

Improving Worker involvement- Improving health and safety

Response to the consultation document

Part 1: Your Details

Name of organisation Universities and Colleges Union (UCU)
UCU was formed in June 2006 by the merger of the Association of University Teachers (AUT) and the National Association of Teachers in Further and Higher Education (NATFHE).

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Status: Trade union representing 114,000 lecturers in Further & Higher Education

You may contact us if you have a query

Q1 Have we got the right:	Legislation	No
	Guidance	No
	Encouragement	No

Q2 (a) Have we got the balance between these three right?

No

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

The introduction of a statutory framework of functions for safety representatives and duties on employers in the SRSCR was to ensure trade union safety representatives would be able to act on behalf of, and adequately represent their members under the 1974 HASAWA. It must have been clear then to the legislature that a voluntary system of safety reps would not work – so parliament needed to ensure that employers could not obstruct or subvert the operation of safety reps in the workplace.

UCU believes that the Safety Representatives and Safety Committee Regulations (SRSCR) have in the past served trade unions reasonably well in establishing a framework of duties on employers that allows safety representatives to operate, and providing a statutory foundation of rights and functions for trade union safety representatives on which to build.

As a representative organisation present in all FE and HE institutions in England and Wales, UCU's experience is that, despite the provisions of the SRSCR, in many of those institutions it remains difficult for our representatives to undertake their functions – in part due to lack of provision of facilities and assistance, a failure to involve our Branches in proper consultation and sometimes employer-imposed restrictions and limitations. It is our belief that, unfortunately, a significant number of employers refuse to respect and encourage the contribution our representatives make, and try to circumvent their duties. There is a need for more effective regulation within the framework of the existing legislation. Guidance and encouragement should be there to support and reinforce the regulatory and enforcement framework.

There are a number of areas where the Regulations are weak and often open both to mis-interpretation by employers, and sometimes to deliberate distortion, in both cases to limit what our safety representatives can achieve. One example would be in respect of the operation of safety committees – the SRSCR only deals with their establishment, how they operate being left to guidance. Sometimes distortion has been consolidated into other documents intended to encourage, for example, the Safety Representatives Charter published by the former tri-partite body HIFEAC. HIFEAC recognised there were problems relating to the formal recognition and restrictions in the practical operation of safety representatives in FE and HE institutions, so the Charter was written with the intention to encourage individual institutions to see safety representatives in a more positive light, and to encourage compliance with the SRSCR duties and safety rep rights and functions.

In Paragraph 35 of the Charter the word 'reasonable' is introduced into what in the Regulations is an unqualified duty to allow safety representatives "such time off with pay during working hours as shall be necessary (to enable them to perform their functions)" (SRSCR Reg 4(1)). The same qualification occurs in Paragraph 39 on the duty of employers to provide facilities and assistance to safety representatives. Given that the Charter has the status of an HSE document, this is a serious distortion.

Despite the good intentions underlying the Charter, in our experience it has not had any major beneficial impact. This is an example where encouragement has in our view undermined the statutory duty, yet even with this introduced weakness, it hasn't worked.

The most significant weakness in the SRSCR is the lack of any regulatory procedures to deal with breaches of duty by employers other than on questions of time-off and pay. Thus UCU suggests that HSE should seriously consider including a fourth pillar to the strategy to give it added stability. This fourth pillar would be effective regulation and enforcement.

UCU therefore believes that the regulatory framework itself needs to be strengthened, and effective provision made to enforce the Regulations. We fail to understand how, when dealing with this particular bit of statutory regulation, enforcement is downplayed. In any other area of statutory regulation, enforcement is a key priority in ensuring that the law is observed. We know there are a range of methods that enforcement officials can use to regulate more effectively, ranging from pointing-out to an employer the statutory standard in the Regulations, to adopting one of the formal enforcement procedures set out in the Act. We are aware that there are enforcers who do act to ensure employer compliance with their duty, within both HSE and local authorities.

UCU recognises the value of having sound guidance to lead both employers and trade union representatives in the right direction, but we would prefer all such guidance to be within an Approved Code of Practice, with its quasi-legal status, rather than the more easily-dismissed Guidance. We also see the guidance given as too general and bland; the SRSCR are about the rights and functions of trade union safety representatives and corresponding duties on employers to enable them to operate effectively, so there is no reason why any ACoP or other guidance cannot be strongly skewed in that direction – i.e. to support safety reps more positively, and to emphasise how employers can achieve compliance with their duty, thus it should also emphasise those employer duties more strongly.

We are concerned that the Government's over-riding concern with "reducing the regulatory burden" is being inappropriately applied to health and safety. We don't see the prevention of harm to people as imposing a burden on employers; in fact we see this as the avoidance of burdens being placed on potential victims, their families and society in general

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

Not much at this stage apart from a very small number of employers seeking to replace formal recognition-based consultation with alternative arrangements. These attempts have largely failed.

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

UCU believes that the existing structures for consultation, negotiation and co-operation provided for in the SRSCR provide a by now well-tried and understandable framework in many respects but do need some improvement and additions, including the additional support of a strong regulatory regime. We see no role for ICER. This seems to us that ICER does represent a bureaucratic imposition compared to the relatively relaxed and familiar standards in the SRSCR.

Q4 (a) Do you think the existing guidance should be improved?

Yes.

Q4 (b) If so, in what way?

Two examples of the weakness of the guidance/encouragement approach from our experience:

a. Underlying the guidance is the implicit assumption that employers will behave reasonably in respect of trade union involvement in health, safety and welfare matters, respect safety reps approaches and work co-operatively with them. Our view is that a significant number of employers in the sectors in which our members work will only do the statutory minimum at best.

In too many institutions, our members report that the local management repeatedly and consistently challenge our safety reps rights to act; they obstruct their functions; question their knowledge and experience; fail to work through procedures which facilitate the discussion and resolution of problems. Many pay lip-service to health & safety issues and fail to manage it effectively by including it as an integral element in the organisation and delivery of the service. Rather they see it as an “add-on” that has a disproportionate marginal cost, and is thus a target for cost saving and cutting to the minimum, always at the expense of increasing the hazards and risks faced by our members. In this light, they also see UCU safety reps as being an additional cost that is not in the budget, and consequently behave in the ways instanced above.

b. Another problem commonly experienced by UCU safety representatives concerns the employer’s duty to consult under Regulation 4A (1) of the SRSC. Guidance Note 13 explains in words almost of one syllable what an employer should do to meet the duty to consult and ensure real consultation takes place. UCU safety reps regularly report that, when employers say they are consulting, they often do no more than inform our reps about decisions that have already been taken. Worse, it is also often the case that the first our representatives know about a significant change is when it happens, employers failing to even give notice that a decision has been taken.

One particularly common problem that has developed over the past two - three years in the FE sector concerns risk assessments. Our members are now being instructed to do basic risk assessments in areas like workshops and off-site premises, and in workplaces where student work experience placements are organised. This is a significant change in their job, and many of our members do not have the necessary experience or knowledge to do this, neither does the employer provide training or other assistance. Despite the statutory duty on the employer to consult in good time on matters that have a significant impact on workers, and the supporting guidance that they should allow time for the union to consider the proposals, listen to any responses and take them into account before making decisions, this is mostly ignored.

The guidance does not reflect the changing world of work since the SRSCR were introduced, particularly the developments in atypical working. Neither does it reflect the changes in technology effectively. And increasingly there are a number of HR techniques that also potentially restrict a safety reps ability to undertake their functions; for example, the need to achieve performance targets, or in our sector particularly, the balance between classroom or lecture based teaching time and other associated duties.

Employers need to recognise the central role of safety reps in managing health & safety in the workplace, and make the necessary allowances for such activity in target and goal setting, in performance reviews and appraisal systems, and in setting budgets. In particular further and higher education have extraordinarily higher numbers of casually employed staff whose integration into health and safety is flimsy at best. 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 or Guidance, in itself, will not improve the ability of safety representatives to perform the functions unless it is combined with better regulation and effective enforcement.

There should be preferably ACoP paragraphs, or guidance about the duty on employers to provide the facilities and assistance that reps reasonably require. There is guidance on appropriate facilities for union representatives published by ACAS (albeit quite limited), but nothing for safety reps. We would argue that safety reps need some additional facilities over and above other union reps – for example, given the increasing propensity of HSE to base general H&S information and specifically the workers pages on the internet sites, guidance aimed at employers to include computer access as a facility would be useful.

We also want to suggest that, in order to help employers to perceive the SRSCR in their correct light, the format of the document itself should be changed to match the appearance of other Regulations, ACoP and Guidance booklets published by HSE. This might seem a minor point, but we believe that employers don't necessarily see the SRSCR as something that places duties on them, rather as something specifically for safety reps that they, the employer, can ignore.

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

UCU safety representatives make use of those parts of the guidance notes relevant to the employers duties, to help them be clear about what the employer should be doing, and to help them build arguments to put to employers when they (the employers) are in breach of their duties under the SRSCR. Our experience is that many employers, when we raise matters covered by guidance with them, tell us that this is only guidance and imposes no statutory duty on them. On matters where guidance, ACoP or even Regulations are open to interpretation, UCU representatives regularly report that employers are reluctant to even consider representations.

UCU safety reps also use guidance that supports their rights and functions as a basis for developing positive consultation and negotiation arguments where appropriate, rather than just criticisms of employer failures.

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?

Yes.

Q5 (b) If so, what form should such an initiative take?

UCU agrees there is a need for some sort of fund to both develop and support worker involvement. Such funds should enable employers and workers to develop appropriate and lasting models of worker involvement, aimed at improving the health & safety culture in the workplace. It should be based on and promote the union organisational model. There should be more funding; it should also be available for periods longer than one year, and should be more widely available to support trade union-based initiatives, even in workplaces where unions are already organised but having problems with employers.

We don't believe this should be a free advice service for small businesses – we have problems in large organisations in our sectors with worker involvement that need to be tackled.

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

The voluntary approach has never been effective in isolation. Standards of best practice would only be useful if they are designed to reinforce effective regulation and enforcement. Voluntary standards are not a substitute for regulation. Our experience is that, while we have a good relationship with the employers body on the Higher Education Safety & Health forum, (which sets a standard) this is not easily replicated at institutional level.

Q6 (b) Would you use such a tool in your own workplace?

We would commend anything to our members and representatives that we believed would help them overcome the problems of lack of recognition and respect, poor co-operation and managerial indifference and obstruction.

Q7 (a) What sorts of incentive to encourage more worker participation have been successful in your experience?

Not many. We are concerned that in many institutions where we have members, the employers and management do not take a positive attitude and approach to the UCU and its organisation for health & safety. It has been the case that, where there have been significant or serious incidents, then our members have demanded better standards from the employer, and members have been willing to come forward to act as representatives.

The Safety Representatives Charter was supposed to provide encouragement to employers to take a positive approach to union safety representatives, but again, the evidence for any success is flimsy.

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

The biggest assistance would be to ensure employers understand and meet the statutory duties set out in the SRSC regulations. While many regulatory officers do, by various means act to encourage and promote safety representatives rights and functions and ensure employers meet their duties, there are those who don't. Rather, they make references to internal procedures and ACAS to resolve problems. ACAS has no powers to resolve disputes, only to bring parties together, but given that they have been together to disagree, this is all a bit pointless. We believe that HSE and other enforcers do have powers to ensure safety representative involvement when they choose to use them. Where they don't there is no incentive on employers who deliberately reject the positive advantages of consultation to comply.

UCU believes that the HSE and its (and local government) Inspectors should be much more pro-active in promoting the trade union model – even to the extent of recommending that workers in non-organised workplaces consider contacting a trade union and looking at the benefits this will bring. When visiting any workplaces, all inspectors should ask an employer how they consult, and ask for documentary evidence, as a matter of course. This is no less a duty on the employer than, for example, the requirement to have a safety policy or Employers Liability (Compulsory) Insurance. HSE should ensure that all visits by inspectors should include a meeting with safety representatives as a matter of course.

In the HE sector where the HSE took the lead in setting up a joint forum between unions and employers, our experience is that this has made an impact on our involvement nationally, and we have made some positive and significant contribution to the development of policy and guidance. We are currently in the process of establishing a similar body in the FE sector, and hope that this will also prove to be positive.

We believe there needs to be much greater promotion of worker involvement in all HSE materials and resources, Given the volume and high cost of HSE and other publications, we understand that the HSE has made a decision in principle to make all their publications available free of charge on a website in the future, and this is very welcome.

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?

Yes – with qualification

Q8 (b) Are our proposals practical?

Yes. UCU welcomes this proposal. While the duty to undertake risk assessments is on the employer, it is our view that risk assessments can only be of practical use if safety representatives are involved. Our involvement should be to ensure that the workers whose jobs are being assessed for risks are themselves involved through suitable questioning and interrogative techniques by the assessor, that the safety reps for those workers are also questioned and given the opportunity to make contributions, and that all relevant factors are taken into account. Draft assessments should be made available to safety reps for a critical evaluation and to allow them to suggest amendments, additions etc.

Our experience is that employers in many institutions in our sectors resist trade union involvement in the risk assessment process because it is not an explicitly stated duty. An amendment to Regulations that does this will help our safety representatives in colleges and other institutions, so prescribing a duty to involve safety reps in the process would be a simple fix. We note that it has been possible to include specific duties on employers in the 2005 Noise Regulations, requiring the employer to consult with workers or representatives about noise surveys, noise control methods and the selection of PPE. We think this is a good model for a regulatory approach.

We are concerned that the proposal contains the phrase “significant assessments” and CD207 suggests that what is significant should be decided by agreement; these questions of interpretation and agreement are an area that has been problematic in the sector. Also, the suggestion that risk assessments that only affect an individual should only involve the safety representative if the employee consents gives the wrong impression. It is, the work activity which is being assessed not just the individual worker. UCU believes that safety representatives should be involved in all risk assessments.

Q9 What other measures do we need to take to make sure this does not become bureaucratic or simply a paper exercise?

A duty already exists on employers to record the main points of a risk assessment, and to inform the workers concerned of these and the measures taken to control the risks identified by the assessment. There is no reason to believe that involving the safety representative in this process should be any greater burden than any other part of the risk assessment process. Risk assessment is the foundation on which safe systems of work are built, and an enthusiastic and positive approach to it should help to engender a positive and dynamic health and safety culture. Imposing a specific duty on employers to consult with safety representatives should not be seen as being an administrative burden.

Instead it should be viewed as a positive step towards making the process more effective. Active UCU safety representatives will ensure this process is based in reality and has an impact on the conditions in the workplace and on members health, safety & welfare.

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

Yes, absolutely.

This is a good example of the weakness of the voluntary approach relying on encouragement and/or guidance, particularly where the employers are concerned. Paragraph 24 of the Guidance to the SRSCR clearly recommends that employers respond in writing to safety reps reports explaining reasons why no action may be taken, or the action taken is delayed. The example form for a safety rep report in the SRSCR booklet (p. 30) – itself part of the guidance notes, - carries a column heading “This column to be completed by the employer” and to detail “Remedial action taken (with date) or explanation if not taken.” UCU safety representatives invariably follow the recommendation contained in ACoP paragraph 5(c) about bringing matters to the employer’s attention normally in writing; our experience is that employers and managers are less assiduous in following HSE guidance. There is no doubt that it is a serious omission that the current regulations state that safety representatives have the right to make any representations on health, safety and welfare to their employers but there is no legal duty on the employer to respond. Clearly this is contrary to the intention and spirit of the regulations and needs to be corrected.

It is again our experience that many UCU safety representatives put matters they wish to draw to management’s attention in writing, and frequently fail to get a reply, or experience long delays and procrastination.

Q10 (b) Do you consider that written representations and responses would be necessary?

Yes

Q10 (c) What sort of systems do you think would work?

Under employment legislation, employers are required to have grievance and disputes procedures in place, many of which have simple forms that are completed at the end of each stage to record either the decisions taken, confirm resolution of a problem or move progress to the next stage. Most if not all such procedures already contain suitable time limits. We see no reason why matters related to health, safety and welfare should not be handled through normal dispute procedures. Final stages of such procedures could be linked to a PIN’s system, as a way of bringing resolution to an issue via a link to the formal enforcement procedures.

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

Employers can respond almost immediately when many issues are first raised, but practically will need sufficient time to make a more considered response, and perhaps to consult with the safety reps or more senior managers before making any proposals. They also need to ensure the allocation of resources is adequate to deal expediently with the matters raised. As with formal grievance procedures, time limits should be set into the Regulations or an ACoP – say 1 days to acknowledge receipt, 3-5 days to arrange a consultation meeting; a further 7 days to discuss and decide appropriate action, with a maximum of 28 days where the resolution to the problem might necessitate substantial capital investment in equipment, building work, staff recruitment, major workplace re-organisation etc.

In those more complex cases where the employer needs an extension to the maximum period, the Regulation should include a duty on the employer to agree this with the safety rep(s) who raised the issue.

Q12 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?

UCU believes the ideal model is trade union safety representatives supported by the union and with full rights. Representatives of employee's safety have fewer statutory functions, no organisational framework, and do not have access to independent advice and support. However, there is no reason why the proposed duties should not be extended to include representatives of employee safety where they exist.

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

Safety representatives have always taken-up work-related health issues and problems, and this element of a safety reps work has increased as the research and knowledge base of harm that substance exposure, work processes and employer/management behaviour have on workers has expanded. The proposed change in title will be welcomed by many of our health and safety representatives, but will be a formality.

Q14 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?

UCU membership is concentrated in larger workplaces, where our representatives represent non-union members amongst the academic and related staff for the purposes of consultation under the 1996 Health & Safety (Consultation with Employees) Regulations. We would support the contention that the HSE should be encouraging trade union membership and representation within such organisations 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?

UCU would argue that these proposed additions already exist in the Regulations, if they are correctly interpreted. As proposals to clarify the current regulations they should not present any additional burden. Good employers should involve and consult their workers, and that involvement is what improves health & safety standards and prevents injury. The fact that the HSE deems it necessary to conduct this consultation exercise indicates that they themselves believe the Regulations need strengthening and clarifying. As we have already said above, we see this as helping to prevent the burden of injury, ill-health and death being imposed on victims, their families and society in general.

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?

We interpret your question to mean an option which improves worker involvement leading to an improvement in HS&W performance, measured by consequent reductions in work-related injury and ill-health.

UCU believes that, although the SRSC are basically sound, and potentially very powerful, there is a need for significant changes, to emphasise and clarify safety representatives' functions and rights, and a corresponding clarification of the employers duty to deal with safety reps.

We do not believe that there is one single option that would make the significant changes we think are necessary. We do believe that the promotion and adoption of the trade-union safety representative inspection and representation model has proved itself to be highly effective, and progress has been made even with the worst employers and those most reluctant to co-operate.

UCU would like to see a statutory duty on employers to recognise trade union safety representatives in every workplace, regardless of the absence of general trade union recognition. To achieve this would require additional statutory changes, such as a clear position on roving safety representatives appointed by trade unions, with rights of access to and inspection of premises; safety representatives with the right to stop the job where there were clear risks both to the safety, and particularly the health of workers, and these rights supported by a Provisional Improvement Notice system that would lead to more effective regulation by the enforcing agency.

Whilst all these options are important in themselves, they should supplement, not replace the regulatory and enforcement functions exercised by the agencies of the state, and that the exercise of these state functions needs to be improved. HSE needs to act positively to empower safety representatives and their organisation within workplaces and take whatever action is necessary to overcome the resistance of employers who deliberately and consistently fail to observe duties under SRSCR.

Q17 The 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?

If the assumption underlying the regulatory impact is that there will be absolute compliance with the revised regulations this must be incorrect. The existing regulations are certainly not complied with universally and there is no reason to believe that, even with a stronger enforcement regime, the proposed changes will lead to any significant improvement. In terms of costs, where employers already have systems in place, the cost implications of some additional part should be minimal.

We think 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?

Not applicable

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

UCU believes that this document is relatively timid in its approach. We say that the explicit inclusion of a statutory right to a response, and to be involved in risk assessments helps to clarify what we, and many others would argue already exists if correct interpretation of the existing Regulations is made. We regret the HSE wasn't able to include, (as you did in 1999) some discussion of other, more radical proposals for improving safety reps functions and impact such as Provisional Improvement Notice's, stop-the-job rights, and roving safety reps. Neither have you grasped the nettle of the enforcement agencies role in improving workplace safety, health & welfare.

We are aware of the view that was stated during one of the CD207 consultation meetings held in Manchester, that HSE can only recommend legislation where there is agreement between all parties concerned, but we don't understand the logic that says "We have evidence that safety reps mean safer workplaces, but we cannot take the necessary steps to improve and clarify safety reps rights and functions because the employers won't agree to it".

Q20 Is there anything you particularly liked or disliked about this consultation exercise?

The response required to some of the questions were merely tick boxes, and did not give the opportunity for reasons or justification for the answer to be given on the form. UCU believes that it is important to make appropriate arguments and points in support of our responses; so in these cases we have included arguments and justifications above.

We also think this is a considerable time-consuming exercise for relatively minor clarifications.