
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for further implementation, within Great Britain, of Articles 10, 11 and 12 of Council Directive 89/391/EEC (“the Framework Directive”, OJNo. L183, 29.6.89, p.1) on the introduction of measures to encourage improvements in the health and safety of employees at work. The Safety Representatives and Safety Committees Regulations 1977 (S.I.1977/500 as amended by S.I. 1992/2051) already implement those Articles in cases where employees are represented by safety representatives appointed by a trade union recognised by their employer. These Regulations require employers to consult either their employees directly or representatives elected by their employees where there are employees not represented by safety representatives appointed by trade unions under the 1977 Regulations. The need for this further implementation of those Articles in the Framework Directive arises from the judgment of the European Court of Justice in cases C382/92 and C383/92, Commission of the European Communities v. United Kingdom of Great Britain and Northern Ireland ([1994] I.C.R. 664) which, although the judgment was in respect of other Directives, established the principle that rights to consultation had to be accorded to all employees and could not be limited to those employees who were represented by a trade union recognised by their employer.

Regulation 3 requires employers to consult their employees in good time on matters relating to their health and safety at work and, in particular, on certain specific issues.

Regulation 4 provides that consultation must be either with the employees directly or, in respect of any group of employees, with representatives elected by that group.

Regulation 5 requires an employer to make certain information available to those whom he consults.

Regulation 6 sets out the functions of elected representatives of employee safety who are consulted by their employer.

Regulation 7 gives such representatives the right to a reasonable amount of training, paid for by their employer, and to time off with pay for such training and for carrying out their functions. Candidates for election are also given the right to time off with pay. Pay for time off is calculated in accordance with rules set out in Schedule 1. Jurisdiction is conferred on industrial tribunals to adjudicate on claims arising out of such rights (Schedule 2).

Regulation 8 amends the Employment Rights Act 1996 to protect an employee who takes part in consultation with an employer under these Regulations, or who takes part in an election, in cases of dismissal or other detriment arising out of such participation.

Regulation 9 excludes civil liability for breach of a duty imposed by these Regulations.

Regulation 10 applies certain provisions of health and safety legislation (including enforcement provisions) so that they operate in respect of these Regulations.

Regulation 11 applies these Regulations to the Crown subject to modifications in respect of the armed forces of the Crown.

Regulation 12 disapplies these Regulations to the master or crew of sea-going ships.

Regulation 13 amends the 1977 Regulations so that they apply in respect of employees working in mines.

A copy of the compliance cost assessment prepared in respect of these Regulations can be obtained from the Health and Safety Executive, Rose Court, 2 Southwark Bridge, London SE1 9HS. A copy has been placed in the Library of each House of Parliament.

Changes to legislation:

There are currently no known outstanding effects for the The Health and Safety (Consultation with Employees) Regulations 1996.