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HEALTH AND SAFETY COMMISSION

DISCUSSION DOCUMENT

EMPLOYEE CONSULTATION AND INVOLVEMENT

IN HEALTH AND SAFETY

FOREWORD

1 This document seeks to promote public debate on arrangements for employee consultation and greater involvement in workplace health and safety and:

- w explains why we think greater employee involvement is beneficial;
- w describes current law, practice and HSC/E initiatives;
- w outlines some of the opportunities and challenges to greater worker¹ involvement; and
- w outlines and invites comment on a range of options.

2 A key programme in our Strategic Plan aims to secure more effective employee participation in health and safety. The Government is also keen to promote employee involvement and has asked us to review how workers are currently consulted and explore ways to enhance the role of safety representatives. We welcome this opportunity.

3 The active participation of workers in improving health and safety is not new. In the mining industry, for example, there have been legal provisions for workers to inspect their workplaces since 1872. In the early 1970s, the Robens Report, which led to the Health and Safety at Work etc. Act 1974 and the UK system of self-regulation, recognised that employee involvement in the promotion of health and safety at work was crucial to the success of self-regulation. The report led to the system of safety representatives appointed by trade unions which has been the cornerstone of health and safety consultation for the past twenty five years.

4 We share the belief expressed in the Robens report that employee involvement is crucial to securing higher standards of health and safety at work. The report was prepared in the 1970s, however, before restructuring and changes in patterns of working. At that time too trade union recognition and membership was much higher than now. Our review, considers these changes in examining ways to promote wider involvement of employees. Any changes to current arrangements will need wide support and commitment from stakeholders. We believe that partnership is the best way to maximise the health and safety benefits which

¹ In this document, the term “worker” refers to all employees employed at the workplace and other employees and self-employed persons who regularly work there e.g. agency workers and sub-contractors. Changes in patterns of employment over the last 20 years have brought greater contractorisation and more complex employment relationships. We explore these issues in the second half of this document.

worker consultation can bring. We want to explore the ideas that have already been suggested and to gather more ideas to stimulate a wider debate about how to improve consultation and worker involvement.

5 A Review is timely in the light of:

- w the Government's strategic appraisal of the health and safety system²;
- w post 1974 changes to health and safety law;
- w changing patterns of employment; and
- w proposed changes in the field of employment rights.

6 Our Review will be wide-ranging, exploring possible changes to the law on consultation with employees and other options for promoting wider employee involvement. This document has been prepared with the assistance of other stakeholders. Our discussions with them and emerging evidence lead us to believe that more needs to be done.

7 We will consider our options in the light of the outcome of the Review and make recommendations to Ministers. If it is agreed that new regulations are required we will first carry out a separate consultation exercise on specific proposals.

8 If you have ideas for promoting greater worker involvement we would like to hear about them. The questionnaire at **Appendix 3** is for your comments. It will help us analyse the results of this exercise if you could use it.

THE BENEFITS OF CONSULTATION AND WORKER INVOLVEMENT

Active involvement

9 By law, employers must consult their employees on health and safety matters. Consultation means both providing the workforce with information and also taking account of their views before making decisions affecting health and safety. We believe that the law may not be as effective as intended. We therefore need to examine whether there are ways to improve compliance and also whether changes should be made to the existing provisions.

10 The aim is to encourage active workforce involvement in developing measures to improve health and safety. However, managers have long recognised the value of involving workers in decisions about work, through quality circles etc. Similarly, there is value in the active involvement of workers, either directly or through their representatives, in the development of workplace health and safety. An example is the 'Sheffield Initiative' - a scheme between employers, trade unions and HSE which seeks the commitment of chief executives to health and safety improvements in the engineering sector in Sheffield. In many situations workers are in the best position to understand the risks associated with their work. Employers who tap into this expertise find dividends in terms of better health and safety and

² This year marks the 25th anniversary of the Health and Safety at Work etc. Act 1974.

reduced financial losses from accidents and ill health. Of course, the final decisions on health and safety in the workplace remain with the employer. Employers are the duty holders and cannot delegate their legal responsibilities.

11 There is a clear need for the law to set out minimum requirements for consultation and information. It may be however, that active involvement is best achieved by voluntary initiatives agreed by employers and workers that reflect the range of circumstances of organisations.

What are the benefits?

12 It is generally agreed that employee involvement is a key element in an effective health and safety management system. Employees' behaviour is more likely to be influenced by action to improve health and safety if they understand and have contributed to those decisions. Such involvement also promotes employee commitment to health and safety and develops a positive health and safety culture. Such partnerships are likely to build trust between employees and management. In other aspects of business activity employee involvement is a key characteristic of many successful organisations and is recognised in systems such as Total Quality Management (TQM) and the Business Excellence Model.

13 Research based on the Workplace Industrial Relations Survey 1990 data by Reilly, Paci and Holl³ showed that workplaces with trades union safety representatives and joint health and safety committees have significantly better accident records - over 50% fewer injuries - than those with no consultation mechanism. HSE research⁴ on occupational exposure limits showed that safety representatives were better informed about workplace health and safety than their managers. Safety representatives can also form a useful link between management and employees in developing what one of our Commissioners has called "joined-up health and safety". Their unique role means safety representatives are well placed (like the employees they represent) to identify potential problems which prompt action can resolve.

THE CURRENT POSITION

Legal position

14 The current legal requirements relating to worker consultation are the Health and Safety at Work etc. Act 1974, the European "Framework" Directive 89/391/EEC, the Safety Representatives and Safety Committees Regulations 1977, the Health and Safety (Consultation with Employees) Regulations 1996, the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, the Mines and Quarries Act 1954, the Construction (Design and Management) Regulations 1994 and the Railways (Safety Case) Regulations 1994.

15 Section 2 of the **Health and Safety at Work etc. Act 1974 (HSWA)** sets out employers' general health, safety and welfare duties to their employees, and provides powers

³ "Unions, Safety Committees and Workplace Injuries" by Barry Reilly, Pierella Paci and Peter Holl. British Journal of Industrial Relations 33.2 June 1995 0007-1080

⁴ "Industry's Perception and Use of Occupational Exposure Limits" (HSE Contract Research Report 144/97)

for Ministers to make regulations for the appointment by recognised trades unions of safety representatives, and for employers to consult with these representatives “...with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees, and in checking the effectiveness of such measures.” It also provides the legal framework for regulations on safety committees (see paragraph 17)

16 The **European Framework Directive (89/391/EEC)** contains the following general principles:

- w “... to ensure an improved degree of protection, workers and/or their representatives must be informed of risks to their health and safety and of the measures required to reduce or eliminate these risks; they must also be in a position to contribute, by means of balanced participation in accordance with national laws and/or practices, to seeing that the necessary protective measures are taken.”
- w “...information, dialogue and balanced participation on safety and health at work must be developed between employers and workers and/or their representatives by means of appropriate procedures and instruments, in accordance with national laws and/or practices.”
- w Article 11 of the Directive restates these, and also includes more detail on Workers’ representatives rights (see **Appendix 1**).

17 The **Safety Representatives and Safety Committees Regulations 1977** provide for safety representatives to be appointed by trade unions which are recognised in the workplace. The TUC has estimated that there are 200,000 TU-appointed safety representatives. Around 66% of them work for larger organisations. The rights and functions of safety representatives, include:

- w investigating hazards etc. and examining causes of accidents;
- w investigating complaints by the employees;
- w carrying out inspections of the workplace, and inspecting relevant documents;
- w representing employees in consultations with HSE/Local Authority inspectors and receiving information from them; and
- w attending safety committee meetings.

18 The regulations require employers to allow safety representatives time off with pay to carry out their functions and to undergo training. Employers have to consult safety representatives in good time, provide facilities and assistance, and make available to them information they need for their functions.

19 If two or more representatives request it, employers have to set up a safety committee to keep under review measures to safeguard the health and safety of the workers. Its functions are agreed between the employer, safety representatives and representatives of recognised trades unions. The employer has a duty to post a notice informing the employees of the composition of the safety committee and the workplaces covered by it.

20 The **Health and Safety (Consultation with Employees) Regulations 1996** apply where groups of employees are not covered by TU safety representatives appointed under the 1977 Regulations. Employers can consult employees direct, perhaps the most favourable

option for small firms, or can arrange for employees to elect representatives for consultation purposes. Where they consult via elected representatives, employers must allow time off with pay for these representatives to carry out their consultation-related functions and undergo training.

21 The **Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989** provide for the election of safety representatives, on every installation, through a system of constituencies (of up to 40 workers in each) with the same rights and functions as TU appointed representatives onshore. These regulations, introduced following the Piper Alpha disaster, take account of the relatively low level of union recognition and membership offshore.

22 The **Mines and Quarries Act 1954**: Although the 1977 and 1996 regulations apply at mines, in addition Section 123 of this Act provides for the appointment of "workmen's inspectors" appointed by the association(s) which represent the majority of employees at the mine. Workmen's inspectors have the right to carry out monthly inspections of the workplace, inspect after a notifiable accident or occurrence and inspect certain documents.

23 The **Quarries Regulations 1999** which will come into force on 1 January 2000, build on existing law by requiring operators to co-operate with those working at the quarry over arrangements to ensure their health, safety and welfare. A committee may be appointed to facilitate this by the workforce or a body, for example a Trade Union, representing it. The Regulations also require the operator to permit members of the committee, and their advisers to carry out accident investigations and regular workplace inspections (including reviewing the risk assessment and scrutiny of any documents). The operator is also required to consider any suggested improvements and provide written reasons if these are not acceptable. The proposals are intended to promote workforce involvement in identifying and controlling risks and so contribute to reducing the high accident rate in quarries.

24 The **Construction (Design and Management) Regulations 1994 (CDM)** include duties on the principal contractor to ensure that workers and the self-employed are able to discuss, and offer advice on related matters which might affect their health and safety, and to ensure that there are arrangements for the coordination of the views of workers or their representatives. (The CDM Approved Code of Practice is under revision and will be the subject of consultation early next year).

25 The **Railway (Safety Case) Regulations 1994** clarify the rights of TU safety representatives to be consulted in the preparation of railway safety cases, and revisions of safety cases and their entitlements to inspect and copy safety cases and related documentation kept on film or in electronic form.

HSC/E initiatives to promote employee consultation and involvement

26 A number of initiatives are currently taking place involving HSE. Many will contribute to the achievement of our key programme 'Securing more effective employee participation on health and safety'.

27 *Research:* The Institute for Employment Studies (IES) has recently carried out research on behalf of HSE, into employers' awareness of statutory requirements, how they consult with workers, and whether this consultation is effective. The views of employers,

workers and their representatives have been sought through questionnaires and interviews. The report is still being finalised.

28 *Occupational Health:* One of our strategic themes is to raise the profile of occupational health. We have responded to a request by Ministers for advice on improving access to occupational health support (particular for those working in small/medium enterprises (SMEs)) with a number of recommendations, including that employers involve safety representatives, where present, and other members of the workforce in identifying needs for occupational health support and implementing control measures.

29 In taking forward our “Good Health is Good Business” campaign we organised a series of seminars last year in partnership with the TUC targeted at safety representatives and managers. These were well received and proved beneficial in raising awareness and promoting greater partnership to improve health and safety. HSE also sponsored a TUC checklist of health risk management questions that TU safety representatives could use to prompt action by employers. Hundreds of companies have involved their workforces in initiatives to improve health and safety performance during the annual European Health and Safety Weeks and trade unions received awards together with other organisations.

30 *Employment Sector Activity:* This is co-ordinated through our Industry Advisory Committees and HSE’s Sector Groups. Both ourselves and HSE have sought to involve all stakeholders in the development of priorities and workplans through meetings with national representatives. This has helped to establish national/regional networks with trades unions. Initiatives include:

- w regular discussions between trades unions and our HSE/LA Enforcement Liaison Committee (HELA) relating to sectors where health and safety is enforced by local authorities.
- w the launch of the “Working Well Together” campaign in the Construction Sector: One of its primary themes is building commitment amongst and between different stakeholders, including workers to improve communications. Effective communication can be a particular challenge because of the prevalence of contractisation in the industry.
- w a project to identify more than a dozen case studies from the chemical industry illustrating good practice, together with various examples of effective workforce involvement in the sector. The report is expected to be published in February 2000.

31 *HSE Field Activity:* In addition to working at a national level with individual sectors, HSE also promotes the role of safety representatives at regional level, for example, by supporting trades union organised courses and arranging meetings with local safety representatives to discuss regional workplans. Such activity will continue. Recent or forthcoming activity includes:

- w regular liaison meetings and seminars with the TUC Northern Region Health and Safety Group;
- w attending the Scottish TUC Congress and the TUC Wales Conference; and

- w visits to site operators and initiatives during next year's European Health and Safety Week in relation to the "Working Well Together" Campaign. (see paragraph 30 above).

32 HSE guidance to inspectors (replicated for local authorities) was revised in 1998 with the help of a working group including safety representatives, TUC, CBI, representatives of the small firm's sector and other interests. The guidance confirms that contact with employees is an intrinsic part of inspection, revisits and investigations. It reminds inspectors to provide safety representatives with information concerning their visits and to allow the representative to raise any concerns. Following an evaluation⁵ of its inspection practices for worker and safety representative contact in the workplace, HSE is currently reviewing the effectiveness of its support for safety representatives and their training, and its contacts with the trade union movement at national and regional level.

33 *HSE guidance:*

- w HSE is seeking examples of good practice that demonstrate active employee involvement in health and safety through a press release and through its website. It is hoped that this exercise will lead to guidance for employers on ways to involve employees.
- w In addition to publications designed specifically for safety representatives (listed at **Appendix 2**) we promote the involvement of safety representatives, where appropriate, in all our publications. For example, our proposed revision of the Management of Health and Safety at Work Regulations Approved Code of Practice, recently the subject of consultation, includes suggestions for involving safety representatives.

34 *Other activities to encourage worker participation:*

- w HSE has recently published a leaflet promoting the use of benchmarking, a tool for comparing and improving processes and performance which builds partnership between organisations and employees and their representatives. It can successfully be applied to health and safety.
- w Whenever possible we include references to the valuable contribution that employees and their representatives can make to reducing accidents and ill-health in the workplace when Commissioners or HSE staff are invited to speak at events.
- w Commissioners took part in a conference for TU safety representatives and their managers (organised in conjunction with the TUC Northern Region) last November. The event was attended by 160 safety representatives and proved highly successful in providing a forum for safety representatives to share information with both HSE and local authority inspectors.
- w Arrangements for a new 'Safety Representative of the Year Award' are underway. The award is intended to raise the profile of safety representatives by promoting their role, demonstrating their contribution, encouraging their training and publicising the value of partnerships between employers and workers. The Health and Safety Executive for Northern Ireland launched a similar award last year.

⁵ "Contact with Workers During HSE Inspection": Project Leader Alistair McNab

- w HSE has also developed the Health and Safety Climate Survey Tool, launched in December 1997. This was specifically developed to promote employee involvement in health and safety. Its questionnaire format seeks workforce views on key health and safety issues as the basis for improvements. Over 400 organisations have bought the Tool. It has been used extensively in the Mining Industry where it has proved useful in setting the agenda for the development of better employee involvement.

35 We suspect that a great deal more activity to encourage worker involvement in health and safety is underway, and we are interested in knowing about it. The questionnaire at **Appendix 3** provides an opportunity for you to tell us about other initiatives.

CHALLENGES AND OPPORTUNITIES

36 Much of our current and planned activity takes account of wider influences on work and the workplace. Many of these have implications for involving workers in health and safety in the workplace.

Changing Patterns of Work

37 Over the last twenty years there have been major changes in industrial structure and the control and ownership of industry in Great Britain. There have been substantial falls in employment in manufacturing, particularly in labour intensive heavy manufacturing. Employment in the business, distribution and transport sectors has increased dramatically.

38 Consequently, the workforce now engaged in occupations traditionally associated with higher workplace risk i.e. craft and skilled manual jobs is expected to fall by 400,000 between 1997 and 2006 while managerial jobs are likely to grow by a similar amount during the same period⁶. Though the number facing risks in heavy industry has fallen, new technologies and work in the expanding service sector bring their own risks including stress and the potential for violence. There has also been an appreciable increase in the number of self employed⁷, and women employed, and trends towards greater employment of older and disabled people.

39 In addition to this industrial restructuring, state enterprises have been privatised and/or broken into smaller units. Markets previously dominated by large firms have been opened up. Most large organisations have slimmer management structures as a consequence of contracting out. There has been a corresponding growth in the number of SMEs. Small firms (employing fewer than 50) now represent 99% of the total number of private businesses in the UK, and account for 46% of total private employment. In general, the health and safety performance of small firms has been disappointing. Those working in a small manufacturing workplaces are twice as likely to have a serious accident as those working in large firms (employing more than 200).

⁶ Source: The Institute of Employment Research, Warwick University

⁷ People working under the control and direction of employers who are treated as self-employed for tax and NI purposes, may nevertheless be treated as employees for health and safety purposes.

40 In 1996 the HSC published a discussion document: ‘The health and safety implications of changing patterns of employment’. The outcome of this discussion exercise confirmed that existing health and safety law is generally effective in providing statutory protection for all workers, but there were some areas where health and safety coverage for workers outside traditional employer/employee relationships and in non-standard patterns of work could be strengthened. As a result we asked HSE to undertake work where gaps in legislation, guidance or lack of understanding had been identified such as in relation to the self employed, agency/short-term/casual and home workers, and peripatetic/mobile workers; and issues such as training, responsibility for health and safety and dissemination of information.

The impact of Trade Union membership

41 Given the role of recognised trade unions under existing health and safety law (see particularly paragraphs 17-19), the clear effectiveness of TU safety representatives in improving health and safety, and the limited impact of the Health and Safety (Consultation with Employees) Regulations 1996 in workplaces with no recognised trade unions, the extent of trade union membership and recognition must be considered when exploring options for involving workers in health and safety in the workplace.

42 An analysis by the TUC of data drawn from the 1998 Labour Force Survey⁸ suggests that TU membership has stabilised at nearly 7 million (30% of the working population).



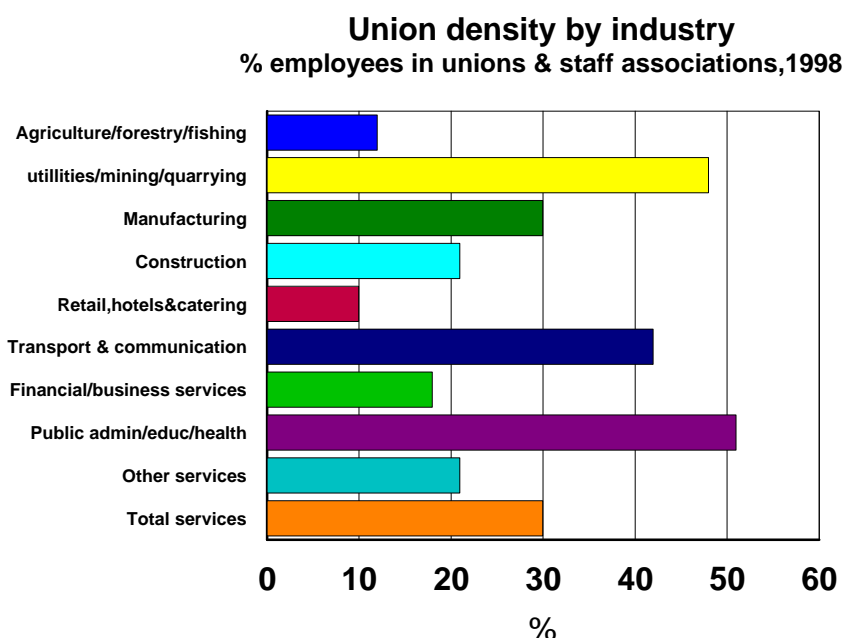
Source:
based on
the Annual
Report of
the

Certification Officer. Data published in ‘Labour Market Trends’ July 1999

⁸ “Today’s Trade Unionists” May 1999

Most workers (70%) are not in trades unions. However, just over 10 million⁹ employees work in workplaces with a recognition agreement covering pay and conditions.

43 Of the trade union members, 5.6 million work full-time (33% of all full-time workers) and 1.2 million work part-time (20% of all part-time workers). Membership is highest in managerial and professional jobs, and in larger workplaces¹⁰, and lowest amongst sales occupations (11%). Union density in the public sector (60%) is much higher than in the private sector (19%). Union density by industrial sector is given in the table below, (reproduced from the TUC Report). The TUC’s report also shows that workers in permanent jobs are more likely to be union members than those in temporary jobs: 19% of temporary workers are TU members compared with 31% of workers in permanent jobs.



Reproduced from ‘Today’s trade Unionists’ by permission of the TUC

44 We are aware that there may be issues relating to gender and ethnicity which could affect worker involvement in health and safety, but we do not have specific research or identifiable trends. We would be very interested to hear from anyone who has experience or knowledge of such questions.

⁹ DTI estimates for Great Britain (seasonally unadjusted) based on the Labour Force Survey (“Labour Force Trends” (July 1999)).

¹⁰ Thirty seven per cent of workers in workplaces with more than 25 workers are union members compared with 15% in workplaces with fewer than 25 workers (only 8% in the private sector).

The Employment Relations Act 1999

45 The Act, which received Royal Assent in July 1999 marks a fresh approach to employment relations, based on partnership between employers and their employees. The following provisions of the Act are particularly relevant to our Review:

- w *Trades Union Recognition:* The Act enables unions to apply for recognition in organisations employing 21 or more workers where a majority of a bargaining unit favour it. These provisions are expected to come into force in the first part of 2000. These provisions may lead to some reversal of the decline in TU recognition with a consequent increase in TU-appointed safety representatives.
- w *Prohibiting Blacklisting of Trade Unionists:* The DTI is expected to consult on draft regulations in 2000 which will prohibit lists aimed at discriminating in recruitment and employment on the grounds of previous trade union membership or activities. This measure will help protect TU-appointed safety representatives who, because of raising health and safety matters, are unable to find employment with other employers who have been notified that they are “troublemakers”.
- w *Right to be Accompanied in Disciplinary and Grievance Hearings:* These provisions create a statutory right for a worker to be accompanied by a fellow worker or a TU official at disciplinary and grievance hearings of a serious nature. Safety representatives could be involved in hearings about health and safety if action is taken against them or if they are called on to support a fellow worker.
- w *Partnership Fund:* The Act provides statutory authority for a fund to support workplace projects in which employers and employee representatives work together to assist and develop partnership at work. This may encompass health and safety matters provided the primary objective is to foster partnership.

EC proposals on informing and consulting workers

46 There are two developments in Europe which may also have implications for health and safety consultation arrangements:

- w the European Works Council Directive which sets out requirements for informing and consulting employees at the European level in companies or groups with at least 1000 employees and at least 150 employees in each of two or more of those member states. There is some evidence that health and safety are amongst the subjects raised at Works Councils; and
- w EC proposals for a European Directive on information and consultation in undertakings with at least 50 employees.

Protection for ‘Whistleblowers’

47 Existing employment law protects employees (whether as individuals or when they are acting as representatives, against dismissal or disciplinary action because they have participated in consultation. The Public Interest Disclosure Act, which came into force on 2 July 1999 supplements this. It provides protection for any worker who raises concerns about a health and safety danger with their employer. The Act aims to encourage problems to be resolved within the workplace, but also gives protection where a worker makes a disclosure to

certain prescribed bodies including HSE and local authorities in their role as enforcers of health and safety. Wider public disclosures are protected in certain limited circumstances.

OPTIONS

48 We believe that worker consultation and involvement helps improve workplace health and safety. Existing systems can work well but do not operate in a significant proportion of workplaces.

49 The challenge is to find ways to:

- w secure effective consultation in workplaces (particularly small firms) where no (or inadequate) consultation takes place now;
- w ensure that workers in more complex employment relationships (i.e. those employed via agencies, those on short-term contracts, and those working for contractors in other employers' workplaces) are properly consulted;
- w ensure that effective consultation takes place irrespective of the gender, ethnicity or language of the worker; and
- w enhance the effectiveness of the contribution which workers or their representatives make.

50 Taking account of the developments, trends and pressures for change outlined earlier we see a number of options. A series of statements are included at each option for your consideration.

Take no action (retain the Status quo)

51 We first considered whether the existing arrangements for health and safety consultation are working well. If this is the case, no action is needed to change the status quo.

52 We concluded, however, that action of some kind - legislative or non-legislative - is needed. A number of factors led us to this conclusion:

- w there are a significant number of workplaces in which effective consultation does not take place;
- w securing more effective consultation and employee involvement can provide a significant boost to health and safety standards;
- w changes in the structure of the economy and in patterns of working are making it more difficult for the current statutory arrangements for consultation to succeed;
- w there appears to be some overlap and discrepancies in the various sets of relevant regulations; and
- w other approaches to employee involvement have been increasingly successful.

We therefore do not believe that the status quo is a satisfactory option.

Do you agree that the status quo is not an option?

Possible action

Non-legislative options

53 There are a number of non-legislative options which might help to encourage employee consultation and involvement in workplace health and safety. Some of these we could carry out or lead on ourselves, for others we would seek to influence stakeholders to take action.

Publicity

54 More needs to be done to increase employers' awareness of the value of employee consultation and of the legal requirement to consult. Evidence from the IES research (see paragraph 27) shows that 66% of employers were unaware of the 1996 regulations. HSE and local authorities or others could run publicity campaigns to increase awareness, perhaps during the annual European Health & Safety Week. If a publicity campaign is to be run we would need to consider:

- w whether it would achieve lasting results;
- w whether it should be combined with an enforcement initiative (see paragraph 64);
- w who should lead and/or finance the initiative; and
- w whether it should be run specifically about employee consultation or combined with other publicity campaigns.

Best Practice Initiatives

55 We could encourage non-binding "framework" agreements between employer and employee organisations which provide guides on best practice for employee consultation on health and safety. These might cover a shared commitment to the success of the business and accident and ill health prevention. The intention would be to go beyond, and build on legal requirements. An agreement to encourage good practice could:

- w be signed by a wide range of industry bodies; and
- w take the form of a general agreement or be sectoral, regional or industry-based.

There is a danger that voluntary agreements would be adopted by progressive employers and ignored by poor ones unless publicity and pressure persuaded employers to sign up. We would also have to consider how to monitor progress.

Management Standards and Awards

56 The introduction of quality systems and models of excellence such as Total Quality Management (TQM) and the Business Excellence model have encouraged improvements in communications within businesses. There may be lessons concerning employee involvement from these models which might usefully be applied to health and safety. There may also be the opportunity to promote health and safety by introducing evidence of employers' commitment to health and safety consultation into existing systems/models.

57 We already have plans for a Safety Representative of the Year Award. Other Awards, for example to recognise partnerships to improve workplace health and safety, might also prove beneficial.

Employee attitude

58 There are workplaces where employees are consulted on health and safety matters and systems exist for their involvement, but nevertheless they remain reluctant to contribute. We need to consider whether there are barriers which prevent them from participating, e.g. skills, abilities, lack of encouragement and whether there are measures which could be taken to overcome these barriers and persuade them to cooperate in raising standards of health and safety in the workplace.

Training and support for representatives

59 The TUC, with HSE support, is raising standards of TU safety representative training by revising all its materials used on the courses it runs for TU safety representatives. In addition, a trade union pathway direct to the IOSH Technician Safety Practitioner (TechSP) grade has been agreed between the TUC and IOSH, underpinned by National Open College Network (NOCN) credits and Employment National Training Organisation (ENTO) standards for safety representatives. It is possible that vocational qualifications and recognition of transferability of a representative's skills into other areas will enhance the role and status of safety representatives.

60 Recognising the increase in non-unionised workplaces, the training of non-TU safety representatives needs to be considered. IES research shows that 25% of safety representatives receive no training and it has been suggested that there should be common standards of training/competence for all safety representatives.

61 One suggestion is for the introduction of a "job specification" for safety representatives to make the role of the safety representative clear to all in the workplace. This might address the issue of lack of support from other employees which some representatives have indicated is a problem.

62 New sources of information could be developed for safety representatives, such as:

- w a specific website¹¹, interactive electronic systems or facilities for access to existing sites on the Internet e.g. an "expert system" and/or an E-mail forum to promote discussion and an exchange of ideas;
- w publications aimed solely at safety representatives; and
- w publications aimed at employers explaining the rights, role and value of safety representatives.

¹¹A TUC dedicated website went on line on 1 September 1999

If these ideas would be useful, who should develop and maintain the systems and material?
Would their value warrant the investment?

63 Paragraphs 31-35 describe HSE activity in support of safety representatives. There may be scope for HSE and local authorities to do more, e.g. :

- w attending, or organising regional conferences;
- w securing greater involvement of safety representatives (TU or otherwise) (or employees themselves where there are no representatives) at inspection visits;
- w becoming more involved in the training of safety representatives; and
- w seeking additional sources of funding for training for non-TU safety representatives¹².
- w setting up a register of safety representatives so that information can be sent to them.

Views on whether any of these ideas would be helpful are invited.

Enforcement practice

64 Action by HSE and local authority inspectors is taken in accordance with the principles of our Enforcement Policy Statement: proportionality, consistency, transparency and targeting. Often inspectors can secure compliance with the law through oral/written advice rather than formal enforcement action. There may be scope for inspectors to do more to enforce the 1977 and 1996 regulations perhaps combined with publicity campaigns (see paragraph 54). This needs to be carefully considered; there are some issues relating to the regulations where enforcement action is not appropriate. We need to consider whether further enforcement would have beneficial or detrimental effects on employment relations.

65 One alternative that has been suggested is to give Employment Tribunals (ETs) a greater role.

- w At present ETs adjudicate on any appeals against enforcement notices issued by enforcing authorities and consider cases relating to time off for safety representatives.
- w It has been suggested that failure to consult on health and safety might be seen as a breach of an individual contract. And, that ETs might be given new powers to hear cases in which safety representatives or workers claim that employers have demonstrated a sustained failure to consult. This would, however increase ET's workloads and we need to consider whether HSE and local authorities are better placed to enforce the law in these circumstances.

Legislative options

Harmonise the regulations.

66 Paragraphs 14-25 explain the characteristics of existing sets of regulations. It would not be practical to harmonise all the provisions of all the sets of regulations although it might be possible to consider this in relation to some sets of regulations e.g. applying provisions of the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989

¹²HSC/E currently has no statutory power to provide such funding.

to those working onshore. There may also be scope to harmonise the two key general sets of regulations:

- w the Safety Representative and Safety Committees Regulations 1977; and
- w the Health and Safety (Consultation with Employees) Regulations 1996.

67 The main differences between the 1977 and 1996 regulations are that, unlike TU safety representatives appointed under the 1977 regulations, employee representatives elected under the 1996 regulations have no legal rights to:

- require the establishment of a safety committee;
- investigate potential hazards or accidents;
- or carry out inspections of the workplace or inspect relevant documents, although employers can, voluntarily, arrange for the elected representatives to carry out these functions.

Options that might be considered are to:

- w harmonise the regulations to produce one set of regulations for safety representatives based on the powers and functions provided for in the 1977 Regulations. This would have the effect of increasing the powers of non-TU safety representatives.
- w enable workers not covered by TU-appointed safety representatives to elect safety representatives if they choose to do so. At present, employers have the choice of whether to consult employees directly or through an elected representative.

Consolidate, and update the ACoP and Guidance

68 If the 1977 Regulations and the 1996 Regulations are harmonized as described above, revised guidance would be needed. Even if it is not possible to harmonise the regulations, it may be possible to revise and consolidate the Approved Code of Practice (ACoP) and guidance on the 1977 regulations (“the Brown Book”) and the guidance on the 1996 regulations into one document. An opportunity might be taken to include examples of good practice or case studies.

Safety committees

69 Under the 1977 Regulations an employer has to establish a safety committee if requested to do so, in writing, by at least two TU-appointed safety representatives. Safety committees have proved effective in resolving health and safety issues and the existing requirements could be extended:

- w to place this obligation on employers who do not recognise trade unions. The position of small businesses would need to be taken into account; or
- w alternatively, employees could be given a right, where there is no recognised TU, to require a health and safety committee to be established.

Revise/extend the regulations

70 Despite their valuable contribution to improving health and safety, there is a perception that the overall impact of safety representatives has been reduced in recent years. Changes in patterns of employment and reduced TU membership have limited the appointment and effectiveness of TU-appointed safety representatives. The following options might respond to the changing environment:

- w Employers (as controllers of the workplace) might be required to consult workers contracted to provide services in the workplace e.g. the self-employed or agency workers and for them to be represented on the safety committee. (This already happens at some nuclear sites and the new Quarries Regulations address similar situations (see paragraph 23).
- w The regulations could be amended in some way to give self-employed or agency workers the right to represent others in their workplace.

71 Suggestions for increasing the powers and rights of safety representatives include:

Powers to issue notices

72 In the State of Victoria, Australia safety representatives have legal powers to issue their employers with a Provisional Improvement Notice (PIN) requiring an alleged breach in the law to be remedied within a specific period. If the employer refuses to act, either party can call in the enforcing authority to adjudicate. If the enforcing authority agrees that there has been a breach of law it can issue a formal improvement notice¹³. A similar system in South Australia gives safety representatives the right to call in the enforcing authority where there is a matter needing immediate action (but not to issue a PIN).

73 It has been suggested that a similar system might be introduced in Great Britain as a way of providing a structured means of resolving health and safety difficulties before involving enforcing authorities. Issues that would need to be taken into account include:

- w the detrimental effect of such a system on the partnership approach to raising workplace health and safety standards;
- w whether PINs might apply to all health and safety law or some parts of it;
- w the implications for safety representative competence; and
- w the effects on enforcing authorities e.g. diverting them from agreed planned inspection visits or investigations.

74 Workers currently have protection against dismissal or other detriment if they leave (or propose to leave) their place of work in circumstances of serious, imminent and unavoidable danger. This might be extended so that safety representatives have protection if they recommend that workers leave their place of work in these circumstances. Alternatively, the powers of safety representatives could be increased so that they had a right to act if there is a serious or imminent danger. This would be similar to the issuing of a notice by health and safety enforcing authorities. In these circumstances there might be a need to consider whether a system which could recompense employers where financial or other loss resulted from an erroneous use of such powers would be justified.

Extension of right of access to information

¹³The PIN requirements were revised in 1993 to ensure that employers and employees explored all avenues to resolve PIN disputes before involving the enforcing authorities.

75 Existing law requires employers to provide employees with information on the likely risks and dangers arising from their work. Additionally, the 1977 Regulations require employers to make available to TU-appointed safety representatives information necessary to enable them to carry out their functions such as technical information about hazards to health and safety and information about accidents, occurrences or diseases (with specific exceptions). The 1996 Regulations contain a similar requirement but does not specify the information that needs to be provided if an employer consults directly. It has been suggested however that key information may not be reaching workers or their representatives who need it. This might be addressed if:

- w employers were required to make certain specific information available to all employees; or
- w third parties, such as suppliers of chemicals were required to provide information such as safety data sheets to safety representatives, if requested.

Roving Safety Representatives

76 One of the suggestions for reaching workers who are not represented by safety representatives is to have a wider system of 'roving' safety representatives, whereby TU-appointed safety representatives who have been specially trained can visit workplaces of different employers where members of their TU work.

77 In Sweden such a system has existed for around 50 years in the construction and forestry industries and was extended to all sectors about 25 years ago. There are about 1,500 roving safety representatives in Sweden. In 1995 they carried out 65,000 workplace visits. The costs of their work was met by a levy on employers until 1995 and through state funding since then. Roving safety representatives in Sweden have three statutory tasks:

- to promote a good occupational health and safety system (including checking standards in small firms and requesting improvements);
- promote employee participation; and
- activate local health and safety work.

78 In the UK a small group of roving safety representatives were appointed as part of a trades unions' pilot in the agricultural sector in the south of England. Constraints on the role of roving representatives in this trial identified in a report by Dr Walters included:

- w insufficient resources for training and other support;
- w absence of employers support (which has meant that few farms have been visited); and
- w the absence of time off and facilities for roving representatives.

79 The 1977 Regulations, in effect, permit roving safety representatives to be appointed to represent groups of members of the British Actors' Equity Association or of the Musicians' Union. This takes account of the nature of actors' and musicians' employment.

80 The introduction of roving safety representatives would be a significant development and raises issues such as:

- w the relevance of safety representative competence and whether it could be applied to a range of different working environments or to various workplaces in the same industrial sector;
- w the costs of training and paying for roving safety representatives; and
- w employer's acceptance/relationship with roving safety representative i.e. a safety representative from outside the workforce; and
- w the impact on the culture of workplaces, potential conflicts of interest, and commercial sensitivities.

Greater protection against victimisation

81 In common with other workers, safety representatives are protected by employment law against dismissal and suffering detriment for raising health and safety matters, through Employment Tribunals. This "protection" can take the form of reinstatement (in the case of dismissal) or compensation after the safety representative has suffered detriment or dismissal.

- w It has been suggested that because of their unique role, safety representatives might need greater protection to prevent victimisation. If you believe this is the case what form should this protection take?

YOUR RESPONSE

82 The above options are not listed in order of preference, they are simply intended to stimulate debate. You may have your own ideas or favour variations of some of the options, or a combination of them. The questionnaire at **Appendix 3** has been provided for your response. If you choose to use it this will greatly help our analysis of the outcome of this exercise.

83 If you wish to respond to this document your comments should be sent to:

John Holland
Health and Safety Executive
Policy Unit
8SW, Rose Court
2 Southwark Bridge
London SE1 9HS

by **17 March 2000**. We will acknowledge and give full consideration to all responses.

84 We want this consultation exercise to be as thorough and open as possible. Given the subject matter we have consulted widely. A list of consultees is available, on request, at HSE's Information Centres in London, Sheffield and Bootle. After the close of the discussion

period responses to this document will be lodged at HSE's Information Centres where they can be inspected or copied on payment of the appropriate fee.

85 Responses to this document are invited on this basis. Responses, or parts of them, will be withheld from the Information Centres only at the express request of the respondent. In such cases a note will be put in the index to the responses identifying those respondents who have asked for their responses to be treated as confidential.

86 We may contact you if, for example, we have a query. If you respond in a personal capacity, rather than on behalf of an organisation, you should know that information you provide may constitute personal data under the terms of the Data Protection Act 1998. For the purpose of this Act, HSE is the data controller and will process the data for health, safety or environmental purposes. HSE may disclose this data to any person or organisation for the purposes for which it was collected, or where the Act allows disclosure. You have the right to ask for a copy of the data and ask for inaccurate data to be corrected.

87 If you are not satisfied with the way in which this exercise has been conducted you can complain by contacting Alan Bell, Health and Safety Executive, Policy Unit, 2 Southwark Bridge, London SE1 9HS.

GLOSSARY

In this document the following terms mean:

| | |
|------------------------------------|--|
| Safety representative | anyone who is a safety representative appointed under any statutory provisions |
| TU-appointed safety representative | a safety representative appointed under the Safety Representative and Safety Committee Regulations 1977 |
| Worker | all employees employed at the workplace and other employees and self-employed persons who regularly work there e.g. agency workers and sub-contractors |

- (b) the list and reports referred to in Article 9 (1) (c) and (d);
- (c) the information yielded by protective and preventive measures, inspection agencies and bodies responsible for safety and health.

Article 11

Consultation and participation of workers

1. Employers shall consult workers and/or their representatives and allow them to take part in discussions on all questions relating to safety and health at work.

This presupposes:

- the consultation of workers,
- the right of workers and/or their representatives to make proposals,
- balanced participation in accordance with national laws and/or practices.

2. Workers or workers' representatives with specific responsibility for the safety and health of workers shall take part in a balanced way, in accordance with national laws and/or practices, or shall be consulted in advance and in good time by the employer with regard to:

- (a) any measure which may substantially affect safety and health;
- (b) the designation of workers referred to in Articles 7 (1) and 8 (2) and the activities referred to in Article 7 (1);
- (c) the information referred to in Articles 9 (1) and 10;
- (d) the enlistment, where appropriate, of the competent services or persons outside the undertaking and/or establishment, as referred to in Article 7 (3);
- (e) the planning and organization of the training referred to in Article 12.

3. Workers' representatives with specific responsibility for the safety and health of workers shall have the right to ask the employer to take appropriate measures and to submit proposals to him to that end to mitigate hazards for workers and/or to remove sources of danger.

4. The workers referred to in paragraph 2 and the workers' representatives referred to in paragraphs 2 and 3 may not be placed at a disadvantage because of their respective activities referred to in paragraphs 2 and 3.

5. Employers must allow workers' representatives with specific responsibility for the safety and health of workers

adequate time off work, without loss of pay, and provide them with the necessary means to enable such representatives to exercise their rights and functions deriving from this Directive.

6. Workers and/or their representatives are entitled to appeal, in accordance with national law and/or practice, to the authority responsible for safety and health protection at work if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring safety and health at work.

Workers' representatives must be given the opportunity to submit their observations during inspection visits by the competent authority.

Article 12

Training of workers

1. The employer shall ensure that each worker receives adequate safety and health training, in particular in the form of information and instructions specific to his workstation or job:

- on recruitment,
- in the event of a transfer or a change of job,
- in the event of the introduction of new work equipment or a change in equipment,
- in the event of the introduction of any new technology.

The training shall be:

- adapted to take account of new or changed risks, and
- repeated periodically if necessary.

2. The employer shall ensure that workers from outside undertakings and/or establishments engaged in work in his undertaking and/or establishment have in fact received appropriate instructions regarding health and safety risks during their activities in his undertaking and/or establishment.

3. Workers' representatives with a specific role in protecting the safety and health of workers shall be entitled to appropriate training.

4. The training referred to in paragraphs 1 and 3 may not be at the workers' expense or at that of the workers' representatives.

HSE PUBLICATIONS

Safety Representatives and Safety Committees (Third Edition 1996)

L87 (ISBN 0 7176 1220 1) £5.75 a copy or £40.00 for 10 copies

A Guide to the Health and Safety (Consultation with Employees) Regulations 1996

L95 (ISBN 0 7176 1234 1) £8.00

Safety Representatives and Safety Committees on Offshore Installations

INDG119(rev1) Free (single copies)*

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**HEALTH AND SAFETY COMMISSION
DISCUSSION DOCUMENT**

**EMPLOYEE CONSULTATION AND INVOLVEMENT IN HEALTH AND SAFETY:
RESPONSE QUESTIONNAIRE**

Your details

Name
Position in organisation
Organisation
Address
Postcode
Telephone
Fax
Email

Which of the following best describes yourself/your organisation?

| | | | |
|--------------------------------|--------------------------|--|--------------------------|
| employer | <input type="checkbox"/> | trade association/federation | <input type="checkbox"/> |
| trade union | <input type="checkbox"/> | health & safety organisation/publisher | <input type="checkbox"/> |
| charity | <input type="checkbox"/> | MP/MEP | <input type="checkbox"/> |
| consultant | <input type="checkbox"/> | Government department/agency | <input type="checkbox"/> |
| local authority/LA association | <input type="checkbox"/> | individual | <input type="checkbox"/> |
| other (please specify) | <input type="checkbox"/> | | |

.....

In what sector does your organisation operate?

| | | | |
|--|---|--------------------------------------|---|
| agriculture, hunting, forestry & fishing | P | utilities (electricity, gas & water) | P |
| extractive (mining, quarrying, & offshore exploration) | P | manufacturing | P |
| construction | P | banking, finance & insurance | P |
| wholesale & retail | P | transport, storage and communication | P |
| hotels & restaurants | P | education | P |
| health and social work | P | local Government | P |
| central Government | P | leisure (sport) | P |
| voluntary | P | other (please specify) | P |

What is its size? i.e. numbers of people employed.....

Employee Consultation and Involvement in Health and Safety

We would welcome your responses to the following questions:

Question 1:

Should further measures be introduced to promote greater workforce consultation and involvement in health and safety?

Yes No No opinion

Please give reasons for your answer:

Question 2:

What measures would be most effective at promoting greater general workforce consultation and involvement in health and safety? (You may indicate more than one choice)

- a publicity
- b best practice initiatives
- c management standards/awards

- d training/support for safety reps
- e greater enforcement of current law
- f harmonise existing regulations P
- g consolidate/update existing ACoP/guidance P
- h extend requirements for safety committees
- l revise/extend the powers/rights of safety reps
- j other (please specify) P

.....

Why do you favour your choice? How would this work and why would it be effective? What would be the benefits/costs?

Question 3:

What measures would be most effective at promoting greater general workforce consultation and involvement in health and safety at small firms (<50 employees)?
(You may indicate more than one choice)

- a publicity
- b best practice initiatives P
- c management standards/awards
- d training/support for safety reps
- e greater enforcement of current law
- f harmonise existing regulations
- g consolidate/update existing ACoP/guidance P
- h extend requirements for safety committees P
- i revise/extend the powers/rights of safety reps P
(e.g. a wider system of roving safety reps)
- j other (please specify) P

.....
Why do you favour this choice? How would this work, and what would make it effective?

Question 4:

What measures would best ensure the consultation/involvement of:

- a peripatetic/mobile workers;
- b home workers;
- c contracted workers e.g. agency or casual workers, the self-employed etc.;
- and
- d employees who are reluctant to contribute to improving workplace health and safety?

Please comment:

Question 5:

Are you aware of any issues relating to gender, ethnicity or language which could impact on the effectiveness of measures to promote greater workforce consultation and involvement in health and safety? If so, please describe these issues and how they might be addressed.

Safety representatives

Question 6:

Should safety representatives be provided with more powers?

Yes No No opinion

If “yes” what form should these take:

- a power to issue notices e.g. PINs (see paras 72-73)
- b power to recommend to workers that they leave the place of work
(see para 74) P
- c access to certain specific information (see para 75) P
- d other (please specify)

Why do you favour this choice? How should this work and what would make it effective? Should the same rights be available to trades union and non-trades union safety representatives?

If “no” why do you consider that existing powers are sufficient? Do you foresee particular difficulties with providing safety representatives with more powers. If so, what concerns you?

Question 7:

Do safety representatives require greater protection against victimisation/suffering detriment? (see para 81)

Yes No No opinion

If “yes” what would you like to see, and why?

Question 8:

Should there be common standards of training/competence for all safety representatives? (see paras 59-63)

Yes No No opinion

If “yes” who should verify competence and how, and who should administer the training?

Roving safety representatives

Question 9:

Should the law permit a wider system of roving safety representatives? (see paras 76-80)

Yes No No opinion

If “yes” should the system be restricted to particular industrial sectors, if so which? What powers would be appropriate to roving safety representatives?

If “no” what concerns you about roving safety representatives?

Question 10:

Have you any other comments or ideas? (Please use a separate sheet, if necessary).

Quality Check

As part of our work to improve our communications with our stakeholders, we would be grateful for your response to the following questions:

In your view, how well does this document represent the different policy issues relating to employee consultation/involvement in health and safety:

- | | |
|-----------|--------------------------|
| Very well | <input type="checkbox"/> |
| Well | <input type="checkbox"/> |
| Not well | <input type="checkbox"/> |
| Poorly | <input type="checkbox"/> |

If you answered "not well" or "poorly", how do suggest things might be improved for the future?

Thank you for completing this questionnaire. Please send it to:

John Holland
Health and Safety Executive
Policy Unit
8SW, Rose Court
2 Southwark Bridge
London SE1 9HS

or by E-Mail to: john.holland@hse.gov.uk

by **17 March 2000**