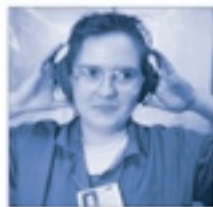


Health and Safety



Interactive links to articles
can be accessed from the
contents on page 5

ESSENTIALS



INTRODUCTION



The AEEU has a proud tradition of upholding policies and systems that are essential in maintaining safe and secure workplaces. Over the years we have published many leaflets and books on various aspects of health and safety. This latest publication is new in both format and approach in dealing with everyday and more complex safety problems.

In this booklet we have included major industries, while not ignoring smaller enterprises that have problems of equal gravity. As time has moved on, much of the older legislation has been repealed and replaced with new regulation. With this in mind, we have put an abbreviated version of the most relevant legislation into this publication. The law is constantly changing and updates are published in the Union News, the AEEU's quarterly journal. Health and Safety Essentials is available for downloading on the AEEU website at www.aeeu.org.uk, or further copies are available from head office on: 020 8462 7755 ext 436.

As your interest broadens, so will your information sources need to expand. Therefore a network of people dedicated to health and safety issues is now in place. The network is responsible for all aspects of safety training, information dissemination, National representation on various official bodies and committees, and most importantly listening to what our safety representatives want, and responding to their wishes.

We hope that you find this book useful. If you need advice remember we are only a phone call, fax, e-mail, or letter away. Keep in touch, together we can make workplaces safer.

Best wishes,

A handwritten signature in black ink, appearing to read 'Ken Jackson', written in a cursive style.

Sir Ken Jackson
General Secretary
AEEU

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CHAPTER ONE

Safety Representatives and Safety Committees

Employers who consult their employees over health and safety issues involve the whole of their organisation in a health and safety culture. In human and financial terms, this benefits everyone. In legal terms, this consultation is now compulsory.

The Safety Representatives and Safety Committees Regulations 1977 (SRSCR) gave trade unions the legal right to appoint workplace safety representatives. As a result, the AEEU now has more than 20,000 safety reps. In 1996, the Health and Safety (Consultation with Employees) Regulations (HSCER 1996) came into force. Domestic servants and the masters and crews of sea-going ships excepted, these regulations oblige employers to consult with all those employees not represented by union safety representatives.

Consequently, most employees in Britain today have the right to be consulted in good time, directly or indirectly through their representatives, regarding:

- (a) Any proposed new measures that may substantially affect their health and safety
- (b) The appointment of people competent to advise employers under the Management of Health and Safety at Work Regulations 1999
- (c) Required health and safety information

- (d) Health and safety training arrangements
 - (e) Health and safety consequences of introducing new technology
- Under the SRSCR 1977, which still apply in their entirety, union safety reps have a wide range of rights and functions. These include rights to:

Representation and consultation

- (a) Make representations on behalf of their members to the employer on any health, safety and welfare matter
- (b) Represent their members in consultations with HSE inspectors or other enforcing authorities and
- (c) Require their employer to set up a safety committee within three months of the request

Inspection

- (a) Inspect designated workplace areas at least every three months and
- (b) Make additional inspections if work practices change or new information arises

Investigation

- (a) Investigate potential hazards
- (b) Investigate complaints by members
- (c) Investigate the causes of accidents, dangerous occurrences and diseases

Assistance, information and training

- (a) Receive help and facilities from the employer to enable them to carry out inspections
- (b) Receive legal and technical information from inspectors
- (c) Receive information from the employer to enable them to carry out their functions and
- (d) Receive time off with pay to carry out their job as safety reps and to undergo TUC or union approved training

Facilities for safety reps

Every employer must provide any help and facilities reasonably required by safety reps to enable them to carry out their functions.

Although the law gives basic rights to safety reps, these are only put into practice through negotiation and agreement with employers. This is recognised by the Health and Safety Commission (HSC) Guidance on Safety Reps and Safety Committees. This states that employers and unions should make full and proper use of existing agreed industrial relations machinery to reach agreement on implementation of the SRSCR.

Good union organisation makes it possible to secure improvements that go beyond the minimum rights and entitlements in the SRSCR. But, when negotiations fail, health and safety inspectors could intervene:

- (a) When an employer has not accepted the appointment of a safety rep by a recognised trade union
- (b) When an employer has not provided information and facilities
- (c) In spite of requests by at least two safety reps, an employer has not taken steps to set up a safety committee.

Who appoints safety reps?

Independent trade unions recognised by employers have the right to appoint safety reps. Each union has to decide on their own arrangements for appointment. It is not a matter for employers. In most cases, safety reps are elected by the members they are to represent. The AEEU, of course, has to approve their election and must advise the employer in writing of their appointment. The employer must also be told in writing which group or groups of employees the appointed safety rep represents.

Who can be a safety rep?

In the AEEU, shop stewards can be appointed as safety reps. However, shop stewards or not, all safety reps should work closely with their trade union colleagues and ensure that they do not take decisions without the support of the members they represent.

The AEEU provides their appointed safety reps with credentials. Employers have no role in this, although they should always be informed of any changes.

Always notify your regional official if you have been elected/appointed as an AEEU health and safety representative.

How many safety reps are necessary?

SRSCR do not lay down the numbers of safety reps to be appointed. Unions and employers should negotiate this in the light of local needs and circumstances. The Health and Safety Executive (HSE) view is that each safety rep should ideally be responsible for a clearly defined group of workers.

The size of these groups will vary from union to union and from workplace to workplace. Numbers of employees, variety of occupations, shift systems, the type of work activity and the degree and character of workplace hazards are all factors that will determine how many safety reps are necessary. Unions usually relate their arrangements for appointing safety reps to their arrangements for dealing with other industrial relations matters.

When there is more than one union involved

Sometimes, for health and safety purposes, unions favour joint representation. The guidance on SRSCR specifically allows for this, stating that the regulations do not preclude the possibility of a safety rep representing, by mutual agreement between the appropriate unions, more than one group or groups of employees (e.g. in a small workplace or within the organisation of a small employer when the number of recognised trade unions is high relative to the total number employed).

Replacement of safety reps

Employees cease to be safety reps when the AEEU notifies their employer in writing that their appointment has been terminated. The appointment of a safety representative is also terminated if the employer dismisses them or transfers them from the workplace or workplaces covered by SRSCR.

The role of a safety rep

Safety reps are health and safety problem solvers taking up any matters that relate to health and safety on behalf of employees with the employer. They have the right to the following:

- (a) To investigate potential hazards and dangerous occurrences at the workplace (whether or not they are drawn to her/his attention by the employees s/he represents) and to examine the causes of accidents at the workplace
- (b) To investigate complaints by an employee s/he represents relating to the employees health, safety or welfare at work
- (c) To make representations to the employer on matters arising out of the sub-paragraphs above
- (d) To make representations to the employer on general matters affecting health, safety or welfare at work of the employees at the workplace
- (e) To carry out inspections
- (f) To represent the employees s/he was appointed to represent in consultations at the workplace with inspectors of the HSE or any other enforcing authority;
- (g) To receive information from inspectors in accordance with section 28(8) of the Health and Safety at Work Act (HASAWA)
- (h) To attend meetings of safety committees where s/he attends in her/his capacity as a safety rep in connection with any of the above functions; but without prejudice to sections 7 and 8 of HASAWA, no function given to a Safety Rep by this paragraph shall be construed as imposing any duty on her/him

Safety reps do not merely react to problems. They also have broad powers to monitor health and safety in their workplace, keep members health

and safety interests under review and discuss all matters arising with their employer. But although the employer must listen to and consult the safety rep, there is no legal means to insist that an employer acts upon the safety reps advice.

Inspections

A major part of the safety reps job is carrying out inspections. These inspections are in two main areas:

- Carry out inspections of the workplace at least once a quarter
- Inspect any documents the employer is legally required to keep on matters of health, safety and welfare at work

Arrangements for three-monthly and other more frequent inspections will need to be agreed with employers. These matters are often best dealt with at the workplace level. Issues to be discussed include:

- (a) The need for more frequent inspections of high risk or rapidly changing areas of work activity
- (b) Notice and timing of formal inspections by safety reps and how many safety reps will be involved
- (c) The possibility of breaking up plant-wide formal inspections into smaller, more manageable inspections
- (d) The need for different groups of safety reps to carry out inspections of different parts of the workplace
- (e) The type of inspection to be carried out, such as safety tours, sampling or surveys (including consulting employees)
- (f) The enlistment by safety reps of independent technical advisers

Formal inspections are no substitute for daily observation. However, they provide a useful opportunity to carry out a full-scale examination of all or part of the workplace, including the inspection of documents required by health and safety legislation such as certificates concerning the testing of equipment. During these inspections, safety reps can network with other safety reps and discuss remedial action with their employers.

During inspections following notifiable accidents or dangerous occurrences, employers are not legally obliged to be present, while safety reps consult their members. There may of course be occasions when safety reps do not wish employers to be present. However, the regulations do not preclude them or their representatives from being present. (Regulation 6 (2)).

Though considerable care needs to be taken during collection, safety reps should also be permitted to take samples of any substance used at work for independent analysis outside the workplace.

Following an inspection, safety reps should complete an inspection report, recording the date, time and details of an inspection. One copy of the completed form should be sent to the employer and one copy should be retained by the safety rep for their own records and for reference during safety committee discussions.

Risk assessments

Safety reps should not confuse workplace inspections with risk assessments. Inspections only seek to identify hazards and problems. Risk assessments are more wide ranging and identify hazards, evaluate the risks, record the findings, recommend precautions and review progress.

Management is legally responsible for carrying out risk assessments, but the AEEU encourages safety reps to participate in all stages of risk assessments to ensure that procedures and improvements are working effectively.

Investigations

Under the SRSCR, safety reps are also allowed to investigate:

- (a) Potential hazards
- (b) Dangerous occurrences
- (c) Causes of accidents and occupational ill-health
- (d) Complaints from their members.

Safety reps could therefore, immediately, and without formal notice of an inspection, investigate imminent risks.

Following the investigation of a serious mishap, the safety rep should also complete a hazard report form, retain one copy and send the other to the employer. The employer should complete and return to the safety rep the part of the form that describes any proposed remedial action or offers an explanation. The safety committee should refer to this during their discussions of the incident.

Inspection and report forms can be drafted to an agreed format to meet local needs.

Making representations

Once safety reps have investigated unsafe conditions or hazards to health in their workplace, the SRSCR gives them the right to make representations as follows:

- (a) To the employer about potential hazards or about members complaints
- (b) To the employer on behalf of all employees as regards general health, safety or welfare matters at work
- (c) To bring to the notice of the employer their findings and complaints after inspections
- (d) To represent members in workplace consultations with HSE inspectors

Receiving information

Under the SRSCR, safety reps are entitled to receive full information from their employers to enable them to carry out their functions. However, their employers can refuse information if giving it:

- (a) Endangers national security
- (b) Breaks the law
- (c) Breaks confidentiality without permission from the individual concerned
- (d) Harms the business (excepting its impact on health and safety)
- (e) Is in connection with legal proceedings

Under Section 28 (8) of HASAWA, HSE inspectors and local authority environmental health officers have a duty to disclose specific kinds of information to employees or their representatives concerning their health or safety or welfare at work. This information includes any measurement

testing, the results of sampling or monitoring and any action that the inspector takes or proposes to take; for example, prosecutions, the issue of Improvement or Prohibition Notices or warning letters to employers.

Safety reps should ensure that they are informed by the employer when an HSE inspector or an Environmental Health Officer (EHO) is expected to visit the premises. When the HSE inspector or the EHO are actually in the workplace, safety reps should ensure that they are given the opportunity to speak privately with the inspectors.

Absence of legal liability

Under SRSCR, safety reps are given a number of legal functions, which their employers should allow them to carry out. However, Regulation 4 also states that they can not be legally penalised if they do not, or only partly, carry them out.

As safety reps are not legally responsible for health, safety or welfare at work under these regulations they cannot be liable in either criminal or civil law for anything they may do, or fail to do.

This protection does not absolve safety reps from their general responsibility as an employee, but it does ensure that their responsibility has not increased because of their appointment.

Protection for safety reps and employees

The Employment Rights Act 1996 (Section 44 and 100) strengthens the position of safety reps and employees. Safety reps are protected from

detriment or dismissal for carrying out their designated functions. They and other employees are also protected:

- (a) If they leave, or propose, to leave the workplace in circumstances of serious and imminent danger
- (b) If they take or propose to take action against serious and imminent danger

This section of the Act adds Sections 22A and 57A to the Employment Protection (Consolidation) Act 1978. Protection is available regardless of length of service, hours of work or age. The rights are enforceable through industrial tribunals.

Facilities for safety reps

During formal inspections, employers are required to furnish reasonable facilities and assist safety reps. These are not specified in the SRSCR, the ACoP or Guidance.

The AEEU believes the following facilities, recommended by the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice on Time Off for Trade Union Duties and Activities, should be made available:

- (a) Accommodation – e.g. use of suitable room for reporting back to and consulting with members
- (b) Equipment – e.g. a room and desk at the workplace, facilities for storing correspondence, access to internal and external telephones, typing and duplicating facilities, provision of noticeboards)
- (c) The names of new workers – other facilities should include the provision of copies of all relevant Acts, Regulations, ACoPs and Guidance and copies of all legal or technical standards that are

relevant to the workplace, information on plant, equipment and substances used in the workplace.

Most of this information is available over the internet and all legislation since 1996 is freely available from open government sites. You should have access to this source of information.

These facilities should be the subject of negotiation.

The right to paid time off work

Under the SRSCR, all safety reps have the right to paid time off work in order to:

- (a) Carry out their safety functions
- (b) Undergo union training courses for safety reps in accordance with the ACoP

The SRSCR do not give safety reps the right to demand a specified period off work. This has to be negotiated with employers, but the ACoP is designed to assist safety reps in these negotiations.

Safety reps should also note that employers under HASAWA have the duty to train all employees in basic job safety. The regulations affected by European Directives emphasise the importance of this. Safety reps should be allowed to attend in-company training so they can understand workplace hazards met by those they represent.

If your employer appears unwilling to allow you this right, contact your AEEU Regional Official immediately.

Details of the code on time off

As soon as possible after their appointment, safety reps should be allowed paid time off work to attend basic training approved by the AEEU. Further training should be undertaken when the need arises. This may involve refresher courses or further training on specific hazards such as noise, chemicals or new technology.

The amount of time required for training cannot be rigidly prescribed. But basic training should teach new safety reps about their functions under the SRSCR, helping them understand their role and that of safety committees. It should also instruct them about trade union policies and practices regarding:

- (a) Legal requirements relating to health and safety at work, with particular reference to the groups whom they represent
- (b) Nature and extent of workplace hazards, and measures available to eliminate or minimise them
- (c) The health and safety policy of their employer and the arrangements for fulfilling that policy

Safety committees

When at least two safety representatives have put their request for a safety committee in writing, an employer must set one up within three months.

During this process, the employer must consult the safety reps that made the request and the representatives of recognised trade unions whose members work in any workplace to be covered by the committee. A notice must be prominently displayed, stating the composition of the committee and the work areas that it will cover.

The Guidance to the SRSCR states that the size, shape and terms of reference of a safety committee must depend on discussion and agreement between employers and unions. It recommends:

- (a) Committees be compact
- (b) There should be 50/50 management and union representation
- (c) Safety advisers, doctors and other health and safety professionals should be ex-officio members
- (d) Safety committees could also provide a link with the enforcing authorities

Agendas for safety committee meetings could usefully include:

- (a) Studying accident and ill health trends
- (b) Examining safety inspection reports
- (c) Considering information from inspectors, unions, employer and industry bodies
- (d) Discussing reports from safety reps
- (e) Developing safe systems of work
- (f) Examining the health and safety implications of new plant, equipment and processes
- (g) Reviewing the health and safety content of employee training
- (h) Monitoring the effectiveness of the employer's health and safety services
- (i) Reviewing risk assessments
- (j) Reviewing the operation of the employers health and safety policy and making an annual assessment of health and safety performance, problems and future priorities

- (k) Reviewing the effectiveness of health and safety information and publicity materials

Making decisions

The measure of a good safety committee is whether or not it can secure change. If it is only talking shop, or never takes any decisions, or the same items appear again and again on this agenda, safety reps should take action to put this right by, for example:

- (a) Making sure meeting dates are agreed in advance and only postponed by joint agreement
- (b) Making sure that a senior person with managerial health and safety responsibility is committed to being present. (This person should be named in the employers health and safety policy. The AEEU would suggest a Board member or Director)
- (c) Seeing that the right items are regularly on the agenda
- (d) Making sure that named people are given the responsibility for actions and are committed to a completion date
- (e) Making sure the minutes are issued promptly, are well displayed and reflect fairly discussions, decisions and agreed timetables for action.

One of the most frustrating experiences for a safety rep is to be part of a weak or poorly-organised safety committee. Safety reps should make sure that safety committees have the power to improve health and safety at the workplace. Committees should not be used as a means for employers to avoid taking action.

