

NERC GUIDANCE: TRADE UNION APPOINTED SAFETY REPRESENTATIVES

Version 1.1

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1. General

- 1.1. Safety Representatives are appointed by recognised trade unions (e.g. Prospect and PCS) to represent employees on health and safety matters under the Safety Representatives and Safety Committees Regulations 1977 as amended (SRSCR). Once safety representatives have been appointed, there is a legal duty on the employer to consult them on issues that affect the health, safety and welfare of staff. This duty is formally met by having safety committees on which managers, competent persons, safety representatives, specialist staff and other relevant parties sit. Within NERC at least one safety representative sits on the NERC Safety Management Group (SMG) and safety representatives sit on the NERC Health and Safety Committee and Research Centre / Site / Area Health and Safety Committees. It has been agreed that within NERC appointed trade union safety representatives will represent all staff at NERC Research Centres on health and safety matters, whether members of a recognised Union or not, for the purposes of consultation with all employees under the Health and Safety (Consultation with Employees) Regulations 1996 (HSCER). In addition to being consulted on health, safety and welfare issues, safety representatives have other functions and legal rights as outlined at 2.2.
- 1.2. The HSE Approved Code of Practice (ACoP) and Guidance, 'Consulting workers on health and safety' (see reference), gives official guidance on the SRSCR and HSCER and is the basis of the advice given below, together with an interpretation on how NERC can meet its legal duties.
- 1.3. The recognised trade union has to notify the employer in writing of the names of the persons appointed as safety representatives and the group / groups of employees they represent.

2. Functions of Safety Representatives

- 2.1 Under the Health and Safety at Work (HaSaW) Act 1974 there is a duty on the employer to consult safety representatives where they are appointed.
- 2.2 Under the SRSCR the safety representative's functions (which are legal rights) are to:
 - Investigate potential hazards and dangerous occurrences at the workplace and to examine the causes of accidents at the workplace
 - Investigate complaints by employees relating to their health, safety and welfare at work

- Make representations to the employer arising from the above
- Make representations to the employer on general matters affecting the health, safety and welfare at work of the employees
- Carry out inspections
- Represent employees in consultations with Inspectors of Health and Safety
- Receive information from Inspectors
- Attend meetings of Safety Committees

2.3 An employer has to allow a safety representative to take such time off with pay as is necessary for the purpose of performing his functions for the above and for such training in aspects of those as may be reasonable.

3. Employer's duty to consult, provide facilities and assistance

The SRSC Regulations were amended by the Management of Health and Safety at Work Regulations (MoHaSWR) to include a duty on the employer to consult safety reps in good time on matters affecting the employees they represent with regard to:

- Introduction of any measure at the workplace which may substantially affect their health and safety
- The employer's arrangements for appointing or nominating competent person(s)
- Any health and safety information the employer is required to provide
- Planning and organisation of any health and safety training required to be given
- Health and safety consequences of the introduction of new technologies into the workplace
- Provide such facilities and assistance as safety reps may reasonably need to carry out their functions

4. Consulting Safety Reps on risk assessments

The ACoP to MoHaSWR makes clear that the risk assessment process needs to be practical and take account of the views of employees and their safety reps. Risk assessments which do not take into account or seek to gain the commitment of the people who will have to follow them are liable to be less successful at adequately controlling risk. In particular this is necessary to ensure the precautions match the level of risk, that the precautions are practicable and can be followed by those implementing them and that the risks are understood by the affected employees.

5. Safety Inspections

5.1 Safety representatives are entitled to inspect the workplace every three months, or more frequently by agreement, having given reasonable notice of their intention to do so. There is nothing that states safety representatives cannot inspect less frequently should they wish, such as every six months or

once a year or vary the frequency based on experience. They can also inspect when there has been a substantial change in the conditions of work or new information has been published by the HSE relevant to the hazards at the workplace. When major new projects or alterations have been undertaken in NERC, it is suggested that safety reps be informed just before the project is complete so they may inspect the affected area, should they wish. This can be incorporated into formal commissioning and handover procedures for projects. The employer must provide such facilities and assistance as may reasonably be required for the purpose of carrying out a safety inspection but nothing precludes the employer or his representative from being present in the workplace during the inspection and indeed joint participation would maximise the benefits derived.

- 5.2 It is suggested that in NERC a timetable for routine trade union safety inspections be agreed at the local Safety Committee and that management / other safety committee members / appointed competent staff accompany the inspection. An inspection team of about three is probably best and more than four is cumbersome. The timetable should be published and made available to all staff. It is up to local agreement whether or not reminder notices of inspections are issued before inspections occur as there are benefits and disadvantages in doing so. The report of the inspection is for the safety representative to produce but this is liable to be better received if the opportunity for comment and discussion of recommendations has been available at the time of the inspection. It is up to local management to consider the report and decide how they will address its recommendations. The report and actions can then be discussed at the next safety committee meeting. If the inspections are done jointly and with the support of the safety committee this allows better discussion and follow-up on recommendations so that agreed methods of dealing with issues can be identified and continuous improvement achieved.

6. Inspections following notifiable injuries, diseases or occurrences

- 6.1 The safety representative has the right to inspect the part(s) of the workplace concerned when there has been a reportable injury, disease or dangerous occurrence (e.g. under Reporting of Injuries Diseases and Dangerous Occurrences Regulations [RIDDOR]). The employer must provide such facilities and assistance as the safety representative may reasonably require, including facilities for independent investigation and private discussion with employees, although nothing precludes the employer or his representative from being present during the inspection. The safety representative will need to be informed of the reportable occurrence as soon as possible in case they wish to investigate its cause and examine any relevant machinery, plant, equipment or substance in the workplace. However, the safety representative's examination must not interfere with any evidence or involve testing of machinery, plant, equipment or substances which could destroy factual evidence. The safety representative has the right to take copies of documents relevant to the workplace or employees they represent, although they may need to give reasonable notice and bear in mind any other circumstances the employer may be faced with in producing such documents.

6.2 The employer does not have to provide certain documents which:

- Are against the interests of national security
- Would be prohibited from disclosure under another enactment
- Is information specifically related to an individual, unless they have consented to its disclosure
- Their disclosure would, for reasons other than its effect on health, safety or welfare, cause substantial injury to the employer's undertaking or, where information was provided by another person, to the undertaking of that other person
- Information obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings

6.3 Safety representatives need to be informed of reportable occurrences soon after they occur, or it is first known they have occurred, so they can inspect the location. The Regulations do not specify exactly how soon the safety representative needs to be informed or what information needs to be provided. It is recommended that in NERC this is done as soon as possible after it becomes apparent that a reportable event has occurred and sufficiently accurate information has been obtained. The following information should be provided to the safety representative as a minimum:

- Where the reportable occurrence happened,
- The name of the person or persons injured
- When it happened,
- The broad nature and background to the occurrence
- Its outcome, as far as is known
- Any actions proposed, if known at that point

6.4 The name(s) or any information specifically related to the person(s) involved do not strictly have to be disclosed to the safety representative unless the individual(s) involved have given permission, which is not always possible to seek or gain. However, lack of information about the person(s) involved will inhibit the safety representative's inspection and, in any case, the injured person(s) identity will quickly become apparent during their inspection.

6.5 In general, it is best that an open policy on the details of reportable occurrences is promoted whereby no blame is attached to the individuals involved and names of persons involved and general details of type and location of injury are able to be given. Permission to do this could be automatically included as part of the information sought by the accident recording system, with a positive opt-out by the injured and / or reporting person if they do not wish such details to be disclosed more widely. However, sensitive personal details or specific details of injuries / conditions / diseases / treatment, which could be subject to medical confidentiality, should not be given. General details of a workplace occurrence would not normally be considered confidential and disclosure could be important in allowing proper investigation and helping identify actions to prevent further damage or harm to other individuals.

- 6.6 It is not recommended that copies of RIDDOR notifications are sent to safety representatives as they contain personal details such as addresses, date of birth and phone numbers. However, it is important that sufficient information is given to safety representatives on reportable occurrences so that they are able to exercise their right to inspect the area where the occurrence happened, make their own investigations if necessary and reach their own conclusions as to the causes and possible corrective actions that need to be taken. This will allow a full and open discussion to reach agreement on any recommendations for measures to prevent a recurrence of the event. The minimum information specified at 6.3 would normally suffice but best practice would be for full investigation reports to be provided. However, where there is debate or controversy about the cause or actions to be taken, sections containing opinion and discussion as opposed to factual information may need to be excluded.
- 6.7 Sufficient detail needs to be provided so that the safety representative can undertake their inspection as permitted under the law.

7. Inspection of documents and provision of information

The cases where it is not necessary for the employer to disclose information are given at section 6.2. However, it is a legal duty under the MoHaSW Regulations for the employer to provide employees with information on:

- Risks to employees' health and safety as identified by risk assessment
- Preventive and protective measures designed to ensure employees' health and safety
- Procedures to be followed in the event of an emergency
- Identity of any appointed / nominated 'competent' person
- Risks notified by another employer with whom a workplace is shared arising out of their activities

8. Safety Committees

Safety Committees are a legal requirement where there are appointed safety representatives who request one and help meet the duty to consult with employees. There would normally be agreed terms of reference and membership for the committee. The main objective is the promotion of co-operation between employer and employees in instigating, developing and carrying out measures to ensure the health, safety and welfare at work of employees that will lead to continuous improvement. Safety representatives are not appointed by the Safety Committee or vice versa and the relationship between safety representatives and the Safety Committee should be a flexible but intimate one with neither responsible to, or for, the other. All appointed safety representatives have the right to be members of their local committee. Membership should aim to be roughly equal between employee representatives and management / competent persons / other members. The aim should be effective co-ordination between the work of the committee and the representatives.

9. Employment tribunals

A safety representative may present a complaint to an employment tribunal with regard to failure of an employer to allow time off in accordance with that permitted by the SRSC Regulations or if he has failed to be paid for time spent as allowed.

10. Visits by inspectors

- 10.1 There are legal duties on the inspector under the HaSaW Act to keep employees adequately informed about matters affecting their health, safety and welfare. Also, they must give safety representatives factual information they obtained in the workplace and details of any actions they have taken / plan to take.
- 10.2 One of the functions of a safety representative under the SRSC Regulations is to receive information from inspectors. Inspectors will normally ask during a visit if there are any appointed safety representatives for the workplace and request a meeting to inform them of any actions they are taking a result of their visit. They may wish to do this in private. If a letter is sent as result of a visit, the inspector may ask that a copy be given to the safety representative, include a copy for circulation to the safety representative or send them their own copy separately.
- 10.3 Safety Representatives may ask to be given prior notice of planned visits from inspectors and it will help the inspector fulfil his obligations if a safety representative is available at the time of their visit. It is therefore reasonable to inform safety representatives in good time when notice of a visit has been given by an inspector. However, there is no strict legal duty on the employer to inform safety representatives about a visit and if, for example, the visit were unannounced this may be impossible.

Reference: 'Consulting workers on health and safety: Safety Representatives and Safety Committee Regulations 1977 (as amended) and Health and Safety (Consultation with employees) Regulations 1996 (as amended)', Approved Codes of Practice and Guidance, HSE, L146, 2008, ISBN 978-0-7176-6311-8