restricted to health and safety, and the possibility was raised of synergy through working in partnership with other organisations.
15. The consultation has not given us a basis for recommending significant change in our approach. There is support amongst all stakeholders for the principles of worker involvement but there is significant disagreement about how best to encourage it. Many of the respondents expressed traditional views, with little common ground between them. Nonetheless, the consultation has pointed up some examples of good practice and helpful suggestions. Other evidence, such as the construction sector case studies recently published by the Union of Construction Allied Trades and Technicians (UCATT), suggests that there is a real appetite in some quarters for genuine cooperation between managers, workers and trade unions.

Proposed approach

16. HSE has sought to propose an approach to worker involvement that reflects the views put forward, while recognising that many are mutually irreconcilable. A rationale for the approach is at **annex 4**. The approach underpinning our plan of work reflects a focus on what we characterised as the first two stages of worker involvement in the consultative document, namely information, instruction and training (IIT) and consultation. From these we might hope that the third stage (joint problem-solving) might grow organically, but it is IIT and consultation that are the legal requirements and ensuring compliance with the law is core HSE and LA business.
17. The proposed prioritised workplan consists of:

- **Revitalising guidance**

This will include simplifying and updating the 'Brown Book' (the safety representatives ACoP and guidance) and related guidance, making it more streamlined and coherent, providing more practical examples, illustrative case studies and advice on how to meet the legal requirements.

- **Mainstreaming: work in construction and the public sector as priorities**

This will build on the work we have already been doing in corporate campaigns and Fit3 priorities. We believe that **construction**, where there have been significant steps to involve workers and examples of good practice exist, and the **public sector**, with its relatively high trade union presence, offer particular opportunities for effective promotion of worker involvement.

- **Mainstreaming: promoting worker involvement to HSE inspectors, LA enforcement officers and other field staff**

We will also work to ensure that **Inspectors and LA enforcement officers** look at worker involvement as part of their activities. We will do this in particular through promotion of the recently published 'topic pack' (<http://www.hse.gov.uk/foi/internalops/fod/inspect/workerinvolve.pdf>), which gives

inspectors guidance on the legal duties, how to assess consultation arrangements and how to advise employers on involving their workers. Where enforcement action is necessary, this should be carefully targeted and publicised to ensure widespread compliance.

- **Working with others, particularly on safety representatives and health**

This will include work to **encourage worker involvement more widely** in business (that is, not just in health and safety), adding value where we can; **encouraging more people (particularly women) to volunteer to become health and safety representatives in more places**; and strengthening worker involvement in **health** initiatives, building, for example, on the work done with Investors In People (IIP) on the healthy workplace standard. Acas have considerable expertise in the field of worker engagement. We will work closely with them to exploit the common ground between the two organisations and develop an effective shared strategy for encouraging worker involvement, providing seamless guidance for the end user.

The Commission is invited to agree this approach as offering a realistic but achievable way forward.

Consultation

18. Internally and with: Acas, CBI, EEF, FSB, IOD, IOSH, LACoRS, TUC, the Small Business Trade Association Forum, DTI and the Better Regulation Executive.

Presentation

19. There will be a high level of interest in the results of the consultation from stakeholders. In particular, the TUC and trade unions are likely to be disappointed that our proposals are not more far-reaching. The Commission will therefore wish to consider how it collectively responds in the light of its discussion. One approach is to highlight the importance the Commission continues to attach to worker involvement, to note that views expressed in the consultation agree on this, but not always on the means, and to promote the positive impact of the package proposed.

Costs and Benefits

20. The costs and benefits of involving workers are difficult to quantify. A large body of evidence points to the fact that where workers are involved accidents and ill-health can be reduced, but there is no conclusive evidence that puts a figure on what the return on investment is. Nonetheless, many organisations have developed systems to involve their workers, which adds credence to the idea that the benefits of doing so justify the investment made.

Financial/Resource Implications for HSE

Investment in worker involvement 2004-2007

21. We estimate HSE's investment in worker involvement from April 2004-March 2007 is about £1.6 million, equating to an **average annual cost of £540,000**. This is made up of:

- Workers' Safety Adviser (WSA) challenge fund, (including evaluation, but excluding £3m DWP funding): £235,000 (average £78,000 per year)
- Research and communications: £750,000 (average £250,000 per year)
- Staff costs (based on salaries – including those for administering WSA - and travel and subsistence): £630,000 (average of £210,000 per year)

Costs of worker involvement 2007-2008

22. Projected specific costs April 2007-March 2008 are estimated at £350,000. This is based on:

- Research and communications (including revised guidance): £80,000
- Staff costs (based on average annual salaries): £270,000

These costs are conservative and do not take into consideration the wider HSE resource in programme teams and Fit3 from further mainstreaming of worker involvement into HSE's activity. Most of the current guidance is priced. Refreshing it may improve declining sales.

Environmental and Other Implications

23. None

Action

24. The Commission is invited to:

- (a) **Note** the achievements of HSE's worker involvement programme (annex 1);
- (b) **Reaffirm** the importance it attaches to strong promotion of worker involvement;
- (c) **Note** the results of the consultation exercise on worker involvement (annex 3); and
- (d) **Agree** the proposed approach and prioritised workplan, set out in paras 16 and 17, as offering a realistic but achievable way forward.

Summary of HSE achievements on worker involvement since 2004

1. Strategic issues

- We drafted and secured agreement to the Commission's **Collective Declaration on Worker Involvement**. This set out more explicitly what the health and safety system needed to do to deliver the high-level objectives on worker involvement described in the Commission's strategy.
- We created a worker involvement **programme** in HSE to provide a specific team within HSE responsible for promoting consultation with employees. This programme has benefited from secondments from the TUC and Acas, which have helped to reinforce our strong links with partner organisations with shared objectives.
- We created and administered the **WSA Challenge Fund**, which sought to test out new ways of stimulating worker involvement using an external change agent, particularly in smaller organisations and those where trade unions are not recognised.

2. Research

- We have commissioned a great deal of research (both as part of more general surveys and specific to worker involvement) on the **attitudes and behaviours** of senior managers, line managers and workers with respect to worker involvement. As a result, we know that, (for example):
 - About 70% of employers and about 40% of workers want to involve their workers more and be personally more involved, respectively. Neither party believes the other wants this.
 - Senior managers and line managers' views and needs on worker involvement are quite different and excellent strategic policies may not be delivered in quite the way senior managers expect.
 - Worker involvement levels seem high, but the methods used are often informal and may not be as effective as they could be.
 - Workers may say they are satisfied with their level of involvement, but it appears they have low expectations.
 - In poor health and safety climates, accident rates are highest in workplaces where employees do not feel they can have a say.
 - Effective risk control is associated with strong encouragement to employees to raise concerns and with employees being able to have a say.

This has greatly improved the advice the worker involvement team is able to offer colleagues in HSE and LAs, for example on targeting communication activity.

- We commissioned research on the **effectiveness of trade union health and safety representatives** in promoting health and safety messages that will report shortly. We expect this to contribute to advice to colleagues about how best to involve health and safety representatives in corporate campaigns.

3. External activities

- Worker involvement is a key component of HSE's **stress management standards**. The standards and their supporting guidance emphasise that working in partnership with staff is critical to managing stress and improving well-being.
- A pilot project to use worker involvement as a tool to tackle **noise and vibration** risks in 28 manufacturing and construction companies has been running since July 2006. A wide range of activities in participating companies is under way and projects will be evaluated in spring 2007.
- HSE's **corporate campaigns** on **musculoskeletal disorders** and **slips and trips** have had specific components dedicated to encouraging the use of worker involvement as a way of tackling these highly prevalent problems.
- We have published **toolbox talks** on the safe use of ladders that employers can use to stimulate discussions in teams about **preventing falls**. We have also published ladder safety **pocket cards** in a range of languages to raise awareness of fall risks.
- In **construction**, the industry has recognised particular challenges in relation to its employment practices. The Worker Engagement Initiative has pursued a proactive strategy, which is endorsed by the industry. Achievements in construction include:
 - A worker engagement decision tool has been developed to help managers identify whether arrangements on their sites meet minimum legal requirements, and what improvements can be made. This tool is specific to the construction environment.
 - The Construction Industry Advisory Committee (CONIAC) has a worker engagement working party that regularly considers how the Committee can continue to provide leadership for the industry on worker involvement.
 - A series of 12 case studies has been published on the construction worker engagement website. Among these case studies is the work being taken forward by UCATT on the Manchester Joint Hospitals Project, and the success of Rok Building in adopting informal methods of consultation.
 - In 2007/08, HSE's main focus will be on embedding the new Construction (Design and Management) ('CDM') Regulations, which include a stronger duty to consult the workforce.
 - We want to ensure that the London Olympics are a showcase for worker involvement. The Olympic Delivery Authority (ODA) has set out in its health and safety standards for contractors that worker involvement must be a priority. HSE will work with ODA and their suppliers to ensure that this aspiration is delivered in practice during the construction of the Olympic venues and infrastructure.
- In tackling **Major Hazards** there has been a focus on engaging with employees, health and safety representatives and trade unions, both as part of day to day regulation and in targeted initiatives. For example:
 - In 2005/06 we modified the Explosives Industry Forum terms of reference to include, for the first time, worker representatives.
 - In 2006 we organised a highly successful Worker Involvement Day for the chemicals industry, attended by over 70 delegates.

- In the offshore industries, workforce involvement in the step change initiative has led to improved supervisory training, and a review of safety representative training to improve 'soft skills.'
- For hazardous installations and nuclear safety we have developed an approach to inspecting safety culture that, in the majority of cases, involves assessing employee involvement. It has been used at a number of oil and chemical sites, and in December 2006 at part of Sellafield. There have been strong positive impacts of this at some very large employers, for example the introduction, in one, of a continuous improvement system including employee workshops, to improve levels of worker participation.
- Our 'Operational Strategy for the Natural Gas Supply and Major Accident Hazard Pipelines Industries 2007-2012' includes a commitment to involve the workforce and engage with workforce safety representatives. One example of this in practice is the establishment of a national level meeting to engage with safety representatives and take a strategic view of safety following Transco's sale of four major distribution networks. The first of these national level meetings took place on 2 March 2007 and involved national officials and safety representatives from the three main unions (GMB, Apex and Unison).
- HSE is refreshing its view for the **management of health and safety**, as exemplified in HSG65 *Successful Health and Safety Management*. This is strongly evidence-based, and the evidence shows that employee trust, ownership and participation are key success factors. The target for developing the new model is summer 2007, and this will in turn be used as a basis for external guidance and HSE training.
- The **Ministerial taskforce** on health, safety and productivity (whose Secretariat is based in HSE) has published guidance for Civil Service Departments on absence management that emphasises the importance of worker involvement.
- We published HSE's **first generic guidance** on *how* to consult and involve workers (as opposed to simply what the law requires), including four case studies. These studies included a small firm and a non-unionised firm.
- We updated HSE's **workers' web pages**, providing more resources for health and safety representatives and employees.
- We published guidance on sickness absence and returning to work for safety representatives – the **first guidance produced specifically for health and safety representatives** by HSE. The equivalent guidance for managers emphasises the importance of consulting staff.
- Other guidance for health and safety representatives has also been published, for example on **asbestos**, which was a joint effort with the TUC.
- Jointly with the TUC, we published the leaflet *Your Health, Your Safety*, on **basic health and safety rights for workers**, in more than 20 languages
- We published a new version of the **accident book** that allows employers to give health and safety representatives copies of accident reports, where the victim agrees, thus improving the flow of information to health and safety representatives.
- We allowed the TUC to publish the **Approved Codes of Practice** on the Safety Representatives and Safety Committees Regulations (the 'Brown Book') on the internet for training purposes, thus making them more widely available than before.

- We published **case studies** on health and safety leadership that specifically include discussion of how organisational leaders use worker involvement to manage health and safety.
- We have held **training days** for and **conferences** with health and safety representatives, building their confidence and experience.

4. Internal activities

- We have produced a '**topic pack**' on worker involvement for HSE and LA visiting staff that gives guidance on worker involvement and suggests a process for encouraging employers and workers to engage in consultation.
- We **engaged with local authorities** through partnership managers, explaining what worker involvement is about and how LAs can build it into their workplans. For the first time, local authority returns of activity now include a section on what LAs have been doing on worker involvement.
- We have **championed** worker involvement and consultation with policy and delivery colleagues to help embed it in their thinking, particularly through a series of seminars on working more effectively with trade unions, but also in a range of other activities.

The consultation process on CD207: *Improving worker involvement – Improving health and safety*

Publication

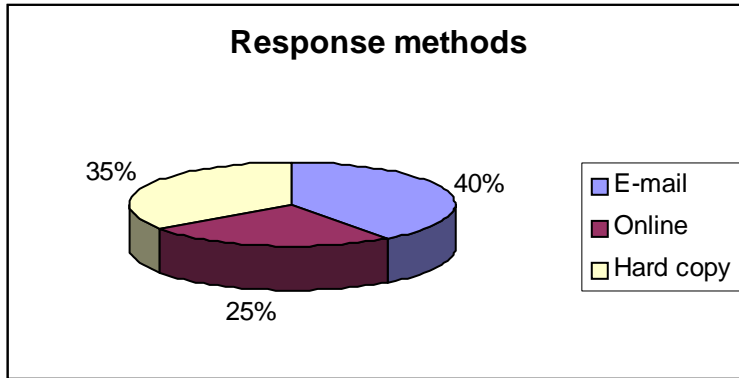
1. HSE published Consultation Document 207 (CD207) on 24 April 2006. As well as the full CD, HSE published a summary document to introduce the issues under consideration. It was anticipated that the summary document would be particularly helpful for workers and smaller businesses. The consultation closed on 8 September 2006.
2. The documents were published to HSE's website along with a feedback form in Microsoft Word format (to enable consultees to fill out their response off line and email it to us) and an online reply form. A printed reply form was annexed to both the main CD and the summary document to allow those without Internet access to send us their views.

Promotion

3. A press release was issued on 24 April announcing the consultation and there was on-line publicity on HSE's homepage and News Centre. In addition to HSE's own promotion, stakeholders such as the TUC, LACoRS, RoSPA and EEF publicised the consultation and encouraged responses from their members. The TUC prepared a briefing for safety representatives, to help them to structure their responses.
4. The CD and summary document were sent directly to a list of 227 organisations and individuals. Hard copies were also made available through HSE Books, which fulfilled requests for 387 copies of the CD and 619 of the summary. There have been 10,276 visitors to the consultation website, 3,759 of whom viewed the CD and 3,084 viewed the summary document.
5. As well as encouraging written responses to the consultation, in June 2006 HSE organised discussion meetings in Manchester and London, to introduce the CD and encourage broad discussion of the issues involved. Meetings in Cardiff and Edinburgh were cancelled due to a lack of interest. The London and Manchester meetings were well attended (around 70 delegates in total) and generated lively debate, the key points of which were published to HSE's website.
6. HSE gave presentations on the consultation to a wide range of stakeholders, including HSE's Small Business Trade Association Forum, regional TUC health and safety meetings, the CBI and a Rail industry forum organised by the Rail Safety and Standards Board.

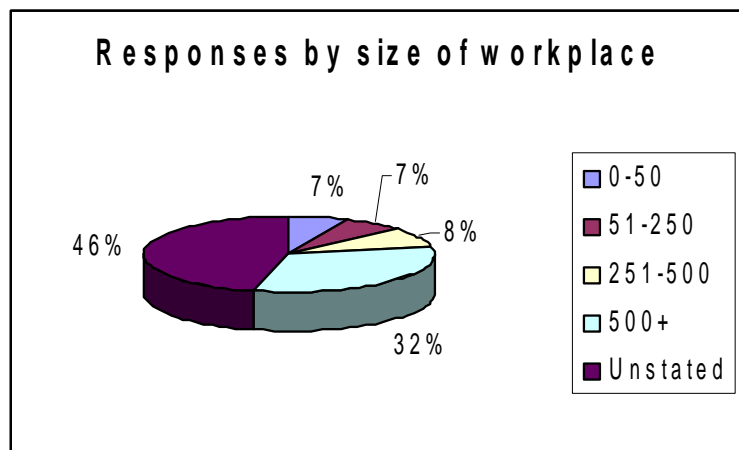
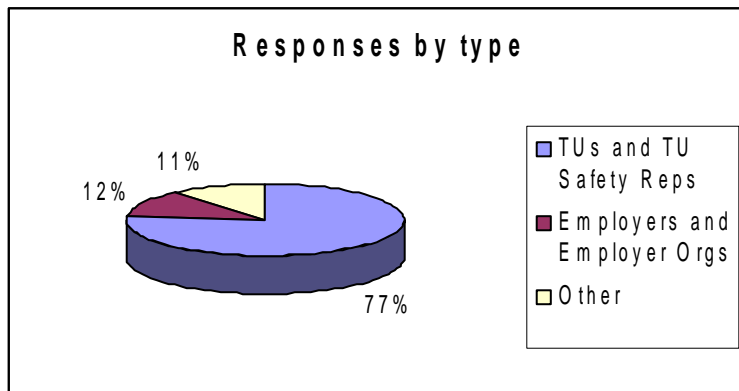
Responses

7. All response mechanisms (on-line, email and hard copy) were used, with email being the most popular method. The vast majority of respondents (78%) used the prepared reply form to send in their comments.



Analysis of respondents

8. There have been 443 written responses to the consultation, representing a wide variety of stakeholder views.



Analysis of responses to CD207: *Improving worker involvement – Improving health and safety*

General Questions

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

Q2: Have we got the balance between these right? If not, which pillar needs adjusting and how?

		Responded	Yes (we've got it right)*	No*
Legislation	Total	89%	21%	79%
	TUs and reps	93%	11%	89%
	Employers	83%	70%	30%
	Other	71%	49%	51%
Guidance	Total	80%	38%	62%
	TUs and reps	81%	35%	65%
	Employers	83%	48%	52%
	Other	73%	53%	47%
Encouragement	Total	79%	30%	70%
	TUs and reps	80%	26%	74%
	Employers	83%	50%	50%
	Other	71%	37%	63%
Balance	Total	87%	12%	88%
	TUs and reps	91%	5%	95%
	Employers	83%	48%	52%
	Other	69%	29%	71%

* Percentage of those who gave a response

The overwhelming majority of respondents indicate that one or more pillar needs to be adjusted. However, there is a large divergence of opinion about what needs to be changed and how.

Trade unions and trade union safety representatives argued strongly for changes to the legislation. They would like to see more far-reaching change than is proposed within the CD, including roving safety representation, Union Improvement Notices and the right to 'stop the job.' They argue that only robust legislation and legally recognised rights for safety representatives will produce widespread improvements in consultation and involvement. They further argue that legislation without enforcement is meaningless and strongly urge HSE to start actively enforcing existing and any new regulations on consultation. They would like to see improvements to HSC/E's guidance and encouragement activity but as secondary to (and not substitutes for) regulation and enforcement.

A clear majority of employers and employers' organisations think existing legislation is right. Although some employer responses indicate that they do not think it is perfect, they oppose regulatory change. They argue that improved guidance and encouragement

focussing on the business and health and safety benefits of involvement will be the only way to secure the cultural changes necessary for successful worker involvement.

Q3: What impact have the ICE (Information and Consultation of Employees) Regulations had (or do you think they will have) on your organisation and what impact have they had (or do you think they will have) on consultation on health and safety?

Responses to this question revealed a widespread lack of knowledge about the ICE Regulations. It appears that where there are already formal systems for consultation, the new regulations have had little impact. A handful of respondents indicated that there has been a better communication of information since their introduction but the majority have not seen a significant change.

Some trade union safety representatives indicated that the ICE regulations might be used to undermine consultation with union representatives. They argued that employers could invite those staff they think will be supportive of management to participate in consultation mechanisms (and thus be able to claim they have consulted the workforce without involving the trade unions).

Many reiterated the TUC's concern that consultation under the ICE regulations should not be a substitute for that required in health and safety law.

Conversely many employers would like to see better coordination of consultation across management issues:

Employers are seeking to have a common framework for consultation and involvement which is applicable for health and safety as well as other employment and corporate issues.... [the ICE Regs] are likely to stimulate renewed interest in health and safety consultation arrangements in the short term simply as a result of organisations having to develop systems for consultation generally. (CBI)

Although they are clear that regulation on consultation from the ICE Regs and that required under health and safety law remain distinct, IOSH suggested in their response that opportunities for awareness raising across different types of consultation should not be missed:

We suggest HSE and DTI work together and use these regulations as an opportunity to remind duty holders of the requirement to consult on health and safety, providing links to the newly updated HSE guidance and standards.

The Guidance Pillar

Q4: Do you think the existing guidance should be improved? If so, in what way? What is the most useful part of our current guidance? What would be the most useful type of new guidance we could produce (for example, case studies)?

There is near-universal support for improving HSE's guidance in this area, with 94% of those who replied to this question agreeing that it should be improved. Trade unions and safety representatives were marginally more keen on improvements than employers and their representatives, with 97% agreeing that the guidance should be improved compared to 74% of employers.

There was a widespread call for more **practical examples and case studies**. Some respondents argued that more sector-specific illustrations would be helpful.

Liberal use of good and best practice examples is by far the most powerful form of guidance. It will not convince those who are set against involving employees. No guidance will. However there are many who can see the potential benefits of greater involvement but are not sure how to go about it. Case studies will give them the confidence to 'have a go', particularly if examples are not limited to the best of the best, but also include the good, which will be more realistic for many. This will persuade many to have a go and once they see the benefits this progress will become embedded. (Engineering Construction Industry Association)

Employers and their representatives, in particular, focussed on guidance as the activity that will have the biggest impact – showing employers what the legal duties might look like in practice but giving plenty of flexibility for organisations to develop their own systems:

Case studies are effective as they provide a benchmark for organisations with similar hazards and affords the opportunity to prevent incident recurrence. Guidance on worker involvement using effective communication strategies is considered essential, to develop employees taking responsibility and ownership of health and safety issues. (British Coatings Federation)

Most people agreed that the language of guidance was very important and there were calls for Plain English, text-light materials especially for smaller businesses.

The general guidance and its recommendations are too long, complex and bureaucratic to be of assistance to a typical construction SME. They have too many other areas to concentrate on, such as compliance with new regulations, to be able to devote their scarce time and resources to creating such systems. (Federation of Master Builders)

There was a call for **more simple tools**. Suggestions included basic checklists, proformas for representations and responses, toolbox talks, surveys and suggested safety committee constitutions and agendas.

There was **praise for the 'Brown Book'** with many health and safety representatives, for example, saying that it was particularly helpful in setting up safety committees and defining their statutory functions. Despite this praise, there were calls for it to be updated:

The Code of Practice and Guidance are both unclear in many areas such as training. They also need clarification in respect of which workers safety representatives can cover. The guidance does not reflect the changing world of work since 1977 in respect of greater shift working, part time working, home-working, and contractorisation. It should cover issues relating to the increased flexibility within the workforce. (TUC)

More than one consultee suggested the format of the Brown Book needs to be revised:

The unusual layout and format of the "brown book" should be replaced by a more conventional A4 document in the modern style and to incorporate some worked examples. At the moment its still very much couched in legalistic terms. INDG232 [HSE's free leaflet on workforce consultation], on the other hand, is a much more user-friendly document. (Network Rail Infrastructure Ltd)

HSE's **on-line tools for employers** (published in February 2006) were not widely cited, but were praised by one respondent:

The web pages on this issue... are brilliant. Particularly the case studies, questionnaires and tools. Guidance issued should mirror this. (Health and safety manager, social housing group)

There was a call from the TUC, reflected again in many of the responses from safety representatives, that **guidance should be put into Approved Codes of Practice (ACoPs)** in order to give it added weight with employers:

In order to ensure there is greater pressure on employers to adhere to guidance, any future guidance should be contained in ACoPs where possible (STUC).

Much of what is in the guidance should actually be within the Code of Practice so that employers have to take it into account (TUC briefing pack for safety representatives)

There were voices against more guidance. One argument was that guidance would only ever be looked at by the converted. Another suggested that guidance will not be taken seriously by employers and will therefore have little effect.

The Encouragement Pillar

Q5: 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?

Responses to this question have been given separate consideration and are detailed in paper HSC/06/88 of 7 November 2006. The Commission accepted the recommendation made, to discontinue the WSA initiative and embed the learning in HSE's activities.

Q6: Do you believe that a framework of standards of best practice would be a useful and effective tool to encourage worker involvement? Would you use such a tool in your own workplace?

This question was responded to by 63% of the total respondents, which is a lower response than was generated to questions around legislation and guidance. Of those that expressed a clear view about a framework of standards of best practice, the majority (75%) was in favour. However, many respondents – particularly trade unions and safety representatives – answered 'yes' but expressed considerable reservations:

Voluntary standards aren't effective unless their purpose is to reinforce strong and enforced laws. With the difficulties of getting employers to comply with the current regulations, ACoP, and guidance, it's unlikely that voluntary standards will be of any more use, especially with indifferent or negligent employers where the greatest need for action is. Given some employers' track records, and the standards' voluntary status, even if safety reps tried to use them, they would be unlikely to achieve much success. Many employers would just place lip service to them, so the likelihood is that safety reps will view them with scepticism and be unlikely to use them. (Unison)

Employers' organisations were more supportive of the standards idea, or something allied and there were expressions of enthusiasm:

We strongly support the development of best practice initiatives, which give examples of the varied ways in which effective employee involvement in industry takes place. (EEF)

A cautionary note is sounded about their application in small businesses:

A modern framework of voluntary standards could be a useful tool for setting standards for benchmarking purposes. However, we agree that these standards are likely to be more appropriate when applied in larger organisations. (FSB)

Almost half of respondents (47%) chose not to express an opinion about whether they would use standards in their workplace, though of those 84% answered that they would. However, again, many qualified their responses and a small number of those who said that they would use a voluntary framework had previously said that such a tool would not be useful for improving worker involvement.

Because of the low response rate to questions on voluntary standards and the strong message from trade unions and safety representatives that such standards would be a poor substitute for legislation and enforcement, overall, the responses amount to no more than a **lukewarm welcome for the idea of voluntary standards**, rather than a resounding endorsement.

Q7: What sorts of incentive to encourage more worker participation have been successful in your experience? What more can we in HSC and HSE do to help?

Respondents had the opportunity to describe initiatives that in their experience have encouraged worker involvement. Many respondents commented but **no clear picture emerged** of what currently works well. Specific examples included:

This [worker participation] has occurred in workplaces where employers have been willing to engage with the workforce and forge a genuine partnership and positively address their concerns. (NUMAST)

We have worker involvement as a key activity within our organisation and have a safety matters working group that allows 'shopfloor' employees the opportunity to liaise and discuss health and safety with senior directors. It is well publicised but has only been successful because the company has listened to the employees and actively changed, plant, equipment and procedures. (Health and safety manager, Hanson Aggregates)

H&S Week has been promoted jointly with staff side and management during October for the last 6 years, running campaigns on health and safety giving advice and information on risk assessments. Safety reps also attend the monthly inductions for new starters to give a presentation and make staff aware how to contact a health and safety rep who will advise and take up any concerns on their behalf. (Unison safety representative)

Tool-box talks - presentations - questionnaires/surveys – discussions. (TUC Tutor)

Just saying thank you for a task well done often helps and is sufficient in many cases. (HR Director, Environment Agency)

Responses from the employer perspective were less specific, tending to make broader observations. For example:

Ensuring that the corporate culture truly has respect for all embedded in it is the best way to encourage worker participation. This is developed from example rather than pressure. (CBI)

Greater worker participation often arises out of developing team work, when employees share a common purpose. (EEF)

Many responses to this question were aspirational rather than being evidence-based:

There must be feedback to workers with regular briefings. Workers know best. (GMB safety representative)

Employers can encourage employees to become more involved by making public statements that they support the role of safety representatives, encouraging their workforce to join a trade union setting up and supporting safety committees. There needs to be transparency in the workplace. (TUC, quoted by many TUs and safety representatives)

Although **no single strong theme** of existing good practice emerged in response to this question, it does seem that practical action of one kind or another is a hallmark of the examples given, whether by the establishment of committees, the running of safety weeks or the delivery of tool box talks.

When asked what can HSC/E do to help encouragement, responses from the TU side veered away from encouragement and back to enforcement, suggesting more inspections, more enforcement activity and legislative changes to increase protection for representatives:

Inspectors should ask for evidence of consultation at each visit. (TUC, quoted by many TUs and safety representatives)

The biggest assistance would be to start enforcing the current consultation regulations. (TUC, quoted by many TUs and safety representatives)

Beyond the points made about enforcement, **no consistent theme** emerged as to what HSC/E can do to help with encouraging worker involvement. A few ideas were suggested, though, including supply chain leverage and insurance premia leverage, as well as urging support in a more general way:

Continue to highlight best practice and imaginative solutions to engagement and participation, including some of the benefits of soft skills. (The Environment Agency)

More than one response from the construction sector argued that HSC/E should not focus exclusively on trade union representation:

Do not undermine the importance of engaging the workforce and worker involvement in their own H&S by over inflating the role of the Safety Rep (Balfour Beatty Construction)

The Legislation Pillar

Q8: 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?

The vast majority of respondents (91% of those who answered) think this new duty would be useful. Of those, 82% also believed that our proposals were practical. However, the overall figure hides a much less enthusiastic response from employers and their representatives, of whom 42% said they would like to see this new duty, 43% that they

would not and 15% declined to answer. Of those employers who answered the question, 53% believed our proposals were impractical.

In particular **trade unions and safety representatives were in favour of this change:**

We strongly support this proposal. The lack of a specific duty on employers to consult safety representatives undermines the whole risk assessment process. A recent TUC survey showed that less than 3 out of 10 safety representatives were satisfied with their involvement in risk assessment. Around half are not consulted at all. (Unison, Glasgow City Branch)

Of course this would be helpful! Currently many managers pay only lip service to consultation on [risk assessments] and many believe they shouldn't bother! They routinely deal with any that may be contentious by advising the rep at extremely short notice (about the activity and RA) so the rep cannot give due consideration to the validity of the RA. (Safety Rep)

In my organisation there is no consultation on risk assessments there is gross disparity in contents, style, and competence in risk assessments that have been produced. (Safety Rep)

Many safety representatives and trade unions would have preferred our proposal to include all risk assessments.

Nonetheless, many employers and their representative organisations were strongly against the proposal. The CBI, in their response, expressed **concern about prescribing who should be involved in risk assessments**, arguing that it might not always be the safety representative but other staff who would make the most useful contribution. Other respondents expressed concern about the competence of representatives:

The proposal duplicates the existing practice of consultation, review and approval of risk assessments. As such, the proposal 1) offers no benefit, and 2) makes massive assumptions on the (undefined) competence of safety representatives (Balfour Beatty)

The CBI further raised the **risk to business competitiveness** of legislating for employees to be made available to participate in work already being carried out by others.

A number of respondents were concerned about the **potential for misunderstanding** and conflict over what might constitute a 'significant' assessment.

The Employment Lawyers' Association raised concern about the **effect on broader consultation** of specifying a duty to consult on risk assessments:

That could produce... a dangerous belief that, unless a duty is specifically imposed or is otherwise obviously within the scope of the general duty... then none exists.

Q9: What other measures do we need to take to make sure this is not just a bureaucratic exercise?

Trade unions and safety representatives disputed vehemently that consultation on risk assessments would necessarily lead to added bureaucracy, arguing that it should simply be part of the overall process.

Some consultees expressed **concern that the responsibility for risk assessment must remain with the employer.**

Managers must still retain the right to make the final decision, but consideration should be given to the views of employees. It should also be voluntary and not part of the formal inspection regime. (Scotch Whiskey Association)

There were, from employers and their organisations, **concerns about bureaucracy** and **clear guidance** was seen as the most effective check on this.

Even where employers stated that they would like to see the new duty, some indicated that they would prefer not to have it established in law. The following responses were given by consultees who had answered yes to a new duty to consult on risk assessments:

Managers must still retain the right to make the final decision, but consideration should be given to the views of employees. It should also be voluntary and not part of the formal inspection regime. (The Scotch Whisky Association)

The proposals are not practical with an organisation which is geographically widespread. Our main risk is from Manual Handling and if safety reps had to be involved in all Manual handling risk assessments, we would not be able to function. (Health and Safety Adviser, Regional Ambulance Service)

The main objective is to have this process as part of the normal work regime without making it a legislative requirement. (Sedgefield Borough Council)

Q10: Do you agree that employers should have a duty to respond to representations from safety representatives? Do you consider that written representations would be necessary? What sort of systems do you think would work?

The majority (96%) of those who answered the question favoured a duty to respond, though again employers were less enthusiastic with 72% of those who answered agreeing.

However, there was also strong opposition to this proposal:

It would have the potential to damage the openness needed for truly effective and involved cultures... If safety representatives have to resort to law in this area there is clearly something wrong with the communications and relationships they have with management. A legal requirement is unlikely to improve matters and undermines the whole concept of partnership... (CBI)

There was near-universal agreement that if such a duty existed then written responses would be needed to prove compliance. However, many respondents suggested that systems should be agreed between managers and safety representatives and that sometimes a verbal response will be enough, whereas at other times more formal responses would be needed.

Trade unions and representatives, who argued strongly for the new duty, asked for Union Inspection Notices to be given legal backing.

Q11: What do you consider a 'reasonable' time for a response?

Definitions varied from immediate to a number of months. There was agreement across the board that the response time would depend on the nature of the risk involved. Many suggested that an initial response, if just to acknowledge that a representation had been made, should be produced within a few days. The majority of respondents argued that a fuller response should be produced within 28 days of the representation.

Both safety representatives and employers argued that there could be room for flexibility if agreed between the parties.

One suggestion was to look at response standards in relation to customers:

Look at customer care standards in a range of organisations. E.g. we are obliged to respond within 7 days, even if just to say we are dealing with a query, then follow this up every 7 days after with an update. Others will be different – but why treat our own staff differently than those we serve through our business? During a recent staff satisfaction survey, this was the most common response we got – staff are treated as second-class citizens. (Health and Safety Manager)

Q12: Do you agree that both the proposed duties should be extended to include consulting and responding to representatives of employee safety under the Health and Safety (Consultation with Employees) (HSCWE) Regulations?

84% of those who responded agreed that the duties should apply to non-union representatives, with little difference between the different types of respondent.

There were, however, reservations raised, particularly from safety representatives, about the lack of training for Representatives of Employee Safety (ROES) and their vulnerability to domination by managers. Indeed some respondents argued that in practice ROES are rarely elected representatives but are, instead, appointed by management. Nonetheless, most consultees agreed that any new duties should not be applied only in unionised workplaces but across representative systems.

Q13: Do you agree that the titles of “safety representative” and “representative of employee safety” should be changed to “health and safety representative” and “representative of employee health and safety”?

90% of those who expressed an opinion agreed with this change. Some suggested that it was not an important issue and many of the safety representatives who responded to the consultation described themselves already as health and safety representatives. There was a suggestion from some consultees that the title should be further expanded to include welfare.

Final Questions

Q14: Will the options suggested improve worker involvement for those who do not have access to either a trade union or non-trade union safety representative - for example, people who work in very small organizations? If not, what do you think would work better for such people?

Of those who answered this question (54% of total responses), 48% stated that the proposals would improve involvement of workers in smaller businesses, and 52% that they would not. Key employers' organisations, including CBI, EEF and FSB answered 'no' to this question. There was a clear feeling expressed in responses that smaller businesses need a focussed approach, tailored to their particular needs. In particular, the need for non-bureaucratic systems to fit in with more informal communications in micro-businesses.

For trade unions and safety representatives, 'roving' trade union representation was suggested as one method for improving involvement of workers in smaller businesses whilst many reiterated the TUC's view that HSE should be encouraging trade union membership in smaller businesses.

Trade unions can be just as effective, if not more so, in small organisations, and the HSE should be encouraging trade union membership within these sectors as being a way forward. (TUC)

Some employers' organisations used this question to emphasise in particular the inability of legislation to effect improvements for smaller businesses. They highlighted the importance of practical examples and accessible guidance.

If changes to legislation are made then this will add to the existing burden of health and safety legislation on small businesses. Small businesses need straightforward and accessible guidance on how to encourage worker involvement in their organisation. (Federation of Small Businesses)

There needs to be a stronger and wider push to implement the principles of worker involvement supported by clear case studies and cost benefit information. Ultimately we need to achieve a cultural change where everyone's expectations are raised in terms of health and safety standards and level of engagement. For those without access to union representation or safety reps – they will need more persuasion, encouragement and simple guidance. (Construction Confederation)

Q15: 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?

This question confirmed the difference in opinion between employers' and trade unions and safety representatives. The latter were sceptical about administrative burdens and argued that any burdens would only fall on employers who do not consult properly (those who comply with existing regulations should be responding to representations and consulting on risk assessments already):

The proposed legislative amendments simply reinforce and support the current regulations. These are what any good and sensible employer would be doing anyway. They should not be seen as a "burden on business". (TUC)

Employers' organisations and others (for example, the Office of Rail Regulation) were concerned about regulatory change leading to bureaucratic systems and excessive burden on businesses. They clearly favour a non-regulatory approach but did make suggestions in terms of guidance and language if the law was to be changed.

This requires very close attention to the wording of the legislation, avoiding prescriptive detailed requirements, but enshrining good practice in guidance. (EEF)

By making the regulations high-level and using flexible goal-setting language rather than absolute duties. (Office of Rail Regulation)

Be very clear as to what is expected of employers so they can respond accordingly. Avoid creating new legislative requirements unless there is clear evidence that they will lead to improved standards... Understand the likely impacts of the changes on the behaviours of employers and safety representatives, and aim for changes which engender co-operation and avoid creating adversarial relationships. (Network Rail Infrastructure Ltd)

Q16: 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?

There was a variety of responses to this question, though it did not produce new ideas not reflected elsewhere in the responses. Trade unions and safety representatives argued that the key activity would be to enforce existing regulations, whereas employers' organisations focussed on improved guidance and activities to encourage good practice.

As far as small businesses are concerned the single most effective thing would be to provide improved guidance including small business case studies of good practice to provide practical examples of how worker involvement can be improved in the workplace. (FSB)

The production of clear and precise guidance which can be easily understood by all, along with encouragement at every level will have the greatest impact on the culture within our workforce (British Glass Manufacturers' Confederation)

One response focussed very much on the importance of basic skills and training:

Work with training providers and develop government sponsored schemes for basic and intermediate training, not only in developing involvement, but also in general health and safety awareness. (British Coatings Federation)

Regulatory impact assessment

Q17: HSC 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?

There was no additional evidence produced that benefits will outweigh costs. A small number of respondents stated that the evidence does not exist because costs do clearly outweigh benefits, though many did express their conviction that benefits would result.

The benefits lie in improved health and safety management resulting in fewer H&S incidents, better commercial standing, more productive workforce, reduced lost time etc (Construction Confederation)

Employee involvement in health and safety issues also has a beneficial knock on effect for industrial relations, worker well-being and general communication levels (Association of Electricity Producers)

A number of responses talked about benefits of good health and safety management generally rather than on consultation and involvement specifically.

'Costs' are too often calculated in purely cash terms, and benefits that are not easily quantifiable are often overlooked. The real cost of ignoring health and safety legislation is often greater than the apparent cost of conforming to it. (Safety Representative, Education Sector)

Many respondents, notably the TUC and safety representatives, were concerned at the assumption of 100% compliance in calculating the costs of the legislation, which they argued was unrealistic and misleading.

Q18: 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. If you are from a local authority, please let us know your thoughts.

There was very little information regarding the impact of enforcing the regulations from LAs. One respondent welcomed the proposals, despite additional bureaucracy for enforcement:

Obviously enforcing additional regulation could further add to the bureaucratic arm of the regulation, but I think it is necessary to raise awareness (anonymous response)

This consultation exercise

Q19: In your view, how well does this Consultative Document represent the different policy issues involved in this matter?

Q20: Is there anything you particularly liked or disliked about this consultation exercise?

Of those who answered Q19, 17% believed it had represented the policy issues well, 40% answered 'adequately' and the remaining 43% answered 'poorly.' This figure appears to have been strongly influenced by the TUC template with many respondents using their wording. Of employers and their representative organisations who answered this question, 55% thought it represented the issues adequately, 34% well and only 11% poorly.

Consultees expressed some concern about the reply form. An over-reliance on closed 'yes/no' questions and the use of acronyms was criticised. Although the consultation made clear that we would welcome any additional comments on extra sheets, we have taken on board these comments and shared them with colleagues looking at HSE's guidance on consultation.

Many of those who believed the policy issues had been poorly represented expressed disappointment that the consultation was not more wide-ranging. In particular, trade unions and safety representatives would have welcomed the opportunity to express their views on roving representation, Union Improvement Notices and the right to stop the job.

Despite these criticisms, the overall response to the way the consultation was managed has been very positive. Consultees welcomed the opportunity to give their views and recognised the importance of worker involvement for effective health and safety management. Many welcomed, specifically, the accessibility of the summary document. Those who had attended discussion meetings stated that this was a valuable opportunity both to develop their thinking on the issues involved and to share their own experiences with HSE.

Rationale for the proposed approach to current and future work

1. Worker involvement is a key theme of HSC's strategy, which recognises that effective worker involvement can reduce accidents and ill health. This is the central premise on which the consultative document was based. Throughout the consultative process we have reflected on what 'worker involvement' is and what it means in practice. We have considered the constituent parts of worker involvement and how they interrelate, and we have talked this through with our colleagues in Acas.
2. From our discussions and reflections we now believe that the vision of worker involvement outlined in the consultative document, whilst accurate and valid in itself, presents a somewhat idealistic view of the subject, which may be difficult to incorporate into a focussed and useful strategy. This view is reinforced by responses to the consultative document that reveal differing degrees of understanding of what worker involvement is, and how it is manifest in the workplace.
3. The consultative document refers to a continuum of involvement from simple information exchange through to joint problem solving (JPS). Although that theory holds true, it is clear from discussion with Acas and others that joint problem solving, as the ideal exemplar of worker involvement, is not always straightforward to identify and would be challenging for HSE and LAs to promote. This leads us to suggest that if we continue to equate worker involvement with joint problem solving then we are associating it (worker involvement) with the most complex end of the involvement spectrum.
4. Consultation is, in comparison, a less complex matter, and it lies at the centre of effective worker involvement. True consultation provides workers with the genuine opportunity to change the views, decisions and actions of management. It is more than a two-way flow of information, and when it works well it builds trust and enhances employee relations generally. This growth of trust and positive relations can provide the environment in which effective joint problem solving is then established, and the interchange between consultation and JPS can become dynamic, with one often arising seamlessly from the other.
5. These considerations lead us to the view that we should keep our focus firmly on the familiar territory of consultation and information, instruction and training (IIT). This would play to the strengths of HSE and LAs: we know what the law requires in these areas and we can build on that knowledge in developing our encouragement strategy. We can defer to other sources of expertise (such as Acas) if it is needed in the arena of joint problem solving. We believe that these core areas (consultation and IIT) have the capacity to effect the improvements in health and safety at work which research attributes to 'worker involvement'. Therefore this is where we should be putting our main effort, where we can deliver with impact, and make best practice examples available for better performers.

Restorative Justice

6. A focus on our core business should underpin broader input to support involvement. There are, for example, clear links with HSE's work on restorative justice (RJ) processes that are part of thinking about alternative penalties proposed by the Macrory Penalties Review. RJ can empower staff to have a greater voice and encourage managers to work with employees, and so can be used as a form of enforcement

action, securing compliance by bringing managers and workers together quickly to agree solutions to tackle non-compliant situations.

The Public Sector and the Construction Industry

7. The public sector and the construction industry are two areas where we believe our efforts to encourage worker involvement could have significant impact. The public sector has the union recognition machinery in place that is able to underpin effective worker involvement, but indications are from some Government Departments and other public sector organisations that these arrangements often fall short of achieving real worker involvement in health and safety (and indeed in other areas). We believe that focussing on the public sector provides HSE with an opportunity to get the worker involvement message across to an audience which ought to be highly receptive and which has the potential to impact on a considerable number of employees.
8. Responses to the consultation paper confirmed that there are several examples of good practice for worker involvement in the construction industry and a real willingness for some organisations to share that good practice in case studies. We believe that there will be real benefit in using and sharing the good practice within the industry to build on HSE's work with the construction industry and reach throughout the sector and beyond.

Legislation and its enforcement

9. The Commission has a long tradition of being a good regulator. It proposes legislation only when it has broad stakeholder support and the legislation is the best means by which the health and safety objective can be effectively achieved. In broad terms, only one group of stakeholders unambiguously supports the need for legislation. Moreover, there is no clear evidence that the benefits of introducing duties to consult health and safety representatives on risk assessments or to respond to their representations will outweigh the costs.
10. Unions also made strong calls for stronger enforcement of existing legislation. It is not entirely clear which of the four legal duties on consultation¹ unions believe are not being discharged adequately and require enforcement. The legislation in both the Safety Representatives and Safety Committees Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996 is intended to provide a framework within which the parties are encouraged to agree the most effective solutions in a spirit of trust and cooperation.
11. Guidance for HSE and LA inspectors:
 - (a) Encourages them to raise information, instruction and training and workforce consultation whenever it is appropriate; and
 - (b) Recognises that there may be circumstances in which formal enforcement action may be necessary. If these circumstances occur, we should ensure that we target and publicise such action appropriately, to ensure widespread deterrence and stimulation of compliance.

We will promote this guidance to colleagues in client-facing roles in HSE and LAs.

¹ The Health and Safety at Work etc Act 1974 and the onshore consultation regulations impose four main duties enforceable by inspectors: the duty to consult employees or their representatives (which is an unqualified duty – for example, there is no duty to consult them 'adequately'); the duty to provide facilities and assistance to representatives; the duty to provide information to representatives and the duty to constitute a safety committee when requested to do so by two or more representatives.

Guidance

12. HSE has a range of guidance on consultation and involvement. Specific printed guidance is contained in:

- *Safety Representatives and Safety Committees*, L87 (Third edition) – the ‘Brown Book’ – which includes two ACoPs as well as guidance.
- *A guide to the Health and Safety (Consultation with Employees) Regulations 1996*, L95, 1996.
- *Consulting Employees on Health and Safety: A Guide to the Law*, INDG232, 1996, which gives an overview of consultation using both sets of regulations.
- *A guide to the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989*, L110 (Second edition), 1998.

All of these (except INDG232) are priced publications.

13. All of the onshore publications have seen a reduced demand in the past few years:

Publication		2003	2004	2005	2006
L87		11,495	10,685	6,434	5,759
L95		710	664	674	556
INDG232	Free single copies	36,864	27,264	25,209	12,197
	Priced packs of 10	232	271	366	158

14. The printed guidance has not been updated for a number of years. It concentrates, in the main, on what the law requires rather than on practical advice on how to meet those requirements. HSE has, therefore, also published web-based advice for employers on involving workers (www.hse.gov.uk/involvement), which includes a suggested process for involvement and case studies, and tools for health and safety representatives (www.hse.gov.uk/workers/safetyreps).

15. The consultation shows an appetite for more and updated guidance from most stakeholders. There was a near-universal support for more practical examples and case studies and for plain English, accessible advice. Health and safety representatives, in particular, praised the ‘Brown Book’, though they agreed it would benefit from updates, citing changes in work patterns that need to be reflected.

16. During the cross-government exercise to measure administrative burdens, costs to employers associated with the Safety Representatives and Safety Committees 1977 Regulations were measured. The results of the exercise suggested there was a high cost to businesses from providing information to safety representatives and maintaining records from consultation. This suggests that businesses may be focussing more on paperwork than the actual legislative requirements (the law does not require records to be kept) and would benefit from better guidance.

17. We, therefore, recommend that guidance should be updated and improved to address these two issues. In particular, greater clarity and accessibility is likely to result from redrafting existing guidance notes in plain English with a focus on **how** to comply with the law. We propose including case study material, not as stand-alone products, but to illustrate particular aspects of consultation and involvement and to bring the guidance ‘to life.’ As part of this, illustrations involving a range of industries and sizes of workplace as well as different work patterns, such as part-time and agency working should be provided. Refreshing guidance in this way may also improve declining sales.

18. Our publication records show that there is a demand for combined guidance on consultation (INDG232). Rather than assuming that employers and workers will know which set of regulations applies to them, we believe that amalgamating revised guidance into one document would be useful. This approach will go some way to meeting the hope expressed by some consultees that the regulations themselves should be combined.
19. Updating the guidance will give us the opportunity to address two issues of terminology raised during the consultation. There was widespread support for changing the titles of 'safety representative' and 'representative of employee safety' to 'health and safety representative' and 'representative of employee health and safety.' Although we do not propose revising the legislation in this respect, we do think that using these changed titles in our guidance will effectively highlight the role of representatives in promoting health as well as safety. The second point of terminology was raised, in particular, at our discussion meetings. Delegates talked about the inadequacy of the term 'time off' to describe time spent on training and carrying out representative functions. Using this terminology is seen to undermine representatives and foster resentment in managers and colleagues, by encouraging an impression of 'time off' as comparable to annual leave. We therefore propose to use a different form of words in any new guidance to make clear that this is time spent working for the benefit of the workplace.
20. In February 2006 the Commission published a statement on the future use of ACoPs. This stated that when proposals to make or revise an ACoP are made, the case should be examined against four criteria:
- Are we dealing with a significant or widespread risk?
 - Is there one specific method you always expect people to follow in dealing with this risk (in which case the Commission suggested it should be prescribed in the regulation) or are there several?
 - Are some methods of meeting the legal duty particularly recommended or are there many methods that are as good as each other?
 - If you could not guide people to recommended methods in an ACoP would you be minded to put more prescription in the law?
21. Although trades unions have suggested that more guidance should be incorporated into ACoPs, they do not specify which areas in particular should be thus incorporated. We do not believe that guidance not already included in the Codes of Practice on Safety Representatives and on Time Off for the Training of Safety Representatives meets the first, third and fourth of the Commission's criteria. We therefore conclude that **there is no case for reviewing the existing ACoPs** and recommend that they be retained as they are.

Marbling worker involvement into all HSE and LA activities

22. Annex 1 enumerated the range of activity that people across HSE and LAs have been engaged on to improve worker involvement. However, this does not mean that our work is done: we will need to continue this activity over a number of years to secure the fundamental cultural change the Commission seeks. We recognise the need to build on our success. We particularly recognise the need to make stronger links to our work to improve health and safety management generally and making sure that employers (particularly in smaller organisations) receive the advice and guidance they need. Health issues seem to us to offer particularly fertile ground for activity – the stress management standards have blazed a useful trail, and are making useful links across

Government to initiatives such as IIP's 'healthy workplaces' standard on which we might build.

Encouragement

23. The business benefits of worker involvement extend far beyond the confines of health and safety at work. Several organisations cited worker involvement as key to business success (Acas, IPA) and the consultation document responses confirmed that all sides of industry recognise that worker involvement is a positive force in business.
24. Our suggestion of voluntary standards was not rejected, but neither did it receive a resounding welcome. Perhaps this is because there are several similar schemes in existence already, including our own stress management standards. The cost of developing and implementing the stress management standards to date is estimated conservatively at £4M over the past ten years. The impact of this spend has yet to be fully evaluated. While an approach based on standards may be possible in theory, it would be complicated and expensive and would reinforce barriers between different types of work that are, in reality, all connected. It seems sensible to look at a different way forward.
25. Another area for consideration under 'encouragement' is soft skills acquisition. Recognising that effective worker involvement in health and safety draws on a set of soft skills, HSE commissioned research in early 2006 to identify which skills are most important and how they are acquired. This research has identified key skills that effectively support and promote employee involvement in health and safety. However, the report also concludes that the role of training and delivery of these skills is, by their very nature, difficult to assess, and in particular difficult to differentiate from the generality of soft skills acquisition in the workplace. Although there may be some scope to consider collaborative working in this field, we believe that the practical difficulties of focussing effort on soft skills for worker involvement specifically in health and safety mitigate against developing a strategy for action in this area.
26. We recommend that the Commission adopts a strategy based on working in partnership with other organisations to encourage worker involvement across the piece, rather than seeking to lead the field. This approach would have the added benefit of raising this particular profile of HSC/E's work with other organisations, which may not usually perceive us as having a role beyond enforcement. All partners should then be able to optimise the use of scarce resources and benefit from an exchange of ideas.
27. An obvious starting point for collaborative work would be Acas. Acas are the independent and impartial employment relations experts, funded by the DTI. They have developed and promote their 'Model Workplace' for business that places heavy reliance on consultation and involvement of employees. Acas has a network of senior advisers and trainers who have experience and expertise in developing internal worker involvement strategies in businesses. It makes sense for HSE to draw on this experience. For example, during 2004/5 Acas delivered health-checks to 800 employers, as well as follow-up training, on the Information and Consultation of Employees ('ICE') Regulations on behalf of DTI, and in spring 2007 will be launching an online Health Check Audit Tool for ICE. Preliminary discussions with Acas indicate that they are willing to engage with HSE in developing this online tool to cover worker involvement in health and safety.

28. Further scope for joint working may be found in, for example, shared badging of literature, and shared website links. Acas has indicated its willingness to work collaboratively with HSE in this way, and to explore other opportunities for joint initiatives to promote worker involvement.

29. We recommend that the strategy of collaborative working follows the following steps:

- Identifying key organisations that actively promote worker involvement;
- Approach them for discussion on shared working;
- Clarify what their activities are; and
- Agree and implement joint activity on encouraging worker involvement.

30. We envisage that by taking this approach, in a structured and considered way, then the message of worker involvement in health and safety can be successfully linked to the broader worker involvement message, at lower cost and with greater impact than HSE would be able to achieve alone.

Encouraging more health and safety representatives

31. We value the work of health and safety representatives. They make an invaluable contribution to promoting better health and safety at work through cooperation and trust. HSE estimates that there are between 150,000 and 201,000 trade union representatives in Britain. These will be largely found in the public sector, where trade unions are best organised. We want to spread the benefits that health and safety representatives bring more widely, and we want to make sure that they more accurately reflect their constituencies. We agree with the TUC that 'more must be done to recruit more women, black and ethnic minority workers and young people as [health and] safety representatives'. We want to work with the TUC and others to increase the numbers of health and safety representatives – not just where they already exist, but also where there are currently no representatives at all. This may well be in non-unionised organisations. The lack of trade union recognition should not be a bar to receiving the benefits of health and safety representation.