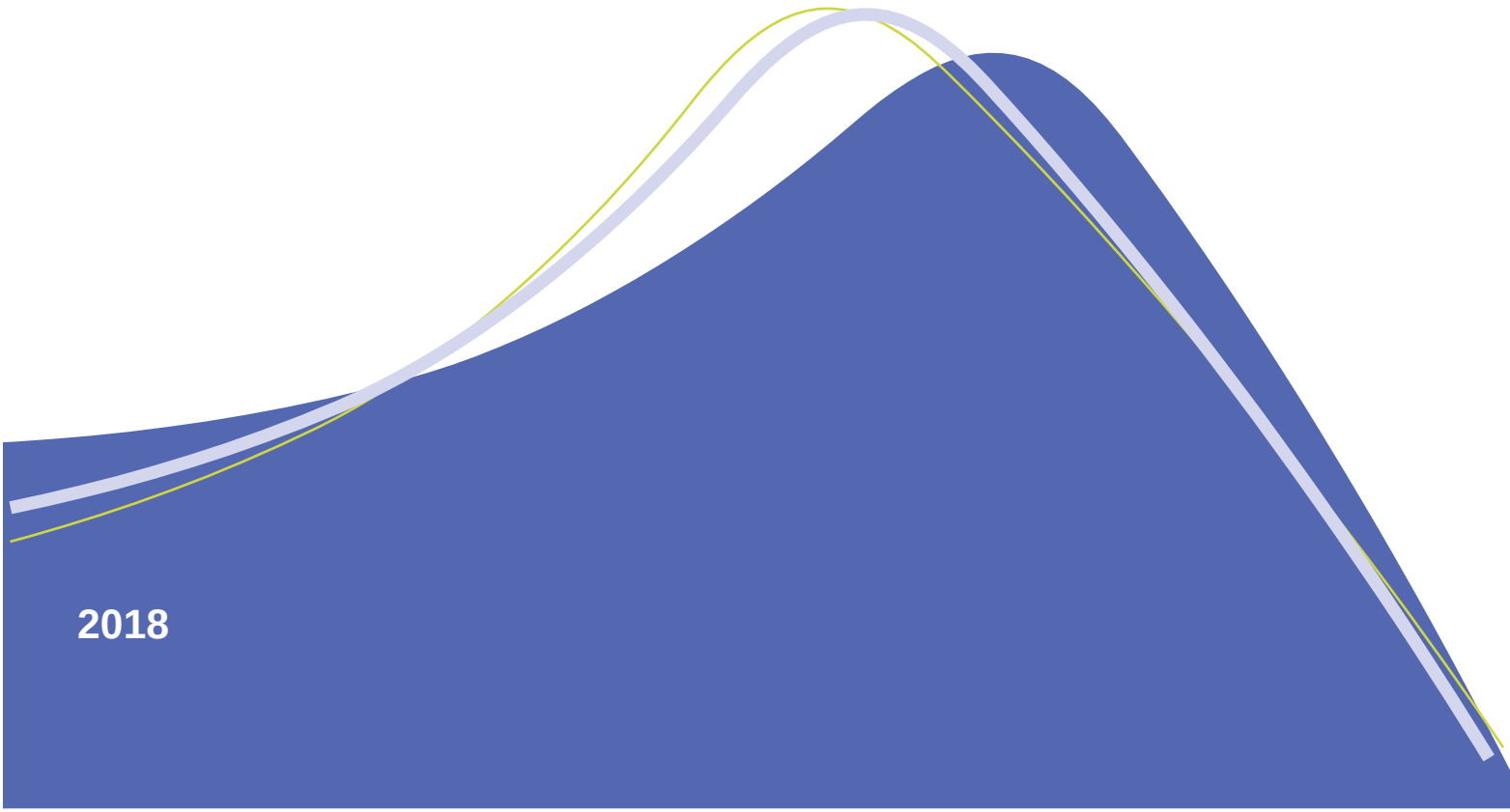
CHARTERED
SOCIETY
OF
PHYSIOTHERAPY

Information Manual

for Safety Reps



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SETTING THE SCENE

Introduction

This health and safety manual has been produced by the CSP to assist accredited safety reps to carry out their functions more effectively and with greater confidence. It will enable you to better represent the interests of CSP members locally, take up issues with line managers and with the Safety Committee and provide you with a briefing on the key health and safety issues that the CSP believes are of importance in the current climate of physiotherapy.

The manual complements the health and safety training courses offered by the CSP to our safety reps.
It is important to note that this Manual in no way replaces the need for you to undertake health and safety training.

The manual is designed to act as a resource for CSP safety reps. However, it does not aim to be fully inclusive of all health and safety issues. One of the key skills you need to develop as a safety rep is that of finding and using information. The manual will assist with this, in terms of guiding you to relevant organisations, publications and legal standards. It is important that you become used to seeking out relevant information and using it to press for improvements to the health, safety and welfare of local members.

The CSP Employment Relations Union Services (ERUS) is always available to assist safety reps to provide information, advice and assistance on particular problems.

The Aims of the Manual

The aim of this manual is to provide CSP safety reps with the information vital to enable them to carry out their role. It covers:

- All major areas of health and safety law;
- Guidance on good practice in the application of the law to the workplace;
- The role and functions of safety reps;
- The legal rights of safety reps;
- The legal duties of employers, employees and others;
- The role of Safety Committees within workplaces;
- Recommended methods of improving health and safety standards for members via the CSP at local level;
- Sources of advice and information.

The manual provides general guidance and suggestions for safety reps on how to ensure that you are able to achieve a safer working environment and, where possible, negotiate agreements that improve on the basic legal requirements.

How to Use the Manual

Health and safety is a major issue for all CSP members. Many accidents occur to physiotherapists and physiotherapy associates every year. At best these cause continuing pain and difficulties in carrying out their work and their daily lives. At worst such accidents could threaten to end members' careers.

The most common of these is damage caused by moving and handling, often caused by physiotherapists and physiotherapy associates attempting to move either patients or equipment in an unsafe manner. This type of problem highlights the need for clear health and safety procedures in all physiotherapy departments, and other areas where CSP members work, which are strictly adhered to. It is all too easy for members to get into the habit of bypassing such procedures, perhaps because of under-staffing and the pressure to get things done quickly.

Manual handling is just one area of health and safety that is highlighted in the manual. There is a whole range of health and safety issues which are of equal importance and are of concern to both safety reps and members. Much of the equipment used in physiotherapy departments presents potential problems, as do many of the substances commonly used at work.

As a result, it is recommended that you use the manual in the following ways.

(a) As a general introduction to the key elements of health and safety at work as they affect CSP members.

(b) To develop your knowledge of the law on health and safety at work, and the duties the law places on your employer.

(c) To establish and confirm your rights at work as a CSP safety rep, and the role and functions the CSP expects you will carry out on behalf of the union and local members.

(d) As a guide to the basic information relating to the most common hazards at work that CSP members may face.

(e) To find out where you may obtain further information and guidance relating to specific health and safety issues within your physiotherapy department.

Newly elected CSP safety reps will find it useful to read the manual from start to finish. If you are more experienced, you will find the manual particularly helpful in terms of reviewing your own knowledge and practices as a safety rep. Since the law is changing all the time, the manual will also help you to update your understanding of current legal standards and the duties these place on employers, employees and others.
The manual has been designed to be used in a variety of ways. Since different safety reps may need to use the manual in a number of ways, you may find that issues covered in one part are also dealt with in others. As a result, you will find the contents pages and the index

helpful in locating particular areas of interest to you and your members. These will help you to dip in and out of the manual when you need to locate specific information.

The manual is divided into four parts. Each part of the manual is then sub-divided into sections covering specific areas. These are summarised below.

- **Part One – Understanding Health and Safety Law**
  - Section 1: The Legal Framework
  - Section 2: Understanding *"Reasonably Practicable"*
  - Section 3: The Employer's Duties
  - Section 4: Risk Assessment
  - Section 5: Safety Policies
  - Section 6: Managing Safety in Physiotherapy
  - Section 7: Legal Duties Imposed on Others
  - Section 8: The Working Environment
  - Section 9: Other Parts of the *"Six Pack"*
  - Section 10: Other Legal Standards.

- **Part Two – The Rights and Roles of CSP Safety Reps**
  - Section 1: The Rights and Functions of a Safety Rep
  - Section 2: Workplace Inspections
  - Section 3: Investigating Accidents
  - Section 4: Participating in Safety Committees.

- **Part Three – Hazards at Work**
  - Section 1: Key Hazards Affecting CSP Members
  - Section 2: Manual Handling at Work

- **Part Four – Organising for Health and Safety**
  - Section 1: General Trade Union Organisation
  - Section 2: Working with Other Trade Union Safety Reps
  - Section 3: Organising for Health, Safety and Welfare
  - Section 4: Finding and Using Information.

At the beginning of each section you will find a brief summary of the key areas covered.

The final part of the manual consist of three appendices. These are as follows.

- **Appendix A:** Provisions for Northern Ireland
- **Appendix B:** Useful Sources of Information
- **Appendix C:** Safety Policies Checklist

In various parts of the Manual, we have indicated that there is additional information available to safety reps from the CSP. There are a series of up-to-date and detailed Information Papers provided to CSP safety reps and these can be accessed via the CSP website.

Abbreviations Used

Health and safety information and the legislation are full of abbreviations. Below is a list of the most common examples, and others used in the manual, together with an explanation of each set of initials.

- ⇒ ACOP Approved Code of Practice
- ⇒ CAW The Control of Asbestos at Work Regulations, 2006
- ⇒ CDM The Construction (Design and Management) Regulations, 1994
- ⇒ CHIP The Chemicals (Hazard Information and Packaging for Supply) Regulations, 2002
- ⇒ COSHH The Control of Substances Hazardous to Health Regulations, 2002
- ⇒ DH The Department of Health
- ⇒ DSE The Health and Safety (Display Screen Equipment) Regulations, 2002
- ⇒ EAT Employment Appeal Tribunal
- ⇒ EAV Exposure Action Value (Control of Noise at Work Regs)
- ⇒ ECJ The European Court of Justice
- ⇒ ERUS The Employment Relations Union Services (of the CSP)
- ⇒ ET Employment Tribunal
- ⇒ EU European Union
- ⇒ GN Guidance Note
- ⇒ HASAWA The Health and Safety at Work Act 1974
- ⇒ HEA The Health Education Authority
- ⇒ HSE The Health and Safety Executive
- ⇒ LOLER The Lifting Operations and Lifting Equipment Regulations, 1998
- ⇒ LRD The Labour Research Department

- ⇒ NONS The Notification of New Substances Regulations 1995 and 2002
- ⇒ PPE The Personal Protective Equipment Regulations 1992
- ⇒ PUWER The Provision and Use of Work Equipment Regulations 1998
- ⇒ REACH The Registration, Evaluation and Authorisation of Chemicals Regulations 2007
- ⇒ RIDDOR The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995
- ⇒ ROSPA The Royal Society for the Prevention of Accidents
- ⇒ SI Statutory Instrument
- ⇒ SRSC The Safety Representatives and Safety Committees Regulations 1977
- ⇒ SSOW Safe System of Work
- ⇒ SSP Statutory Sick Pay
- ⇒ TUC The Trades Union Congress
- ⇒ WEL Workplace Exposure Level *(in April 2005 the term occupational exposure standard/level was replaced with the term workplace exposure limit)*
- ⇒ WRULDS Work-Related Upper Limb Disorders.

PART ONE

UNDERSTANDING HEALTH AND SAFETY LAW

SECTION 1: THE LEGAL FRAMEWORK

Introduction

In law the employer has the primary responsibility for ensuring safe systems of work to provide for the health, safety and welfare of all those who use their premises: staff, visitors, patients, clients, students or contractors.

To be effective, CSP safety reps need a good general understanding of where the law originates, how it works and the duties it places on employers, employees and others. This will help the CSP in preparing arguments and evidence to put to managers when improving health and safety standards on behalf of our members.

In section 1 we look at:

- ⇨ ***the need for effective health and safety at work legislation;***
- ⇨ ***the Health and Safety at Work Act;***
- ⇨ ***the way the law works;***
- ⇨ ***the "Six Pack" Regulations;***
- ⇨ ***other health and safety Regulations;***
- ⇨ ***absolute and qualified duties; and***
- ⇨ ***enforcing the law;***
- ⇨ ***the Corporate Manslaughter & Corporate Homicide Act 2007***

Details of the relevant Northern Ireland legal provisions are given in Appendix A.

The Need for Effective Health and Safety at Work Legislation

Work is dangerous to our health. According to HSE statistics for 20014/15, a total of 142 people were killed at work. For the same period 611,000 workers suffered a RIDDOR reportable major injury at work. 198,000 reportable injuries occurred, causing employees to be off work for 3 or more days. 36% of these were caused by falls, slips and trips. The most frequent cause of the reported 152,000 injuries that led to over 7 day absences was handling related.

In 2014/15 it was estimated that 4.1 million working days was lost due to workplace injuries, with an average of 6.7 days per case. Half of the working days lost was due to handling injuries and slips and trips. HSE give a conservative estimate that the total cost to Britain for injuries/ill health arising from work is around £14 billion per annum. They estimate that there are 13,000 early deaths each year arising from long term occupational diseases.
In terms of the NHS for 2014/15 an estimated 6,000 staff are off sick daily with MSK related problems. This is costing the NHS £200 million a year.

Stress and mental health problems is also a major source of NHS staff absences. CIPD research released in March 2015 showed that absence for this reason has doubled in the past 4 years. 41,112 staff went off sick through suffering anxiety, stress and depression, a

dramatic jump from 20,207 reported cases in 2010. According to one RCN spokesperson this significant change could be contributed to the relentless pressures facing staff operating with tight cost restraints against a constant increase in demand for their services.

Respondents reported high levels of absenteeism, with many staff stating that they come to work when they feel sufficiently unwell to justify staying at home. The Boorman 2009 review on NHS staff's health and wellbeing recommended that staff be offered more support and yet currently in 2015 there is still one in three trusts without a health and safety wellbeing strategy and one in five trusts denying their staff rapid access to occupational health services including physiotherapy.

The above statistics serve to illustrate that poor health and safety standards in across all industries not only have a severe impact on employees. They also have a practical and financial cost to employers. These include high sickness levels, difficulty in covering work left unattended by staff taking sick leave, the costs of early retirement or compensation for those injured at work and the possibility of prosecution for breaches of the law and the public exposure this may bring.

For 2014 the HSE issued 6,270 improvement notices, 3,100 prohibition notices and undertook 600 prosecution cases, achieving a 96% convicted rate in the courts. Legislation demands that employers organise workplaces in a way that minimises the likelihood that people will be injured or made ill. Most of the law created since the late 1980s originated in the European Union (EU). It is a requirement of the UK's membership of the EU that, like all other member states, the government introduces EU laws into the UK's legal framework for health and safety. The law places great emphasis on employers creating safe systems of work, in order to prevent or minimise the likelihood of injury and ill-health, to be maintained by risk assessment, staff training, instruction and supervision.

Importantly, workplaces with union safety reps have half the accident rates of workplaces with no union safety presence. The HSE states that in workplaces with recognised trade union safety reps there are 50% fewer accidents. In workplaces with union recognised safety representatives there are significantly lower injury rates – on average 5.3 injuries per thousand employees – compared with those where management alone determine health and safety arrangements – on average 10.9 injuries per thousand.

The Health and Safety at Work Act

HASAWA is a general piece of law, which covers all workers in all workplaces. It aims to ensure that workers in all occupations are protected by health and safety legislation. It incorporates most of the pre-1974 legislation. HASAWA provides a broad framework within which health and safety is regulated by one comprehensive, integrated system of law. HASAWA is an *Enabling Act* under which more detailed health and safety Regulations are created by Parliament. All health and safety Regulations and Approved Codes of Practice (ACOPs), which include any derived from EU Directives, are enforced under HASAWA. The Act is written in general terms and the duties placed on the employer are often qualified with the words *"so far as is reasonably practicable"* (see Section 2).

Under Section 2(3) of HASAWA employers with 5+ employees must prepare a written safety policy (see Section 5). This should detail the hazards present at the workplace, the employer's health and safety arrangements and specify which people will deal with these hazards. It must be revised and updated as necessary and brought to the attention of all employees. The Act places responsibilities on employers, employees, manufacturers, suppliers, designers, importers, contractors and the self-employed.

The health and safety executive

The Health and Safety Executive (HSE) under the HASWA formulates general policy on health, safety and welfare. Its primary function is to enforce health and safety law. It therefore remains independent from ministers and retains on its board the representation of stakeholders, including 3 employees, 3 employer, 1 local authority and 2 independent representatives.

The HSE is responsible for developing the law and formulating general policy on health and safety. Its main duties laid down in HASAWA, are:

- The drafting of Regulations and ACOPs to be placed before Parliament;
- Drafting Guidance Notes (GNs) to complement any Regulations and ACOPs agreed by Parliament;
- Giving assistance and encouragement to those concerned with health and safety at work;
- Making arrangements for carrying out and publicising research;
- Encouraging training in health and safety;
- Making arrangements to ensure that interested bodies (employer and employee organisations) are provided with an adequate advisory and information service;
- Ordering, when necessary, official investigations into major accidents at work.

The HSE has an operational arm, to implement policy, enforce legal requirements and provide an advisory service to both sides of industry.

- ***HSE inspectors***

The main responsibility for day to day enforcement of safety legislation rests with HSE Inspectors. Their role involves trying to prevent accidents and offer advice, and they will try to solve health and safety problems at work informally. Only in the event of this approach failing will Inspectors use their legal powers. Contact with union safety reps is viewed as an intrinsic part of the intervention and investigation activities undertaken by HSE Inspectors.

The HSE recognises the key part which safety reps play in preventing deaths, injuries and ill-health at work and also in terms of promoting good standards of health, safety and welfare in the workplace. This year in partnership with the TUC they set up an online reporting process that facilitates reps contacting them directly if there are serious health and safety issues that reps can't get resolved through the usual grievance processes via the support of their trade union. http://www.hse.gov.uk/involvement/hsrepresentatives.htm

- ***Duties of HSE inspectors***

An Inspector has the right and a duty to make routine inspections from time to time of all workplaces under their authority, with or without giving any warning. During such an inspection, they may be accompanied by either management or safety reps, or both. Although neither management nor unions have the right to accompany Inspectors on their visits, they do have the right to speak to them privately.

Inspectors should investigate complaints made to them about unsafe work practices, dangerous equipment, etc. and provide information on health and safety matters to both workers and management. In particular, after visiting a workplace, inspectors should provide:

- ✓ *A report of visit.* Information about the premises or the work done there which the Inspector has obtained at first hand, including the results of any atmospheric tests or analysis of samples taken, the conclusions of tests on plant and equipment or clinical examinations, in written or oral form depending on the seriousness or particular nature of the findings.

- ✓ *Notice of action.* Information about any action the Inspector has taken or intends to take, including details of legal proceedings to be initiated, copies of improvement or prohibition notices issued, and any general recommendations on matters of concern (a 'Notice of Action').

- ***Powers of Inspectors***

HSE Inspectors have various legal powers as enforcement officers. These include (relevant sections of HASAWA in brackets) the right to:

- Enter premises in the course of their duty at any reasonable hour (or at any time whatsoever in urgent cases) (s.20(2));
- Take photographs, measurements, recordings and samples during inspection (s.20(2)(i));
- Take away articles or substances for examination (s.20(2)(i));
- Seize or destroy any articles or substances that may be a cause of imminent serious personal injury (s.20(2)(h));
- Access relevant records and documents (s.20(2)(k));
- Question anyone for relevant information, if necessary requiring them to sign a declaration of the truth of their answers (s.20(2)(j))
- Promote HSE's occupational health campaigns.

The Way the Law Works

Under HASAWA, health and safety law is made up of Regulations, Approved Codes of Practice (ACOPs) and Guidance Notes (GNs).

(a) Regulations

Regulations cover a range of specific areas and/or hazards and lay down the detailed requirements of the law on a given issue. Regulations have the force of law and amend existing legislation. Regulations agreed by Parliament provide the detail of the law and form part of the Act. It is absolutely binding on employers to comply fully with Regulations. Regulations are used to add provisions to HASAWA, without the need to amend it. Often Regulations relate to technical details that require frequent amendment. Regulations may be accompanied by an ACOP.

Regulations have the full force of the law and are introduced through Parliament by a *"Statutory Instrument".* They are usually designated by the letters *'S.I.'* followed by the year of enactment and a number. For example, the SRSC Regulations, which were the first set of Regulations created under HASAWA, carries the reference SI 1977 No 1 500.

(b) Approved codes of practice (ACOPs)

These interpret the meaning of a given Regulation and lay down clearer standards for employers to meet in those areas covered by a particular Regulation. ACOPs are intended to give a fairly detailed interpretation of how the employer can carry out potentially hazardous practices - for example, working in a noisy environment, or in dealing with ionising radiation in medical and dental work. ACOPs do not have the same legal force as Regulations, but they are "admissible evidence" in criminal proceedings for the alleged contravention of a Regulation for which an ACOP is in force. They are often referred to as *"semi-legislative"* in nature.

ACOPs are not the law as such, but are intended to be more than just good advice. Thus, if any employer has disregarded the interpretation of the law provided in an ACOP this may be taken into consideration in any legal proceedings taken against him/her for alleged contravention of the Regulations. In these circumstances, the onus will be on an employer to show that they have complied with the law in another way. A comparison can be made with the Highway Code, which is a Code of Practice. A breach of the Code does not in itself lead to prosecution since this is done under the Road Traffic Act. Breaches of the Code are cited as substantiating evidence in court. ACOPs are important, because they are officially approved and issued by the HSE.

(c) Guidance notes (GNs)

These are further detailed advice to employers on how a Regulation is to be interpreted and implemented in practice. They do not have legal force, but if any employer does not warn employees of dangers referred to in a GN, then the employee may be able to prove negligence in a civil claim for damages. GNs are issued by the HSE and consist of detailed information to supplement Regulations and ACOPs. It is important that safety reps, when using any legal in Regulations, become used to reading any accompanying ACOPs and GNs and quoting these to managers. They provide the detail of how an employer should comply with their legal duties.

(d) European union law

Since the 1980s, the EU has been moving towards a European-wide market in which goods, capital and labour can move freely between member states. The Single European Act 1987 provides a single framework for facilitating all the changes deemed necessary to achieve this. This included the introduction of health and safety law, which aims to standardise the position of employers and employees throughout the EU. The most significant of these was the 1989 European Health and Safety Framework Directive. There are two main ways of creating EU law: Regulations and Directives.

- ***EU regulations***

Regulations are the more powerful and are legally binding on all member states, under the Treaty of Rome 1957. They must be implemented in their entirety and are used less often than Directives. Most of the law on health and safety created in the EU has been via Directives.

- ***EU directives***

Directives are more flexible than Regulations, and member states have some scope to translate a Directive into national law in a manner that suits local circumstances. However, the key elements and the spirit of the Directive must be adopted by all member states within a given time limit, for example two years. Once the EU adopts Directives, they are binding on all member states and have to be incorporated into the legal framework of every state.

Health and safety Directives are dealt with by Qualified Majority Voting (QMV) introduced into the EU decision-making process via the Single European Act of 1987. No member state alone can veto the introduction of a health and safety measure, as they can for example with the introduction of social measures. If sufficient member states vote in favour of a proposal, under the system of Qualified Majority Voting it will carry, regardless of whether a minority of member states are opposed. It is then binding on all member states regardless of whether or not they voted for it. In the UK the HSE is responsible for proposing legislation to comply with the requirements of health and safety Directives. This is done by the introduction of Regulations, which complement, and operate in tandem with, HASAWA.

The "Six Pack" Regulations

The EU is the driving force behind the development of most new UK health and safety Regulations. Six Directives were introduced in 1988 with a deadline for implementation in national law throughout the EU of 1st January 1993. These were the Framework Directive and 5 *"Daughter"* Directives. All have now been incorporated into UK law and are the:

- Management of Health and Safety at Work Regulations 1999;
- Workplace (Health, Safety and Welfare) Regulations 1992;
- Provision and Use of Work Equipment Regulations 1998;
- Personal Protective Equipment Regulations 1992;

- Manual Handling Operations Regulations 1992;
- Health and Safety (Display Screen Equipment) Regulations 2002.

The shorthand term for these Regulations is the *"Six Pack"*. The Framework Directive became, within the UK, the Management of Health and Safety Regulations. These Regulations are important. They give models of good practice to be adopted in all workplaces and provide legal minimum standards to determine how work should be organised safely. All these Regulations place stringent duties on employers to ensure their workplaces are free from risk to staff and other users of their premises.

The *"Six Pack"* introduces a number of common threads to health and safety law. These Regulations place an emphasis on:

- A risk assessment based approach to preventing injury and ill-health;
- Designing jobs to fit the worker, rather than making the worker adapt to the job design or equipment in use;
- Preventing exposure rather than using protective equipment;
- The employer's role in creating safe systems of work and maintaining them;
- Employee participation and consultation;
- The employer's responsibility in assessing, minimising and monitoring risks;
- Ensuring workplaces and equipment are maintained in good working order;
- Providing information, instruction, training and supervision;
- Improving organisational solutions to health and safety issues and to overcoming risks.

Other Health and Safety Regulations

There have been a host of Regulations introduced in the last 25 years, including the:
- Control of Asbestos at Work Regulations, 1987/94/2002/06;
- Control of Substances Hazardous to Health (COSHH) Regulations, 1988/94/99/2002;
- Electricity at Work Regulations, 1989;
- Health and Safety (First Aid) Regulations, 1981;
- Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) Regulations, 1995;
- Lifting Operations and Lifting Equipment Regulations, 1998;
- Working Time Regulations, 1998;
- Health and Safety (Miscellaneous Amendments) Regulations, 2002;
- Control of Noise at Work Regulations, 2005.

Absolute and Qualified Duties

Much of the law places duties on employers. Some are absolute duties, but many are qualified duties. It's important to recognise this in interpreting their meaning.

(a) Absolute duties

These give employers no room for manoeuvre. An absolute duty must be acted upon and the law does not accept that there is any other way of dealing with a particular hazard. You

can spot absolute duties because they include the word "*shall*" or *"must",* without any other qualifying term.

EXAMPLE : The Workplace (Health, Safety and Welfare) Regulations 1992
Regulation 25 – Facilities for Rest and to Eat Meals
"(1) Suitable and sufficient rest facilities shall be provided at readily accessible places."

(b) Qualified duties

There are two types of qualified duties, and both give employers some scope for interpretation. The 'give away' terms are *"practicable"* or *"reasonably practicable".*

Practicable duties indicate that employers must comply if the technical means exist for them to do so. Reasonably practicable duties mean that a judgement has to be made about the risks posed and the time, money and effort needed to eradicate or control them (see Section 2).

Hence a duty that indicates that an employer shall, where practicable or reasonably practicable, do something, means it may be that an employer does not have to comply because they are able to argue that it would not be possible or practical for them to do so.

EXAMPLE: The Workplace (Health, Safety and Welfare) Regulations 1992
Regulation 8 – Lighting
"(1) Every workplace shall have suitable and sufficient lighting.
(2) The lighting mentioned in paragraph (1) shall, so far as is reasonably practicable, be by natural light."

Enforcing the Law

In most cases, a breach of HASAWA is a criminal offence. There are three enforcing authorities for health and safety law. These are: the HSE, covering factories, foundries, hospitals and other health care establishments, railways, building sites, mines, farms, chemical plants, schools, colleges, universities, fairgrounds, offshore and nuclear installations; the Environmental Health Department of the local authority, covering offices, shops, railway premises where these are located within their local authority catchment area; and the fire service, dealing with all alleged breaches of fire safety law within the local authority area for which they are responsible.

Inspectors from all three of the above have powers of enforcement under the Act. These include improvement notices, prohibition notices and prosecution, as follows (relevant sections of HASAWA in brackets).

(a) Improvement notices

When an improvement notice is served, the employer is required to take action to put

things right within a specified time. These are issued when HASAWA or Regulations have been contravened and the Inspector considers that a fault must be remedied within a given period of time. If the employer fails to comply, a prohibition notice may be served.

(b) Prohibition notices

These prevent any further work taking place in all, or part, of a premises if an Inspector believes there is a risk of serious personal injury. An Inspector is within their rights to close a workplace if they feel there is good cause. A deferred prohibition notice may also be issued. There is a right to appeal to an Employment Tribunal, but the notice remains in force until the hearing (s.22).

(c) Prosecution

If the above are not deemed sufficient, i.e. the breach is so serious to pose immediate and obvious threat to people's lives, or if an employer has failed to respond to an improvement or prohibition notice, then an Inspector may prosecute the employer through the criminal courts.

The ***Health and Safety Offences Act 2008*** came into force in January 2009. The Act increases penalties and provides the courts with greater sentencing powers for those who break health and safety law. There is a maximum fine of £20,000 on conviction, at the magistrates' court, or an unlimited fine and/or up to 2 years' imprisonment if the trial is at a higher court. In 2008 the average fine for prosecutions brought by the HSE was £12,896; and for prosecutions brought by local authorities the average was £7,663.

As well as the possibility of prosecution over breaches of HASAWA, employers may face being sued for compensation when employees or others are injured or made ill as a result of poor health and safety standards. Figures provided by the TUC state that 100,000 successful personal injury claims are taken each year with the lion share by trade unions achieving £300 million settlements on behalf of their members. The courts award compensation for:

- Pain, suffering and inability to do things after an accident/illness that could be undertaken prior to the incident. The award is made based on medical evidence, normally specialist reports, of the injuries suffered, how they affect the injured person and how they may be affected by the injury in the future.

- Financial losses sustained as a result of the accident. The injured person will be entitled to financial compensation for the injuries suffered and financial losses and expenses as a result of the accident or illness. The aim is to put him/her in a position financially as if the accident/illness had never occurred.

- Loss of earnings since the accident/illness and future loss of earnings.

During 2008, the government introduced the Regulatory Enforcement and Sanctions Bill, which allows for alternative penalties to criminal prosecution to be used against employers who breach HASAWA. These could include administrative fines, profit orders, corporate

rehabilitation orders and publicity orders.

The Corporate Manslaughter and Corporate Homicide Act 2007

The Act creates a new offence of corporate manslaughter. It removes a key obstacle in previous prosecutions, where a company could only be convicted of manslaughter if a *'directing mind'* – such as a director – at the top of the organisation was personally liable.

The Act enables a jury to convict an organisation for both the offence of corporate manslaughter and for health and safety offences. This allows company directors to be prosecuted for a health and safety offence at the same time that the company is prosecuted for corporate manslaughter.

The new law allows for an unlimited fine, a remedial order or a publicity order as sentences for a convicted organisation. In 2007, the Sentencing Advisory Panel (SAP) proposed starting fines for manslaughter convictions at 5% of turnover, and at 2.5% for deaths where the conviction is under HASAWA. Trade unions have welcomed the introduction of the legislation, but are disappointed that individual directors would not be held to account.

SECTION 2: UNDERSTANDING "REASONABLY PRACTICABLE"

Introduction

Throughout health and safety law you will find the term *"reasonably practicable".* It implies that a balance has to be made between the cost of any improvement, compared with the risk of injury or ill health. There are many examples of where an employer has simply used the qualification of *"so far as is reasonably practicable"* as a means of evading their duty to ensure good health and safety standards at work.

While not an absolute legal requirement, reasonable practicability is acknowledged to be a very strict test. To do your job well, you need to understand the term and be able to discuss what it means and how the law should be interpreted with managers.

In this section we look at:

- ***the legal definition;***
- ***the onus of proof;***
- ***the view of the European Union;***
- ***the role of safety reps.***

The Legal Definition

The term *"reasonably practicable"* has existed for a long time and appears in both the Factories Act and the Offices, Shops and Railway Premises Act. The legal definition arose from a definitive case in 1949, when the judge ruled the following.

"Reasonably practicable implies that a compilation must be made in which the quantum of risk is placed in one scale and the sacrifice involved in the measures necessary for averting the risk (whether in time, money or trouble) is placed in the other; and that if it be shown that there is a gross disproportion between them – the risk being insignificant in relation to the sacrifice – the employer has discharged the onus upon them."

Simply, this means balancing the costs (time, effort and money required to eradicate a hazard) and the risks. Employers must balance the cost of introducing adequate safety measures against the benefits of reducing the risk. It does not mean that employers can avoid their responsibilities just by claiming they cannot afford improvements.

An employer should calculate not only how much it will cost to introduce a safer working practice. They must also calculate the benefits this will bring, in terms of improved health and safety standards, and the numbers of people who are affected. If its introduction will only affect very few people, and the improvements it will make are small, but the cost is substantial, it could be argued that it would not be reasonably practical for the employer to introduce the change. The relationship between cost and improvement has to be *"grossly disproportionate".*

The Onus of Proof

The above and other judgements were given in civil cases for damages relating to breaches of statutory duty. In ***Nimmo-v-Alexander Cowan and Sons Ltd (1968),*** a case on the interpretation of Section 29(1) of the Factories Act 1961 (relating to safe means of access to, and safe place of, employment) the House of Lords held that:

> *"once the hazard had been established, the onus of proving that it was not reasonably practicable to remove it in order to comply with a statutory obligation lay on the defendant (the employer)".*

The onus of proof is on the employer. The judicial interpretation of the onus of proof, in civil law, has now been placed firmly in the criminal law by Section 40 of HASAWA, which states the following.

> *"In any proceedings for an offence under any of the relevant statutory provisions consisting of a failure to comply with a duty or requirements to do something as far as is practicable, or so far as is reasonably practicable, or to use the best practicable means to do something, it shall be for the accused to prove (as the case may be) that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means than was in fact used to satisfy the duty or requirement."*

The View of the European Union

The EU Framework Directive 1989, incorporated into UK law as the Management Regulations, states an employer is responsible *"in relation to all events adverse to the health and safety of his workers".* However, UK legislation states that this extends only *"so far as it is reasonably practicable"* for employers to ensure workers' health and safety. In 2005, the European Commission challenged the UK government at the ECJ, arguing that the clause gives employers too much latitude and should be deleted from UK law. The Commission argued that the EU Framework Directive sets an absolute duty and therefore should not be qualified. The ECJ dismissed the action, finding that the Commission had not established its case to *"the requisite legal standard".* So the UK wording remains in HASAWA and all the Regulations created under the Act. ***(Commission of the European Communities – v – the United Kingdom of Great Britain and Northern Ireland, Case C-127/06.)***

The Role of Safety Reps

Employers can only use costs as a reason for not taking action when the risk of injury or ill health is disproportionate when compared with the costs eliminating the risks. In negotiations, safety reps can help to tip the balance of risks versus costs in favour of greater protection for staff by:

- Using information about injuries, ill health and sickness to show that risks are significant; and

- Checking that the right solutions are being costed and that costs have not been exaggerated. Further, costs should be offset against expected savings from reduced accidents, ill health and sickness absence, lower insurance and fire premiums, fewer industrial injury claims, reduced turnover, ill-health retirement and recruitment/retraining costs.

Many more things become *"reasonably practicable"* when the costs and risks are properly analysed in this way. When arguing what is *"reasonably practicable",* it is important to remember that the law balances the costs and risks for all employers alike, regardless of the size or their level of profit.
The expression *"reasonably practicable"* is used frequently to qualify the standard of performance required by the duties placed on employers under HASAWA. The general duties of the 1974 Act are so wide that they have to be qualified by a term such as *"reasonably practicable".* So it is important employers and safety reps work together to find a suitable interpretation that can be applied in local circumstances.

However, as more and more Regulations are created under the 1974 Act, greater detail is available to employers and safety reps about exactly how the law should be interpreted and acted upon in any given set of circumstances.

SECTION 3 – THE EMPLOYER'S LEGAL DUTIES

Introduction

The general duties of employers are set out in HASAWA. However, the Act is not detailed in its provisions. Many specific legal standards have been brought into force as the result of the introduction into UK law of a range of Regulations derived from Directives issued by the EU.

The most important of these are the Management of Health and Safety at Work Regulations (see Section 1), although very many Regulations created under HASAWA place duties on employers.

In this section we look at:

- ***the employer's duties under HASAWA;***
- ***the employer's duties under the Management Regulations;***
- ***the employer's duties under the Disability Discrimination Act.***

The Employer's Duties Under HASAWA

The Act places a wide range of general duties on all employers, which are detailed in the Regulations made law under the Act. Any legal duty placed on an employer by specific Regulations takes precedence over those in the Act. Under HASAWA, an employer has a duty *"so far as is reasonably practicable"* to ensure the health, safety and welfare of their employees, and any other users of their premises. The following is a summary of the key duties on employers – relevant sections of HASAWA in brackets.

(a) General duties to employees

A duty to ensure:

- ❑ The health, safety and welfare at work of all employees (s.2(1));
- ❑ Plant and systems of work are provided and maintained so as to be safe and without risk to health (s.2(2)(a));
- ❑ Articles and substances are used, handled, stored and transported in a safe and healthy way (s.2(2)(b));
- ❑ Employees are provided with information, instruction, training and supervision as is necessary to ensure their health and safety (s.2(2)(c));
- ❑ The workplace is maintained, safe and with risks to health. Further to provide and maintain means of access to and egress from the workplace that are safe and without risks (s.2(2)(d));

- The working environment is safe and healthy with adequate welfare arrangements (s.2(2)(e)). Note: In this context *"welfare"* applies to lavatories, washing facilities, drinking water, first aid, changing rooms, lockers, canteens, rest rooms etc.;

- Provision is made for the preparation and appropriate revision of a written statement of a general health and safety policy and the organisation and arrangements for carrying out that policy. Both the statement and any changes to be notified to all employees (s. 2(3));

- A Safety Committee is set up to keep health and safety matters under review if requested to do so by union safety reps. (s.2(7));

- No employee is charged for anything provided as a result of specific legislation to protect their health and safety (s.9).

(b) General duties to others

A duty to:

- Conduct their undertaking in such a way as to ensure, so far as is reasonably practicable, that those using their premises, but are not employees, are not exposed to any risks to their health or safety (s.3(1));

- Provide those using their premises, who are not employees, information about the way in which the undertaking is conducted, which may affect their health and safety (s.3(3));

- Ensure that any person who is not an employee, but is employed on their premises either on a self-employed or contract basis, or is employed by another organisation, has means of safe access to, or egress from, the premises. Further, to ensure that any plant or substance on the premises, or used on the premises, is safe and without risks to health and safety of such non-employees (s.4(1)(2));

- Ensure, as someone who controls premises used by others on a contract or tenancy basis, the premises are maintained and in good repair in terms of safe access to and egress from and that there is an absence of risks to health and safety arising from any plant or substances on their premises. The person in control of any premises is legally responsible for the health and safety of other users regardless of whether their undertaking is for profit or not (s.4(3)(4));

- Ensure, as someone who controls premises, that the premises has the best practicable means of preventing the emission into the atmosphere from the premises of noxious or offensive substances, and for rendering harmless and inoffensive such substances as may be emitted (s.5(1).

The Employer's Duties Under the Management Regulations 1999

(a) Regulation 3 - risk assessment

Employers have a duty to carry out a *"suitable and sufficient"* risk assessment to identify any hazards present in the workplace and the level of risk these pose. They must then act to eliminate such risks, or if this is not possible minimise and control them. A *"suitable and sufficient"* assessment is one that:

- Accurately identifies any significant risk;
- Enables the assessors to decide upon appropriate action to eliminate or minimise the risk;
- Is appropriate for the type of activity being assessed;
- Will remain valid for a reasonable period.

Risk assessment must be carried out by *"competent persons"* (see paragraph 3(e)). The type and capability of the workforce should also be considered; for example, the existence of young, pregnant or disabled workers. Employers with 5+ employees must keep a record of all significant findings from the risk assessment and identity any groups especially at risk.

Assessments must identify any hazards, the extent of the risk they pose and the measures needed to comply with relevant statutory provisions. Then employers should aim to eliminate or minimise the impact of such risks on their employees. Risk assessments must be recorded. They must *"remain valid for a reasonable period of time and be reviewed when circumstances change".* Paragraph 26 of the ACOP to Regulation 3 states an employer must redo their risk assessment following any accidents or near-misses in the workplace.

In assessing risks, an employer should ask - and answer - the following questions:

- How likely is it that something will go wrong?
- If it goes wrong, how serious could the consequences be?
- How frequently does the risk arise?
- Who would be affected?
- How many people would be affected?
- Are the effects immediate or chronic?
- What does the law require?

GN38 of Regulation 4A of the SRSC Regs, amended in 2015, states that safety reps should be consulted by employers about their risk assessment process. Further, all staff must be given suitable training and information about the hazards identified by the risk assessment, and the employer should consult with safety reps about the content of such training and information. Under Regulation 7 of the SRSC Regs, safety reps are entitled to receive a copy of the written report prepared following a risk assessment.

Following the risk assessment, employers must by law remedy any problems which the process may have highlighted. The following four stage hierarchy of response is encouraged, with stage one being the preferred remedy.

i) If possible, avoid a risk altogether. (For example, do not stock dangerous substances that are inessential, or for which there is an effective alternative.)

ii) Combat risks at source. (For example, treat or replace slippery steps rather than putting up a handrail or warning sign.)
iii) Control the risk by isolating the hazard. (For example, enclose a noisy machine.)
iv) Issue personal protection - the least desirable method to be used as a last resort.

Further, employers must take advantage of technological progress and prioritise those measures that protect the whole workforce, who must be trained to understand and accept the need for avoidance, prevention and reduction of risks and must understand what has to be done to achieve this. Risk prevention measures should form part of a coherent policy, to generate an active safety culture developed throughout the organisation. Safety reps should ensure that the risk assessments are monitored to ensure that control measures are implemented and are fully effective. (See also Section 4.)

(b) Regulation 4 – the principles of prevention to be applied

Employers have a duty to introduce preventative and protective measures to avoid or control risks identified by a risk assessment. The duty is laid down in Schedule 1 to the Regulations.

"Where an employer implements any preventative and protective measures he shall do so on the basis of the following principles:

i. avoiding risks;
ii. evaluating the risks which cannot be avoided;
iii. combating the risks at source;
iv. adapting the work to the individual, especially in regards to the design of workplaces, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a pre-determined work-rate and to reducing their effect on health;
v. adapting to technical progress;
vi. replacing the dangerous by the non-dangerous or less dangerous;
vii. developing a coherent overall prevention policy which covers technology, organisation of work, working conditions, social relationships and the influence of factors relating to the working environment;
viii. giving collective protective measures priority over individual protective measures; and
ix. giving appropriate instructions to employees."

By law, employers must comply with the Schedule in its entirety.

(c) Regulation 5 - health and safety arrangements

Employers must put in place arrangements to cover health and safety within the workplace. Effective management of safety depends on a risk assessment being done and the findings being used to remedy problems and prevent similar risks in the future. Where there are 5+ staff, the employer must record their health and safety arrangements in writing. The arrangements must be integrated into the management system for all aspects of an employer's activities. The ACOP states the measures taken should be based on the following hierarchy:

- ***Planning***

Adopting a systematic approach to the completion of risk assessment. Selecting appropriate methods of risk control to minimise risks. Establishing priorities and developing performance standards both for the completion of risk assessment(s) and the implementation of preventative and protective measures, which at each stage minimises the risk of harm to people. Wherever possible risks should be eliminated.

- ***Organisation***

Involving employees and their reps in carrying out risk assessments. Deciding on preventative and protective measures and implementing these in the workplace. Health and Safety Committees are recognised as having a role to place in achieving this.

- ***Control***

Clarifying health and safety responsibilities and ensuring that the activities of everyone are well co-ordinated. Ensuring that everyone understands clearly what they have to do to discharge their responsibilities, and ensure they have the time and resources to discharge them effectively. Setting standards to judge the performance of those with responsibilities to ensure they meet them. Ensuring adequate and appropriate supervision, particularly for those who are training and who are new.

- ***Monitoring***

Employers should measure what they are doing to implement their health and safety policy, to assess how effectively they are controlling risks and how well they are developing a positive health and safety culture. Devising a plan and making routine inspections to check that preventative and protective measures are in place and effective. Investigating the immediate and underlying causes of incidents and accidents to ensure that remedial action is taken, lessons are learnt and longer term objectives are introduced.

- ***Reviewing***

Establishing priorities for remedial action identified through monitoring and ensuring that suitable action is taken in good time and is completed; periodically reviewing the whole health and safety management system.

(d) Regulation 6 - health surveillance

Employers must carry out health surveillance appropriate to any risks to health and safety identified in the assessment. Examples of the necessity for surveillance include where a work-related disease or adverse health condition has been identified as linked to a particular work process, or where there is a reasonable likelihood of their occurrence under particular work conditions. Such surveillance is likely to protect the health of the employees examined and provide valid techniques to identify where such problems exist. Surveillance

will enable employers to identify and protect employees at increased risk and could provide information on the accuracy of the risk assessment. The method of carrying out surveillance could, include for example, maintenance of basic health records and examination by a medically qualified person.

(e) Regulation 7 – health and safety assistance

If an employer is not competent to carry out measures to comply with the Regulations they must appoint one or more competent persons to do so. A competent person is defined as someone who *"has sufficient training and experience or knowledge and other qualities to enable him or her properly to assist the employer in undertaking the required measures".*

Employers may not '*buy in'* expertise on a consultancy basis in the first instance. They must endeavour to ensure they employ sufficient competent persons to meet the requirements of the Regulations and the needs of their particular organisation. They may use health and safety consultants only if it is not practicable to do otherwise. The number appointed must be sufficient to deal with the health and safety issues within a given workplace or establishment. They must be given information on the factors known or suspected to affect the health of all relevant persons. Regulation 4A(1)(b) of the SRSC Regulations states that safety reps are entitled to be consulted on the appointment of competent persons.

(f) Regulation 8 - procedures for serious and imminent danger

An employer must establish procedures to evacuate staff threatened by serious and imminent danger, for example, in case of fire or a bomb threat. A sufficient number of competent persons must be nominated to implement such procedures. This Regulation also means that for the first time employees have the right to stop work and go to a place of safety if they are threatened by serious and imminent danger.

(g) Regulation 9 – contacts with external services

This Regulation develops the employer's duties in terms of serious and imminent danger. It demands that employers ensure that any contact with external services (the fire brigade, the police or the ambulance service) is arranged as regards first-aid, emergency medical care and rescue work.

Employers should establish procedures for any worker to follow if an emergency situation arises which may lead to imminent danger. These procedures must be written down (Regulation 5(2)) and clearly state the limits of actions to be taken by employees. This information should be made available to all employees (Regulation 10). Induction training (carried out under Regulation 13) should cover emergency procedures and should familiarise employees with those procedures.

(h) Regulation 10 - information for employees

All employees must be given full information on:

- All health and safety procedures including evacuation;

- Risks to their health and safety identified by risk assessment and the measures in place to prevent and protect them from these risks;
- Any risks notified by employers who share the same workplace.

SRSC Regulation 4A(1)(c) entitles safety reps to be consulted about the content of any information the employer has a duty to provide to staff.

(i) Regulation 11 - co-operation and co-ordination

Employers sharing a site must provide each other with relevant information on risks and must co-operate on and co-ordinate the implementation of any appropriate and necessary safety measures, including an effective procedure for imminent danger.

(j) Regulation 12 - persons working in host employers' undertakings

Employers who control premises, used by those who they do not employ, must ensure that such individuals are safe and without risk. In other words, anyone using premises for any purpose is entitled to assume that the health, safety and welfare standards are adequate. An employer must provide those working on their premises from outside organisations with instruction and comprehensible information on the risks to their health and safety while they are on the premises and the evacuation procedures in operation.

There is some overlap between this duty on employers, and those imposed by ***Regulation 11***. The worker's employer – as opposed to the *'host'* employer – retains the overall duty of care towards their employees.

These are key elements of the Management Regulations for many CSP members and safety reps, since often they are employed in, or use, premises that are not owned by their direct employer, for example a GP surgery. As a result, it is vital that safety reps understand the duties placed on their members' employer, and those of the host employer, to whom the premises belong.

The member's employer is the organisation with whom they have a contract of employment, and it is this employer who has the over-riding responsibility for the health, safety and welfare for their employee, even if they work off site at a host employer's premises.

The host employer has a duty to carry out a risk assessment, and to take into account the risks to others using the premises, and not just their own staff. On the basis of the results of the risk assessment process, the host organisation has a duty to provide to users of the premises comprehensive information about any risks, and the measures in place to control them, as required under Regulation 10. The host organisation must provide others with relevant information, either directly or via their own employer. There is a duty on the CSP members' employer to ensure that such information is being provided, if it is agreed that this will be undertaken by the host organisation. The information must include the identity of nominated staff to help with the emergency evaluation procedures, as required by Regulation 8.

The visiting employees may also introduce risks to the permanent workforce (for example, from equipment or substances they use). Their employers have a general duty to inform the host employer of such risks and to co-operate with the host employer in controlling any such risks. (See Part 1, Section 6 for more CSP advice on this issue.)

(k) Regulation 13 - capabilities and training

Employers must provide adequate training to staff on recruitment and if an employee changes job; if existing equipment is changed or new equipment or technology is introduced; or if a new system of work is introduced. The training must take place in working hours. If this is not practicable, staff are entitled to their normal arrangements in terms of overtime pay/time off in lieu. Under Regulation 4A1(d) of the SRSC Regs safety reps are entitled to be consulted about the suitability, duration and content of health and safety training for staff.

(l) Regulation 14 - employees' duties

Lays down the legal duties imposed on employees – see Section 6.

(m) Regulation 15 - temporary workers

The law protects all workers, whether full-time or part-time, and regardless of length of service or whether they are temporary or permanent staff. Temporary workers must be provided with appropriate training and information to enable them to carry out their work safely. This also applies to agency staff. They should also be subject to appropriate health surveillance.

(n) Regulations 16, 17 and 18 - new or expectant mothers

- ***Regulation 16*** states that any employer with women of child-bearing age must ensure that a risk assessment carried out under Regulation 3 considers the likely risks posed within the workplace to pregnant women or women who have recently given birth (up to two years after the birth of a child). Where a woman becomes pregnant, if a risk assessment shows that there may be a risk to her health, or that of her unborn child, which the employer cannot remedy, then the woman concerned is entitled to suitable alternative work that is safe (at the same rate of pay). If such alternative work is not available, the employer must suspend the woman on full pay until the time she begins her maternity leave.
- ***Regulation 17*** states that if a pregnant woman has a certificate issued by her GP, a hospital doctor or her midwife showing that it is unsafe for her to continue working during pregnancy she should be suspended on full pay until her maternity leave begins. This affects all pregnant women, but particularly those who work at night.

- ***Regulation 18*** states that the employer has no duty to act under Regulations 16 and 17 until they are notified in writing by the employee in question that she is pregnant, has given birth in the last 6 months, or is breastfeeding.

(o) Regulation 19 - young workers

Places a legal duty on employers to ensure young employees are protected from any risks to their health and safety. Employers must carry out a risk assessment before young workers start to see if any risks are evident and to take protective steps in consequence. A young worker is defined as being above school leaving age (16) and up to the maximum school leaving age (18).

(p) Legal liabilities

- **Regulation 21 - legal liability.** An employer is not afforded a defence in law for any alleged contravention of their health and safety duties by reason of any act, or omission, by an employee or a competent person.

- **Regulation 22 – exclusion from civil liability.** Originally, the law precluded any civil action being brought against an employer for a failure to comply with their legal duties. The government amended the law in October 2003 so that employees now have the right to claim damages from their employer in civil actions where they suffer injury or illness as a result of their employer breaching HASAWA and any of the Regulations created under the provisions of the Act.

The Employer's Duties Under the Equality Act 2010

It is vital that CSP safety reps are aware of the rights in terms of their health, safety and welfare of members who may be defined as disabled. Employer's have legal duties not only under HASAWA, but also under the terms of the Equality Act 2010. The CSP, and all staff side unions, need to be pro-active in ensuring that the health and safety rights of members with disabilities are understood by senior and line management, and that action to provide a healthy and safe working environment is undertaken throughout the Trust/Health Board. CSP safety reps have a key role in ensuring that all risk assessments carried out in their area include a consideration of the hazards posed to members with disabilities.

It's important to remember that disability can affect any of us at any stage of life. A member who is fit and healthy may become disabled, for example following a work-related accident, and as a result will then be able to benefit from the rights laid down in the Equality Act, and the duties the Act places on the employer.

(a) Defining disability

A member with a disability, or a long-term health condition, is protected both by the Health and Safety at Work Act 1974 and the Equality Act defines a disability as follows.

"A person has a disability for the purposes of the Act if he or she has a physical or mental impairment which has a substantial and long term adverse effect on his or her ability to carry out normal day to day activities."

***"Long term"* has been defined as a condition which has lasted 12 months, or which doctors confirm is expected to last at least 12 months. Mental impairment which is the result of alcohol or drug abuse, and personality disorders, are specifically excluded from the definition within the Act. Some people have an impairment that is always defined as a disability. For example, someone with a hearing impairment that requires the use of a hearing aid; someone who is registered blind or partially sighted and someone with a facial disfigurement. Certain conditions are automatically defined as a disability from the date of diagnosis. These are cancer, multiple sclerosis and HIV/AIDS.**

(b) *How does HASAWA protect disabled workers?*

All employers have a duty to *'ensure so far as is reasonably practicable the health, safety and welfare at work of all employees'*. This means that they have to carry out a risk assessment of all workers' activities, including the additional risks to certain groups of workers, such as disabled people.

If there may be particular hazards, posing specific risks, to workers who are disabled, then, under the Equality Act, the employer has a duty to provide a healthy and safe working environment for the disabled worker, and this may include a duty to make reasonable adjustments to the post, workplace, work equipment or hours of work.

(c) *Risk assessment and disability*

The risk assessment is critical to ensure that disabled staff are provided with a healthy and safe working environment. The assessment process must:

- Focus on the disabled worker as an individual.
- Not make assumptions about the individual and their capabilities.
- Consider the facts.
- Consider the essential elements of the job.
- Identify the length of time/frequency of any hazardous situations.
- Get individual specific medical advice, where appropriate.
- Consult the disabled worker about any reasonable adjustments that may be required and how these can be introduced.

- Implement a programme of remedial action, including any reasonable adjustments, to reduce the risk.

If there is still an *'unacceptable risk'*, even with adjustments, either to the disabled worker or to others, the employer may have to consider, as a last resort, redeploying the disabled worker. This can include redeploying the person to a job that may be more senior than the current post.

A member may well continue to be employed in their current role if, after doing everything that's reasonable to reduce the risks identified in the assessment, the employer is certain that the worker is aware of the risks, accepts them and understands how they can be practically minimised through supervision, information, and training. There must be regular reviews and the employee must be involved in, and informed of, any changes and the potential consequences of these to their health and safety.

(d) *Fire hazards and disabled workers*

Article 9 of the ***Regulatory Reform (Fire Safety) Order 2006*** the employer must make a *'suitable and sufficient'* assessment of the risk of, and from, fire in the workplace, playing special attention to dangerous substances and to people who may be especially at risk, such as young people, pregnant women, temporary workers and people with disabilities.

The staff side of the Safety Committee should ensure that the employer's Fire Safety Policy takes into account the needs of disabled people, including staff, and that effective procedures are in place for serious and imminent danger (in line with Regulation 8 of the Management of Health and Safety at Work Regulations 1999) in terms of the needs of disabled users of the premises.

Safety reps should ensure that where there are members with a disability that may present a difficulty during a fire, the departmental evacuation plan takes into account their particular needs. Discuss these plans with your line manager and ensure that all staff concerned know about the arrangements.

There are a number of simple reasonable adjustments that can help, such as the provision of flashing lights as well as auditory devices, establishing a *'buddy'* system to ensure wheelchair users get help, named guides for visually impaired people.

See also the CSP ERUS Information Paper 37- Disability Discrimination – the Law (2012).

SECTION 4: RISK ASSESSMENT

Introduction

Most accidents at work are caused by badly designed or poorly managed systems of work which will eventually injure or cause ill health to anyone exposed to them for long enough. The HSE has stated that in their view carelessness is seldom the cause.

The law emphasises that work should be adapted to suit the individual when designing the job, selecting equipment and introducing methods of work. In order to identify where employees may be working in situations that have the possibility to injure them or make them ill, it is the employer's responsibility, in Regulation 3 of the Management of Health and Safety at Work Regulations, to carry out a *"suitable and sufficient assessment of all the risks".*

In this section we look at:

- ***Defining risk assessment***
- ***A safe system of work***
- ***Identification of hazards or risk;***
- ***Defining hazard and risk***
- ***The likelihood of occurrence***
- ***A risk assessment checklist***
- ***Preventative and protective measures***

See also the CSP ERUS Information Paper H&S 03 "Risk Assessment" (2008).

Defining Risk Assessment

Risk assessment is a mechanism that seeks to clarify, for staff and employers, any working practices that could present a hazard. Having identified the hazards, the law demands that employers evaluate the extent to which they pose a risk and to remove or minimise such risks.

Regulation 3 of the Management Regulations demands that all employers carry out risk assessment throughout the workplaces for which they are responsible. Additionally, there are risk assessment requirements in a range of other Regulations, for example the Manual Handling Regulations and COSHH. Where the risk assessment duties on employers overlap between the Management Regulations and those of other Regulations, compliance with the more specific Regulations will be sufficient to comply with the employer's duties in law.

A Safe System of Work

A safe system of work (SSOW) is the agreed safest way of carrying out a work process, taking into account all elements of the workplace, the equipment/substances to be used, the method of carrying out work, the nature of the workforce and the means of ensuring their on-going health, safety and welfare. A SSOW is determined by thorough analysis and

on-going monitoring and it cannot be in place until the following process has been undertaken:

- Identifying the hazards within the workplace.
- Systematically assessing the risks to health and safety posed by such hazards and recording of findings.
- Analysing the results of the risk assessment and agreeing the mechanisms for the prevention of injury and ill-health that need to be applied.
- Applying such means of eradicating or minimising the risks identified via the risk assessment.
- Agreeing the safest means of working and then informing, training and supervising staff accordingly.
- Monitoring that the SSOW is being upheld and remains current.
- Carrying out a new risk assessment when changes are made within the workplace, or following a serious accident or near-miss.

Fundamental to a creating a SSOW is the commitment to a safety first attitude at all levels within the organisation: among senior management; line managers and all staff. For a SSOW to be meaningful, it is vital that it is reflected in the culture and ethos of the organisation if any written commitment (via a Health and Safety Policy) is to be turned into practical action throughout an organisation.

Identification of Hazards or Risks

A *"suitable and sufficient"* risk assessment means it should:

- Correctly and accurately identify a hazard.
- Disregard inconsequential risks and trivial risks associated with life in general.
- Determine the likelihood of injury or harm arising from a hazard.
- Quantify the severity of the consequences and the numbers of people who would be affected.
- Take into account any existing control measures.
- Identify any specific legal duty or requirement relating to the hazard.
- Remain valid for a reasonable period of time.
- Provide sufficient information to enable the employer to decide upon appropriate control measures, taking into account the latest scientific developments and advances.
- Enable the employer to prioritise remedial measures.

Where 5+ staff are employed, the results of the risk assessment must be recorded, outlining the significant hazards identified, the control measures in place, the extent to which these control the risk and the people exposed to the risk. Safety reps are entitled to a copy of the employer's written record of the risk assessment (Regulation 7 of the SRSC Regs). Safety reps should also exercise their right to be fully consulted over all aspects of risk assessment (Regulation 4A of the SRSC Regs). Such consultation should include the appointment of and training for risk assessors; planning and prioritising of risk assessment and an opportunity to comment on the written records of a risk assessment.

Defining Hazards and Risks

It is easy to confuse the terms hazard and risk.

- A hazard can be defined as something with the inherent potential to cause harm or injury.
- A risk can be defined as the likelihood of harm or injury arising from a hazard.
- The extent of the risk is the number of people who might be exposed and the severity of the consequences for them.

Examples of hazards and the associated risks include:

- *Handling of chemical substances.* Chemical substances pose a hazard since there may be a risk of exposure to the chemical.

- *Walking on floor surfaces.* Floor surfaces pose a hazard since there may be a risk of slips, trips or falls.

- *Climbing up or down ladders.* Using a ladder poses a hazard since there may be a risk of falling from, or collapse of, the ladder.

- *Use of electrical equipment*. Electrical equipment poses a hazard since there may be a risk of electrical shock or burns.

- *Lifting people or objects.* Lifting poses a hazard since there may be a risk of back injury, or of the people or objects being lifted falling.

The Likelihood of Occurrence

Risk assessment is a mechanism for calculating the probability that a hazard will result in an accident with definable consequences. Risk is the product of the severity of the consequences of any failure and the likelihood of that failure occurring, along with the potential numbers of people likely to be affected.

Level of risk =
the likelihood of occurrence/the numbers likely to be affected x
the severity of potential consequences.

Thus an event with a low probability of occurrence, but a high severity, can be compared against an event likely to happen relatively often but with a comparatively trivial consequence. For example, slight cuts to the fingers when working with paper (which may happen often, but poses a very minor hazard), compared to an emission of noxious substances at work (which may happen very rarely, but could have fatal consequences when it does). The likelihood of risk occurring and its consequences are often described in a priority order as low (L); medium (M) and high (H).

- ***Low risk:*** remote or unlikely to occur (or may occur often with trivial consequences). May cause minor injury or illness. No lost time from work.

- ***Medium risk:*** will occur in time if no preventative action is taken. Injury or illness likely. May cause lost time from work.

- ***High risk:*** likely to occur immediately or in near future (or may occur rarely with potentially catastrophic consequences). May cause serious or fatal injury or illness. Considerable amounts of lost time from work.

A Risk Assessment Checklist

The checklist below outlines the required contents of a risk assessment record:

- The date risk assessment will be carried out
- Job title/description on job.
- Frequency of task
- Hazards: actual and potential
- Consequences of the risk (low, medium, high)
- Non-routine (occasional) jobs
- Other staff affected
- Workers particularly at risk: people with disabilities, lone workers, pregnant women/other persons affected (the public, contractors)
- The working environment
- Legal standards that apply
- Emergency procedures
- Training
- Monitoring: control measures and health surveillance
- Recommended improvements (corrective action)
- Review date and signature of competent person

Preventative and Protective Measures

Regulation 4 of the Management Regulations outlines in detail the principles of prevention to be applied following the carrying out of a risk assessment. Details of this Regulation are provided in Section 3. The preventative and protective measures that have to be taken depend upon the relevant legislation, both HASAWA and any Regulations covering particular hazards, and the results of the risk assessment.

The GN to Regulation 4 (paragraph 30) advises how employers should respond in deciding which protective and preventative measures to take.

- It is always best if possible, to avoid the risk altogether, e.g. do the work in a different way, taking care not to introduce new hazards.
- Evaluate risks that cannot be avoided by carrying out a risk assessment.

- Combat risks at source, rather than palliative measures. So, if the steps are slippery, treating or replacing them is better than providing a warning sign.

- Adapt work to the requirements of the individual (consulting those who will be

affected when designing workplaces, selecting work and personal protective equipment and drawing up working and safety procedures and methods of production). Aim to alleviate monotonous work and paced work at a predetermined rate, and increase the control individuals have over work they are responsible for.

- Take advantage of technological and technical progress which often offers opportunities for improving working methods and making them safer.

- Implement risk prevention measures to form part of a coherent policy and approach. This will progressively reduce those risks that cannot be prevented or avoided altogether, and will take account of the way work is organised, the working conditions, the environment and any relevant social factors. Health and safety policy statements required under Section 2(3) of the HASAWA should be prepared and applied by reference to these principles.

- Give priority to those measures which protect the whole workforce and everyone who works there, and so give the greatest benefit (i.e. give collective protective measures priority over individual measures).

- Ensure workers, whether employees or self-employed, understand what they must do.

- A positive health and safety culture should exist within an organisation. This means the avoidance, prevention and reduction of risks at work must be accepted as part of the organisation's approach and attitude to all its activities. It should be recognised at all levels of the organisation, from junior to senior management.

Action Following Risk Assessment

One strategy for carrying out the process of protecting people following risk assessment is ERIC:

E - Eliminate
R - Reduce
I - Isolate
C - Control.

Followed by implementation of:

P - Protect, where it is not possible to eliminate; and
D - Discipline (the personal discipline required to act safely, once trained.

Another approach to risk assessment is as follows.

STAGE 1
Identify the hazard.

⬇

STAGE 2
Evaluate the risk the hazard poses. Record findings.

⬇

STAGE 3
Eradicate the hazard or control the risk.

⬇

STAGE 4
Devise and agree a safe system of work.

⬇

STAGE 5
Inform, train and supervise staff.

⬇

STAGE 6
Monitor, review and amend as necessary.

Some Pitfalls with Risk Assessment

A 2003 research report for the HSE, produced by the Health and Safety Laboratory, entitled *"Good Practice and Pitfalls in Risk Assessment"*, found a large number of inadequate industry risk assessments that illustrate common pitfalls in the process. These include:

- Carrying out a risk assessment to attempt to justify a decision that has already been reached.
- Only considering the risk from one activity.
- Not involving in the assessment employees with practical knowledge of the process/activity being assessed.
- Ineffective use of consultants.
- Failure to identify all hazards associated with a particular activity.
- Inappropriate use of cost benefit analysis.
- Not doing anything with the results of the risk assessment.
- Not linking hazards with risk controls.

The report recommended that risk assessment is carried out in consultation with union safety reps as required under the regulations. It provides case studies which show the inadequacies of some of the risk assessments being carried out in workplaces across the country, as these examples show.

- *Stones were being thrown from trains crossing a viaduct at a car showroom. HSE Inspectors served an improvement notice on the rail operator to put up a fence. The operator employed consultants to carry out a risk assessment to 'show' that the cost involved were grossly disproportionate.*

- *A company used a risk assessment prepared for a similar site, without considering the differences between them. As a result, a spillage of very toxic substances contaminated a nearby river.*

- *A worker's arm was amputated by a machine as he was cleaning in a factory. The risk assessment had been carried out by a manager who did not know how the machine worked, who failed to notice that guard switches were missing.*

Safety Reps and Risk Assessment

Neither safety reps nor managers should confuse workplace inspections with risk assessments. Inspections seek to identify on-going hazards and problems. Risk assessments are part of the risk management process which seeks to identify hazards, evaluate risks, record the findings, recommend precautions and review progress. It is the responsibility of the employer to carry out risk assessments, not the safety rep.

However, trade union safety reps can play an important part in the risk assessment process. Safety reps and their members have a wealth of experience and detailed knowledge of their workplace and the jobs that are being done. Despite this, their involvement in the risk assessment process is far from satisfactory. In a 2014 TUC Safety Reps' Survey, those safety reps working in health services responding stated:

- 23% of employers had done risk assessments that were considered inadequate.
- There were only 72% formal risk assessments undertaken in comparison to 83% in the private sector.
- Safety reps' level of satisfaction declined from 33% in 2012 to only 28% stating they were satisfied with their involvement in drawing up the risk assessment.
- 36% of safety reps, around a third of reps are never automatically consulted by their employer.
- 12% are never consulted, even after they have requested to be.

Safety reps have rights under the SRSC Regulations 1977. In addition, the Management of Health and Safety at Work Regulations 1999 refer to involvement of safety reps, and employees generally, in the risk assessment process:

- **Regulation 3 Risk Assessment: ACOP paragraph 15 Risk Assessment in Practice –** *"The risk assessment process needs to be practical and take account of the views of employees and their safety representatives, who will have practical knowledge to contribute."*

- **Regulation 5 Health and Safety Arrangements: ACOP paragraph 34** ***"Organisation.*** *This includes: (a) involving employees and their representatives in carrying out risk assessments, deciding on preventive and protective measures and implementing those requirements in the workplace. This may be achieved by the use of formal health and safety committees where they exist, and by the use of team-working, where employees are involved in deciding on the appropriate preventive and protective measures and written procedures, etc; (b) establishing effective means of communication and consultation in which a positive approach to health and safety is visible and clear. The*

employer should have adequate health and safety information and make sure it is communicated to employees and their representatives, so informed decisions can be made about the choice of preventive and protective measures. Effective communication will ensure that employees are provided with sufficient information so that control measures can be implemented effectively."

It is important that safety reps use these rights fully to: become constructively involved in the risk assessment process; check their employers' risk assessments; and check plans for risk prevention and control, so that members' health and safety is properly protected.

Remember:
It is the safety representative's function to carry out regular inspections of their members' workplace. It is the employer's duty to carry out risk assessment.

SECTION 5: SAFETY POLICIES

Introduction

In order to ensure that employers consider their responsibilities carefully, Section 2(3) of HASAWA requires them to prepare and keep up-to-date a Health and Safety Policy. Those employers with more than five employees must prepare and revise, as appropriate, a written statement of their general policy on health and safety.

A Health and Safety Policy is viewed as an essential pre-requisite for employers. For example in Regulation 5 of the Management Regulations '*Health and Safety Arrangements'*, the need for a positive health and safety culture within an organisation is stressed. There is a requirement on the employer to detail how they aim to achieve this culture and then outline their strategy within a Health and Safety Policy.

In this section we look at:

- ***The aims of a Health and Safety Policy***
- ***The contents of a Health and Safety Policy***
- ***Identifying hazards and assessing risks***
- ***Elimination and control of risks***
- ***Monitoring Health and Safety Policies***
- ***Safety policies for physiotherapy departments***
- ***CSP members in the community***

The Aims of a Health and Safety Policy

A Health and Safety Policy should outline the ways in which the employer will ensure workplaces are healthy and safe, and how the welfare of employees will be secured. It is a written statement of intent. However, safety reps should remember that it is of little value if there is no evidence that an employer is actively seeking to put their written commitment into practice throughout an organisation. To comply with the law, the Health and Safety Policy statement must:

- Include a statement of commitment by the organisation and the arrangements for carrying out the policy.
- Be revised as often as is necessary.
- Be brought to the attention of all employees.

The HSE states that there are 3 main elements to an effective safety policy: assessing risk; eliminating or controlling risk; monitoring and reviewing. On their website they provide guidance with an example of a health and safety policy for employers.

In preparing and revising the statement, the employer is advised to consult their employees, through their safety reps and Safety Committee. A general statement of intent by itself is not enough. The policy must be related to the specific organisational features and safety problems of the workplace.

The Contents of a Safety Policy

The policy should cover the following points:

- A declaration of intent to provide the safest and healthiest working conditions possible.
- Names of managers at various levels responsible for implementing the policy.
- The names of the organisation's competent persons.
- The roles of any safety advisers.
- The organisation of any Safety Committee.
- The employer's policy on information, training and supervision.
- Identification of the main hazards and precautions to be taken.
- The procedure for recording accidents.

Safety reps should consider seeking agreement to include the following:

- How line managers delegate duties to supervisors.
- How managers link with safety advisers.
- How hazards and risks are dealt with and how agreement is reached on remedying any failures.
- How expenditure is met both in terms of money and time spent by staff on involved in these duties.
- Arrangements for facilities for safety reps.
- Details of arrangements for joint consultation with unions.

The GN to Regulation 9 of the SRSC Regulations suggests that a Safety Committee may be a suitable channel for communicating the safety policy to employees. However, it is up to the employer to ensure that all employees are made aware of the policy by whichever means seems most effective. This may mean giving everyone a copy, holding special meetings, having a special session on safety in staff induction training. Employers should ensure that any language difficulties are overcome so that all employees can understand the policy.

Identifying Hazards and Assessing Risks

All hazards likely to arise in the workplace must first be identified and the risks associated with those hazards (the chances of harm actually occurring, and to whom) must also be assessed. Only then can an effective safety policy be written. The policy should aim to eradicate all hazards, as far as reasonably practicable. It should aim to eliminate or control any risks likely to occur because of any remaining hazards in the workplace. The identification of hazards and the assessment of any associated risks should be carried out using relevant legal standards. These are:

- HASAWA - in particular Sections 2,3,4 and 6 which form a useful checklist of areas to cover in risk assessment, including safe systems of work, supervision, training and working environment.
- The Management of Health and Safety at Work Regulations 1999 particularly Regulation 3 relating to risk assessment and Regulation 4 relating to principles of prevention to be applied (see Sections 3 and 4).
- The COSHH Regulations and others relating to noise, electricity, manual handling, DSE equipment, work equipment, PPE, etc. These all have clear risk assessment procedures. If a risk assessment has already been carried out in order to comply with a

particular legal requirement under such Regulations, an employer does not have a duty to repeat that process when they assessing risks throughout the organisation. The risk assessment requirement of any specific sets of Regulations takes precedence over Regulation 3 of the Management Regulations.

- HSE guidelines.

Elimination and Control of Hazards and Risks

The main aim of any policy should be to eliminate hazards or, if this is not possible, to control them. Methods of risk control should ensure:

- Compliance with relevant legislation and recognised technical standards.
- Agreement that, where necessary, to go beyond the minimum requirement to comply with qualified duties, such as those that demand employers comply *"as far as is reasonably practicable".*
- Coverage of health risks as well as safety risks.
- Agreement with unions.
- Clear and unambiguous understanding by all employees.
- Account is taken of real practice - the way people actually work.

Monitoring Safety Policies

It is essential that policies are regularly reviewed to ensure that they are up to date and reflect changes in legislation, work practices and technology and the environment. The regular review period should be specified within the detail of the policy. Union safety reps should aim for an annual review.

Safety Policies for Physiotherapy Departments

Each Trust, nor NHS organisation should have a comprehensive policy available to all staff. Such a policy will have to be generalised for particular items but should state management's intention to provide a healthy and safe working environment with the arrangements for implementing this clearly set down.

It is advisable for physiotherapy units and departments to establish their own safety policies to combat their own unique problems, and respond to the particular hazards that may be faced by physiotherapy staff.

Appendix C provides further guidance on drafting policy statements. A well drafted, and regularly revised, safety policy will be of great use to safety reps in gaining improvements in working conditions. It should set explicit standards to be attained and make clear what procedures should be followed in the event of a problem arising.

Physiotherapists in the Community

Many CSP members are community based. So it is important that safety reps ensure that written safety policies reflect the needs of their members working out in the community.

They face particular hazards and risks and these must be addressed, not only in the written policy, but also in any action plans drawn up to eliminate and control such risks.

For example, there are a range of hazards inherent in lone working, and CSP safety reps should aim to negotiate a lone working policy with the employer, which takes particular account of these hazards for CSP members, and the action to be implemented to minimise the risks of lone working. **For further information, see CSP H&S Information Paper No. 7: *Personal Safety for Lone Working*.**

SECTION 6: MANAGING SAFETY WITHIN PHYSIOTHERAPY

Introduction

In law, the employer has a legal duty to provide for the health, safety and welfare of all their employees. It is important that safety reps understand who employs their members and what rights their members have in terms of health, safety and welfare at work.

In order that safety reps can play an effective role in ensuring good health and safety standards for all their members, they need to raise the issue of good management of health and safety within their departments.

In this section we look at:

- ***Who employs CSP members;***
- ***The responsibilities of clinical leads and physiotherapy managers;***
- ***The special position of physiotherapy schools.***

Who Employs CSP Members?

The employer is not the NHS as a whole or your physiotherapy department or your physiotherapy manager/lead. Legally, the employer is the person or body which hires you, issues your contract of employment, pays your wages and has the right to dismiss you.

For CSP members this may be:

- An NHS Trust
- A private hospital company, charity or an individual owner of a clinic
- A General Practitioner, or partnership of GPs, a Primary Care Group or a Primary Care Trust
- Other organisations, such as a company, university, football club.

The actual responsibility for health and safety will be delegated by the employer to a particular individual or group of individuals – known in law as “competent persons”.

In Trusts there may be a member of the Personnel Department who is appointed with responsibility for overall health and safety or there may be a Health and Safety Manager.

There is also an obligation on managers within departments, such as your physiotherapy/therapy manager or clinical lead, to take some responsibility for health and safety matters for their own staff and department.

Responsibilities of Clinical Leads & Physiotherapy Managers

The question of how much legal responsibility for health and safety superintendents have or ought to accept is a particularly difficult one. Clearly, along with other functional managers in the NHS, band 8 physiotherapists or therapy managers have general responsibilities to promote safe working conditions and to take action to remedy any hazards that come to their attention.

It will often be the band 8 who sometimes accompanies the safety rep on their inspections; who keeps the accident record book and who takes responsibility for training in safe working practices. Band 8 (and other physiotherapy managers) should also draw up a safety policy for physiotherapy staff and will usually have overall responsibility for physiotherapy risk assessments. But do their responsibilities extend beyond this?

Some physiotherapy managers/leads have been assured that, although they have responsibilities under the Act, they are not required to display technical or professional knowledge or skills beyond those reasonably expected of his/her training and the post he/she holds.

Other physiotherapy managers/leads have been faced with attempts to write additional responsibilities into their job description or to give them the additional title of 'Safety Officer' or 'Safety Liaison Officer'. It is the stated view of CSP to oppose this unless this is the wish of individual managers and they have been specifically trained for such a role in order that they are fully aware of their legal responsibilities.

If leads do accept the additional title of 'Safety Officer' or 'Safety Liaison Officer' this could be taken as implying that they carry additional safety responsibilities and that they possess greater expertise in health and safety matters than other managers. In extreme circumstances a prosecution against such a designated officer would probably stand a greater chance of success.

There are many health and safety problems for which band 8s or clinical leads could not reasonably be held responsible. Many hazards need the approval of more senior management at hospital level, for example fire precautions. Additionally, some hazards affect a range of departments and it would be unfair to expect the funding required to remedy them to be taken from physiotherapy budgets.

Physiotherapy managers should also remember that while the safety rep's role relates to CSP members only, the manager's responsibilities often extend beyond physiotherapy staff and may include clerical staff using VDUs and others in the department, such as occupational therapists, speech therapists and chiropodists. They will need to consider the particular needs of these staff.

It is advisable for safety reps to approach their lead first where problems exist to ensure that the matter is then dealt with by the appropriate level of management. It would usually

be appropriate to have spoken to your lead/manager and gained their support when attempting to resolve a problem with more senior managers.

The Special Position of Physiotherapy Educational Institutes

The university is unquestionably the employer for the purposes of HASAWA. It should therefore have a safety policy and a senior member of staff appointed as a "competent person", with overall responsibility for health and safety. Many responsibilities will obviously be delegated to department heads and their position will be broadly similar to that of superintendents.

The question of safety reps is much more problematic however, because the CSP is not a recognised trade union in higher education. The Association of University Teachers (AUT), the National Association of Teachers in Further and Higher Education (NATFHE) and the Educational Institute of Scotland (EIS) are the unions which represent teaching staff in universities, and they have their own system of representation.

The CSP, AUT and NATFHE have a joint membership agreement, whereby those who are members of both organisations receive a reduction in subscriptions. The EIS does not offer such a reduction. More information on this agreement is available from the Employment Relations and Union Services of the CSP.

CSP members should make use of the services of recognised stewards and safety reps elected via these unions. The CSP would however, always be willing to advise on any individual cases. Furthermore, the Employment Relations Act (ERA 99) affords members the right to be accompanied in most grievance and disciplinary situations, even when the union concerned is not recognised at the workplace.

(a) Responsibility for Students

Students are not employees, and so the whole list of employer's general duties given in Section 2 of the HASAWA does not directly apply to them. However, Section 3(1) of the Act states:

> ***"it shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby, are not exposed to risks to their health or safety".***

The main differences are that:

- The principal is not legally obliged to keep a record of all accidents, although notifiable accidents and notifiable dangerous occurrences must be noted.

- Students do not have the right to appoint legally recognised Safety Reps.

However, many principals may feel that it is worth keeping a detailed accident book and consulting with their students, even though they are not required to do so. Consultation might either be through informal contact between students and safety reps, or through a more formal student liaison safety committee if appropriate.

Students working in a hospital setting, and even when accompanying a community physiotherapist on a domiciliary visit, will be the responsibility of the hospital rather than the school, with the supervising member of staff having to take reasonable care of the students' safety.

(b) Local Authority, Special Schools, Homes and GP Premises

Some CSP members, although employed by a Trust will work full time in Education or Social Service Departments' premises. For example, special schools or residential homes or in premises owned by a GP. Their position is a difficult one.

They have a right to be represented by a safety rep, but this could either be:

- A CSP safety rep from a neighbouring hospital who visits their workplace;
- A safety rep from amongst themselves; or
- A safety rep of another union at their workplace who is prepared to cover their problems.

The best alternative will depend on what seems most suited to local circumstances.

Again, the most important point to remember is that it is the CSP member's employer who is ultimately responsible for their health and safety. Any problems should therefore be brought to the employer to resolve in conjunction with the owner of the premises or whoever is locally responsible for health and safety.

SECTION 7: LEGAL DUTIES IMPOSED ON OTHERS

Introduction

While it is clear that the law places an overriding duty on employers to provide for the health, safety and welfare of their staff and other users of their premises, there are also legal duties affecting others.

Both HASAWA and the Management Regulations place duties on staff, self-employed people, manufacturers, designers, importers and suppliers of substances, equipment and goods. It is important that safety reps are aware of these legal obligations in order to deal more effectively with managers, and advise members appropriately.

In this section we look:

- ***The duties of employees***
- ***The duties of self-employed people***
- ***The duties of manufacturers, designers, importers and suppliers of articles and substances***

The Duties of Employees

The legal requirements on employees are found in HASAWA and the Management Regulations.

(a) Employees' Duties under HASAWA

Employees have some duties in health and safety law. Many of these already exist in common law and are often viewed as being common sense. Under HASAWA these duties are contained within Sections 7 and 8. They are to (relevant sections of HASAWA in brackets):

- Take all reasonable care not to endanger themselves or others who might be affected by their work (s.7a);
- Co-operate with their employer so far as is necessary to enable the employer to carry out his/her legal duty on health and safety (s.7b);
- Not intentionally or recklessly misuse anything provided in the interests of health and safety. (s.8)

(b) Employees' Duties under the Management Regulations 1999

Regulation 14 imposes the following additional duties on employees.

- To use machinery, equipment, dangerous substances, means of production and safety devices in accordance with instruction and training provided by their employer.

- (Based on the knowledge they have received from training) To bring to the attention of the employer or an appointed safety rep any situation which might have been considered to represent a serious and imminent danger to health and safety or which has revealed a shortcoming in the employer's protective arrangements.

Although this means that employees as well as employers do have legal duties and could be prosecuted for failure to comply, in practice employees are only likely to face prosecution in cases where they have wilfully or recklessly placed themselves or their fellow workers at risk. These duties above do not mean that legal responsibility of health and safety is shared equally between employer and employees; the overwhelming responsibility still lies with the employer, as outlined by Regulation 21 of the Management Regulations.

In law, the employer has ***vicarious liability***. In other words, the employer is seen as liable for the actions of their managers or employees. The only exception to this would be in circumstances where an employer is able to prove in court that they did everything they reasonably could to ensure that the individual employee concerned had been provided with effective information, training and instruction. If, despite the efforts of the employer, an employee acts in a way that poses a threat to others' health or safety, then a court may decide that the employer has discharged their legal responsibility and so cannot be held liable for the injury or ill-health that may arise. It is extremely unlikely that an employer could win such a defence, but not impossible.

The Duties of Self-Employed People

The law imposes a range of legal duties on self-employed people and self-employed members should take advice from the local office of the HSE, or refer to the HSE website www.hse.gov.uk, to ensure that they are complying with the legal duties placed upon them

The Duties of Manufacturers, Designers, Importers and Suppliers of Articles and Substances

Under HASAWA manufacturers, designers, importers and suppliers have a duty to (relevant sections of HASAWA in brackets):

(a) Ensure, so far as is reasonably practicable, that the article or substance is safe and without risks when properly used (articles 2.6(1)a, substances s.6(4)a).

(b) Carry out testing and examinations (articles s.6(1)b, substances s.6(4)c).

(c) Provide information about the safe use of equipment and substances, including information about the results of tests (articles s.6(1)c, substances s.6(4)c). It is important to note that manufacturers, importers and suppliers ***always*** provide health and safety information to employers. Your employer should pass this on to safety

reps, where it relates to products, equipment and substances used by members. Safety reps or managers may also contact manufacturers or suppliers directly to request information about hazards or safe usage of particular substances or equipment. Under Regulation 7 of the SRSC Regulations safety reps should ensure they develop the practice of always asking for, and receiving, this information;

(d) Carry out research to discover and, so far as is reasonably practicable, eliminate or minimise any risks to health and safety that might arise from using the article or substance. (s.6(5)).

SECTION 8: THE WORKING ENVIRONMENT

Introduction

The Workplace (Health, Safety and Welfare) Regulations 1992 apply to all workers who have a designated workplace. Regulation 4 demands that employers should ensure that all workplaces under their control comply.

In this section we look at:

- ***The background to the workplace regulations;***
- ***A summary of the regulations;***
- ***Key workplace issues for CSP members.***

The Background to the Workplace Regulations

Most of the standards laid down by the Regulations were originally to be found within existing legislation such as the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1961. The value of the Workplace Regulations is that they standardise these minimum requirements. They apply to all workers, regardless of the type of workplace within which they are employed.

It's in the ACOPs that the details of the minimum standards are found. So it can be difficult to use these Regulations in negotiations with managers, who may tend to focus only on the wording of the Regulations. It's important to raise with managers that ACOPs have legal status and are interpretations, from the HSE, of how the law should be implemented (see Part 1, Section 1).

The Regulations deal with many of the day-to-day hazards of work often faced by workers, and which can have severe consequences on people's health and welfare. For example, although they may sound trivial, slips and trips are one of the most common causes of major injuries in the workplace. To reduce the risk of slips and trips, Regulation 12 says that every floor, surface or traffic route in a workplace should be suitable for its purpose, should be properly constructed and maintained. The area should be kept free of obstructions, articles or substances that may cause a person to slip, trip or fall.

However, the Court of Appeal has now imposed a greater duty on employers by extending their liability over slippery floors. The ruling came in the case of ***Ellis-v-Bristol City Council 2007***. Susan Ellis, a care assistant at a home for the elderly run by the Council, where it was common for residents to urinate in the home's main corridor. The Council knew that this made the vinyl floor surface slippery, and following a number of such incidents the Council established a good system of inspection and cleaning, as well as risk assessment, warning notices and 2 non-slip mats. This did not prevent Ms Ellis from slipping in a pool of urine on the floor, and her claim was that the Council should have done more to prevent her accident. She argued that the floor was not suitable for the purpose for which it was used because it was often urinated upon. Paragraph 93 of the ACOP to Regulation 12 states that surfaces of floors which are likely to get wet should be of a type which does not become

unduly slippery and that a slip-resistant coating should be applied. The Court of Appeal ruled in her favour. It held that if a smooth floor is frequently and regularly slippery as a result of a substance lying on it (albeit only temporary) it may be classified as unsuitable because it has become a hazard for those walking across it. Workers had slipped 3 times in the 3 years before Ms Ellis' accident, so an incident leading to injury of at least moderate severity was entirely foreseeable.

A Summary of the Regulations

- ***Regulation 5:*** equipment and devices to be subject to a suitable system of maintenance.

- ***Regulation 6:*** effective and suitable ventilation to be provided. Ventilation plant to have a warning device and be properly' maintained. Does not apply to any confined space.

- ***Regulation 7***: a reasonable temperature to be maintained during working hours. The heating or cooling system shall not emit injurious or offensive fumes. Thermometers to be provided.

- ***Regulation 8:*** suitable and sufficient lighting, preferably natural, to be provided.

- ***Regulation 9:*** floors, walls and ceilings to be capable of being cleaned or redecorated. The workplace, including furnishings, furniture and fittings to be kept clean.

- ***Regulation 10:*** sufficient space for each worker to be provided (a minimum of 11 cubic metres, exclusive of equipment).

- ***Regulation 1l:*** workstations to be suitable.

- ***Regulation 12:*** floors, surfaces and traffic routes to be suitable for purposed and be properly constructed and maintained for safe use.

- ***Regulation 13:*** safeguards to be provided to prevent falls and falling objects such provision to include warning signs, information, and physical barriers.

- ***Regulation 14:*** for new workplaces, glazing shall be of a safe material and bear a conspicuous mark or feature. For existing workplace glazing need only be marked.

- ***Regulation 15:*** for new workplaces only, opening windows, skylights or ventilators shall be of a safe design and construction.

- ***Regulation 16:*** for new workplaces only, suitable cleaning devices shall be fitted to windows and skylights to enable them to be cleaned safely.

- ***Regulation 17:*** traffic routes to be organised so that vehicles and pedestrians can move safely.

- **Regulation 18:** doors and gates, to be safely constructed.

- ***Regulation19:*** for new workplaces only escalators to function safely.

- ***Regulation 20:*** suitable and sufficient sanitary conveniences to be provided and be readily accessible.

- ***Regulation 21:*** suitable and sufficient washing facilities to be provided and readily accessible.

- ***Regulation 22:*** an adequate supply of wholesome drinking water to be provided and maintained, along with a means of drinking it.

- ***Regulation 23:*** appropriate secure clothing storage to be provided for those who need to wear outdoor clothing at work.

- ***Regulation 24:*** facilities for changing clothes to be provided where special clothing has to be worn for work or such facilities are necessary for reasons of health or propriety.

- ***Regulation 25:*** rest rooms/areas to be provided with sufficient seating and tables; rest rooms/areas to be provided for pregnant women and nursing mothers, which are smoke free; rest rooms to be equipped with seating for disabled workers; arrangements to be made to protect non-smokers from tobacco smoke; facilities for eating meals to be provided.

Key Workplace Issues for CSP Members

(a) Temperatures in Physiotherapy Departments

The CSP Employment Relations Union Services (ERUS) is frequently asked whether there is any legislation on correct temperatures in physiotherapy departments.

The Regulations require the employer to maintain a reasonable temperature. The ACOP to Regulation 7 states that temperature in workrooms should normally be at least 16c, or 13c where the work requires severe physical effort.

However, 16c may be too cold for a physiotherapy department, especially where patients may be partially undressed. The CSP therefore advises safety reps to negotiate on temperatures using the legislation.

As guidance, the CSP recommends the following temperatures (in degrees Celsius):

▪ Exercise area	21
▪ Gym	21
▪ Hydrotherapy pool	26
▪ Hydrotherapy treatment utility	21
▪ Pool changing/showers	26
▪ Preparation bay	21
▪ Wax and splint	21
▪ Therapy rooms	21
▪ Staff base	18
▪ Staff changing	18
▪ Staff lavatories	16

In other sections of the hospital temperatures of 18c for the majority of wards (21c for the care of the elderly and 21c upwards for maternity), offices, classrooms etc are recommended. Low temperatures present a risk to physiotherapists, besides making working conditions uncomfortable, but present an even greater risk to patients.

If low temperature is a frequent problem, discuss it with your manager and try to get your hospital's engineering department to give you temporary heating.

The opposite problem of excessively high temperatures is more difficult since there is no legal maximum temperature. Again safety reps will have to argue on the grounds of reasonableness, comfort and risks to the health and welfare of staff and patients. Where this is just an occasional problem during periods of hot weather, a temporary solution may be found in the provision of fans. It is essential that if fans are used they are safely positioned and comply with the Electricity Regulations 1989 (see Part 1, Section 11).

However, where – as often – the problem is persistent, a more long-term solution should be found to reduce working temperatures. For example, better ventilation or the installation of air conditioning.

The ACOP adds that where such appliances fail to give reasonable comfort suitable protective clothing and rest facilities should be provided, and if practical systems of work such as work rotation should be introduced to limit the time workers spend in uncomfortable temperatures.

If temperature continues to be a serious problem, safety reps should raise the issue with the Safety Committee. If it becomes impossible to resolve, safety reps could use the grievance procedure to voice their concerns and try to find a solution. If patients are unhappy, suggest they voice their complaints to management.

(b) Working Space in Physiotherapy Departments

Space is often a problem in physiotherapy departments, particularly because of the amount of equipment that is used.

Regulation 10(1) of the Workplace Regulations states that every room where people work should have sufficient floor area and height and unoccupied space for the purposes of health, safety and welfare.

The ACOP stresses that there should be sufficient free space for people to move within the room with ease, and that account should be taken of the space taken up by furniture, fittings - equipment. The total volume of the room when empty, divided by the number of people normally in it should be at least 11 cubic metres. (Room heights above 3m should be ignored in this calculation).

However, this figure is a minimum and may be insufficient if, for example, much of the room is taken up by furniture and equipment and depending on the nature of the work done.

While these are particular problems, natural light, changing and toilet facilities are also common issues for CSP members.

SECTION 9: OTHER PARTS OF THE "SIX PACK"

Introduction

The *"Six Pack",* introduced into UK law in 1993, covers a wide range of management duties and provides detailed legal standards on a number of common hazards within workplaces.

Sections 3 and 8 of Part 1 of the Manual summarise the key features of the Management of Health and Safety at Work Regulations and the Workplace (Health, Safety and Welfare) Regulations on CSP members, health care employers and physiotherapy mangers.

The four other sets of Regulations making up the *"Six Pack"* are: the Personal Protective Equipment (PPE) Regulations 1992; the Provision and Use of Work Equipment (PUWER) Regulations 1998; the Health and Safety (Display Screen Equipment) (DSE) Regulations 1992 and the Manual Handling Operations Regulations 1992.

Although not part of the *"Six Pack"*, the Lifting Operations and Lifting Equipment (LOLER) Regulations 1998 become important in those circumstances where it is agreed that manual handling can be avoided by the use of mechanical aids and lifting equipment. As a result, we have included guidance to LOLER in this Section.

In this section we look at:

- ***The personal protective equipment regulations;***
- ***The provision and use of work equipment regulations;***
- ***The health and safety (display screen equipment)regulations;***
- ***The manual handling operations regulations; and***
- ***The lifting operations and lifting equipment regulations.***

The Personal Protective Equipment Regulations

The Personal Protective Equipment (PPE) Regulations 1992 came into force on 1st January 1993. The Regulations place great stress on the fact that personal protective equipment should only be used as a last resort with priority given to getting rid of the hazard if at all possible. They do not override any of the duties contained in COSHH.

(a) Definition

Regulation 2 defines PPE as all equipment which is intended to be worn or held by a person at work for protection against risks to health and safety, including clothing for protection against the weather. To be suitable, PPE must not only provide the required protection. It must also be possible for the worker to do their job safely and with comfort while they are wearing the PPE. It must be designed to fit the individual who will be wearing it and a range of different sizes or types will have to be provided to make sure that it suits the needs of all individual staff members.

(b) The Employer's Duties

The duties of employers laid down in the Regulations are to:

- Provide suitable personal protective equipment to employees who are exposed to any risk except, where those risks are adequately controlled by other means, and only as a last resort ***(Regulation 4)***;
- Ensure that where more than one risk exists, and more than one item of PPE is needed to combat those risks, the items are compatible ***(Regulation 5)***;
- Make and monitor assessments to ensure that the risk cannot be avoided by other means or whether changes in the risks require changes to the PPE ***(Regulation 6)***;
- Ensure that PPE is maintained in good working order, fits the wearer properly and takes account of the health and comfort of the wearer (PPE must be hygienic and free of risks to health. Employers should ensure it is provided only for the use of an individual worker) ***(Regulation 7)***;
- Provide adequate storage for PPE ***(Regulation 8)***;
- Ensure wearers are provided with adequate instruction and training on the use, care and maintenance of PPE and understand the risks ***(Regulation 9)***;

(c) Employees' duties

Duties on employees are to:

- Use PPE in accordance with instructions and training given to them and return PPE to the appropriate storage place ***(Regulation 10)***; and
- Report any loss or defect to their employer or representative immediately ***(Regulation 11)***.

(d) Payment for PPE

Section 9 of HASAWA prevents employers from charging for anything supplied as a requirement of health and safety legislation. This means that any PPE required in law must be provided to employees free of charge if, under Regulation 3 of the Management Regulations, the risk assessment shows that PPE is required.

(e) Rights of safety reps

Safety reps have the right to be consulted about the type of PPE to be selected and the circumstances under which it should be worn. They should ensure PPE is suitable and effective, and provided only as a last resort, following agreement that there is no other means of ensuring members' safety.

Work Equipment

The Provision and Use of Work Equipment Regulations (PUWER) 1998 govern the selection, operation and maintenance of all types of machinery, tools and equipment. HASAWA, the COSHH Regulations and the Electricity at Work Regulations also have requirements which also apply to the use of work equipment.

(a) Definition of work equipment

Regulation 2 details that *"work equipment"* covers any machine, appliance, apparatus, tool and plant used at work. "Use" covers starting stopping, modifying, programming, setting, transporting, maintaining, servicing and cleaning.

(b) The employer's duties

The employer's duties are to ensure that:

- Work equipment is suitable for the task for which it will be used ***(Regulation 4***);
- A risk assessment is carried out on all types of work equipment with a view to identifying how to eliminate or minimise risks to those using the equipment ***(Regulation 5(2));***
- The working conditions and hazards are taken into account when selecting equipment ***(Regulation 5(3));***
- Work equipment is maintained in an efficient state, in good working order and in good repair ***(Regulation 6);***
- Appropriate information, instruction and training is given to employees and any supervisors or managers who are responsible for work equipment including foreseeable abnormal situations and the action to be taken if such a situation occurs ***(Regulations 8 and 9);***
- Dangerous parts of machinery are effectively guarded ***(Regulation 11);***
- Employees are protected from specified hazards related to the use of work equipment ***(Regulation 12);***
- Work equipment has adequate protection to prevent any person being injured by high or low temperatures of the equipment ***(Regulation 13);***
- Equipment has suitable control systems (including emergency stop controls) and control devices ***(Regulations 14-18);***
- Stop controls are in place to ensure that equipment can be isolated from the power source where appropriate ***(Regulation 19);***
- Work equipment is stable and clamped, or otherwise secured where necessary ***(Regulation 20);***
- Suitable and sufficient lighting is provided at any place where a person uses work equipment ***(Regulation 21);***
- Steps are taken to ensure that work equipment may be properly maintained while the work equipment is shut down and not in use ***(Regulation 22);***
- Equipment is marked and has clear warning devices where necessary for reasons of health and safety ***(Regulations 23 and 24).***

(c) Employees' duties

Employees must comply with their duties under HASAWA and the Management Regulations to use equipment properly, in accordance with any information, training and instruction provided.

(d) Rights for safety reps

Under Regulation 4A of the SRSC Regulations safety reps have the right to be consulted about the proposed introduction into the workplace of any new technology which may affect health and safety. Such consultation should take place prior to any decisions or purchases being made, with a view to the employer and the safety reps concerned reaching agreement. Safety reps should:

- Be consulted prior to the introduction of new machinery and equipment i.e. at the planning stage;
- Demand that all staff are trained in the use of any equipment and on the risks that its use presents to them;
- Ensure that safe systems of work are introduced and equipment properly maintained;
- Ensure the employer reviews on a regular basis, and in consultation with safety reps, the health and safety standards of any equipment in use at work.

Display Screen Equipment

The Health and Safety (Display Screen Equipment) Regulations 2002 amend and update the Regulations originally created in 1992, derived from EU Directive 90/270/EEC 1990. Only Regulations 3, 5 and 6 were amended. The Guidance to the Regulations have been revised in other places, to bring it up to date with changes in technology of DSE equipment, and improvements in knowledge of the risks and how to avoid them. Much of the updating of the duties relate to the use of portable DSE equipment. All workstations must meet the requirements of the Regulations and employers are responsible for reducing risks to the lowest extent reasonably practicable for those employees who are *"significant users"* of DSE.

(a) Regulation 1 - who is a DSE user?

A DSE user is defined as an employee who habitually uses DSE as a significant part of their normal work. Paragraph 15 of the GN states that a worker is a user if they:

- Normally use DSE for continuous or near-continuous spells of 1 hour or more at a time; and
- Use DSE in this way more or less daily; and
- Have to transfer information quickly to or from the DSE; and
- Need to apply high levels of attention and concentration, or are highly dependent on DSE, or have no choice about using it, or need special training to use the DSE.

Paragraph 16 states that part-time workers should be assessed using the same criteria. For example, if an employee works only 2 days a week, but spends most of that time on DSE work, that person should definitely be considered a user. Employees who occasionally use such equipment, such as for the presentation of statistics, are not be defined as users. For those who are classified as users, there are various requirements laid down.

(b) Regulation 2 - assessing the risks

As with many other parts of the *"Six Pack"*, the DSE Regulations demand that employers carry out a risk assessment of the whole workstation used by staff working on DSE equipment. The process should be systematic and comprehensive; appendix 2 to the Regulations highlights the key hazards as:

- Musculoskeletal disorders, such as postural problems caused by the design of the workstation and WRULDS caused by repeated hand/arm movements;
- Visual problems such as sore eyes, headaches caused by glare, poor lighting. etc.;
- Stress and fatigue caused by the design of the workstation, intensity of work load and repetitive work;
- Other health effects such as epilepsy, facial dermatitis, electromagnetic radiation.

Paragraph 42 of the GN deals with who should carry out the risk assessment. It should be made by health and safety personnel, or other in-house staff if they are trained to do so. Those making the risk assessment should have the ability to:

- Identify hazards (including less obvious ones) and assess risks from the workstation and the kind of DSE work being done. For example, by completing a checklist or reviewing one completed by the worker. A model checklist is provided in Appendix 5 of the Regulations, and paragraph 39 states clearly that whatever type of checklist is used, employers should ensure workers have received the necessary training before being asked to complete one;
- Draw upon additional sources of information on risk, as appropriate;
- Draw valid and reliable conclusions from assessments and identify steps to reduce risks;
- Make a clear record of the assessment and communicate the findings to those who need to take appropriate action, and to the worker concerned;
- Recognise their own limitations as to assessment, so that further expertise can be called upon if necessary.

Paragraph 44 states that the inclusion of the views of individual users about their workstations is an essential part of the assessment. Safety reps should also be encouraged to play a full part in the assessment process. In particular, they should be encouraged to report any problems with DSE work that come to their attention.

(c) Regulation 3 - requirements for work stations

Employers must ensure any workstations used in their workplaces meet the requirements laid down in the Schedule provided in Regulation 3. The Schedule is legally binding in its entirety and lays down minimum standards in terms of:

- Adequate lighting;
- Adequate contrast, no glare or distracting reflections;
- Distracting noise being minimised;
- Sufficient leg room and clearances to allow postural changes;
- The provision of a window covering, if needed to minimise glare;
- Software, which is appropriate to the task, adapted to the user and provided feedback on the system status with no undisclosed monitoring;

- The screen, which is to have a stable image, be adjustable, readable and be glare/reflection free;
- The keyboard, which is to be usable, adjustable, detachable and legible;
- Sufficient work surface with space for flexible arrangement of equipment and documents and be glare free;
- The chair to be stable and adjustable;
- The provision of a footrest, if requested by the user.

(d) Regulation 4 - daily work routine

This includes the need for breaks from DSE work for users, which can consist of other work that does not involve similar use of hands and arms, or rest breaks. The Regulations stress the importance of reviewing job design to ensure a variety of tasks. There is no precise recommendation on frequency or lengths of breaks, but paragraph 62 of the GN states:

- Breaks should be taken before the onset of fatigue and before productivity reduces;
- Breaks should be included as part of working time;
- The timing of the break is more important than its length. Short, frequent breaks are more satisfactory than occasional, longer breaks, for example a 5-10minute break after 50-60minutes continuous screen/keyboard work is likely to be better than a 15 minute break every 2 hours;
- Informal breaks are probably better than formal breaks. For example, time spent doing other work-related tasks;
- Where possible users should have some discretion and individual control over how they do their jobs and when they take breaks.

(e) Regulation 5 - eyes and eyesight

On request, the employer must provide an eye test carried out by a *"competent"* person. The test to which users are entitled is an *"appropriate eye and eyesight test"* by a qualified optician or medical practitioner. Paragraph 71 of the Guidance states that this means a *"sight test"*, which is defined as *"testing sight with the object of determining whether there is any, and if so, what defect of sight and correcting, remedying or relieving any such defect of anatomical or physiological natures by means of an optical appliance prescribed on the basis of the determination".* The decision on the frequency of regular re-testing should be based on the advice of the optician or doctor carrying out the test.
Some organisations offer quick vision screening tests, which may help to identify people who need full eye tests. Paragraph 76 of the Guidance states that vision screening tests are not eye and eyesight tests and therefore do not satisfy the Regulations' requirements. Vision screening is a means of identifying individuals with eye defects, such as injury or disease, which may not at first affect vision. Users may opt to take a screening test if it is offered, but it should be made clear that individual users can insist on full eye and eyesight tests if they wish.

The employer is liable for the cost of what the Regulations call *"corrective appliances"* - usually spectacles. However, this only applied to *"special"* appliances required for DSE use or to special modifications to the user's normal spectacles required for DSE work. The employer has a duty to provide an eye test free of charge to employees. However, the

employer has no legal obligation to give staff paid time off work to have their eyes tested. This was confirmed by the HSE in 2007, when challenged by unions who had found that their members were having their pay docked for the time they took off work to have an eye test. In effect, this means that the test is not free, even though it is work-related and carried out in the interests of workers' health and safety. This practice appears to be against the spirit of Article 9 of EU Directive 90/270/EEC, which states *"measures taken pursuant to this Article may in no circumstances involve workers in additional financial costs".* It also seems to contravene Section 9 of HASAWA, which stipulates that employers should not charge workers for anything *"done or provided"* in connection with their health and safety duties.

(f) Regulation 6 - provision of training

The training provided should be tailored to the work of the user. The duty to train stipulates that the employer must ensure a user is given appropriate training before they begin using DSE equipment in the workplace. The training provided should cover six inter-related aspects.

i) The user's role in correct and timely detection of hazards and risks, such as the absence of desirable features (for example, seat height adjustment) and the presence of undesirable features (for example, screen reflection or glare), together with information on health risks and what to look out for as early warning of problems.

ii) A simple explanation of the causes of risks and the mechanisms by which harm may be brought about (for example, poor posture leading to static loading on the musculoskeletal system and eventual fatigue and discomfort.

iii) User initiated actions/procedures to bring risks under control, to cover:

- The importance of comfortable posture;
- The use of adjustment of equipment and furniture to reduce stress and fatigue;
- The way to arrange the workstation to ensure good posture, avoid glare, avoid the need for twisting and turning excessively;
- The need for regular cleaning/inspection of screens and maintenance of the equipment in use;
- The need to take rest breaks or vary the work activity.

iv) Organisational arrangements by which users and their supervisors can alert management to ill-health symptoms or problems with workstations.

v) Information, particularly regarding eyesight, rest pauses, the legal minimum requirements for workstations (in Appendix 1 of the DSE Regulations).

vi) The user's contributions to the risk assessment process.

Training should be aimed at reducing or minimising the three risk areas outline in Regulation 2. These are: musculoskeletal problems; fatigue; and stress. Ill health can result from poor equipment or furniture, work organisation, working environment, job design, posture and

from inappropriate working methods. Ill-health can be prevented by good ergonomic design of equipment, workplace and job, and by worker training and consultation. Where staff have been absent from work for long periods, employers should provide retraining as part of their re-introduction to work, particularly if they have been suffering from visual, musculoskeletal or stress-related ill health.

(g) Regulation 7 - provision of information

Employers have a duty to provide users with information, which covers all aspects of health and safety relating to their workstations and the measures that have been taken to reduce the risks to users' health and safety. The information must also highlight the system for reporting problems, the availability of adjustable window coverings and furniture and how to use them.

The aim of the provision of information is to consolidate the training which they user should have received prior to taking up the post, or commencing use of the workstation. It should also act as a reminder to those staff previously trained.
Regulation 7 outlines the information the employer must provide. This includes:

- The risks from DSE equipment and workstations;
- The risk assessment process and the measures taken to reduce the risks to users (Regulations 2 and 3);
- The breaks that should be taken during working time and the activity changes that should be undertaken to help maintain health and safety (Regulation 4);
- The right to have eye and eyesight tests (Regulation 5);
- Initial training arrangements (Regulation 6(1));
- Training to be undertaken when there is a workstation modification (Regulation 6(2)).

Figure 2 in the Regulations covers information in terms of good seating and posture for typical office tasks at workstations:

- An adjustable seat back and good lumbar support;
- Adjustable seat height;
- No excess pressure on underside of thighs and back of knees;
- Foot support, if needed;
- Space for postural change, and no obstacles under desk;
- Forearms approximately horizontal;
- Wrists not excessively bent (up, down or sideways);
- Screen height and angle to allow comfortable head position;
- Space in front of keyboard to support hand/wrists during pauses in keying.

Information must be made available to staff in a way that they can understand and access. It should also be provided to safety reps.

(h) Work with portable DSE

Portable DSE, such as laptops and notebook computers, is subject to the Regulations if it is in prolonged use. To comply, employers must aim to reduce risks to users by applying the following recommendations.

- ***Risk assessment (regulation 2)***

Portable DSE users should be given sufficient information and training to make their own risk assessments and ensure that measures are taken to control risks (for example, poor posture) whenever they set up their portables. As well as the risks common to both portable and desktop DSE work, additional risks may be associated with portable DSE work: manual handling risks when moving between locations; and the risk physical violence involving an assault.

- ***Equipment, workstation and task requirements (regulation 3 and schedule)***

As with desktop DSE, portables in prolonged use (and the work stations and working environments where they are used) are required to comply with the Schedule. The main difference is that the inherent requirements of portability may mean that some of the detailed requirements cannot be complied with in all respects. Users and employers should be aware that some design compromises inherent in portables can lead to postural problems. For example, a bent neck or headaches caused by the low, fixed position of the screen.

One way of tackling such risks is to avoid prolonged use and to take more frequent breaks. Another way, if working in an office, is to use the portable with a docking station. These allow the use of a full sized screen and/or keyboard and mouse.

Portable equipment should be selected with care, and should be as light as possible – the recommendation is 3kg or less – with a detachable or height-adjustable screen. Users should be provided with a carrying case with handle and shoulder straps, without any external logo. to minimise the risk of theft and assault.

- ***Breaks and changes of activity (regulation 4)***

These are particularly important for portable users not using docking stations. Such users need longer and more frequent breaks or changes of activity to compensate for poorer working conditions, which can impact particularly on posture. Employers need to give frequent advice to staff who are portable users, especially who are unsupervised, of the need to take breaks. Break monitoring software should be used.

- ***Eyes and eyesight (regulation 5)***

Users should explain to the optician carrying out the eye test that they use a portable computer, since viewing distances may be shorter for portable users than for those always using desktop computers.

- ***Training (regulation 6) and information (regulation 7)***

Good health and safety training is particularly important for people who make prolonged use of portables. The following are specific to the use of a portable:

- Advice on set up and use in the locations where it is to be used, and to effectively re-do the risk assessment whenever starting work in each location;
- Guidance on setting up and using a docking station, and additional precautions if using a portable when a docking station is not available;
- Advise that staff should use docking stations wherever available;
- Ensure that staff only use portable computers only when away from their main place of work, or when docking station equipment is not available;
- Ensure staff understand the manual handling hazards of carrying portable equipment and advise staff only to carry equipment and paperwork that is likely to be needed. Encourage staff to use a backpack to cut down strain on the arms, and to distribute loads evenly across the body. Encourage staff to post paperwork ahead, rather than carry it to a work venue;
- Ensure staff understand the risk of physical violence and suggest sensible precautions, such as not carrying equipment in luggage with a manufacturer's brand visible, not leaving equipment in a parked car and taking care in public places;
- Minimise the use of portable equipment in non-ideal locations, such as motor vehicles;
- Ensure that handheld computers for prolonged use are carefully selected for ergonomic features which match the requirements of the tasks undertaken. For example, equipment to be used outdoors should be adequately waterproofed, legible in bright sunlight, and keyboards and screens should be large enough to be used comfortably.

Employers should provide staff with advice on how to report promptly any symptoms of discomfort that may be associated with their use of portable DSE, and where to get help and advice. Information should be provided to staff on the need to take regular breaks.

Managers of staff who use portable DSE should themselves receive health and safety training, so that they are aware of the risks and be able and willing to take action to prevent such health risks from developing, as well as being able to respond to any problems reported.
Key issues managers should be aware of are the:
- Need for regular breaks to avoid use of DSE for extended periods;
- Benefits of ensuring adequate variety in users' tasks;
- Importance of health and safety training for users; and
- Reasons for providing docking station equipment, and encouraging its use.

Manual Handling

(a) The extent of the problem

11 million working days a year are lost due to musculo-skeletal disorders, including work-related back pain. The overall cost to industry is £5 billion per annum. Of all workplace accidents reported to the HSE each year, 33% are associated with manual handling. Within the health services the proportion is considerably higher, accounting for over 50% of accidents reported, over 60% of which involve patient handling. The most common these

involve sprains or strains of the back. Injuries related to the handling of patients accounts for approximately 70% of these accidents.

The nature of the work carried out by CSP members, puts them at considerable risk of short-term and long-term injury because of poor manual handling operations and techniques.

The Manual Handling Operations Regulations 1992, amended in 2002, apply to all workplaces and aim to control the risk of injury and ill health caused by manual handling at work. The 2002 amendments were minor, and deal with risk factors relating to individual workers if he or she: is physically unsuited to carry out work-related tasks; is wearing unsuitable clothing, footwear or other personal effects; and does not have adequate or appropriate knowledge of training. These factors are now included in Regulation 4(3) ***'Individual Capability'***, although they do not introduce any new duties on employers. The Guidance to the Regulations has also been revised in other places, in order to bring it up to date with improvements in the knowledge of the risks from manual handling, and how to avoid them.

(b) Defining manual handling

Manual handling is not just lifting and carrying. In the introduction to the Regulations, manual handling is defined as: *"The transporting or supporting of a load. This includes lifting, lowering, pushing, pulling, carrying or moving. The load may be either inanimate, for example a box or a trolley, or animate, for example a person or an animal."*

The Regulations set no specific requirements such as weight limits. Instead, they require an ergonomic assessment based on a range of relevant factors, including the individual workers who may be expected to be involved in manual handling activities, to determine the risk of injury and effective remedial action.

(c) The employer's duties

Regulation 4 states that to comply with these Regulations, the employer must:

- Arrange work to avoid manual handling where possible by redesigning the job or introducing mechanised or automated means such as the use of a crane, forklift truck or sling;
- Where manual handling cannot be avoided, carry out a risk assessment of manual handling operations;
- Introduce appropriate measures to protect employees and reduce the risk of injury as far as is reasonably practicable;
- Review the risk assessment if it is no longer valid or if there has been a significant change in manual handling operations;
- Provide employees with general indications, or if practicable, precise information, on the weights of each load and the heaviest side of an uneven load;
- Monitor the steps taken to reduce the risk of injury to check that they are effective;
- Provide suitable training, as well as information, to employees.

In the GN, it is states that the organisation should also aim to:

- Provide furniture and equipment that effectively reduces manual handling;
- Distribute unavoidable manual handling tasks throughout the shift;
- Rotate staff between manual handling operations to minimise repetitive or poor posture and allow for adequate rest and recovery periods;
- Provide sufficient staff to perform the manual handling tasks in safety.

Regulation 4(1)(a) sets out a hierarchy of measures which should be followed to reduce the risks from manual handling. These are:

i) Avoid hazardous manual handling operations so far as is reasonably practicable;
ii) Assess any hazardous manual handling operations that cannot be avoided;
iii) Reduce the risk of injury so far as is reasonably practicable.

The extent of the employer's duties is summarised in GN31: *"The extent of the employer's duty to avoid manual handling or to reduce the risk of injury is determined by reference to what is 'reasonably practicable'. This duty can be satisfied if the employer can show that the cost of any further preventative steps would be grossly disproportionate to the further benefit from their introduction."*

(d) Risk assessment

Where it is not reasonably practicable to avoid manual handling and where the risk is not of a *"low order"* the employer must make a *"suitable and sufficient"* assessment of the manual handling operations undertaken by employees. This is covered by **Regulation 4(1)(b)(i)**, which is detailed and extensive.

- ***Contents of risk assessment***

The Regulations specify the areas to be considered when carrying out risk assessments, and are divided into these areas:

(i) Does the task involve:
- ⇨ Holding a load at distance from trunk;
- ⇨ Unsatisfactory bodily movement or posture, especially twisting the trunk or stooping;
- ⇨ Excessive movement of the load, especially excessive:
- ⇨ Lifting or lowering distances;
- ⇨ Carrying distances;
- ⇨ Pushing or pulling distances;
- ⇨ Risk of sudden movement of load;
- ⇨ Frequent or prolonged physical effort;
- ⇨ Insufficient rest or recovery periods?

(ii) Is the load:
- ⇨ Heavy;
- ⇨ Bulky or unwieldy;
- ⇨ Difficult to grasp;

- ⇨ Unstable or with contents likely to shift;
- ⇨ Sharp, hot or otherwise potentially damaging?

(iii) In the working environment are there:
- ⇨ Space constraints preventing good posture;
- ⇨ Uneven, slippery or unstable floors;
- ⇨ Variations in level of floors or work surfaces;
- ⇨ Extremes of temperature or humidity;
- ⇨ Ventilation problems or gusts of wind;
- ⇨ Poor lighting conditions?

(iv) Individual capability - does the job:
- ⇨ Require unusual strength, height etc;
- ⇨ Put at risk those who might reasonably be considered to be pregnant or have a health problem;
- ⇨ Require special information or training for its safe performance?

With the exception of the simplest and most obvious cases, the assessments should be recorded and kept readily accessible.

GN 55 relates to the contribution of safety reps and employees about the arrangements for any risk prevention strategy. It states: *"For this to be successful, it is essential that employers work in partnership with safety representatives and employees, because they know at first hand the risks in the workplace and can offer practical solutions to controlling them. Safety representatives can make a particular contribution because of the specialised training and support they receive, which helps them to understand workplace risks and to develop ways to control them. For example, safety representatives and employees can make effective contributions by bringing to the employer's attention the difficulties caused by:*
(a) the size or shape of loads;
(b) how often loads are handling;
(c) the order in which the task is carried out;
(d) the environment in which the handling operations are carried out."

- ❑ ***Who should carry out risk assessment?***

GN 59 states that in most cases the risk assessment is best carried out by members of staff who are familiar with the operations in question, provided they are informed, trained and competent to do so. It may be necessary to call in outside expertise where, for example, the manual handling operation is complex.

Those involved in carrying out the risk assessment will need to:
- ⇨ Have knowledge of the Regulations and understand how to identify hazards and their associated risks;
- ⇨ Understand the nature of the handling operations;
- ⇨ Have a basic understanding of human capabilities; and
- ⇨ Be able to draw valid and reliable conclusions from the risk assessment, and identify the steps required to reduce risk.

- ***Reduction of risks***

Regulation 4(1)(b)(ii) – General Principles for Reducing Manual Handling Risks –relates to the employer's duties once the risk assessment has been carried out. If manual handling cannot be avoided for certain tasks and involves risk of injury, the employer must take appropriate steps to reduce the risk of injury to those employees arising out of their undertaking any such manual handling operations to the lowest level reasonably practicable.

A number of methods for reducing the risk of injury are outlined in the GN, including:

- ⇨ Providing mechanical assistance;
- ⇨ Improving task layout;
- ⇨ Using the body more efficiently i.e. by allowing the load to be held closer to the body;
- ⇨ Improving the work routine, for example by minimising the need for fixed postures and by job rotation;
- ⇨ By having more than one person handling the load.

GN 72 suggests that the same structured approach used during the risk assessment should be undertaken considering (in turn) the task, the load, the working environment and individual capability. GN 83 talks about appropriate steps.
"Above all, the steps taken to reduce the risk of injury should be 'appropriate'. They should address the problem in a practical and effective manner, and their effectiveness should be monitored. This can be done by observing the effect of the changes made, and discussing these changes with the handlers or, less directly, checking accident statistics regularly. If they do not have the desired effect, the situation should be reappraised."

- ***Information and training for staff***

GN 188 of Regulation 4(3)(c) states: *"Section 2 of the HASAWA and Regulations 10 and 13 of the Management of Health and Safety at Work Regulations require employers to provide their employees with health and safety information and training. This should be supplemented as necessary with more specific information and training on manual handling risks and prevention, as part of the steps to reduce the risk required by Regulation 4(1)(b)(ii) of the Manual Handling Operations Regulations."*

GN 190 makes the point that the provision of information and training alone will not ensure safe manual handling. The first objective in reducing the risk of injury should always be to design the manual handling operations to be as safe as is possible. This means improving the task, the working environment and reducing the load weight, as appropriate. Manual handling should be designed to suit individuals, not the other way round. Effective training should complement a safe system of work, and has an important part to play in reducing the risks of manual handling injury. It is not, however, a substitute for a safe system of work.

The main emphasis is on changing work practices to remove or reduce the risk without relying on training to achieve this. If the risk assessment identifies a need for manual

handling training, then it may be appropriate that physiotherapists are involved in the training process. However, physiotherapy departments asked to become involved in training should ask what arrangements are being made for the assessment process and how management sees training as fitting into that process.

Training should draw attention to the recognition of handling risks, for example:

- ⇨ Rocking a load from side to side before lifting to gain an idea of its weight;
- ⇨ How to deal with unfamiliar operations;
- ⇨ The use of handling aids;
- ⇨ The proper use of personal protective equipment;
- ⇨ The importance of good housekeeping;
- ⇨ Factors affecting individual capability;
- ⇨ Good handling techniques.

(e) Employees' Duties

Employees' duties under Sections 7 and 8 of HASAWA and Regulation 14 of the Management Regulations are supplemented by **Regulation 5** of the Manual Handling Operations Regulations. Employees must make full and proper use of handling aids, safe systems of work, training and information provided by the employer.

The Lifting Operations and Lifting Equipment Regulations 1998

(a) Definitions

The Regulations provide a number of important definitions.

- **Lifting equipment – (Regulation 2)** defines lifting equipment as work equipment for lifting or lowering loads. It includes any attachments used for anchoring, fixing or supporting it.

- **Lifting operation – (Regulation 8)** defines a lifting operation as an activity concerned with the lifting or lowering of a load.

- **Load - Regulation 2** defines a load as any object, including a person.

- **Thorough examination – (Regulation 2)** defines, for the purposes of **Regulation 9**, thorough examination as:

  - A means of thoroughly examining lifting equipment after installation and prior to use by a *"competent person",* to ensure that it has been correctly installed and is safe to operate;

  - Where it is appropriate to carry out testing for the purposes of complying with Regulation 9, such testing is carried out by a *"competent person".*

- **Work equipment – (Regulation 2)** defines work equipment as any machinery, appliance, apparatus, tool or installation for use at work, whether exclusively or not.

- **The carrier -** In a number of places within the Regulations reference is made to *"the carrier".* This is the employee who participates in carrying loads, or people, with the assistance of lifting equipment. In terms of the CSP, it will mean the physiotherapist or physiotherapy assistant involved in lifting and carrying.

(b) Who is Affected?

Regulation 3 states that the requirements imposed on an employer shall apply to any lifting equipment provided for use or used by an employee at work. Any self-employed person is also covered by the terms of the Regulations.

Regulation 3 also makes it clear that a person is covered by the duties laid down in the Regulations if they have control to any extent of:

- Lifting equipment
- A person who uses or supervises or manages the use of lifting equipment
- The way in which lifting equipment is used.

(c) Strength and Suitability

Regulation 4 deals with the strength and suitability of any lifting equipment used at work. Every employer has a duty to ensure:

- Lifting equipment is of adequate strength and stability for each load, having regard in particular to the stress induced at its mounting or fixing point; and
- Every part of a load, and anything attached to it and used in lifting, it is of adequate strength.

(d) Lifting Equipment for Lifting People

Regulation 5 is specifically related to the requirement to ensure that equipment used for lifting people is suitable and without risk.
An employer must ensure that lifting equipment for lifting people:

- Is such as to prevent a person using it being crushed, trapped, stuck or falling from the carrier;
- Is such as to prevent a person using it, while carrying out activities, from being crushed, trapped, stuck or falling from the carrier;

- Has suitable devices to prevent the risk of a carrier falling. If such a risk cannot be prevented, for reasons inherent in the site and height differences, the employer must ensure that the carrier has an enhanced safety co-efficient suspension rope or chain. They must also ensure that the rope or chain is inspected by a "competent person" every working day;

- Is such that a person trapped in any carrier is not thereby exposed to danger and can be freed.

(e) Positioning and Installation

Regulation 6 relates to the location and installation of lifting equipment. The Regulation demands that employers ensure that lifting equipment is positioned or installed in such a way as to reduce to as low as is reasonably practicable the risk:

- Of the lifting equipment or a load striking a person; or

- Of a load drifting, falling freely or being released unintentionally and is otherwise safe.

The Regulation states that every employer shall ensure that there are suitable devices to prevent a person from falling down a shaft or hoistway.

(f) Marking of Lifting Equipment

Regulation 7 demands that employers shall ensure that:

- Machinery and accessories for lifting loads are clearly marked to indicate their safe working loads;

- Where the safe working load of machinery for lifting loads depends on its configuration, the machinery is clearly marked to indicate its safe working load for each configuration. Alternatively, information may be provided with the machinery, which clearly indicates its safe working load for each configuration.

(g) Organisation of Lifting Operations

Regulation 8 states that an employer should ensure that every lifting operation involving lifting equipment is properly planned by a "competent person"; appropriately supervised and carried out in a safely.

(h) Thorough Examination and Inspection

Regulation 9 deals with the requirement to ensure that lifting equipment is installed correctly and is safe to use. It states that an employer should ensure – before lifting equipment is put into use for the first time – that it is thoroughly examined for any defect. They must also ensure that where the lifting equipment depends on the installation conditions, it is thoroughly examined after installation and prior to being put into service. Additionally, where it is to be used in a new location, after assembly and before being put into service it must be thoroughly examined, even if it has previously been in use elsewhere.

Where lifting equipment is exposed to conditions that may cause deterioration which is liable to result in dangerous situations, the employer must ensure that it is thoroughly examined at least every six months if it is used to lift people. If it is used to carry other loads

this inspection should be made annually. This is to ensure that health and safety standards are maintained and any deterioration can be detected and remedied in good time.

An employer must ensure that no lifting equipment leaves their undertaking for use elsewhere, or is brought into use in their undertaking from another location, unless it is accompanied by physical evidence that the last thorough examination required to be carried out under Regulation 9 has been carried out.

(i) Reports and Defects

Regulation 10 refers to the requirement to ensure that a procedure is put in place for the reporting of any defects or hazards identified as part of a thorough inspection.

A *"competent person"* making an inspection of lifting equipment, and finding a defect involving an existing or imminent risk of serious personal injury should report it to their employer.

Once such a report is made, the employer must ensure that the lifting equipment is not used until the defect is rectified.

Additionally, Regulation 10 demands that the employer makes a report of any serious danger to the HSE as soon as reasonably practicable.

SECTION 10: OTHER LEGAL STANDARDS

Introduction

The *"Six Pack"* is seen as being an important development in setting effective health and safety standards within workplaces throughout the UK. However, there are many other sets of Regulations that may be used by safety reps to press managers to act more effectively in terms of improving their members' health, safety and welfare.

In this section we look at:

- ***The Control of Substances Hazardous to Health Regulations;***
- ***The Electricity Regulations;***
- ***The Health and Safety (First Aid) Regulations;***
- ***The Regulatory Reform (Fire Safety) Order;***
- ***The Working Time Regulations;***
- ***The Control of Asbestos at Work Regulations;***
- ***RIDDOR.***

The Control of Substances Hazardous to Health Regulations

The ***Control of Substances Hazardous to Health Regulations*** first came into force in 1989 and were amended in 1994, 1999 and 2002. The Regulations require employers to carry out an assessment of the risks to health from exposure to any hazardous substances in the workplace.

(a) Which substances are covered?

Regulation 2 outlines the substances covered by COSHH. These are:

- Those listed in as very toxic, toxic, harmful, irritant or corrosive in Part 1 of the approved list of the Chemicals (Hazard Information and Packaging for Supply) Regulations 1994 (CHIP). Preparations containing these substances should bear the characteristic orange warning sign;
- Substances listed in Schedule 1 of the Regulations as having Workplace Exposure Level (WEL) (see paragraph 8 below);
- Harmful biological agents;
- Micro-organisms arising from the work activity which create a hazard to health;
- Dust of any kind when present in concentrations equal or greater than 10mg/m3 as a time-weighted average over 8 hours of total inhalable dust or 4mg/m3 as a time-weighted average over 8 hours of respirable dust;
- Any other substance creating a comparable hazard to health that is not covered above.

(b) Carcinogens

Research continues to find further substances used at work that may cause cancer.

Employers should have an active precautionary policy of prevention and control, based on both proven and suspected carcinogens. A carcinogen is any substance classified under the CHIP Regulations; or any substance listed in Schedule 1 of the COSHH Regulations. COSHH includes special provisions for carcinogens in ***Regulation 7(3) and 7(9).*** Certain carcinogenic substances are prohibited under ***Regulation 4.***
A wide range of hazardous substances may be found in physiotherapy departments including:

- Asbestos (report this even if sealed);
- Formaldehyde/gluteraldehyde;
- Solvents such as acetone;
- Carbon tetrachloride;
- 1,1,1 or 1,1,2, trichioroethane;
- Chlorine. bromine and other hydro pool chemicals cleaning agents in general;
- Silica gel;
- Paraffin wax;
- Plaster of paris dust;
- Ozone emitted by UV equipment.

This list is not exhaustive and there will be other hazardous substances present in physiotherapy departments. Other substances may be added to the list in the future if they are identified as being hazardous.

(c) Key elements of the regulations

- ***Regulation 3*** places a duty on employers to ensure that employees and any other users of their premises are protected from exposure to harmful substances. As well as employers, sub-contractors and the self-employed all have the duties of employers under the Regulations. The duties cover protection of employees and (with some exceptions such as health surveillance) to other persons who may be affected by their work. Additionally, employees have a duty to make full and proper use of control measures and any PPE that is required to comply with COSSH.

- ***Regulation 4*** demands that employers identify substances that may be hazardous to health. The means of identification could include:
  - Information on labels complying with the CHIP Regulations;
  - Information from manufacturers and suppliers, including data sheets;
  - Guidance material from the HSE;
  - Experience gained from previous use;
  - Technical reference books, journals, professional institutions and trade unions.

- The Regulations state that employers must:
  - Carry out a risk assessment and put into place measures to eliminate or control any risks identified (***Regulation 6***);
  - Prevent or control exposure to harmful substances (***Regulation 7)***;
  - Use control measures and maintenance, examination and test of control measures (***Regulations 8 and 9***);
  - Monitor exposure at workplace level (***Regulation 10***);

- Carry out health surveillance (***Regulation 11***);
- Provide employees with information, instruction and training to maximise their health and safety in workplaces where substances that may be harmful to health are in use or present (***Regulation 12)***.

No employer is permitted to carry on any work: "which is liable to expose any employees to any substance hazardous to health unless they have made a suitable and sufficient assessment of the risks and the steps that need to be taken to meet the requirements of these regulations" (**Regulation 6**).
Once a hazardous substance has been identified it should be eliminated. If this is not practicable, either a less hazardous substance, or the same substance in a less hazardous form, should be used. Control measures should be implemented and if no other method of control is practicable, personal protective clothing should be provided. The provision of such clothing is only to be used as a last resort with preference given to prevention from use or adequate control from exposure.

The Regulations state that unless a risk assessment has been made, no work involving exposure to hazardous substances should be carried out. Risk assessment must be recorded in writing and carried out by a *"competent person"* who has received *"necessary information, training and instruction".* Employers must keep records of examinations and tests of control equipment and of monitoring results. Employees and safety reps should be informed of the results of all assessments and risks and must make *"full and proper use"* of any control measures or personal protective equipment and report any defect.

(d) Other duties under COSHH

Since the 1994 COSHH Regulations, employers have been required to:
- Review COSHH risks at least once every five years; and
- Retain, for 40 years, records of exposure monitoring and health surveillance for named individuals who work with carcinogens and other hazardous substances.

(e) Recognising symptoms

One important way of identifying hazards is to try to recognise any suspicious symptoms which members may develop. These will vary depending on what form the hazard takes, for example, dust or toxic substances.

- ***Dust.*** Symptoms include irritations of the eyes, nose or throat, coughing and dermatitis. Since the human body tends to filter out relatively larger particles of dust in the process of inhalation, it is usually found that those atmospheres in which dust is not visible to the naked eye (even in sunbeams) are potentially the most dangerous.

- ***Toxic substances.*** These can enter the body by three routes: inhalation, ingestion and absorption through the skin (cutaneous route). In the acute stage symptoms may appear such as irritation of the skin, throat and eyes, headaches, nausea, dizziness and unconsciousness.

Safety reps encountering symptoms of this kind (or others) should try to pinpoint the cause of the problems by asking questions such as:

- How many people have the symptoms?
- Do they all work in the same area?
- Do the symptoms only arise when a particular substance/piece of equipment is used?
- If a substance is involved, can it be identified?

(f) Identifying and Controlling Hazards

There are a number of recommended stages.

- ***Identify the hazard*** - this could involve using checklists, carrying out surveys, asking the right questions, reviewing the employer's sickness absence records or recognising a pattern to symptoms.

- ***Establish a safe standard,*** using HASAWA Section 2, the Management of Health and Safety at Work Regulations 1999, the Health and Safety (Workplace Regulations) 1992 and the COSHH Regulations.

- ***Agree a means of preventing or controlling exposure,*** involving one or more of the following, in order of preference:
  - Elimination of the substance hazardous to health;
  - Substitution of a substance hazardous to health by one that is less hazardous;
  - Plant, processes and systems of work to be designed to prevent the exposure to, or suppress the formation of, dust, vapour, gases or aerosols;
  - Substances hazardous to health being contained in totally closed systems;
  - Enclosure with effective local exhaust ventilation being used;
  - Effective local exhaust as close to the source of contamination as possible;
  - Effective general ventilation should be provided by the circulation of fresh air in working areas; and
  - Restricting the quantity of the substance used, limiting the area in the workplace in which the substance is used, limiting the number of people exposed. In appropriate cases the period of exposure should be limited, but this is not desirable if it leads to a corresponding increase in the number of people exposed.

- ***Additionally,*** the control of exposure should include:
  - Measures to ensure the cleanliness of workplaces, premises and plant;
  - Avoidance of the spread of contamination;
  - Where necessary, the provision of adequate and suitable personal protective equipment; and
  - The provision of adequate and suitable facilities for washing, clothing, accommodation, eating and drinking.

(g) Workplace exposure levels – the new system

In 2005, a new, simpler, occupational limit system came into force. The old system of occupational exposure limits – Maximum Exposure Limits (MELs) and Occupational Exposure Standards (OESs) – were replaced with a single type of limit, known as the ***Workplace Exposure Limit (WEL).*** A WEL is the maximum concentration of an airborne substance averaged over a reference period that an employee may inhale without risk to their health. HSE guidance says that *"WELs should not be considered a hard and fast line between safe and unsafe."* Nearly 400 MELs and OESs were transferred to WELs, with their numerical value unchanged, and around 100 OESs were deleted.

(h) New chemical safety rules

Of all occupational diseases recognised in the EU every year, a third are believed to be caused by exposure to workplace chemicals. In the UK, the TUC estimates that 18,000 deaths a year are the result of cancers caused by workplace exposure, and tens of thousands of workers suffer from skin problems, breathing problems or neurological damage caused by exposure to chemicals at work. in this context, new legislation on chemicals from the EU is of vital importance to safety reps.

The ***Registration, Evaluation and Authorisation of Chemicals Regulations (REACH) 2007*** aim to ensure that chemicals are properly tested before going on the market. Under the new system, better information will become available on around 30,000 different substances. The substances covered are: carcinogens, mutagens and those toxic to reproduction above 1 tonne per year; and those very toxic to aquatic organisms above 100 tonnes per year. While REACH is primarily intended as a measure to protect the environment and consumers, it has implications for workplace safety. The Regulations should not undermine the worker protection provided by existing law, such as COSSH and CHIP. In the long term, REACH should mean that safety reps have access to much more information on the safety of chemicals use in their workplaces. The final deadline for the registering of all affected substances is June 2018.

The Electricity at Work Regulations

(a) The employer's duties

The Electricity at Work Regulations 1989 place a legal duty on employers to provide safe electrical working practices. Employers must assess activities which use or are affected by electricity. This includes the suitability, design, construction, siting and installation of systems and the evaluation of adverse effects, including environmental effects. All electrical equipment is covered. Safety reps should ensure training for staff engaged in electrical work.

(b) An outline of the regulations

- ***Regulation 4***: systems, work activities and protective equipment. All systems shall be constructed and maintained to avoid danger as far as reasonably practicable; every

work activity shall be carried out so as not to give rise to danger; protective equipment shall be suitable, properly maintained and properly used.

- ***Regulation 5:*** strength and capability of electrical equipment. No electrical equipment can be used where its strength and capability may be exceeded so as to give rise to danger - this applies to unusual/transient and normal conditions.

- ***Regulation 6:*** adverse or hazardous environments. The construction and protection of equipment must prevent danger arising from mechanical danger, effects of the weather, natural hazards, temperature and pressure, wet, dirty, dusty or corrosive conditions and flammable or explosive substances.

- ***Regulation 7***: insulation, protection and placing of conductors. All conductors shall be covered with insulating material or have such precaution taken (including being properly placed) as to avoid danger.

- ***Regulation 8:*** earthing or other suitable precautions. Precautions shall be taken to enable discharge to earth from any conductor in, or in electrostatic or electromagnetic fields created by a system. In addition to earthing, other techniques such as double insulation, connection to a common voltage reference point, use of safe voltages, non-conducting environments, current/energy limitation and separated or isolated systems may be used as circumstances permit.

- ***Regulation 9:*** integrity of referenced conductors. Nothing that might break the electrical continuity or introduce high impedance shall be placed in a circuit conductor connected to earth unless suitable precautions are taken.

- ***Regulation 10:*** connections. All joints and connections in a system shall be mechanically and electrically suitable for use, including connections to terminals, plugs, sockets and joints between conductors.

- ***Regulation 11:*** means for protecting from excess of current. Efficient suitably located means shall prevent an excess of current in every part of a system, taking into account overloads, short circuits and earth faults.

- ***Regulation 12:*** means for cutting off the supply and for isolation. Suitable means shall be available to cut off the electricity supply to equipment and to isolate any equipment.

- ***Regulation 13:*** precautions for work on equipment made dead. Precautions shall be taken to prevent equipment which has been made dead while work is being carried out on or near from becoming charged during that work.

- ***Regulation 14***: work on or near live conductors. Work on or near live conductors is permitted only if these three conditions are met:
  - It is reasonable in all circumstances for the system to be dead;
  - It is reasonable in all circumstances for work to be carried out on or near the

system when it is live; and
- Suitable steps are taken to prevent injury including the provision of PPE.

- ***Regulation 15:*** working space, access and lighting. Adequate space, access and lighting shall be provided at or near where work is being done with electrical equipment.

- ***Regulation 16:*** persons to be competent to prevent danger and injury. Those engaged in electrical work must have the technical knowledge or experience necessary to prevent injury or danger, or must be supervised.

(c) Rights for safety reps

Legal standards are only of value if they are policed effectively. Safety reps have an important role in maximising electricity safety at work by:
- Insisting all equipment is tested and maintained at regular intervals by a competent person;
- Ensuring that all faulty equipment is mended or replaced right away;
- Ensuring Regulation 14 is complied with to the letter at all times when working with live systems to the letter (switch off first!);
- Making sure that all arrangements for earthing, circuit breaking, cutting off supply and rendering equipment dead, function in all foreseeable circumstances;
- Insisting that no equipment runs near to its maximum strength or capability under either normal or adverse conditions.

The Health and Safety (First Aid) Regulations

Employers are required by law to take steps to prevent injuries and ill health at work. They are legally obliged to provide basic welfare facilities such as toilets, washing facilities and storage for clothing. They must also make first aid provision. When someone falls ill or is injured at work, a fully trained first aider should be there to attend to them. The law covering these requirements is the Health and Safety (First Aid) Regulations 1981. An up-dated ACOP and Guidance Notes were published in 1997, intended to take account of differing needs at different workplaces, with more emphasis on assessing the need for first aid in workplaces.

(a) The employer's duties

Under the Health and Safety (First Aid) Regulations 1981, when someone falls ill or is injured at work, a fully trained first aider should be there to attend to them. Up-dated ACOP and Guidance Notes were published in 1997. These aim to take account of the varied needs at different workplaces, with more emphasis on assessing the need for first aid in workplaces.

The GN states: *"in low risk situations, e.g. offices or libraries, an employer will need one first aider during normal working hours for every 50 employees."*

In hazardous situations, the employer should decide what number of first aiders will be adequate and appropriate but this should be not fewer than one for every 50 employees.

The Regulations put clear duties on the employer to provide:

- Adequate/appropriate first-aid equipment/facilities (***Regulation 3(1)***);

- A sufficient number of suitably trained and qualified first-aiders, dependent on the type of workplace and the nature of the work carried out at the workplace. Such *"suitable persons"* should hold a current first aid certificate from a training course approved by the HSE. This may necessitate additional or specific training (***Regulation 3(2));***

- An *"appointed person"* if the first-aider is absent to cover *"temporary or exceptional absence"* of trained first aiders. This does not include absence on annual leave, so employers must appoint enough first aiders to provide such cover. The HSE says that emergency first-aid training should be considered for appointed persons. (***Regulation 3(3)***);

- Provide information for all workers about first-aid arrangements, location of equipment, facilities and personnel (***Regulation 4).***

(b) Rights for safety reps

Previously a first aid room was required in law for every 400 employees. The requirement is now based on whether the place of work *"presents a high risk from hazards"*, an argument which could certainly be applied to the hospital workplace. Safety reps should check that such rooms are available, clean and properly equipped.

Safety reps should argue that this is essential given the hazards to be found in physiotherapy departments which would also back up the need for a ratio of first aiders higher than one for every 50 employees. In workplaces where such an argument could be applied safety reps should check that such rooms are available, clean and properly equipped. The GN states: *"Employers' obligations under the regulations are better met by arranging for first aiders to be trained in specific techniques appropriate to the circumstances of the undertaking".*

Such techniques would be needed where there was a danger of poisoning by certain cyanides or related compounds; danger of burns from hydrofluoric acid; or a need for oxygen as an aid to resuscitation. Safety reps are entitled to check that:

- The names and locations of first aiders or appointed persons are displayed on noticeboards;
- There are sufficient numbers of first aiders, bearing in mind the nature of the work carried out and the range of shift patterns worked within the workplace;
- First aiders and appointed persons have attended an approved course within the last 3 years;
- First aid boxes are available and properly equipped; travel kits are provided when necessary.

There is no legal requirement on an employer to remunerate staff who undertake the role of first aider. However, it is worth trying to negotiate an allowance, and good practice suggests an annual payment of around £250 a year.

The Regulatory Reform (Fire Safety) Order

Every year hundreds of people die and thousands are injured in fire related accidents at work that could be prevented. Fire and explosion at work account for 2% of major injuries reported annually to the HSE. So it's important that standards for fire precautions are a high priority.

The Regulatory Reform (Fire Safety) Order 2006 is the largest piece of legislation made under the ***Regulatory Reform Act 2001***, which gives Ministers the power to reform legislation that *'has the effect of imposing burdens affecting persons in the carrying on of any activity'*. The Order repeals the Fire Precautions Act 1971 and amends or removes provision in over 100 other pieces of legislation. The Order applies the risk assessment principles introduced by the Fire Precautions (Workplace) Regulations 1997 and provides a single fire safety regime that applies to all workplaces across England and Wales. Scotland and Northern Ireland have devolved responsibility for fire safety law.

(a) Key features of the order

The Order is divided into Articles, rather than Regulations, but the format is similar to other health and safety law. It applies to most non-domestic premises, including self-employed people with premises separate from their homes. Workplaces not covered are ships, offshore installations, agricultural land (away from buildings), aircraft, locomotive or rolling stock, and mines.

Responsibility for complying with the Order rests with the *'responsible person' (RP)* defined in ***Article 13***. This is the employer and any other person who may have control of any part of the premises (such as the occupier or owner). In all other premises, the people in control of the premises are responsible.

Article 8 requires the RP to take general fire precautions to ensure the safety of staff and other users of the premises. As defined in ***Article 4***, these precautions relate to:

- Reducing the risk of fire and the spread of fire on the premises;
- Ensuring that there are means of escape from the premises, which can be safely and effectively used;
- Establishing means for fighting and detecting fire on the premises, and for giving warning in the case of fire; and
- Establishing arrangements for action to be taken in the event of fire, including the training of employees and the mitigation of the fire's effect.

Under ***Article 9*** the RP must make a *'suitable and sufficient'* risk assessment of the risk of, and from, fire in the workplace, playing special attention to dangerous substances and to people who may especially at risk, such as young people, pregnant women, temporary workers and people with disabilities.

Article 10 requires the RP to follow a hierarchy of preventative and protection measures, starting with eliminating the risks altogether where possible. The risk assessment and the preventative and protective measures arising from it must be recorded if the employer has 5+ employees.

To help implement the preventative and protective measures, the RP is required under ***Article 18*** to appoint *'competent persons',* who have *'sufficient training and experience or knowledge and other qualities to enable them properly to assist in undertaking the measures'*. They must be given adequate means and *'the time available for them to fulfil their functions'*. The RP should appoint a competent employee in preference to an outside person, such as a contractor.

Article 13 stipulates that the RP must also:

- Ensure that the workplace is equipped with appropriate fire-fighting equipment and fire detectors and alarms;
- Adopt appropriate measures for fire-fighting on the premises;
- Nominate an adequate number of suitably trained and equipped *competent persons* to implement such measures; and
- Arrange any necessary contacts with external emergency services, particularly as regards fire-fighting, rescue work, first aid and emergency medical care.

There are additional duties on RPs relating to emergency routes and exits in ***Article 14*** and to procedures – including safety drills and evacuation procedures – for dealing with *'serious and imminent danger'* in ***Article 15***.

Article 19 states that the RP must provide employees with *'comprehensive and relevant information'* arising from the risk assessment, such as the protection measures, emergency procedures and details of dangerous substances on the premises. Employees must also receive adequate fire safety training at their induction and whenever they are exposed to new or increased risks. This training should be *'repeated periodically'* and *'take place during working hours'*.

Article 23 imposes duties on employees to take reasonable care for the safety of themselves and others, to report matters of serious or imminent danger and any shortcomings they identify in the fire protection arrangements.

For every type of workplace, ***Article 25*** defines the enforcing authority (EA). This continues to be the local fire and rescue authorities in most cases, although the HSE has responsibility for the nuclear industry, construction sites and for ships under construction or repair. The EA can serve *'alterations notices'* where it believes that premises constitute a serious risk – ***Article 29***, as well as enforcement and prohibition ***(Articles 30 and 31)***.

Article 41 imposes a duty on employers to consult with employees, thus amending the SRSC Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996.

Since October 1st 2006, businesses no longer need a fire certificate. However, the fire service is still able to inspect premises and ensure that adequate fire precautions are in place.

(b) Rights for safety reps

As well as ensuring the employers comply with their duties under the Regulatory Reform (Fire Safety) Order 2006, safety reps should seek to ensure *"good practice"* is upheld, as follows:

- The compilation of a Health and Safety Information Manual;

- Instructions should be issued to staff on what to do in the event of fire;

- Employees should be given instruction and training by a competent person covering:
  - Fire risks and fire prevention precautions;
  - What to do if you discover a fire;
  - What to do when the fire alarm is raised;
  - Raising the alarm, including location of alarm call points;
  - Calling the fire brigade;
  - Location and use of fire-fighting equipment;
  - Escape routes and fire exits;
  - Operation of escape door fastenings (panic bars etc);
  - Evacuation procedures, including arrangements for people with disabilities and members of the public;
  - Assembly areas and means of ensuring that everyone has left the building;
  - Regular fire drills should be carried out with a number of staff and managers designated to observe and report back. Records of fire drills and training should be kept;
  - All workplaces must have means of escape in case of fire. All escape routes must be kept clear and lead quickly to a safe area. Fire exits should be kept clear at all times and be clearly marked. The exit should lead to a safe area and be easy to open;
  - Staff should be trained on how to use fire-fighting equipment. Fire extinguishers
  - Should be tested regularly by the supplier or another trained person and be refilled after use. This should ideally be done annually. All fire-fighting equipment should be examined once a month and equipment that is damaged should be taken out of service immediately;
  - Fire alarms should be tested regularly, ideally once a week, by a trained person on the premises. The installer should carry out a thorough test at least once a year. Alarms should be tested after replacement of parts/maintenance. Details of the examination, testing and maintenance of fire-fighting equipment should be kept by management.

Remember, under Regulation 4A of the SRSC Regulations the employer has a duty to involve safety reps in planning any information to be issued to staff and any training to be provided for staff. This should include fire safety issues.

Likewise, Regulation 7 of the SRSC Regulations gives safety reps the right to be given a copy of the report of any risk assessment carried out under the Fire Safety Order. You should be involved in the discussion into its implications and any follow-up required. If in doubt about the legal status of the various pieces of fire safety legislation within a particular workplace, you are entitled to call the Fire Brigade Headquarters covering the county within which you work. Ask to be directed to the nearest Fire Safety Department to your workplace for information and advice.

The Working Time Regulations

(a) The Background to the regulations

The Working Time Regulations (WTR) 1998 were introduced under the *"enabling"* provisions of HASAWA, since working time is viewed primarily as a health and safety issue. The Regulations implement the EU Working Time Directive. The stated aim of the EU Working Time Directive is to: *"improve health and safety at work by introducing minimum rules for employees relating to daily and weekly rest periods, rest breaks, annual paid leave entitlements, the length of the working week, and night work".* Amendments to the Regulations came into force in 1999 and 2001.

The legislation is made up of 40 Regulations, many of which are specific to particular industries or groups of workers. Apart from certain groups of workers who are specifically excluded (see Regulation 18), the Regulations apply to all workers other than to the genuinely self-employed. Freelancers, agency workers, trainees, temporary, part-time and contract staff are all covered.

The Regulations mean that for the first time in the UK there is:

- A statutory provision for paid annual holidays;
- A statutory limit on average weekly working hours;
- Controls on the length of night shift working;
- Protection for trainees and young workers;
- Recognition of the particular needs of contract and agency workers by ensuring they are covered for most of the protections and benefits brought in by the Regulations.

(b) A summary of the regulations

Where employees already have contractual terms and conditions that exceed the provisions of these Regulations, for example in terms of paid leave, the contractual rights continue to apply. For more information on the impact of the Regulations on CSP members, see CSP Information Paper ERUS 36.

- ***Maximum Weekly Working Time - Regulation 4***

The maximum working week, including overtime, is now set at 48 hours per week (per 7 days) when averaged over 17 weeks (roughly 4 months and known as the reference period). This means that workers can legally work for more than 48 hours in some weeks, as long as

they work fewer than 48 hours in others, so that the average does not exceed 48 hours. The average is calculated as follows - The total number of hours worked in the reference period plus the number of hours worked in an equivalent number of days following this period equal to any days taken during the 17 weeks as holiday, sick or maternity leave, divided by 17.

EXAMPLE: An employer has planned that a worker should work 55 hours a week for the first 9 weeks of a reference period, and 40 hours a week for the remaining 8 weeks. This gives an average of 9 x 55 + 8 x 40 divided by 17 = 47.0 hours per week. This would mean the employer is acting within the law.

If the worker is taken ill, or is off for 2 weeks in the second period, then the 2 weeks will have to be added on at the end of the 17 week reference period. The number of hours worked must be such that the average is no more than 48. So if the worker works 40 hours for those weeks the average will be as above. Employers must take all reasonable steps, in keeping with the need to protect the health and safety of workers, to comply with the 48 hour limit. They must also keep records for 2 years to show that the limits on the maximum working week are being complied with for all workers ***(Regulation 9).***

- ⇨ *What is Working Time?* There are no clear guidelines in the Regulations on how to calculate the 48 hours, when an employee is actually working, and whether it includes breaks like lunch. It is also unclear whether other situations where an employee is not working, for example when on paid time-off for trade union duties, are to be taken into account to calculate the hours worked. There is likely to be disagreement between employers and trade unions over this issue. For example, when a worker is present in a workplace, or on-call and available for work - but not actually carrying out a work-related task. The guidance to the Regulations says that if a worker is on-call, but otherwise free to pursue their time as their own, they may not be regarded as working.

  In October 2000 the ECJ gave judgement in a case concerning the status of *'on-call'* time. The judgement related to doctors employed in primary health care teams, though a similar approach may now be taken in other areas. It indicated that *'on-call'* time would be working time when a worker is required to be at their place of work. When a worker is permitted to be away from the workplace when *'on-call'* and accordingly free to pursue leisure activities, on-call time is not 'working time'. *(Sindicato de Médicos de Asistencia Publics (SIMAP) - v - Conselleria de Sanidad y Consumo de la Generalidad Valenciana, Case C-303/98).*

- ⇨ *Breaks.* The Regulations do not make it clear whether breaks count as working time. Workers who are required to remain at work on-call through meal breaks, whether these are paid or not, should have this time included in their working time.

- ❑ ***Opting out - regulation 5***

The 2007 Labour Force Survey suggests that 13% of workers now have a typical working

week of longer than 48 hours, with the figure rising to 16% in London. 3,242,000 people exceeded the 48 hour limit in 2007, 93,000 more than in 2006. The HSE believes there is cause for concern over a possible link over long working hours and accidents at work, particularly among workers whose jobs involve driving.

The UK is the only member state of the EU that allows workers to agree to opt out of the 48 hour maximum working week, in which case this must be agreed with the employer in writing. This may be for a specific period or it can apply indefinitely. It can be terminated by the worker giving at least 7 days' notice to the employer in writing, unless a different notice period is agreed. However, the notice period cannot be more than 3 months. This opt out is voluntary; it cannot be enforced.
If workers do opt out, the employer must:

- ⇨ Maintain up-to-date records which identify the workers who have opted out. Under the 2001 amendments to the Regulations employers no longer have a duty to keep detailed records of those who have signed an opt-out clause (***Regulation 5(2)***). Previously, it was the case that employers must set out any terms on which the worker agreed that the limit should not apply and specify the number of hours worked by the employee each week since the agreement came into effect, or for the most recent 2 year period. This has been repealed;
- ⇨ Permit HSE Inspectors to see their records on request; and
- ⇨ Provide an Inspector with any information s/he may request regarding any such workers.

Even when individuals choose to work more than 48 hours a week, there is an absolute limit of 72 hours per week and 13 hours per day. Employers must take all reasonable steps, in keeping with the need to protect the health and safety of workers, to comply with the 48 hour limit.

- ***Length of night work - regulation 6***

The Working Time Directive states that research shows that: *"The human body is more sensitive at night to environmental disturbances and also to certain burdensome forms of work organisation, and that long periods of night work can be detrimental to the health of workers and can endanger safety in the workplace."*

In the WTR, a night worker is defined as a worker who works at least 3 hours per day during night time on the majority of days or *"as a normal course*". Night time is defined as a period of at least 7 hours, including the period between midnight and 5am, as laid down in an agreement or contract, or in the absence of such, the period between 11pm and 6am. This definition can be extended by agreement to include any workers who work a proportion of their annual working time during the night. The Department of Trade and Industry (DTI) guidance to the Regulations states*: "A worker may be said to work at night 'as a normal course' if they do so on a regular basis on a rotating shift pattern that results in them working regularly during night time, as opposed to on an infrequent or ad hoc basis. Employer and workers may wish to clarify this by collective or workforce agreements."*

A night worker must not normally work more than 8 hours in each 24 period when averaged

over the 17 week reference period. The reference period is any 17 weeks during the course of employment, and the employer must ensure that this limit is complied with. Where a worker has been employed for fewer than 17 weeks, the average is calculated from the time since starting work so that, for the first week, the worker cannot work more than 48 hours (6 nights of 8 hours), allowing for the required day's rest per week. Employers must ensure that night workers whose work involves special hazards or heavy physical/mental strain do not work more than 8 hours in any 24 period.

- ***Health assessment and transfer of night workers to day work - regulation 7***

Employers must not assign adult workers to night work, or young workers between 10pm and 6am, unless they have first ensured the worker has the opportunity of a free health assessment. Night workers must have the opportunity of free health assessments at regular intervals. These can be provided by an occupational health doctor or a GP. The cost of an assessment must be paid by the employer, and the worker must not lose any wages for any time lost.

The GN says that a number of medical conditions can arise, or be made worse, by working at night and could therefore rule out night work. These include: diabetes; some heart and circulatory disorders; stomach or intestinal disorders; medical conditions affecting sleep; chronic chest disorders and other medical conditions requiring regular medication on a strict timetable. It states it's prudent to repeat screening annually. Assessments must not be shown to anyone other than the worker without their written consent, unless the disclosure is confined to a simple statement that the worker is fit to take up, or continue, an assignment. If an employer is advised by a doctor that a worker is suffering from health problems, believed to be caused by night work, and it is possible to transfer the worker to suitable work that is not night work, the employer must transfer the worker.

Employers must keep records for 2 years to show the Regulations on the length of night work for all night workers, and those exposed to particular danger, and on health assessments are being complied (***Regulation 9***).

- ***Patterns of work - regulation 8***

Where the working pattern is such as to put the health and safety of a worker at risk - in particular because the work is monotonous or the work-rate is pre-determined - the employer must ensure that the worker is given adequate rest breaks.

- ***Daily rest - regulation 10***

Adult workers are entitled to at least 11 consecutive hours, and young workers (16 and 17 year olds) to at least 12 consecutive hours, rest period in each 24 hour period. In other words, the time between shifts should be no shorter than 11 or 12 hours respectively.

- ***Weekly rest period - regulation 11***

Adult workers are entitled to an uninterrupted rest period of at least 24 hours in each 7 day

period. The employer can decide that this is taken as two uninterrupted rest period of at least 24 hours in each 7 day period, or one uninterrupted rest period of at least 48 hours in each 14 day period. Young workers are entitled to at least 48 hours in each 7 day period. The 7 or 14 day period starts at midnight between Sunday and Monday, unless otherwise specified in an agreement or contract. The minimum rest period for an adult must not include any part of the daily rest period, except where this is justified by objective or technical reasons concerning the organisation of work. The Regulations do not require Sunday to be part of minimum weekly rest.

- ***Rest breaks - regulation 12***

Workers are entitled to a rest break where they work more than 6 hours in a day. The length of the break and the way it is taken are to be determined by a collective agreement. However, the rest break must be an uninterrupted period of at least 20 minutes and away from the work station, if the worker has one. The break cannot be taken either at the start or at the end of working time. The Regulations are silent on whether the rest breaks should be paid or unpaid.

The Department of Business, Enterprise and Regulatory Reform (BERR) (formerly the DTi) issued Guidance on the Working Time Regulations, published in 2004, stating *"Employers must make sure that workers can take their rest, but are not required to make sure they do take their rest."* This interpretation led many employers to argue that they were meeting their legal duty to provide for rest time, but they did not have a legal duty to ensure that workers took such rest. In the case of ***The EU Commission – v – United Kingdom 2006*** the ECJ ruled that the UK government was wrong to publish guidance saying that employers do not have a duty to ensure that workers actually take the rest to which they are entitled. The ECJ stated that the wording of the Working Time Directive requires workers to *"actually benefit from the daily and weekly periods of rest provided for".* Member states therefore have to guarantee that all the requirements are observed. As the purpose of the Directive was to protect the health and safety of workers, member states that did not ensure that workers were able to exercise their rights were not guaranteeing compliance with the minimum requirements, or essential objective, of the Directive. Although employers should not be expected to force workers to take their rest periods, guidance telling them that they did not have to was liable to render the rights of workers under the Directive meaningless. The ECJ also said that guidance telling employers that they do not have a duty to ensure that workers take their rest periods was incompatible with the objective of the Directive, in which minimum rest periods *"are considered to be essential for the protection of workers' health and safety".* The BERR Guidance has been amended and this statement has been removed.

The extent of workers failing to take breaks to which they are legally entitled has been highlighted by TUC research published in 2007, entitled *"Work Your Proper Hours"*. The research, based on official figures from summer 2006 Labour Force Survey and the Annual Survey of Hours and Earnings, indicates that UK employees working unpaid overtime clock up an extra 7 hours and 6 minutes a week on average, and would get an extra £4,800 a year if they were paid for those hours. Across the UK, unpaid overtime worth £23 billion was worked last year. The TUC points out that the figures should be a concern to employers too.

Overtime contributes to poor productivity, increased work-related stress and higher sickness absences. Full-time employees in France work 5 hours a week fewer than those in the UK, but are more productive.

- ***Entitlement to paid annual leave - regulation 13***

Since April 2009, every worker – whether part-time or full-time – is entitled to 5.6 weeks (28 days if you work a five day week). This is leave paid at average or normal, not basic, earnings. The leave year begins on the date provided for in an agreement or contract or where not specified on 1st October. Where a worker starts work later than the date on which the leave year begins, as specified in an agreement or their contract, s/he is entitled to an amount of leave proportional to the amount of the leave year remaining. Leave may be taken in installments, but it may only be taken in that leave year. It may not be replaced by payment in lieu, except where the worker's employment is terminated.

Originally, to qualify a worker had to be continuously employed for 13 weeks. All other Regulations apply to relevant workers regardless of length of service. The right to paid annual leave now accrues from day one of employment. The change came about in 2001 when the Broadcasting, Entertainment, Cinemagraphic Trades Union (BECTU) brought a successful challenge to the Government's interpretation of the Working Time Directive in relation to the 13 week qualifying period. The ECJ agreed with the union that nothing in the Directive allows the Government to impose such a qualification and the 13 week qualification period was removed. All workers now have the legal right to pro-rata paid annual leave, regardless of length of service.

- ***Compensation related to entitlement to leave - regulation 14***

This applies where a worker's employment is ended and the amount of leave taken differs from that to which s/he is entitled. Where the leave is less than the proportion of leave accumulated, the employer must pay the worker compensation in lieu of leave. The amount of this payment is either determined by an agreement or contract or, where there is neither, is at the rate of a week's pay for each week's leave owed.

- ***Dates on which leave is taken - regulation 15***

In the absence of any other agreement, workers can take leave when they want by giving notice to the employer when leave will be taken, and when leave is for part of a day only for how long. The notice must be given at least twice as many days in advance of the first day of leave as the number of days, or part days, to which it relates. An employer can require workers to take their leave at specified times, using the same notice periods. If the employer requires workers not to take leave on certain days, the period of notice of this requirement to be given is as many days in advance of the earliest day specified as the number of days or part days to which the notice relates. There is no provision for the right to paid time off for bank holidays or public holidays. An employer is able to include public holidays within the 4 weeks' annual leave entitlement.

- ***Payment in respect of periods of leave - regulation 16***

Workers are entitled to be paid average earnings in respect of any period of annual leave to which they are entitled under Regulation 13, at the rate of a week's pay in respect of each week of leave. Therefore, annual leave pay should take account of such issues as night working in defining *"normal"* earnings. This is pro-rata. So a part-timer who works two days a week would have the right to 2 days pay for each week's leave taken.

⇨ *Holiday pay and normal working hours.* For some workers, establishing how much they should be paid during their 4 weeks' holiday is contentious. The issue is whether their normal working hours means that their pay varies according to the amount of work done or the time at which it is done. Two rulings at the EAT have established that various bonuses should be included in the holiday pay calculation of certain groups of workers. In ***May Gurney Ltd – v – Adshead and 95 others, 2006*** the workers, in addition to their basic pay, received a fixed bonus attendance allowance, as long as they worked a full week, plus a variable productivity bonus, calculated differently in each department. The issue for the EAT was whether these bonuses meant that the wages varied with the amount of work done. If so, workers on a week's holiday would be entitled to their weekly pay over the previous 12 weeks, but if their pay did not vary with the amount of work done, the holiday pay should include the bonus pay. The EAT found that the bonuses were related to output, in that they were connected with performance, even though a productivity bonus may not be directly related to the amount of work done. It ruled that the productivity bonuses should be included in the workers' holiday pay, as should the fixed bonus, since these was contractually payable to any worker who did a week's work and was therefore a compulsory element of pay. In ***Sanderson and Griffin – v – Exel Management Services Ltd, 2006,*** drivers worked a basic 40 hour week under a standard hours contract, but with different rates of pay for overtime, shifts and particular types of work. Any hours in excess of 40 were called *'production hours'* and were subject to enhanced pay. The drivers' holiday pay was based on a fixed rate of pay only, but the EAT ruled that, while the loading times used to calculate production hours were based on an estimate of the number of hours the process was likely to take, changes in technology meant that this was no longer a genuine estimate. Since fixed hours must be definite and must be actual hours, rather than a notional estimate, the production hours were not fixed. Hence the drivers could not be said to have normal working hours, and their bonuses should be included in their holiday pay.

⇨ *Rolled up holiday pay.* Many employers had a practice of building holiday pay into workers' hourly rate: holiday pay *'rolled up'* into basic hourly pay. The ECJ has clarified the law in the case of ***Robinson-Steele – v - R D Services Ltd (2006)***. The court ruled that it is unlawful to pay holiday pay as part of the hourly rate of pay. It said that the practice of rolled up holiday pay did not comply with the Working Time Directive, which required that workers are paid for their holiday at the time that they take it. Hence an employer has a duty to calculate the pro-rata holiday pay of a worker, based on annual weeks/hours worked during the

period of an annual leave year, rather than a random calculation built into the worker's hourly rate.

- ***Entitlements under other provisions - regulation 17***

Where during any period a worker is entitled to a rest period, rest break or annual leave both under the WTR and a separate provision, such as a collective agreement or contract of employment, s/he may not exercise the two rights separately. In other words, workers are entitled to choose whichever is most favourable: their legal entitlement or the provisions afforded to them already by their employer.

- ***Exceptions - regulation 18***

The EU Directive allows member states to *"derogate"* (or opt out) groups of workers from the majority of its provisions. The UK government chose to take advantage of all the derogations available. This means that large numbers of workers who should have received the full benefit of the legislation have been denied their full rights. The Regulations on the length of night work and daily rest, weekly rest and rest breaks for adult workers do not apply to employees:

- Whose work and home are distant from one another, or whose different places of work are distant from one another. The government argues that this may apply where it is desirable for these workers to work longer hours for a short period to complete the task more quickly or where continual changes in the location of work make it impractical to set a pattern of work:
- Who are engaged in security or surveillance work;
- Whose work involves the need for continuity of service or production, for example services relating to the treatment or care provided by hospitals;
- In jobs where there is a foreseeable surge of activity, for example in agriculture, tourism and postal services: and
- Whose work is affected by unusual and unforeseeable circumstances beyond the control of the employer. This could include exceptional events, whose consequences could not have been avoided or an accident or the imminent risk of an accident.

Also, the working week of these workers is determined as an average over 26 weeks, instead of 17 weeks. Where workers are required to work during a period that would otherwise be a rest period, or rest break, the employer must give the worker an equivalent period of compensatory rest (***Regulation 24).***

What this means in practical terms is that these workers are still entitled to the same right to have night work limited and to have the same rest periods and breaks, but there may be variations in when these can occur.

- ***Unmeasured working time - regulation 20***

Workers on *"unmeasured"* time are excluded from the maximum working week limits, night work limits and rest period/breaks. The exclusions apply if the duration of working time is not *"measured or predetermined"* because of the nature of *"the specific characteristics of*

the activity" in which workers are engaged. They also apply where workers can determine the duration of working time themselves. Examples given in the 1998 Regulations included managing executives and others with *"autonomous decision-taking powers* ".

In the 1999 Regulations the unmeasured-time exclusion was extended to workers whose work is partly unmeasured. The protections in the Regulations now apply *"only to so much of"* the work as is measured or pre-determined or cannot be determined by the worker themselves. BERR says this means *"additional hours which the worker chooses to do without being required to by their employer do not count as working time".* The key factor is worker choice *"without detriment".*

The TUC argues that treating work done voluntarily beyond contracted hours as not counting towards the 48 hour limit would *"leave salaried workers working unpaid overtime with no legal protection against pressure from employers to work very long hours"*. Reacting to this, BERR *"no one can be forced to work more than an average of 48 hours a week against his or her will",* and said the unmeasured work exclusion does not apply to:

- ⇨ Working time that is hourly paid;
- ⇨ Prescribed hours of work;
- ⇨ Situations where the worker works under close supervision;
- ⇨ Any time where a worker is expressly required to work (eg to attend meetings outside normal working time);
- ⇨ Any time a worker is implicitly required to work (for example because of the requirements of the job or because of the possible detriment if the worker refuses).

- ❑ ***Shift workers - regulation 22***

The Regulations on the daily and weekly rest periods do not apply to shift workers when they change shifts and cannot take the rest periods between the end of one shift and the start of the next. However, if workers lose out on their rest periods, because of moving straight from one shift to another, they must be given an equivalent period of compensatory rest (Regulation 24).

- ❑ ***Collective and workforce agreements - regulation 23***

The Regulations allow for a collective or workforce agreement to modify, or exclude from, Regulations 6, 10, 11 and 12. Additionally, such agreements can also modify the application of Regulation 4, by the substitution, for each reference to 17 weeks, of a different period provided this period does not exceed 52 weeks. These agreements must: be in writing; must specify the date of operation of the agreement; not last longer than 5 years; be given to all the workers covered by the agreement, together with any necessary guidance, before it is signed; and be signed by representatives of the workforce, or part of the workforce.

- ❑ ***Enforcement of the regulations***

The restrictions on the maximum week, night work and work patterns impose obligations on employers and are enforceable by the HSE or by the EHOs of the appropriate local authority.

Any employer who fails to keep to the Regulations is breaking criminal law and can be prosecuted by one of the two bodies above. The entitlements to daily and weekly rest periods, rest breaks and paid annual leave confer rights on workers are enforceable in an ET.

- ***Protection against discrimination***

The Employment Rights Act 1996 has been amended by the Regulations so that workers cannot be victimised if they refuse to do something contrary to the Regulations or to forego their rights provided in the Regulations. If a worker is dismissed on such grounds this is automatically regarded as unfair dismissal, and the employee concerned should lodge a complaint with an ET within 3 months of the dismissal occurring. This means, for example, any worker victimised or sacked for refusing to agree to opt out of the 48 hour week is protected.

(c) Implementing the Regulations in the NHS

- ***Section 27 of the NHS Terms and Conditions Handbook***

It is clear that the Working Time Regulations 1999 have an impact on many groups of workers within the NHS. The following pages contain the NHS agreement on working time. This is Section 27 of the National Terms and Conditions Handbook, which is a national agreement, providing a framework to be followed by local NHS employers.

It is important that safety reps are aware of the content of Section 27 in order to consider how its contents should be interpreted and enacted in their physiotherapy departments and to the benefit of local CSP members.

NHS NATIONAL TERMS AND CONDITIONS OF SERVICE HANDBOOK: SECTION 27 – WORKING TIME REGULATIONS

27.1 There is a general responsibility for employers and employees under health and safety law to protect as far as is practicable the health and safety of all employees at work. Control on working hours should be regarded as an integral element of managing health and safety at work and promoting health at work. It is, therefore, appropriate that health service employers, when organising work, should take account of the general principle of adapting work to the worker.
27.2 In reaching local arrangements to implement this agreement, employers or employees are expected to ensure that no arrangements are reached which discriminate against members of staff with family or other carer responsibilities.

Exceptions

27.3 Doctors in training are excluded from the provisions of this agreement.
27.4 Regulation 18 of the Working Time Regulations states: *'Regulations 4(1) and (2), 6(1), (2) and (7), 7(1), and (6), 8, 10(1), and 11(1) and (2), 12(1), 13 and 16 do not apply, where characteristics peculiar to certain specified services such as the armed forces or the police, or to certain specific activities in the civil protection services, inevitably conflict with provisions of these Regulations.'*
27.5 Regulation 2 cites ambulance services within the definition of civil protection services. In the case of employees unable to benefit from the protection of the Working Time Regulations, ambulance services employers are expected to apply the principles of the Regulations and this agreement as far as the exigencies of the service permit.

Protection

27.6 Employees must suffer no detriment because they have exercised any of their entitlements under the regulations. The provisions of the Working Time Regulations are not maximum standards, and conditions that are currently in place and more favourable to staff should not be worsened.

Records

27.7 Employers must keep records, which will be available to locally recognised unions, that are adequate to ensure that the limits specified in paragraph 27.9 (maximum working weekly time), paragraph 27.15 (rest breaks), paragraph 27.17 (daily rest), paragraph 27.19 (weekly rest periods), and paragraph 27.20 (night work) are complied with and that where there is an entitlement to compensatory rest this is provided for.

Maximum weekly working time

27.8 Working time may or may not happen to coincide with the time for which a worker receives pay or with the time during which he/she may be required to work under a contract of employment. Working time will include time taken for training purposes, civic and public duties, health and safety and trade union duties.
27.9 Employees will normally not be expected to work more than 48 hours per each seven-day period calculated over an averaging period of 17 weeks. In exceptional circumstances,

for those health professionals involved in the need for continuous care relating to reception, treatment or care of patients, the reference period may be extended by agreement with locally recognised unions to a maximum of 26 weeks.
27.10 Unless it is agreed with locally recognised unions to the contrary, the averaging reference period (as per paragraph 27.9) is the 17 weeks immediately preceding each day in the course of a worker's employment.
27.11 Working time will be calculated exclusive of meal breaks except where individuals are required to work during meals in which case such time should be counted as working time.

Individual option to work more than 48 hours a week

27.12 Individuals may choose to agree to work more than the 48 hours average weekly limit if they agree with their employer in writing. A decision to exercise this option is an individual, voluntary one and no pressure should be placed on an employee to take this option. Such an individual agreement may either relate to a specified period or apply indefinitely. To end any agreement a worker must give written notice to his/her employer. This can take the form of a previously specified notice period of up to three months written in any agreement or if no notice period is specified only seven days' notice would be required. Records of such agreements must be kept and be made available to locally recognised unions.

On-call staff

27.13 Staff who are on-call, i.e. available to work if called upon, will be regarded as working from the time they are required to undertake any work-related activity. Where staff are on-call, but otherwise free to use the time as their own this will not count towards working time. This method of calculating working time will not affect on-call payments.
27.14 Where staff are required to *'sleep in'* on NHS premises for the duration of a specified period, local agreements should be made for compensatory rest.

Rest breaks

27.15 Where the working day is longer than six hours, all staff are entitled to take a break of at least 20 minutes. Rest breaks must be taken during the period of work and should not be taken either at the start or the end of a period of working time. Employees should be able to take this rest break away from their work station. In exceptional circumstances and by agreement with the worker, where a rest break cannot be taken the unused entitlement should be claimed as a period of equivalent compensatory rest. Line managers should ensure that provision is made to allow compensatory rest to be taken. Existing local arrangements, which already provide for breaks of more than 20 minutes (for example, lunch breaks), will meet the requirements of this provision and no further action will be needed.
27.16 In circumstances where work is repetitive, continuous or requiring exceptional concentration, employers must ensure the provision of adequate rest breaks as an integral part of their duty to protect the health and safety of their employee. In such circumstances the advice of local occupational health services should be sought.

Minimum daily rest periods

27.17 Employees should normally have a rest period of not less than 11 hours in each 24-hour period. In exceptional circumstances where this is not practicable because of the contingencies of the service, daily rest may be less than 11 hours. In these circumstances records should be kept by the employer that will be available to locally recognised unions. Local arrangements should be agreed to ensure that a period of equivalent compensatory rest is provided. Any proposed regular amendment to the minimum daily rest period must be agreed with locally recognised unions. It is recognised that in some emergency situations compensatory rest may not always be possible.

27.18 Where full daily rest cannot be taken because a worker is changing shifts the employer should make arrangements to allow equivalent compensatory rest.

Weekly rest periods

27.19 All employees should receive an uninterrupted weekly rest period of 35 hours (including the 11 hours of daily rest) in each seven-day period for which they work for their employer. Where this is not possible they should receive equivalent rest over a 14-day period, either as one 70-hour period or two 35-hour periods.

Night work

27.20 'Night-time' is a period of at least 7 hours that includes the period from midnight to 5am. A night worker is someone who is classed as working for at least three hours daily during night-time hours as a 'normal course'. Employers should ensure that the 'normal hours' of their night workers do not exceed an average of eight hours over a 17-week period.

27.21 'Normal hours' are those which are regularly worked and/or fixed by contract of employment. The calculation is not affected by absence from work, as a worker's normal hours of work would remain the same regardless of the 'actual' hours worked. Time worked as overtime is not normal work unless an employee's contract fixes a minimum number of hours.

Special hazards or heavy physical or mental strain

27.22 Employers must identify special hazards faced by night workers by identifying them in risk assessments as involving a significant risk to health and safety undertaken in accordance with the Management of Health and Safety at Work Regulations 1992.

27.23 Employers should ensure that night workers, whose work does involve special hazards or heavy physical or mental strain, do not actually work for more than eight hours in any 24-hour period during which the night worker performs night work.

Health assessment for night workers/transfer to day work

27.24 All night workers are entitled to a regular free and confidential occupational health assessment and, additionally, when a work-related problem is identified, to determine whether the worker is fit to undertake the night work to which he/she is assigned. The format and content of the health assessment should be agreed by locally recognised unions in accordance with the advice on occupational health services issued by NHS Employers and the Health and Safety Commission's Health Services Advisory Committee. Paid time off should be given to employees to attend occupational health assessments.

27.25 Employees identified by a medical practitioner as having health problems related to night work should be offered, wherever possible, the option of transfer to suitable day work with appropriate pay and conditions of service.

- ***Bank workers***

There is no NHS national agreement on working time, which relates specifically to bank workers. However, permanent staff who work additional hours on their own bank will already have contracts of employment entitling them to 4.8 or more weeks' paid annual leave. In these circumstances they will be receiving the annual holiday entitlement provided for in the Working Time Regulations. No additional holiday entitlement accrues for the additional hours worked on the bank. However, in calculating holiday pay, employers will have to take into account the additional pay earned on the bank, so that the holiday pay entitlement can be calculated on actual earnings over the reference period.

Where someone has a substantial contract with Trust A, but works additional hours on a bank with Trust B, under a separate contract of employment that is on-going, they will be entitled to annual leave under the bank contract.

(d) Action for safety reps

Much contained within the NHS National Agreement and the Regulations needs to be interpreted and negotiated with trade unions at local level. CSP safety reps, along with their colleagues from other Staff Side unions, have an important role to play in ensuring that the spirit of the legislation is reflected in any local agreements that are concluded.

Many of the rights offered in the Working Time Regulations are vague, and indeed make the assumption that the implementation of the law will rest with agreements made at workplace level.

It is important that safety reps act to prevent individual members making their own agreements, and instead focus on the need to ensure good collective agreements that protect and benefit all members. Where working time agreements (as in the majority of cases) are negotiated by stewards, safety reps and stewards should liaise closely to ensure that health and safety aspects of such an agreement are properly covered.

The Control of Asbestos at Work Regulations

(a) The background to the regulations

The reason for legislation on asbestos is clear. It is still the major killer at work. 5,000 people die each year from asbestos-related diseases. The HSE estimates that 1.5 million workplaces contain asbestos materials. Blue (crocidolite) and brown (amosite) asbestos have not been imported into the UK for 25 years and the Asbestos (Prohibition) Regulations 1985 (amended in 1992) banned the import, supply and use of blue and brown asbestos. The Asbestos (Prohibitions) (Amendment) Regulations 1999 made it illegal to import supply or use white (chrysotile) asbestos.

The Control of Asbestos at Work Regulations 2006 are aimed at stopping the new use of asbestos and they also make it illegal to supply and use second-hand asbestos cement products. Also banned is the supply/use of boards, tiles and panels that are painted or covered with paints and textured plasters containing asbestos.

Experts now agree that there is no safe level of exposure to asbestos. Exposure to even minute amounts of blue, brown or white asbestos can be deadly. Key employer responsibilities are to: reduce the risk of exposure by substitution; restrict the ways it can be used; and improve safety management.

(b) Regulation 4 – the duty to manage asbestos

Employers should presume that materials do contain asbestos without strong evidence they do not, and they must make and keep a record of the location and condition of these materials. The priority is to remove the asbestos. If this is not reasonably practicable, the law demands that exposure should be controlled to the lowest level possible. Employers have a legal duty to manage asbestos in the premises they own of control. Employers have to go through a 5 stage to comply with the law. They must:

- Check for asbestos on the premises or appoint someone else competent to do so;
- Inspect the workplace and find out whether asbestos is present;
- Assess the risks from any asbestos;
- Manage the risk and prepare a plan; and
- Monitor arrangements.

Employers must not carry out demolition, maintenance or any other work which exposes, or may expose, their employees to asbestos, unless they have found out the type and condition of asbestos present.

(c) Regulation 5 - identifying the presence of asbestos

Employers should carry out a *"suitable and sufficient assessment of the workplace"* to determine whether *"asbestos is or is liable to be present in the premises."* This includes all buildings, external pipes, fixed plant, machinery and mobile units.

Employers must check through documentary records of building plans and plant on the premises. They should make an accurate drawing of the premises to record where any asbestos is or may be. The drawing/record should be available on the site for the entire life of premises, and must be kept up to date.

(d) Other key features of the regulation

- **Regulation 6 – risk assessment.** Before work with asbestos is carried out, the employer must make an assessment of the likely exposure of employees to asbestos dust. The assessment should include the precautions which are to be taken to control dust release and to protect those who may be affected such work. Employers must record their risk assessment findings.

- **Regulation 7 – planning work.** Employers should not arrange to work with asbestos unless a written plan of work, detailing how that work is to be carried out, has first been prepared. Safety reps have the right to press employers to develop an asbestos action plan and should be fully involved at all stages. No asbestos should be worked on or removed without stringent controls including the use of licensed contractors.

- **Regulation 10 – training information and instruction**. Employers must give adequate training, information and instruction to all employees who are, or may be, exposed to asbestos. Safety reps are entitled to receive:
  - A copy of the current risk assessment for the work;
  - A copy of the plan at work;
  - Details of any air monitoring strategy and results;
  - Maintenance records for control measures;
  - Personal information from health records;
  - A copy of the individual's training needs; and
  - The results of any face-fit test for asbestos respiratory PPE.

- **Regulation 22 - health records and medical surveillance,** Employers have to keep a health record; keep the record (or a copy) for at least 40 years; ensure the employees are under adequate medical surveillance by a relevant doctor; provide a medical examination not more than two years before such exposure and one at least every two years while such exposure continues (certificates of examination need to be kept for four years); tell the employee if the medical shows any disease or ill-health effect from the exposure.

(e) The construction (design and management) regulations (CDM) 1994

These Regulations require the client (commissioning the design and building work) to provide the planning supervisor with information about the project relevant to health and safety. This might include previous surveys of the building for asbestos.

RIDDOR

The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 2013 place specific reporting duties on employers. RIDDOR is important because it provides an external mechanism for policing the extent to which work processes and equipment are the sources of injury and ill-health among workers. Safety reps can use their rights under Regulation 7 of the SRSC Regulations to demand copies of any RIDDOR report forms sent to the HSE by their employer. Collating such information will enable safety reps to identify any work practices, equipment and organisation that appear to be posing to risk to staff.

Accidents which cause serious or fatal injuries or lead to more than a 7 day period off work have to be notified to the HSE under RIDDOR. The Regulations require employers to notify information direct to the HSE and to keep records.

The Regulations also cover dangerous occurrences - commonly called "near-misses" - and a

range of industrial diseases. Again, any instances of these within a workplace must be reported to the HSE, immediately by telephone or fax and then, within a specified period, in writing on the appropriate reporting form. Under the Regulations, the employer must notify the HSE of any fatality, reportable accident, near-miss or disease in the workplace.

- "***Notifiable Matters***" fall into four categories.

i) Accidents arising out of, or in connection with, work and resulting in the death of, or major injury to, any person, including members of the public.

ii) Accidents arising out of, or in connection with, work and resulting in an employee being unable to work, or to carry out their full range of duties, for more than 7 consecutive days (including rest days). This includes any incidents of physical violence.

iii) Certain potentially dangerous occurrences or near-misses - whether or not injury results. These must be notified to the HSE.

iv) Certain specified diseases, diagnosed by a doctor, affecting employees carrying out a specified work activity, in which case the HSE must be notified.

- "***Major Injuries***" are defined as:
  - Fracture of the skull, spine or pelvis;
  - Fracture of any bone: in the arm, other than a bone in the wrist or hand; in the leg, other than a bone in the ankle or foot;
  - Amputation of a hand or foot;
  - The loss of sight or an eye;
  - Any other injury which results in the person injured being admitted into hospital as an in-patient for more than 24 hours, unless that person is detained only for observation.

- "***Dangerous occurrences***" which must be notified include:
  - Explosions of boilers and gas cylinders;
  - Electrical short circuits or overloads resulting in serious fires or explosions, collapse of buildings during alterations;
  - The uncontrolled release or escape of any substance or agent in circumstances which might be liable to cause damage to the health of, or major injury to, any person;
  - Any incident in which any person is affected by the inhalation, ingestion or other absorption of any substance or by lack of oxygen to such an extent as to cause ill health requiring medical treatment;
  - Any case of acute ill health where there is reason to believe that this resulted from occupational exposure to isolated pathogens or infected materials.

All incidents can be reported online but a telephone service is also provided for reporting fatal/specified injuries only - call on 0845 300 9923 (opening hours Monday to Friday 8.30 am to 5 pm).

Reporting out of hours

Check the HSE website www.hse.gov.uk for details. Circumstances where the HSE need to respond out of hours may include:

- A work-related death or situation where there is a strong likelihood of death following an incident at or connected with work
- A serious accident at the workplace so that the HSE can gather details of physical evidence that would be lost with time; and
- Following a major incident at a workplace where the severity of the incident or the degree of public concern requires immediate public statement from the HSE or government ministers.

Paper forms

There is no longer a paper form for RIDDOR reporting, since the online system is the preferred reporting mechanism. Should it be essential for you to submit a report by post, it should be sent to:

RIDDOR Reports
Health and Safety Executive
Redgrave Court
Merton Road
Bootle
Merseyside
L20 7HS

PART TWO

THE RIGHTS AND ROLES OF CSP SAFETY REPRESENTATIVES

Including:

⇒ **Section 1: The Rights and Functions of a CSP Safety Rep**

⇒ **Section 2: Workplace Inspections**

⇒ **Section 3: Investigating Accidents**

⇒ **Section 4: Participating in Safety Committees.**

SECTION 1: THE RIGHTS AND FUNCTIONS OF A CSP SAFETY REP

Introduction

As we saw in Part 1 of the Manual, the law places many health and safety duties on employers. Additionally, all employees, including safety reps in their role as employees, have a number of legal duties imposed upon them by health and safety legislation. It is important to stress, however, that as a safety rep you have many powers and rights afforded to you in law.

These rights are enshrined in the ***Safety Representatives and Safety Committees Regulations 1977 (the SRSC Regs)***. These Regulations have been updated to extend the rights of safety reps a number of times since they were first issued, the 2008 edition is the most recent.

Although Section 2(4) of the HASAWA makes reference to the role of safety reps, this part of the Act only became effective following the publication of the *"Regulations on Safety Representatives and Safety Committees (Statutory Instrument SI 1977 No.500)"*, which came into force from 1st October 1978. The Regulations also contain the accompanying Code of Practice (ACOP) and Guidance Notes (GN), and should be read carefully.

In this section we look at:

- ***The SRSC Regulations in brief;***
- ***Key issues for CSP safety reps;***
- ***Links with CSP stewards;***
- ***Employment rights for safety reps and others;***
- ***Checklist: the role of a CSP safety rep;***
- ***Section 25 of the National Terms and Conditions of Service Handbook.***

The SRSC Regulations in Brief

There are 11 Regulations, not all of which are directly relevant to CSP safety reps. We look at the key Regulations that you need to be aware of if you are to function effectively as a safety rep within the NHS.

(a) Regulation 2 – interpretation

- ***A recognised trade union.*** This means an independent trade union, which the employer concerned recognises for the purpose of negotiation on behalf of members, including on health and safety matters. The CSP is registered as an independent trade union.

- ***Workplace.*** Workplace means any place or places where their members are likely to work or which they are likely to frequent in their employment.

(b) Regulation 3 – appointment of safety reps

In law it is the right of the recognised union (the CSP) to appoint (or elect) their safety reps from among the members to be represented. Once the employer is notified in writing by the CSP that a safety rep has been appointed the safety rep is entitled to carry out their functions (see Regulation 4). The employer has no right to determine who should be a union safety rep. The Regulations do not stipulate how many safety reps each union is entitled to appoint. This is dependent on the numbers employed, the range of occupations and locations and the type of shift patterns worked. It is for the recognised union to determine how many safety reps are needed. The TUC recommendation is one safety reps for every 50 members.

(c) Regulation 4 – functions of safety reps

This is the largest section of the SRSC Regs, and includes detailed information about how a safety rep should operate, as well as their rights to paid time off to undertake their functions and to attend CSP or TUC training courses.

Safety reps have the legal right to:

- Represent members who have grievances related to health and safety;
- Investigate potential hazards and dangerous occurrences at the workplace, whether or not they are drawn to their attention by their members, and to examine the causes of accidents in the workplace;
- Investigate complaints by any member relating to health, safety or welfare at work;
- Make representations to the employer on matters arising out of the above investigations and on general matters affecting the health, safety and welfare of employees at the workplace;
- Carry out inspections of the workplace, in accordance with Regulations 5 and 6;
- Represent members in consultations at the workplace with inspectors from the HSE, the Environment Health Department or the Fire Service;
- Receive information from inspectors from the three above enforcing authorities;
- Attend meetings of the Safety Committee (also see Regulation 9).

Safety reps should not only react to problems, they should pro-actively monitor health and safety. All issues that arise can be discussed with employers, but although the employer must listen they are not legally obliged to take the safety rep's advice. To be effective safety reps need good workplace organisation and the backing of CSP members (see Section 4 of the Manual).

In ***ASLEF – v – London Underground Limited 2007***, an ET awarded compensation of £11,500 to Paul McCarthy, a union safety rep, who was prevented from inspecting four tube lines by London Underground. The company was found to have *"thwarted a health and safety representative in his duties"* and had *"failed to ensure (its) employees' health and safety"* when it stopped Mr McCarthy from checking whether the lines were a safe working environment for staff. The ET ruled that management had *"wilfully and deliberately ignored the recognised machinery"* for safety inspections, and said their defence of the claim was *"misconceived and unreasonable"*.

(d) Legal provisions for time off

According to Regulation 4(2), safety reps must be permitted by employers to take such time off work with their **normal** pay within normal working hours, in order to carry out the functions listed in Regulation 4 and to undertake training. You need to check that you are getting sufficient time off to enable you to do all the work required of you by the union. If you are not sure you should find out what your Trust or Board Facilities Agreement says about paid time off for union safety reps. You may discover that you are not taking sufficient time off. Find out what paid time off is taken by other unions' safety reps. If there is nothing laid down in relation to paid time for safety reps in your Facilities Agreement, you can seek parity with CSP stewards.

Additionally, Regulation 9 states that safety reps are entitled to paid time off to attend Safety Committees. Local agreements will need to be reached as to what time off is necessary to perform these functions. An employer failing to permit time off or refusing to pay a safety rep for such time off, can be taken to an Employment Tribunal (ET) and made to pay compensation (Regulation 11).

- ***Paid time off for part-time staff***

In the past part-time staff had difficulties where their safety rep functions or training fell outside their normal hours. In the SRSC Regulations, an employer has a duty to pay a safety rep only for the time they would normally have been at work. However, this has been superseded by the introduction of the *Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000*. As a result of these Regulations (which form part of the *Employment Relations Act 1999*, safety reps who work part-time should be paid for all the time taken to fulfil their functions and attend training courses. Safety reps cannot pro-rata attend a Safety Committee meeting or a union training course.

The case law on this issue is ***Davies –v –Neath Port Talbot County Borough Council 1999***. The EAT adjudged that paying a union safety rep who works part-time only her normal working hours while she attended a union health and safety course, where full-time workers were paid for all the hours they attended the course, was unlawful. If you work part-time and have difficulties securing pay for all the time you need as a safety rep, you should take the matter up with your full-time officer.

If you work part-time and have difficulties securing pay for all the time you need as a safety rep, you should take the matter up with your CSP Senior Negotiating Officer.

- ***Time off to attend training courses***

Your right to paid time off for training is contained with Regulation 4(2). This is a Schedule and must be complied with in its entirety. The CSP 2 day Safety Reps' Induction Courses (mostly held at CSP Head Office); the TUC 10 day courses and the CSP Regional Training Days clearly fall into the scope of this. Unions are however expected to inform management, normally by giving at least a few weeks of notice, for safety reps who have been nominated for courses, and to take some account of their employer's pressure of work and of alternative courses available, in deciding who should attend.

It doesn't matter how helpful a previous safety rep may be, **training is essential**. Some employers may provide training sessions to which safety reps are invited, but the Act and its Regulations recognise that trade unions will wish to take the primary responsibility for training their own safety reps. It is essential that new safety reps should contact the CSP ERUS and arrange to attend a course as soon as possible.

You are legally entitled to paid time off to attend the course and travelling expenses are reimbursed by CSP. The course provides a valuable opportunity both to explore further many of the issues in this manual and to meet other safety reps in the same position and share your experiences.

- ***What is a reasonable amount of time off?***

There may be occasions when it is legitimate for an employer to refuse a request for time off for trade union duties or training. Employers may argue that the amounts of time off requested are excessive; there are too many requests at the same time; there are staff shortages; pressures of work is severe or that the rep concerned has given insufficient notice. One of the main reasons given by employers is staff shortages. A recent Labour Research Department (LRD) survey has found that in the 54% of workplaces in which union reps had experienced difficulties in obtaining time off, the employer had used this argument.
However, employers who persistently use the existence of staff shortages as a reason for turning down requests for time off should be challenged. An ET ruling in the case of ***Barnes – v – Scarborough Hospital Trust 1996*** found that it was not reasonable for an employer to continually refuse requests for time off on the grounds of staff shortages. Eric Barnes was *'persistently and unlawfully'* refused the right to time off because there were staff shortages in the hospital where he worked. The ET awarded Barnes £6,000 to compensate for the fact that he had had to spend his own time on trade union duties for which he should have been allowed paid time off work.
In the Barnes case, the ET also ordered the Trust to:

- ⇨ Provide sufficient funding and resources to ensure that, except in cases of unforeseen emergencies, union reps would be granted paid time off;
- ⇨ Prioritise requests for time off for union duties above other requests for time off; and
- ⇨ Maintain records of time off and review the arrangements with the unions as necessary.

(e) Rights to other facilities

Regulation 5(3) of the SRSC Regulations requires employers to give *"such facilities as the safety representative may reasonably require"* for safety inspections. Regulation 4A(2) of the SRSC Regulations gives safety reps considerable powers to demand facilities to enable them to carry out their functions effectively. *"Facilities"* are not specified however and are therefore still open to local negotiation.
In terms of good practice, the CSP recommends that facilities should include:

- Accommodation for meetings;

- Access to a telephone and other communication media used in the workplace such as e-mail, intranet and internet;
- The right of the union and its members to communicate in confidence, without intrusion or monitoring by the employer;
- The use of notice boards;
- Confidential space where an employee can meet their safety rep. This is particularly important where the member wishing to discuss issues relating to work-related stress, allegations of bullying or harassment, or their health and safety rights if they are pregnant;
- Access to members who work at a different location;
- Access to e-learning tools where computer facilities are available;
- The use of dedicated office space for the union;
- The names of new employees in the workplace;
- Arrangements to meet management as necessary in suitable surroundings;
- A lockable filing cabinet for every safety rep, or a secure place to keep correspondence, reports, etc.;
- Time off with pay for meeting other safety reps and other staff side reps in their Trust or Health Board;
- Funding to establish a small library of health and safety information.

You should check your Trust or Health Board ***Facilities Agreement*** to find out the rights that have been negotiated agreed for reps and safety reps in your workplace. At the end of this Section, we have reproduced Section 25 of the NHS Terms and Conditions of Service Handbook, which is the national framework agreement that should be used as the basis for your local trade union Facilities Agreement.

(f) Rights to consultation and information

Safety reps have rights to information and consultation over and above that which all employees are entitled to receive. Under Section 2(6) of HASAWA employers are obliged to consult with safety reps. Regulation 4A has far reaching consequences for the union in terms of being able to be involved with the employer at the planning stage of any changes that the latter may be considering. Regulation 4A provides consultation rights for safety reps, who should be consulted *"in good time",* with regard to the following.

- The introduction of any measure at the workplace which may substantially affect the health and safety of employees you represent. Clearly, this means that you must be consulted well in advance about any changes that will have a major impact on employees' health and safety.

- The arrangements employers make for appointing *"competent persons"* to help them provide the necessary measures to protect the workforce. Employers are required, under the 1999 amendments to the Management Regulations, to employ specialists to ensure that adequate preventive or protective measures are applied at the workplace.

- Any health and safety information the employer is required to provide for employees. Safety reps should use this right to agree with the employer the health and safety

information which will be circulated to employees, before such information is released.

- The planning and organisation of any health and safety training the employer is required to provide for employees. This right allows safety reps to become directly involved in consultations about the content and duration of training courses, when they are held, who should attend etc.

- The introduction of new technologies into the workplace - especially at the planning stage - and the impact these may have on the health and safety of employees. This duty to consult safety reps over new technologies must be used to ensure that health and safety is considered before new technologies are introduced.

Paragraph 41 of the GN to Regulation 4A states the following.

"Regulation 4A requires that employers consult safety representatives "in good time". Good time is not defined. However, it means that before making a decision involving work equipment, processes or organisation, which could have health and safety consequences for employees, you should allow time:
(a) to provide the safety representatives with information about what you propose to do;
(b) to give the safety representatives an opportunity to express their views about the matter in the light of that information; and then
(c) to take account of any response."

The CSP's advice, based on the above, is that employers must consult you in advance of any planned changes being introduced and give you enough time for consultation to take place before any changes are incorporated into the workplace. It is impossible to be specific about the time employers should allow for consultation. In the case of a serious accident, new health and safety measures will need to be applied immediately and the time for consultation is short. By contrast there is usually a reasonably long planning period before training programmes are introduced or a new department is opened. In the past, many safety reps were faced with obstruction by employers when they have tried to become involved at the planning stage. For example, equipment which adversely affects health and safety may be introduced without advance notice; new buildings planned; unsafe systems of work applied without considering your views; inadequate training programmes introduced without discussion. Safety reps should therefore seek to ensure that these problems do not arise by reaching an agreement with employers to ensure that consultation always takes place prior to any measures, which affect health and safety being applied.

Early consultation and involvement in planning is often particularly poor when a physiotherapy department is being relocated or a new one built. Local agreements should ensure this takes place as a matter of course. The key point is that employers need to allow sufficient time to ensure that safety reps are able to be consulted over the issues covered by Regulation 4A. Local agreements should ensure meaningful consultation takes place as a matter of course.
Safety reps should:

- Draw the employer's attention to Regulation 4A;
- Seek a meeting with the employer to ensure that consultation take place in advance of any changes;
- Try to reach a formal written agreement on consultation; use Regulation 4A to become pro-active at the planning stage, before measures affecting health and safety have been finalised; ensure that you are allowed sufficient paid time off for training to become familiar with the health and safety legislation.

The employer's duty to consult safety reps on risk assessments is covered in GN 38: ***"Requirements to consult health and safety representatives on risk assessments"***. Under Regulation 3 of the Management Regulations the employer has a duty to assess the risks to the health and safety of employees to which they are exposed at work. ACOP 15 of Regulation 3 makes clear that the risk assessment process needs to be practical and take account of the views of employees and their safety reps, who will have practical knowledge to contribute.

(g) The legal liabilities of safety reps

Under Regulation 4 of the SRSC Regulations, if an accident occurs, a safety rep will not be held liable. Employers are responsible for the safety of the workplace and their employees. All employees have a legal duty not to endanger themselves or others and to help their employer to comply with safety laws (Sections 7 and 8 of HASAWA). Safety reps are no exception to this rule. However, safety reps cannot be sued or prosecuted for anything they do or fail to do as safety reps. Paragraph 44 of the GN gives more detail of this exemption. Remember under HASAWA the employer has legal duties, safety reps have functions and rights.

(h) Regulation 5 – inspections of the workplace - see Part 2, Section 3.

(i) Regulation 6 – inspections following notifiable accidents, occurrences and diseases

Where there has been a notifiable accident or near-miss, or a notifiable disease has been contracted, Regulation 6 gives safety reps the right to make an inspection of the affected area of work if their members are involved and it is safe to do so.

Under Regulation 6(1) you need only notify your employer of your intention to carry out an accident inspection where it is *"reasonably practicable"* to do so. This applies only to RIDDOR reportable injuries, diseases and dangerous occurrences. However, it may only emerge that an event is reportable as the result of an inspection and you cannot always tell in advance whether the injuries caused by an accident will keep someone off work for long enough for the accident to be reportable.

Under Regulation 4(1)(a) of the SRSC Regulations, safety reps have the right to examine the causes of injuries and to investigate potential hazards and dangerous occurrences.

(j) Regulation 7 – inspection of documents and provision of information

The employer has a legal duty to make available to safety reps any information within their knowledge safety reps to fulfil their functions. This includes the right to access any product information provided to employers by manufacturers, suppliers and importers of any equipment, product or substance in order that the safety rep can try to identify any potential or actual risks to the health and safety of users. It also includes the provision of legal standards so that safety reps may access these easily.

Employers have duties under the Management Regulations to provide information on:

- The risks to their employees' health and safety identified by their risk assessment;
- The preventative and protective measures designed to ensure employees' health and safety;
- The procedures to be followed in the event of an emergency in the workplace;
- The identify of any *'competent persons'* nominated by the employer to help with the implementation of those procedures; and
- Risks notified by another employer with whom a workplace is shared, arising out of, or in connection with, the conduct of the second employer's undertaking.

(k) Regulation 8 – cases where safety representatives need not be employees

This Regulation relates to groups of workers who are not permanently employed by an organisation, for example actors and musicians, who can be represented by the British Actors' Equity Association and the Musicians' Union respectively.

(l) Regulation 9 – safety committees

An employer must establish a workplace Safety Committee if two or more union safety reps require them, in writing, to do so – see Part 2, Section 5. The aim of a Safety Committee is to provide a regular forum within which health and safety can be considered adequately.

If the CSP does not have a seat on your Trust/Board Safety Committee you should find out why this is the case. If you are unable to resolve the situation yourself, you should contact the CSP Senior Negotiating Officer.

(m) Regulation 11 – provisions as to employment tribunals

A safety rep, denied their rights in terms of paid time off from work to carry out their functions or to undertake training, has the right to bring a claim to an ET, within 3 months of the refusal arising. ETs should be viewed as a last resort, when negotiation has failed. Check your Trust/Board Facilities Agreement first. It may be that there is a specified amount of paid time off provided to safety reps. If you still experience difficulties, you should contact the CSP Senior Negotiating Officer.

You should **never** lodge a complaint with the ET without consulting the Senior Negotiating Officer in the first instance.

NOTE:
All CSP safety reps receive a copy of the SRSC Regulations, when they attend their induction training**.** The regulation is also available to download off the CSP website **www.csp.org.uk**

Key Issues for CSP Safety Reps

(a) The appointment of safety reps

Regulation 3(4) states the following, in terms of the election of safety reps.

"So far as is reasonably practicable, the person appointed shall either have worked for their present employer for two years or have had at least two years experience in similar employment".

In reality it may be that no-one with this extent of experience is willing to stand as a safety rep. Enthusiasm for, and commitment to the role, are the most important requirements. This is often the case with a workplace such as a physiotherapy department where many members change jobs frequently.

The method of selecting safety reps and deciding what area they should cover is a matter for each union to decide. The number of safety reps depends on the size of workplace, the number of sites covered, the number of employees, the seriousness and extent of risks, the types of shift patterns and variety of different occupations. The CSP would hope that both staff and managers in physiotherapy departments will recognise the importance of the safety rep's role and that all members will have access to a trained safety rep. it is recommended that physiotherapists who manger other physiotherapists should not stand for election to avoid the possibility of a conflict of roles in view of their legal responsibilities as managers under HASAWA.

(b) The process of election in the CSP

CSP safety reps are elected for a period of two years. Elections are usually organised by the outgoing safety rep or the local steward and each department is free to decide on its own method of election providing that the electorate are annually subscribing members of the CSP and employees of the relevant employer.

Elections can be carried out by a show of hands at a meeting of all members entitled to a vote. Any local CSP member is eligible to stand, although ideally they should have either worked in the area throughout the preceding two years or had two years working in another physiotherapy department.

A physiotherapy department may decide they need more than one safety rep. This may be so if it is particularly large or covers a number of different sites. On the other hand where physiotherapists are working in ones and twos it will probably make more sense to have one

safety rep covering several workplaces, provided that these are reasonably close together and do not result in excessive travelling.
If you have any questions regarding the CSP's election process then review our policy titled *CSP Representative Election Policy* available on the CSP website.

(c) Accreditation of CSP safety reps

Following election as a safety rep you should complete your electronic safety rep accreditation form (available on the CSP website). ERUS will add your name and details to our computerised list and then contact your employer's Human Resources Department directly to inform them of your appointment. Once your employer has received this letter, you are a legally recognised as a safety rep.

At this point you will also be sent any resources you have not inherited from your predecessor. These include a safety rep's Starter Pack, details of training courses, details of the Regional CSP safety rep who co-ordinates your area and details of your CSP Senior Negotiating Officer.

It is very important to follow this procedure to ensure that:

- ⇨ The CSP is aware of your appointment and can send you information about training courses and copies of manuals and regular mailings of Safety News etc.;
- ⇨ Your Human Resources Department is aware of your appointment so that they can ensure you receive any relevant mailings and notification of meetings, as well as being aware of your entitlement to paid time off and facilities.

Don't forget to inform your manager of your appointment.

(d) Resignation of CSP safety reps

Someone is no longer legally regarded as a safety rep if either:

- ⇨ They resign;
- ⇨ Their union notifies the employer that their appointment is ended;
- ⇨ They cease to be employed at their workplace (unless they represent more than one workplace and are transferred from one to another) (***Reg 3(3)***).

Do not forget to:

- ⇨ Organise an election for your replacement and inform your CSP Senior Negotiating Officer (SNO), if this has not been possible before you leave;
- ⇨ Leave all handbooks and other information where they can be found by your successor;
- ⇨ Complete the CSP resignation online form and exit survey, available on the CSP website.

(e) Action after accreditation by CSP

Where there has previously been a safety rep, this should make the tasks of a new safety rep easier. Check that your predecessor has:

- Handed over any files and records including:
  - ⇨ The CSP Safety Rep's Information and Briefing Papers Manuals; copy of the SRSC Regulations;
  - ⇨ Any files and records including minutes of local Safety Committee meetings;
  - ⇨ Copies of hospital and departmental safety policies;
  - ⇨ Any information on particular hazards;
  - ⇨ Any accident records (including those relating to RIDDOR 95);

- Notified you of any outstanding cases which have not been fully dealt with (e.g. recent accidents or complaints);
- Told you when the next safety inspection is due and passed on copies of recent inspection reports;
- Told you of the date of the next local Safety Committee meeting.

If you do not have any or some of this information make sure you get hold of it as soon as possible.

Your predecessor should have done much of the groundwork for you and will have arrived at a satisfactory way of carrying out the safety rep's responsibilities in your area of work. If possible, talk to them to get all the information and advice possible.

In particular, arrangements should have been agreed about time off and facilities to enable you to carry out your functions as a safety rep, and being able to leave work to attend to problems that arise.

Many of the safety reps' rights are left open to local negotiation, and in some cases a Health and Safety Agreement between unions and management may have been arrived at to cover these issues. Alternatively, such matters may be covered in your Trust/Board Facilities Agreement. Similarly, when you resign it is important that you notify your members so that an election can be held and, following this, hand on files, records, information and advice to your successor. Such continuity is vital to ensure that improvements are made and members' interests protected.

Links with CSP Stewards

It is extremely important for safety reps to develop and maintain good working relationships with CSP stewards. It is likely that your local steward will represent the same group of members as yourself and will be very helpful ensuring that relevant action is taken to improve health and safety standards in your workplace.

Many issues will not fall neatly into place as the responsibility of only the safety rep or the steward. For example the introduction of new equipment, staffing levels, stress, lone working, bullying, working time and industrial injuries would be issues which you could take up jointly thus providing moral support to one another and sharing any work involved.

It is particularly important to recognise that the SRSC Regulations give safety reps many more powers in the workplace than those enjoyed by CSP stewards. As a result, you may be able to use your powers to raise and deal with issues that have a health and safety element to them. Working as a team with a steward, who in practice may have more difficulty in getting these matters resolved effectively, could lead to more positive results on behalf of CSP members.

The Employment Rights of Safety Reps and Others

The ***Trade Union and Labour Relations (Consolidation) Act 1992 (TULRA)*** as amended by the ***Employment Relations* Act *1999 (ERA 99)*** protect union reps, including safety reps, and union members from unfair treatment at work.

Action short of dismissal (or victimisation) by an employer resulting from an individual's trade union membership, non-membership or activity is a breach of Section 146 of TULR(C)A. Section 2 of ERA 99 says that trade union activists are protected from a detriment short of dismissal resulting from *"any act or deliberate failure to act"* on the part of the employer.

Under Section 137 of the TULR(C)A there is a legal right not to be refused work on the grounds of membership or non-membership of a trade union. Within Section 152 the Act, an employee has the right not to be dismissed because of membership of a trade union and the right not to be selected for redundancy for that reason.

Any alleged breach of the law can ultimately be dealt with at an ET. The time limit for lodging a complaint with an ET is 3 months from the date of the alleged victimisation. The maximum compensation payable for unfair dismissal is £66,200 (2009/10). The minimum basic award for unfair dismissal relating to trade union membership or activities is £4,700 (2009/10).

Where the unfair treatment involves victimisation, an employee can bring a claim against their employer for *'injury to feelings'* relating to their trade union activities. In the case of ***London Borough of Hackney – v – Adams 2001***, the EAT awarded an injury to feelings award of £5,000 to an employee who had had an offer of promotion withdrawn because of her trade union activities as a rep.

In cases where an employee is able to prove they were victimised – but not dismissed – because of trade union membership or activity, the ET is entitled to order the employer to pay compensation amounting to – at most – two weeks' pay (set at actual pay or no more than £380 a week (2009/10), whichever is the higher).

The minimum compensation for unlawful inducement relating to trade union membership or activities or collective bargaining is £3,100 (2009/10).

Checklist: The Role of a CSP Safety Rep

In this Section we have extensively reviewed the rights and functions of a safety rep. This will give you a picture of what is expected of you once you are elected. The following checklist summarises the key jobs of a CSP safety rep.

Tick each box once you are happy that it is a part of the role you are fulfilling. Some of the jobs are likely to be shared between you and the CSP steward.

- ❑ Identify your members.
- ❑ Recruit non-members and new employees into the CSP.
- ❑ Ensure there are enough safety reps, particularly that members working in the community are represented.
- ❑ Police the law. Ensure that your employer is complying with their legal duties under health and safety legislation. Ensure particularly that you have access to all relevant information including the employer's accident book, accident statistics, technical information and the results of any risk assessments;
- ❑ Ensure that health and safety is included in any induction programmes for new staff. Ensure that established members of staff have access to refresher training as required.
- ❑ Check your employer's (and departmental if you have one) Health and Safety Policy is up to date and in line with all new legislation.
- ❑ Let members know who their safety rep is, how you can be contacted and the health and safety services the CSP offers to members.
- ❑ Make sure your members are given health and safety information such as fire precautions and the location of first aid.
- ❑ Ensure the noticeboard displays health and safety information relevant to your members. Encouraging members to read relevant articles in "Frontline" and displaying your copy of *"Safety News".*
- ❑ Encourage members to discuss problems with you and report all potential hazards, especially if they are not being put right after management have been informed of them. Remind members of procedures such as using the accident book to report near misses and accidents, however trivial they may seem.
- ❑ Make sure members are aware of your successes and the resolution of problems they have raised.
- ❑ Keep members informed of matters being discussed by your Safety Committee.

- ❑ Liaise with and working together with other safety reps on the Staff Side.
- ❑ Attend the Safety Committee, including any Staff Side pre-meetings and debrief meetings.
- ❑ Organise meetings with members to discuss health and safety issues.
- ❑ Carry out regular inspections of the workplace.
- ❑ Carry out inspections following any accidents or near-misses.
- ❑ Ensure that you have access to all relevant information including the employer's accident book, accident statistics, technical information and the results of any risk assessments.
- ❑ Keep up-to-date with CSP policies and briefings on health and safety. Ensure you are on the mailing to receive all relevant information.
- ❑ Take up members' health and safety problems. Use the grievance procedure if necessary to raise problems formally.
- ❑ Build a working relationship with your manger. Establish the practice of regular meetings with them. Make sure they are aware of your role and the legal rights you have to act on behalf of the CSP and local members. Ensure they accompany you when you wish to carry out inspections.
- ❑ Inform members of their rights to a healthy and safe workplace, and encourage them to support you in pressing for improvements to standards.
- ❑ Monitor that risk assessments are carried out and that remedial action is agreed and followed through.
- ❑ Participate in the CSP's democratic decision-making processes, including attending regional training days and other meetings organised by the CSP locally and regionally.
- ❑ Attend the training offered to you as a safety rep via the CSP and/or the TUC.

The information contained within Part Four of the Manual will help you in carrying out some of the roles outlined in the checklist.

It is an excellent idea to promote and educate on what safety reps can do. The CSP has produced three concise one page advice sheets with each targeted at either managers, members or your CSP stewards. This vital resource titled *Do you Know how Safety Reps Can Help?* is available for you to download on the CSP website www.csp.org.uk

Section 25: Time off and Facilities for Trade Union Representatives

25.1 The NHS Staff Council is committed to the principles of partnership working and staff involvement. Partnership underpins and facilitates the development of sound and effective employee relations throughout the NHS. The national partners recognise that the participation of trade union representatives in the partnership process can contribute to delivering improved services to patients and users.

25.2 Further information about the partnership approach to the implementation of pay modernisation is set out in Part 1 of this handbook, including the importance of ensuring that the representatives of trade unions recognised for purposes of collective bargaining at local level are released appropriately to participate in local partnership arrangements. The principles of partnership working are set out in the annex A1 to this section.

25.3 It is for employers and representatives of locally recognised trade unions to agree in partnership local arrangements and procedures on time off and facilities that are appropriate meet local circumstances. Local arrangements are expected to be consistent with the principles set out below.

Time off for accredited trade union representatives

Accredited representatives

25.4 Local arrangements should apply to accredited representatives of trade unions recognised by local NHS organisations. Accreditation will only be given to employees of the organisation who have been duly elected or appointed in accordance with the rules of the respective trade unions.

25.5 Accredited representatives of trade unions will:

- Abide by the rules of their trade union and the policies and procedures of the employing organisation;
- Represent their members on matters that are of concern to the employing organisation and/or its employees.

25.6 It will be for the relevant trade unions to discuss and agree with the local employer an appropriate number of representatives. Local discussions should have regard to the size and location of the unions' membership and the expected workload associated with the role. The unions would be required to issue written credentials and notify the human resources department of the number and location of work groups for which each representative will be responsible.

25.7 Subject to the needs of the service and adequate notification, accredited representatives should be permitted paid time off, including time to prepare for meetings and disseminate information and outcomes to members, during working hours to carry out duties that are concerned with any aspect of:

- Negotiation and/or consultation on matters relating to terms and conditions of employment or agreed partnership processes. Examples include:
  - ⇒ Terms and conditions of employment;
  - ⇒ Engagement or termination of employment;
  - ⇒ Allocation of work;
  - ⇒ Matters of discipline;
  - ⇒ Grievances and disputes;

- ⇒ Union membership or non-membership;
- ⇒ Facilities for trade union representatives;
- ⇒ Machinery for negotiation or consultation or other procedures.

- Meetings with members;
- Meetings with other lay officials or full time officers;
- Appearing on behalf of members before internal or external bodies;
- All joint policy implementation and partnership working;
- Other matters relating to employee relations and partnership working.

25.8 The expectation is that it is good practice that staff representatives should indicate the general nature of the business for which time off is required, where they can be contacted if required. Requests should be made as far in advance as possible as is reasonable in the circumstances. Wherever possible, the representatives should indicate the anticipated period of absence. The expectation is that requests for paid time off for trade union representatives will not be unreasonably refused.

Training

25.9 Accredited trade union representatives should be given adequate time off to allow them to attend trade union approved training courses or events. Time off should not be regarded as automatic, as employers have responsibilities to take account of the needs of service delivery. However, the expectation is that requests for paid time off to attend training courses should not be unreasonably refused as long as locally agreed processes are followed.

25.10 The expectation is that requests for release for training should be made with reasonable notice to the appropriate manager. Any training course should be relevant to their duties approved by their trade union. Local representatives should provide details of the course to local management.

Payment arrangements

25.11 Where time with pay has been approved, the payment due will equate to the earnings the employee would otherwise have received had s/he been at work.

25.12 Where meetings called by management are held on matters covered by paragraph 7 where staff representatives have to attend outside their normal working hours, equivalent time off will be granted or appropriate payment should be made by local agreement.

25.13 There should be local agreement on when travelling and subsistence expenses will be reimbursed to accredited representatives who are undertaking approved work in relation to the partnership process and/or joint policy implementations (as listed in paragraph 25.7).

Trades union activities

25.14 It is the responsibility of the recognised local trade unions to ensure that the time and resources provided in this context are used appropriately.

25.15 NHS organisations are encouraged to support partnership working, by giving reasonable time off, during working hours to enable trade union members or representatives for:

- Executive committee meetings or annual conference or regional union meetings;
- Voting in properly conducted ballots on industrial relations;
- Voting in union elections;
- Meetings to discuss urgent matters relating to the workplace;
- Recruitment and organisation of members.

25.16 Local arrangements should specify the circumstances when time off may be refused for either representatives or members. These may include:

- Unreasonable notice periods on behalf of the representatives;
- Activities which do not fall within any of the categories in paragraph 7,10 and 15;
- Activities are not authorised by the union;
- Service needs.

25.17 Locally, it may be agreed that it is appropriate in the interests of partnership working and good industrial relations for trade union representatives to be released from work for regular defined periods each week.

Trades union learning representatives

25.18 Trade Union Learning representatives are accredited by their unions to support organisations in identifying training needs and ensuring staff access to training. Learning representatives also have the right to reasonable paid time off for undertaking these duties and for relevant training.

Health and safety representatives

25.19 The Safety Representatives and Safety Committee Regulations 1977 provides a legal entitlement for trade union appointed safety representatives to have paid time from their normal work to carry out their functions and undergo training.

Facilities for trade union representatives

25.20 The local partnership should agree the facilities that are provided to representatives of recognised trade unions. It is recommended that local employers provide the following facilities:

- Access to appropriate private accommodation, with storage facilities for documentation, appropriate administrative facilities and access to meeting rooms;
- Access to internal and external telephones with due regard given for the need for privacy and confidentiality;
- Access to appropriate internal and external mail systems; a
- Appropriate access to the employer's intranet and email systems;
- Access to appropriate computer facilities;
- Access to sufficient notice boards at all major locations for the display of trade union literature and information;
- Access for staff representatives to all joint documents relating to the local partnership process;

- Based on the geographical nature of the organisation consideration may need to be given to access to suitable transport facilities;
- Backfilling of posts where practical. The extent to which practical would inevitably be dependent on such factors as the numbers of representatives needing time off and the work areas that would need to be covered and the needs of the service.

25.21 Within NHS Scotland the Staff Governance Standard (which includes the PIN on facilities arrangements) applies.

Annex 27: Principles and best practice of partnership working

To deliver partnership working successfully it is important to develop good formal and informal working relations that build trust and share responsibility, whilst respecting difference. To facilitate this, all parties commit to adopt the following principles in their dealings with each other:

- Building trust and a mutual respect for each other's roles and responsibilities;
- Openness, honesty and transparency in communications;
- Top level commitment;
- A positive and constructive approach;
- Commitment to work with and learn from each other;
- Early discussion of emerging issues and maintaining dialogue on policy and priorities;
- Commitment to ensuring high quality outcomes;
- Where appropriate, confidentiality and agreed external positions;
- Making the best use of resources;
- Ensuring a no surprise culture.

SECTION 2: WORKPLACE INSPECTIONS

Introduction

Regulation 5 of the SRSC Regulations gives safety reps the right to carry out formal inspections of their workplace (all areas in which their members work) at least once every three months, or more frequently with management's agreement. Reasonable notice in writing must be given to the employer of your intention to inspect.

This is a very important right for safety reps. In effect the law allows safety reps to tour their workplaces, and talk to their members in private, with a view to identifying any hazards and associated risks they may pose. It is an opportunity on a regular basis for CSP members to see their union in action and to be involved in the work the union is doing to maximise health and safety standards in their areas of work.

It is vital that all safety reps carry out regular inspections.

In this section we look at:

- ***Key points about inspections;***
- ***Rights to paid time off;***
- ***Rights to information;***
- ***Reasons for carrying out inspections;***
- ***Carrying out an inspection;***
- ***Resolving problems.***

Key Points About Inspections

Regulation 5 states that safety reps have the right to make inspections at least every 3 months. More frequent inspections may be made in the following circumstances (the relevant parts of the SRSC Regulations are included in brackets):

- If there has been a substantial change in the conditions of work (Reg.5(2));
- If new information has been published by the Health and Safety Executive relevant to the hazards of the workplace (Reg.5(2));
- Following a *"notifiable accident"* (Reg.6(1)) (see Section 3);
- Following a dangerous occurrence (Reg.6(1)) (see Section 3);
- If a *"notifiable disease"* has been contracted (Reg.6(1)) (see Section 3);
- In response to complaints by your members (Reg.4(1)(b));
- Following action taken by an employer to remedy any such accidents, dangerous occurrences or diseases.

Regulation 5(3) goes on to state that an employer should provide *"such facilities and assistance as the safety rep may reasonably require with regard to inspections"* (including allowing a safety rep to investigate independently and have private discussions with employees).

This should not *"preclude the employer or their representative from being present in the workplace during inspection".* Indeed the Guidance Notes recommend the practice of joint inspections as they give safety reps the opportunity of clearly drawing management's attention to hazards encountered. However, if the manager refuses to accompany the safety rep, then nothing in the Regulations precludes the safety rep from carrying out the inspection alone.

Bear in mind, however, that there is real value in a joint inspection, where the manager concerned is seriously involved in health and safety matters. During the inspection the safety rep and the manager can discuss potential hazards and review the options available for rectifying any problems they find. It is often the case that both the safety rep and the manager look at the workplace in a fresh way when they do so as part of a formal inspection process.

The HSE recommends that formal inspections should be of the following type:

- ⇨ Safety tours - general inspections of the workplace;
- ⇨ Safety sampling - of particular dangerous activities, processes or areas;
- ⇨ Safety surveys - general inspection of particularly dangerous operations.

Rights to Paid Time Off

Regulation 4 of the SRSC Regulations states that carrying out regular workplace inspections is a function of a union safety rep (see Part 2, Section 1 Part 2).
As a result, an employer must allow a safety rep to take sufficient time off – at their normal rate of pay - during their working hours to carry out inspections.

Rights to Information

The employer must provide such facilities, assistance and information as the safety rep may reasonably require under Regulation 5(5) of SRSC. This should include access to adequate technical and legal literature. (See also Sections 1 and 4 for details of the type of information that should be made available to safety reps).

Reasons for Carrying out Inspections

Regular quarterly inspections are important.

- ❑ It provides an opportunity for the safety rep to meet members at work and discuss safety issues with them (especially important if you represent more than one workplace). It also highlights the importance of health and safety in the workplace and the role of the safety rep to avoid complacency among members and management.

- It makes it easier to be systematic and cover all the relevant aspects of workplace safety(using a checklist can be particularly useful here. Access the CSP general inspection checklist available on the CSP website.

- It may bring to light problems not apparent to a manager or a safety rep in their own day-today observations.

- Where the inspection is being carried out jointly with management, it can provide a chance to draw their attention directly to hazards (with more force than a written report). It enables a check to be made on whether agreed improvements have actually been carried out.

One argument against regular formal inspections is that they give people the chance to tidy up or temporarily adopt safe systems of work. This is hard to avoid, especially because the safety rep has to give management *"reasonable notice in writing"* of their intention to inspect. One solution is to keep notice as short as possible: reasonable notice need perhaps only be the beginning of the week, or the day before. If managers are serious in their concern for health and safety they should appreciate the value of this. Safety reps can also explain to members that it is their interest to leave their work areas in their normal condition.

Carrying Out an Inspection

As with a lot of trade union work, preparation is essential prior to carrying out an inspection. Below we highlight the key areas that you need to consider before, during and after an inspection.

(a) Before an inspection

It is important to be well prepared for an inspection and there are several ways to make this easier for yourself.

- Inform both the manager and CSP members of when and where you intend to carry out the inspection. Find out whether the manager is going to accompany you. Ensure you agree with the manager adequate time to carry out a full inspection. Consider varying the time of inspections in order to see work areas when both full and empty.

- Take this opportunity to ask members to inform you about any hazards (new or old) or other health and safety problems, so that they can be checked during the inspection. Remember to contact members who work alone or out in the community if you are their safety rep.

- If you will be inspecting an unfamiliar area obtain a plan and a rough idea of what working practices and equipment are used. Ask members about any particular hazards or problems that they feel they are faced with in their work.

- Remember to take along a checklist to use on your inspections. A suggested checklist is provided on the CSP website www.csp.org.uk. Clearly you will need to add to this and revise it to make it fully comprehensive for the areas you inspect. Also remember to update it regularly to take account of new legislation, advice, guidelines and any amendments to the layout or equipment in the workplace.

- If possible discuss your inspection with safety reps from other staff side unions that have members in the workplace. You may find that their members have reported problems and hazards similar to ones reported to you by your members. They may have noticed hazards, which you or your members have overlooked. You could organise inspections jointly with their safety reps or plan special inspections together. This will help all of you to avoid taking things for granted or not seeing recurring problems that can be easy to forget.

- Consider taking along any information which may be of help such as:
  - Workplace safety policy;
  - Previous inspection reports;
  - Reports of any risk assessments carried out in the workplace;
  - Information from manufacturers and suppliers;
  - Any available standards, e.g. legal standards, CSP guidance;
  - Details of items that might need regular checking; (for example stairs, fire escapes, ventilation, machinery, storage);
  - Details of storage and use of substances;
  - Number of people working in areas;
  - Information on accident reports;
  - Copies of any RIDDOR report forms;
  - Information about health and safety training in your department.

- Get yourself organised. Think about what you should take with you on the inspection: a clipboard, pen and enough paper. Think about whether you need to carry a tape measure and a camera. If you are organised you will feel much more confident and that will help you to be assertive with the manager.

- Consider what you should wear. If you normally wear a uniform during working hours, avoid doing so for the duration of the inspection. This again will help your confidence and will re-assert your rights as a safety rep with the manager. Mental preparation is important. For most of the time you are at work you are a physiotherapist or a physiotherapy assistant. During the time you are acting as a CSP safety rep, you need to ensure that the manager recognises you as an equal – regardless of your status and pay band as an employee. Remember: the CSP is a recognised trade union and you – as a safety rep – have ***the legal right to undertake these functions on behalf of your members.***

(b) During an Inspection

- Remember that members have the right to discuss a problem with you in private, even when you are being accompanied by a manager.

- Use your checklist to review problems that have been identified on previous inspections. Find out whether they have been resolved. Also remember to include any new problems that members have reported to you recently.

- Make a note of problems or potential problems and where they were spotted.

- Keep a careful check on those hazards which are not easily seen. For example frayed wiring will need close inspection. Some hazards, like loose guards will need active shaking and prodding. Hazards situated above or below eye level will need active searching.
- The most difficult hazards to spot are those which:

    - Result from a combination of factors. For example, they only occur when two particular machines are working together, or when two mistakes are made simultaneously, e.g. smoking and spilling an inflammable liquid;

    - Are temporary. For example, they occur when an inexperienced person operates a machine, or when equipment is being serviced;

    - Are invisible or otherwise not detectable by the senses. For example, potential electrical short circuits, very small dust particles, microwaves, stress, bullying and lone working.

- Try to question everything you see and do not assume that because they are experienced in the workplace, members will spot the potential hazards of a piece of equipment or working practice. Often there will be a large number of potential hazards and it is easy to forget about crucial items or be distracted by one type of hazard which has been spotted and not to look further for other hazards. You could avoid this by concentrating one inspection on a few topics, such as emergency procedures, manual handling, lone working or violence.

- Are there any hazards which may not present problems for the majority of your members but may be potentially dangerous for some? In particular consider newly qualified inexperienced members; those with disabilities; pregnant members; those with particular problems such as back injuries.

(c) After an Inspection

Once you have completed your inspection it is important to keep full and accurate notes to ensure that any problems are resolved as quickly as possible.

- Fill in your report form as soon after the inspection as possible using the notes taken during the inspection. You may find that the Trust/Board has a standard report form for use following health and safety inspections.

- Identify any problems you spotted and confirm them in writing with the management representative who accompanied you.

A record should always be kept of when an inspection has taken place and a copy given to management - even when already reported verbally. The GN to Regulation 4 include a model report form (A), for a safety rep to use to record that an inspection has taken place. This covers:

- Date and time of inspection;
- Area inspected;
- Name and signature of safety rep taking part;
- Name and signature of manager taking part (if any);
- Record of receipt of inspection form by management: signature/date.

The form also has the following important disclaimer: *"This record does not imply that the conditions are safe and healthy or that the arrangements for welfare at work are satisfactory".*

There is a separate form (B) for use in the event of unsafe or unhealthy conditions being found. This form details:

- The particulars of matters notified to management and their location;
- The names of the safety rep notifying the employer;
- Remedial action taken (with dates) or explanation if the action has not been taken. This part of the form is completed by the manager.

You may find that there are tailored report forms that have been produced by Trust/Board, with the sanction of the Safety Committee, for all staff side unions' safety reps to use. These forms should be available from your Human Resources Department. Give a copy of the report to management and ask for a written response of their intended action with a timescale prioritising the most important problems to be resolved first. You should also discuss any problems which may be serious enough to require members to stop a certain working practice or the use of a particular substance.

Make sure that management keep to any proposed timetable for action. Keep writing to management if you feel that problems are not being resolved quickly enough or that management's response is not adequate. The GN 57 says:

"Where remedial action:

(a) Is not considered appropriate; or

(b) Cannot be taken within a reasonable period of time, or

(c) The form of remedial action is not acceptable to the safety representatives,

the employer or their representative should explain the reasons and give them in writing

to the safety representatives."

Once remedial action has been taken, GN58 states the following should happen:

"(a) the health and safety representatives who notified the matter(s) ought to be given the opportunity to make any necessary re-inspection to satisfy themselves that the matter(s) have received appropriate attention. They should also be given the opportunity to record their views on this;
(b) it should be publicised throughout the workplace and to other appropriate parts of the business, if necessary the whole organisation, by the normal channels of communication;
(c) it may be appropriate to bring it to the specific attention of the safety committee, if one exists."

Other action you should take after an inspection includes:

- Review and amend your inspections checklist as soon as possible after every inspection. If you leave this until the next inspection you may forget some key elements;
- Set the date for the next inspection. It may be preferable to talk to your manager at the beginning of each year to set the dates for your quarterly inspections on an annual basis;
- Inform your members of what you found during the inspection and what action you are recommending to remedy any problems you have identified;
- Keep a copy of your inspection report in a place where you can easily retrieve it. Review it from time to time before the next inspection so that you can check on any progress made;
- Talk to safety reps from other recognised unions if you uncover any hazards that may affect their members as well.

Resolving Problems

(a) How to approach management

Written or verbal approaches are the two main options, the latter less formal than the former. Management may be made aware of hazards and problems at the workplace either through a written report after an inspection or by a direct verbal approach.

A verbal approach will be appropriate:

- Where speedy remedial action is necessary; or
- For minor matters which do not need a formal written approach.

Verbal requests should always be confirmed in writing; like-wise verbal agreements should always be confirmed in writing.

(b) Which level of management to approach

There is nothing in the SRSC Regulations stating that representations to management have to be made through a Safety Committee, and doing this could seriously delay action on improvements. It is, therefore, important for safety reps to know which matters should be taken up with which level of management.

In Regulation 4, GN 46 states:

> *"It is important that health and safety representatives can take matters up with management without delay if they need to. Therefore they should have ready access to the employer, or their representatives; who those should be will be determined in the light of local circumstances. It may not be desirable to specify one individual for all contacts, bearing in mind that hazards could, involve differing degrees of urgency and importance."*

Generally speaking, safety reps should always try to resolve a problem at the most immediate line manager for the members concerned. Many day-to-day health and safety problems will be within the responsibility of a Physiotherapy/therapy Manager or lead, but on more serious issues it will be useful to have access to a member of senior management who has responsibility for health and safety. Such an approach would clearly stand a better chance of being effective if it was made jointly with your Manager or with safety reps from other staff side unions.

In emergencies, or where no progress is being made, you should always contact your Senior Negotiating Officer in the first instance.

As a general rule, therefore, safety reps should take up issues with the relevant levels of management, using agreed procedures, unless problems are especially urgent or serious and negotiations are failing to produce results. You could use your local grievance procedure as a means of forcing management to respond and act. If this is not successful, contact the CSP Senior Negotiating Officer for support before involving the HSE.

If you wish to raise a hazard that poses a risk to those beyond your own department, then it may be advisable to ask for the issue to be placed on the agenda of the Safety Committee for consideration and action.

(c) The issue of costs

A response that you may find you receive from management is that the cost of making improvements is not justified by the level of risk. This relates back to the issue of what is meant by the term *"reasonably practicable"* discussed in Part 1 Section 2 of this manual. Should you receive such a response, consider the following questions to put to management.

- Are the claimed costs of the improvements accurate?
- Has the level of the risk to staff been adequately assessed?

- Have the savings from lower injury/sickness/accident rates been taken into account?

- Have savings from lower insurance premiums been taken into account?

- Have savings from greater efficiency been taken into account?

- If protective clothing or special safety equipment is being used, would it be better in the long run to remove the hazard altogether? (Such clothing and equipment should be of good quality, personally issued, inspected, cleaned, maintained, and replaced. All this involves (or should involve) extra costs which the employer may not have considered.)

- Would the money have to be spent anyway? For example, to replace some old equipment. If the equipment is wearing out it would need replacing sooner or later anyway. So it would be wrong to say that all or even most of the cost is paying for safety alone.

Such arguments will be one of the most difficult problems a safety rep has to overcome, and will need persistence and considerable support from your members, other safety reps and perhaps the local Safety Committee.

Should you find that the problem is becoming impossible to resolve, contact the CSP Senior Negotiating Officer for further help and advice.

The CSP has a general inspection checklist that is available to access on our website and is email to reps prior to attending their induction. The workbook provided on the course also contains excellent inspection resources and this subject is covered extensively throughout the two days of training.

SECTION 3: INVESTIGATING ACCIDENTS

Introduction

Trade unions annually take around 120,000 personal injury compensation cases for their members and win over £3 million from ill health and injury claims. Safety reps are an important link between injured members and the employer, and have a vital role in ensuring that effective investigations take place following accidents and near-misses in the workplace.

It cannot be too strongly emphasised that the prime function of a safety rep is that of accident and ill health prevention. Nevertheless, it would be unrealistic to assume that a safety rep will be able to prevent all occupational accidents occurring. When they do occur, safety reps have two important tasks. Firstly, to investigate the accident and work to ensure that it does not occur again. Secondly, make sure members involved receive the benefit or compensation to which they may be entitled.

In this section we look at:

- ***The legal rights of safety reps investigating accidents;***
- ***HSE guidance on action following accidents or near-misses;***
- ***Action after an accident;***
- ***Advice on claiming damages after an accident;***
- ***Key issues for safety reps following an accident.***

The Legal Rights of Safety Reps Investigating Accidents

Where there has been a notifiable accident or dangerous occurrence in a workplace, or a notifiable disease has been contracted, Regulation 6 of the SRSC Regulations gives safety reps the right to make an inspection if their members are involved and it is safe to do so.

Under Regulation 6(1) you need only notify your employer of your intention to carry out an inspection where it is *"reasonably practicable"* to do so. This applies only to reportable injuries, diseases and dangerous occurrences (see Part 1, Section 10). However, it may only emerge that an event is reportable as the result of an inspection and you cannot always tell in advance whether the injuries sustained will keep someone off work for long enough for the accident to be reportable.

Remember that under Regulation 4(1)(a) you have the right to examine the causes of injuries and to investigate potential hazards and dangerous occurrences. Wherever possible, a safety rep should obtain permission from the therapy manager to attend any injury or accident involving a member.

HSE Guidance on Action Following Accidents or Near-Misses

In October 2004 the HSE published detailed guidance to employers on action to be taken following a workplace accident, near-miss or the reporting of a work-related disease

contained within ***"Investigating Accidents and Incidents"*** (available from the HSE website www.hse.gov.uk). The approach recommended by the HSE, with a clear statement that safety reps should be involved, emphasises that the key reason for investigating accidents and near-misses is to identify the **root causes**, as well as the immediate causes, of an incident and to understand why it occurred, with a view to taking steps to preventing a similar occurrence in the future. The HSE details a 4 stage approach to be adopted by employers in the event of an accident or near-miss occurring in their workplaces.

- ⇨ **Stage 1** – Gathering information.
- ⇨ **Stage 2** – Analysing the information gathered.
- ⇨ **Stage 3** – Identifying risk control measures required.
- ⇨ **Stage 1** – Devising an action plan, to prevent similar incidents and implementing it.

The process outlined by the HSE is detailed and systematic. The HSE makes it clear that it is the duty of trained investigators to undertake the process of identifying the root causes of an incident on behalf of management, and that safety reps should be involved in discussing the outcome of the investigation and in agreeing the control measures and action plan that result from the investigation.

Action After an Accident

When advised on an accident, safety reps should take the following action.

- ❑ Get to the scene of the accident as quickly as they can and make sure it is safe to approach.

- ❑ Ensure the injured member is receiving appropriate first-aid or medical attention.

- ❑ Arrange to talk to the injured person as soon as possible.

- ❑ Insist that, as far as is possible, nothing is moved or altered until enquiries are completed. If this has already happened make careful notes about the changes, including a statement from management if possible. The GN to Regulation 6 insists that in the case of notifiable accidents, dangerous occurrences or notifiable diseases, the factual evidence should not be disturbed or destroyed before an HSE inspector has inspected.

- ❑ Inspect the scene, making sketches and measurements and taking photographs where appropriate.

- ❑ Talk to witnesses to get more information, take written statements and important points if necessary. If this is left for even a short time memories may become blurred, or the witnesses might leave their jobs or move away.

Consider asking the following questions:

- What system of work was involved?
- Who decided the system for moving the patient?
- What is the weight, height and name of the patient?
- What part of the body was injured?
- Were mechanical aids used? If not why not?
- Was anyone else involved? If yes, record their name and address
- Was there a written assessment on the procedure to be used?

- Remind members that they may be asked to make a statement, but there is no compulsion to do this immediately. You can help members with statements by ensuring that what they provide is a factual record of the event. Advise them to keep a copy the accident form.

- Insist on a private discussion with the members present if necessary.

- It may be necessary to suggest immediate precautions to the employer to prevent any recurrence. This should be done in writing as well as verbally.

- Check the accident book to see that the accident has been recorded, and that the description of the accident and its causes is accurate. Although this is the employer's responsibility, it will be in your member's interest to make sure.

- If the accident is, or seems likely to be, either a notifiable accident or dangerous occurrence under RIDDOR (see Part One, Section 10) then, check whether the HSE Inspectorate has been notified. Again, this is the employer's responsibility, but you may decide to contact the HSE Inspector yourself to check. If a report has been made to the HSE, ask for a copy of the completed report form.

Advice on Claiming Damages After an Accident

(a) Personal injury claims

It is very important that you advise members to report a work-related injury that results in harm or ill-health promptly and complete the employer's incident form and keeps a copy for their own records.
A personal injury can be:

- A physical injury, disease or illness or
- A psychological injury or illness.

Example of work-related personal injuries are:

- An injury at work
- A work related disease such as occupational asthma
- A psychological illness caused by stress at work.

There are strict time limits for making a personal injury claim. Legal proceedings must commence no later than 3 years from the date of injury or accident, or from the date the

member first knew they were suffering from a work-related illness.

Encourage the member to seek advice by contacting the CSP's legal firm that provides our personal injury services. Details are available on the CSP website.

Key Issues for Safety Reps Following an Accident

The whole emphasis of HASAWA is that employers have a duty to ensure that the workplace and its systems of work are safe: prevention is better than cure.

(a) Factors to consider

Even if an employer does admit liability for a particular accident or dangerous occurrence, it is important that the safety rep should make a thorough investigation of the circumstances so that action can be taken to prevent them recurring. Some of the major underlying factors to be looked for are listed below.

- ***The working environment.*** At the place of the accident, consider the state of the following:
  - Lighting;
  - Workplace layout;
  - Working space;
  - Temperature;
  - The flooring;
  - Dust and fumes;
  - Humidity;
  - Housekeeping;
  - Noise.

- ***Training, job experience and supervision:***
  - How long had the member been employed?
  - What safety training had he or she received?
  - What supervision was available?
  - What safety training had the supervisor received?

- ***Information.*** What evidence is there that information was available to the member on:
  - Safe use of equipment?
  - Safe handling of materials?

- ***Maintenance:***
  - Was all equipment maintained to standard?
  - What do maintenance reports reveal about the state of any equipment?

- ***PPE:***
  - If protective clothing was issued, was it suitable for the individual and properly maintained?

- Is there any evidence of previous unsafe practices being condoned by management?

(b) RIDDOR

The RIDDOR Regulations 2013 states cases/injuries notifiable to the HSE, the employer is required to contact the Inspectorate within 15 days. The employer must keep a register of all notifiable accidents and dangerous occurrences and all enquiries received from the DOH about prescribed industrial diseases. (See page 99 of the Manual)

(c) The importance of keeping accident records

Since serious chronic disabilities (involving claims for negligence against an employer, claims for state injury benefits or a claim of disability discrimination) may arise out of comparatively small incidents it is important for safety reps to insist that a record be kept of all accidents, and not just the notifiable cases.

Details of these and other dangerous occurrences (or *"near misses")* will also be of great help in analysing the overall pattern of health and safety in a hospital or department.

Regulation 7(1) of the SRSC Regulations gives a safety rep the right to inspect any such accident books and registers (subject only to information about specific named employees not being revealed without their consent). This right is re-iterated as Guidance Note 42 of the Notification of Accidents Regulations.

(d) Accident books

Under the Social Security (Claims and Payments) Regulations 1987 requires an accident book to be kept by certain occupiers including any premises where 10 or more people are employed at the same time. The book must be kept where any employee can easily access it at all reasonable times. Additional arrangements may need to be made where staff sustain accidents away from their employer's premises. Employees have the right to make entries in the accident book personally, or by asking someone to do it on their behalf.

Employers and managers must investigate the cause of an accident and record whether anything is different from what has been stated. When the book is full, it must be kept for 3 years from the date of the last entry. Regulation 7 of the SRSC Regulations gives safety reps the right to inspect documents and be provided with information relating to accidents.

Recording of the accident in the accident book fulfils the employee's duty to report under the Social Security (Claim and Payments) Regulations. If injury is not obvious, but may cause ill effect later on, employees should make an entry in the accident book and obtain form BI95 from the local DSS office.

(e) Data protections issues and accident books

Some employers have withdrawn accident books from use on the basis of confidentiality issues raised by data protection legislation. They should be challenged for doing this, as

safety reps have a legal right to the information contained in the accident book. If an injured employee does not agree for their personal information to be shared with the safety rep HSE advises the employer should conceal that individual's identity and details but should still give the information to the rep.

SECTION 4: PARTICIPATING IN SAFETY COMMITTEES

Introduction

Safety Committees are an important mechanism for discussing and agreeing action on health, safety and welfare issues within the workplace on a regular basis. Their existence as a separate entity means that appropriate amounts of time can be set aside to consider safety matters seriously. Without a specific Safety Committee, items relating to health and safety – when placed on a general industrial relations agenda – tend to be overlooked or dealt with inadequately or too briefly.

Safety Committees provide safety reps with an effective forum to work with employers in partnership with regard to improving health and safety standards across a whole organisation, or within a specific specialist area. In law, they are recognised as joint bodies, where both the management and staff sides should have equal access to the agenda. Both sides are entitled to raise issues with an expectation that they should be dealt with promptly, effectively and by agreement.

Experience of Safety Committees tells us, however, that if the safety reps participating in them are not assertive then they can become no more than *"talking shops",* which achieve little.

In this section we look at:

- ***Setting up a Safety Committee;***
- ***The functions of a Safety Committee;***
- ***Membership of Safety Committees;***
- ***Some problems with Safety Committees.***

Setting Up a Safety Committee

Regulation 9 of the SRSC Regulations requires employers to set up a joint Safety Committee if two or more union safety reps request one. The Committee must be set up within three months of the request (which should be made in writing). Under Regulation 9, when setting up a Committee the employer must:

- Consult the safety reps who made the request and other recognised unions on how the Committee should function;

- Inform all employees by posting a notice in a prominent position stating the composition of the committee and the work areas it will cover.

If an employer refuses a request to consult safety reps about the setting up a Safety Committee, a HSE inspector can serve a notice requesting a Committee to be established or prosecute the employer for failing to carry out their duties. Alternatively, the union or

unions affected can lodge a complaint with an ET (Regulation 11 of the SRSC Regulations) within 3 months of the employer's refusal.

If no Safety Committee currently exists at your workplace, you should aim to have one established as soon as possible. Speak to other union safety reps and put pressure on management to abide by these legal requirements.

Safety Committees provide valuable forums where staff side unions can work together to overcome problems. You may find that a problem which affects your members affects the members of some or all of the other unions. It is much easier to put pressure on management to bring about changes by working together as a collective force.

The Functions of Safety Committees

The value of Safety Committees is that they provide a forum to take a broader and more long-term look at health, safety and welfare issues than an individual safety rep is able to do. It is chiefly within Regulation 9 of the SRSC Regulations that the role of Safety Committees are set out. However, their role is defined in the Act as that of:

> *"keeping under review the measures taken to ensure the health and safety at work of employees" (s.2(7)).*

The GN to Regulation 9 recommends that Safety Committees should have the general objective of promoting:

> *"co-operation between employers in instigating, developing and carrying out measures to ensure the health and safety at work of the employees".*

Paragraph 76 of the GN to Regulation 9 suggests these functions:

- Studying statistics and trends of accidents and notifiable diseases and examining safety audit reports;
- Considering reports and information provided by Health and Safety Inspectors and maintaining close links between them;
- Considering reports by safety reps;
- Reporting to management any unsafe and unhealthy conditions and practices and making recommendations for corrective action;
- Assisting in developing work safety rules and safe systems of work;
- Monitoring the safety content of employee training;
- Monitoring the impact of safety communication and publicity in the workplace;
- Providing a link between the employer and the enforcing authority.

The Safety Committee should have other important parts to its role –
Including to:

- Analyse any available reports or statistics about general sickness, accidents, injuries, dangerous working conditions etc. and to try to make sense of the overall pattern. It may well be that a particular department has a disproportionate number of accidents, or

that a certain kind of accident is happening very frequently. The Safety Committee can investigate;
- Make appropriate recommendations to prevent or minimise the chances of accidents recurring, and ensuring adequate expenditure on safety generally;
- Perform a monitoring role to ensure that safety policies, the provision of safety training, safety equipment, protective clothing etc, are up to standard;
- Assist in the development of safety notices and safe working systems and to secure the goodwill and co-operation of all employees;
- Consider the health and safety aspects of any changes to the workforce, technology or working practices;
- Consider the effect and implementation of new safety laws and Regulations;
- Examine the health and safety policy of any sub-contractors, where the employer is involved in a tendering procedure.

Paragraph 77 of the GN makes it clear that the purpose of studying accidents is to stop them recurring. It is not the committee's business to allocate blame. Its job should be to:
- Look at the facts in an impartial way;
- Consider what sort of precautions might be taken; and
- Make appropriate recommendations.

The Safety Committee should keep employees informed of its activities. It must have access to all health and safety information that is relevant to work activities, and be willing to digest, interpret and disseminate that information throughout the workplace. An effective Safety Committee will monitor all major safety issues aiming to prevent problems. A key role will be the negotiation of policies in areas such as stress, lone working, manual handling and violence at work.

It must have access to all health and safety information that is relevant to hospital or other health care establishments' activities, and also be willing to digest, interpret and disseminate that information throughout the workplace.

In practice, an effective Safety Committee will monitor all major safety issues, with the aim of preventing problems. A key role will be the negotiation of policies and procedures in areas such as stress, lone working, manual handling, infection control, dealing with violence at work, which affect a number of working groups in the NHS.

Membership of Safety Committees

Regulation 9 does not lay down any hard and fast rules in terms of the membership of Safety Committees. Paragraph 83 of the GN states that the membership, structure and constitution of Safety Committees are matters for local negotiation, and should be settled in consultation between management and safety reps through the normal negotiation machinery. GN93 states the following.

"Committees may wish to draw up additional rules for the conduct of meetings. These might include procedures by which committees might reach decisions."

Adequate representation of all employees must be ensured, but without the size of the Committee becoming so large as to be unwieldy. This means that in large organisations, like a hospital, not all safety reps will sit on the Committee. The recognised unions will need to agree democratically which unions will be directly represented. It is important that, on the rare occasions when the CSP does not have a seat on the Committee, a seat is given to another union representing other professional groups in the NHS. In reality, CSP safety reps should push hard for a seat, as numbers attending meetings are often low.

All safety reps must have:

- An opportunity to place items on the Committee's agenda;
- A voice in terms of the arguments and tactics to be used at Committee meetings. Ensuring that a safety rep who wishes to do so can attend and participate in the union side pre-meetings prior to the Committee meeting;
- Information about the decisions reached at a Committee meeting and future or remedial action that has been agreed.

Management representatives should not only include those from line management, but also others such as engineers, HR managers, occupational health professionals and safety advisers. GN84 states:

> *"Management representation should be aimed at ensuring:*
> *(a) adequate authority to give proper consideration to views and recommendations;*
> *(b) the necessary knowledge and expertise to provide accurate information to the committee on company policy, production needs, and on technical matters in relation to premises, processes, plant, machinery and equipment."*

The relationship between safety reps and the Committee is left undefined. Safety reps are not appointed by the Committee, nor is the Committee appointed by the safety reps. Neither is responsible to the other. GN86 states:

> *"The relationship between safety representatives and the safety committee should be a flexible but intimate one."*

Safety reps should at least equal the number of management representatives. The GN states that the management side should include someone with adequate authority to give proper consideration to views and recommendations, and should have the necessary knowledge and expertise to provide accurate information to the Committee.

Paragraph 92 of the GN recommends that meeting dates should be agreed well in advance – it is recommended that the series of meetings are planned six months or a year ahead. Importantly, the GN91 states that meeting should only be postponed in exceptional circumstances. Meetings should be regular, publicised, minuted and a copy sent to each member of the Committee. Decisions made by the Committee should be acted upon speedily, and reported to staff.

As with other safety reps' functions, time spent preparing for and attending Safety Committees should be regarded as part of a safety rep's normal working time, and safety reps should have time off work, paid at their normal rate, accordingly.

Some Problems with Safety Committees

On the basis of experience, we know that there can be problems with the organisation and functioning of Safety Committees.

(a) Safety committees do not replace the need for safety reps

Safety Committees do not have any legal powers to force management to take up its suggestions (whereas safety reps do). They are not an alternative to elected and active safety reps operating in all sections of the workplace. They merely provide another channel of communication between unions and the employer.

(b) Safety committees are nothing more than talking shops

CSP safety reps sometimes report that Safety Committees are no more than talking shops, and achieve little in terms of action and improvements to members' health and safety. Management sides often do not demonstrate real commitment to the Committee, or cancel meetings that are planned.

Regulation 9 stresses the need for the effective working of Safety Committees, and the need for a recognition by the management side of the value of the Committee as a means of achieving genuine improvements to safety standards within the workplaces for which they have responsibility. GN89 states the following.

> *"An essential condition for the effective working of a health and safety committee is good communications between management and the committee, and between the committee and the employees. In addition, there must be a genuine desire on the part of management to tap the knowledge and experience of its employees and an equally genuine desire on the part of the employees to improve the standards of health and safety in the workplace."*

In terms of the cancellation of meetings, this should only occur if there is a joint decision to do so. Management sides may get into the habit of cancelling meetings, arguing their representatives do not have the time to attend, or claiming there are no urgent issues on the agenda. GN91 states the following.

> *"Meetings should not be cancelled or postponed except in very exceptional circumstances. Where postponement is absolutely necessary, an agreed date for the next meeting should be made and announced as soon as possible."*

One recommended response from the staff side to a management lack of commitment to the Safety Committee is to include an agenda item seeking a review of the constitution and remit of the Committee, which will provide an opportunity to discuss how the working of

the Committee can be improved and energised. The staff side should put their concerns in writing before the meeting, possibly quoting the relevant elements of Regulation 9, and outline the improvements to the workings of the Committee that they wish to see implemented. It would make sense to include this discussion at the beginning of the agenda. Likewise, the staff side needs to ensure that sufficient time is allocated at the meeting to have such a detailed discussion of the role and remit of the Committee.

(c) Safety committees do not exist to do management's job

Safety Committees are the same as any other joint consultative body, so CSP safety reps attend to represent the views of their members and to negotiate acceptable joint solutions to health and safety problems in the workplace. For example, Safety Committees should not:

- Agree limits on health and safety spending; or
- Deal with issues to do with patient safety or clinical risk.

Safety reps are not there to relieve management of their legal and moral responsibilities to provide a safe and healthy working environment.

(d) Safety committees can be used as a delaying tactic

Some employers have attempted to refer almost every safety complaint to the Safety Committee. This is not the role of a Safety Committee. They are not courts of appeal. The law recognises that it is best to deal with safety issues as quickly and locally as possible. Many minor matters can be dealt with effectively within departments, through discussions between a safety rep and a manager. There should be no need to place such matters on the Committee's agenda.

Management may refer everything directly to the Safety Committee as a means of delaying the carrying out of necessary safety improvements. The Committee may only quarterly, by which time they hope the problems will go away. It may also be a further attempt to pass responsibility to the Committee that actually resides with Departmental management. Safety reps should insist that any justifiable complaints by safety reps are dealt with speedily and effectively by management. If they refuse to do so safety reps have the right to call in an HSE Inspector as a last resort.

(e) Safety reps are not responsible to the safety committee

CSP members elect our safety reps: they are not appointed by the Safety Committee. Safety Committees must not be allowed to tell safety reps what to do. To be effective, the Committee should work by co-operation, consensus and goodwill.

A Safety Committee's value is in dealing with long-term considerations. Its key aims must be the prevention of health hazards and accidents and foster a positive health and safety culture within the workplace. An efficient Safety Committee will be able to achieve important improvements in the health and safety field. However, care should be taken that the role of the Committee is not over emphasised. They are not a replacement for

management accepting its responsibilities to create a safe place of work, nor for a safety rep doing an effective job by acting proactively and decisively in terms of staff health, safety and welfare.

(f) Representatives of employee health and safety and safety committees

The introduction of the ***Health and Safety (Consultation with Employees) Regulations 1996*** led some employers to demand that *'representatives of employee health and safety'* should have seats on the Safety Committees, sharing seats with staff side union appointed safety reps.

Under the 1996 Regulations, employers have a duty to consult with employees who are *"not represented by health and safety representatives under the 1977 Regulations"* on a range of health and safety matters. Employers must consult individual employees or make arrangements for the election of representatives of employee health and safety and consult with them to a limited extent on matters of health and safety at work. Such representatives of employee health and safety have many fewer rights than union safety reps.
For example, they have no rights to:

- Inspect the workplace;
- Investigate accidents or near-misses;
- Demand the establishment of, or sit on, a Safety Committee;
- Receive information from a health and safety inspector; or
- Provide individual representation on behalf of staff.

The 1996 Regulations pose a threat to union organisation around health, safety and welfare by introducing a third party into workplace structures. It is important that recognised trade unions continue to set the agenda for the staff side of the Safety Committee and forestall any developments which could undermine union organisation in the workplace.

It is not in the employer's interest to create additional structures or procedures. This could:

- Duplicate existing arrangements and make them less effective;
- Increase the employer's administrative workload and costs. The employer would have to fund the training of non-union representatives of employee health and safety;
- Create confusion among managers and staff;
- Adversely affect the relationship between the employer and its recognised unions and thereby potentially damage good industrial relations.

Some safety reps have reported difficulties with employers wishing to include representatives of employee health and safety on the Safety Committee as part of the Staff Side complement. You should point out that Regulation 9 of the SRSC Regs states that the membership and structure of a Safety Committee should be settled in consultation between management and **recognised trade union safety reps** through the use of the normal negotiating machinery.

The aim should be to keep the total size of the Committee as compact as possible. The number of management representatives should not normally exceed the number of union reps. Representatives of employee health and safety have no right in law to sit on the Safety

Committee. If management are insistent about the participation of representatives of employee health and safety in the work of the Safety Committee, the Staff Side should argue that such representatives should take seats on the management side.

You could further point out that staff who are not members of unions have always benefited from trade union organisation around health and safety. Hazards at work affect all staff, and safe systems of work benefit everyone, and these are monitored by union safety reps. An arrangement whereby union safety reps represent all staff within the spirit of, and for the limited purposes of, the 1996 Regulations would not alter any current good practice from a trade union perspective.

Key NHS Resource – *The Importance of Effective Partnership Working on Health, Safety and Wellbeing*

This excellent resource is useful to you if your manager or colleagues lack awareness on why partnership working is crucial for an effective safety culture in your workplace. The document sets out your role and functions, what an effective health and safety committee looks like and the legal requirements on employers to consult on health and safety matter.

The guidance is available on the NHS Employers website www.nhsemployers.org/

PART THREE

HAZARDS AT WORK

⇒ **Section 1: Key Hazards Affecting CSP Members at Work**

⇒ **Section 2: Manual Handling Hazards**

SECTION 1: KEY HAZARDS AFFECTING CSP MEMBERS AT WORK

Introduction

A wide range of workplace hazards have a particular impact on CSP members. As a result, the CSP has produced a series of Health and Safety Briefing Packs providing detailed information on these key issues.

The information in these Briefing Packs has not been reproduced in the manual. Rather, a brief outline of these hazards is provided, together with some guidance to safety reps on how to obtain further information.

In this section we look at:

- ⇨ ***Work-related stress;***
- ⇨ ***Bullying at work;***
- ⇨ ***Hazards affecting pregnant workers;***
- ⇨ ***Violence and lone working;***
- ⇨ ***Workplace infection risks;***
- ⇨ ***Electrotherapy hazards;***
- ⇨ ***Strain injuries;***
- ⇨ ***Latex allergies;***
- ⇨ ***Hydrotherapy hazards.***

Work-Related Stress

a) What is work-related stress?

Since 1999, according to Department of Health (DH) statistics, the most common reason cited by employees for sickness absence from work in the UK is work-related stress. In many areas of work there is an epidemic of stress-related illness. This has major consequences for both individual employees and the organisations that employ them.

Stress is generally a term used to describe an unpleasant feeling of fatigue, being under too much pressure and being unable to cope. It has been defined as: *"A negative and unpleasant condition which may be experienced when a person perceives that they are unable to meet the demands and pressures that are placed upon them and which may be associated with a range of ill-health affects both physiological and psychological".*

The HSE defines stress as follows. *"The reaction people have to excessive demands or pressures, arising when people try to cope with tasks, responsibilities or other types of pressure connected with their jobs, but find difficulty, strain or worry in doing so."*

Stress in itself is not an illness, but if it is excessive and prolonged, it can lead to mental and physical ill health. Stress affects all of us in different ways and to different degrees. However, it is clear that most people will suffer eventually if the stress they are under is not alleviated.

Occupational stress is a result of such factors as:

- Lack of control over work;
- The degree of responsibility at work;
- Arrangement of working time, such as working shifts and long hours which can lead to conflicts between work and family life;
- Poor relationships with colleagues and managers;
- Pressure of work and the size of workloads;
- Job insecurity;
- Low status at work;
- Long hours;
- Lack of promotion or recognition;
- Bullying and harassment at work.

Stress affects people differently and the sources or stress – stressors – vary too. It may be that stress is viewed as a *'challenge'*, or as a feeling of being unable to cope. Or it may be that some people are able to live with the *'challenge'* for a while and then find their situation becomes intolerable. It is at this stage that stress becomes harmful and may lead to physical or mental illness, or both. Despite the fact that stress is now viewed as a major hazard of work, there is no specific law laying down minimum standards to eradicate or minimise work-related stress.

Stress is a health and safety issue, since short term and longer-term stress can have a major impact on health and safety standards in a workplace. Team working may break down and the effects of stress may mean that workers operate less safely because they may find it difficult to concentrate or may be put under pressure to rush or cut corners. As a result, accidents and injuries increase.

Below is an outline of the short and longer terms effects of stress on employees.

SHORT AND LONG TERM EFFECTS OF STRESS ON WORKERS

SHORT-TERM **LONG-TERM**

Behavioural Effects:

Overindulgence in smoking, alcohol or drugs Marital and family
Accidents Breakdown
Impulsive emotional behaviour
Social isolation
Poor relationships with others at home and at work
Poor work performance
Apathy

Physical Effects:

Headaches
Heart disease
Backaches
Hypertension
Poor sleep
Ulcers
Indigestion
Poor general health
Chest pain
Nausea
Dizziness

Emotional Effects:

Tiredness
Insomnia
Anxiety
Chronic depression and anxiety
Boredom
Neurosis
Irritability
Nervous or mental breakdown
Depression
Inability to concentrate
Suicide
Low self-esteem.

b) The HSE Stress Management Standards

The HSE's major initiative on stress was *'Managing the Causes of Work-Related Stress: a step-by-step approach using the Management Standards' 2007.* This approach was the first step to establishing some benchmarks for measuring employers' performance in preventing work-related stress.

While there is no regulation dealing with work related stress, it is possible to still rely on the Health and Safety at Work Act 1974 to challenge employers subjecting staff to excessive stress and its ill-effects. It is under this act that sets out the principle that employers should provide a healthy and safe working environment.

The Health and Safety at Work Act, 1974.

The Act places general duties on employers to ensure the health, safety and welfare of all employees, but it does not specifically mention stress.

Section 2(1). It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

HSE Guidance on preventing workplace stress states:

"Ill health resulting from stress caused at work has to be treated the same as ill health due to other, physical causes present in the workplace. This means that employers do have a legal duty to take reasonable care to ensure that health is not placed at risk through excessive and sustained levels of stress arising from the way work is organised, the way people deal with each other at their work or from the day-to-day demands placed on their workforce."

Safety reps can use their extensive rights to investigate and take up problems of work-related stress in the same way that they investigate any other workplace hazard. They are also entitled under Regulation 4A to be consulted on health and safety matters and the introduction of changes to the workplace, which may have an impact on their members' health, safety and welfare.

c) The Management of Health and Safety at Work Regulations, 1999

Regulation 3 of the Management Regulations demands that all employers must carry out a *"suitable and sufficient"* assessment of the risks in the workplace. A hazard is defined as anything at work that can cause harm and risk is the likelihood that the hazard will harm someone with definable consequences.

Having identified any risks, it is then the responsibility of the employer, under **Regulation 4**, to implement the preventative and protective measures that are needed to ensure that the risks are removed or minimised.

Regulation 13 states that an employer has a duty to take into account an employee's capabilities with respect to the work they are asked to do. Paragraph 80 of the Approved Code of Practice (ACOP) states: *"where allocating work to employees, employers should ensure that the demands of the job do not exceed the employees' ability to carry out the work without risk to themselves or others."*

Trade unions should press employers to apply the HSE Stress Management Standards for tackling stress at work (see below). Further, safety reps should press their employers to ensure that stress is included in the range of risks that members' face and so should be included in their risk assessment. In paragraph 30(c) of the Guidance Note to **Regulation 4**, to help reduce possible adverse effects on safety, employers are advised to:

"Adapt work to the requirements of the individual (consulting those who will be affected when designing workplaces, selecting work and personal protective equipment and drawing up working and safety procedures and methods of production). Aim to alleviate monotonous work and paced working at a predetermined work rate, and increase the control individuals have over the work they are responsible for."

In 2003, the HSE issued an Improvement Notice to Dorset and Dorchester NHS Trust for failing to risk assess work-related stress and have adequate arrangements in place for effective planning, organisation and controls to reduce the risk of work-related stress to employees, in compliance with Regulations 3 and 4 of the Management Regulations, and Section 2 of HASAWA. The Trust admitted they had not made an assessment of the risk associated with work-related stressors, and that they did not have a policy in place to manage stressed staff.

d) The HSE Stress Management Standards

The HSE states that *"a healthy organisational culture will be one where communication, support and mutual respect are the norm".* Examples of a positive culture are where:

- Work-related stress and other health issues are treated seriously;
- The organisation responds positively to any concerns raised with them;
- Working long hours is not encouraged;
- Staff are not encouraged to take work home.

The standards is available on the HSE website www.hse.gov.uk.

The standards are guidance, so employers have no legal obligation to use them. They are designed to fit in with the risk assessment approach and help employers to identify the specific causes of stress and suggest how they might be addressed.

The Standards help employers to measure performance in managing work-related stress. Each standard provides simple statements about good management practice in all 6 areas.

The Standards are goals that employers should work towards through ongoing risk assessment and continuous improvement. The Standards include the ***'states to be achieved'*** in all 6 categories of stress risk, which generate a useful checklist for employers and safety reps in identifying progress being made.

❑ The Six Factors

The standards highlight 6 overall *'risk factors'* for stress. These are:

- Demands of the job;
- Control over work;
- Support from managers and colleagues;
- Relationships at work;
- Role in the organisation; and
- Change and how it is managed.

For all of the risk factors below, there is an additional standard: ensuring that '*systems are in place locally to respond to any individual concerns'*.

(i) Demands of the job. Demands on the individual are often quoted as the main cause of work-related stress. Demands include workload, working patterns and the working environment. One crucial demand is work overload, when a person is allocated a great

deal of work, but insufficient resources (in terms of ability, staff, time or equipment) to cope with it. Other factors include capability and capacity.

Paragraph 80 of the Approved Code of Practice to Regulation 13 of the Management Regulations (Capabilities and Training) states the following. "W*hen allocating work to employees, employers should ensure that the demands of the job do not exceed the employee's ability to carry out the work without risk to themselves or others. Employers should review their employees' capabilities to carry out their work as necessary".*

The HSE emphasises the risks from the physical environment, such as noise, temperature, ventilation, lighting and potential violence at work.

(ii) ***Control over work.*** The HSE defines control as *"the amount of say the individual has in how their work is carried out".* They challenges managers to ask themselves whether they enable staff to plan their own work and make decisions and advises them to *"only monitor employees' output if this is essential".*

(iii) ***Support from managers and individuals.*** The HSE recommends that "*members of staff receive sufficient training to undertake the core functions of their jobs".* It warns employers not to train staff to become *"stress resistant".* It concludes: *"Stress management is not the answer. Stress prevention is".*

The HSE provides a checklist of action employers and unions can take to challenge stress. These include:

- ➔ Ensuring that managers do not penalise employees for feeling the effects of too much pressure;
- ➔ Encouraging staff to manage their own well-being at work, and provide them with the support they need to do this;
- ➔ Asking the person how managers can help, rather than just assuming a particular course of action is the most appropriate;
- ➔ Ensuring the person knows what support the organisation can offer;
- ➔ Discussing whether any changes in workload or other adjustments would help; and
- ➔ Trying to create a culture and structures within the workplace that enable staff to seek help.

Support should include encouragement, sponsorship and resources provided by the organisation, line management and colleagues. Employees should *'indicate that they receive adequate information and support from their colleagues and superiors.'*

(iv) ***Relationships at work.*** Bullying and harassment are addressed here. The HSE states that managers should *"in consultation with staff and trade unions, draw up effective policies to reduce or eliminate harassment and bullying".* This element includes the promotion of positive working and the prevention of unacceptable behaviour.

(v) ***Role in the organisation.*** The HSE indicates that stress can be reduced if *"a person's role in the organisation is clearly defined and understood".* It suggests managers provide proper job descriptions and work plans, and that new staff receive a comprehensive induction programme. The employer should act to ensure that employees do not have conflicting roles and that employees should *'indicate that they understand their role and responsibilities.'*

(vi) ***Change and how it is managed.*** The Guidance advises employer to *"revise your risk assessment to see if any changes, eg a decrease in staff numbers, have resulted in increased hazards to staff".* Further, employers should take steps to identify employees' views by ensuring *'the organisation engages them frequently when undergoing an organisational change'*.

- **The Process**

⇨ ***Step 1 – Identify the hazards.*** The first step is to identify what's causing stress in the workplace. Employers should begin by ensuring that senior management make a commitment to tackling stress and involve staff and union reps. Under each of the 6 headings, there are certain common elements, in particular the need for a system to allow employees to raise their individual concerns and have them dealt with. The HSE also lists what should be achieved in each category.

⇨ ***Step 2 – Decide who might be harmed and how.*** The HSE suggests using a range of methods for identifying stress, including informal talks, performance appraisal, focus groups and interviews, as well as analysing data on sickness absence and staff turnover. The management standards include an ***Indicator Tool***, which is a questionnaire that can be used to survey all workers. It is made up of tick box statements that ask about working conditions known to be potential stressors. The results can then be put through the ***Analysis Tool***, which computes the average figure for each of the 6 management standards for the whole workforce, or a particular part of the workforce. It provides a benchmark figure to compare the organisation with others.

⇨ ***Step 3 – Evaluate the risk and take action.*** All workers should receive feedback on the findings and the HSE says that employers should deal with individual concerns and organise focus groups to discuss solutions. It suggests using case studies from comparable organisations and sectors to identify good practice.

⇨ ***Step 4 – Record your findings.*** Employers should record the results of the risk assessment in an action plan which should be discussed with union reps and be made available to all workers.

⇨ ***Step 5 – Monitor and review.*** Employers should monitor and review their action plan and further meetings and follow-up surveys could be undertaken. It suggests that daily and monthly interventions should be scheduled and that surveys could be carried out annually.

e) Common Law

By using the law related to contracts of employment, a number of claims have been successful through utilising a common law principle that employers have a duty of care towards their employees. It is an implied term of all contracts of employment. However, in reality pursuing a legal remedy for work related stress is difficult and expensive. Key decisions influencing the legal framework for pursuing redress include:

The landmark case of ***Walker – v - Northumberland County Council*** 1995, John Walker, a UNISON member and a social worker, had two nervous breakdowns as a result of increasing workloads. His employers were found guilty of breaking common law by not discharging their duty of care towards their employee. Mr Walker was awarded £175,000 in an out of court settlement before an appeal came to court.

In 2002 the case of ***Sutherland – v – Hatton***, the Court of Appeal (CA) set out **guidelines** to the lower courts in deciding future stress compensation cases. The key points include:

⇨ The employer must have been able to **reasonably foresee** the problem;

⇨ The employer is entitled to assume that an employee can withstand the normal pressures of a job unless that person is known to be vulnerable;

⇨ The employee must show that the harm done has been caused by what the employer has failed to do and will succeed only to the extent they can show the employer has contributed to their condition and this will require an assessment of vulnerability.

Under this criteria, this case only ruled in favour of one of the four claimants because she was able to provide clear evidence that she had repeatedly complained of overwork and the unreasonable behaviour of her manager. This highlights the need to encourage staff, despite the difficulties in doing so, to come forward with complaints and to keep records of any complaint they may make.

In 2004, the House of Lords (HL), the UK's highest court, confirmed the view that employers are liable to pay compensation for workplace stress **only** if the employee's illness was foreseeable and the employer failed to take reasonable steps to prevent it.

In 2008 the case of Dickens v O2 plc EWCA Civ 1144, ruled that the employer who knows (or should have known) that their employee is at risk of psychiatric harm cannot escape liability, by only offering counselling or OH services. There is still a requirement on the employer to take other reasonable steps that could remove the risk of harm, such as reducing an excessive work load, if that was identified as a cause.

For practical advice access the NHS Staff Council publication titled *Guidance on Prevention and Management of Stress at Work, October 2014.*

The guidance contains:

- How to effectively measure stress in the workplace
- Checklist on what the policy should cover

A useful account of management behaviours that trigger staff's stress and detailed best practice examples of what managers should do to improve their communication and actions regarding work overload, poor equipment and resources, work related aggression and violence. This excellent resource can be downloaded from the NHS Employers' website www.nhsemployers.org/

For more detailed information see the **CSP Health and Safety Briefing Paper Number 1: *"Stress at Work".***

Bullying at Work

a) What is bullying?

Many employers now have Equal Opportunities and Dignity at Work Policies in place. It is important that CSP safety reps and stewards are involved in working with employers to ensure that measures are sufficient to challenge a culture of bullying in workplaces. Members have the right to be protected from bullying. Members and managers should be in no doubt that bullying will not be condoned and complaints of bullying will be dealt with swiftly and effectively.

A lack of legislation means there is no legal definition of what constitutes bullying. A generally accepted definition of bullying, provided by ACAS, is: *Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.*

Bullying can take many forms, including:

- Intimidation;
- Humiliation;
- Belittlement/ridicule at work;
- Questioning of professional competence;
- Withholding information;
- Refusing reasonable requests;
- Excessive supervision;
- Overruling authority;
- Setting impossible objectives/targets;
- Excessive/unwarranted criticism;
- Changing work remits without advising the person concerned;
- Spreading malicious rumours.

Bullying affects not only the individuals involved, but the organisation as a whole.

People working in a climate of fear and resentment do not give of their best. Effective team working is impaired and as a result health and safety standards may fall.

b) The law and bullying

At present there is no specific piece of legislation covering bullying at work. However, there is law which may be appropriate, depending on the circumstances of the individual bringing a claim.

- **The Health and Safety at Work Act, 1974**

⇨ ***General duty.*** Section 2(1) places a duty on every employer to ensure the health, safety and welfare of all their employees.

⇨ ***Risk assessment.*** Every employer, under Section 3 of the Management of Health and Safety Regulations 1999, has a legal duty to make a suitable and sufficient assessment of the risks to the health, safety and welfare of employees. Following the risk assessment, Regulation 4 requires the employer takes preventative and protective measures to eradicate or control any risks that have been identified.

⇨ ***Safety reps*****.** Regulation 4A of the SRSC Regulations 1977 states employers have a legal duty to consult with safety reps about all health and safety matters.

- **Employment law**

⇨ ***Constructive dismissal*****.** Employers have a general duty of care under civil law. If bullying leads to a fundamental breach of the employment contract an employee may be able to pursue a claim of constructive dismissal under the ***Employment Rights Act 1996***, provided they have worked with the same employer for at least two year. Beware however. Only 2% of cases of constructive dismissal taken to Employment Tribunals each year are successful.

⇨ ***Common law.*** For cases to succeed they need to demonstrate the bullying was extreme and in evidence. The following examples highlights what is required.

The first successful claim against an employer, who allowed a staff member to be bullied into retiring early from work, was ***Menzies – v – The London Borough of Barnet 2003,*** brought by Margaret Menzies, with the support of the NUT. Ms Menzies endured 2 years of bullying by Head Teacher Valerie Hughes, which led to her feeling she could never teach again. The Central London County Court accepted that the Council had fundamentally breached its duty of care, implied in the employment contract, and that the humiliation Ms Menzies had suffered had led to a depressive illness and a phobic disorder. Ms Menzies case was strengthened by evidence from a senior schools inspector who had reported that during his 1999 inspection he had noticed that teachers were threatened and bullied by the head teacher, yet no action was taken by the Council to remedy this situation. Ms Menzies was awarded £86,487 in damages and costs.

In ***Green – v – Deutsche Bank 2006*** Helen Green, an administrator at the bank, was awarded £817,000 in compensation by the High Court for the bullying treatment she

had endured for 4 years at the hands of 5 colleagues, four female and one male. Ms Green found their campaign of harassment so *'offensive, abusive, intimidating, denigrating, humiliating, patronising, infantile and insulting'* that she was driven to a nervous breakdown. The high Court held that the company were vicariously liable for the treatment of Ms Green, as well as finding that the company's response to Ms Green's complaints were inadequate.

⇨ ***The duty to prevent unlawful discrimination.*** Bullying, directed at an individual because of one or more of the ***"protected characteristics"*** covered by the 6 core elements of the Equality Act 2010, may be viewed as direct discrimination and is unlawful, where proven. This is treatment of an individual based on their gender, race, sexual, disability, sexual orientation, age, religion or belief. In terms of harassment as a form of direct discrimination, the complainant must prove that but for their sex (for example) they would not have been treated in the way which they were treated. The over-riding reason for such treatment is the person's gender.

The legal definitions of harassment on grounds of sex, race, disability, age, sexual orientation and religion or belief is set out in Section 26 of the Equality Act 2010. It defines harassment as *unwanted conduct with the purpose or effect of:*

- *Violating the employee's dignity; or*
- *Creating an intimidating, hostile, degrading, humiliating or offensive environment for that employee*

Unlike in cases of unfair dismissal, there is no service qualification for individuals wishing to claim discrimination however the claim must be lodged 3 months (minus one day) from the date of the act or incident of discrimination.

c) The Protection from Harassment Act 1997

In 2006, the House of Lords (HL) held that an employer can be **legally liable for harassment** carried out by their employees. This means that someone who is a victim of bullying at work could have a legal remedy without having to leave their job first, as is required for a claim of constructive dismissal. The ruling was made in the case of ***Majrowski – v – Guy's and St Thomas' NHS Trust 2006 (House of Lords).*** William Majrowski alleged that he was bullied, intimidated and harassed by his departmental manager, who he said was excessively critical, rude and abusive to him in front of other staff; imposed unrealistic targets and threatened him with disciplinary action if he did not achieve them. Majrowski brought a claim under the Protection from Harassment Act 1997, claiming his manager's actions amounted to harassment and he should be protected by the Act. The HL held that the employer is vicariously liable for their employees' actions in the workplace, if such actions amount to harassment in breach of the 1997 Act and ruled that Mr Majrowski was entitled to pursue his claim in the county court.

The ruling may help employees who have suffered an injury at the hands of their employer, but are unable to show that the injury was foreseeable (the downfall of many negligence claims in the past). In assessing the use of the Act for employees bringing claims, the Court

of Appeal laid down the criteria, which must be met by an employee. It is a three part test. The claimant must show that:

⇨ There was a course of conduct directed at them that was deliberately intended to cause alarm or distress;

⇨ The conduct was oppressive and unreasonable and had occurred on at least two occasions;

⇨ It was sufficiently closely connected to the employee's job for liability to be imposed on the employer.

d) ACAS advice to employers

ACAS has published guides entitled "***Bullying and Harassment at Work: a Guide for Managers and Employers"*** and "***Bullying and Harassment at Work: guidance for employees***" (2009).
The guidance for managers and employers includes a recommendation to adopt a formal policy on bullying and harassment. ACAS suggests the policy could include:

- A statement of commitment from senior management;
- An acknowledgement that bullying and harassment are problems for the organisation;
- A clear statement that bullying and harassment will not be tolerated;
- Examples of unacceptable behaviour;
- A statement that bullying and harassment may be treated as disciplinary offences;
- The steps the organisation takes to prevent bullying and harassment;
- The responsibilities of supervisors and managers;
- A commitment to any complainant that confidentiality will be respected;
- Reference to grievance procedures – formal and informal – including time scales for action;
- Investigation procedures, including time scales for action;
- Reference to disciplinary procedures, including time scales for action;
- Counselling and support availability;
- Training for managers;
- Protection from victimisation;
- How the policy is to be implemented, reviewed and monitored.

NHS Guidance
In 2016 the NHS Partnership Forum produced a document for the NHS titled ***Tackling Bullying in the NHS:A Collective Call to Action***. It was endorsed by the Minister of State for Health and challenges all organisations to explore their cultures in partnership with staff, commit to positive action and track progress. It contains a checklist of actions to reduce bullying with links to other resources. It can be downloaded from www.socialpartnershipforum.org

For more detailed information see the **CSP Health and Safety Briefing Paper Number 5: *"Bullying at Work"*.**

Hazards Affecting Pregnant Workers

Regulation 16 of the Management Regulations requires employers to specifically take account of risks to new and expectant mothers when assessing work related hazards and to avoid, remove or control the associated risks.

Many types of hazard are covered, including physical, biological and chemical agents, working processes and conditions. Examples include night work, manual handling, noise, and extreme temperatures. See our CSP advice sheet, titled *Hazards Checklist for Pregnant Members*. This document is available on our website.

a) Health and safety law and pregnant workers

We cover this part of the law in detail in Part One, Section 3 of the manual. It is important that you read this part of the manual if you are dealing with an issue relating to the health and safety duties of the employer in this area, and the rights of pregnant CSP members.

b) The link between employment law and health and safety law

It is potentially sex discrimination under the Equality Act 2010, if an employer fails to comply with Regulation 16 of the Management Regulations and fails to carry out a risk assessment.

Employers should also properly consult with the member before making any changes to her role, working patterns or when considering full maternity suspension. Their decision making must be based on the results of a suitable and sufficient risk assessment. If employers fail to do this, the member may have (depending on her circumstances) grounds for a discrimination claim.

c) The role of safety reps

Where a CSP member has a claim that the employer has failed to comply with Regulation 16, for failure to carry out a risk assessment or to properly review and update their general risk assessment for pregnant workers and new mothers, safety reps can do the following:

- Request copy of the employer's general risk assessment for pregnant workers/new mothers from Human Resources. Many NHS employers have specific policy and procedures covering this issue.
- Review the assessment or any information provided by your employer against the CSP advice sheet of hazards and guidance provided by the HSE on their website www.hse.gov.uk. The HSE has excellent and comprehensive advice on pregnant workers' health and safety rights.
- Contact your Senior Negotiating Officer (SNO) for advice if you consider the employer's risk assessment is inadequate and for support to the member, particularly if the situation requires a legal referral to be undertaken on their behalf. If so, it would be helpful if you and the member could consider what evidence you have to support or refute such a claim.

- Be mindful of possible legal deadlines – do not delay contacting your SNO, when a member may have a case.

Pregnancy and night work
Regulation 17 of the Management Regulations says that new or expectant mothers may be suspended from night work where they have a signed certificate from a registered medical practitioner or midwife stating this is necessary in the interests of health and safety of the mother. Check your employer's policy on pregnancy to see if they have any provision covering on-call. Alternatively check your employer's flexible working policy the member could make an application to the employer to change her work patterns and hours. For further information, check the CSP website on flexible working.

Pregnancy and breastfeeding - access to suitable facilities
Your employer is required to provide a place for pregnant and breastfeeding mothers to rest. Unfortunately, there is no explicit right to paid time off to breastfeed, but the employer could be challenged under the Equality Act for sex discrimination if they treated their employee less favourably because she was breast-feeding. The HSE has advised that expecting new mothers to use the toilets for expressing milk or to breast-feed is not suitable.

A helpful European Court of Justice decision has recently come out on behalf of a breastfeeding Spanish nurse challenging her employer' inadequate risk assessment and lack of facilities and support. The ECJ, which is binding on the UK government, determined that where a breastfeeding mother can show a risk assessment is inadequate (or indeed not carried out at all) this can give rise to a potential discrimination claim. *Elds Otera Ramos v Servicio Galego de Saide, Instituto Nacional de la Segirodad Social Case C-531/15.*

Violence and Lone Working

a) The extent of the problem

NHS Protect, the authority tasked with collating NHS organisations' reports on violence incidences, recorded in their final report before being disbanded in December 2016 that there were approximately 70,000 incidences. The Health Unions understand this equates to a 25% increase from the previous year. Unfortunately, their data does not break down how many are clinical events related to dementia/mental health patients.

The ***NHS Staff Survey***, findings in 2017 showed that 15% of NHS staff had experienced violence from patients in the previous 12 months and 28% had experienced harassment or abuse.

UNISON released their findings on research they undertook in April 2018 showing that violence was certainly increasing and a correlation with acute trusts that have large deficits of over £20 million having also recorded higher levels of violent incidences against staff (23% increase) than trusts that were operating in the black (9.5% increase). UNISON concluded that based on their findings on average across the NHS in England there is likely 200 attacks occurring per day.

Ambulance staff are particularly vulnerable with over a third assaulted by patients and members of the public.

NHS Staff Council has produced guidance for managers and staff on lone working which is available on the NHS Employers website www.nhsemployers.org/

b) Defining violence and lone working

⇨ ***Workplace violence***

There is no specific legislation covering the threat of violence at work or lone working, so no formal definitions are available. The following definitions are provided by a range of organisations.

Department of Health

"Any incident where staff are abused, threatened or assaulted in circumstances related to their work, involving an explicit or implicit challenge to their safety, well-being or health" - European Commission 1997

⇨ ***The HSE***

The HSE booklet **"*Working Alone in Safety***, defines lone workers as follows:

"Lone workers are those who work by themselves without close or direct supervision. They are found in a wide range of situations; some examples are given below.

➔ ***People in fixed establishments where:***

- *Only one person works on the premises;*
- *People work separately from others;*
- *People work outside normal hours.*

➔ ***Mobile workers working away from their fixed base:***

- *On construction sites, plan installations, maintenance and cleaning work, electrical repairs, lift repairs, painting and decorating, vehicle recovery;*
- *Agricultural and forestry workers;*
- *Service workers, e.g. rent collectors, post staff, social workers, home helps, district nurses, pest control workers, drivers, engineers, architects, estate agents, sales representatives, and similar professionals visiting domestic and commercial premises."*

⇨ ***The CSP***

"Any work which is undertaken in isolation from another member of staff. The term includes those who might work only for a short period of time each day on their own

(such as treating a patient in a remote ward) and those who work whole shifts unaccompanied on a regular basis."

⇨ ***NHS Protect***

"Any situation or location in which someone works without a colleague nearby; or when someone is working out of sight or earshot of another colleague".

This includes those who work only for a short period of time every day on their own, as well as those who work unaccompanied for whole shifts in the Community on a regular basis.

c) The law and lone working

The law is silent on the issue, unless the result of the violence is death or the worker incurring an injury that removes them from their workplace for 7 days and therefore requiring the employer to report the event to the HSE under ***RIDDOR***.

The ***Health and Safety at Work Act 1974 (HASAWA*)** lays down the general duties of employers and the requirements regarding safe systems of work, health and safety policies, information, training and instruction for staff. Under the ***Management of Health and Safety at Work Regulations 1999*** (which in law form part of HASAWA) is where the detailed requirements on risk assessment are given.

Regulation 3 requires employers to carry out a *"suitable and sufficient"* risk assessment to identify any hazards present in the workplace and the level of risk they pose. They must then act to eliminate such risks, or if this is not possible minimise and control them. Employers often fail to include in the risk assessment process the *'social'* hazards of work – such as bullying, potential violence at work, lone working – and tend to focus only on tangible hazards. It is vital that CSP safety reps demand that their employers include hazards like lone working in the risk assessment, and press for effective protection for staff who are exposed to lone working.

d) Protecting lone workers through risk assessment

The Health and Safety Laboratory (HSL), the research arm of the HSE, published a report in 2005 on lone working, using the risk assessment process described in Resource Note 3.

The report is entitled *"Managing and preventing violence to lone workers: case studies".*

The most common risks identified by the research were:

⇨ Alcohol and drug use, by clients and members of the public with whom the lone worker comes into contact. Drug and alcohol use can make people aggressive and their behaviour unpredictable;

- ⇨ Location. Certain areas of towns and cities, such as town centres and council estates, were known to pose a higher risk of danger of violence to lone workers;

- ⇨ Late evening/early morning. Working during these times carried an increased risk of violence because there were generally either fewer people around, a greater number of less predictable individuals, or people under the influence of drugs or alcohol;

- ⇨ The nature of the job. In some jobs lone workers hold positions of power or authority over customers or clients, which can cause resentment and cause people to be more aggressive;

- ⇨ Client or customer behaviour. for a number of reasons, clients or customers can be highly emotional, unpredictable or aggressive;

- ⇨ Other people or situations encountered while doing the job. These include members of the public, visitors, family members of clients;

- ⇨ Travelling, visiting people's homes and carrying money or equipment.

The HSL report grouped the most successful ways of managing and preventing violence against lone workers under 4 headings:

(i) Training and Information;
(ii) Communication;
(iii) Work Equipment and Environment;
(iv) Job design.

e) The NHS Requirements for England

Providers of NHS services are required by the authorising commissioning body to meet certain standards on fraud and security. The standards are defined as using a risk-based model, requiring the provider to carry out a risk assessment following the standards as set out in their contract.

It is the responsibility of NHS England to publish the NHS Standards Contract
http://www.england.nhs.uk/nhs-standard-contract

To determine if your organisation is doing enough to address this persistent problem please refer to the NHS Staff Council *Workplace Health and Safety Standards* and the guidance for managers and staff titled *Improving safety for lone workers.* The Workplace standards and guidance on lone working are available from the NHS Employers website
www.nhsemployers.org/

For further detailed information see the ***CSP Health and Safety Briefing Papers Number 2: "Violence at Work"*** *and* ***Number 7 "Personal Safety for Lone Workers".*** **Both documents are on the CSP website.**

Workplace Infection Risks

CSP members, like a wide range of other health care employees, are at risk of infection because of the nature of the work they do and the numbers of clients they deal with on a day to day basis.

It is important that managers recognise the hazards posed to physiotherapy staff arising out of their interaction with members of the public and because of their workplaces are likely to be hospitals or clinics. These hazards, and their associated risks, should be dealt with in the same systematic manner as any other hazard at work.

The Department of Health has produced a set of **universal precautions** that should be used at all times. They are outlined below.

- Apply good basic hygiene practices with regular hand washing.
- Cover existing wounds or skin lesions with waterproof dressings.
- Avoid invasive procedures if suffering from chronic skin lesions on hands.
- Avoid contamination of person by appropriate use of protective clothing.
- Protect mucous membrane of eyes, mouth and nose from blood splashes.
- Prevent puncture wounds, cuts and abrasions in the presence of blood.
- Avoid sharps usage wherever possible.
- Institute safe procedures for handling and disposal of needles and other sharps.
- Institute approved procedures for sterilization and disinfection of instruments and equipment.
- Clear up spillages of blood and other body fluids promptly and disinfect surfaces.
- Institute a procedure for safe disposal of contaminated waste.

Safety reps should always ensure that arguments about the costs of implementing universal precautions are not used to avoid effective adherence to them.

These are essential, to protect both staff and patients, and must be adhered to.

For more detailed information see the **CSP Health and Safety Briefing Paper Number 9: *"Workplace Infection Risks"*.**

Strain Injuries

CSP members report a significant level of musculoskeletal injuries (MSK), particularly to the back, neck and upper limbs. Many of these injuries are the result of the poor implementation by employers of manual handling procedures.

See **CSP Health and Safety Briefing Paper Number 11** ***"Work-related Musculoskeletal disorders".*** The document sets out the scale of the problem and how injuries occur for each discipline of physiotherapy.

MSK injuries next to stress is the main hazards confronting NHS clinicians.

In recognition of this problem there are various resources available on what should be done to prevent these injuries from occurring.

Key CSP Resources www.csp.org.uk

- The CSP has produced an excellent resource titled ***Guidance on Manual Handling in Physiotherapy*** and this is available to members on the CSP website. This publication sets out the professional and legal framework of manual handling patients and covers risk management, delegation and education of staff. It also looks at the key issues with regard to purchasers, commissioners and service planners.

- **The CSP MSK Resource Pack: Resources for Safety Reps** For guidance specific to your role as safety rep do check out the CSP MSK Resource pack which is available to you to down-load. This pack introduces you to body mapping, a form of inspection that you can undertake with members to identify and evidence their pain and injuries, in order for you to raise with your employer to take action. Information about body mapping is also set out in your induction workbook.

Key NHS Resources – all available on the NHS Employers' website
www.nhsemployers.org/

- **Workplace health and safety standards –** this key document sets out what your employer is required to do to properly manage and risk assess musculoskeletal disorders, manual handling, provision and use of work and lifting equipment

- **Back in work back pack**
  The back pack offers practical advice about working safely in the healthcare setting, helping staff avoid MSDs and injury wherever possible. It offers guidance on the importance of training, lifting correctly, line management, and legal issues, and is aimed at both staff and their managers.

- The back pack looks at fitness to work issues, rehabilitation, re-deployment and sickness absence. It addresses the legal requirements for both the employer and employee, referencing not only the law but also good practice and the value of being an employer of excellence. It reinforces the business case for early treatment of MSDs and

the resources to provide treatment and support for staff suffering from these conditions. The back pack is about good partnership working between employers, their staff and the staff representatives to provide a safer working environment and support when MSDs strike the individual.

Latex Allergies

Latex allergy is an increasing problem for many health care workers because of the need for glove use during treatment. The greatest problems result from the use of powdered gloves.

Any CSP member who has either dermatitis or asthma should contact the CSP Employment Relations Department to discuss whether their condition is likely to be related to wearing latex gloves at work.

Aquatic therapy Hazards

CSP members are commonly involved in hydrotherapy when treating patients. It is becoming increasing clear that there are a number of risks linked to hydrotherapy.

These include hazards, and the associated risks, from:

- ⇨ Slips and falls;
- ⇨ Fainting in the pool;
- ⇨ Fatigue;
- ⇨ Spread of infection;
- ⇨ The safe handling and storage of chemicals;
- ⇨ Incorrect pool chemistry; and
- ⇨ General hygiene and cleanliness.

Safety Reps may also access the ATACP iCSP network for Aquatic therapy and review this clinical interest group's *Standards for the Management of the Aquatic Therapy Pool.*

For more general health and safety advice on pool management, we would refer you to the HSE web site www.hse.gov.uk

SECTION 2: MANUAL HANDLING HAZARDS

Introduction

Manual handling is the single most common cause of workplace injury and research suggests that over 600,000 people in Britain consider they have a health problem caused by manual handling at work.

The Manual Handling Operations Regulations 1992, amended in 2002, apply to all workplaces and aim to control the risk of injury and ill health caused by manual handling at work. The 2002 amendments deal with risk factors relating to individual workers if he or she: is physically unsuited to carry out work-related tasks; is wearing unsuitable clothing, footwear or other personal effects; and does not have adequate or appropriate knowledge of training.

These factors are now included in Regulation 4(3) ***'Individual Capability'***, although they do not introduce any new duties on employers. The Guidance to the Regulations has also been revised in other places, in order to bring it up to date with improvements in the knowledge of the risks from manual handling, and how to avoid them.

Manual handling covers:

⇨ Lifting;
⇨ Carrying;
⇨ Pulling;
⇨ Pushing;
⇨ Stretching; and
⇨ Holding loads.

Back pain and injury is the main problem. Such injuries are often cumulative, caused by poor manual handling over a long period of time. So a key aim of CSP safety reps will be preventing injuries relating to manual handling.

In this section, we look at:

- ***The extent of the problem***
- ***An ergonomic approach***
- ***Avoiding manual handling***
- ***Reducing the risk of injury***
- ***Training***
- ***CSP advice.***

You should read this Section in association with Section 10, Part 1 and Section 1, Part 3 of the manual.

The Extent of the Problem

11 million working days a year are lost due to musculoskeletal disorders, including work-related back pain. The overall cost to industry is £5 billion per annum. Of all workplace accidents reported to the HSE each year, 33% are associated with manual handling.

Within the health services the proportion is considerably higher, accounting for over 50% of accidents reported, over 60% of which involve patient handling. The most common these involve sprains or strains of the back. Injuries related to the handling of patients accounts for approximately 70% of these accidents.

The vast majority of manual handling accidents reported under RIDDOR result in over three-day injury, most commonly a sprain or a strain, often in the back. Handling injuries account for 36.5% of total injuries; 73.1% of injuries caused by handling accidents were sprains or strains; and 49.3% of the injuries were to the back.

Sprains and strains are caused by incorrect application and/or prolongation of bodily force. Poor posture and excessive repetition of movement can be important factors in their onset. Many manual handling injuries are cumulative rather than being truly attributable to any single handling incident.

The injured do not always make a full recovery. The result can be physical impairment or even permanent disability. This may result in workers being unable to continue in paid employment. Since much of the work carried out by CSP members involves manual handling it is clearly a major hazard at work and one which employers have a legal duty to eliminate, where possible, or minimise in circumstances where the need for manual handling cannot be eradicated.

An Ergonomic Approach

The Manual Handling Regulations set no specific requirements, such as weight limits. Instead, Regulation 4(1)(b)(ii) requires employers to adopt an ergonomic approach, via risk assessment, based on a range of relevant factors, including the individual workers who may be expected to be involved in manual handling activities, to determine the risk of injury and effective remedial action.

The ergonomic approach is about ensuring that work fits the worker, rather than the other way round. The TUC states that such an ergonomic principle is the most effective way of tackling musculoskeletal disorders, including back strain.

To comply with Regulation 4(1)(a), the employer must arrange work to avoid manual handling where possible by redesigning the job or introducing mechanised or automated means, such as the use of a crane, forklift truck or sling.

Where it is not reasonably practicable to avoid manual handling and where the risk is not of a *"low order"*, Regulation 4(1)(b) requires that the employer make a *"suitable and sufficient"* assessment of the manual handling operations undertaken by employees.

CSP safety reps should ensure their involvement in the risk assessments relating to manual handling to monitor that these are sufficient and are carried out effectively. They should then demand to be included in the discussion of how to remedy any problems that the risk assessment has highlighted. This is supported by GN55 to Regulation 4.

"Employers have a duty to consult safety representatives about the arrangements they make for health and safety in the workplace. This includes any risk-prevention strategy. But for this to be successful, it is essential that employers work in partnership with safety reps and employees, because they know at first hand the risks in the workplace and can offer practical solutions to controlling them. Safety reps can make a particular contribution because of the specialised training and support they receive, which helps them to understand workplace risks and to develop ways to control them."

In addition to risk assessment, the TUC advocates a technique known as body mapping as a way of dealing with back strain. This involves using two outlines of a body, one representing the front and the other the back of the body. Workers are given small sticky labels, which they apply to the body maps on those places where they think their job is causing pain or illness. Different colours can be used for different symptoms. Workers are asked to explain why they placed each sticker in a particular place.

The exercise is most effective where workers are doing the same or similar jobs. Different groups from within a workplace can then compare completed body maps. This reveals how problems differ between jobs and which ones are likely to be caused by the job.

Body mapping can be crucial evidence to show not enough is being done to protect workers from back injury and to assist negotiations for improvements to manual handling policies and practice.

Avoiding Manual Handling Operations

The first priority of an employer should be avoiding or minimising the need for manual handling at work. This should be achieved by either redesigning the workplace or work organisation or automating or mechanising tasks.

If operations are automated or mechanised, new risks can arise and these need to be assessed. Consideration also needs to be given to whether additional manual handling problems are caused by loading and unloading from mechanical or automated lifting equipment.

Such hazards are covered by the Lifting Operations and Lifting Equipment Regulations (LOLER) 1998 (See Section 10 of Part 1 of the manual for further information).

Often, due to the nature of the work of CSP members, it is not appropriate to avoid manual handling. For example, the handling may be an integral part of the treatment process, such as regaining independence in moving from sitting to standing. In such situations, risk prevention should aim to remove the risk from the procedure rather than removing the procedure itself. Amendments can be made and risk should be reduced to a minimal level.

However, there are many instances where manual handling is not essential to the treatment effectiveness. In these circumstances, manual handling should be avoided wherever possible; for example, moving someone from the wheelchair to plinth prior to treatment beginning.

Reducing the Risk of Injury

Regulation 4(1)(b)(iii) of the Manual Handling Regulations requires that where manual handling operations which involve a risk of injury cannot be avoided, appropriate steps must be taken to reduce the risk to as low a level as reasonably practicable. This will involve an examination of the task, load, working environment and individual capability.

GN 59 to Regulation 4 states that in most cases the risk assessment is best carried out by members of staff who are familiar with the operations in question, provided they are informed, trained and competent to do so. It may be necessary to call in outside expertise where, for example, the manual handling operation is complex.

Those involved in carrying out the risk assessment will need to:

- ⇨ Have knowledge of the Regulations and understand how to identify hazards and their associated risks;
- ⇨ Understand the nature of the handling operations;
- ⇨ Have a basic understanding of human capabilities; and
- ⇨ Be able to draw valid and reliable conclusions from the risk assessment, and identify the steps required to reduce risk.

There are various of steps employers can take to identify the safest way of manual handling. Safety reps should talk to managers about whether it is possible to redesign the job in order to ensure the safety of employees. There are a number of ways this could be achieved.

The GN72 to Regulation 4 states that a structured approach should be used to risk assessing manual handling operations, which allows employers to consider in turn:

- ⇨ The task;
- ⇨ The load;
- ⇨ The working environment;
- ⇨ Individual capability;
- ⇨ The work routine; and
- ⇨ Any other relevant factors.

a) Making alterations to the load

Non-patient loads can be made lighter, smaller or provided with handles to make them easier to hold. However, if this results in more frequent handling then it could make the situation worse.

b) Making improvements to the task

This means reducing the amount of bending, stretching, stooping, pushing and pulling required. For example, storage heights can be adjusted to lower levels, obstacles that have to be reached over or into can be removed, and lifting can be replaced with controlled pulling and pushing.

Job rotation can allow one group of muscles to rest while another group is being used, or heavier work can be interspersed with lighter work.

Adjustable equipment can be used to suit particular jobs and reduce bending, platforms can be provided to avoid lifts above the shoulder for shorter workers and containers with removable sides which allow access to the bottom can reduce stooping.

In addition, changes can be made to allow the body to be used more efficiently. In general, any change that allows loads to be held closer to the body will be an improvement. When lifting of loads at or near floor level is unavoidable, handling techniques which allow the use of the legs rather than the back are preferable, as long as the load is small enough to be held close to the trunk.

c) Mechanical assistance

It is essential that once a risk assessment has been undertaken, agreement should be reached on how to reduce the risk of injury. At this point, in terms of many of the work activities carried out by CSP members, the use of mechanical assistance should be assessed. Handling aids can be provided so that although there is still some manual handling required, there is reduced risk of injury.

In the health care, suitable lifting aids are more easily available than they used to be, but they are still often under-used or not used at all. Staff are sometimes reluctant to use these aids because they do not know enough about them, distrust their design or maintenance, or believe that clients dislike them. If the numbers of manual handling injuries are to be cut, however, the manual handling itself must be reduced. The selection and use of appropriate lifting aids should therefore be a primary precaution where manual handling cannot be avoided altogether.

It is vital that safety reps exercise their rights under Regulation 4A of the SRSC Regulations to ensure they are fully consulted on any new work equipment prior to its purchase and use.

Poorly maintained equipment is likely to cause injury to both clients and CSP members. It also creates distrust of mechanical aids. Under the provisions of the **Provision and Use of**

Work Equipment Regulations 1998 there is a legal duty on employers to ensure that equipment is maintained and in a safe condition at all times. The type and frequency of maintenance will vary with the type of equipment and its use. Manufacturers' recommendations are relevant when establishing preventative maintenance schedules. This information is provided by the manufacturer or supplier when the equipment is purchased and safety reps should ensure they obtain a copy under the rights provided to them in Regulation 7 of the SRSC Regulations.

d) The working environment

Having a workplace with adequate space to manoeuvre, adequate headroom and clear floor space will reduce the risk of injury. The ground should be stable and level, spillages should be dealt with promptly and there should be a comfortable working environment with adequate lighting, heating and ventilation.

e) Individual capability

Special consideration should be given to those who are pregnant, are disabled and/or have a history or back, knee, hip or hernia trouble.

Training

Training should be a complement to, not an alternative to, safe systems of work. TUC research suggests that training is by far the most common method used by employers to prevent back strain. Safety reps should be involved with employers in the development of manual handling training. This is backed up by the rights provided through Regulation 4A of the SRSC Regulations.

GN 190 to Regulation 4 makes the point that the provision of information and training alone will not ensure safe manual handling. The first objective in reducing the risk of injury should always be to design the manual handling operations to be as safe as is possible. This means improving the task, the working environment and reducing the load weight, as appropriate. Manual handling should be designed to suit individuals, not the other way round.

Effective training should complement a safe system of work; it has an important part to play in reducing the risks of manual handling injury. It is not, however, a substitute for a safe system of work.

a) The content of the training

Training should draw attention to the recognition of handling risks, for example:

- ⇨ Rocking a load from side to side before lifting to gain an idea of its weight;
- ⇨ How to deal with unfamiliar operations;
- ⇨ The use of handling aids;
- ⇨ The proper use of personal protective equipment;
- ⇨ The importance of good housekeeping;

⇨ Factors affecting individual capability;
⇨ Good handling techniques.

Further, training should cover:
⇨ The law in this area;
⇨ Avoiding hazards;
⇨ Dealing with unavoidable and unfamiliar manual handling operations;
⇨ The proper use of handling aids and PPE
⇨ Features of the working environment contributing to safety;
⇨ The importance of good housekeeping;
⇨ Factors affecting capability; and
⇨ Good handling techniques.

The training should include recognition of loads whose weight or shape could cause injury, and assessing weight before attempting to lift a load. It is important that the practices taught on training courses can actually be used in the workplace.

Where mechanical aids are used to assist with lifting, the training should include safe use of such equipment.

b) Good handling techniques

Training in good handling techniques is not a substitute for other measures to reduce injury, but it can be valuable alongside other risk reduction measures as long as it is consistently put in practice in the workplace. The training must also be tailored to the particular handling operations required in the jobs of the staff concerned.

GN 198 to Regulation 4 states that there is no single correct way to lift and there are many different approaches. The training in good handling techniques should be tailored to the particular operations likely to undertaken.

The following list, based on research carried out for the HSE, illustrates some important points relevant to a two handed symmetrical lift.

⇨ ***Think before handling or lifting.*** Plan the lift to determine whether help or handling aids are required. Where is the load going to be placed? Will help be needed with the load? Remove obstructions, such as discarded wrapping materials. For long lifts, such as from floor to shoulder height, consider resting the load mid-way on a table or bench to change grip.

⇨ ***Keep the load close to the waist.***

⇨ ***Adopt a stable position.*** Keep the feet apart, with one leg slightly forward, to give a balanced and stable base for lifting; adopt a good posture with the knees bent and the hands level with the waist when grasping the load, the back straight, maintaining its natural curve and the chin tucked in.

⇨ ***Ensure a good hold on the load.*** Hug the load as close as possible to the body. This is better than gripping it tightly only with the hands.

⇨ ***Moderate flexing of the back, hips and knees at the start of the lift*** is preferable to either fully flexing the back (stooping) or fully flexing the hips and knees (full/deep squatting).

⇨ ***Don't flex the back any further while lifting.***

⇨ ***Avoid twisting the back or leaning sideways, especially when the back is bent.***

⇨ ***Keep the head up when handling.***

⇨ ***Move smoothly.*** Do not jerk or snatch the load as this can make it harder to keep control and can increase the risk of injury.

⇨ ***Don't lift or handle more than can be easily managed.***

⇨ ***Put down, then adjust.*** If careful positioning of the load is necessary, put it down first, then slide it into the desired position.

CSP Advice

There are two important issues to be considered with respect to CSP members and manual handling. Firstly, many members undertake work as moving and handling trainers and advisers. Secondly, it is vital to ensure that the health and safety of CSP members at work is safeguarded. The CSP's Professional Affairs Department produces comprehensive professional advice titled *Guidance on Manual Handling in Physiotherapy.* This document is available on the CSP website.

Negotiating an effective Manual Handling Policy, and ensuring this is implemented fully, is a key mechanism in protecting CSP members at work. A local Manual Handling Policy should be fully negotiated with the Staff Side safety reps and should be comprehensive in line with best practice.

The issue of therapeutic handling has become a particularly contentious one in recent years. Many CSP members feel that their employer's minimal lifting policy conflicts with patients' requirements for treatment and rehabilitation. This does not have to be the case. A Manual Handling Policy should specifically stress the issue of therapeutic handling.

The CSP's advice is that a moving and handling policy should contain a specific section on handling for treatment. The following wording reflects the spirit of what the CSP would wish to see incorporated into such a policy.

"The employer will comply at all times with health and safety legislation, including the Manual Handling Operations Regulations 1992 and is committed to the prevention of manual handling injuries to staff. Therefore, risk assessments will be conducted and risk reduced to the lowest possible level.

The employer acknowledges that high quality rehabilitation is essential to its undertaking. There are many staff (particularly physiotherapists and physiotherapy assistants) who handle patients as an integral part of their treatment/rehabilitation, rather than moving them as part of another process.

In such situations it may not be appropriate to use mechanical lifting equipment. However, at these times, risk will be reduced by other means, such as greater staffing levels and more appropriate rehabilitation equipment.

Risk assessments will be conducted in the same way and risk reduced to the lowest possible level."

Safety reps experiencing difficulty in negotiating the inclusion of such a statement in their moving and handling policy, or who are concerned that members may be unwittingly working outside the requirements of the policy, should contact the Employment Relations Department at CSP Headquarters.

You should also refer to the Guidance Notes in the Manual Handling Operations Regulations and to the HSAC sector specific guidance.

PART FOUR

ORGANISING FOR HEALTH AND SAFETY

Including:

⇒ **Section 1: General Trade Union Organisation**

⇒ **Section 2: Working with Other Staff Side Safety Reps**

⇒ **Section 3: Organising for Health, Safety and Welfare**

⇒ **Section 4: Finding Information**

SECTION 1: GENERAL TRADE UNION ORGANISATION

Introduction

A good safety rep does not need to be an expert in health and safety law. Knowing where to find legal standards, then analysing and applying them to the health and safety concerns of CSP members is a key role of a safety rep.

Good organisation is the most important way in which trade unions – like the CSP – achieve improvements in their members' working lives. Indeed since trade unions were first formed in the 19th century, gaining improvements to terms and conditions of employment, protecting members and promoting fairness and equality have been key trade union aims.

While the CSP's Industrial Relations Department staff, safety reps and stewards provide valuable support to members at work, such assistance cannot be fully effective without members being involved and prepared to back the CSP in the claims we make to managers and employers.

Solutions to most health and safety problems require more than information and expertise. They require the collective support of members. This will only be developed through good organisation. That means ensuring that a maximum number of appropriate staff within your department join the CSP.

Once they have joined it doesn't stop there. It also means involving members, listening to them and building support around the issues that most concern members.

In this section we look at:

- ***What organising means***
- ***Starting to organise***
- ***Recruiting members***
- ***Establishing communications***
- ***Selecting your issues***
- ***Getting started***
- ***An audit of CSP membership.***

What Organising Means

Organising is essentially about solving our problems together; it is about involving members, about raising the profile of the CSP in the workplace and about the union having a real and effective role within Trusts.

Improving organisation is about decreasing the percentage of employees who are apathetic about their membership of the CSP, or indeed are not members of the organisation at all. It is about increasing the numbers of members who are active or who are supportive of the CSP's aims and objectives. The greater the support for the CSP's activities and campaigns, the more seriously managers and employers will view the organisation.

Starting to Organise

If you have identified that in your workplace there are some non-members or members who are apathetic, what should be done about it? As a safety rep, you shouldn't do it all yourself. ***You need a team***. This team will draw on your current activists and stewards. You can also include anyone who has a positive contribution to make. An effective team requires a number of characteristics. Most important are mutual respect of the team members and recognition that some people will be better at some things, and probably weaker at others. The aim is to use everyone's strengths for the benefit of the collective group.

The first task is to complete an audit of what is already happening and who does what. The audit in paragraph 7 will help you to do this. You should then ask questions like:

⇨ Are there enough stewards?
⇨ Are there enough safety reps?
⇨ How many members do you have?
⇨ Are there any gaps in membership that need addressing?
⇨ How do we communicate with members?
⇨ How do members communicate with the CSP?
⇨ What are the kinds of issues that members have become involved in previously?
⇨ When and where do we hold meetings about health and safety?
⇨ Do the agendas for meetings reflect the real needs of members?
⇨ What are the key issues important to members at present?

The audit will highlight the strengths and weaknesses in your present organisation. You can then move on to identify specific objectives to be prioritised and split into specific tasks. These tasks can be shared among all those who are involved.

In terms of the number of safety reps, it is for the CSP to determine how many are needed in each workplace. In the GN21 to Regulation 3 of the SRSC Regulations 1977, it states:

> *The Regulations mean that recognised trade unions may appoint health and safety representatives to represent the employees. Any disputes between employers and trade unions about recognition should be dealt with through the normal employment relations machinery.*

GN 26 states:

> *When trade unions are considering the number of health and safety representatives to be appointed in a particular case . . . Appropriate criteria would include:*
> *(a) the total numbers employed;*
> *(b) the variety of different occupations;*
> *(c) the size of the workplace and the variety of workplace locations;*
> *(d) the operation of shift systems;*
> *(e) the type of work activity and the degree and character of the inherent dangers.*

So, the numbers of safety reps agreed between the employer and the CSP should reflect the above. For example, it may be that if you are part of a large department one safety rep may not be sufficient. Equally, if you have a relatively small number of members, but they work on several sites, you may need additional safety reps.

Make sure that your objectives are realistic and are not over ambitious. Start with some of the more simple ideas for improvement first. If they work well, then move on to a task that is more challenging. Remember that developing good organisation is a slow process and one that is never finished.

Consider the range of tasks to be undertaken and how members can help. One reason preventing people from getting involved is a lack of confidence, or an assumption that they should know everything about the CSP before they become active within it.

One answer is to give people jobs with which they feel comfortable. For example, someone to keep the noticeboard up-to-date and tidy, or someone who has access to a computer, if they could type up a newsletter or the leaflets you may wish to use.

Recruiting members

It is important to know who your members are so that you are aware of who you represent in your role as a safety rep. However, it is also important to identify non-members who are potential members, both qualified physiotherapists and assistants.

Talk to non-members about why they have not joined the CSP; some may be members of other recognised trade unions but you will find that many are not.
Explain to them the benefits of joining the CSP, some of which are listed below:

- ⇨ Receiving information on a wide variety of matters, including health and safety;
- ⇨ Feeding information and views back into the CSP, to influence policies;
- ⇨ Receiving advice and support from safety reps and stewards;
- ⇨ Representation on all work-related matters, including health and safety issues, working conditions, hours, grading, pay, injuries, grievances etc.;
- ⇨ Access to free legal advice and representation on matters related to employment, personal injury and criminal as well on a number of non-work-related issues, including road traffic accidents.

Make sure that you and the steward keep a stock of the CSP's recruitment materials, including application forms.

Establishing Communications

There are many ways of communicating. How you communicate with your members and how they can communicate with you may be limited by a number of factors. For instance, many members work out in the community and you may not see them every day or even every month.

By far the best way of communicating is on a personal basis, face to face. When you chat to your members on a one to one basis, you not only have the chance to let them know about what the CSP is doing, you also get an opportunity of hearing their views and ideas. Additionally, you are able to let them know of the achievements the CSP has made at local level.

Week in and week out, CSP safety reps and stewards are helping and protecting members in all sorts of ways that others know nothing of. Such involvement includes:

- ⇨ Dealing with grievances;
- ⇨ Representing members at disciplinary hearings;
- ⇨ Taking up health and safety problems;
- ⇨ Attending meetings with other Staff Side unions to put the physiotherapy point of view;
- ⇨ Attending the Joint Health and Safety Committee;
- ⇨ Carrying out regular health and safety inspections to ensure CPS members health, safety and welfare is protected.

In other words, despite all the hard work done within the CSP, we very rarely "*blow our own trumpets*", and often members believe that any achievements are the result of the kind-heartedness of managers or the Trust employers. It is not difficult to give members an overview of the progress made through the CSP's involvement, without necessarily naming those who have been helped or represented.

To assist with this you could carry out an annual audit of the work done by stewards and safety reps, to identify the extent to which they have been involved in resolving disputes and assisting individuals or groups of individuals.

However, communicating one-to-one takes a great deal of time. The answer is to divide the job and to set up a network of those willing to participate. One-to-one communication should usually be supplemented with other forms of communication: workplace meetings, newsletters, posters, leaflets and surveys.

a) Meetings

Meetings are the traditional way of communicating with members and have an important role to play. If members don't attend meetings, we have to ask ourselves why that is. Don't just assume it's because they are apathetic. Turn that assumption on its head. It may be because the meetings are at the wrong time, in the wrong place. are over-long or deal with issues that members do not feel are priorities.

Make sure you survey members to find out what the best time is likely to be and where they would prefer that meetings were held. Keep the agenda short and ensure it covers topical issues that are relevant to members. Create a welcoming, involving atmosphere and get away from a formal format. Encourage everyone to participate and have their say. A well prepared, attended and run meeting can be inspiring.

b) Newsletters

Regular, short newsletters can really help your organisation. Encourage members to help by writing, designing, producing or delivering the newsletter. Make it their newsletter! Use your imagination, and make them fun and easy to read. They don't need to be only about trade union issues at your workplace. As a safety rep you will receive information from the CSP. Select the elements of mailings that are of particular relevance to local members for use in the newsletter.

c) Leaflets

Use leaflets when you want to attract members' attention to a particular matter that is current and important. Keep them short, and stick to one subject for each leaflet. Make them eye-catching and use illustrations to grab members' attention.

d) Posters

To liven up a noticeboard and make the CSP a much more visible presence in the workplace, use posters. These can be produced - covering local issues – on a computer, photocopied onto A4 paper and displayed.

e) E-mail

E-mail is easy, quick and friendly, so use it where you can. But don't forget about those members who do not have access to e-mail and keep using other forms of communication. Find out from your Facilities Agreement if you are entitled to use the Trust's e-mail for CSP communications.

f) Surveys

People like to be asked! An annual survey can be a very useful means of keeping in touch and ensuring members feel involved and are having their voices heard. Keep any survey short and the questions straightforward. You will get a better result if your members can answer it quickly and at once.

Always tell members the result of any survey you carry out. If you don't they will feel patronised and may be reluctant to fill in future surveys. As well as an annual opinion survey, you can also use surveys to glean the views and feelings of members on key issues at work. The following checklist will help you to prepare.

- ***Work out your aims***

Be very clear what the purpose is of carrying out a survey. What do you hope to achieve? Once you are sure what your objectives are it will help you to select your target group(s) and organise the content of the survey. You will probably have a fairly clear picture of what the feedback may be from a survey, particularly if it is dealing with a contentious issue.

However, avoid making any assumptions. Wait until you have the responses, rather than anticipating the result.

- ***Identify your target group***

Who do you want to obtain information from? This could include CSP members, all union members, non-members, line managers. If you are targeting all union members you will want to work jointly with safety reps from other staff side organisations.

- ***Content***

The type of questions you ask should be carefully designed. Thought must be given to how the analysis will be done. Include as many YES/NO questions or multiple choice questions as possible. These set questions can be ticked and they avoid long, wordy responses that are difficult to quantify when the analysis is done.

However, questions should not "lead" the respondents. Questions must be neutral and direct. This is turn will add authority to the results of the survey.

You may wish to use the suggested standard monitoring questions as part of your survey. For example, age, job category, gender, ethnic origin, disability. This allows you to compare results between surveys and between different groups of members.

- ***Method and distribution***

Identifying who you wish to survey will help you to decide how to carry out the survey. You need to consider which method is likely to receive the fullest and most accurate response. Possible methods include postal surveys, telephone surveys and surveys carried out by personal interview. Response rates to postal surveys can vary considerably. A response rate of 10%-20% is not unusual for an unsolicited survey sent out "cold". In other words, a survey of 1,000 will attract about 100-200 replies. However if the issue is one that people feel strongly about, if you advertise it will be sent, and if you chase people for replies you are likely to get a much better response rate. Personal interviews will give you a higher number of responses, but are much more time consuming and labour intensive. Beware, however, of carrying out a survey that produces few responses. The employer may argue it is invalid because it doesn't represent the real feelings of the majority of staff.

Some people are worried about filling in surveys because they are afraid they may be identified. Make it clear on the survey that all replies will be treated in the **strictest confidence** and that no individual respondent needs to include their name.

- ***Return cut-off date***

This is a date by which completed surveys should be returned, or telephoning and interviewing should end. Make sure this date ties in with any meetings or events where you wish to advertise the survey results. Remember you will need sufficient time after the deadline date to analyse the data and prepare a report.

- ***Analysis and report***

This part of survey work is usually the most time consuming, as it can take a long time to analyse the returns. When you have the results write them up into a report. Make sure you publicise them, especially to those who completed a survey. Let them see the outcome, and the work that the CSP is doing on their behalf.

You may also participate in larger surveys undertaken jointly by management and the Staff Side and/or the Safety Committee. The results will provide excellent information for your newsletters and will provide useful ammunition when you are negotiating with managers on issues that they feel are not particularly problematic.

COMMUNICATING WITH MEMBERS: KEY POINTS TO REMEMBER

- **Always ensure that any communication you distribute makes it obvious that it is from the CSP. Cut out and use the logo.**
- **When you're planning a communication with members, always start by asking yourself *"what am I trying to achieve?"* and *"what's the key message I'm trying to get across?"***
- **Ensure that you reach all your members. If you fail to do so, those that are excluded will feel angry and disillusioned.**

Selecting Your Issues

Issues get people working together, but they may not be the obvious things that trade unions usually see as important, such as this year's pay increase, longer holidays or better maternity provisions. People also get worked up about the way they are treated, about the nature of their jobs or about being taken for granted or undervalued. Increasingly, members are concerned about issues that have a direct health and safety element, like working time, work-related stress, violence at work and bullying.
If the CSP locally selects issues that members are not only interested in, but also feel strongly about, then members will help and become more involved. By using the information we gain by talking to members, we can select the issues we are either going to raise with managers or promote in our leaflets, newsletters and posters.

How do you decide which ones to take up? These should be the ones that members are most concerned about. You will also need to identify those that the CSP can do something about, those that fit in with what the CSP is trying to achieve, those which members understand and are willing to act upon. Use the following checklist to help you identify the key issues that affect your members.

- *Do your members think that it's important?*
- *Is it important to a wide range of members? (A big issue for some may be of little concern to others.)*
- *Does it fit in with the CSP's overall objectives?*

- *Is it divisive? (Some issues can divide your members and mean that some might work against the campaign)*
- *What can be done about it?*
- *Can we realistically expect any improvement or progress?*
- *Would the members support their stewards and safety reps on the issue?*
- *What sort of action would they take to support you?*

Some of the issues that are identified may also concern members of other unions. So you will need to liaise with the reps from those unions and work co-operatively with them in identifying your aims and planning your campaign.

Getting Started

A basic plan of action could look like this:

a) Establish your organising team and agree roles

Your team will draw on your current activists and reps. Do not be prescriptive about who is a member of the team. Include anyone who has a positive contribution to make, however minor. Each member of the team must know what their role is and what they are supposed to do.

b) Audit your organisation

Use the audit in paragraph 7 below to help you identify the strengths and weaknesses of your current organisation.

c) Identify your objectives and prepare your plan

Make sure that your objectives are realistic and achievable. Don't be too cautious either! A useful early objective would be to establish communications with your members to involve members. Also remember the ways of achieving it: giving members things to do and campaigning on issues that they feel are important.

d) Carry out your plan

Have a timescale in mind when embarking on your plan and keep to it. You may need to elect a co-ordinator who is prepared to chase others and ensure they carry out their share of the work. Make sure you get concrete feedback from those involved.

e) Review progress

Your team should be meeting regularly to discuss experiences and responses from members. This will help to build confidence and encourage those who have been less involved in the past. You may discover problems that need addressing, you may need to re-think your plan or your approach or you may need just to congratulate each other on your

success to date! At the end of the process, get together again to plan your next steps, and how you will put into effect the information you have gleaned.

An Audit of Your CSP Organisation

Completing the following audit will help you identify key action points for improving your workplace organisation for health and safety. It makes sense to work together with the steward in compiling and analysing the information the audit provides.

Photocopy the following page and then tick off the questions as you answer them.

AUDITING YOUR CSP ORGANISATION

1. Your workplace structure

- ❑ How many physiotherapists and physiotherapy assistants are there in your workplace?
- ❑ How many safety reps are there?
- ❑ Does every member have a safety rep?
- ❑ Are there enough stewards and safety reps?

2. Your members and non-members

- ❑ How many members are there?
- ❑ Do you know where they work and who their steward and safety rep are?
- ❑ Do you know what issues are of interest to your members?
- ❑ Is there a list of this information?
- ❑ Does this list/database record any involvement they've had with the CSP?
- ❑ How many non-members are there?
- ❑ Do you know where they work?
- ❑ Have these non-members ever been approached to join the CSP?
- ❑ What was the response?

3. Communicating with members

- ❑ Do you hold regular meetings with members?
- ❑ Do you circulate a regular newsletter to members?
- ❑ Do you make best use of noticeboards?
- ❑ Does the CSP have a visible presence in the workplace?

4. How members communicate with you

- ❑ Do all your members know how to contact you?
- ❑ Is there a network for communicating with members?
- ❑ Do safety reps talk to members during their 3 monthly health and safety inspections?

5. How active are your members?

- ❑ What percentage of your members:
- ❑ Have attended a CSP meeting in the past year?
- ❑ Have been involved with health and safety issues?
- ❑ Have asked for help with a health and safety problem?
- ❑ Have undertaken any form of union activity?

6. How can members participate?

- ❑ Do safety reps and stewards encourage members to become active in the CSP?
- ❑ What union activities can members get involved in?
- ❑ Do you circulate an annual survey to obtain members views?

SECTION TWO: WORKING WITH OTHER STAFF SIDE SAFETY REPS

Introduction

The NHS employs one and a quarter staff and is the largest employer in the UK. There are many areas of NHS employment, and some private sector employment, where a range of unions are recognised to represent the interests of the different workers. As a CSP safety rep, you will find yourself working to improve health, safety and welfare standards alongside safety reps from all the other unions recognised by your employer.

There will be a number of health and safety issues that affect not only CSP members. Many hazards and risks will pose threats to other employees. So it is important that you find out who the other unions' safety reps are, and begin to build links and channels of communication.

In this section we look at:

- ***Recognition and facilities agreements***
- ***Identifying other staff side safety reps***
- ***Working with other staff side unions.***

Recognition and Facilities Agreements

Trade unions that represent members working within an organisation are only able in law to do so with the express agreement of the employer. The formal name for this is a ***recognition agreement***. This may be a verbal agreement, but today is more likely to be a written agreement. If you have not seen your recognition agreement, it is important that you get hold of a copy for your own use and information. You should be able to obtain a copy from the human resources department or your steward.

The recognition agreement stipulates those areas where your employer has agreed to talk to the appropriate trade unions on behalf of their members. It is a joint agreement between the employer and its recognised trade unions. Both sides have agreed to abide by the terms of the written agreement in order to deal with industrial relations issues and workplace problems.
This usually includes union representation for:

⇨ Disciplinary matters;
⇨ Grievance handling;
⇨ Pay and conditions of employment;
⇨ Equal opportunities;
⇨ Health and safety;
⇨ Redundancy.

This is not an exhaustive list.

The recognition agreement will also outline the agreed ways in which negotiation and consultation with trade unions will take place, including on health, safety and welfare

matters. So it is important to review your employer's document to identify any information or decision-making procedures that you may not already know of.

Recognition agreements usually contain the arrangements made between the employer and the trade unions for the facilities to be provided to elected stewards and safety reps. This is called a ***facilities agreement*.**

There is a framework National Agreement on time off and facilities for trade union representatives in the NHS, contained within Section 25 of the **National Terms and Conditions of Service Handbook**. However, the details of your rights to paid time off for training, to undertake your functions as a CSP safety rep and the practical facilities you are entitled to access in the workplace will be contained with your Trust/Board's Facilities Agreement, so you should obtain a copy of this document. Check it carefully to ensure that you are receiving and exercising all your rights to paid time off to undertake the work you do for the CSP and your members.

New safety reps are often surprised at the content of the facilities agreement. You may find that it stipulates a specific number of days per annum each safety rep is entitled to take off with pay to undertake training. Additionally, it may outline an agreed number of hours per week or month that you are entitled to take off work with pay to undertake your functions.

However, you may find that the facilities agreement is not written down in detail, but is based on custom and practice. In this latter case, talk to other union safety reps if you are newly elected. You need to find out what your rights are to paid time off from work to undertake your health and safety functions and activities, as well as your rights to paid time off work to undertake training.

It is important that you have access to any agreements of this type in case your manager creates difficulties for you in terms of attending courses and taking time off to carry out inspections, attend meetings or deal with health and safety issues.

Identifying Other Staff Side Safety Reps

When you are employed by a large organisation, you will find that many of the health and safety issues that are of concern to CSP members affect other groups of employees as well. So a strategy for resolving these problems may need to be planned across departments or the whole workplace.

There is little point in CSP safety reps working in isolation on such matters. You need to co-ordinate your action with the safety reps of other appropriate recognised unions. To help you build links with the other unions you should consider the following:

- Find out who the lead person is for the trade union side on the Safety Committee (Staff Side Chair). Personnel/Human Resources, or the previous safety rep, should be able to advise you about this. The Staff Side Chair should be an important source of information and guidance. You may wish to raise health and safety issues important

to the CSP with them to ensure they are placed on Safety Committee agendas where necessary;

- Compile a list of the safety reps of other recognised trade unions. You can begin this by asking the Staff Side lead person, and then by asking around. If you have recently taken over from a previous safety rep ask them who deals with safety issues for other unions. Once again, the Personnel Department should be able to assist you with this. Ensure that you keep the list up-to-date together with contact numbers and information on their shift patterns so that you will know when they may be at work;

- Find out when the next Safety Committee is due to be held. If you do not have a seat on the Committee, ask if you can sit in as an observer. This will help you to identify who is who in terms of both the staff side and the management side teams. If you do find you will be sitting on the Committee, ask for a list of members from the staff side in advance. Approach one of the other members and ask if you can attend the pre-meeting and the Committee meeting with them. This will allow you to get a grasp of the way things work more easily, because you can ask the person you are attending with to explain what is happening, how issues are dealt with and how you can play an effective part.

Never feel you are expected to be an expert in health and safety just because you have been elected by your members. You will need training and you will need to find your feet in terms of the way things work within your workplace.

You do not have to re-invent the wheel! If you don't know – and there's no reason why you should – ask others. You will quickly learn who is most useful and approachable. Problems that may initially seem insurmountable to you, because you are inexperienced, may well have been handled successfully by other unions' safety reps in the past.

Developing a habit of finding out whether there have been any similar issues raised and dealt with and what the result was. In some instances, you will find that they were not handled very well and you can learn from the mistakes made and so avoid them. In others, you will find that valuable solutions to problems have already been agreed and you can adopt and utilise these.

Working with Other Staff Side Unions

Once you have done the background work of identifying who is who on the staff side, you need to think about how you can work together with other union safety reps on those issues that are wider than the physiotherapy department. The following are some suggestions of ways in which you may wish to do this.

a) Liaising with other local safety reps

You need to find out which other unions are represented in your area of responsibility and then identify their safety reps. There will be common issues relating to health, safety and welfare standards that affect all those in your workplace. You need to have contact with

these other unions' safety reps so that you can co-ordinate action and avoid repetition. The following suggestions for joint involvement will be of value.

- ***Meetings***

Arranging and holding regular meetings of all CSP safety reps and those from other unions within your Department. This will allow you to discuss and co-ordinate activity. It will also ensure that other safety reps are aware of what the CSP are doing and so avoid duplication. Additionally, you can share out work between unions, so that one safety rep is not facing the prospect of carrying out all the work alone. Regulation 4 of the SRSC Regulations entitles you to take paid time off work to participate in such meetings.

- ***Inspections***

Carrying out joint inspections – again to avoid duplication. Alternatively, sharing the job of inspecting the workplace, so that you do not do all four inspections during the year. Even if you intend to participate in all inspections, sharing the reports of inspections between safety reps makes sense. You can then ensure that any areas that are missed can be built into checklists for use in future inspections. Additionally, working with safety reps from all unions will give you greater strength in seeking improvements from managers. Reviewing inspections and planning what needs to be done to improve safety standards on a joint union basis makes practical good sense.

- ***Safety committees***

Establishing and participating in a departmental Safety Committee, if it is felt that there is a need to create such a body. In a number of larger workplaces, there are not only committees covering the whole organisation, but there are also committees based in departments, which can respond more quickly and effectively to any local hazards and risks.

It is vital that you liaise with other unions' safety reps prior to participating in such a committee, and planning a joint approach prior to and during the meetings.

If there is only an overall Safety Committee for your organisation, and once you know who sits on the committee, work with the other safety reps in the department to ensure key issues important to your members are raised at that level. If one of the safety reps has a seat on the committee, ensuring that there is effective feedback from the meetings is vital.

- ***Communicating with members***

Discussing with other unions' safety reps the value of joint communication with members saves time and duplication. Ensure there is a health and safety noticeboard in the department and share the task of preparing and updating the information displayed. On issues that affect all staff in the Department, produce joint surveys and leaflets (or other forms of communication). In term of surveys, share the work of preparing, distributing and

analysing the returns. Promoting the idea of joint union working on relevant issues helps to build membership support and a co-operative approach to health and safety.

b) Liaising with the staff side

Beyond your own department, it is important to build strong links between the CSP and other unions. This may not be possible in the case of all unions, but you may well find that some unions' safety reps are happy to work co-operatively.

Showing a united front to management will give the staff side strength in negotiations and is likely to lead to greater achievements. Disagreements between the staff side will encourage the management side to adopt more divisive tactics, and these are likely to be detrimental to the chances of gaining real improvements to health and safety standards. The following suggestions for joint involvement are of value:

- ***Pre-meetings and debrief meetings***

It is important to establish the practice of pre-meetings prior to, and debrief meetings after, Safety Committees, if these do not happen already.

If it is the norm to hold a staff side pre-meeting before going in to talk to the management side, CSP safety reps should attend. This is the case even if the CSP does not hold a seat on the committee. It is vital that issues that concern CSP members are raised with the Safety Committee. Likewise, it is important to ensure that the CSP's views on matters placed on the agenda for Safety Committee meetings are part of the staff side's demands; otherwise, local members will not have a voice at this level.

Pre-meetings are essential in order that the staff side is well prepared to meet the management side. The staff side collectively needs to discuss:

⇨ The views of the differing groups of members and unions they represent;
⇨ Their priority issues;
⇨ Those areas on which they are prepared to offer a compromise;
⇨ Their minimum and maximum positions in negotiations;
⇨ Arguments that can be used to back up their claims;
⇨ Who will do what in the meeting;
⇨ The counter-arguments the management side are likely to put forward.

Debrief meetings are necessary after the Safety Committee is over, and will probably only take 10 minutes. This allows an analysis of what was achieved at the meeting, what should happen next and who needs to do what.

Always ensure members are given information about the outcome of Safety Committees as this is a useful way of reminding members of the work carried out on their behalf by the CSP.

- ***Joint communications***

There will be issues that affect everyone working in the organisation which need to be dealt with at the Safety Committee. It makes sense for the staff side to work together in terms of consulting and advising members in relation to these common areas of concern.

Suggesting that the staff side prepare leaflets or posters on these issues jointly will prevent duplication of effort or confusion over the message.

Likewise, carrying out surveys of all staff via the Staff Side will help to ensure that the views of all members are collated. Voicing the views and demands of all unions' members will add strength to the Staff Side's case when they are raising issues with management.

Another useful practice is to organise staff meetings jointly as a means of ensuring that a consistent message is received across departments. Apart from the value of working together to create a stronger voice for all union members, it also means the work is shared and the responsibility less onerous for individual safety reps.

SECTION 3: ORGANISING FOR HEALTH, SAFETY AND WELFARE

Introduction

Health, safety and welfare issues are increasingly significant in the workplace. As workloads grow and pressure of work increases, many CSP members are suffering the consequences through stress, ill-health and more accidents. Despite extensive legal provisions to protect workers' health and safety, it is doubtful that any employer fully meets their responsibilities to their staff.

As a result, it has become even more important that trade unions like the CSP take the steps necessary to protect members from changes at work that may cause problems. As with other issues at work, well informed, effective local organisation will enable safety reps to achieve real improvements to health and safety standards within workplaces.

In this section we look at:

- ***Involving members in health and safety***
- ***Communicating with members***
- ***Ensuring sufficient safety reps***
- ***Being available for members***
- ***Ensuring safety reps' rights are recognised***
- ***Checking management complies with the law***
- ***Organising for health and safety: a checklist***
- ***A safety rep's toolkit.***

Involving Members in Health and Safety

You cannot function well as a safety rep unless members are interested and involved in what you are trying to achieve. The difficulties in involving members should not be underestimated. Understanding some of the reasons behind members' lack of interest may help you to improve the position. Members may:

⇨ Take minor hazards for granted;
⇨ Assume that some hazards are just *"part of the job"* (for instance back injury);
⇨ Feel so demoralised that they believe it's impossible to secure improvements;
⇨ Believe that their workplace is not really *"dangerous"* in the same way as a factory or foundry may be;
⇨ Feel that accidents result from carelessness without looking at the real causes;
⇨ Work with hidden hazards, whose ill-health effects are not always immediately obvious (for example noise, fumes);
⇨ Associate health and safety with too many rules and too much fuss;
⇨ Fear that complaining about health and safety issues may affect their job security or promotion prospects;
⇨ Think *"it will never happen to me"*.

Safety reps can change some of these attitudes by showing members that the CSP can improve their working conditions and health prospects. Indeed, better health and safety

standards can improve the quality of working life, reduce stress and create a more pleasant working environment. With members' support safety reps will be able to put more pressure on managers.

It is not easy to build members' interest in health and safety, but it can be achieved with a structured, planned approach to trade union organisation. The following are some suggested ways of encouraging members' interest in health and safety, and support for you as their safety rep.

- Ask management if you can talk to new physiotherapy staff during their induction.
- Use the notice board and change the display regularly so that people learn to look at it and recognise it's important to them.
- Advertise who the safety rep is and how you can be contacted.
- Place health and safety on the agenda of meetings and ensure that there is something interesting and relevant to report.
- Arrange special meetings to keep members informed and report back on progress made on any problems you've been handling.
- Talk to members as you carry out your inspections.
- Conduct surveys to find out what interests and concerns your members in terms of health, safety and welfare.
- Hold meetings on specific topics and where appropriate invite outside speakers.
- Identify any members who have any particular knowledge or skills and involve them as much as possible.
- Encourage members to undertake hazard spotting and report problems they find to you.

Communicating with Members

To back up any demands for improvements to health and safety that you make of managers, you need to ensure that members are backing the CSP's aims. If managers know that members are genuinely concerned or angry about a health and safety issue, they will take your work as the safety rep more seriously.

Communication is a two way process. It is not just about talking to members. It is also important to find ways of identifying what members think and feel on any issue. Listening is an important skill for all safety reps.

Members should be encouraged to contact their safety rep whenever they have any health, safety or welfare concerns. They should also be urged to report to you any changes, or proposed changes, if they feel these may have an impact on health and safety.

To build a strong trade union culture among CSP members, it is essential that regular information – relating to local, relevant issues – is reported to the whole membership.

It is likely there will be issues that the members may not consider to be health and safety hazards, particularly those involving long-term effects to health and well-being. Once again, it is important that they receive regular information via the CSP of existing hazards and their likely impact, or any new concerns.

For example, if the employer proposes relocating the physiotherapy department, this may seem to be an issue for CSP stewards, but it is in fact an issue for safety reps as well. Regulation 4A(a) of the SRSC Regulations states:

> *"Without prejudice to the generality of Section 2(6) of the Health and Safety at Work 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 representative concerned represent."*

This means that employers must consult with safety reps – with a view to reaching agreement – about proposed changes ***before any change takes place*** in order to safeguard the health and safety of members.

This is a crucial right and it is important that stewards and safety reps work together when changes are proposed to ensure there is agreement around the safest manner of making the transition.

Are all members made aware of the legal duties their employer has towards them? Have they had the health and safety training that they are entitled to in law? Do the minimum standards laid down in Regulations apply in your workplace and do members know what these are?

These are all key questions that you need to answer. On the basis of the information you gather, and depending on the answers you receive, you need to raise such issues with managers to agree remedial action.

Very few employers do inform their workers of all the risks and hazards they face at work, despite the fact that a number of legal sources give safety reps and members the right to that information. It is vital in building a good workplace organisation, that all this information is sought, compiled and used to the benefit of CSP members.
If improvements to the working environment are to be made, it is important that these issues feature regularly in whatever means of communication are used between safety reps and the members they represent.

Ensuring Sufficient Safety Reps

The CSP, along with other unions in the NHS, has the right to appoint health and safety reps in any workplace where the union is recognised. Although numbers are not specified in law, Regulation 3 of the SRSC Regulations suggest that the factors to be considered include:

- ⇨ Total numbers of members;
- ⇨ Variety of occupations represented;
- ⇨ Different locations;
- ⇨ Shifts;
- ⇨ Working patterns;
- ⇨ The extent of existing hazards.

It is also worth considering the constituency of each safety rep. Should a safety rep cover different physical areas or different groups of workers? It is good sense to ensure that there is sufficient coverage of safety reps to cover holidays, sick leave and absences to attend training courses.

Safety reps are appointed – or elected - by CSP members. They are responsible to the members who elected them, and not to management. It is important to remember this, especially when you are newly elected.

Whatever your job is as an employee, when you are carrying out your functions as a CSP safety rep you have the same status as the manager you are dealing with and your role is backed up by law. You have the right to be involved, and you must ensure you are assertive in carrying out your role on behalf of the CSP and local members.

Being Available to Members

There is no point in having CSP safety reps if the members they represent do not know who they are, what they can do on behalf of members and how they can be contacted.

Lists of first-aiders are posted in most workplaces. Why not do the same with the names of safety reps? Publish names, locations and telephone extensions for all safety reps on noticeboards.

Ensure that managers know who the safety reps are and that they should be contacted in the event of a safety hazard becoming evident, or an accident/near-miss occurring.

You may wish to consider carrying out an annual audit of the work carried out by the safety reps. Many improvements to safety standards take place in workplaces specifically because of the action and competence of CSP safety reps. However, often members assume these steps forward have come about because of management action, rather than as the result of a safety rep making demands.

Keep records of all the activities you carry out as a safety rep. You could then list any achievements on a leaflet or poster for all members to access. This could include:

- The number of inspections that have been carried out and a summary what has happened as a result;

- The types and numbers of health and safety problems that reps have dealt with and what the outcomes were;

- Any involvement by CSP safety reps in staff side initiatives on health, safety and welfare and what such campaigns or activities have achieved within your members' workplace;

- Any improvements achieved through CSP safety reps using their rights to information and consultation and the impact of this involvement in terms of creating safer systems of work or better safety standards. This should include not only major improvements, but also all the smaller scale issues that you have been involved with, since they often have as much impact on members as some of the large scale projects.

In terms of communicating effectively with members, it is important to remember that you should always:

- Consult with members when you are planning to raise an issue with management. Ask them what they want out of any agreement with the employer. Discuss with them how best you might achieve such an outcome. Reinforce that you need them to back you in pressing for improvements in safety standards; and

- Let members know the results of a discussion/meeting with management. Ensure you organise some mechanism for feeding back the key points raised, discussed and agreed. Members will quickly begin to feel ignored and disinterested in your work if you don't involve them throughout.

Ensuring Safety Reps' Rights are Recognised

The law underpins your rights to act as a union appointed safety rep and to represent the interests of CSP members in your department. Ensuring that your managers respect this is an important element of gaining recognition once you have been elected.

The CSP recommends that you approach your manager as soon as possible following your election to seek a meeting with them. At this meeting you can discuss the role you intend to play and identify ways in which you can work in partnership in order to improve safety standards within physiotherapy.

Try to gain agreement for a regular meeting between you and the manager. Ensure the meeting is timetabled into the manager's diary and insist that it takes place, even if you have only minor matters to discuss. Make sure that these meetings take place in a location where you can discuss health and safety seriously and without interruption. Don't allow the meetings to take place in an ad hoc way, or in a setting that is public or busy.

It is imperative that you take an assertive approach that suggests that you will not be ignored or fobbed off by the manager. If you find that your manager is not used to dealing with a CSP safety rep in this manner, the following information will help to boost your position in the workplace.

a) Paid time off to carry out your functions

Under Regulation 4(2) of the SRSC Regulations, all CSP safety reps have the legal right to reasonable amounts of paid time off from their normal duties to undertake their functions as a safety rep.

This right is reflected in page 12 of ACAS guidance titled *Trade Union Representation in the Workplace,* outlining the legal entitlements of representatives of recognised trade unions.

> *"The Safety Representatives and Safety Committees Regulations 1977 Regulation 4(2)(a) requires that employers allow union health and safety representatives paid time, as is necessary during working hours, to perform their functions."*

You need to check that you are getting sufficient time off to enable you to do all the work required of you by the CSP. If you are not sure you should:

- Find out what your Facilities Agreement says about paid time off for union safety representatives. You may be surprised by how generous the agreement is and may discover that you are not taking sufficient time off;

- Ask other CSP safety reps in your workplace, if they are any;

- Find out what paid time off is taken by other unions' safety reps. Even if there is nothing laid down in relation to paid time in your Facilities Agreement, you can seek parity with union reps in other departments. If you find any useful precedents by asking around, raise with your manager that it is fair that CSP safety reps should be entitled to the same.

b) Paid time off to undertake trade union training

Paragraphs 32 and 33 of the ACOP to Regulation 4(2) of the SRSC Regulations states:

"32. Under Regulation 4(2)(b) of those Regulations the employer has a duty to permit those safety representatives such time off with pay during the employee's working hours as shall be necessary for the purposes of 'undergoing such training aspects of those functions as may be reasonable in all the circumstances'.

33. As soon as possible after their appointment safety representatives should be permitted time off with pay to attend basic training facilities approved by the TUC or by the independent union or unions which appointed the safety representatives. Further training, similarly approved, should be undertaken where the safety representative has special responsibilities or where such training is necessary to meet changes in circumstances or relevant legislation."

This right is reflected in paragraph 22 of ACAS Code of Practice 3 *"Time off for trade union duties and activities"* (2010).

"The Safety Representatives and Safety Committees Regulations 1977 Regulation 4(2)(b) requires that employers allow union health and safety representatives to undergo training in aspects of their functions that is 'reasonable in all the circumstances'."

It is important to recognise that the training provided should be via the CSP, which is registered as an independent trade union, or the TUC. Any training offered on a joint basis with the employer may complement trade union training. However it should never be seen as an alternative to the training provided for by Regulation 4(2).

c) Consultation with safety reps

Both HSAWA and the SRSC Regulations provide safety reps with the legal right to be consulted by the employer on proposals to take measures to maintain the health, safety and welfare of the safety rep's members.

You need to ensure that this becomes a normal part of your relationship with your manager. Regulation 4A of the SRSC Regulations states that you should be consulted in good time, with a view to reaching agreement.

You should also be consulted about the appointment of the *"competent persons"* required by the Management Regulations, and on staff health and safety training.

If you find that the employer is not fulfilling their duties to consult you, you must raise this and demand that such a practice stops. Again finding out the extent to which other unions' safety reps are consulted in other parts of the organisation will provide you with useful ammunition in raising this issue within physiotherapy.

One problem you may have is that if previous CSP safety reps have allowed managers to ignore their legal duties, they may believe that no such legal requirement exists. If you need help with this, you should contact your Senior Negotiating Officer.

d) Inspections

Under Regulation 5(1) of the SRSC Regulations safety reps are entitled in law to carry out an inspection of their members' workplace, or any part of it, at least every three months. You must ensure that you use this right.

Inspections are one opportunity to build active links with members. They are a good way of introducing yourself to members, and then reinforcing your role on a quarterly basis. It is important to recognise that GN52 to Regulation 5 gives safety reps the right to talk to their members in private in the course of an inspection.

> *" HSE sees advantages in formal inspections being jointly carried out by the employer representatives and safety representatives, but this should not prevent health and safety representatives from carrying out independent investigations or private discussion with employees."*

It is useful to carry out inspections with the manager. They provide the safety rep with an opportunity to reinforce the equality of the relationship between the two roles. On a practical note, it means you can discuss possible hazards as you walk around, and begin the process of discussing how problems could be remedied during the inspection.

Both safety reps and managers have commented that they see their workplace quite differently during an inspection. The process focuses attention on health and safety specifically, rather on than the usual day-to-day activities of the workplace.

If the manager refuses to accompany you, or is constantly deferring inspections because of pressure of work, you are within your rights to carry out the inspection alone. It may be useful to talk to the manager at the beginning of each year to plan your quarterly inspections in advance. This will save you the effort of *"pinning"* the manager down every time you wish to inspect.

Remember that safety reps are also entitled to carry out an inspection following an accident or near-miss (Regulation 6, SRSC Regulations). Again you should assert your right to be notified of any accidents or near-misses and your right to inspect the site of the incident.

e) Provision of information to safety reps

Regulation 7 of the SRSC Reps provides safety reps with the right to be provided with any information necessary to enable them to carry out their functions. This could be information from the employer. For example, statistical information on the reasons for sickness absence to enable the safety rep to identify whether working practices have an impact on increases to sickness levels or whether equipment in use leads to higher incidences of work-related injury.

Other information from the employer should include copies of risk assessment reports, copies of RIDDOR forms, statistics from the accident book, and so on. Alternatively, it could

be information, which must be provided in law, from manufacturers, importers or suppliers on the potential hazards of equipment or substances in use in the workplace.

Checking Management Complies with the Law

It is the employer's legal duty to provide safe systems of work. Having the law in place is only the beginning of this process. If there is no mechanism for ensuring employers comply with their duties, then the law can become meaningless.

The role of the safety rep in policing the law in the workplace is vital. The following key questions can help you to determine the extent to which your employer is fulfilling their legal duties.

Photocopy these following pages and then tick the appropriate box when you are sure the duties are being carried out by your employer.

Checklist for Management Action

- ☐ Does the employer have a written statement of health and safety policy. Do all union safety reps have a copy? Is it reviewed and updated on a regular basis?

- ☐ Has the employer appointed one or more *"competent persons"?* Were union safety reps consulted? Does the appointed person(s) have *"sufficient training and experience or knowledge and other qualities"* to enable them to carry out measures required of them? (Regulation 7 of the Management Regulations 1999) Do you have their names and contact information?

- ☐ Are all required risk assessments being carried out? Are safety reps involved in the planning and training of staff? Has the employer produced a written report of the findings of the risk assessments? Have safety reps been provided with copies? (Regulation 3 of the Management Regulations.)

- ☐ Does the employer intend to consult with safety reps over the *"principles of prevention to be applied"* in remedying any significant risks identified? Does the employer agree that removing the risk altogether is the ideal starting place, followed by taking steps to minimise the risk? (Regulation 4 and 5 of the Management Regulations).

- ☐ What staff training in health and safety takes place? Is it adequate? Have safety reps been consulted in order to agree the content and duration of such training? Is refresher training available to staff in the event of changes in the workplace?

- ☐ Does the employer carry out any health surveillance? Do safety reps have access to the information this produces? (Regulation 6 Management Regulations)

- ❑ Does the employer comply with their duties under RIDDOR? Do safety reps have access to copies of any report forms submitted to the HSE? Do discussions take place on how to reduce the number of accidents or near-misses on a regular basis?

- ❑ Are *"procedures for serious and imminent danger and for danger areas"* in place? Are they adequate? Do staff get sufficient training in these procedures for use in the event of an emergency? Are they reviewed regularly? (Regulations 8 and 9 Management Regulations)

- ❑ What arrangements are in place for providing "supervision and instruction" to staff in terms of health, safety and welfare within the workplace? Do all senior and line managers understand their responsibilities for ensuring the health and safety policy is put into effect in all areas of the organisation? Do managers receive adequate training to enable them to do this? (Regulations 10 and 13 of the Management Regulations.)

- ❑ Are there proper arrangements in place for co-ordinating health and safety policy and practice with other organisations who use the employer's premises (for example contractors)? Likewise, are staff working off-site in other employers' premises protected in terms of their health and safety? Are these policies put into effect consistently? (Regulations 11 and 12 of the Management Regulations.)

- ❑ Does the employer comply with their duties under the COSHH Regulations 2002 in terms of:
  - Training of staff;
  - Information to staff;
  - Safe storage of substances;
  - Clear and appropriate labelling of substances.

Organising for Health and Safety: A Checklist

Use the following checklist to help you in developing and maintaining your health and safety organisation within the workplace. Photocopy the checklist and then work your way through each point and tick those that you feel have been undertaken.

- ❑ Identify any concerns CSP members have about health, safety and welfare at work. Involve members in every stage of raising and resolving problems.

- ❑ Provide members with information, guidance and advice on all health, safety and welfare issues that may concern them.

- ❑ Regularly feature health and safety matters on meeting agendas.

- ❑ Elect sufficient CSP safety reps to cover the entire membership and inform all members of the name and location of their safety rep.

- ❑ Make certain that all safety reps receive sufficient trade union training.

- ❑ Ensure that all safety reps are given adequate paid time off and assistance from the employer to carry out their legally supported functions.

- ❑ Carry out regular inspections of all parts of the workplace.

- ❑ Investigate all accidents and near-misses.

- ❑ Investigate complaints reported by CSP members. Ensure members are involved in reaching decisions to resolve such matters.

- ❑ Put all reports in writing, even if they are only confirming conversations. Keep copies and store them in a way that ensures you can retrieve them easily.

- ❑ Ensure the Safety Committee is effective, not just a talking shop. Ensure that the CSP has involvement in the decisions taken by the staff side.

- ❑ Request health and safety information from your employer on a regular basis.

- ❑ Be assertive in pressing management to comply with their legal duties for the health, safety and welfare of CSP members.

- ❑ Make certain that safety reps are consulted by management – in good time – when changes that will have an impact on health and safety are being considered.

- ❑ Keep in regular contact with other safety reps, including those elected by other Staff Side unions.

- ❑ When an agreement has been reached with your employer, ask for it in writing. Make sure the arrangements for implementation are both practical and achievable.

- ❑ Publicise successes you achieve. Use these as examples to build members' confidence in terms of challenging managers on other health and safety issues.

- ❑ When recruiting new members to the CSP refer to all the successes the union has been a party to, in terms of health and safety standards. Encourage all members to become actively involved. Make good use of the skills of all members, even if they don't wish to become a steward or a safety rep.

A Safety Rep's Toolkit

If you are organised and well prepared as a CSP safety rep you will feel so much more confident. You are also likely to be more effective. As a result, the CSP members who elected you will place greater trust in you and be more prepared to support you in the work you are doing to improve their standards of health, safety and welfare in the workplace.

The following checklist will help you to put together the essential items that you will need to ensure that you are as organised and effective as possible. You may not need personal copies of all of the items in the checklist. You may only need to know where they are kept and how you can easily access them in order to ensure that you are as well prepared as possible.

Remember that as a recognised trade union safety rep you have the right under Regulation 4A of the SRSC Regulations to be provided with facilities and assistance from your employer to enable you to carry out your functions.

Regulation 4A 2
"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.

The contents of a recommended CSP ***"Safety Rep's Toolkit"*** are outlined below. Check what you already have, and what you need to obtain. Photocopy the checklist and then tick the box next to the item when you have access to it.

(a) Essential Requirements:

- ☐ A copy of the Recognition Agreement between the joint trade unions and the employer.

- ☐ Details from the CSP Industrial Relations Department of forthcoming CSP and TUC training courses for safety reps.

- ☐ A copy of the Facilities Agreement outlining the rights that union reps and safety reps to paid time off from their normal work to undertake their functions and training.

- ☐ The basic facilities that you will need to play an effective role on behalf of members. The very least you should have – over and above paid time off work to undertake your functions as a safety rep – is:
  - Access to a confidential and quiet telephone
  - Use of photocopier
  - Use of the internal mailing system (traditional and electronic)
  - A lockable filing cabinet within which you can store your information and papers in a confidential manner
  - Use of word processor or secretarial services
  - A room or other space where you can interview members and witnesses when necessary.

- ☐ Information about any joint trade union facilities afforded by the employer that you can utilise. For example an office, photo-copying equipment, internal post or e-mail arrangements.

- ❑ A copy of the employer's Grievance Procedure, so that you can easily access it should you wish to raise health and safety problems formally.

- ❑ A personal copy of the following:
  - The SRSC Regulations (2015 edition);
  - The CSP's Safety Rep's Information Manual;
  - The CSP's Safety Rep's Briefing Papers;

- ❑ A copy of the employer's written Health and Safety Policy and other relevant health and safety documents.

- ❑ The name and contact number of the employer's chief *"competent person"* (for example, the Safety Officer)

- ❑ The name and contact number of the Staff Side chair on the joint Health and Safety Committee.

- ❑ A list of the names and contact numbers of as many trade union members of the Safety Committee as possible. Include all recognised trade union safety reps in the list, even if they rarely or never come to Safety Committee meetings.

- ❑ The name and contact number of the manager responsible for health and safety in your department.

- ❑ A health and safety noticeboard for display in your department. Alternatively agreement that a section of the general union noticeboard will be dedicated to health and safety issues.

- ❑ A list of all other CSP reps (stewards and safety reps) in your department, including those who represent members working in the community.

- ❑ A list of all the CSP members you represent.

- ❑ Recruitment information from the CSP for signing up new members.

- ❑ Information on the type and extent of health and safety training for the CSP members you represent that has been carried out to date by your employer.

- ❑ Posters for display on the noticeboard to advertise that you are the safety rep and where you can be contacted

- ❑ Names and contact information for the CSP headquarters.

(b) Workplace Inspections

- ☐ An annual programme of dates for inspections agreed with the manager who will be accompanying you.
- ☐ Copies of previous reports from inspections made.
- ☐ A checklist for use during inspections (there may be a standard checklist that you can use and adapt).
- ☐ Copies of RIDDOR report forms and records from the accident book.
- ☐ Copies of the report forms used in your workplace for completion after inspections.
- ☐ Information about where to submit your report forms following inspections.
- ☐ Items such as a clipboard, a tape measure and camera for use during inspections.

(c) Information

- ☐ The location and availability of any joint resources for the use of union safety reps. For example, a health and safety library, access to computerised information from outside organisations, in particular the HSE, the TUC and the Labour Research Department. It may be advisable and cost effective to purchase copies of required resource material for the use of all safety reps, rather than on an individual basis. However if this is agreed, the resources must be placed in a central location that is easily accessible for all safety reps.
- ☐ Access to key legal standards – not necessarily just for your personal use. The key documents you are likely to need to make use of include:
  - The Health and Safety at Work Act 1974;
  - The Management of Health and Safety at Work Regulations 1999;
  - The Workplace (Health, Safety and Welfare) Regulations 1992;
  - The Manual Handling Operations Regulations 1992;
  - The Provision and Use of Work Equipment Regulations 1998;
  - The Health and Safety (Display Screen Equipment) Regulations 2002;
  - The Personal Protective Equipment Regulations 1992;
  - The Control of Substances Hazardous to Health Regulations 2002;
  - The Reporting of Injuries, Disease and Dangerous Occurrences Regulations 1995;
  - The Lifting Operations and Lifting Equipment Regulations 1998;
  - The Working Time Regulations 1999.
- ☐ Access to other information likely to be of value to you in your role as a safety rep, including:
  - Guidance from the NHS Staff Council which is provided on the NHS Employers website www.nhsemployers.org/

- Reference information from organisations like the TUC and the LRD.

- ☐ The address and contact numbers for the local HSE Office. If possible, find out the name of an inspector to whom you can communicate directly.

- ☐ Information from the CSP. In particular you will need an up-to-date copy of the CSP's advice sheets dealing with health and safety issues; and are available to members on the CSP website.

SECTION FOUR: FINDING INFORMATION

Introduction

To be an effective CSP safety rep, it is important that you have a working knowledge of the information that may be available to you. You need ready access to such information so that you can use it to develop stronger arguments with managers to help you to improve safety standards at work.

In order to carry out your functions as a safety rep effectively, you will need to access information of a variety of types and from a range of sources.

Your personnel or human resources department should have copies of all relevant health and safety legislation. Should you need more detailed information you should contact the CSP Industrial Relations Department for further details.

Under HASAWA and a number of Regulations employees are entitled to receive a great deal of information. Under Regulation 7 of the SRSC Regulations as a safety rep you are entitled to a wide range of health and safety information in order to ensure your members' health, safety and welfare is protected. This section summarises these entitlements to information and recommends other useful sources.

In this section we look at:

- ***Information from employers***
- ***Information from manufacturers, suppliers and importers***
- ***Information from the HSE***
- ***Information from the CSP***
- ***Information from libraries***
- ***Information from other sources.***

Information from Employers

In law, employers have a duty to provide health and safety information to both employees and safety reps.

a) Information for employees

The employer has a wide ranging duty to provide information, instruction and training for all their employees. The nature and extent of the information they provide will depend on the circumstances of the workplace in question.

Employers must ensure that the HSE *"Health and Safety Law – What You Need to Know"* poster (available from the HSE) is prominently displayed in all premises for which they have responsibility. Safety reps should ensure is done in their workplace.

The TUC advises that in addition employers should make available for inspection copies of:

- ⇨ The Health and Safety at Work Act;
- ⇨ The Management of Health and Safety at Work Regulations;
- ⇨ Any Regulations that have a particular impact within a workplace, for example the Manual Handling Operations Regulations;
- ⇨ HSE guidance notes;
- ⇨ Any information notes on potential hazards posed by substances or equipment used in a workplace which have been issued by suppliers or manufacturers (especially Safety Data Sheets for toxic substances);
- ⇨ Warning signs;
- ⇨ Safety instructions;
- ⇨ The employer's Safety Policy (or a summary of its key elements).

Employees are also entitled to receive information on:
- ⇨ All health and safety procedures, particularly emergency evacuation procedures;
- ⇨ Any risks to their health and safety identified by risk assessments;
- ⇨ Agreed measures to protect them from such risks;
- ⇨ Any risks notified by other employers based at the same site.

With regard to training, employers should provide (Regulation 13 of the Management Regulations):
- ⇨ Adequate safety training to all staff when first recruited;
- ⇨ Further training following any changes to equipment or technology used or the introduction of new work systems or following a change of job.

Regulation 13 states that all such training should take place within working hours and must be provided free of charge. In the ACOP to the Regulation it states:

"Health and safety training should take place during working hours. If it is necessary to arrange training outside an employee's normal hours, this should be treated as an extension of time at work. Employees are not required to pay for their own training. Section 9 of HASAWA prohibits employers from charging employees for anything they have to do or are required to do in respect of carrying out specific requirements of the relevant statutory provisions. The requirement to provide health and safety training is such a provision."

This is a reflection of Section 9 of HASAWA, which says:

"No employer shall levy or permit to be levied on any employer of his [sic] any charge in respect of anything done or provided in pursuance of any specific requirement of the relevant statutory provisions."

This element of the law is particularly important to part-time CSP members who may find that any planned health and safety training for staff is due to be held at a time that they would not normally be at work.
They should be paid for the extra time taken to undertake the training or should be able to change their working days in order to attend. Alternatively, the training should be reorganised, taking staff working hours into account.

b) Information for safety reps

Safety reps require, and are entitled to, much more information than is generally provided to employees. Paragraph 65 of the ACOP to Regulation 7 of the SRSC Regulations indicates that this information should include:

- Information about the plans and performance of their undertaking and any changes proposed insofar as they affect employees' health and safety at work;
- Information about the technical nature about hazards and precautions deemed necessary to eliminate or minimise them;
- Information which the employer keeps relating to the occurrences of any accident, near miss or notifiable industrial disease;
- Any other information specifically related to matters affecting the health and safety of employees, including the results of any measurements taken by the employer in the course of checking the effectiveness of health and safety arrangements; and
- Information on articles or substances which the employer issues to homeworkers.

While the employer has to provide all the above information there are some exemptions. Regulation 7(2) of the SRSC Regulations exempts the employer from providing any information:

- The disclosure of which would be against the interests of national security;
- Which they could not disclose without contravening a prohibition imposed by or under an enactment;
- Relating specifically to an individual, unless they have consented to its being disclosed;
- The disclosure of which would, for reasons other than its effect on health, safety or welfare at work, cause substantial injury to the employers' undertaking or, where the information was supplied to him by some other person, to the undertaking of that other person;
- Obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings.

Under Regulation 4A of the SRSC Regulations, safety reps have the right to be consulted in good time about:

- New measures or processes which many substantially affect their members' health and safety;

- The appointment or nomination of competent persons under Regulation 7 of the Management Regulations;

- Any health and safety information the employer is required to provide for employees;

- The content and duration of any training courses for employees;

- The health and safety consequences of the introduction of any new technologies into the workplace.

Information from Manufacturers, Suppliers and Importers

Under Section 6 of HASAWA those who design, manufacture, import or supply plant, machinery or substances have a duty to make sure that when their products are supplied for use at work, they are accompanied by adequate information.

They must also make sure that their products are safe and without risks to health, and that they are properly erected and installed and that their products have been subjected to adequate testing and research before they are introduced into the workplace.

When faced with a potential hazard from either plant and machinery or a substance, safety reps should always, as a first step, seek from the employer the information which they will have received from the supplier, most of whom produce comprehensive hazard sheets. Safety reps can use this guidance when examining information from manufacturers and suppliers. Questions to ask include the following:

- Is the information in an easily understandable form (for example hazard data sheets)? Are potential hazards clearly outlined?

- Does the information describe testing and research which has been carried out to identify potential hazards? Does this include the results of tests and research?

- Is the information adequate in the case of a substance? Are details provided of: its chemical composition; possible poisonous effects; whether it can cause cancer; whether it can affect pregnancy; whether it is explosive or inflammable?

- Are adequate precautions outlined? Is reference made to dangers of unusual uses?

- Does the information make reference to existing standards and recommendations (for instance HASAWA, Regulations, ACOPs) in order to show that the article or substance is safe and without risk to health when properly used?

In addition to the requirements of Section 6 of HASAWA, the COSHH Regulations 2002, relating to labelling and packaging of dangerous substances, require over 1,100 prescribed substances to be supplied in secure containers which bear labels showing certain basic health and safety information. These state that containers must be adequately constructed

and that caps and stoppers must be made of materials which are not affected by the substances in question.

Information from the HSE

a) Publications

The HSE has online information and offers an advisory service which supplies trade unionists and employers with a wide variety of statutory guidance material (see paragraph 8 of this section). Copies of Regulations, together with any accompanying ACOPs and Guidance Notes can be downloaded from their website www.hse.gov.uk

HSE information includes Guidance Notes, posters, pamphlets, reports, Regulations, ACOPs, explanatory booklets. Many of their leaflets are free of charge and a detailed booklet of their publications may be obtained free of charge simply by contacting HSE Books. HSE publications are available for retail at Waterstone's Bookshops.

You will find that in almost every case, the HSE publishes Regulations, Codes of Practice and Guidance Notes within the same document. You do not have to obtain these separately.

When you are using legal standards to prepare a case for improving health and safety at work, ***always*** remember to read any accompanying ACOPs and Guidance Notes. You will often find that the Regulations are not detailed. You need to read on to discover the HSE's interpretation of how the law should be implemented on a practical basis.

Note as well that any Schedules included in Regulations are minimum legal requirements which must be complied with in their entirety by employers.

b) Inspectors

Safety reps should always be informed of HSE inspectors' visits to the employer's premises. Inspectors must also provide safety reps with reports, survey results, details of written or verbal warnings given to the employer, written undertakings from the employer, details of prohibition or improvement notices or other legal proceedings, which have been issued against such notices.

Information from the Employment Medical Advisory Service

EMAS, the Medical Division of the HSE, was founded in 1973. EMAS has the task of identifying health hazards related to employment by monitoring studies and surveys; acting as a central information bank, advising trade unions and employers on how to deal with health hazards - and acting as a focus for medical aspects of employment problems, particularly in areas such as disablement and rehabilitation.

Employment Medical Advisers can be helpful in advising on problems in the workplace. They are often prepared to carry out health screening, workplace surveys and, together with HSE's Technology Division, to give advice on work with toxic substances.

Wherever occupational health (as opposed to safety) problems are concerned, one possible line of enquiry for safety reps is to the local EMAS area office. EMAS telephone numbers can be obtained by contacting your local HSE area office.

Information from the CSP

The CSP provides several publications for safety reps as well as post news updates and information on health and safety matters on our iCSP national safety rep network

Any difficulties, which safety reps cannot resolve, should be referred to their Senior Negotiating Officer who can offer advice, guidance and representation on all health and safety matters.

Information from Other Sources

a) HSE Books

All HSE publications, including copies of the HASAWA and Regulations, can be purchased from HSE Books. If you ring them they will be happy to send you, free of charge, a detailed A4 booklet outlining their current publications, prices and how to place an order. Even if you do not need any of their publications immediately, it is always useful to have an up-to-date publications booklet to hand. Don't forget much of their publications can be downloaded directly from their website www.hse.gov.uk

b) The Trades Union Congress (TUC)

The CSP is affiliated to the TUC and so we are able to access their information, advice and support services. They have a large health and safety department and a wide range of health and safety publications. They produce an annually updated publications catalogue in September every year. It's a good idea to ring the Publications Department to obtain your own copy of this catalogue.

The TUC's key health and safety publication is *"Hazards at Work"*, which costs £18.00. They also post plenty of excellent guidance on their website www.tuc.org.uk

Trades Union Congress, Publications Department, Congress House, 23-28 Great Russell Street, London, WC1B 3LS. Telephone 020-7636-4030. Internet: www.tuc.org.uk.

c) The Labour Research Department (LRD)

The LRD is an independent trade union based research organisation, supplying trade unions with a range of information including on health and safety issues. Their A5 sized guides are written by trade unionists for trade unionists and so are easy to follow. They always include

examples of case law and good practice that you may wish to quote to employers if you find you have difficulties in making progress on improving safety standards.

Of particular value to safety reps is their publication *"**Health and Safety Law**"*. This is updated and revised annually. It provides good basic information about the background to, and the workings of, health and safety legislation.

Their web address is www.lrd.org.uk

LRD, 78 Blackfriars Road, London, SE1 8HF. Telephone 020-7928 3649.
E-mail: info@lrd.org.uk. *Web pages:* www.lrd.org.uk

d) The London Hazards Centre

This is a non-profit making organisation researching and advising on health, safety and welfare in the workplace.

The London Hazards Centre provides information and advice to trade union groups on all kinds of chemical, physical and environmental hazards.

The London Hazards Centre, 222 Seven Sisters Road, Finsbury Park N4 2DA. Telephone: 020-7527 5107. E-mail: mail@lhc.org.uk
Web site: www.lhc.org.uk
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Professional Bodies

British Occupational Hygiene Society – www.bohs.org
It is also known as the Chartered Society for Workers Health Protection and it's remit is managing and controlling workplace health risks.

Institution of Occupational Safety and Health (IOSH) – www.iosh.co.uk

IOSH is the Chartered body for health and safety professionals.

They campaign on health and safety issues and set standards, support, develop and connect our members with resources, guidance, events and training.

PART FIVE

APPENDICES

⇒ Appendix A: Provisions for Northern Ireland & Scotland

⇒ Appendix B: Useful websites for Northern Ireland and Scotland

⇒ Appendix C: A Checklist for Safety Policies

⇒ Appendix D: How safety reps can assist disabled members at work

APPENDIX A: PROVISIONS FOR NORTHERN IRELAND

The Health and Safety Authority

The Authority was established in 1989 under the Safety, Health and Welfare at Work Act, 1989, which is their equivalent of the Health & Safety at Work Act, and reports to the Minister for Business, Enterprise and Innovation. The Health and Safety Authority (HSA) has overall responsibility for the administration and enforcement of health and safety at work in Ireland.

They monitor compliance with legislation at the workplace and are the national centre for information and advice to employers, employees and self-employed on all aspects of workplace health and safety.

The HSA also promotes education, training and research in the field of health and safety
To access NI health and safety legislation visit the Northern Ireland Health & Safety Authority website www.hsa.ie/eng/

Enforcement of health and safety work standards is undertaken by the Health and Safety Executive for Northern Ireland (HSENI).
The web address is www.hseni.gov.uk

Responsibility for securing workplace health and safety standards is mainly shared between HSENI and the District Councils. HSENI is the enforcing authority for health and safety in many areas of employment. Some of the main areas within HSENI's remit include manufacturing, construction, agriculture, quarries, docks, chemical plants, education, fairgrounds, hospitals and nursing homes, District Councils, railways, the Fire Authority, the Police Service, and Crown bodies.

District Councils promote and enforce health and safety law in workplaces allocated to them by the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999 – including offices, shops, retail and wholesale distribution centres, leisure, hotel and catering premises.

Safety Representatives and Safety Committees Regulations 1978

The Safety Representatives and Safety Committees Regulations (S.I.1977 No. 500) were enacted in Northern Ireland in 1978. It is laid out in the same way as the English version with Regulations, ACOPs and Guidance Notes.

APPENDIX B: USEFUL WEBSITES FOR NORTHERN IRELAND & SCOTLAND

Northern Ireland

Department of health equivalent
http://www.dhsspsni.gov.uk/
But issues like pandemic flu more likely to be found here
http://www.publichealth.hscni.net/

Department of work and pensions
http://www.dsdni.gov.uk/index/ssa.htm

Scotland
Department of health
http://www.scotland.gov.uk/Topics/Health/Services
or
http://www.healthcareimprovementscotland.org/home.aspx
(health care improvement do inspections of workplaces) and can be contacted with concerns)
This page lists all the inspections carried out and the results
http://www.healthcareimprovementscotland.org/our_work/inspecting_and_regulating_care/hei_inspections/all_hei_reports.aspx

APPENDIX C: A CHECKLIST FOR SAFETY POLICIES

The following checklist can be used when negotiating a new health and safety policy or revising an existing one. It is not exhaustive and more detailed guidance can be found in the relevant chapters in this manual.

The checklist should assist you in ensuring that all the main points are included and will give you guidance on additional issues which may not currently be included in the policy or which could be made clearer or more detailed.

1. Responsibilities of Management

- ❑ Does the Health and Safety Policy give a clear unequivocal commitment to health and safety?
- ❑ Does the Health and Safety Policy make it clear that management is responsible for establishing and maintaining a safe working environment?
- ❑ Make sure that the Policy does not attempt to pass responsibility for safety to employees, Safety Reps or Safety Committees.
- ❑ Does the Policy specify which manager is responsible for which area in respect of health and safety matters?
- ❑ Are the organisation's "competent persons", with responsibilities for implementing safety policies, clearly named?
- ❑ Are their specific responsibilities clearly stated?
- ❑ Do managers understand the consequences of failure to implement the Policy in their area of responsibility?
- ❑ Are the persons stated as responsible known to all employees?
- ❑ Are supervisors' responsibilities for safety clearly laid down?
- ❑ Does the Health and Safety Policy state the responsibilities of safety officers, fire officers and security officers?
- ❑ Are there clear procedures for managers and safety officers and advisers to work together and co-operate?
- ❑ Are the powers and responsibilities of the safety officer stated?
- ❑ Who is responsible for ensuring adherence to the Health and Safety Policy?

- Is there a clear method for monitoring the effectiveness of the Health and Safety Policy? Are named individuals responsible for this at different levels?

- Does the Health and Safety Policy state how failures in health and safety can be corrected with clear lines of accountability for reaching agreed safety targets?

- Does the Health and Safety Policy state management's obligations to make available all necessary safety devices and protective equipment and supervise their use and maintenance?

- Does the Health and Safety Policy include management's responsibility to carry out health surveillance of all employees?

- Does the Health and Safety Policy refer to management's responsibilities for the selection, safety and maintenance etc. of work equipment?

- Are there details of arrangements for joint consultation with unions on health and safety matters?

- Does the Health and Safety Policy require co-operation with outside contractors and the need for them to sign and abide by the Policy?

2. Rights and Responsibilities of Employees

- Does the Health and Safety Policy state the responsibilities of all employees to adhere to the Policy and health and safety measures and to take all reasonable care not to endanger themselves or others?

- Does the Health and Safety Policy include employees' rights to full information on all health and safety matters including risk to their health and protection measures. Does this include temporary workers?

- Are employees aware of the importance of recording all accidents and near misses - does the Health and Safety Policy require them to do so?

- Are employees' obligations to bring health and safety risks to the employer's attention included?

- Does the Health and Safety Policy make clear employees' rights to refuse to work in conditions where they believe their health is in serious imminent danger with no comeback or penalties?

3. Rights and Functions of Safety Reps

- Are the rights and functions of safety reps clearly specified?

- Are safety reps' rights to time off with pay for training and re-training by their union employer laid down?

- Are safety reps' rights to time off with pay to undertake their functions clearly laid down?

- Are facilities for safety reps clearly listed in the Health and Safety Policy?

- Does the Policy state how expenditure by safety reps and others is met both in terms of money and time spent by staff in these duties?

- Are safety reps' rights to consultation fully laid out - particularly with regard to changes to work practices, introduction of new equipment and technology and planning and organisation of health and safety training? Is there a clearly set out procedure for this consultation to take place? Is sufficient time for proper consultation allowed?

- Does the Health and Safety Policy give safety reps access to all reports on hazards, accidents, health monitoring, risk assessments and other documents the employer is obliged to keep under health and safety legislation?

- Are safety reps' rights to carry out investigations and inspections clearly laid down?

- Is there a clearly laid down procedure for dealing with unresolved problems?

- Are safety reps' rights to be notified of accidents and immediately to attend members involved in accidents included?

- Are safety reps' rights to consult with, meet and receive reports from HSE Inspectors included?

- Are safety reps' rights to be informed of visits by HSE inspectors, to meet privately with them and to call in Inspectors as necessary included?

4. Safety Committees

- Are the rights and responsibilities of the Safety Committee clearly stated?

- Are the limitations of the Safety Committee's responsibilities clearly stated?

- Are the Safety committee members clearly named?

- Is it clear who is entitled to a seat on the Committee from the Staff Side ie accredited representatives from recognised unions? Is there provision for deputies?

- Does the Policy state the titles of Management Side members?

- How are the Chair and Secretary agreed?
- How often will the Committee meet?
- Is there a clear procedure for employees to raise matters with the Committee?

5. Information and Training

- Have all employees been given a copy of the Policy?
- Is the Policy displayed on notice boards?
- Are amendments to the Policy passed on to employees?
- Are safety reps' and other employees' full rights to information on health and safety matters included?
- Does the Health and Safety Policy specify procedures for disclosing information to safety reps?
- Does the Health and Safety Policy lay down the need for training all employees in all risks, hazards, protective and work equipment etc? Does this include temporary workers?
- Is this training regularly updated?
- Do induction programmes for new employees include adequate health and safety training?
- Does the Health and Safety Policy specify procedure for training and re-training supervisors and other managers on their safety responsibilities?
- Does the Health and Safety Policy state the requirement for accurate records to be kept of:
  - Hazards
  - Risk assessments
  - Health monitoring results
  - Manufacturers, and suppliers, manuals and information
  - Accident record book
  - RIDDOR reports to the HSE?
- Are training requirements for special risk situations adequately covered?

6. Hazards, Risks and Accidents

- Are there clear procedures for the identification of hazards and assessment of risks?

- Are the procedures for control and elimination of risks and hazards included?
- Is the effectiveness of these measures monitored continuously?
- Does the Health and Safety Policy lay down arrangements for bringing in expert help, either in-house or outside specialists, for conducting risk assessments?
- Are there arrangements to appoint “competent persons” to carry out measures to comply with health and safety laws and regulations?
- Is there an accident/hazard reporting procedure clearly laid down and made known to all employees? Does this include all serious accidents and near misses?
- Is there proper provision for maintaining an accident book and records - do all employees know where the book is kept and have access to it?
- Are training requirements for special risk situations adequately covered?
- Are there clear procedures to evacuate staff threatened by serious imminent danger? Are all staff aware of them?
- Does the Health and Safety Policy make clear which management representatives should be approached for different problems especially in emergencies?
- Are there adequate provisions for first aid including equipment, a room and properly trained first aiders known to all employees?
- Are there clear fire precautions known to all employees?
- Does the Policy cover environmental pollution, waste disposal, outside atmospheric pollution?
- Are there specific policies for:
  - COSHH
  - Manual handling
  - Personal protective equipment
  - The provision and use of work equipment
  - Procedures for serious and imminent danger, including fire precautions
  - First aid
  - DSE (VDU) equipment
  - HIV/AIDS
  - Vaccination and immunisation
  - Working alone and violence
  - The particular risks to community based staff

- Specific departmental hazards and associated risks (for example, physiotherapy department)
- Infection control
- Stress
- Bullying
- Risk assessment
- Fire and security?

APPENDIX D: HOW SAFETY REPS CAN ASSIST DISABLED MEMBERS AT WORK

HEALTH AND SAFETY REGULATIONS THAT GIVE YOU KEY RIGHTS	WHAT YOU CAN DO WITH THESE RIGHTS	YOU CAN ASSIST DISABLED MEMBERS BY:
INSPECTIONS – safety reps can inspect their workplaces in paid time- Safety Representatives & Safety Committees Regulations 77 (SRSC) *also known as the "Brown Book"* regulation 4 – *Functions of safety representatives* http://www.csp.org.uk/professional-union/union-support/safety-reps/resources	Access employer's information – e.g. sickness absence/accidents OH reports/statistics/policies Conduct Member Surveys Undertake Body Mapping with members Interview Members Inspect your workplace premises, equipment, work practises (to prevent accidents/injuries)	**Reviewing employer's sickness absence stats** to see if disabled members are being unfairly penalised under employer's sickness absence policy and to collect data to make a case for disability leave policy. Undertaking a **survey** to check for members' stress levels that enables a disabled member to express their needs for example - a dyslexic member suffering from stress due to lack of sufficient time/equipment to complete his patient notes. When undertaking **body mapping** activity with a group of members on their MSD symptoms - ensuring disabled members' particular needs are included. I**nterviewing** a disabled member to determine what their working environment needs are Utilising CSP's safety rep checklist, to **inspect work stations/equipment** are appropriate for disabled members. Your inspection can identify hazards in the workplace that can impede disabled members from doing their work safely.
RISK ASSESSMENT – safety reps should be consulted on employers' risk assessments under the Management of Health and Safety at Work Regulations. Also under the SRSC Regulation 4A, it refers to the Employer's duty to consult and to give reps access to relevant health and safety information, such as previous risk assessments under Regulation 7	Request and be involved in the undertaking of risk assessments Ensure process meets the requirements of the HSE, Equality & Human Rights Commission and the disabled member's particular needs	Safety reps can challenge an employer who tries to use risk assessments to dismiss disabled members on health and safety grounds and not make reasonable adjustments as required under the Equality Act 2010 Ensuring the employer makes reasonable adjustments that meet the findings/recommendations of the disabled member's risk assessment. For example – installing appropriate software and IT equipment to assist staff with dyslexia.
CONSULTATION - Under the SRSC Regulation 4A employers should consult	Request that you be consulted in 'good time' – i.e. be given information and	Being involved at planning/procurement stages to ensure employers includes disabled workers' needs and how they may be affected by new

safety reps when introducing technology or any substantial health and safety changes.	provided with the opportunity to give feedback which the employer is required to take into account.	technology, for example - electronic patient records systems or by new building designs.

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CSP SAFETY REPS' MANUAL
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