

Briefing for GMB Safety Reps:

**Your legal right to be consulted on risk assessments**

There is confusion amongst some employers about their responsibility to consult with GMB health and safety reps on risk assessments for a safe return to work. This briefing is designed to clarify the situation by restating two fundamental points.

Point 1. All employer measures for a safe return to work have to be carried out within the framework of existing health and safety law.

Point 2. Health and safety law requires employers to consult with GMB health and safety reps.

The law setting this out is the Safety Representatives and Safety Committee Regulations (SRSC regs) 1977, and in particular Regulation 4A. This says that employers must consult with safety reps in good time about:

**‘*the introduction of any measure at the workplace which may substantially affect the health and safety of the employees the safety representatives concerned represent’.***

The Health and Safety Executive have written guidance attached to the SRSC regs which makes it clear that consulting with reps on risk assessment is both a legal duty and best practice. Consultation will produce better risk assessments by using the workplace experience and practical knowledge of reps and members.

The consultation has to involve the GMB rep or reps having the time to study the proposals and suggest changes, and the employer must take into account the GMB points and respond to them. If there is still disagreement the GMB can activate the grievance procedure.

The employer has to consult with the GMB where GMB is recognised.

Below we reprint the key section of the legislation and guidance covering Safety Reps rights to be consulted on risk assessment:

*‘****Regulation 4A Safety Representatives and Safety Committee Regulations 1977***

‘Employer’s duty to consult and provide facilities and assistance

(1) Without prejudice to the generality of section 2(6) of the Health and Safety at Work etc Act 1974, every employer shall consult safety representatives in good time with regard to –

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

(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 1992;(b)

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

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

(e) the health and safety consequences for the employees the safety

representatives concerned represent of the introduction (including the

planning thereof) of new technologies into the workplace.

(2) Without prejudice to regulations 5 and 6 of the Regulations, 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.’

<https://www.tuc.org.uk/sites/default/files/BrownBook2015.pdf>

**In addition, there is specific HSE Guidance which states:**

***HSE Guidance on consulting health and safety representatives on risk assessments***

‘38 Under the Management Regulations, you have a duty to assess the health and safety risks your employees are exposed to while they are at work. The risk assessment process needs to be practical. Seeking the views of employees and their health and safety representatives, who will have practical knowledge to contribute, will help to ensure you take account of all relevant information.

39 Consulting employees or their representatives about matters to do with their health and safety is good management, as well as being a requirement under health and safety law. Employees are a valuable source of information and can provide feedback about the effectiveness of health and safety management arrangements and control measures. Where safety representatives exist, they can act as an effective channel for employees’ views.

40 Safety representatives’ experience of workplace conditions and their commitment to health and safety means they often identify potential problems, allowing the employer to take prompt action. They can also have an important part to play in explaining safety measures to the workforce and gaining commitment.’

41 Regulation 4A requires that employers consult health and safety representatives ‘in good time’. Good time is not defined. However, it means that before making decisions involving work equipment, processes or organisation which could have health and safety consequences for employees, you should allow time to:

(a) provide health and safety representatives with information about what you propose to do;

(b) give the health and safety representatives an opportunity to express their views about the matter in the light of that information; and then

(c) take account of any response.

<https://www.tuc.org.uk/sites/default/files/BrownBook2015.pdf>

**Government guidance on Covid 19**

**The over-arching government guidance on a safe return to work makes it clear that in step1 the employer must consult on risk assessment.**

*‘Before restarting work you should ensure the safety of the workplace by:*

* *carrying out a risk assessment in line with the*[*HSE guidance*](https://www.hse.gov.uk/simple-health-safety/risk/index.htm)
* *consulting with your workers or trade unions*
* *sharing the results of the risk assessment with your workforce and on your website’*

<https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/5-steps-to-working-safely>