

DOES GDPR AFFECT THE SAFETY REPS' ROLE?

Introduction

TSSA health and safety reps in one of the companies that we bargain with have recently encountered an issue whereby the employer has used GDPR to refuse to provide them with information that they are legally entitled to under the Safety Reps and Safety Committee Regulations.

TSSA isn't alone in encountering this issue because other unions have also reported some employers taking the same position since the introduction of GDPR.

In this Reps' Bulletin we will be sharing the adviceⁱ given to our reps which is based on material produced by the TUC's expert.

What is GDPR?

GDPR – or the General Data Protection Regulations – originated from an EU desire to see data protection laws across Europe harmonised and modernised into a common system, applicable across Member States and EEA countries.

In the UK, this has led to the replacement of the Data Protection Act 1998 with the Data Protection Act 2018. This means that from 25th May

2018 all of the elements of GDPR have been incorporated into UK law, including the need for consent for the use of personal data and stricter arrangements for how data is stored, used and shared.

What rights to information do Health and Safety Reps have?

Regulation 7(2)ⁱⁱ of The Safety Reps and Safety Committee (SRSC) Regulations 1977 is very clear about what safety reps are entitled to:

“An employer shall make available to safety representatives the information, within the employer's knowledge, necessary to enable them to fulfil their functions”

There is an exception for information that relates specifically to an individual unless they have consented.

The HSE Code of Practiceⁱⁱⁱ to the Regulations lists what information is covered, and it is very comprehensive, including information on accidents, audits, etc (see Reps Action at the end of this Bulletin).

Consent to supply information

Employers have a legal responsibility

to supply information under the SRSC Regs but where they refuse to share it because of GDPR they are often making no attempt to gain consent so that they can pass it to you.

Where the consent is withheld, they are not anonymising the information.

In some cases – as with the company that objected to supplying information to TSSA reps recently - what is doubly galling is that they are obviously supplying the very same details to supervisors and managers that they are withholding from safety reps - suggesting that they are in breach of their own view of GDPR. This leads to the question, have they obtained consent for information to be disclosed to these people?

Policy designed to impede safety reps in their duties

Instead, this seems to be a deliberate attempt to stop union safety reps from getting useful information as a way to impede them in carrying out their role. That will often require - (for example, with accident reports) - needing to know who the employee is.

Does GDPR overrule SRSC?

GDPR does not change the information that can be given to union health and safety representatives.

Both the SRSC Regulations and the 1998 Data Protection Act already restricted personal information being given out, which is why employers had to anonymise it or get the permission of the individual.

In fact, the official accident report form published by the TSO (The Stationery

Office) has a box asking the person to consent to the information going to the safety representative.

Legal advice

HSE advice obtained by Hugh Robertson at the TUC confirmed that the:

“Government Legal Department advise that the implementation of the EU General Data Protection Regulation should not adversely impact safety representatives carrying out their functions within the Safety Representatives and Safety Committees Regulations. Employers are required to provide documents and information requested by safety representatives under Regulation 7 as before.”

On this basis, safety representatives can still get all the information that they need. If an individual is mentioned, they can be asked to give consent or the name can be withheld (it is obviously better to have the individual's name and other details so that the rep can speak to that person or their colleagues).

Information on any injuries, near misses or occupational diseases can still be given to representatives, as can any audit or other reports or the results of investigations.

What can you do if your employer refuses to give you information?

Where employers attempt to withhold information, reps can ask where it says that the GDPR somehow trumps the

SRSC Regs? They can also ask where it says in the GDPR that they should not provide the information covered in Regulation 7 of the SRSC Regulations?

Does GDPR affect safety reps in other ways?

GDPR does affect safety representatives when handling personal data, including membership information and details of issues that are being dealt with. All information needs to be kept securely which is why the SRSC Regulations include the following provisions

- Regulation 5(3)^{iv} requires employers to give “such facilities as the safety representative may reasonably require” for safety inspections;
- Regulation 4A2^v gives safety reps considerable powers to demand facilities to enable them to carry out their functions effectively.

With this in mind, reps should consider how they can securely store the information that they receive:

- Computer storage: Many reps have access to work based computer systems which should have secure arrangements already installed. If a rep uses his or her own computer, they should make sure it has GDPR compliant security arrangements installed;
- Paper storage: reps should be supplied with lockable filing

cabinets where they can keep paper copies.

The provision of these facilities is also an argument for personal information being supplied because the rep can argue that secure arrangements are in place.

Rep Actions

There are a number of things that TSSA reps do, including:

1. Familiarise yourself with the contents of this Bulletin
2. Make yourself aware of the list of types of information that you are entitled to under the HSE Code of Practice associated with Regulation 7(2).^{vi} In this way reps can be prepared for what they can request and expect to be provided with – after all, information is power and this is why employers are sometimes reluctant to share it!
3. Review the issues that you are dealing with at present and establish what information you need? If there is anything missing, ask management for it.
4. Check the accident forms used by your employer to see if they contain the consent box – and if it does not, ask your employer why that is the case?

Further information and acknowledgements

This Bulletin is based on:

- The TUC’s “GDPR and health and safety representatives”, written by Hugh Robertson, published 23rd May 2018 and available at:

<https://www.tuc.org.uk/blogs/gdpr-and-health-and-safety-representatives>

- The Brown Book, aka “Safety representatives and safety committees: The Regulations, Codes of Practice and guidance relating to the Safety

Representatives and Safety Committees Regulations, 1977” (March 2015) at:

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

ⁱ See: <https://www.tuc.org.uk/blogs/gdpr-and-health-and-safety-representatives>

ⁱⁱ See page 26: “Safety representatives and safety committees: The Regulations, Codes of Practice and guidance relating to the Safety Representatives and Safety Committees

Regulations, 1977” (March 2015) at: <https://www.tuc.org.uk/sites/default/files/BrownBook2015.pdf>

ⁱⁱⁱ See page 26-7 of the Brown Book in Note ii.

^{iv} See Page 22 of the Brown Book.

^v See Page 13, Brown Book.

^{vi} See page 26 and 27, Brown Book.