

**HEALTH AND SAFETY COMMISSION AND EXECUTIVE
AGRICULTURE INDUSTRY ADVISORY COMMITTEE**

Promoting worker involvement in agriculture

Summary

1 HSE reported to AIAC in October 2006 on the inaugural meeting of the Roving Safety Representative Project Group. Members asked that a paper be presented at the next AIAC meeting to explore the scope for future work on promoting worker involvement in the industry in the context of HSC/E's emerging worker involvement strategy.

Background

2 AIAC members have been interested in the potential of roving (peripatetic) trades union appointed safety representatives (RSRs) in agriculture for some years. In support of the AIAC and its predecessor bodies, HSE has commissioned a series of research projects since 1998 to examine the scope for and impact of RSRs in the industry.

3 In May 2005, HSE reported to AIAC on the outcome of the most recent research carried out between June 2000 and August 2004 (AIAC Paper 230501 refers). Members agreed that RSRs and more generally, worker involvement, should be treated as a priority and that a Project Group be set up to take the issue forward.

4 In November 2005 HSE advised members of the Health and Safety Commission's (the Commission) revised policy on safety representatives. In considering the role of safety representatives earlier in the year, the Commission had identified a number of fundamental problems in relation to peripatetic representatives to do with cross-subsidisation, representation, recognition and rights of entry. Acknowledging that these problems were currently insurmountable it concluded HSE should not pursue the issue of RSRs in current proposals for future work in respect of worker involvement. Commission paper HSC/05/16 refers.

5 For reasons beyond its control, the Project Group did not meet until September 2006 to discuss the way forward. Reporting to AIAC in October, the group's Chair:

- summarised the findings of papers AIAC 230501 and HSC/05/16 and drew members' attention to the provisional findings of the evaluation of the DTI sponsored Workers Safety Advisors' (WSA) Challenge Fund. Further information on the outcome of subsequent discussion at the Commission meeting in November 2006 on the future of the WSA Challenge Fund is set out in para.6 below; and
- suggested that if members wished to take work on worker involvement forward, the aims and objectives of the group would need to be recast and its membership widened. In discussion it was agreed that the trend to greater temporary and migrant working in the industry posed particular challenges.

6 As a result, members asked HSE to table a paper to the next meeting exploring the options for pursuing and promoting initiatives in support of HSC/E's Worker Involvement Programme.

The Commission's current position on worker involvement

7 Having considered paper HSC/06/88 in November 2006, the Commission agreed the WSA Challenge Fund should be discontinued in March 2007 with the lessons learnt being taken forward; particular consideration being given to those industrial sectors where trades union membership was scarce.

8 Earlier this year, the Commission also considered paper HSC/07/12 which summarised the results of a recent public consultation exercise on worker involvement - Consultation Document "Improving worker involvement: Improving health and safety" (CD207) refers - and agreed an approach to current and future work. In doing so, it was advised that any approach to worker involvement would need to take account of views and standpoints, which are often mutually irreconcilable. The approach agreed by the Commission focuses on the current legal requirements i.e. on information, instruction and training (IIT) and consultation. From these it hopes that joint problem-solving initiatives might be grown organically.

9 The Commission's agreed strategy consists of:

- Revitalising guidance – including 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 in priority sectors – building on the work already underway. The construction and public sectors are believed to offer particular opportunities for effective promotion of worker involvement.

- Mainstreaming by promoting worker involvement through HSE/LA frontline activities – whereby Inspectors and LA enforcement officers look at worker involvement as part of their activities.
- Working with others – including work to encourage worker involvement more widely in business (not just in health and safety); encouraging more people to volunteer to become health and safety representatives in more places; and strengthening worker involvement in health initiatives.

10 The rationale for this approach is attached at Annex 1.

Worker involvement in agriculture

11 It is difficult to argue with the conclusion of Commission paper HSC/06/88 that most of the initiatives funded under the WSA Challenge fund, like the AIAC's RSR research project, focused on the role of safety representatives as sponsored health and safety advisers rather than as facilitators of worker involvement. Most members would probably agree that there is a role for worker involvement in the industry and that it should be encouraged/improved. A majority might also agree that the AIAC has a role in promoting it.

12 However taking into account the findings of all HSE's research on worker involvement – including that on RSRs in agriculture – it is neither possible nor advisable to be prescriptive about which activities or initiatives are most effective in stimulating greater involvement in any given situation or environment.

13 Notwithstanding, the ADAS report did conclude that visits from RSRs demonstrated some improvement in engagement with workers. What it did not do was to suggest a link between the improvement of worker participation with improvement in health and safety performance; though HSE does have other evidence that improved worker involvement is associated with an improvement in the control of risk and of health and safety outcomes. The report also highlighted a number of issues to which AIAC needs to give careful consideration before agreeing on how any future work should be taken forward. These include:

- Training and maintaining the expertise of safety representatives
- Recruiting and retention of safety representatives
- The connection between safety representatives and the trade unions and the perceptions of farmers and growers
- The geographical dispersion and comparative isolation of farm businesses.

14 Given the outcomes of the ADAS report and the Commission's conclusions in early 2005 and late 2006, it is not possible to conclude that RSRs provide an answer to the problems of worker involvement in agriculture; at least not at present.

Conclusions

15 In view of the Commission's strategy summarised at para.7 and Annex 1, future work in agriculture might focus on:

- Securing greater stakeholder commitment to the idea of worker involvement as a key component of sensible health and safety management. Stimulating changes in attitudes and beliefs so that stakeholders feel that health and safety is worthwhile and that worker involvement in health and safety is practicable and beneficial. In particular perhaps better/more creative use might be made of information on reported injuries and cases of health and bad practice collated from RIDDOR 1995 and other sources in the preparation of briefing/ information/publicity material.
- Promoting innovative ideas for encouraging worker involvement through capturing, publishing and promoting case studies of effective worker involvement in agriculture
- Promoting active involvement in health and safety through participation and consultation with workers/workforces who would otherwise not be represented. Priority might be focused in the first instance on:
 - Workplaces with >5 but <20 workers; and/or
 - Workplaces with a significant migrant workforce.

16 Industry stakeholders may hold widely divergent and possibly mutually irreconcilable views about the value of worker involvement in the industry. Future AIAC initiatives are only likely to succeed if they enjoy the involvement and support of as wide a base of members (and co-optees) as possible.

Action

17 Members are asked to note the content of this paper as the basis for discussion on the way forward.

EXTRACTS FROM COMMISSION PAPER HSC 07/12

RATIONALE FOR THE PROPOSED APPROACH TO CURRENT AND FUTURE WORK

Concentration on our core business

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 with the most complex end of the involvement spectrum.
4. Consultation is, in comparison, a less complex matter, and 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 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 focus 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.
6. We may need to consider whether the word 'involvement' is appropriate to this initiative. It is less straightforward than either 'engagement' or 'participation', each of which is closer to the reality of these proposals.

Restorative Justice

7. 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

8. 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....and responses to the consultation paper on construction suggest there are several examples of good practice for worker involvement which could be shared across the industry.

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. Neither of these criteria is met in the present case. In broad terms, only one group of stakeholders unambiguously supports the need for legislation. Moreover, no evidence has been produced 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. **The case for more legislation is not made.**
10. Undoubtedly, the trade union movement believes strongly that health and safety representatives need more powers, including powers beyond those on which the Commission sought views. However, it appears that it foresees these powers being used to compel employers to take action on health and safety issues of concern. This role is not one that was foreseen for health and safety representatives in the 1977 regulations. There is a clear role for representatives to bring matters of concern to employers' attention, but the idea of compulsion is, in our view, alien to a relationship that needs to be based on trust and cooperation. We understand unions' views that many employers with whom they have to deal only tackle health and safety issues because of the threat of (or taking of) legal action. However, it seems to us to defeat our aim of securing better trust and cooperation in the workplace if we alter the current balance by giving more powers to one side.
11. 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. HSE has long held the view that it would similarly be counterproductive to undertake proactive enforcement of the duties. 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. We do not believe that this trust can be stimulated by compulsion from a third party through enforcement action.
12. Nevertheless, 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.

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.

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

Guidance

13. 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.

14. 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

15. The printed guidance has not been updated for a number of years....The consultation shows an appetite for more and updated guidance from most stakeholders.....We, therefore, recommend that guidance be updated and improved.... We propose including case study material, 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.

16. .

17. 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 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 raised, concerned use of the term ‘time off’ to describe time spent on training and carrying out representative functions. The term is perceived as undermining representatives and fostering resentment in managers and colleagues, by encouraging an impression of ‘time off’ as comparable to annual leave. We propose using a different form of words in any new guidance to make clear that this is time spent working for the benefit of the workplace.

Marbling worker involvement into all HSE and LA activities

18. 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 make stronger links to our work to improve health and safety management generally and to ensuring that employers (particularly in smaller organisations) receive the advice and guidance they need.

Encouragement

19. The business benefits of worker involvement extend far beyond the confines of health and safety at work.
20. We recommend 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.
21. 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.
22. 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

23. 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.