

Health and Safety Executive		Operational Circular	
Operations Group		OC 167/12	
Review Date	29/09/2013	Open Government Status	Fully Open
Version No & Date	2: 26/11/2004	Author Unit/Section	FOD OSU1

Target Audience:
All HSE Inspectors

LANGUAGE CONSIDERATIONS FOR MANAGEMENT OF THE HEALTH AND SAFETY OF NON-ENGLISH-SPEAKING WORKERS

INTRODUCTION

1. This OC provides guidance to inspectors in situations where workers are non-English-speaking or have a limited knowledge of English. It should be read in conjunction with [OC 167/13](#) Handling race issues encountered during work with external contacts. It does not deal with use of the Welsh language. Advice is given on:

- 1) the action to be taken in ensuring employers comply with their duties under the Health and Safety at Work etc. Act (HSWA) s.2(1) (as explained in s.2(2)(c)) and The Management of Health and Safety at Work Regulations 1999 (MHSW Regulations) regulations 3 and 10;
- 2) enforcement action where differences in language significantly contribute to risk
- 3) disclosure of information under HSW Act s.28(8).

BACKGROUND

2. HSC/E's Race Equality Scheme commits us to work towards identifying and closing gaps in service provision so that everyone has equal levels of protection and access to information. This issue is of particular concern in industries where casual employment of immigrants recently arrived in Britain has become common place e.g. construction and agriculture.

3. The Commission for Racial Equality and local pressure groups have questioned whether the provision of information by HSE to non-English-speaking workers is adequate. Since 1986 HSE policy has been to produce all HSE information in English and to consider translating publications into other languages. HSE has recently agreed an explicit [policy](#) (7 Pages) as to what publications etc would be provided in languages other than English and Welsh. In outline the policy states that HSE will produce a small number of core basic information documents explaining the role of the enforcing authorities; setting out essential legal rights and duties; and providing access details for further information. In addition more specific documents will be produced in alternative languages where there is a significant need and effective channels for distribution and promotion can be identified.

RACE RELATIONS (AMENDMENT) ACT 2000

4. Section 19B(1) of the Race Relations Act 1976 (the 1976 Act) (as inserted by section 1 of the Race Relations (Amendment) Act 2000 makes it unlawful for a public authority in carrying out any of its functions to do anything which constitutes discrimination. Specifically the Act includes provisions designed to eliminate indirect racial discrimination. "Indirect discrimination" is defined as occurring where a requirement or condition is applied equally to persons of different racial groups, but is such that:

1) a considerably smaller proportion of one racial group compared to another can comply with it; and

2) this will be to the detriment of that group.

5. To avoid a charge of indirect discrimination, the employer would have to show that the requirement or condition was justifiable, irrespective of racial consideration. "Justifiable" is not defined in the Act but would be determined by the courts or industrial tribunals in any particular case. If employers discriminate on non-justifiable grounds they will breach the 1976 Act. If HSE were to collude in discrimination HSE would also be in breach of the amended Act.

6. If employers seek advice from inspectors about such problems they should be referred to the [Commission for Racial Equality website](#), the relevant industry body (e.g. CITB) and/or [Equality Direct](#). The Commission for Racial Equality has published an [Employment Code of Practice](#) on Race Relations. The [Appendix](#) to this OC reproduces an extract from the Code of Practice concerning communication and training.

PROVISION OF INFORMATION FOR NON-ENGLISH SPEAKING WORKERS BY EMPLOYERS

7. An employer has a general duty under HSWA section 2(2)(c) to provide their employees with such information as is necessary to ensure so far as is reasonably practicable their health and safety at work. Regulation 10 of the MHSW Regulations requires employers to provide information to employees which is **comprehensible and relevant**, i.e. capable of being understood by the person for whom it is intended and reg 15 requires certain information to be provided to temporary workers.

8. Paragraph 64 of the guidance to the Approved Code of Practice *Management of health and safety at work* advises:

"The information provided should be pitched appropriately, given the level of training, knowledge and experience of the employee. It should be provided in a form which takes account of any language difficulties or disabilities. Information can be provided in whatever form is most suitable in the circumstances, as long as it can be understood by everyone. For employees with little or no understanding of English, or who cannot read English, employers may need to make special arrangements. These could include providing translation, using interpreters, or replacing written notices with clearly understood symbols or diagrams."

9. The information to be supplied under regulation 10 of the MHSW Regulations should link with the risk assessment and the measures to be taken for prevention, protection, in emergencies, or as a consequence of the work conducted by other employers in the same workplace. The assessment under regulation 3 should identify any group of employees (and others not in the employer's employment) who are especially at risk. Where there are 5 or more employees the employer must record the health and safety arrangements referred to in regulation 5(1). Employers should ensure employees in such groups fully understand what they must do. Similar standards should also be applied to temporary workers and contractors employees (regulation 15).

10. Information for employees must be comprehensible. Employers should take account of difficulties where employees have limited command of English. Verbal communication may often be adequate to comply especially where changing conditions require quick reaction to verbal communication. In some circumstances failure to understand basic verbal instructions can have serious consequences, e.g. failure to communicate effectively with colleagues. This is particularly so in workplaces where conditions change rapidly such as construction sites and agricultural activities. But there will be circumstances where written information will be essential.

11. Action by employers should include:

1) assessing the risks associated with the fact that the individual does not speak and/or understand English

2) consider reasonable means of reducing the risk e.g.

- a) translating safety notices and training manuals into relevant languages or replacing written notices with clearly understood symbols;
- b) use of internationally recognised pictorial warning signs which offer a means of communication that should be clear to all regardless of literacy or language.
- c) providing safety training sessions in relevant alternative languages to English;
- d) providing appropriate English language training ranging from key words only, to oral and written fluency in English for longer term workers; and
- e) using bilingual employees to interpret/translate information to their non-English-speaking colleagues. The employer must satisfy themselves that the interpreter/translator has sufficient command of English to understand what is being communicated and is given sufficient authority to discharge the responsibility placed upon them.

CONSIDERATION OF LANGUAGE ISSUES

12. In the course of inspection or investigation visits, where all or part of the work force are non-English-speaking or have limited knowledge of English, inspectors should enquire how the employer is fulfilling their legal duties to provide employees with such comprehensible information as is necessary for ensuring their health and safety at work. Inspectors should not be concerned because it is a race related issue; it is the same issue as more generally ensuring provision for adequate communication, instruction and training in the workplace.

14. Inspectors should use an [interpreter](#) in circumstances where it is not possible to communicate with a dutyholder, employee or other stakeholder in the same language as the member of HSE staff.

15. The Construction Confederation published guidance which sets out good practice for employers on this issue ([Health and Safety Briefing](#)) (2 Pages).

Consideration of enforcement action

16. In circumstances where there are workers at risk who appear not to be able to adequately understand instructions inspectors should establish whether there is a 'risk of serious personal injury' based on the work activity underway and the extent of the language barrier. If workers or others are at serious risk, inspectors should take action to ensure the risk is controlled e.g. stop work, serving a prohibition notice if appropriate. Inspectors should then require the dutyholder to ensure that information is communicated in a comprehensible form (see regulations 10 and 15 of the MHSW Regulations), taking further enforcement action if appropriate.

PROVISION OF INFORMATION BY INSPECTORS

17. HSW Act s.28(8) allows inspectors to give certain information to employees. Where there are language difficulties inspectors are free to choose the form of communication most appropriate to the circumstances. For example:

- 1) By identifying where possible an English-speaking employee representative who can act as a channel of communication with other employees.
- 2) If the employer is prepared to assist and if the agreement of the employees or their representatives can be obtained, by sending any letter with information for the employees

to the employer for translation.

3) In circumstances where any of the following apply

a) there is doubt as to whether an employer would, or would properly prepare the translation, or

b) if the employees or their representatives do not agree to the employer undertaking the translation, or

c) it is particularly important to ensure from a health and safety perspective that employees are informed promptly of risks (particularly serious or imminent risks) to their health and safety

d) the inspector has little or no confidence in the employer,

and alternative means are not available for discharging the duty under s.28(8), the inspector should make the necessary arrangements for translation (see [Language Services](#)) and provision of the information.

18 The provision of information direct set out in para 17(1) is preferable to the more indirect means in paras 17(2) and 17(3). Other courses of action may be appropriate in particular circumstances and inspectors should not feel themselves restricted by the above suggestions.

Cancellation of instructions

OC 167/6 **cancel** and **destroy**.

Date first issued: 29 September 2003
(FOD/220/1037/03)

APPENDIX

EMPLOYMENT CODE OF PRACTICE

1 The [Code of Practice on Race Relations](#) aims to give practical guidance not only on the provisions and implications of the Race Relations Act but also how best the policies can be implemented to eliminate racial discrimination and to enhance equality of opportunity.

2 Failure on the part of any person to follow any provision of a Code of Practice issued under section 47 of the 1976 Act does not of itself render him liable in law. But in any proceedings brought under the 1976 Act any code of practice so issued shall be admissible in evidence, and if any provision of such a code appears to the employment tribunal or the court to be relevant to any question arising in the proceedings it must be taken into account in determining that question. Only an employment tribunal or a court can provide an authoritative statement of the law.

3 The following extract from Section 1 of the CoP concerns communications and language training for employees:

"Although there is no legal requirement to provide language training, difficulties in communication can endanger equal opportunity in the workforce. In addition, good communications can improve efficiency, promotion prospects and safety and health and create a better understanding between employers, employees and unions. Where the workforce includes current employees whose English is limited it is recommended that steps are taken to

ensure that communications are as effective as possible.

These should include, where reasonably practicable:

(a) provision of interpretation and translation facilities, for example, in the communication of grievance and other procedures, and of terms of employment;

(b) training in English language and in communication skills;

(c) training for managers and supervisors in the background and culture of racial minority groups;

The use of alternative or additional methods of communication, where employees find it difficult to understand health and safety requirements, for example;

- safety signs; translations of safety notices;
- instructions through interpreters;
- instruction combined with industrial language training".



health & safety Briefing

Construction Confederation

May 2002

www.thecc.org.uk

Managing the health and safety of non-English speaking personnel on construction sites

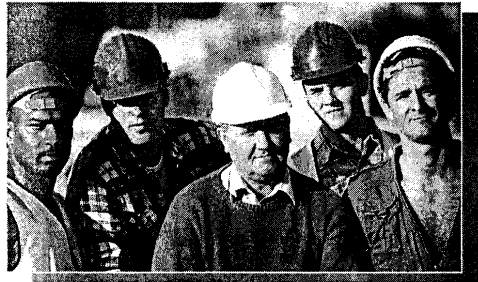
The Health and Safety and Industrial Relations Departments receive a number of queries regarding the employment of non-English speaking employees. Whilst many people from ethnic minority backgrounds have excellent skills in spoken and written English, a significant minority regard their first language as being other than English and have difficulty in comprehending written and / or spoken English.

The Management of Health and Safety at Work Regulations require employers to provide their employees with understandable and relevant information on risks to their health and safety and on precautions to take to avoid those risks. Information should be provided in a way that takes account of any language difficulties or disabilities. It can be provided in whatever form is most suitable in the circumstances, as long as it can be understood by everyone. For employees or workers with little or no understanding of spoken or written English, employers and those in control may need to make special arrangements.

The following guidance has been developed and issued jointly by the two departments.

Introduction

Many employers cite risks to health and safety as one of their main concerns when employing persons who do not speak and / or understand English. On construction sites where changing conditions often require quick reactions to verbal communications, the inability to speak and / or understand English could create a particularly high risk to health and safety.



However, a blanket refusal to consider non-English speaking employees for any vacancies or activities will almost certainly be in breach of the provisions of the Race Relations legislation.

This guidance is therefore intended to protect the health and safety of non-English speaking personnel, and others on site, whilst ensuring that they are not unfairly discriminated against. It should be noted that this does not only apply to "foreign" labour, as British citizens cannot always read / write in English and their communication skills may be poor.

Irrespective of whether the employee meets other criteria for the job (eg. CSCS cardholder) employers will need to assess the risks of any language barrier to health and safety and the control measures required to overcome those risks before making a final decision.

Assessing the Risk

As with all health and safety hazards, in the first instance it is important to assess the risks associated with the fact that the individual does not speak and / or understand English. The employer will need to identify if the individual does not speak English or does not understand English, these are two very different issues. Many

people find it easier to understand a second language before they can speak it with any degree of fluency.

Risks may arise from a range of issues: from the consequences of not being able to understand the site safety induction to the inability to communicate danger to others on site. The employer needs to assess the risk of each activity and identify where the ability to understand and speak English is critical and where it is not. Such critical activities may include those such as crane slinger/signallers; confined space working and activities that require a permit to work system. These types of activity may be deemed unsuitable for operatives who cannot understand or speak English.

The conditions on construction sites, by their very nature, are constantly changing. Employers need to consider how many new or unexpected potential dangers can be effectively communicated to those individuals who do not speak and / or understand English.

Reducing the Risk

Having identified and assessed the health and safety hazards, the next stage is for the employer to consider reasonable means of reducing the risk. These will vary according to the specific circumstances and the nature of the risk.

A well tried and successful method of dealing with the issue is to have all non-English speakers working together in relatively small manageable gangs and a working ganger or supervisor with each gang who can act as their interpreter. This ganger or supervisor must stay with the gang at all times in order to deliver inductions, briefings, routine instructions and generally act as their liaison with the rest of the site team. Under certain conditions the interpreter may even have a wider role in assisting with transport and accommodation arrangements. This 'gang interpreter' approach should be discussed with sub-contractors at an early stage and included within the contract conditions; if necessary a maximum gang size per translator can be specified. Details should also be contained within the Health and Safety Plan. You must consider your arrangements if the 'gang interpreter' is not available for any reason.

In some instances, particularly for lower risk activities, the company may have other employees who speak both English and the first language of the non-English speaking employees. They can therefore arrange for these workers to work together in order that they can act as translators. Where there is a relatively high density of a particular ethnic group in an area, there may be some external translator assistance available from local community groups.

For instances where lower risk activities are being carried out it may only be necessary for method statements and risk assessments to be

translated into the appropriate language and issued to the nominated workforce – assuming that they can read. Just as there are British people who cannot read English, there are many non-British people who cannot read their own language.

Other measures that can assist in the safe integration of non-English speakers into the working environment include:

- Not allowing lone working or allocating safety critical roles to non-English speakers.
- The allocation of low risk work and/or areas for non-English speakers.
- Ensuring the maximum use of internationally recognised pictorial warning signs within the workplace.
- Providing a greater degree of training and allowing additional training time.
- Providing a greater degree of supervision.
- Using external translator services where the provision of written information is considered essential.*
- Considering English language courses for longer-term workers.

Whatever methods are chosen, it is vital that their effectiveness is closely monitored. Simple observation of their working practices should indicate whether the requisite messages have been received and understood by the non-English speakers and any deficiencies must be acted upon immediately.

In Summary

Once the employer has identified the risk and considered reasonable means of reducing it, if there is still a real health and safety risk, then it may be acceptable to refuse to employ non-English speaking personnel for particular jobs. Any blanket ban on non-English speaking employees is, however, still likely to be in breach of current race regulations legislation. ■

* if you register with the Languages NTO at www.languagesnto.org.uk you can find a translator via the Business Languages Information Service (BLIS).