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1. Employer duties under the SRSC Regulations

As many of you already know, the 1977 Safety Representatives & Safety Committees Regulations (SRSCR) are the most powerful piece of industrial relations legislation we have ever had (or are ever likely to have) in the UK. They provide for the appointment of safety representatives by trade unions, and then give those representatives an extensive range of statutory functions, and impose a consequential set of duties on employers to facilitate safety reps ability to exercise those functions. These duties are absolute, not qualified; that means the employer has no choice but to observe them.

The SRSCR came about because parliament knew that many employers would be reluctant to involve workers and their representative organisations to the extent necessary to meet the requirements of H&S legislation, according to the principles set-out by Lord Robens in his 1972 report. The extension of formal duties in relation to health, safety and welfare (HS&W) into all employment sectors would bring in

many employers would had little or no experience of talking to and involving unions in HS&W matters; universities and local authorities were two of the many "new entrants" under the 1974 Health & Safety at Work Act. New entrant employers have now had over 36 years to get used to these duties, but UCU health & safety advice is regularly told of cases where an employer fails to observe them; this is what they are required to do:

a) **Permit safety reps time-off to undertake their functions**

Regulation 4(2) places an absolute duty on the employer to permit safety reps to take such time off with pay during working hours as shall be necessary for them to undertake their statutory functions, and to undergo training approved by their union. This duty is unqualified by 'reasonable', consequently is much stronger than time-off provisions for other union representatives, branch officers etc. It should **not** be undermined by an agreement that places limits on time-off for safety reps, or takes facility time away from other reps. Safety rep time-off is required by statute – it is

“statutory time” required by regulation, not facility time. Complaint can be made to an Employment Tribunal if the employer refuses time-off for either functions or training.

b) Provide facilities and assistance to reps

Regulation 4A(2) places an absolute duty on every employer as follows:

‘...every employer **shall** provide such facilities and assistance as safety representatives may reasonably require for the purpose of carrying out their functions under Section 2(4) of the 1974 Act and under these Regulations.’ Regulations 5(3) and 6(3) also impose the same duty on the employer specifically in relation to workplace inspections and the investigation of incidents and injuries.

What does ‘reasonably require’ mean in this case?

‘Reasonably require’ qualifies the representative’s needs, NOT what the employer has to provide. So to be reasonable, the assistance and facilities required must be related to health, safety and welfare matters that safety reps need to enable them to function effectively in the workplace. That should extend to the provision of, for example, a copy of the TUC Hazards at Work manual or other information publications – essential information sources for safety reps; or requesting the employer to get specialist assistance where there is a need to find-out more about a health-related matter – for example an ergonomist where there are concerns about musculo-skeletal injuries.

c) To consult with safety reps

Regulation 4A(1)(a-e) places a duty on the employer to consult, in good time on a range of matters:

- Introduction of any measures that may substantially affect H&S
- Appointing competent persons under the Management Regulations to assist the employer to achieve the duties imposed on them by H&S statute
- The provision of information to workers
- Planning and organisation of H&S training
- H&S consequences of the introduction of any new technology.

Accompanying guidance to the Regulation spells out in more detail what the employer should do. This says the employer should tell the union what they are thinking about doing, give them time to consider it, and take their response into account before making the final decision. UCU local organisations should negotiate an agreement to improve these limited areas. For instance, training consideration should extend to the need for training of those promoted to managerial or supervisory positions – all too often training needs are limited to those at the lower end of a hierarchy.

d) To provide access to and copies of documents, when requested

Regulation 7(1) requires the employer to give a safety rep access to, and on request, a copy of any H&S document they are required by law to keep. This includes the recorded main points of a risk assessment; a copy of the RIDDOR report form following an injury or

dangerous occurrence; entries from the accident book; the asbestos management plan; COSHH assessments are examples.

e) Make available information about H&S within their knowledge

Regulation 7(2) requires the employer to make available any information they have related to H&S that would enable the reps to undertake their function. The Regulation does not say the reps have to request it - the employer should automatically give it to the safety reps.

In the preface to the Regulations, HSE says *"...the purpose of the Safety Representatives and Safety Committees Regulations and Codes of Practice is to provide a legal framework for employers and trade unions to reach agreement on arrangements for health and safety representatives and health and safety committees to operate in their workplace.* However, it goes on to say that employers and unions can make alternative arrangement, but where these detract from the obligations on employers, then:

"Recognised trade unions can at any time invoke the rights given by the Safety Representatives and Safety Committees Regulations and the obligations on the employer would then apply."

http://www.ucu.org.uk/media/pdf/6/l/brownbook_UCU_logo.pdf for the HSE copyright-released version for the TUC to use for training purposes, or <http://www.hse.gov.uk/pubns/books/l146.htm> for the HSE publication – but be aware that this also contains the Health & Safety (Consultation with employees) Regulations 1996, the Regulations that

apply to workplaces that don't recognise trade unions.

2. Bullying and harassment: more evidence

A new Family Lives survey

<http://www.familylives.org.uk/about/press/family-lives-extended-news-release-bullying-in-the-workplace/>

reveals just how deep an issue bullying is for many workers and how it is imperative that employers eradicate the problem. The respondents, 70% female and 30% male, reported that two-thirds of workers had witnessed bullying at work. More specifically, 43% of workers felt bullied by their line manager, 38% by a colleague and 20% by senior management or even the chief executive. In more than one in three cases, the offending behaviour was prolonged for more than a year.

Bullying can range from spreading malicious rumours or gossip to giving someone unachievable or meaningless tasks. In most situations (73%) the bullying was verbal – including threats – and 60% of staff also saw it manifest in social cases; through being excluded, ignored and isolated by assailants. See our checklist "Robust management style, or bullying" here <http://www.ucu.org.uk/workloadcampaign/resources> for more examples.

The effects of bullying in the workplace are obvious. Victims experience a substantial decline in self-esteem, work ethic, confidence and the satisfaction inherent in their job. At the most extreme, some people take their own lives. Three-quarters of respondents said that workplace bullying affected

their personal and family life and close relationships. Just under half were forced to obtain medical advice or counselling because of the bullying they experienced.

The survey reported that 91% of workers do not believe their organisation handles bullying adequately.

The research reveals how many sufferers feel alienated from their employing organisation and are often scared to ask for help from other staff. Almost half (48%) feel they must put up with the bullying as part of their job, while over three-quarters (78%) said that the shortage of jobs and their financial dependence on their current job prevent them from standing up to workplace bullying. Many believed that the only way to stop it would be formal action, but again their willingness to do this was seriously inhibited by fears of the consequences.

Family Lives offers the following suggestions for those who are bullied. Bear in mind they give advice for everyone; but I've edited it so as to reflect trade union organisation and objectives.

- All employees need to commit collectively and as individuals to a zero tolerance policy.
- Be honest about your own response, be prepared to report transgressions and actively support those that are bullied, don't hide behind a wall of silence and look the other way when abuses take place.

- If ever we needed a policy of 'stand up and be counted' it is to combat bullying.
- You should also talk to other people experiencing workplace bullying.
- Utilise the power of email and following any perceived transgression, email the person concerned calmly outlining your perception of what took place, what you had been asked to do/or criticised for not doing – this could also form part of a diary of incidents. It may also help the perpetrator to realise you are taking this seriously and will log all confrontational interactions – it will also help you to recollect exact times, dates and issues if a future grievance procedure takes place.
- For those who are targeted by bullies, the worst feeling is that of helplessness. You can take control again.
- Firstly confide in someone you trust. Then keep a diary logging each and every incident that makes you feel belittled or afraid.
- Note down the names of people who witnessed this. Hearsay evidence is not relevant, so this detail is really important.
- Log what occurred but also how it made you feel. The writing of a diary is quite a cathartic experience in itself and empowers the employee by understanding that it is not them that has the problem, but the bully.
- Involve the union from the start.

Family Lives also offer employers a lot of advice, but there is precious little evidence that many of them follow it. It

cannot be said often enough; we need to organise effectively at the workplace to overcome these problems. The law and its enforcers might assume employers will behave properly and reasonably towards their workers, but this kind of evidence suggests that in many cases, they don't. Given the absence of any real commitment to effective enforcement, we are forced back onto our own resources. In the absence of any employer reasonability, our only real chance of resolving this huge problem is at workplace level by strong and proactive union organisation. <http://familylives.org.uk/> for more information.

3. E-cigarettes: E-Tribunal case

The employment tribunal in the case of *Insley v Accent Catering* considered a claim by a school catering assistant that she had been constructively dismissed by her employer.

<http://www.personneltoday.com/hr/e-cigarettes-in-the-workplace-vaping-tribunal-employers/>

The head teacher at the school where catering assistant Ms Insley worked complained to her employer, Accent Catering, that he had seen her using an e-cigarette in full view of pupils. She resigned just before a disciplinary hearing to decide if her actions were serious enough to justify dismissal. She claimed constructive dismissal, but the tribunal dismissed her claim, holding that the employer had acted properly.

The tribunal stressed that, because she had resigned and not been dismissed, it could not decide the question of whether or not her actions amounted to gross misconduct. The school's smoking

policy would have been relevant to an unfair dismissal claim; this prohibited smoking on school premises, but did not prohibit the use of e-cigarettes. If Ms Insley had been dismissed, she could have argued that it was unfair to dismiss her because using an e-cigarette was not expressly prohibited. So it seems to be the case that employers cannot therefore rely on legislation or their own policies that prohibit smoking tobacco products to control the use of e-cigarettes in the workplace or to take disciplinary action for using e-cigarettes.

As we have reported in previous editions of HSNEWS, these devices are coming under increased scrutiny because of concerns about health benefits for users and those exposed to second-hand vapour. A 2014 report commissioned by Public Health England concluded that the hazards of using e-cigarettes and being exposed to second-hand vapour are likely to be extremely low.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311887/Ecigarettes_report.pdf

The World Health Organisation also concluded that e-cigarettes were less harmful than conventional cigarettes, but cautioned that the vapour emitted by e-cigarettes is not merely "water vapour" as often claimed, but a vapour containing nicotine and other toxic particles.

http://apps.who.int/gb/fctc/PDF/cop6/FC/COP6_10Rev1-en.pdf

4. Asbestos

We've dealt with a number of enquiries about asbestos recently. It's worth repeating some basic information.

Workplaces constructed before 1999 are likely to have some asbestos-containing materials (ACM's) in their structure; the older they are the more likely that is, and the more likely that it will be asbestos in a state that can more easily release fibres, not asbestos secured in cement, plaster or other kind of matrix. In the immediate post-war period many local authorities used prefabricated systems to provide school and college accommodation; systems were called CLASP, SCOLA, SEAC, MACE, and ONWARD. These buildings have structural parts fire proofed with asbestos, asbestos joint-sealing material between panels and around doors and windows, and ceiling and floor tiles containing asbestos. Normal building expansion and contraction can abrade materials and cause fibre release, as can banging doors and windows. ACM wall-boards were common building materials from the 1960's onward – they are like plasterboard with asbestos fibre as reinforcing, fire-proofing and partial insulation. Asbestolux was probably the most common brand. Noticeboards on classroom walls were often asbestos-based, and asbestos fibres were released by simply using drawing pins. Almost 300 teachers are known to have developed, (and died from) mesothelioma since 1980, probably caused by such exposures. Exposure to asbestos is the only known cause of mesothelioma.

Michael Lees, whose wife was a teacher who died from mesothelioma aged 51, has for years campaigned on asbestos in schools, and HSE has been pushed by his work to devote more attention to this.

<http://www.asbestosexposureschools.co.uk/>

For "official" information and resources see

<http://www.hse.gov.uk/services/education/asbestos.htm>

This checklist is as applicable to colleges and older university buildings as to schools:

<http://www.hse.gov.uk/services/education/asbestos-checklist.pdf>

All asbestos is hazardous, so don't get diverted into discussions about the relative toxicity of different kinds. Apologists for the industry continue to propagate the idea that white asbestos is safe if used properly, whatever that means. That's like saying some cigarettes are safer than others, or that they are safe if used properly. Asbestos kills, as the families of the 2,535 people who died of mesothelioma in 2012 will tell you.

This isn't the place for a comprehensive run-down of the requirements of the Control of Asbestos Regulations 2012 (CAR) (for that, see Chapter 24 of the TUC Hazards of Work manual; TUC publications 2012); but based on information arising from recent enquiries, here are two essential reminders.

i) Check your employer's asbestos management plan regularly. CAR Regulation 4 requires employers and those in control of premises to find out where asbestos is in the buildings they control, and devise a plan to manage it to reduce the risk of exposure to asbestos fibres to below the official control limit. The plan must be in writing, so safety reps must be given a copy if they request it. The plan should include a map of the workplace noting the location of asbestos. The employer MUST assume asbestos is present in any place not examined and confirmed as asbestos-free, and act accordingly. Safety representatives should have been involved in drawing-up the plan - there are many references to involvement in the ACoP and guidance. For a downloadable copy of CAR etc.

<http://www.hse.gov.uk/pubns/books/l143.htm> To help you check the plan, see UCU's checklist [The management of asbestos in the workplace: regulation 4 of the Control of Asbestos Regulations 2012 - UCU factsheet \(.doc\) \[196kb\]](#)

ii) If there is an incident involving the release of asbestos fibres, then employers MUST make a report under RIDDOR - it is a dangerous occurrence. The duty to report the release of a substance that may cause harm is now under Schedule 2 (27) of the 2013 RIDDOR regulations. See under the heading Hazardous escapes of substances. <http://www.legislation.gov.uk/ukxi/2013/1471/contents/made>

Such releases should be followed-up by a review of the management plan - a release indicates it has failed.

5. Health & Safety training for all reps

An experience on a recent UCU Dealing with Stress course highlighted the need for all Branch officers and reps to attend the UCU health and safety course. Most of the participants were Branch officers, but only one was a safety rep, and we spent quite some time on the opportunities presented by the safety reps regulations to organise in the workplace. It's fair to say that those who were not aware of the statutory functions in the SRSCR and the consequent employer duties were surprised such advantageous standards existed.

As we've said many times before, any decision or action taken by an employer will have some degree of implication for the health, safety or welfare of our members. Health, safety and welfare issues are just part of the wider conditions that affect people at work and need to be taken into consideration when bargaining with the employer. We still need many more UCU safety representatives appointed - our aim must be for an effective workplace organisation to deal with problems like work-related stress, bullying and harassment and asbestos management, to name but three. Remind colleagues that they don't need to be experts in health and safety - they are there to represent issues on behalf of the members. They will develop a wider range of knowledge as their experience

grows, and there are lots of information resources available to consult.

We need to constantly make the point – One safety rep is not enough – so please encourage all of your Branch officers and members of the Branch Committee to attend the H&S training courses when the programme for next year is published.

6. Electromagnetic fields

The latest issue of the European Trade Union Institute (ETUI) HesaMail newsletter draws attention to new guidance on exposure to electromagnetic fields (EMFs). This is an area that remains contentious in terms of the effect such fields have on human health, and UCU H&S Advice has received a number of enquiries over the years, particularly in relation to cell-phone base stations on college roofs, and the possible impact of wi-fi networks in buildings.

This guide is aimed at employers, trade union representatives and workers potentially exposed to electromagnetic fields. It is also designed as an aid to understanding the new EU Directive on occupational exposure to EMFs

(2013/35 EU), which comes into force in 2016. The Guide presents an overview of occupational exposure to electromagnetic fields. It focuses on certain occupations, on risk assessment and on the determination of exposure, and there is specific information on workers who face particular risks, e.g., persons with medical implants, pregnant women or persons taking certain medications. The guidance clearly says that employers must approach this according to the general provisions of the Management of Health & Safety at Work Regulations 1999. The document recommends the precautionary approach, and makes recommendations as to how such an approach can help to reduce high levels of exposure; UCU continues to recommend that our local organisations encourage employers to adopt such a precautionary approach based on a suitable and sufficient risk assessment. Download from:

<http://www.etui.org/en/Publications2/Guides/Electromagnetic-fields-in-working-life.-A-guide-to-risk-assessment>

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UCU Health & Safety Advice

Contact **UCU Health & Safety Advice**
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