

Health and Safety Commission

Improving worker involvement – Improving health and safety

Reply Form

(Please type or write in block capitals)

Part 1: Your details

Name of organisation or (if you are responding in a personal capacity) individual:

Address:

Postcode:

Name of contact: Position:

Telephone: Email:

If you are replying on behalf of an organisation that is not on our original list of consultees¹, please say what it does.

How many people does it employ? 0 - 50 51 - 250 251 - 500 500+

We'd like to understand as much as possible about the people who respond to this document.

Please let us know which of these best describes your role: (please check the box which applies to you)

Are you a: Worker Employer (senior manager)

Employer (middle manager) Health and safety professional

Other (please specify)

Please also let us know: (by checking the box if it applies to you)

Are you a: Trade union-appointed safety representative

Representative of employee safety (non-trade union)

We may wish to contact you, for example, if we have a query. Please indicate if you would be happy to be contacted about your comments. Yes No

¹ See Annex E of the Consultative Document for the list of consultees

Part 2: General questions

Q1	Have we got the right:	Legislation	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
		Guidance	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
		Encouragement	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Q2(a) Have we got the balance between these three right? Yes No

Q2(b) If not, which pillar or pillars need adjusting and how?

We need more legislation, but more importantly, we need more enforcement of legislation. Legislation that is not enforced is meaningless. While guidance and encouragement is welcomed, the voluntary approach, in itself, has never worked and guidance and encouragement should be there to support and reinforce a strong regulatory framework.

Q3(a) What impact have the ICE Regulations had (or do you think they will have) on your organisation?

Q3(b) What impact have the ICE Regulations had (or do you think they will have) on consultation on health and safety?

It is impossible to say what impact these regulations are likely to have on consultations on health and safety, as there is no way of knowing how effective they will be. It is also unlikely that any resources will be put into enforcing them. This should not be seen as a substitute for proper regulations on consultation on health and safety.

Part 3: Guidance pillar

Q4(a) Do you think the existing guidance should be improved? Yes No

Q4(b) If so, in what way?

The Code of Practice and Guidance are both unclear in many areas such as training. They also need clarification in respect of which workers safety representatives can cover. The guidance does not reflect the changing world of work since 1977 in respect of greater shift working, part time working, home-working, and contractorisation. It should cover issues relating to the increased flexibility within the workforce. There is also a need for practical examples within the guidance. However, much of what is in the guidance should actually be within the Code of Practice so that employers have to take it into account. Nevertheless, simply improving the Code of Practice and Guidance, in itself, will not improve the ability of safety representatives to perform the functions unless it is combined with new regulations and enforcement.

Q4(c) What is the most useful part of our current guidance?

Q4(d) What would be the most useful type of new guidance we could produce (for example, case studies)?

One of the biggest problems our safety reps face is securing time off for training and for carrying out their functions as a safety rep. The legislation, ACOPs and guidance are unclear on what reasonable time off is and they do not make it clear enough that it is a right that cannot be put off indefinitely by employers. As with much of health and safety legislation, non-compliance does not have a clear solution and safety reps have to take this issue to an Employment Tribunal to secure their rights.

Part 4: Encouragement pillar

Q5(a) Based on what we know so far, do you think that we should promote a further voluntary initiative like the WSA Challenge Fund, once it ends in March 2007?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Q5(b) If so, what form should such an initiative take?

There is support for the continuation of some sort of fund to support worker involvement, but unions would want to ensure that any fund is used, first and foremost, to develop sustainable models of worker involvement. It must be aimed at funding work that will develop lasting partnerships between employers and employees to improve health and safety and promote the union model.

Where worker/employer partnerships have been developed with help from the HSE, there have been long term improvements in the health and safety culture of these sectors. Any new fund should support such a partnership with the emphasis on worker involvement. Funding should be available for trade/employer groups and employee representative organisations to secure funding to develop morals that were appropriate for that industry or sector, set targets and develop and promote a plan to achieve these targets. Funding should also be available for periods beyond just one year.

Q6(a) Do you believe that a framework of standards of best practice would be a useful and effective tool to encourage worker involvement?

<input type="checkbox"/> Yes	<input type="checkbox"/> No
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Q6(b) Would you use such a tool in your own workplace?

<input type="checkbox"/> Yes	<input type="checkbox"/> No
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Q7(a) What sorts of incentive to encourage more worker participation have been successful in your experience?

Employers can encourage employees to become more involved by making public statements that they support the role of safety representatives, encouraging their workforce to join a trade union and setting up and supporting safety committees.

Q7(b) What more can we in HSC and HSE do to help?

The biggest assistance would be to start enforcing the current consultation regulations. All inspectors should ask an employer how they consult their employees, and ask for documentary evidence, on each visit. They should also ask to see any safety representatives as a matter of course.

Much good work has been done by the worker involvement team of the HSE in providing some additional resources that safety representatives can use, but there has to be much greater promotion of worker involvement in all HSE materials and resources. In addition more materials have to be targeted specifically at safety representatives. As unpaid volunteers, safety representatives also need access to all regulations, ACoPs and guidance without having to pay for them.

Part 5: Legislation pillar

Q8(a) Do you agree that a duty on employers to consult safety representatives on the overall mechanism of risk assessment and on significant assessments would be helpful?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Q8(b) Are our proposals practical?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Q9 What other measures do we need to take to make sure this does not become bureaucratic or simply a paper exercise?

Consultation need not be bureaucratic or a paper exercise. It is important that proper records of a risk assessment are kept. There is no reason why consulting a safety representative on this should be any greater a burden than any other part of the risk assessment process. Risk assessment is one of the main planks of the health and safety culture within the UK. It is a serious omission that it is not currently a specific duty on employers to consult with safety representatives and correcting this omission should not be seen as being an administrative burden. Instead it should be viewed as a positive step towards making the process more effective.

Q10(a) Do you agree that employers should have a duty to respond to representations from safety representatives?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Q10(b) Do you consider that written representations and responses would be necessary?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Q10(c) What sort of systems do you think would work?

There is no need for a detailed bureaucratic system to be set up. Many safety representatives have managed to negotiate agreements whereby an employer will respond within a certain period of time, and if they do not, or if the response is inadequate, it goes to the line manager's superior for further consideration. This system, known as Union Inspection Notices, has been very effective and has helped improve the safety culture within most of these organisations where they have been used. However they have suffered from the absence of any legal backing, and a duty to respond will give this system validity.

Q11 What do you consider to be a "reasonable time" for a response?

Clearly employers must be given sufficient time, not only to respond, but to actually make a considered response. It is therefore not in anyone's interests for either the timescale to be too short, or too long. A possible rule of thumb would be that the employer should acknowledge receipt within seven days and give a detailed response within 28 days. However, the 28-day period should be seen as an absolute maximum and in most cases there is no reason why the matter should not be resolved within the initial week. In certain complex cases, it may be that both the manager and the safety representative would agree that an extension to the 28-day period is required.

Part 6: Extension to non-trade union representatives of employee safety

Q12(a) Do you agree that both the proposed duties should be extended to include consulting and responding to representatives of employee safety under the HSCWE Regulations?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Q12(b) If not, why not?

Part 7: Health and safety representatives?

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

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Part 8: Final questions

Q14(a) Will the options suggested improve worker involvement for those who do not have access to either a trade union or non-trade union safety representative - for example, people who work in very small organisations?

<input type="checkbox"/> Yes	<input type="checkbox"/> No
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Q14(b) If not, what do you think would work better for such people?

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

Q15 If we were to propose legislative amendments, how can we keep administrative burdens to a minimum and maximise the impact on improved health and safety?

The proposed legislative amendments simply reinforce and support the current regulations. These are what any good and sensible employer would be doing anyway. They should not be seen as a “burden on business”. The fact that employers do not respond, or do not consult safety representatives in risk assessments shows that clearly the consultative framework we have now is inadequate and in need of change. There is no reason to believe that either change will create a “burden on business”.

Q16 Please would you tell us which option (whether it is one of ours, or a suggestion of your own) will, in your opinion, be the single most effective thing we can do, and why?

One change that would have a major effect would be to make safety representatives compulsory in all workplaces with more than 5 employees. We would also like to see roving safety representatives, the right for safety representatives to stop work when there is a serious and imminent threat, and the right to issue legally binding improvement notices, as operates in some jurisdictions in Australia.

However, we also believe that it is important to ensure that inspectors enforce any regulations.

Part 9: Regulatory impact assessment

Q17 HSC would welcome comments on the assumptions made in compiling the partial RIA and on its conclusions. Do you have any additional evidence to convince us that the benefits will outweigh costs?

The regulatory impact assessment goes on the basis that there will be 100 per cent compliance with the new regulations and that this will place a cost on employers. Clearly the first part is nonsense. The existing regulations certainly do not have universal compliance and there is no reason to believe that, even with a stronger enforcement regime, the proposed changes will lead to any significant cost for employers. In fact the proposals are simply what any good employer should be doing already.

The assessment also totally underestimates the value of safety representatives' input into risk assessment, and the benefits to workplace culture or managers responding to safety representatives concerns.

Q18 We would be particularly interested to hear from local authorities about what would be the impact on them of enforcing additional regulations on worker involvement. If you are from a local authority, please let us know your thoughts.

Amicus has members working in Local Authorities.
We believe that the consultation document does not seek views on many of the extensions to safety representative's rights that would make a significant difference. These include roving health and safety representatives, the right to stop the job, and the right of safety representatives to issue legally binding improvement/enforcement notices

Part 10: This consultation exercise

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

<input type="checkbox"/> Well	<input type="checkbox"/> Adequately	<input checked="" type="checkbox"/> Poorly
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Q20 Is there anything you particularly liked or disliked about this consultation exercise?

The form simply asks for a "Yes" or "No" answer to many questions, in particular those relating to changes in regulations, without encouraging respondents to give reasons for their response or practical examples.

We believe that the consultation document does not seek views on many of the extensions to safety representative's rights that would make a significant difference. These include roving health and safety representatives, the right to stop the job, and the right of safety representatives to issue legally binding improvement/enforcement notices.

Please note: All responses will be placed in HSE Information Centres unless you state specifically that this response, or part of it, should be treated as confidential.

Treat as confidential?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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Thank you for taking the time to let us know your views

Please email this form to workerinvolvement@hse.gsi.gov.uk

Alternatively, you can post it to us at:

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Please send your response to arrive no later than 8th September 2006