

Topic Pack
Enforcement of consultation Regulations
June 2011

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Introduction

1 This document provides guidance on the actions available to inspectors to improve worker consultation in the workplace. It replaces the *Worker Consultation and Involvement Topic Pack (July 2007)* and *OC111/3 Enforcement of Regulations* requiring consultation with employees, and provides the following information on:

- approaches inspectors can take to improve consultation arrangements;
- Regulations specific to employee consultation;
- case studies and example Improvement Notices.

2 Consultation with workers is an essential element of successful health and safety management and the development of a positive health and safety culture. Inspectors should take all available opportunities to remind employers of their legal duties to consult.

3 The document should be read in conjunction with [Managing for Health and Safety Guidance for regulatory staff on the practice of assessing health and safety management¹](#), specifically the sections on collecting evidence to support enforcement activity.

Approach to enforcement of consultation Regulations

4 This document describes HSE's strategic approach to the enforcement of consultation Regulations. It addresses enforcement in the context of managing health and safety risks in the workplace i.e. where risks are being mismanaged and lack of consultation is a contributing factor. The strategy is based on **three non-sequential approaches** available to inspectors to improve worker consultation. Broadly these are:

- providing advice, guidance and support;
- inclusion of worker consultation in risk based enforcement;
- enforcement against worker consultation Regulations.

Who is this guidance for?

5 This guidance will assist HSE inspectors and LA enforcement officers in assessing consultation arrangements and making appropriate interventions.

Benefits of worker consultation

6 Consultation with workers is fundamental to successful health and safety management. Survey evidence suggests that accident rates in workplaces where employees genuinely feel they have a say in health and safety matters are

¹ See: <http://www.hse.gov.uk/managing/regulators/regulators.pdf>

approximately half of that in workplaces where employees are not involved².
Effective consultation leads to:

- greater recognition of workplace risks;
- making sure health and safety controls are practical because of the input and experience of a range of people including those doing the task; and
- increased commitment to implementing decisions because employees have actively been involved in reaching them.

In the long term consultation can lead to greater co-operation, trust, joint problem solving and improved attitude to health and safety.

Consultation Regulations

7 There are two principal sets of Regulations that contain specific Regulations that require employees to be consulted³:

- a) *The Safety Representatives and Safety Committees Regulations 1977 (as amended) (SRSCR)* – specifically *Regulation 4A(1)* – these Regulations apply to undertakings where trade unions are recognised for collective bargaining purposes; and
- b) *The Health and Safety (Consultation with Employees) Regulations 1996 (as amended) (HSCER)* - specifically *Regulations 3 and 4* – these Regulations apply where trade unions are not recognised. Under these Regulations employers can consult directly with the workforce or through an elected representative.

8 In workplaces where some employees are members of recognised trade unions and others are not, consultation may be according to both sets of Regulations. HSE publication L146 '[Consulting workers on health and safety – Approved Code of](#)

² Source: HSE Fit3 (Fit for Work, Fit for Life, Fit for Tomorrow) employer and employee surveys 2005/06 and Nichols T, Walters D and Tasiran AC (2007) *Journal of Industrial Relations*; 49: 211-225

³ In addition the following Regulations also relate to employee consultation:

- Offshore Installations (Safety Representatives and Safety Committees Regulations 1989);
- Mines and Quarries Act 1954 section 123
- Quarries Regulations 1999 regulation 40
- Construction (Design and Management) Regulations 2007 regulation 24

*Practice and guidance*⁴, provides the full provisions and additional guidance on these Regulations.

Preconditions to effective worker consultation

9 Research indicates that worker consultation is unlikely to be effective without commitment from management and the necessary information, instruction and training being provided to the workforce (see *INDG345 'Health and safety training- What you need to know'*⁵) and their representatives (see Reg. 7(1)(a) of the HSCER) to enable them to contribute positively in the consultation.

Gathering evidence on the effectiveness of worker consultation

10 Wherever relevant, worker involvement will be incorporated into every preventative contact. To help make a judgement on the most appropriate action, inspectors should look for specific evidence that consultation is inadequate and is leading to the mismanagement of risk. This evidence could include:

- employees don't know who to go to with health and safety concerns;
- health and safety controls don't appear practical or employees are having to work around difficulties;
- line managers don't discuss changes in the workplace;
- the number of representatives appears inadequate given the size of the organisation.

11 Inspectors should be aware that consultation can be in the form of informal as well as formal arrangements. HSE research (Fit3⁶) suggests that informal arrangements for consultation are more common in small and micro sized organisations. In addition, under *HSCER* employers can choose to consult directly with the workforce rather than through a Representative of Employee Safety (RoES).

12 Every effort should be made to contact at least one employee or safety representative as early as possible in the inspection visit. Safety representatives have a function in law to represent the views of employees they are appointed or elected to represent in consultations at the workplace with HSE Inspectors.

13 Inspectors should not be drawn into industrial relations disputes. Disagreements between employers and trade unions or employees should be settled through the

⁴ <http://www.hse.gov.uk/pubns/priced/l146.pdf>

⁵ <http://www.hse.gov.uk/pubns/indg345.pdf>

⁶ Fit3 (Fit for work, fit for life, fit for tomorrow) surveys (<http://www.hse.gov.uk/statistics/publications/fit3.htm>)

normal machinery for resolving industrial relations problems with recourse to the [Advisory, Conciliation and Arbitration Service](#)⁷ (ACAS) as appropriate.

Approaches for improving worker consultation

14 HSE recognises the limited effectiveness of enforcing consultation where the development of trust and co-operation are essential. Therefore, an approach to enforcement of consultation is to address it in the context of managing health and safety risks in the workplace. The following three (non- sequential) enforcement approaches are available:

- **Advice:** Inspectors should provide advice, guidance and support for employers and safety representatives (e.g. the provision of face to face advice during inspections or developing specific interventions to help the consultation process). See example [A.1](#) in Annex A.
- **Risk based enforcement:** Where inspectors identify particular risks during inspection the law most specific to the risk identified should be used, even though a failure to consult may be a contributory or exacerbating factor. However, the inclusion of worker consultation in a letter attached to an improvement notice or a letter on lack of compliance is recommended. See example at [A.2](#) in Annex A.
- **Enforcement of worker consultation Regulations:** Where there are a number of risks being mismanaged and a failure to consult is a factor, enforcement of the consultation Regulations in addition to any notices addressing the risks, should be considered when, for example:
 - an employer is unwilling to address the absence of consultation;
 - workers are considered particularly vulnerable;
 - worker consultation is considered critical to the health and safety management due to factors such as the need for workers to make critical decisions and the rate of change of work environment;
 - there is evidence of a number of risks being mismanaged due to an absence of any consultation.

15 Breaches of *SRSCR* or *HSCER* will inform inspectors' assessment of the employer's management arrangements for communicating and cooperating with employees. See [A.3](#) for case study example. See [Annex B](#) for examples of consultation notices.

⁷ <http://www.acas.org.uk/index.aspx?articleid=1461>

Specific enforcement action

16 Enforcement action under *SRSCR* and *HSCER* should be informed by the Compliance and Administrative Arrangements (Table 4) of the *Enforcement Management Model (EMM)*⁸. EMM dutyholder and strategic factors should be considered when considering breaches of consultation Regulations.

EMM dutyholder factors:

- Previous relevant documented enforcement or advice – is there a history of non-compliance with any aspect of the consultation Regulations?
- Intention of the dutyholder – was there a deliberate failure to consult for economic gain?
- Attitude of the dutyholder – does the employer value employees' views or regards them as being unimportant?

Strategic factors:

The strategic factors are not expected generally to affect the final enforcement conclusion. Inspectors should, however, remember that effective employee consultation can have a positive effect on health and safety. It is also a priority area for HSE.

Example Improvement Notices

18 HSE Corporate Operational Information System (COIN) evidence suggests that the most frequently enforced consultation Regulations are:

- failure of an employer to consult (see sample notices in Annex B at [B.1](#) for unionised organisations and [B.2](#) for non-unionised organisations); and
- failure of an employer to provide information necessary for employees or their representatives to participate in the consultation (see sample notices at [B.3](#) for unionised organisations and [B.4](#) for non-unionised organisations).

19 Inspectors should amend the template appropriately to fit with the individual circumstances of the breach. In circumstances where both sets of Regulations apply, two different notices should be served to cover both represented and non-represented employees.

20 [Annex C](#) provides guidance on the application of the EMM to *SRSCR* and *HSCER*.

⁸ <http://www.hse.gov.uk/enforce/emm.pdf>

Annex A

A.1 Example of provision of advice, guidance and support

An inspector met with managers and employees of a non-unionised company which had recently expanded, and wanted advice on appropriate arrangements for worker consultation on health and safety based on the size and structure of the business.

Key messages that were emphasised included all parties (managers, employees and their representatives) had a role in working together to plan and implement health and safety improvements. Advice on processes for consultation and the importance of ensuring all groups of employees from the various different departments were represented was provided. The benefits of having elected representatives to help with consultation arrangements were explained. The employer was signposted to the '*Consulting workers on health and safety- Approved Code of Practice and further guidance*' on the HSE website.

The result is that elected representatives of employee safety play a full and active part in monthly meetings and good records are kept. There is regular and timely consultation and feedback on workplace issues, such as review and use of personal protective equipment. Toolbox talks and involvement of the workforce along with their representatives in the risk assessment process has increased employee commitment, as they now have more of a say.

A.2 Example of enforcement action on specific risks which include worker consultation considerations

A site inspection identified issues regarding noise that the employer was previously aware of as a result of an independent survey, and there was evidence of a failure by the employer to both act on this issue and consult workers or their representatives through the existing health and safety committee route in good time. An Improvement Notice was issued under the *Control of Noise at Work Regulations 2005 and Health and Safety at Work Act 1974*, and the attached letter highlighted the absence of consultation in relation to management of this specific risk.

The following is an example of wording that may be included in a letter attached to an improvement notice served against a particular risk:

It appears that there is an absence or lack of consultation relating to the management of the specific health and safety issue/risk identified in this notice. I strongly recommend you review your current arrangements and ensure you consult employees or their representatives on the issue/risk identified in this notice and other health and safety matters in general. Consulting safety representatives/employees leads to:

- *greater recognition of workplace risks;*
- *making sure health and safety controls are practical because of the input and experience of a range of people including those doing the task;*
- *increased commitment to implementing decisions because employees have actively been involved in reaching them;*

In the long term consultation can lead to greater co-operation, trust and joint problem solving and improved attitude to health and safety.

A.3 Example of enforcement action on absence of consultation

Inspection of a company found a lack of risk assessments on machinery, use of chemicals, manual handling, assessment of risks to pregnant workers and an absence of worker consultation. Improvement Notices were served under *Management of Health and Safety at Work Regulations 1999, Control of Substances Hazardous to Health Regulations 2002 and Manual Handling Operations Regulations 1992* to address the risk assessments, and under *Health and Safety (Consultation with Employees) Regulations 1996* to address the general lack of consultation across the board. The risk assessments conducted following the enforcement action were thorough; the company had stopped using certain chemicals; workstations and housekeeping of the site had improved and a health, safety and welfare group had been set up with employees from each department. Workers gave positive feedback about the changes.

Example of wording to be included in a letter attached to a notice

One of the areas looked into at the visit was how you inform and proactively consult your employees and /or either elected or appointed representatives on health and safety matters. Some of the consultation methods I would have expected to see were either absent or inadequate, resulting in [... specific evidence ...].

*Consulting your employees and/or elected or appointed health and safety representatives on matters concerning their health and safety in good time is a specific legal requirement of the *Health and Safety (Consultation with Employees) 1996 Regulations (as amended) / Safety Representatives and Safety Committees Regulations 1977 (as amended).*

Employee involvement has been shown to have a positive effect on health and safety performance. Given the identified weaknesses in your current arrangements a notice has been issued requiring you to review your current arrangements and put in place effective methods to consult your employees, and elected or appointed representatives on the issues identified in this notice and other health and safety matters.

Further information on your legal duties to consult & best practice can be found in:

- HSE publication HSG263 – *'Involving your workforce in health and safety- Good practice for all workplaces'*. This contains practical advice on your legal duties as well as best practice and is available from HSE books, as either a bought publication- <http://books.hse.gov.uk/hse/public/home.jsf> or as a free download –<http://www.hse.gov.uk/pubns/priced/hsg263.pdf>
- HSE publication L146 - *'Consulting workers on health and safety- Approved Code of Practice and guidance'* that contains the law and guidance on consultation. It is available from HSE books, as either a bought publication <http://books.hse.gov.uk/hse/public/home.jsf> or as a free download – <http://www.hse.gov.uk/pubns/priced/l146.pdf>
- The worker involvement dedicated website at: <http://www.hse.gov.uk/involvement/index.htm>

(*delete as appropriate).

Annex B - Example Improvement Notices, Letter text and Notice sign off

The following notices are provided as guides only and inspectors should amend the template appropriately to fit with the individual circumstances of the breach. In circumstances where both sets of Regulations apply, two different notices should be served to cover both represented and non-represented employees.

B1. Duty to consult – For a workplace where employees in recognised trade unions

Contravention

Health and Safety at Work etc Act 1974, Section 2(6) and

Safety Representatives and Safety Committees Regulations 1977 (as amended), Regulation 4A (1).

Reason

You have failed to put in place a process to consult in good time, the appointed safety representatives on matters relating to their health and safety and of the employees they represent, including [... **describe the specific risk at the workplace ...**].

Schedule

In order to comply with this notice you should:

1 Introduce a process whereby you consult the safety representative(s) in good time on health and safety matters. Specifically with regard to:

- a) the introduction of any measure which may substantially affect the health and safety of those employees represented;
- b) arrangements for appointing a competent person to help you comply with your health and safety requirements;
- c) any health and safety information you are legally required to give to those employees represented on risks to health and safety, and preventative measures;
- d) the planning and organisation of any health and safety training you are legally required to provide to those employees represented; and
- e) the health and safety consequences for the employees represented of the introduction of new technologies into the workplace.

Alternatively, any other equally effective measures may be taken which comply with the statutory provisions listed on the front of this notice.

Letter Text

One of the areas looked into at the visit was how you inform and proactively consult your employees and appointed representatives on health and safety matters. Some of the consultation methods I would have expected to see were missing or inadequate. [...give illustration...].

Consulting your employees and appointed safety representatives on health and safety matters in good time is a specific legal requirement of the SRSC 77 Regulations. Employee involvement has been shown to have a positive effect on health and safety performance. Given the identified weaknesses in your current arrangements this notice requires you review your current arrangements and put in place effective methods to consult your employees and appointed representatives on health and safety matters.

If you choose to take other measures to comply with this Notice, you are advised to speak to HM Inspector in advance, to ensure your measures can allow you to comply.

Further information on your legal duties to consult & best practice can be found in:

- HSE publication HSG263 – *[‘Involving your workforce in health and safety- Good practice for all workplaces’](#)*. This contains practical advice on your legal duties as well as best practice and is available from HSE books, as either a bought publication- <http://books.hse.gov.uk/hse/public/home.jsf> or as a free download –<http://www.hse.gov.uk/pubns/priced/hsg263.pdf>
- HSE publication L146 - *[‘Consulting workers on health and safety- Approved Code of Practice and guidance’](#)* that contains the law and guidance on consultation and is available from HSE books, as either a bought publication <http://books.hse.gov.uk/hse/public/home.jsf> or as a free download – <http://www.hse.gov.uk/pubns/priced/l146.pdf>
- The worker involvement dedicated website at: <http://www.hse.gov.uk/involvement/index.htm>

[NB. Text addressing non-compliance and the appeal process has not been included here.]

Notice sign off

Before compliance visit

Try to maintain contact and a dialogue during the Notice time. Are they doing the right things? There is a lot of practical advice in HSG263 *Involving your workforce in health and safety: Good practice for all workplaces’*.

At the compliance visit

The Company and employees should be able to demonstrate the consultation is now underway and is effective.

Minutes or records maybe available but the feedback of both sides should be sufficient to decide if consultation is taking place.

The process required to be put in place might include more or better attendance at health and safety and or production/planning meetings – daily/weekly or monthly depending on the nature of the business. Production planning groups include health and safety representatives and achieve better overall communication processes between all concerned.

B.2. Duty to consult – For a workplace where employees are not represented by a recognised trade union

Contravention

Health and Safety at Work etc Act 1974, Section 2(6) and Health and Safety (Consultation with Employees) Regulations 1996 (as amended), Regulations 3 & 4.

Reason

You have failed to put in place a process to consult in good time your employees directly AND/OR, the elected representatives of employee safety, on matters relating to their health and safety and of the groups of employees they represent, including **[... describe the specific risk at the workplace ...]**

Schedule

In order to comply with this notice you should:

1 Introduce a process whereby you consult those employees in good time on health and safety matters. Specifically with regard to:

- a) the introduction of any measure which may substantially affect the health and safety of those employees;
- b) arrangements for appointing a competent person to help you comply with your health and safety requirements;
- c) any health and safety information you are legally required to give to those employees on risks to health and safety, and preventative measures;
- d) the planning and organisation of any health and safety training you are legally required to provide to those employees; and

- e) the health and safety consequences for the employees of the introduction of new technologies into the workplace.

and

2 Consultation is with either:

- a) the employees directly;
- b) the elected member(s) of any group of employees represented for the purpose of such consultation;
- c) a combination of both a) and b) above.

Alternatively, any other equally effective measures may be taken which comply with the statutory provisions listed on the front of this notice.

Letter Text

One of the areas looked into at the visit was how you inform and proactively consult your employees and workforce elected representatives on health and safety matters. Some of the consultation methods I would have expected to see were missing or inadequate [...**give illustration...**].

Consulting your employees and elected safety representatives on health and safety matters in good time is a specific legal requirement of the *HSCER 96 Regulations*. Employee involvement has been shown to have a positive effect on health and safety performance. Given the identified weaknesses in your current arrangements this notice requires you review your current arrangements and put in place effective methods to consult your employees and elected safety representatives on health and safety matters.

If you choose to take other measures to comply with this Notice, you are advised to speak to HM Inspector in advance, to ensure your measures can allow you to comply.

Further information on your legal duties to consult & best practice can be found in:

- HSE publication HSG263 – *'Involving your workforce in health and safety- Good practice for all workplaces'*. This contains practical advice on your legal duties as well as best practice and is available from HSE books, as either a bought publication- <http://books.hse.gov.uk/hse/public/home.jsf> or as a free download –<http://www.hse.gov.uk/pubns/priced/hsg263.pdf>
- HSE publication L146 - *'Consulting workers on health and safety- Approved Code of Practice and guidance'* that contains the law and guidance on consultation and is available from HSE books, as either a bought publication <http://books.hse.gov.uk/hse/public/home.jsf> or as a free download – <http://www.hse.gov.uk/pubns/priced/l146.pdf>

- The worker involvement dedicated website at:
<http://www.hse.gov.uk/involvement/index.htm>

[NB. Text addressing non-compliance and the appeal process has not been included here.]

Notice sign off

Before compliance visit

Try to maintain contact and a dialogue during the Notice time. Are they doing the right things?

At the compliance visit

The Company and employees should be able to demonstrate the consultation is now underway and is effective.

Minutes or records may be available but the feedback of both sides should be sufficient to decide if consultation is taking place.

The process required to be put in place might include more or better attendance at health and safety and or production/planning meetings – daily/weekly or monthly depending on the nature of the business. Production planning groups include health and safety representatives and achieve better overall communication processes between all concerned.

B.3. Duty to provide information – For a workplace where employees in recognised trade unions

Contravention

Health and Safety at Work etc Act 1974, Section 2(2)(c) and Safety Representatives and Safety Committees Regulations 1977 (as amended), Regulation 7(2).

Reason

You have failed to make available to the safety representative(s) information, within your knowledge, necessary to enable them to fulfil their functions.

Schedule

In order to comply with this notice you should:

1 Draw up and implement a system for making information, within your knowledge, available to your safety representatives to enable them to fulfil their functions in accordance with *Regulation 4 of the Safety Representatives and Safety Committees Regulations 1977 (as amended)*. Such information should include:

- a) information about plans and performance of your work and any proposed changes which may affect the health and safety of your employees;
- b) technical information about hazards and precautions associated with machinery, plant, equipment, processes, systems of work and substances in use at work;
- c) information you keep relating to the occurrence of any accident, dangerous occurrence or notifiable industrial disease and any associated statistical records;
- d) any other information specifically related to matters affecting the health and safety at work of your employees, including any measurements taken to check the effectiveness of your health and safety arrangements;
- e) information on articles or substances which you issue to homeworkers.

Alternatively, any other equally effective measures may be taken which comply with the statutory provisions listed on the front of this notice.

Letter text

One of the areas looked into at the visit was how you inform, involve and proactively consult with your employees and the Trade Union appointed health and safety representatives on health and safety matters.

It was clear that the Company/business was not yet providing the relevant health and safety information [... **give an example** ...] to the Trade Union appointed health and safety representatives.

Providing the necessary information to safety representatives to enable them to fulfil their functions is a specific legal requirement of the *SRSC 77 Regulations*.

Additionally, employee consultation and involvement has been shown to have a positive effect on health and safety performance. Given the identified weaknesses in your current arrangements for making information available, this notice requires you put in place effective arrangements to ensure relevant health and safety information is provided and shared in line with the *SRSC 77 Regulations*.

If you choose to take other measures to comply with this Notice, you are advised to speak to HM Inspector in advance, to ensure your measures can allow you to comply.

Further information on your legal duties to consult & best practice can be found in:

- HSE publication HSG263 – *'Involving your workforce in health and safety- Good practice for all workplaces'*. This contains practical advice on your legal duties as well as best practice and is available from HSE books, as either a bought publication- <http://books.hse.gov.uk/hse/public/home.jsf> or as a free download –<http://www.hse.gov.uk/pubns/priced/hsg263.pdf>
- HSE publication L146 - *'Consulting workers on health and safety- Approved Code of Practice and guidance'* that contains the law and guidance on consultation and is available from HSE books, as either a bought publication <http://books.hse.gov.uk/hse/public/home.jsf> or as a free download – <http://www.hse.gov.uk/pubns/priced/l146.pdf>
- HSE publications L21 – *'Management of Health and Safety at Work Regulations 1999. Approved code of Practice and guidance.'* It is available from HSE books, as either a bought publication- <http://books.hse.gov.uk/hse/public/home.jsf> or as a free download- <http://www.hse.gov.uk/pubns/priced/l21.pdf>
- The worker involvement dedicated website <http://www.hse.gov.uk/involvement/index.htm>
- Employee Communication and Consultation – ACAS advisory booklet- <http://www.acas.org.uk/index.aspx?articleid=663>

[NB. Text addressing non-compliance and the appeal process has not been included here.]

Notice sign off

Before compliance visit

Try to maintain a dialogue and encourage them to obtain the HSE guidance and apply it.

The sort of information you should expect to see begin to flow to the Representatives and employees should be familiar items – Risk Assessment's, data sheets, COSHH and other assessments, the accident book and safety inspections and checks.

At the compliance visit

There should be evidence that information has begun to flow to the representatives or the employees via various means – verbal, written and email copy, notice boards about the workplace.

Discussions at the health and safety meetings or at workplace and production meetings.

The exact nature and scope will always depend on the nature and size of the business. In a small business less written documentation on the process will be evident but written Risk Assessment's and Safe systems of Work may well still be required. If less than 5 employees verbal information sharing will suffice.

B.4. Duty to provide information – For a workplace where employees in non-recognised trade unions or not represented

Contravention

Health and Safety at Work etc Act 1974, Section 2(2) (c) and Health and Safety (Consultation with Employees) Regulations 1996 (as amended), Regulation 5.

Reason

You have failed to make health and safety information, within your knowledge, available to your employees to allow them to participate fully and effectively in consultation.

Schedule

In order to comply with this notice you should:

1 Draw up and implement a system for making health and safety information, within your knowledge, available to your employees.

- a) Where you consult with employees directly, the system should make available to those employees such information necessary to enable them to participate fully and effectively in the consultation;
- b) Where you consult employee representatives, the system should make available to those representatives such information as is –
 - i. necessary to enable them to participate fully and effectively in the consultation and in the carrying out of their functions under the *Health and Safety (Consultation with Employees) Regulations 1996*;
 - ii. contained in any record which you are required to keep by regulation 7 of the *Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995* and which relates to the workplace or the group of employees represented by those representatives.

Alternatively, any other equally effective measures may be taken which comply with the statutory provisions listed on the front of this notice.

Letter text

One of the areas looked into at the visit was how you inform, involve and proactively consult with your employees and the workforce elected representatives on health and safety matters.

It was clear that the Company/business was not yet providing the relevant health and safety information [... **give an example** ...] to the employees and workforce elected health and safety representatives.

Providing information to employees and elected safety representatives as is necessary to enable them to participate fully and effectively in consultation is a specific legal requirement of the *HSCER 96 Regulations*. Staff consultation and involvement has been shown to have a positive effect on health and safety performance. Given the identified weaknesses in your current arrangements for making information available, this notice requires you put in place effective arrangements to ensure relevant health and safety information is provided and shared in line with the *HSCER 96 Regulations*.

If you choose to take other measures to comply with this Notice, you are advised to speak to HM Inspector in advance, to ensure your measures can allow you to comply.

Further information on your legal duties to consult & best practice can be found in -

- HSE publication HSG263 – *'Involving your workforce in health and safety- Good practice for all workplaces'*. This contains practical advice on your legal duties as well as best practice and is available from HSE books, as either a bought publication- <http://books.hse.gov.uk/hse/public/home.jsf> or as a free download –<http://www.hse.gov.uk/pubns/priced/hsg263.pdf>
- HSE publication L146 - *'Consulting workers on health and safety- Approved Code of Practice and guidance'* that contains the law and guidance on consultation and is available from HSE books, as either a bought publication <http://books.hse.gov.uk/hse/public/home.jsf> or as a free download – <http://www.hse.gov.uk/pubns/priced/l146.pdf>
- HSE publications L21 – *'Management of Health and Safety at Work Regulations 1999. Approved code of Practice and guidance.'* It is available from HSE books, as either a bought publication- <http://books.hse.gov.uk/hse/public/home.jsf> or as a free download- <http://www.hse.gov.uk/pubns/priced/l21.pdf>
- The worker involvement dedicated website <http://www.hse.gov.uk/involvement/index.htm>
- Employee Communication and Consultation – ACAS advisory booklet- <http://www.acas.org.uk/index.aspx?articleid=663>

[NB. Text addressing non-compliance and the appeal process has not been included here.]

Notice sign off

Before compliance visit

Try to keep maintaining a dialogue and encouraging them to obtain the HSE guidance and apply it.

The sort of information you should expect to see begin to flow to the Representatives and employees should be familiar items – Risk Assessment's, data sheets, COSHH and other assessments.

At the compliance visit

There should be evidence that information has begun to flow to the representatives or the employees via various means – verbal, written and email copy, notice boards about the workplace.

Discussions at the health and safety meetings or at workplace and production meetings.

The exact nature and scope will always depend on the nature and size of the business. In a small business less written documentation on the process will be evident but written Risk Assessment's and Safe systems of Work may well still be required. If less than 5 employees verbal information sharing will suffice.

Annex C - Guidance for use with enforcement management model.

The following table gives a selection of examples of situations which might be encountered with respect to particular Regulations. These are mapped against 'descriptors' and 'standards' for administrative arrangements which can be used to establish an initial enforcement expectation. The status of the standard varies between 'defined' or 'established' depending upon whether it is presented as part of the Regulations or the code of practice/published guidance respectively. These examples are not intended to be exhaustive, but will help inspectors to come to an appropriate conclusion when considering actual situations.

Relevant regs	Regulatory requirement with examples of breach(es)	Compliance & Administrative Arrangements	
Descriptor	Standard		
HSCER 7(1)(a)	Requirement: to provide elected representatives with training to ensure they are adequately equipped to fulfil their function, e.g.:		
	1 Employer has not provided any training.	Absent	Defined
	2 Training is provided for elected representatives but is clearly inadequate for the nature of the undertaking, e.g. training in representational skills is adequate but the representative is not given full appreciation of health and safety issues for the site.	Inadequate	Established
	3 Minor deficiencies in training, e.g. sufficient training has been provided for elected representatives to fulfil their roles adequately, but this is not being reviewed on a regular basis to ensure currency.	Minor	Established

Relevant regs	Regulatory requirement with examples of breach(es)	Compliance & Administrative Arrangements	
Descriptor	Standard		
SRSCR 4A(1) HSCER 3	Requirement: to consult with appointed or elected representatives and/or employees on matters relating to their health and safety at work e.g.:		
	1 Employer introduces new process but fails or refuses to consult on safety issues.	Absent	Defined
	2 Information on new process provided, but no evidence that representative's views were sought in return or given serious consideration.	Absent	Established
	3 Evidence of productive consultation process, but employer yet to take account of issues identified.	Minor	Established
SRSCR 4A(2), 5(3), 6(2)	Requirement: to provide safety representatives (SR) with reasonable facilities and assistance for the purpose of carrying out their functions, inspections or investigation, e.g.:		
	1 Employer refuses to provide any support to SR in carrying out their functions, denies access for an inspection to be carried out by a SR, or denies access to information which would contribute to an investigation of an accident being carried out by a SR.	Absent	Defined

Relevant regs	Regulatory requirement with examples of breach(es)	Compliance & Administrative Arrangements	
Descriptor	Standard		
	2 The employer has cooperated with the SR and agreed to a programme of inspections but has varied the plan without the prior agreement of the SR.	Inadequate	Established
	3 It is clear that appropriate and effective remedial action has been taken by the employer following an inspection by SR, but the employer has not formally arranged a follow-up inspection for SR when requested.	Minor	Established
SRSCR 7(1)	Requirement: to allow representatives to inspect and take copies of relevant documents.		
	1 Employer refuses access to any relevant documentation.	Absent	Defined
	2 Access not deliberately restricted but documents difficult or impossible to locate, or employer lacking a coherent filing system for relevant documents making access impracticable.	Inadequate	Defined
	3 Systems in place to allow representatives to inspect and take copies of relevant documents, but not openly promoted or advertised, e.g. access to documentation exists but it is not formally provided to SR, or is available through some other means which is not made clear.	Minor	Defined

Relevant regs	Regulatory requirement with examples of breach(es)	Compliance & Administrative Arrangements	
Descriptor	Standard		
HSCER 5	Requirement: to provide employees or employee representatives with such information as is necessary for them to participate fully in consultation process, e.g.:		
	1 No information provided by employer, or employer refuses to provide information.	Absent	Defined
	2 Employer has identified hazards and risks, but nothing provided on what to do when encountering these.	Absent	Established
	3 Overall, employer has provided a lot of information but has failed to inform all employees of a relevant injury, disease or dangerous occurrence.	Minor	Defined
SRSCR 7(2)	Requirement: to make information available to safety representatives to enable them to fulfil their functions, e.g.:		
	1 Employer refuses to provide any information to safety representative.	Absent	Defined
	2 Employer provides most information but retains results of future plans or fails to pass on relevant information from suppliers of substances/articles used.	Inadequate	Established

Relevant regs	Regulatory requirement with examples of breach(es)	Compliance & Administrative Arrangements	
Descriptor	Standard		
	3 In the main, a good effort is made to make information generally available but it is not formally provided to SR, or is available through some other means which is not made clear to the SR.	Minor	Defined
SRSCR 9(1) & 9(2)(c)	Requirement: To establish a safety committee within 3 months of it being requested by at least 2 safety representatives, e.g.:		
	1) Employer refuses to cooperate with employees or SR on the establishment of a safety committee;	Absent	Defined
	2) Employer can demonstrate good consultation process and has agreed to act but has not delivered within the designated 3-month period;	Absent	Defined
SRSCR 9(2)(a)	Requirement: to consult with representatives when establishing a Safety Committee, e.g.:		
	1 Employer establishes safety committee but refuses to cooperate with SR on the issue or seeks to avoid consultation on how this is achieved.	Absent	Defined
	2 Employer can demonstrate a good consultation system but the number of management	Inadequate	Established

Relevant regs	Regulatory requirement with examples of breach(es)	Compliance & Administrative Arrangements	
Descriptor	Standard		
	representatives on safety committee exceeds employee representatives.		
	3 Safety Committee established and evidence of consultation but lack of appropriate or effective action on representatives views by employer, or no suitable justification offered for discarding representatives views.	Minor	Defined
SRSCR 9(2)(b) HSCER 4	Requirement: To provide employees with information concerning composition of safety committee, or details of the consultation arrangements under HSCER, e.g.:		
	1 Employer refuses to provide information on committee composition.	Absent	Defined
	2 System for safety committees and SR consultation in place but no guidance provided to employees on how they can give their views to their employer.	Absent	Established
	3 Good representation and safety committee systems in place with information made available but information concerning composition of committee not considered to be displayed in a prominent enough place or not enough effort to make it easy to read by employees.	Minor	Defined