

NEU Guidance for Reps and Local Officers

Safety representatives play a vital role in promoting safety in the workplace. This briefing covers the appointment of safety reps and their rights and functions.

Safety representatives: rights and functions

Safety representatives are trade union representatives appointed by trade union members to represent their interests on health and safety issues. The law gives them a range of rights and powers as set out in this briefing. Trade union safety representatives must always be clearly distinguished from “safety co-ordinators” or “safety officers” appointed by employers or managers to help them carry out their health and safety responsibilities. Trade union safety representatives are not accountable to employers or managers, only to trade union members.

Newly appointed safety reps sometimes worry that the wide range of functions which they are entitled to undertake may also impose some legal health and safety duty upon them which goes beyond that of other employees. This is **not** the case and none of a safety rep’s functions imposes any legal duty upon them, for example, safety reps will not be legally responsible in any way if they carry out an inspection and fail to notice a particular hazard.

The law governing the appointment of safety reps and their statutory rights and functions is set out in the Safety Representatives and Safety Committees Regulations 1977. These were made under the Health and Safety at Work etc Act 1974 and have the same force as the Act itself. The Regulations, together with the Health and Safety Executive (HSE) ACOP and Guidance Notes on the rights of safety reps, are set out in a document called the [Brown Book](#).

Appointment of safety representatives

Regulation 3 gives recognised trade unions the right to appoint their own safety reps. Employers have no right to take part, or be consulted, in the appointment process. All that is required for a safety rep to legally hold the role is that the union determines that that person should be a safety representative and that the employer is notified in writing of the appointed safety rep’s name.

Whenever an NEU member is elected or persuaded by colleagues to become the NEU school safety representative, the local NEU secretary and NEU health and safety adviser must be informed. The employer and headteacher must also be formally notified and it is often best if the local NEU officer does this.

The number of safety reps appointed is up to union members. The size of the school and the number of members will be relevant. One NEU safety rep will usually be sufficient in most schools but more than one will be helpful in large schools, particularly those with split sites.

Although the Regulations advise that anyone appointed should, as far as possible, have at least two years’ experience in their occupation, the accompanying HSE Guidance Notes state that this is not a binding rule. NEU members with less than two years’ experience in teaching can, therefore, become NEU safety reps if no-one more experienced is available.

Who do safety representatives represent?

NEU safety reps and employers should be clear who the safety rep actually represents. NEU safety

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reps can also represent staff who are members of other recognised teaching and non-teaching unions (including office, kitchen or caretaking staff) if those staff so agree, and also staff who are not union members provided that there is a recognised union covering that category of employees. NEU safety reps cannot, however, represent support staff who are not employed by the same employer (ie who are employed by contractors). In addition, the NEU cannot assist non-members in the same way as NEU members.

Whoever they represent, however, NEU safety reps are entitled to raise any issue of health and safety if it affects employees generally.

Functions of safety reps

Regulation 4, which sets out the functions of safety reps, gives them the legal right to:

- investigate potential hazards and dangerous occurrences and examine the causes of accidents at the workplace;
- investigate complaints by any employee they represent;
- make representations to the employer on matters arising out of the above;
- make representations to the employer on general matters affecting health, safety and welfare at work;
- carry out inspections of the workplace in a variety of circumstances; and
- represent employees in consultations at the workplace with Health and Safety Executive (HSE) inspectors and receive information from them.

The “workplace” is not restricted to the school but is defined in Regulation 2 as “any places which the employees represented are likely to frequent in the course of their employment”.

All of these functions are legal rights which the employer is bound to observe. The subsequent Regulations and the accompanying ACOP and guidance notes set out in more detail how safety reps can exercise these rights. Appendix 2 summarises the various circumstances in which inspections and investigations can be carried out and the rest of this briefing considers these matters in detail.

The job of safety rep will, of course, involve other matters as well, in particular keeping members consulted and informed. Appendix 1 sets out the NEU's basic "job description" for safety reps. Safety reps should know and understand their rights and functions, but shouldn't be put off by them! Taking on the role of safety rep does not create any legal obligations.

A system for union health and safety representatives to use to report serious concerns to the HSE was launched in September 2014. The HSE's 'Concerns and Advice Form for Safety Representatives' which can be submitted by post or on-line, is intended to be used only when other formal processes have been exhausted.

Where a health and safety representative believes there to have been a breach in the law which the employer fails to resolve, the health and safety representative should raise the issue with a senior union representative (for the NEU this will be the health and safety adviser) or paid union official. If, despite doing this, the issue still remains unresolved, the health and safety representative has the option of [contacting the HSE](#).

Functions not responsibilities

As previously mentioned undertaking any of the above functions does NOT impose any legal health and safety duty upon health and safety reps, which goes beyond that of other employees.

Regulation 4(1) specifically provides that none of a safety rep's functions imposes any legal duty upon them. This means that safety reps are legally in the same position as other employees. They are only legally responsible for any acts or omissions committed in the role of safety rep if they have

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breached the general duty of care which applies to all employees.

For example, safety reps will not be legally responsible in any way if they carry out an inspection and fail to notice a particular hazard. Similarly, safety reps who agree with an employer's proposals for dealing with particular hazards will not be legally responsible if that course of action fails or makes the problem worse. However, safety reps may be legally liable if they fail to draw attention to a hazard which they have noticed during an inspection and which subsequently causes an accident because all employees have a legal duty to draw attention to such hazards.

Rights to be consulted by the employer

Regulation 4A places a duty upon employers to consult "in good time" with safety reps on the introduction of any measure, including the introduction of new technologies, which may affect the health and safety of the employees represented by the safety rep; on the provision of health and safety information to employees; and on the planning and organisation of any health and safety training which the employer is obliged to provide.

The accompanying guidance notes go on to advise at paragraph 13 that before making any decisions which could have health and safety consequences for employees, employers should inform safety reps about their proposed course of action and give them an opportunity to express their views. There is, however, no obligation on employers to agree with safety reps' views!

Rights to carry out safety inspections

> Routine inspections

Regulation 5(1) entitles safety reps to carry out a routine inspection of the workplace on a quarterly basis. The NEU's view is that in schools it is most appropriate for safety reps to aim to carry out routine inspections each term. Inspections should be carried out during working hours when the workplace is in operation and cover should be provided for the safety rep to carry out the inspection. Inspections cannot be put off by employers simply because the employer or another union's safety rep has carried out an inspection in the recent past.

> Inspections in other circumstances

Safety reps are also permitted to carry out further or more frequent inspections in specific circumstances. These include inspections where there has been a substantial change in the conditions of work (Regulation 5(2)); or where new hazard information has been published by the HSE (also Regulation 5(2)); or where a notifiable accident or dangerous occurrence has taken place or a notifiable disease has been contracted (Regulation 6).

> Further Guidance on Inspections

The separate NEU health and briefing on Safety Inspections gives full information on organising and carrying out safety inspections in all of the above circumstances and on reporting to members and the employer afterward. It includes an inspection checklist and model report form. The [HSE website](#) has information on safety rep inspections and a form which safety reps can use to notify their employer that an inspection has taken place.

Rights to carry out investigations

Regulation 4(1) also allows safety reps the right to investigate potential hazards, dangerous occurrences or causes of accidents, either following the receipt of an employee complaint or on their own initiative, and to investigate complaints relating to employees' health, safety or welfare at work. The right to investigate on their own initiative means that safety reps have the right to be proactive in taking up health and safety issues, not just reactive, and can refer to this right in taking up matters even where no accident has yet taken place and no specific right to inspect can be

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clearly held to exist under Regulations 5 or 6. The HSE website has a [form](#) which safety reps can use to notify the employer that there are unsafe or unhealthy working conditions or unsatisfactory arrangements for welfare at work.

Rights to inspect documents and to provision of information

Regulation 7 entitles safety reps to inspect and take copies of any document relevant to health and safety which the employer is required to keep, providing they have given their employer reasonable notice. It also requires employers to make available to safety reps information within their knowledge necessary to fulfil the rep's functions.

The HSE ACOP (in the Brown Book) sets out further details of the information which employers must disclose. This should include information about changes in the workplace which will affect health and safety; information of a technical nature about hazards in the workplace and the precautions deemed necessary to eliminate or minimise them; details of accidents and dangerous occurrences in the workplace; and the results of any tests or measurements taken on health and safety matters.

Particular documents to which a safety rep should be allowed access include the employer and school health and safety policy statement, any employer health and safety manual or guidance on health and safety issues, and all reports of safety investigations carried out at the school (eg asbestos surveys and electrical test reports). The safety rep should also be allowed access to other documents such as the school's accident book, asbestos plan and operating manuals for equipment and machinery.

Taking up issues

All of these rights mean that NEU safety reps are entitled to take up issues of health, safety and welfare which they identify or which are raised with them and receive answers and explanations.

Remember - you are entitled to investigate complaints or matters which concern you; you are entitled to carry out inspections on a regular basis and whenever specific circumstances justify them; and you are entitled to receive information and to be consulted. You are also entitled to receive facilities and support for your work as safety rep as set out in the following section.

Time off and facilities for safety reps

> Time off with pay for inspections and routine functions

Regulation 4(2)a entitles safety reps to "such time off with pay during the employee's working hours as shall be necessary" to perform the functions set out above. Although the Regulations do not specify an exact entitlement, the NEU recommends the following arrangements:

quarterly (or termly) inspections

small single site schools	one half day per inspection
large single site schools	one day per inspection

routine duties

small single site schools	one hour per week
large single site schools	two hours per week

Entitlements to time off with pay for safety reps may be covered in the local authority's agreement with the NEU on facilities time for NEU local officers and representatives. In most cases, however, local authorities do not provide additional funding to schools for supply cover for safety reps' time off with pay. The absence of any local authority funding for supply cover does not affect safety reps'

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legal entitlement to time off with pay to carry out their functions. The NEU recommends that safety reps' time off for routine duties is built into their timetable in the same way as non-contact time for additional responsibilities, while time off for inspections is dealt with by means of cover in the same way as if the safety rep was absent due to sickness. It is important to note that as time off for safety reps is enshrined within the 1977 regulations, these rights are in fact stronger than those for other NEU reps whose time off has to be negotiated with the employer.

Where schools are academies or free-schools, the NEU seeks to agree 'recognition agreements' with the employer, which would include provisions for paid time off for safety reps. While academies do not receive funding from the local authority for supply cover costs, many local authorities allow academies to 'buy back' this service at a small cost, which is usually a fixed amount per pupil. The NEU strongly encourages all academies and academy chains to buy into local facilities time pots as this prevents disputes about who will pay for supply cover.

> **Other facilities for inspections and routine functions**

Regulation 4A entitles safety reps to "such facilities as [they] may reasonably require" to discharge their functions. This might include storage facilities for correspondence, reports, resource materials and other relevant paperwork; access to photocopying facilities; a notice board; and use of a room for meetings with members.

> **Time off with pay for training**

Regulation 4(2)b also entitles safety reps to "such time off with pay during the employee's working hours as shall be necessary" to undergo training to enable them to carry out their functions effectively. The NEU strongly encourages its safety reps to attend the NEU's five-day safety reps training course, which is held at least once annually. Details of upcoming courses are available on the the NEU website.

> **Dealing with problems over time off**

Any NEU safety rep who is refused paid time off, either for inspections and routine duties or to attend training, should in the first instance raise the matter with their NEU Health & Safety adviser or the NEU Adviceline in England, NEU Cymru in Wales or NEU Northern Ireland. Regulation 11 provides that failure to grant paid time off to safety reps can ultimately result in cases being referred to an employment tribunal.

Relationship between safety representative and the HSE

The HSE has produced [guidance](#) for businesses, employees and their representatives which sets out what can be expected when a health and safety inspector calls. Although such visits may be rare in schools, it is helpful for health and safety representatives to be aware of the repercussions for their employer of such a visit, whether that be informal advice, an improvement notice, a prohibition notice, prosecution, or fee for intervention cost recovery.

The guidance helpfully states that where possible an inspector will meet or speak to employees or their representatives during a visit and that representatives should always be given the opportunity to speak privately to the inspector if they so wish.

Further guidance

[The Brown Book](#) (Safety Representatives and Safety Committee Regulations 1977)

NEU Guidance (see <https://neu.org.uk/>)

The Legal Framework
Safety Inspections

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Action points for safety reps

- Ensure your headteacher, employer and NEU health and safety adviser have been notified that you are the NEU safety rep and that all of you know whom you represent.
- Negotiate access to the facilities time to which you are entitled, in particular time off to carry out your regular inspections and other functions.
- Remember – the number of tasks you undertake is often dependent upon your specific workplace setting and how much time you have available to give to the role. It can be especially valuable for members in academies/free schools where there is no school rep and union activity to have a health and safety rep. **Remember – any contribution is worthwhile.**

Contact the NEU

For further information and support, contact the NEU Adviceline in the first instance on 0345 811 811. Members in Northern Ireland contact 028 9078 2020.

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Appendix 1

NEU Safety Reps' Job Description

Some of the tasks an NEU health and safety rep is entitled to carry out are set out below:

- keeping up to date with current legal standards and requirements on health, safety and welfare in schools;
- keeping up to date with NEU policy and guidance and employer policy and guidance;
- in conjunction with other union health and safety reps and the school health and safety manager, carrying out termly safety inspections at the school;
- investigating complaints about health, safety and welfare made by members within the school;
- writing reports to the employer following inspections or investigations;
- checking that action has been taken to resolve problems over health, safety and welfare reported to the employer;
- representing members in consultations on health, safety and welfare with the employer; and
- liaising with the NEU Health and Safety Adviser or NEU Regional/Wales Office where necessary on any problems, particularly where there are serious disagreements with management.

It is always useful to distinguish if a health and safety concern raised by a member is a collective issue or an individual one.

Individual Issues

Individual issues may range from a relative minor concern to a more serious issue. Individual issues may include accidents at work, excessively high or low classroom temperatures or work-related stress. It is not necessary for you to be aware of all policy and procedures relating to these matters, but it is important that you are seen as someone with whom members feel confident and comfortable talking about issues and concerns.

Many problems which members bring to you as an individual issue will, however, also have a collective aspect. For example, a stress problem linked to a workload issue is unlikely to only affect a single teacher in a school; likewise excessively high or low classroom temperatures may affect many members. Members are often surprised, but relieved, to find that they can draw on the support and camaraderie of colleagues and work together to improve the situation under your guidance.

Collective Issues

If the issue or concern affects more than one member, then it is often a good idea to get those members together. This could involve a meeting or just an informal chat. Some collective issues may be easily remedied by speaking with the head teacher or health and safety manager, others may need to be resolved through the school health and safety committee or employer.

Before dealing with such concerns you need to make sure that the issue is genuinely relevant to members and potential members. If we campaign around issues that are important to our

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colleagues, we increase our chances of getting them involved, and increase the likelihood of effecting positive change in the workplace. Before embarking on a campaign concerning any issue consider if it is:

- widely felt – does the issue affect enough teachers – either across the whole school/workplace, within a particular department or amongst a specific group?
- deeply felt – are the teachers affected sufficiently concerned or angry about the issue to want to engage with, and take part in, the campaign?
- winnable – is there a realistic chance of achieving a concrete victory in relation to the issue via the campaign?

On some issues, such as excessive workload, or concerns about bullying, you and the school rep will be able to work together. There are many areas of overlap between the role of the school rep and health and safety rep.

Appendix 2 - Safety Reps' Legal Rights to carry out Inspections

Kind of inspection:	Employer has the right to:	Safety representative has the right to:	When the inspection can take place:
Regular Reg.5(1)	Written notice Presence in workplace	Access Assistance Facilities Privacy, if requested Payment for time spent	3-monthly or by agreement
Notifiable accident Reg.6(1)	Written or oral notice if reasonably practicable	Access Assistance Facilities Privacy, if requested Payment for time spent	Following accident
Dangerous occurrence Reg. 6(1)	Written or oral notice if reasonably practicable Presence in workplace	Access Assistance Facilities Privacy, if requested Payment for time spent	Following dangerous occurrence
Notifiable disease Reg.6(1)	Written or oral notice if reasonably practicable Presence in workplace	Access Assistance Facilities Privacy, if requested Payment for time spent	Following identification of disease
Change in conditions of work Reg.5(2)	To be consulted	Access Assistance Facilities Privacy, if requested Payment for time spent	Following change in conditions of work
New HSE hazard information Reg.5(2)	To be consulted	Access Assistance Facilities Privacy, if requested Payment for time spent	Following notification by HSE
Investigation on own initiative Reg.4(1)(a)		Access Payment for time spent	At representative's discretion
Employee complaint Reg.4(1)(b)		Access Payment for time spent	On receipt of complaint
Inspection of Documents Reg.7; ACOP para 6	Reasonable notice Privacy of excepted materials	Sight of documents Taking of copies Access to information Payment for time spent	Continuous

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