1979 No. 437

HEALTH AND SAFETY

Safety Representatives and Safety Committees Regulations (Northern Ireland) 1979

Made . . . . . 12*th December* 1979

Coming into operation . . . 1*st February* 1980

The Department of Agriculture, the Department of Commerce, the Department of the Environment, the Department of Health and Social Services and the Department of Manpower Services, acting jointly as the Department concerned for the purposes of Articles 4(4) and (6) and 54(1) of the Health and Safety at Work (Northern Ireland) Order 1978(a), in exercise of the powers conferred by Articles 4(4) and (6), 17(1), (3)(*b*) and (5)(*b*), 54(1) and 55(2) of that Order and of every other power enabling them in that behalf, after consultation with the Health and Safety Agency for Northern Ireland and such other bodies as appeared to them to be appropriate, hereby make the following regulations:—

Citation and commencement

1. These regulations may be cited as the Safety Representatives and Safety Committees Regulations (Northern Ireland) 1979 and shall come into operation on 1st February 1980.

Interpretation

2.—(1) In these regulations—

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

"recognised trade union" means an independent trade union as defined in Article 2(2) of the Industrial Relations (Northern Ireland) Order 1976(b) which the employer concerned recognises for the purpose of negotiations relating to or connected with one or more of the matters specified in Article 3(1) of that Order in relation to persons employed by him or as to which the Labour Relations Agency has made a recommendation for recognition under Article 7(1) of that Order which has not been revoked;

"safety representative" means a person appointed under regulation 3(1) to be a safety representative;

"welfare at work" means those aspects of welfare at work which are the subject of health and safety regulations or of any of the existing statutory provisions;

"workplace" in relation to a safety representative means any place or places where the group or groups of employees he is appointed to represent are likely to work or which they are likely to frequent in the course of their employment or incidentally to it.

(a) S.I. 1978/1039 (N.I. 9)—*See* Article 2(2). By S.R. 1978 No. 384 (C. 21) Article 2 was brought into operation partly on 1st February 1979 and partly on 1st May 1979. Articles 17, 54 and 55 on 1st February 1979 and Article 4 on 1st May 1979.

(b) S.I. 1976/1043 (N.I. 16)

(2) These regulations shall not be construed as giving any person a right to inspect any place, article, substance or document which is the subject of restrictions on the grounds of national security, public safety or public order unless he satisfies any test or requirement imposed on those grounds by or on behalf of the Crown.

Appointment of safety representatives

3.—(1) For the purposes of Article 4(4) of the Order of 1978, a recognised trade union may appoint safety representatives from amongst the employees in all cases where one or more employees are employed by an employer by whom it is recognised, except in the case of employees employed in a mine within the meaning of section 156 of the Mines Act (Northern Ireland) 1969(c) which is a coal mine.

(2) Where the employer has been notified in writing by or on behalf of a trade union of the names of the persons appointed as safety representatives under this regulation and the group or groups of employees they represent, each such safety representative shall have the functions set out in regulation 4.

(3) A person shall cease to be a safety representative for the purposes of these regulations when—

(*a*) the trade union which appointed him notifies the employer in writing that his appointment has been terminated; or

(*b*) he ceases to be employed at the workplace but if he was appointed to represent employees at more than one workplace he shall not cease by virtue of this sub-paragraph to be a safety representative so long as he continues to be employed at any one of them; or

(*c*) he resigns.

(4) A person appointed under paragraph (1) as a safety representative shall so far as is reasonably practicable either have been employed by his employer throughout the preceding two years or have had at least two years experience in similar employment.

Functions of safety representatives

4.—(1) In addition to his function under Article 4(4) of the Order of 1978 to represent the employees in consultations with the employer under Article 4(5) of the Order of 1978 (which requires every employer to consult safety representatives with a view to the making and maintenance of arrangements which will enable him and his employees to cooperate effectively in promoting and developing measures to ensure the health and safety at work of the employees and in checking the effectiveness of such measures), each safety representative shall have the following functions:—

(*a*) to investigate potential hazards and dangerous occurrences at the workplace (whether or not they are drawn to his attention by the employees he represents) and to examine the causes of accidents at the workplace;

(*b*) to investigate complaints by any employee he represents relating to that employee's health, safety or welfare at work;

(*c*) to make representations to the employer on matters arising out of sub-paragraphs (*a*) and (*b*);

(*d*) to make representations to the employer on general matters affecting the health, safety or welfare at work of the employees at the workplace;

(*e*) to carry out inspections in accordance with regulations 5, 6 and 7;

(c) 1969 c. 6 (N.I.). This section was brought into operation on 1st June 1970 by S.R. & O. (N.I.) 1969 No. 358 (p. 1658).

(*f*) to represent the employees he was appointed to represent in consultations at the workplace with inspectors of any enforcing authority;

(*g*) to receive information from inspectors in accordance with Article 30(8)(d) of the Order of 1978; and

(*h*) to attend meetings of safety committees where he attends in his capacity as a safety representative in connection with any of the above functions;

but, without prejudice to Articles 8(d) and 9(d) of the Order of 1978, no function given to a safety representative by this paragraph shall be construed as imposing any duty on him.

(2) An employer shall permit a safety representative to take such time off with pay during the employee's working hours as shall be necessary for the purposes of—

(*a*) performing his functions under Article 4(4) of the Order of 1978 and paragraph (1)(*a*) to (*h*);

(*b*) undergoing such training in aspects of those functions as may be reasonable in all the circumstances having regard to any relevant provisions of a code of practice relating to time off for training approved for the time being by the Health and Safety Agency for Northern Ireland under Article 18(e) of the Order of 1978.

In this paragraph "with pay" means with pay in accordance with the Schedule.

Inspections of the workplace

5.—(1) Safety representatives shall be entitled to inspect the workplace or a part of it if they have given the employer or his representative reasonable notice in writing of their intention to do so and have not inspected it, or that part of it, as the case may be, in the previous three months; and may carry out more frequent inspections by agreement with the employer.

(2) Where there has been a substantial change in the conditions of work (whether because of the introduction of new machinery or otherwise) or new information has been published by the Health and Safety Agency for Northern Ireland or the Department concerned relevant to the hazards of the workplace since the last inspection under this regulation, the safety representatives after consultation with the employer shall be entitled to carry out a further inspection of the part of the workplace concerned notwithstanding that three months have not elapsed since the last inspection.

(3) The employer shall provide such facilities and assistance as the safety representatives may reasonably require (including facilities for independent investigation by them and private discussion with the employees) for the purpose of carrying out an inspection under this regulation, but nothing in this paragraph shall preclude the employer or his representative from being present in the workplace during the inspection.

(4) An inspection carried out under section 105 of the Mines Act (Northern Ireland) 1969(c) shall count as an inspection under this regulation.

Inspections following notifiable accidents, occurrences and diseases

6.—(1) Where there has been a notifiable accident or dangerous occurrence in a workplace or a notifiable disease has been contracted there and—

(d) This Article was brought into operation on 1st May 1979 by S.R. 1978 No. 384 (C.21).

(e) This Article was brought into operation on 1st February 1979 by S.R. 1978 No. 384 (C.21).

(*a*) it is safe for an inspection to be carried out; and

(*b*) the interests of employees in the group or groups which safety representatives are appointed to represent might be involved,

those safety representatives may carry out an inspection of the part of the workplace concerned and so far as is necessary for the purpose of determining the cause they may inspect any other part of the workplace; where it is reasonably practicable to do so they shall notify the employer or his representative of their intention to carry out the inspection.

(2) The employer shall provide such facilities and assistance as the safety representatives may reasonably require (including facilities for independent investigation by them and private discussion with the employees) for the purpose of carrying out an inspection under this regulation; but nothing in this paragraph shall preclude the employer or his representative from being present in the workplace during the inspection.

(3) In this regulation "notifiable accident or dangerous occurrence" and "notifiable disease" mean any accident, dangerous occurrence or disease, as the case may be, notice of which is required to be given by virtue of any of the relevant statutory provisions.

Inspection of documents and provision of information

7.—(1) Safety representatives shall for the performance of their functions under Article 4(4) of the Order of 1978 and under these regulations, if they have given the employer reasonable notice, be entitled to inspect and take copies of any document relevant to the workplace or to the employees the safety representatives represent which the employer is required to keep by virtue of any relevant statutory provision except a document consisting of or relating to any health record of an identifiable individual.

(2) An employer shall make available to safety representatives the information, within the employer's knowledge, necessary to enable them to fulfil their functions except—

(*a*) any information the disclosure of which would be against the interests of national security, public safety or public order; or

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

(*c*) any information relating specifically to an individual, unless he has consented to its being disclosed; or

(*d*) any information the disclosure of which would, for reasons other than its effect on health, safety or welfare at work, 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*) any information obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings.

(3) Paragraph (2) does not require an employer to produce or allow inspection of any document or part of a document which is not related to health, safety or welfare.

Cases where safety representatives need not be employees

8.—(1) In the cases mentioned in paragraph (2) safety representatives appointed under regulation 3(1) need not be employees of the employer concerned; and Article 4(4) of the Order of 1978 shall be modified accordingly.

(2) The said cases are those in which the employees in the group or groups the safety representatives are appointed to represent are members of the British Actors' Equity Association or of the Northern Ireland Musicians' Association.

(3) Regulations 3(3)(*b*) and (4) and 4(2) shall not apply to safety representatives appointed by virtue of this regulation and in the case of safety representatives to be so appointed regulation 3(1) shall have effect as if the words "from amongst the employees" were omitted.

Safety committees

9.—(1) For the purposes of Article 4(6) of the Order of 1978 (which requires an employer in prescribed cases to establish a safety committee if requested to do so by safety representatives) the prescribed cases shall be any cases in which at least two safety representatives request the employer in writing to establish a safety committee.

(2) Where an employer is requested to establish a safety committee in a case prescribed in paragraph (1), he shall establish it in accordance with the following provisions—

(*a*) he shall consult with the safety representatives who made the request and with the representatives of recognised trade unions whose members work in any workplace in respect of which he proposes that the committee should function;

(*b*) the employer shall post a notice stating the composition of the committee and the workplace or workplaces to be covered by it in a place where it may be easily read by the employees;

(*c*) the committee shall be established not later than three months after the request for it.

Power to grant exemptions

10. The Health and Safety Agency for Northern Ireland may grant exemptions from any requirement imposed by these regulations and any such exemption may be unconditional or subject to such conditions as the Agency may impose and may be with or without a limit of time.

Provisions as to industrial tribunals

11.—(1) A safety representative may, in accordance with the jurisdiction conferred on industrial tribunals by Article 58(3)(f) of the Industrial Relations (Northern Ireland) Order 1976, present a complaint to an industrial tribunal that—

(*a*) the employer has failed to permit him to take time off in accordance with regulation 4(2); or

(*b*) the employer has failed to pay him in accordance with regulation 4(2) and the Schedule.

(2) An industrial tribunal shall not consider a complaint under paragraph (1) unless it is presented within three months of the date when the failure occurred or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.

(f) This paragraph is brought into operation by this regulation.

(3) Where an industrial tribunal finds a complaint under paragraph (1)(*a*) well-founded the tribunal shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee which shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to permit time off to be taken by the employee and to any loss sustained by the employee which is attributable to the matters complained of.

(4) Where on a complaint under paragraph (1)(*b*) an industrial tribunal finds that the employer has failed to pay the employee the whole or part of the amount required to be paid under paragraph (1)(*b*), the tribunal shall order the employer to pay the employee the amount which it finds due to him.

(5) Article 58 of the Industrial Relations (Northern Ireland) Order 1976(g) (jurisdiction of industrial tribunals) shall be modified by adding the following paragraph:—

"(3) An industrial tribunal shall have jurisdiction to determine complaints relating to time off with pay for safety representatives appointed under regulations made under the Health and Safety at Work (Northern Ireland) Order 1978.".

Sealed with the Official Seal of the Department of Agriculture for Northern Ireland on 12th December 1979.

(L.S.) *D. J. Alexander*
Assistant Secretary

Sealed with the Official Seal of the Department of Commerce for Northern Ireland on 11th December 1979.

(L.S.) *J. D. M. Thompson*
Assistant Secretary

Sealed with the Official Seal of the Department of the Environment for Northern Ireland on 12th December 1979.

(L.S.) *E. A. Simpson*
Assistant Secretary

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 12th December 1979.

(L.S.) *W. Young*
Assistant Secretary

Sealed with the Official Seal of the Department of Manpower Services for Northern Ireland on 11th December 1979.

(L.S.) *R. O. Surgenor*
Assistant Secretary

(g) S.I. 1976/1043 (N.I. 16). Paragraphs (1) and (2) of Article 58 were brought into operation on 1st January 1977 by S.R. 1976 No. 218 (C.11).

SCHEDULE

Regulation 4(2)

Pay for Time Off Allowed to Safety Representatives

1. Subject to paragraph 3, where a safety representative is permitted to take time off in accordance with regulation 4(2), his employer shall pay him—

(*a*) where the safety representative's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, as if he had worked at that work for the whole of that time;

(*b*) where the safety representative's remuneration for that work varies with the amount of work done, an amount calculated by reference to the average hourly earnings for that work (ascertained in accordance with paragraph 2).

2. The average hourly earnings referred to in paragraph 1(*b*) are the average hourly earnings of the safety representative concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

3. Any payment to a safety representative by an employer in respect of a period of time off—

(*a*) if it is a payment which discharges any liability which the employer may have under Article 37 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(h) in respect of that period, shall also discharge his liability in respect of the same period under regulation 4(2);

(*b*) if it is a payment under any contractual obligation, shall go towards discharging the employer's liability in respect of the same period under regulation 4(2);

(*c*) if it is a payment under regulation 4(2), shall go towards discharging any liability of the employer to pay contractual remuneration in respect of the same period.

(h) S.I. 1976/2147 (N.I. 28). This Article was brought into operation on 1st January 1979 by S.R. 1978 No. 362 (C.18).

EXPLANATORY NOTE

(This note is not part of the Regulations, but is intended to indicate their general purport.)

These Regulations:—

(*a*) provide for the appointment of safety representatives and prescribe their functions in relation to the employees they represent and their workplaces;

(*b*) provide for time off with pay for safety representatives in order that they may perform their functions and undergo training in aspects of those functions; and

(*c*) prescribe the cases in which it is the duty of employers to establish safety committees in accordance with the Regulations.

The Regulations also modify Article 58 of the Industrial Relations (Northern Ireland) Order 1976 so as to extend the jurisdiction of industrial tribunals to enable them to deal with complaints by safety representatives relating to time off with pay.