

# Statutory Instrument 1996 No. 1513

## **The Health and Safety (Consultation with Employees) Regulations 1996**

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## STATUTORY INSTRUMENTS

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### 1996 No. 1513

## HEALTH AND SAFETY

### The Health and Safety (Consultation with Employees) Regulations 1996

<i>Made</i>	<i>10th June 1996</i>
<i>Laid before Parliament</i>	<i>1st July 1996</i>
<i>Coming into force</i>	<i>1st October 1996</i>

The Secretary of State, being a Minister designated<sup>[1]</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>[2]</sup> in relation to measures relating to consultation with employees on health and safety at work, in exercise of the powers conferred on him by the said section 2(2) and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

#### **Citation, extent and commencement**

1. These Regulations, which extend to Great Britain, may be cited as the Health and Safety (Consultation with Employees) Regulations 1996 and shall come into force on 1st October 1996.

#### **Interpretation**

- 2.—(1) In these Regulations, unless the context otherwise requires—
- "the 1974 Act" means the Health and Safety at Work etc. Act 1974<sup>[3]</sup>;
  - "the 1977 Regulations" means the Safety Representatives and Safety Committees Regulations 1977<sup>[4]</sup>;
  - "employee" has the meaning assigned to it by section 53(1) of the 1974 Act but shall not include a person employed as a domestic servant in a private household; and "employer" shall be construed

accordingly;

"the relevant statutory provisions" has the meaning assigned to it by section 53(1) of the 1974 Act;

"representatives of employee safety" shall be construed in accordance with regulation 4(1)(b);

"safety representative" has the meaning assigned to it by regulation 2(1) of the 1977 Regulations;

"workplace" means, in relation to an employee, any place or places where that employee is likely to work or which he is likely to frequent in the course of his employment or incidentally to it and, in relation to a representative of employee safety, any place or places where the employees he represents are likely so to work or frequent.

(2) Any reference in these Regulations to consulting employees directly or consulting representatives of employee safety is a reference to consulting them pursuant to regulation 3 and regulation 4(1)(a) or (b), as the case may be.

(3) Unless the context otherwise requires, any reference in these Regulations to—

(a) a numbered regulation or schedule is a reference to the regulation or schedule in these Regulations so numbered; and

(b) a numbered paragraph is a reference to the paragraph so numbered in the regulation or schedule in which the reference appears.

### **Duty of employer to consult**

**3.** Where there are employees who are not represented by safety representatives under the 1977 Regulations, the employer shall consult those employees in good time on matters relating to their health and safety at work and, in particular, with regard to—

(a) the introduction of any measure at the workplace which may substantially affect the health and safety of those employees;

(b) his arrangements for appointing or, as the case may be, nominating persons in accordance with regulations 6(1) and 7(1)(b) of the Management of Health and Safety at Work Regulations 1992<sup>[5]</sup>;

(c) any health and safety information he is required to provide to those employees by or under the relevant statutory provisions;

(d) the planning and organisation of any health and safety training he is required to provide to those employees by or under the relevant statutory provisions; and

(e) the health and safety consequences for those employees of the introduction (including the planning thereof) of new technologies into

the workplace.

### **Persons to be consulted**

**4.—(1)** The consultation required by regulation 3 is consultation with either—

- (a) the employees directly; or
- (b) in respect of any group of employees, one or more persons in that group who were elected, by the employees in that group at the time of the election, to represent that group for the purposes of such consultation (and any such persons are in these Regulations referred to as "representatives of employee safety").

(2) Where an employer consults representatives of employee safety he shall inform the employees represented by those representatives of—

- (a) the names of those representatives; and
- (b) the group of employees represented by those representatives.

(3) An employer shall not consult a person as a representative of employee safety if—

- (a) that person has notified the employer that he does not intend to represent the group of employees for the purposes of such consultation;
- (b) that person has ceased to be employed in the group of employees which he represents;
- (c) the period for which that person was elected has expired without that person being re-elected; or
- (d) that person has become incapacitated from carrying out his functions under these regulations;

and where pursuant to this paragraph an employer discontinues consultation with that person he shall inform the employees in the group concerned of that fact.

(4) Where an employer who has been consulting representatives of employee safety decides to consult employees directly he shall inform the employees and the representatives of that fact.

### **Duty of employer to provide information**

**5.—(1)** Where an employer consults employees directly he shall, subject to paragraph (3), make available to those employees such information, within the employer's knowledge, as is necessary to enable them to participate fully and effectively in the consultation.

(2) Where an employer consults representatives of employee safety he shall, subject to paragraph (3), make available to those representatives such

information, within the employer's knowledge, as is—

(a) necessary to enable them to participate fully and effectively in the consultation and in the carrying out of their functions under these Regulations;

(b) contained in any record which he is required to keep by regulation 7 of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995<sup>[6]</sup> and which relates to the workplace or the group of employees represented by those representatives.

(3) Nothing in paragraph (1) or (2) shall require an employer to make available any information—

(a) the disclosure of which would be against the interests of national security;

(b) which he could not disclose without contravening a prohibition imposed by or under any enactment;

(c) relating specifically to an individual, unless he has consented to its being disclosed;

(d) the disclosure of which would, for reasons other than its effect on health or safety, cause substantial injury to the employer's undertaking or, where the information was supplied to him by some other person, to the undertaking of that other person; or

(e) obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings;

or to provide or allow the inspection of any document or part of a document which is not related to health or safety.

### **Functions of representatives of employee safety**

6. Where an employer consults representatives of employee safety each of those representatives shall, for the period for which that representative is so consulted, have the following functions—

(a) to make representations to the employer on potential hazards and dangerous occurrences at the workplace which affect, or could affect, the group of employees he represents;

(b) to make representations to the employer on general matters affecting the health and safety at work of the group of employees he represents and, in particular, on such matters as he is consulted about by the employer under regulation 3; and

(c) to represent the group of employees he represents in consultations at the workplace with inspectors appointed under section 19(1) of the 1974 Act.

### **Training, time off and facilities for representatives of employee safety and time off for candidates**

7.—(1) Where an employer consults representatives of employee safety, he shall—

(a) ensure that each of those representatives is provided with such training in respect of that representative's functions under these Regulations as is reasonable in all the circumstances and the employer shall meet any reasonable costs associated with such training including travel and subsistence costs; and

(b) permit each of those representatives to take such time off with pay during that representative's working hours as shall be necessary for the purpose of that representative performing his functions under these Regulations or undergoing any training pursuant to paragraph (1)(a).

(2) An employer shall permit a candidate standing for election as a representative of employee safety reasonable time off with pay during that person's working hours in order to perform his functions as such a candidate.

(3) Schedule 1 (pay for time off) and Schedule 2 (provisions as to industrial tribunals) shall have effect.

(4) An employer shall provide such other facilities and assistance as a representative of employee safety may reasonably require for the purpose of carrying out his functions under these Regulations.

### **Amendment of the Employment Rights Act 1996**

8. In sections 44(1) (health and safety cases: right not to suffer detriment) and 100(1) (health and safety cases: unfair dismissal) of the Employment Rights Act 1996<sup>[7]</sup>, after paragraph (b) insert—

"(ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise)," .

### **Exclusion of civil liability**

9. Breach of a duty imposed by these Regulations shall, subject to regulation 7(3) and Schedule 2, not confer any right of action in any civil proceedings.

### **Application of health and safety legislation**

10. Sections 16 to 21, 23, 24, 26, 28, 33, 34, 36 to 39, 42(1) to (3) and 46 of the 1974 Act, the Health and Safety (Enforcing Authority) Regulations 1989<sup>[8]</sup> and the Health and Safety (Training for Employment) Regulations

1990<sup>[9]</sup> shall apply as if any references therein to health and safety regulations or to the relevant statutory provisions included references to these Regulations.

### **Application to the Crown and armed forces**

**11.**—(1) Section 48 of the 1974 Act shall, subject to paragraph (2), apply in respect of these Regulations as it applies in respect of regulations made under Part I of that Act.

(2) These Regulations shall apply in respect of members of the armed forces of the Crown subject to the following—

(a) references to "representatives of employee safety" (in regulation 4(1)(b) and elsewhere) shall, in respect of any group of employees, be references to one or more persons in that group who were appointed by the employer to represent that group for the purposes of such consultation;

(b) references to "elected" and "re-elected" in regulation 4(3)(c) shall be, respectively, references to "appointed" and "re-appointed"; and

(c) regulation 7(1)(b), (2) and (3) shall not apply.

### **Disapplication to sea-going ships**

**12.** These Regulations shall not apply to or in relation to the master or crew of a sea-going ship or to the employer of such persons in respect of the normal ship-board activities of a ship's crew under the direction of the master.

### **Amendment of the 1977 Regulations**

**13.** In regulation 3(1) of the 1977 Regulations the words ", except in the case of employees employed in a mine within the meaning of section 180 of the Mines and Quarries Act 1954 which is a coal mine" shall be omitted.

*John Selwyn Gummer*

Secretary of State for the Environment

10th June 1996

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*Notes:*

[1] S.I. [1996/266](#). [back](#)

[2] 1972 c. 68. [back](#)

[3] 1974 c. 37. [back](#)

[4] S.I. 1977/500 as amended by S.I. [1992/2051](#). [back](#)

[5] S.I. [1992/2051](#). [back](#)

[6] S.I. [1995/3163](#). [back](#)

[7] 1996 c. 18. [back](#)

[8] S.I. [1989/1903](#). [back](#)

[9] S.I. [1990/1380](#). [back](#)

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