STATUTORY RULES OF NORTHERN IRELAND

1996 No. 511

HEALTH AND SAFETY

Health and Safety (Consultation with Employees) Regulations (Northern Ireland) 1996

Made - - - -	*29th October 1996*
Coming into operation	*6th January 1997*

The Department of Economic Development and the Department of Agriculture, being Departments designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to consultation with employees on health and safety at work, acting jointly in exercise of the powers conferred on them by that section and of every other power enabling them in that behalf, hereby make the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Health and Safety (Consultation with Employees) Regulations (Northern Ireland) 1996 and shall come into operation on 6th January 1997.

Interpretation

2.—(1) In these Regulations—

"the 1978 Order" means the Health and Safety at Work (Northern Ireland) Order 1978(**3**);

"the 1979 Regulations" means the Safety Representatives and Safety Committees Regulations (Northern Ireland) 1979(**4**);

"employee" has the meaning assigned to it by Article 2(2) of the 1978 Order but shall not include a person employed as a domestic servant in a private household; and "employer" shall be construed accordingly;

"the relevant statutory provisions" has the meaning assigned to it by Article 2(2) of the 1978 Order;

"representatives of employee safety" shall be construed in accordance with regulation 4(1)(*b*);

(**1**) S.I. 1996/266
(**2**) 1972 c. 68
(**3**) S.I. 1978/1039 (N.I. 9)
(**4**) S.R. 1979 No. 437 as amended by S.R. 1992 No. 459

"safety representative" has the meaning assigned to it by regulation 2(1) of the 1979 Regulations;

"workplace" means, in relation to an employee, any place where that employee is likely to work or which he is likely to frequent in the course of his employment or incidentally to it and, in relation to a representative of employee safety, any place where the employees he represents are likely so to work or frequent.

(2) Any reference in these Regulations to consulting employees directly or consulting representatives of employee safety is a reference to consulting them pursuant to regulation 3 and regulation 4(1)(*a*) or (*b*), as the case may be.

(3) The Interpretation Act (Northern Ireland) 1954(**5**) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Duty of employer to consult

3. Where there are employees who are not represented by safety representatives under the 1979 Regulations, the employer shall consult those employees in good time on matters relating to their health and safety at work and, in particular, with regard to:—

(a) the introduction of any measure at the workplace which may substantially affect the health and safety of those employees;

(b) his arrangements for appointing or, as the case may be, nominating persons in accordance with regulations 6(1) and 7(1)(*b*) of the Management of Health and Safety at Work Regulations (Northern Ireland) 1992(**6**);

(c) any health and safety information he is required to provide to those employees by or under the relevant statutory provisions;

(d) the planning and organisation of any health and safety training he is required to provide to those employees by or under the relevant statutory provisions; and

(e) the health and safety consequences for those employees of the introduction (including the planning thereof) of new technologies into the workplace.

Persons to be consulted

4.—(1) The consultation required by regulation 3 is consultation with either—

(a) the employees directly; or

(b) in respect of any group of employees, one or more persons in that group who were elected, by the employees in that group at the time of the election, to represent that group for the purposes of such consultation (and any such persons are in these Regulations referred to as "representatives of employee safety").

(2) Where an employer consults representatives of employee safety he shall inform the employees represented by those representatives of—

(a) the names of those representatives; and

(b) the group of employees represented by those representatives.

(3) An employer shall not consult a person as a representative of employee safety if—

(a) that person has notified the employer that in respect of any group of employees he does not intend to represent that group of employees for the purposes of such consultation;

(b) that person has ceased to be an employee in the group of employees which he represents;

(**5**) 1954 c. 33 (N.I.)
(**6**) S.R. 1992 No. 459, to which there are amendments not relevant to these Regulations

(c) the period for which that person was elected has expired without that person being re-elected; or

(d) that person has become incapacitated from carrying out his functions under these Regulations;

and where pursuant to this paragraph an employer discontinues consultation with that person he shall inform the employees in the group concerned of that fact.

(4) Where an employer who has been consulting representatives of employee safety decides to consult employees directly he shall inform the employees and the representatives of that fact.

Duty of employer to provide information

5.—(1) Where an employer consults employees directly he shall, subject to paragraph (3), make available to those employees such information, within the employer's knowledge, as is necessary to enable them to participate fully and effectively in the consultation.

(2) Where an employer consults representatives of employee safety he shall, subject to paragraph (3), make available to those representatives such information, within the employer's knowledge, as is—

(a) necessary to enable them to participate fully and effectively in the consultation and in the carrying out of their functions under these Regulations;

(b) contained in any record which he is required to keep by regulation 7 of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (Northern Ireland) 1986(**7**) and which relates to the workplace or the group of employees represented by those representatives.

(3) Nothing in paragraph (1) or (2) shall require an employer to make available any information—

(a) the disclosure of which would be against the interests of national security;

(b) which he could not disclose without contravening a prohibition imposed by or under any statutory provision;

(c) relating specifically to an individual, unless that individual has consented to its being disclosed;

(d) the disclosure of which would, for reasons other than its effect on health or safety, cause substantial injury to the employer's undertaking or, where the information was supplied to him by some other person, to the undertaking of that other person; or

(e) obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings;

or to provide or allow the inspection of any document or part of a document which is not related to health or safety.

Functions of representatives of employee safety

6. Where an employer consults representatives of employee safety each of those representatives shall, for the period for which that representative is so consulted, have the following functions—

(a) to make representations to the employer on potential hazards and dangerous occurrences at the workplace which affect, or could affect, the group of employees he represents;

(b) to make representations to the employer on general matters affecting the health and safety at work of the group of employees he represents and, in particular, on such matters as he is consulted about by the employer under regulation 3; and

(**7**) S.R. 1986 No. 247, to which there are amendments not relevant to these Regulations

(c) to represent the group of employees he represents in consultations at the workplace with inspectors appointed under Article 21(1) of the 1978 Order.

Training, time off and facilities for representatives of employee safety and time off for candidates

7.—(1) Where an employer consults representatives of employee safety, he shall—

(a) ensure that each of those representatives is provided with such training in respect of that representative's functions under these Regulations as is reasonable in all the circumstances and the employer shall meet any reasonable costs associated with such training including travel and subsistence costs; and

(b) permit each of those representatives to take such time off with pay during that representative's working hours as shall be necessary for the purpose of that representative performing his functions under these Regulations or undergoing any training pursuant to sub-paragraph (*a*).

(2) An employer shall permit a candidate standing for election as a representative of employee safety reasonable time off with pay during that person's working hours in order to perform his functions as such a candidate.

(3) Schedule 1 (pay for time off) and Schedule 2 (provisions as to industrial tribunals) shall have effect.

(4) An employer shall provide such other facilities and assistance as a representative of employee safety may reasonably require for the purpose of carrying out his functions under these Regulations.

Amendment of the Employment Rights (Northern Ireland) Order 1996

8. In Articles 68(1) (health and safety cases: right not to suffer detriment) and 132(1) (health and safety cases: unfair dismissal) of the Employment Rights (Northern Ireland) Order 1996(**8**), after paragraph (*b*) there shall be inserted—

"(ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations (Northern Ireland) 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise),".

Exclusion of civil liability

9. Breach of a duty imposed by these Regulations shall, subject to regulation 7(3) and Schedule 2, not confer any right of action in any civil proceedings.

Application of health and safety legislation

10. Articles 18 to 23, 25, 26, 28, 30, 31, 32, 34 to 36 and 39(1) to (3) of the 1978 Order, the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1993(**9**) and the Health and Safety (Training for Employment) Regulations (Northern Ireland) 1994(**10**) shall apply as if any references therein to health and safety regulations or to the relevant statutory provisions included references to these Regulations.

(**8**) S.I. 1996/1919 (N.I. 16)
(**9**) S.R. 1993 No. 147, as amended by S.R. 1995 No. 47 and S.R. 1995 No. 209
(**10**) S.R. 1994 No. 1