

WORKFORCE POOLING

Report on the feasibility of and best practice in workforce pooling in the marine industries

June 2004

Developed by EEF South, Marinetechn South, SERTUC and ACAS, with assistance from SEEDA, Hampshire and Isle of Wight Learning and Skills Council and the Cowes Marine Cluster.

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Foreword

This report on workforce pooling in the marine sector came from an initiative from the Social Dialogue Forum of South East England Development Agency (SEEDA). The Social Dialogue Forum is a unique joint forum, bringing together employers, employer representatives and trade unionists from both the private and public sectors and ACAS in the Region, with the aim to improve the Region's economic performance through building social dialogue at all levels.

The Social Dialogue Forum joined with the Cowes Marine Cluster, Marinotech South, EEF South, SERTUC, ACAS, Hants and Isle of Wight Learning and Skills Council and SEEDA to form a project group on workforce pooling.

The marine sector in the South East is characterised by being made up of small and medium enterprises (SMEs). These provide a high level of skilled employment and constitute a growing and important sector of the South East economy. At the same time the industry is affected by cyclical workloads that impact on skill development and retention of labour. It faces very stiff global competition in a very competitive market.

This project came about to help businesses face these challenges. It aims to develop innovative work arrangements and collaborative working amongst employers and employees, to provide a basis for long term growth through enriched and enhanced work.

The report covers research into existing examples of workforce pooling around the world and looks at the various forms that such arrangements can take. It also sets out practical guidance to three key issues to be considered in any successful workforce pooling arrangement: employment law, health and safety and employer's liability insurance.

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It is hoped that the lessons learned and the good practice identified can be migrated to other sectors of the South East Economy.

The Workforce Pooling Project Group

May 2004

EXECUTIVE SUMMARY

There is a growing body of experience, across different industries and in different countries, that workforce pooling can offer significant benefits to employers and employees. In theory, the marine industry should have a strong incentive to adopt workforce pooling, given the cyclical nature of many marine markets. Historically, this cyclical workload has led to a ‘hire and fire’ culture, which is inconsistent with the present need to develop and retain a multi-skilled workforce.

There is however some scepticism about how effectively workforce pooling would work in practice. There is also evidence of some risk to companies engaged in pooling, often without a proper regard to legal and other requirements.

This feasibility study was carried out to capture existing experience of workforce pooling, to identify the benefits and costs it imposes, and to explore the specific concerns and risks which need to be addressed. The resulting knowledge-base allows a robust recommendation to be made regarding the future potential of workforce pooling in the marine industries.

The study confirms that workforce pooling can be made to work effectively in the right circumstances, and case studies are presented to demonstrate this fact. Successful workforce pooling arrangements can offer substantial benefits to the companies involved and their employees. In particular, companies can reduce their recruitment costs and achieve better staff utilisation; employees can enjoy greater job security and broader on-the-job experience.

The study also confirms that workforce pooling is not a panacea and will not be suitable in all cases. In particular, major differences in culture and in terms and conditions of employment can undermine the viability of workforce pooling. Mutual trust is a key ingredient of successful pooling arrangements and therefore workforce pooling can often be successful within business clusters.

Most successful cases of workforce pooling fall into one of two models: secondment-based and project-based. Secondment-based pooling involves one company making available one or more employees to another company, to be integrated into the recipient’s workforce. The pooled employees will generally adopt the working practices of the recipient company. This model is useful when the lending company experiences a temporary drop in work load. It can retain its skilled employees, whose wage costs can be largely offset by revenue from the recipient company.

Project-based pooling involves two or more companies pooling their human (and often capital) assets in order to implement a specific project. The pooled employees will generally retain their employer’s working practices, but may be located on another company’s premises. This model is useful when a group of companies can access high-margin contract opportunities as a collaborative team, which would not be possible as individual companies.

The study highlights the importance of workforce pooling agreements which protect all parties from risks and liabilities. Agreements must accommodate employment law, respect health and safety requirements, and define insurance needs. Ad-hoc agreements leave companies exposed to liabilities if things go wrong. Specific topics which require consideration by professional advisors have been identified to form the basis of workforce pooling agreements.

Having confirmed the benefits and feasibility of workforce pooling, the report recommends that an operational pilot should now be set up. This will demonstrate how workforce pooling arrangements can be put in place by actual marine companies and allow benefits to be quantified and promulgated.

CONTENTS

1. INTRODUCTION.....	1
2. BACKGROUND.....	2
3. METHODOLOGY.....	3
4. CASE STUDIES AND CRITICAL SUCCESS FACTORS.....	4
4.1 Motivation for pooling.....	4
4.2 Geographic Scope.....	4
4.3 Getting Started.....	4
4.4 Contracts/Relationships.....	4
4.5 Management.....	5
4.6 Operational Factors.....	5
4.7 Costs.....	5
4.8 Benefits to Company.....	6
4.9 Benefits to Employee.....	6
5. WORKFORCE POOLING CATEGORIES.....	7
5.1 Secondment.....	7
5.2 Pooling.....	7
5.3 Professional Employment Organisation.....	8
6. EMPLOYMENT LAW ISSUES FOR WORKFORCE POOLING.....	9
6.1 Who is the employer?.....	9
6.2 Responsibility for health and safety issues.....	9
6.3 Responsibility for grievance and disciplinary issues.....	9
6.4 Implementing arrangements contractually.....	9
6.5 Pensions and other benefits.....	10
6.6 Trade Union Rights.....	10
6.7 Data Protection.....	10
7. HEALTH AND SAFETY ISSUES FOR WORKFORCE POOLING.....	11
8. INSURANCE ISSUES FOR WORKFORCE POOLING.....	12
8.1 Employer’s Liability Insurance.....	12
8.2 Public Liability Insurance.....	12
8.3 Product Liability Insurance.....	13
8.4 Occupier’s Liability Insurance.....	13
8.5 Professional Indemnity Liability.....	13
9. KEY ISSUES FOR WORKFORCE POOLING ARRANGEMENTS.....	14
9.1 Motivation.....	14
9.2 Types of Arrangement.....	14
9.3 Workforce Pooling Champion.....	14
9.4 Incentives for Employees.....	14
9.5 Skills Recording.....	14
9.6 Employer’s Duty of Care and Insurance.....	15
9.7 Legal issues.....	15
9.8 Priority for Labour.....	15
9.9 Competitiveness and poaching.....	15
10. CONCLUSIONS.....	16
11. RECOMMENDATION.....	17

APPENDIX 1 - WHERE TO GO FOR FURTHER INFORMATION	18
1. On employment issues:	18
2. On Health and Safety Issues:	18
APPENDIX 2 - CASE STUDY RESULTS	19
1. Rolls Royce redeployment scheme and MEIRG.....	19
2. Cowes Marine cluster.....	20
3. VT and FSL.....	22
4. Western forms (USA).....	23
5. Chelan County (Washington) Public Utilities Department (USA)	24
6. Others	25
7. Main overall benefits found from research	26
APPENDIX 3 - HEALTH AND SAFETY CONSIDERATIONS	27
1. Legal duties and responsibilities	27
2. Managing health and safety.....	30
3. Reporting of accidents and ill health.....	31
4. Employers Liability (Compulsory Insurance) Act 1969	32
5. The regulatory authorities	32
APPENDIX 4 - SUGGESTED WORKFORCE POOLING AGREEMENTS.....	34
1. Example agreement for short-term secondment.....	34
2. Agreement for project-based cluster	35
APPENDIX 5 - ILLUSTRATIONS OF TWO MODELS OF WORKFORCE SHARING	36
1. Pan company secondment in a cyclical workload situation.	36
2. Project based pooling	37
APPENDIX 6 - PASSPORT TRAINING SCHEMES	39
1. Regulatory support	39
2. Features of a typical passport	39
3. Benefits of passport schemes	39
4. Costs	40
5. Syllabus	40
6. The IOSH-SPA Passport Scheme	40
7. Current developments in the marine sector.....	40
8. Recommendation.....	41

1. INTRODUCTION

Many marine companies experience inherently ‘lumpy’ order books: that is, the peaks and troughs of work are uneven. This becomes problematical in terms of labour resources. The sector in recent years has experienced skills shortages in many areas vital to production; it is therefore keen to retain its skilled workers, and to reduce the costs of recruitment and training. In this tight labour market, the ‘hire-and-fire’ method of redundancy in times of little or no work and later re-employment when needed is inappropriate and counter-productive in the long term.

There is a clear need to retain these skills within the sector and particularly in the South East region. Employers need a flexible, multi-skilled workforce that can be re-deployed across the sector, allowing individual firms to ride out the peaks and troughs in their workload, and a workforce that is given the confidence to take on change. Workforce pooling or sharing appears to be a method that has potential to do this. Sharing of people and facilities is also a feature of business clustering, allowing companies to collaborate on common projects which they would be unable to complete on their own.

This report reviews and analyses six case studies of organisations that have participated in a workforce sharing scheme. It aims to identify their key features and to highlight the main issues that would have to be considered by a company wishing to establish a new scheme. These include employment law, health and safety and insurance issues and sources of further advice are provided in the Appendices.

2. BACKGROUND

The concept for workforce pooling is not entirely new. Research for this report found that arrangements to “borrow” key skilled workers, often on a casual basis between neighbouring marine companies, have been commonplace. During the time of the nationalised “British Shipbuilding”, it was common for yards to loan and borrow personnel when needed. In fact this practice continues with UK yards using common subcontractors for casual skilled labour such as welders. Furthermore, the relative success of the New Zealand yacht building industry has been attributed in part to such flexible working methods¹.

In some countries legislation exists to regulate workforce sharing. In Germany in the 1970s the shortage of skilled labour in the construction industry led to building contractors borrowing workers from each other. Unfortunately such arrangements were used to obscure abuses of the German tax and social contributions system and were made illegal (without licence) under the 1972 Arbeitnehmerüberlassungsgesetz. However, during 2003, the German government realized that workforce sharing had the potential to create work, and relaxed the regulations by passing the 2004 German Loan of Employees Act².

There have been fears expressed by UK industry as to the appropriateness of such a solution to the skills problem. In the (former) EMTA 2002 Marine Engineering Skills Observatory report³, the success of sharing is cast into doubt because of the “strong sense of competition [between companies] along with ...geographical distances”. Research for this project in 2004 did not confirm this view.

In the six case studies included in this report, no real conflicts were recorded. Although some of the companies involved did report some initial scepticism, this was overcome once the benefits became apparent. Indeed, the evidence suggests that groups of companies and their employees can recognise significant long term advantages from such initiatives.

¹ Personal Communication: Robert Brooke, General Manager, New Zealand Boating Industry Training Organisation

² The German Loan of Employees Act, available from [on-line] www.zier-law.com

³ Available [on-line] at [http://www.emta.org.uk/semta.nsf/0/2cf5f38d75c5c61580256bff0033c3e1/\\$FILE/marine.pdf](http://www.emta.org.uk/semta.nsf/0/2cf5f38d75c5c61580256bff0033c3e1/$FILE/marine.pdf)

3. METHODOLOGY

The project has comprised three key elements:

1) Case study research

- Desk research – review available information on existing workforce pooling arrangements.
- Initial evaluation – extract key features of the above, highlighting motivations, possible barriers and benefits.
- Checklist definition – key issues to consider in planning or assessing workforce sharing.
- Further data gathering – discussions with key people in short-listed case studies, covering checklist points.
- Presentation of initial results.

2) Research on legal, health and safety and insurance issues

- Initial brainstorming meeting, led by ACAS, to identify potential issues.
- Professional advice sought on these issues.
- Presentation of initial results.

3) Best practice assessment

- Marine sector requirements – identify key issues which are important for marine industry application (based on checklist, see 1) above).
- Case study appraisal – analyse case studies against marine sector requirements and results of research on legal, health and safety and insurance issues.
- Definition of best practice pooling arrangements for South East marine industries.
- Presentation of results.

The presentation of initial results was achieved at a meeting of the project partners on 11 February 2004. Four cases were presented and the checklist reviewed. Following this meeting, two more cases were analysed and the marine sector requirements were assessed. This allowed a further refinement of the checklist and preliminary drafting of this report.

4. CASE STUDIES AND CRITICAL SUCCESS FACTORS

Five case studies of companies who have operated types of workforce pooling scheme are set out at Appendix 2. Of these, three- Rolls Royce, Cowes Marine Cluster and VT/FSL - are based in the UK, the others – Western Forms and Chelan County Public Utilities Department – are based in the USA.

The following questions address the factors which appear to be critical to the success of a workforce pooling arrangement. They were used to help gather data on the case studies, inform the research into employment law, health and safety and insurance issues and, following on from this, to define the issues to be considered in developing a new pooling arrangement.

4.1 Motivation for pooling

- How does pooling help to smooth out peaks and troughs in workforce levels?
- Do the other companies have seasonal demand out of phase with your own?
- Are there random fluctuations in labour requirement?
- How long do you expect your downturns or peaks in labour demand to last?
- Does pooling enable you to collaborate with other organisations to work on projects which would normally be beyond your capabilities?

4.2 Geographic Scope

- What is the travel to work time for personnel shared with another company?
- Are there any specific practical limits?
- What are the limits of acceptability for personnel?
- How are additional travel costs reimbursed?
- Would extra time for travel be paid for?

4.3 Getting Started

- What issues were found to be important to consider during the setting up of a workforce pooling arrangement?
- How are partners selected? With specific criteria or by serendipity? Is compatibility of business culture important?
- What are characteristics of a good or bad pooling partner?
- Do initial fears need to be overcome? What fears are they? How did you overcome them?
- Is a pooling ‘champion’ important to this process?

4.4 Contracts/Relationships

- What are the formal and informal linkages between the pooling partners?

- Is there a formal contract in place?
- Who defined the contract terms – the ‘lending’ or ‘recipient’ company?
- Do you share information with your pooling partners about forward projections of labour demand, to allow human resource planning?
- How are employer liability issues (maternity leave etc) addressed in the contract?
- Have collaborating companies sought joint liability insurance?
- Have any contract deficiencies come to light?

4.5 Management

- How is the pooling arrangement managed?
- How are potential pooling opportunities communicated to employees?
- Are transferred workers regularly visited by a manager from the host organization?
- Do transferred workers receive training of any kind when they start at their host organization?
- How are the conditions of employment of workers affected? For example, in relation to holidays, working times, breaks etc?
- How are conflicts within the mixed workforce caused by pay and conditions of employment resolved?
- Are special measures needed to re-integrate workers back into their host organization after returning from a transfer?
- How are employer’s liability issues resolved? What arrangements are in place for insurance?
- How are disciplinary measures applied, using the host’s or the recipient’s disciplinary procedures?
- Are measures in place to track new workplace skills acquired by workers during their transfer?

4.6 Operational Factors

- How well does the pooling arrangement work in practice, and what are the pitfalls?
- What happens if there are either too many or too few workers to meet the labour demand within the pool?
- How are needs of different partners prioritized?
- Is there a practical minimum duration for a transfer? Or maximum?
- Is poaching a problem, and how can it be overcome?

4.7 Costs

- What direct costs are incurred and how are these accommodated?

- Have pay-rates increased for transferred workers, to compensate for inconvenience and/or to match rates in recipient company?
- Can full wage costs be recovered from the recipient company? What percentage on average?
- How much extra travel cost is claimed by employees?
- Any legal and other costs?

4.8 Benefits to Company

- Has workforce pooling delivered benefits to the company compared with other approaches to workforce sizing (hire and fire, etc)?
- Have cost savings been achieved from reduced redundancy, recruitment and initiation training needs? How much?
- Have skill levels been enhanced due to broader workplace experience?
- Is there greater employee loyalty and reduced staff turnover? How much?
- Has reputation as a good employer been enhanced and has recruitment become easier?

4.9 Benefits to Employee

- Have employees identified any benefits to them from their transfer?
- Is there a wider range of skills, improved employability?
- Is there greater work security?
- Are there increased earnings or other financial incentives?

5. WORKFORCE POOLING CATEGORIES

The case studies identified a variety of different approaches to sharing staff, broadly falling into two categories:

- **Secondment:** an employer transfers an individual or a team to another company or organisation for a period of time. The seconded staff will then work exclusively for, and under the supervision of, the receiving organisation.
- **Pooling:** two or more companies collaborate, typically on a project by project basis, and workforces are integrated wholly or partly (eg at a team level). This may be combined with sharing of facilities.

A further category is the Professional Employment Organisation (PEO) which has not been encountered within the case studies, but which exists in various forms and is considered to be an option for the future. In this situation, a new legal entity employs the pooled staff and sub-contracts them as required to participating companies.

NB for simplicity all such arrangements are referred to in the rest of this report as “workforce pooling”.

5.1 Secondment

Short-term secondments usually last for 2 – 4 months, and offer an opportunity to re-deploy surplus staff. Workers remain in the employment of the original employer and are seconded to a host who reimburses the employer. This can be a two way process.

Secondment can also be used on a longer term basis, where the original employer wants to retain skills but has a reduced need for them over the medium term. Workers are given a chance to take unpaid leave and to take up employment with another company, often in the supply chain and would return at the end of this secondment.

In both cases, the worker takes up the working practices and arrangements from the receiving employer, but retains an option of returning to the original employer.

Secondment is particularly useful where geographical separation of the original and the receiving employers is large. In such cases, relocation of the employee will be a major issue which can be built into the working arrangements for the secondment.

5.2 Pooling

Sharing of personnel by pooling can be compared to a strategic alliance, under which two or more companies co-operate together to work on a project that could not be achieved individually. Labour (and sometimes other resources) is pooled to achieve this. Workers remain in original employment, but work in another company’s premises.

Two categories of pooling can be identified:

- **Individual pooling:** one or more individuals are relocated into another company and work alongside the host’s employees, sometimes on a sub-contract basis with a defined scope of work, and sometimes on a *per diem* basis;
- **Outsourced pooling:** similar to above, but a more arms-length arrangement through which a single company can undertake a large project by means of sub-contracting to create a large and ready-skilled workforce. This can also be combined with individual pooling.

Pooling arrangements work well where the geographical separation of the pooling partners is not large enough to require relocation and travel to work does not become a significant cost. (In the case of outsourced pooling, the responsibility for relocation is passed to the sub-contractor.)

Selection between the two pooling models will depend largely on compatibility between the companies' terms and conditions of employment. In situations where these differ markedly, it is likely that outsourced pooling will be easier to establish.

5.3 Professional Employment Organisation

This is a further extension of the outsourced pooling model, in which multi-skilled workers are centrally employed and sub-contracted to companies needing those skills. This offers considerable flexibility in that new companies and workers can 'join up' without committing themselves to a relationship with any specific collaborator or employee. However, it is also likely to be more vulnerable to down-turns, as the PEO will generally have a small asset base and be unable to keep surplus staff on the payroll.

Joint investment in a PEO by several major companies could overcome this vulnerability, but this is only likely to become a realistic option after significant experience in outsourced pooling has been built up.

6. EMPLOYMENT LAW ISSUES FOR WORKFORCE POOLING

6.1 Who is the employer?

An employee is someone who works under a contract of employment. In drawing up this guidance, it is assumed that those participating in workforce pooling will be direct employees. An employee who is seconded to another company under the pooling arrangements will remain the employee of the original company.

6.2 Responsibility for health and safety issues

Employers are responsible for providing their employees with a safe system of work. They are responsible for complying with all health and safety requirements including risk assessments and consultation in relation to their employees.

Under workforce pooling arrangements, individuals may be employed by one organisation but work on the premises or at the site of another. Individuals are also likely to come into contact with working environments which are unfamiliar and in respect of which they may not have been trained.

Employers receiving employees of other companies onto their premises under a workforce pooling project will assume responsibility for the health and safety of those individuals. (See section 7 below and Appendix 3 for further information on health and safety)

6.3 Responsibility for grievance and disciplinary issues

It is the responsibility of each company to ensure that they have sound policies and procedures in place to deal with and administer grievances and disciplinary matters. If an individual employee has a grievance they should raise it through their own company procedure. If a disciplinary matter arises whilst an employee is placed in another company it should be dealt with by withdrawing the employee from their pooling arrangement and following their own employer's disciplinary procedure.

6.4 Implementing arrangements contractually

When companies enter into workforce pooling arrangements they should seek the agreement of all existing employees who are likely to be affected to a change in the terms of their employment. An employer does not have the right to make a unilateral variation to a contract of employment. There are two ways in which a contract can be varied. Firstly with the agreement of the employee and secondly through a termination of the old contract and re-engagement under a different contract which would include the new arrangements for workforce pooling. Providing that they have more than one year's continuous service, an employee would have the right to claim unfair dismissal against the old contract. The employer would have to justify the dismissal as being for a genuine business reason and would have to show that they have followed a fair procedure. (See Appendix 4 for a suggested Workforce Pooling Agreement.)

New employees would be recruited on the basis that workforce pooling arrangements will apply to their employment and this should be contained as an express clause in the written

statement of terms and conditions of employment. For existing employees work pooling would remain voluntary.

6.5 Pensions and other benefits

On the implementation of workforce pooling arrangements the identity of the employer will not change. It is therefore possible for all employees to continue to participate in relevant pension and incentive schemes provided by their permanent employer.

6.6 Trade Union Rights

Individual employees have a right to join a trade union and where a trade union is recognised by an employer who is considering entering into a pooling arrangement, the trade union should be consulted prior to any decisions being taken.

Individual employees will retain the right to be accompanied by a trade union representative at all formal disciplinary and grievance meetings, whether in relation to their own employment or that under the workforce pooling arrangement.

6.7 Data Protection

In transferring individuals between different employers under the pooling arrangements, care should be taken to ensure that all personal and sensitive information is handled appropriately under the Data Protection Act, and that any organisation to whom data is transferred maintains adequate safeguards for the security and integrity of the data.

7. HEALTH AND SAFETY ISSUES FOR WORKFORCE POOLING

Companies and individuals participating in workforce pooling will need to ensure that they comply fully with health and safety law in line with the requirements of the Health and Safety at Work Act 1974.

In addition to performing these general duties, it will be necessary to comply with a number of more specific health and safety regulations. Some of these will apply to companies generally, such as the Safety Committee and Safety Representation Regulations and the Management of Health and Safety at Work Regulations. Others dealing with particular risks, such as the Control of Substances Hazardous to Health Regulations may also apply, depending on the kind of work activity. The marine sector for example, presents hazards that are commonly found in most manufacturing sectors but there are some, such as the use of certain toxic chemicals, which are more specific to its production processes.

It will therefore be important in a workforce pooling arrangement to ensure that the relevant regulations are being met. This means that all the hazards and risks arising from the work activities being conducted by an employer proposing to “import” staff under the pooling scheme will have to be identified and controlled. It will also be vital to assess the competence of staff to carry out tasks not only to a satisfactory performance standard but also with proper regard to health and safety for themselves and others.

Employees of another participating employer cannot be expected to be familiar with all the hazards they might find nor with all the legal requirements applicable at another employer’s unfamiliar premises. There will be implications both for their proper training and the provision of information about the hazards expected to be present in their new workplace and the correct measures to be followed to control risks, if they are to be able to work competently and safely.

The general duties are contained principally in Sections 2 to 7 of the Act and are summarised in Appendix 3. Essentially the Act creates a system of responsibilities for risk management to ensure that everyone in the system can be protected from harm arising from work activities. Duty holders include employers, employees, designers, manufacturers and suppliers of work equipment.

8. INSURANCE ISSUES FOR WORKFORCE POOLING

Several types of insurance liability cover need to be considered when developing a workforce pooling scheme. These include employer's liability, public liability, occupiers' liability, product liability and professional indemnity.

The availability of a borrowed labour provision in most employers' and public liability policies would seem to facilitate the operation of a workforce pooling system provided all the insurers are advised in advance. In practice it might be more convenient and attractive to both the pooling scheme and the insurers that all employers in the scheme use just one underwriter. In the early stages of such a scheme it may be that the insurer would take a greater degree of interest in health and safety risk management systems and record keeping procedures than is the case for more traditional employment arrangements.

Uncertainty over liability issues is likely to lead to more expensive terms being offered and it is worth tackling these uncertainties at the outset.

8.1 Employer's Liability Insurance

Arranging employer's liability insurance for workforce pooling will provide a number of challenges but many of these can be overcome by negotiating and developing appropriate management and contractual systems. The actual arrangements would best be handled by a lawyer or insurance broker.

If each company in the workforce pooling arrangement holds an employer's liability insurance policy which includes a provision for the policy to apply to borrowed labour, then it is possible that adequate insurance is already in place through the borrowing company. However, it may be that the transferred employees are being covered twice in premium calculation. The critical consideration will depend on the way in which the employee is paid and where the payroll record resides, with the original employer or the borrowing employer.

The more the borrowing company takes control of the work and the means of performing the work, training, advice and information, the more the borrowing company will be seen to be taking on the role of employer and all that is implied in terms of employers' liability.

A direct approach to an underwriter is an option. If this is considered appropriate, it is more likely to succeed if the companies in the pooling project agree to work with just one underwriter and the more employees there are, both transferable and non-transferable, the more likely it is that employers' liability insurance could be packaged together with other types of insurance for example, public and product liability.

8.2 Public Liability Insurance

Public liability insurance covers legal liability to pay damages to members of the public for death, bodily injury or damage to their property which occurs as a result of business activities. The standard of care required is the standard required to avoid negligence.

Public liability insurance could be useful if the work involves any interaction with the general public, if contractors are working on site or if visitors come to the site. It also covers legal fees, costs and expenses such as representation at any coroner's inquest, fatal accidents enquiry or other court hearing because of an accident.

Public liability insurance is not compulsory but the company might find it difficult to explain absence of cover when there is clear risk to the public/contractors/visitors etc.

If a borrowed worker is injured and was not an employee of the borrowing company, then the most natural response would be to bring the claim under the public liability policy. It is quite common for a public liability policy to include provision for the policy to apply to borrowed labour. The purpose of this is to ensure that the employer is protected in respect of a claim arising out of the actions of the borrowed labour for example, if the borrowed labour injures a visitor to the site.

There is the potential for dispute over which policy should be applied in the case of accident but this would be greatly reduced if the employers' and public liability insurance was provided by the same insurance company.

8.3 Product Liability Insurance

If a company makes, repairs or sells products they could be held legally liable for damage or injury arising from defects in their design or manufacture even if they have not been negligent. Product liability covers the employer in these circumstances up to a maximum amount each year. The Consumer Protection Act (1987) makes it a criminal offence to supply unsafe consumer goods. The supplier has the responsibility in this area, not the employee who created the safety defect.

8.4 Occupier's Liability Insurance

The liability of an occupier is governed by the Occupiers Liability Acts 1957 and 1984 and applies to lawful visitors and unlawful visitors for example, trespassers. An occupier owes a duty of care to people entering the premises which is similar to the standard required to avoid negligence. The duty relates to the risk arising from any danger due to the state of the premises. Occupiers' liability insurance is not compulsory but is usually included in public liability terms and conditions.

If a borrowed worker is injured as a result of poor building maintenance and if it is decided that they are not an employee of the borrowing company, it would be possible to bring a claim under the public liability insurance. The potential for dispute over which policy should be responsible is self evident. The potential for dispute would be greatly reduced if occupiers, employers and public liability insurance cover for all the pooling members were provided by the same insurance company.

8.5 Professional Indemnity Liability

Liability for errors of design or advice provided by employees to their employer is usually covered in the public liability insurance, the assumption being that there is harm to a third party. Errors of advice provided to others may be subject to professional liability. Given that some borrowed employees might have considerable skills to offer it seems quite likely that their advice on product issues would be sought in the course of their temporary transfer. Once again, employee status is essential to the decision over which policy should respond and it may be that this can be clarified by express terms in the contractors used to control the scheme.

Professional indemnity issues should be discussed before details of the scheme are finalised.

9. KEY ISSUES FOR WORKFORCE POOLING ARRANGEMENTS

Summarising the checklist points, professional advice and results from the case studies, the following key issues have been identified, which will be important elements in a best practice model.

These key issues have shaped the two illustrative models presented at Appendix 5.

9.1 Motivation

Successful workforce pooling arrangements have a clearly defined motivation for all parties, reflected in a written agreement between them. Critical questions are the expected duration of the skill imbalance, which the sharing is designed to address, the short-term business rationale, and the longer term benefits.

9.2 Types of Arrangement

Arrangements for secondment or pooling depend upon the motivation of the lending company, the needs of the host company and the practical working arrangements in both parties. The identified workforce sharing categories (see 6. above) indicate the available options.

9.3 Workforce Pooling Champion

The research demonstrated that there is a clear need for any sharing initiative to have a “champion”. There has to be a central person or organisation that is persuasive and can achieve a sufficient level of co-operation between sharing partners. Furthermore, a certain level of openness and teamwork is needed between partners to make the scheme work: this should include sharing of data for project management and manpower planning.

9.4 Incentives for Employees

There may be reluctance for employees to take part in such a scheme, especially if it involves longer travel times to work: the opportunity for greater experience and skills acquisition may not be sufficient incentive. Employers may feel that any sort of financial incentive through enhanced pay could cause overall wage inflation. However, paying shared employees the higher of the lending or host pay rates appears to be workable, according to the experience within the case studies.

9.5 Skills Recording

There is a clear need to record the skills of workers within a cluster or a group of collaborating organisations. In this way employers can have a database of available skills available to them in order to plan projects and manpower. They can also ensure that workers possess the necessary health and safety qualifications which may be required for specific tasks.

Workers within a scheme could be given a “skills passport” kept on a database. Such a development is being addressed separately by SEMTA⁴. If successful, this would strengthen the argument in favour of workforce sharing.

9.6 Employer’s Duty of Care and Insurance

Companies and individuals participating in any workforce pooling arrangement need to comply with relevant health and safety legislation, principally the 1974 Health and Safety at Work Act. Under the terms of the act, workers must be able to perform their tasks safely without undue risk to themselves or others. This clearly has a training implication. In order for employers to comply with this duty of care, reduce costs and increase flexibility and mobility, a health and safety passport scheme could be introduced for workers in a pooling arrangement. Such a passport scheme (see Appendix 6) could also have the effect of reducing premiums for employers’ liability insurance.

9.7 Legal issues

Employees involved in workforce pooling arrangements remain employed by their existing employer under their existing contract of employment and contractual rights/obligations (eg grievance/disciplinary arrangements, pensions, etc) do not change. In order to maximise the opportunities for workforce pooling, employers might wish to incorporate an express clause relating to workforce pooling in contracts of employment for new employees.

9.8 Priority for Labour

Although such issues would be resolved in a contractual way, the overall question remains of how to manage an overall downturn affecting all sectors, or an overall shortage of skilled labour. Linkage with training and up-skilling organisations is likely to be important. The wider perspective on sector skillbase needs, which is intrinsic to most sharing arrangements, will greatly assist investment in such training.

9.9 Competitiveness and poaching

Although in the case studies staff poaching and commercial conflicts of interest were not found to be real problems, it is necessary to overcome initial fears. Appropriate contractual clauses and awareness of successful case studies will both help achieve this.

⁴ The UK Sector Skills Council for Science, Engineering and Manufacturing Technologies

10. CONCLUSIONS

1. The case studies identified in the study have been strongly beneficial to the employers and to the employees concerned. In one case, the lack of a contractual framework has created a problem, but appropriate solutions are available.
2. Benefits range from short-term cost savings (eg lower redundancy and recruitment/re-training costs) and job security, through to intangible, longer term benefits (eg attraction of more young people into a more secure, multi-skilled workforce).
3. A major conclusion of the study, therefore, has been that workforce sharing appears to be both feasible and beneficial for employee and employer alike. There is sufficient evidence of this to warrant an operational pilot project.
4. Workforce sharing is not, however, a panacea. There will remain situations where redundancy is unavoidable, but these are expected to be much less common in situations where sharing is adopted.
5. Interdependence has been identified with: a skills passport initiative; and take-up of training resources. The former can increase the benefits to both employees and employers. The latter can help address situations of overall skill shortage.
6. There is no single model for workforce sharing, though several broad categories of arrangement have been identified. These range from fully integrated human resource arrangements through to sub-contracted team arrangements.
7. The optimal solution for a given group of companies depends on many factors, including corporate structure, culture, skill-base congruence and working practices.
8. Resistance to change within the workforce and scepticism within the management are the two biggest barriers to adoption of workforce sharing arrangements. In successful cases, these have been overcome quite rapidly. Promulgation of successful cases, using peer groups, may therefore be effective in reducing these barriers.
9. A second major conclusion of the study, therefore, has been that workforce sharing can expose companies to contractual and other risks. It is important to minimise these risks by exploiting the existing experience base, and taking professional advice on contractual and insurance arrangements.

11. RECOMMENDATION

An operational pilot should be established, involving a range of small and large marine employers, over a period of time which would allow pooling arrangements to be developed and bedded-in. Ideally, the range of companies should permit both types of pooling (secondment-based and project-based) to be applied.

The geographic scope of the pilot should be consistent with each type of pooling. Project-based pooling would generally be useful within a common travel-to-work area, whereas secondment-based pooling could cover a wider geographic area.

The pilot must be resourced to provide access to relevant professional advice, addressing the various sensitive issues identified in the present study. Such a pilot would demonstrate how new workforce pooling arrangements can be set up by companies, and also disseminate the benefits and lessons learned to a wide range of potential beneficiaries.

APPENDIX 1 - WHERE TO GO FOR FURTHER INFORMATION

1. On employment issues:

ACAS
Southern Area, South and East Region
Westminster House
125 Fleet Road
Fleet
Hampshire GU51 3QL
Tel: 01252 360774
ACAS Helpline 08457 474747
www.acas.org.uk

EEF South
Station Road
Hook
Hampshire RG27 9TL
Tel: 01256 763969
www.eefsouth.org.uk

Trades Union Congress
Congress House
Great Russell Street
London WC1B 3L
Tel: 020 7636 4030
www.tuc.org.uk

2. On Health and Safety Issues:

Health and Safety Executive
Rose Court
2 Southwark Bridge
London SE1 9HS
Tel: 020 7717 6000
Information Line: 08701 545500
www.hse.gov.uk

Trades Union Congress
As above

EEF South
As above

APPENDIX 2 - CASE STUDY RESULTS

1. Rolls Royce redeployment scheme and MEIRG

When faced with major new challenges for the aviation industry after 2000 which resulted in a wide scale redundancy situation, Rolls Royce decided that the usual methods involving of mass lay-offs at its UK plants had not served them well. In the past this approach had led to increased recruitment and training costs for new staff with the skills that were required; a high cost factor for making long serving employees redundant and a negative impact upon productivity throughout the group after the job loss announcement. It was considered that a worker redeployment approach would be a more effective way of dealing with the restructuring of the company's workforce. They see this initiative as a future model for UK industry.

Employees whose positions were being made redundant were therefore encouraged before that time to:

- Look for another job within the Rolls Royce Group
- Look for work elsewhere
- Take up a re-training offered by either Rolls Royce or funded by JobcentrePlus
- Possibly take up a secondment with another company

In order to achieve this, Rolls Royce set up a redeployment service which set up resource centres at six of the company's sites in the UK. Each of these dedicated centres provides the following:

- Counselling for employees who are being made redundant
- Skills training for CV writing, completing applications forms and for selection interviews.
- Provide access to PCs for internet and specialist job hunting software.
- Information on internal and external vacancies

In the four years that Rolls Royce have operated this scheme, approximately 5,500 workers have been redeployed and it has saved the company around £28m. However, despite this success, they found that 70% of employees redeployed outside of Rolls Royce did not stay in engineering. Only 10% of those who re-trained did so in an engineering discipline.

This led to several midlands engineering employers, unions and government bodies co-operating together to set up the Midlands Engineering Industry Redeployment Group (MEIRG) which aimed to keep valuable engineering skills within the region:

“The Midlands Engineering Industries Redeployment Group (MEIRG), which is supported by the Midlands Aerospace Alliance (MAA) aims to ensure that the Midlands can better retain and develop the well trained, skilled and motivated pool of engineering talent that currently exists within the region.”⁵

Essentially the programme acts as an on-line information exchange for skills. A central database holds information on the skills and experience of workers who are enrolled on the

⁵ See [on-line] www.meirg.org.uk

scheme. Registered employers can search the database and request more information on individuals whose details appear on-line anonymously. Employees can also search for vacancies. Re-employment is therefore on the more traditional model.

MEIRG is however working on another redeployment method for members based upon a pan company secondment model. This aims to reduce further recruitment costs whilst retaining a highly skilled and motivated flexible workforce. They aimed to develop this concept more fully in order to run a pilot in April this 2004.

The key points of this model will be:

- That workers will remain employed by their original employer.
- They will be seconded to another organisation but will retain their conditions of employment; for example, holidays and pensions. In all other respects they will be an employee of the organisation they will be seconded to.
- The hosting company will pay the lender directly for the labour.
- Employers' liability remains with the hosting company, although if the level of cover is below that of the original employers, the lender will make up the difference.
- In cases of disciplinary action, the worker will be withdrawn from the hosting company.
- Contracts between employer and employee, lender and host are formal and will be in written form.

There are several issues that MEIRG have considered:

- Equalities of salary: seconded workers' salaries should not change even when the fee paid for the worker is less. It is thought that this in most cases will still save the original employer money when compared to the costs of redundancy.
- Discipline: secondees will be subject to the rules and regulations of the seconding organisation, not their original employer.
- Liability: there are issues connected with the liability for negligence for seconded workers.

2. Cowes Marine cluster

Cowes Marine Cluster has been developed over the past year, with support under the SEEDA Cluster Fund, and now has more than 50 member companies. Most of these are based in and around Cowes, and most are involved in boat building either as a builder, component supplier, or provider of professional services.

Although the cluster itself is new, there has existed for some years a degree of collaboration between companies that know each other. This has recently been extended into the area of workforce pooling, albeit on an informal basis.

There are two situations where pooling is useful:

1. When one company has a large job to complete against a demanding deadline, and needs additional staff, whereas another company has a quiet period and has excess staff;
2. When a large contract opportunity emerges, and two or more companies bid jointly on the basis that they will share the workload between them.

Contracts in this sector are often ‘lumpy’ and too large for one company to take on alone, so the above situations are commonplace.

Shortage of factory space is also a key element of the equation, and pooled workers sometimes remain working on their normal site, but managed by a project manager from another company. This situation may more resemble a simple sub-contract, but still plays a role in the overall pooling process.

Key Features

- Typically 2 to 4 companies pooling their resources for duration of a specific contract, covering personnel and sometimes use of factory space
- One company is contract holder, and provides project management of the whole team. Relationship with other companies can be either an agreement to buy man-hours up to an agreed budget, or a straight sub-contract at fixed price.
- If a company relocates staff to one of the other company’s premises, employer liability remains with the original employer. It is the responsibility of that employer to perform risk assessment of the additional premises and to take out any additional insurances required.
- All companies are located near to each other so travel is not an issue.
- Man-hour rates are not equalised and staff continue to work on their normal rates. Companies agree informally not to poach staff.
- Informal approach vulnerable to a change in personnel or ownership of one of the pooling partners.

Benefits

- Different pooling mechanisms offer flexibility to suit different business needs and contract limitations
- Use of local partners provides workforce flexibility without travel problems
- Informal approach working with other trusted companies means that new arrangements can be set up quickly to meet an urgent client need
- Transparent approach means that partners can see where risk lies and take steps to minimise risk
- No change to employment liabilities compared with existing non-pooled workforce
- No problems with worker scepticism, as there is no significant change to staff rights or wages

Barriers

- Most companies do not have unused factory space, so ability to pool space as well as people is essential. Limited to companies able to partition off factory space to dedicate to a specific pooled activity
- Informal approach depends on trust. This can be dangerous (eg in event of a takeover or change of management) and problems will quickly erode trust

- Ideally needs a framework agreement in place to set the ground rules, then each pooling requirement can be specified in a simple schedule. This will remove much of the risk, but needs to be set up in advance.

3. VT and FSL

VT Group owns a 50% share of naval ship repair business FSL and has established a workforce sharing arrangement with FSL. This allows teams of workers from VT to be allocated to specific work packages at FSL, and vice versa. In 2003, 20 people were transferred from VT to FSL, which has increased to 50 people in 2004. The shared worker is paid at the rate of the highest payer, and sharing tends to be financially attractive for VT employees to transfer to FSL.

The ownership structure simplifies arrangements, for example by allowing the same insurance company to be used by both parties. Obviously this is a feature which is specific to this corporate structure.

During the period of the sharing arrangement, VT Shipbuilding relocated from Southampton to Portsmouth (where it is now adjacent to FSL) and introduced different working practices. The change of VT onto a four-day week has caused major problems because FSL still works a five-day week (actually 4.5 days). VT still provides bussing from Southampton to its new site, but this does not operate on Fridays. Also, daily start times are different.

Historically, workers had been transferred as individuals to join a team in the receiving organisation. There was a tendency to choose employees living near to the receiving organisation, in order to avoid additional travel time and cost. This arrangement has now shifted more towards transfer of a team plus supervisor to undertake a defined scope of work at the receiving organisation. This is partly to get around the problem of different working hours.

The sharing arrangement also extends to BAe, the other shareholder in FSL, but on a longer term basis due to the geographical separation. Industrial employees are relocated (where their terms allow this) while non-industrial employees tend to be seconded.

Key Features

- Transfer typically involves a team of workers plus supervisor, charged to perform a specific scope of work as in a sub-contract. This minimises the friction caused by different working hours.
- The supervisor can maintain a reporting link back to the lending company, and helps to minimise disruption after the sharing comes to an end.
- Insurance issues are minimised as a common insurance company write policies for both parties. The lending company remains the employer throughout, and presumably meets any higher wage costs incurred in the pooling.
- No specific travel arrangements are made for transferred employees, due to the proximity of the two companies.
- Transferred employees are paid at highest rate, which tends to encourage pooling more from the lower-paying company.
- Additional workplace skills acquired by transferees are not currently monitored, and a skills passport would be considered potentially useful to achieve this

Benefits

- Major benefit is retention of skills
- Cost saving compared with redundancy and recruitment
- Support from unions
- Operating with an Extended Partnering Agreement to minimise complexity and cost of setting up each employee transfer
- Problems of different working hours overcome by a team transfer approach
- No change to employment liabilities compared with existing non-pooled workforce

Barriers

- Major barrier is employee suspicion and conservatism. Moving workplace is inherently threatening, though workers become more supportive over time
- Employees do not appear to recognise any benefit in terms of multi-skilling or future employability, possibly because this workforce has quite a high age profile
- Travel arrangements limit range of pooling available – needs to be a package of work
- Really need pooling to be included in employees' Terms and Conditions to make it more widely usable
- Pooling is not a panacea – VT are presently making redundancies.

4. Western forms (USA)

Western forms are based in Kansas City and are manufacturers of aluminium forms for the construction industry. They employ around 100 people, most of whom are skilled in aluminium welding.

Up until five years ago, in order to cope with seasonal swings in demand of up to 300% they would lay-off a portion of their workforce during slack periods. They found however that their recruitment and training costs were rising in a tightening labour market. Furthermore, productivity would decline when new workers were introduced. This led to the decision to network with other local manufactures in order to outpace a number of their workers for these times.

The scheme has proved successful: they typically second up to 40% of their production workers to other employers during off-peak periods to hosting companies that are not affected by the same seasonal demand. Moreover, during peak periods, they can host workers from other companies.

Western Forms employees' welding skills are most called for, but the workforce will take on less skilled work. They do not second their most experienced workers or those who have been employed less than a year. During off-peak periods this gives them the chance to cross-train some of these newer employees.

There has been no experience of poaching or of a clash of interests between employers. They find that an open relationship works well, especially where planning for manpower is needed in relation to expected demand.

The key features of the initiative are:

- Seconded workers remain in the employment of their original employer.
- Employees' terms and conditions of work are not changed but seconded workers will "fit in" with shift patterns and times of hosting company.
- The host company pays the loaning company for the labour. This is normally at cost, sometimes at a premium, occasionally at a loss.
- Employees are kept in contact with their employers through a weekly visit by a supervisor. Payslips are delivered and company updates are given.
- Secondments are normally 3 to 4 months long. Western forms will give a month's notice for early withdrawal but open relationships between companies can result in withdrawal much earlier in times of unexpected high demand.
- Employers' liability remains with the original employer. No experience of worker negligence
- In cases of disciplinary action, Western forms will withdraw the employee from host company.
- Contracts between lender and host are on a verbal basis.

Benefits

- Retains skills and experienced workers
- Reduces costs of recruitment and training
- Workforce becomes more multidisciplined, diversified and flexible.
- Increases job security for workers; makes employment more attractive
- Improves workforce moral and at times, productivity

Barriers

- Geographical limit to scheme; workers will not travel more than 20 minutes to work.
- Western Forms have had experience of loaning employees to companies whose work culture is incompatible with theirs. They were reluctant to return employees to such organisations because of the impact upon their productivity and moral.
- Finding host organisations was found to be difficult but achievable; most contacts for hosting are made through word of mouth by employees.

5. Chelan County (Washington) Public Utilities Department (USA)

Chelan County PUD, a publicly owned hydro electric generating body, has had for a number of years an agreement to share workforces with a private hydro generator, the Avista Corporation.

The two organisations in the past had worked closely on projects; at times some of the Chelan Country hydro engineers had been seconded to Avista. However, in 2002, Avista found that they had a number of maintenance workers surplus to their current needs. This drop in demand for labour coincided with a scheduled increase in work needed on Chelan County's hydro projects. After initial talks with employers and Union representatives, who were at first sceptic, Avista offered these employees the choice of redundancy or a secondment to Chelan County. Eight employees transferred for periods of time of up to ten

months, although the scheme is ongoing. It is also envisaged that during peak periods for Avista, Chelan employees can be transferred to bolster their workforce.

The scheme has been successful. They find that an open relationship with each other concerning work plans and peak and troughs of demand works well. They found that loaned workers did not need training other than for a two week orientation course. Differences in culture and operation between private company and public body were smoothed out over time and the two organisations learnt from each other.

Chelan are currently in negotiation with another generator to exchange workers in the same area.

The key features are:

- Seconded workers remain in the employment of their original employer.
- Employees' terms and conditions of work are not changed but seconded workers will "fit in" with shift patterns and times of hosting company.
- The host company pays the loaning company for the labour.
- The loaning company pays for workers' housing expenses when on secondment.
- Employers' liability remains with the original employer. No experience of worker negligence
- In cases of disciplinary action, the lending organisation will withdraw the worker from host company.
- Contracts between lender and host are formal and written.

Benefits

- Retains skills and experienced workers
- Bolsters workforce in times of peak demand
- Reduces costs of recruitment and training
- Loaned workers can "hit ground running"
- Workforce has experience of different working methods, approaches and cultures.
- Increases job security for workers.
- Hosting Avista workers in Chelan County brings in valuable income to this remote area.

Barriers

- Other than initial scepticism by union representatives, none were reported.

6. Others

Some additional examples are worth mentioning even though details of the arrangements are not available.

- The New Zealand yacht builders (see Section 2. of the main report) achieved success by using a combination of individual pooling and outsourced pooling with sub-contractors in order to complete orders for large super-yachts. Since that time, their industry has

become more established. However, yards still lend out workers on the secondment model during slack times.

- British Airways have had a system where employees can volunteer to be seconded to a company in the BA supply chain for a fixed period of time. They become the employee of the hosting company and are given unpaid leave by BA.

7. Main overall benefits found from research

- Cost savings compared to traditional model of redundancy and re-recruitment
- Retention of key personnel and skills
- Increased job security for employees; more attractive career prospect
- Improved workforce moral and potentially increased productivity
- Potential for workforce to become more multi-skilled, diversified and flexible.
- Support from unions
- Different pooling mechanisms offer flexibility to suit different business needs and contract limitations
- Informal approach working with other trusted companies meant that new arrangements could be set up quickly to meet an urgent client need
- Transparent approach meant that partners could see where risk lay and take steps to minimise risk
- No problems with employer opposition, as there were no adverse impacts on staff rights or wages

APPENDIX 3 - HEALTH AND SAFETY CONSIDERATIONS

1. Legal duties and responsibilities

Companies and individuals participating in workforce pooling will need to ensure that they comply fully with health and safety law. The Health and Safety at Work etc Act 1974 (the Act) is the principal statute setting out what must generally be done to protect health and safety.

In addition to performing these general duties, it will be necessary for duty holders to comply with a number of more specific health and safety regulations. Some of these will apply to companies generally, such as the Safety Committee and Safety Representative Regulations and the Management of Health and Safety at Work Regulations. Others dealing with particular risks, such as the Control of Substances Hazardous to Health Regulations, may also apply, depending on the kind of work activity. The marine sector presents hazards that are commonly found in most manufacturing sectors but there are some, such as the use of certain toxic chemicals, which are more specific to its production processes.

It will be therefore be important for confidence in workforce pooling to ensure that the relevant regulations are being met. This means, essentially, that all the hazards and risks arising from the work activities being conducted by an employer proposing to “import” staff from the work pooling scheme have been identified, and are being controlled. It will also be vital to assess the competence of staff to carry out tasks not only to a satisfactory performance standard but also with proper regard to health and safety, both of themselves and others.

The staff of another employer contributing to the scheme cannot be expected to be familiar with all the hazards they might find nor with all the legal requirements applicable at another employer’s unfamiliar premises. There will be implications both for their proper training and the provision of information about the hazards expected to be present in their new workplace and the correct measures to be followed to control risks, if they are to be able to work competently and safely.

The general duties are contained principally in Sections 2 to 7 of the Act and are summarised below in relation to different duty holders. Essentially, the Act creates a system of responsibilities for risk management to ensure that everyone in the system can be protected from harm arising from work activities. Duty holders include employers and employees, the self-employed, and designers, manufacturers, importers and suppliers of work equipment.

“So far as is reasonably practicable”

The phrase so far as is reasonably practicable qualifies a number of duties in health and safety law relating to the control of risk. It means that the quantum of risk may be weighed by the duty holder against the sacrifice, whether in terms of money, time or trouble, needed to avert the risk. If this calculation shows a gross disproportion, the risk being insignificant in relation to the sacrifice, then the duty holder discharges the burden of proving that compliance is not reasonably practicable. Relevant case law is to be found in *Edwards v National Coal Board*.

1.1 Employers

Section 2 sets out the duties of employers towards their employees. The term “employee” is defined at Section 53 of the Act as an individual who works under a contract of employment.

Every employer has principally to ensure, so far as is reasonably practicable (see above), the health, safety and welfare at work of all his employees. There are several other important duties contained in Section 2. These include the provision of information, training and supervision, the maintenance of a safe and healthy workplace, with safe means of access and egress, and the provision and maintenance of a safe and healthy working environment, with adequate facilities and arrangements for welfare at work.

Section 2 requires every employer to prepare and when necessary revise a written statement of his general policy with respect to the health and safety of his employees, describing the organisation and arrangements for carrying it out. The statement must be brought to the notice of all his employees. An employer engaged in workforce pooling whether as supplier or recipient of labour will need to take this into account and reflect it in his policy.

He must also consult any safety representatives with a view to making arrangements enabling him and his employees to co-operate effectively in promoting and developing measures for ensuring health and safety.

The employer has to establish a safety committee when requested to do so by safety representatives. Detailed requirements are set out in the Safety Representatives and Safety Committee Regulations. Participants in workforce pooling will need to consider whether their arrangements take account of the presence of temporary employees or contractors.

Section 3 deals with the duties of an employer to those who are not his employees. Every employer has to conduct his undertaking so as to ensure that persons not in his employment but who may be affected by the conduct of his undertaking are not exposed to risks to their health and safety. This duty is significant for workforce pooling as, for example, it will cover other employers’ staff who are working at the premises of an employer making use of work-pooling arrangements to meet demand. The duty also covers visitors to the premises or members of the public passing by who could be at risk from the activities.

All those employers participating in work pooling, whether as recipients or suppliers of labour, will need to co-operate to ensure that risks are being properly assessed and managed. Temporary members of an employer’s workforce may be unfamiliar with the risks they are likely to encounter in their new environment. For them this will be a period of high vulnerability. Training, instruction and close supervision will be needed to bring them “up to speed” while keeping them safe.

1.2 Employees

Every employee has a duty under Section 7 of the Act to take reasonable care, both for his own health and safety and that of other persons who may be affected by what he does or does not do. An employee is also required to co- operate with his employer or any other person to enable them to comply with their health and safety duties.

1.3 Self-employed persons

A self-employed person is defined at Section 53 as an individual who works for gain or reward other than under a contract of employment, whether or not he himself employs others.

Section 3 requires a self-employed person to conduct his undertaking so as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected by his conduct of the undertaking are not thereby exposed to risks to their health and safety.

1.4 Members of the public

Section 3 also requires that the health and safety of others who are not employed should be ensured so far as is reasonably practicable by those responsible for work activities which could harm them. This duty thus protects members of the public and visitors.

1.5 Contractors

A contractor is anyone that an employer might get in to work for him who is not his employee. Contractors and subcontractors are not defined in the Act but could be employers or self-employed persons in their own right, or their employees.

Essentially, the same system of duties applies to them as is described above.

Employers may invite other companies or individuals that are not their own employees onto their premises to work, perhaps alongside their own employees, to deliver or collect goods, provide services, and suchlike. These companies or individuals have duties and responsibilities both towards their own employees and to others, even though they are not working at their own premises.

There is case law (see for example *R v Associated Octel Co Ltd* and *R v British Steel plc*) which is relevant to the relationship between an employer and a contractor for complying with health and safety law. The House of Lords held in the Octel case that an employer is under a duty under Section 3(1) of the Act to exercise control over an activity carried on by a contractor if it forms part of the employer's undertaking. The employer must take reasonably practicable steps to avoid risks to the contractor's servants which arise not merely from the physical states of the premises but also for the adequacy of the arrangements which the employer makes with the contractor for how they will do the work.

An employer who invites a contractor onto his site thus cannot simply pass his responsibilities for health and safety over to the contractor and wash his hands of the matter. Neither should a visiting contractor assume that the client employer will be solely responsible for managing any risks that the contractor creates.

Both parties continue to have their own duties of compliance for which they are separately responsible. Clearly, co-operation and understanding between the parties and good communication, including the supply and exchange of relevant health and safety information, will be essential to successful risk management. Contractors (who may be strangers to the site) need to know about the hazards they are likely to encounter, the site rules and safety procedures, what kind of protective clothing is to be worn or safety equipment is to be used, what to do in an emergency, the sound of the alarm, how to raise it and so on.

Employers will therefore be well advised to assess a contractor's competence in health and safety and check for evidence before they give them the job. This could mean examining their procedures for health and safety to ensure they will fit in with site rules and procedures, planning for the contractor's job and assessing the hazards at each stage, informing them of the hazards on site and the site emergency procedures before they start work, and monitoring their progress carefully.

1.6 Designers, manufacturers, importers and suppliers

Section 6 of the Act makes it the duty of any person who designs, manufactures, imports or supplies any article for use at work to ensure, so far as is reasonably practicable, that it is designed and constructed so that it is safe and without risks to health. Any necessary testing or examination must be carried out and information about how to use it safely must be supplied.

2. Managing health and safety

The body of health and safety law and regulations that employers are expected to be aware of is too great to describe here in full. But the Management of Health and Safety at Work Regulations 1999 (MHSW) are particularly significant and will need to be followed closely by participants in work pooling. The MHSW Regulations apply to everyone at work and encourage employers to take a more systematic approach to dealing with health and safety by:

- assessing the risks which affect employees and anyone who might be affected by the work activities, including contractors. Companies who employ five or more people must record the significant findings of the assessment;
- setting up emergency procedures;
- co-operating with others on health and safety matters, eg contractors
- providing temporary workers, such as contractors, with health and safety information.

Where two or more employers share a workplace, whether on a temporary or permanent basis, the Regulations require each employer to:

- co-operate with other employers;
- take reasonable steps to co-ordinate between other employers to comply with legal requirements;
- take reasonable steps to inform other employers where there are risks to health and safety.

The Control of Substances Hazardous to Health Regulations 2002 (COSHH) will also be significant for workforce pooling participants. These Regulations aim to protect people who may be exposed to hazardous substances on site and are particularly important in companies manufacturing, storing and using chemicals. They require an assessment to be carried out on all jobs where there is a risk of exposure to hazardous substances. The COSHH assessment should generally be recorded together with any further action. Employees should be told about any risks and the need to use control measures such as ventilation or personal protective equipment. Contractors must do the same for their employees. Again, co-operation, communication and co-ordination between the parties will be essential to effective risk management.

2.1 Risk assessment

A sound approach to risk assessment will be fundamental to complying with the duties to control risks that have been mentioned above. Risk is a term that has been widely interpreted in case law. In *R v Board of Trustees of the Science Museum* it was held that the possibility of danger was sufficient and there was no need for the prosecution to show that there was an actual danger. In *BOC Distribution Services v Health and Safety Executive* it was held that the offence is concerned with the creation of risk rather than the causation of a particular accident.

Risk can be described in a more practical way as the likelihood of a hazard, such as electricity or a toxic chemical, causing harm. HSE has published guidance on how to conduct risk assessment in five steps, which keeps the process simple:

- look for the hazards
- decide who might be harmed, and how
- evaluate the risks and decide whether the existing precautions are adequate or whether more should be done
- record the findings
- review the assessment and revise it if necessary, eg when change takes place.

There is useful published advice and guidance about risk assessment and managing health and safety available from different sources, such as “Successful Health and Safety Management” (HSG 65) and “Five Steps to Risk Assessment” published by HSE (see Sources of information and advice, below).

3. Reporting of accidents and ill health

Participants in work pooling schemes will need to pay careful attention to the legal requirements for reporting work-related accidents, dangerous occurrences and cases of disease. These are reportable to the enforcing authority under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR '95). Employers, the self-employed and persons in control of premises have duties under these regulations. Failure to report is regarded as a serious matter.

The employer must notify the enforcing authority without delay, eg by telephone, if an accident connected with work occurs and an employee or self-employed person working on the premises is killed or suffers a major injury, or if a member of the public is killed or taken to hospital. This is to be followed up within ten days with a completed accident report form (F2508, available from HSE Books – see Sources of information and advice below).

The report form requires the employer to give various details including information about the date, time and place and whether the injured person was one of his own employees, on a training scheme, on work experience, employed by someone else, self-employed or a member of the public.

If an employee or self-employed person suffers an over-three-day injury, ie one which is not major but results in the injured person being away from work or unable to do their normal work for more than three days, F2508 must be sent to the enforcing authority by the employer within 10 days.

If a doctor notifies an employer that an employee is suffering from a work-related disease the employer must report this to the enforcing authority on form F2508A.

Dangerous occurrences, for example the explosion of a pressure vessel, collapse of lifting equipment or a fire, must be reported immediately (eg by telephone) and followed up within 10 days by F2508.

Self-employed persons who suffer injury working on someone else's premises should, if possible, make sure they know about it, as that person will be responsible for reporting it.

Employers and the self-employed must keep records of any reportable injury, disease or dangerous occurrence, eg by filing copies of completed report forms or recording the details on computer.

3.1 Telephone reporting

Reporting by telephone to the Incident Contact Centre (telephone 0845 300 9923) has been possible since April 2001. There is then no need to fill in and send a report form. Employers are sent a copy of the final report prepared by the ICC based on the information they supply over the telephone, which will meet the employer's statutory obligation to keep records.

4. Employers Liability (Compulsory Insurance) Act 1969

Employers must take out and maintain approved insurance policies with authorised insurers against liability for bodily injury or disease sustained by employees at work. The Act is enforced by HSE. It will be important for participants in workforce pooling to ensure that their policies provide adequate cover.

HSE has published guides to the ELCI Act for employers and employees (see 6. below).

5. The regulatory authorities

The national regulators of health and safety at work are the Health and Safety Commission and the Health and Safety Executive (HSE). The Commission is a tripartite national body including representatives of employers and employees whose principal function is to advise Ministers on policy, in particular the making of health and safety law. The Commission has approved a number of codes of practice to assist duty holders in complying with the law, and has given guidance to enforcing authorities.

HSE is a separate statutory body, assisting and supervised by the Commission. Its principal role is that of the national enforcing authority for health and safety law. The law is enforced by HSE's inspectors in most industrial sectors, including marine (though not ships at sea) and by environmental health officers of Local Authorities in commercial, retail and leisure premises. It is thus most likely to be HSE's inspectors who visit premises in the marine sector to inspect, investigate accidents and cases of ill health, or complaints about working conditions. They have a wide range of powers and may serve improvement notices if in their opinion there is a contravention of the law or may prohibit activities if in their opinion there is a risk of serious personal injury.

Flagrant or persistent breaches of the law will invite prosecutions.

6. Sources of advice and information about health and safety

Health and safety information is available from numerous sources such as the TUC, CBI, EEF South, RoSPA, British Safety Council, Institution of Occupational Health and Safety and consultancies.

HSE's Regional Offices (see telephone directory) may also be contacted and their local inspectors will usually give advice free of charge. HSE maintains a telephone advisory service called "Infoline" which is a useful first port of call (telephone number 08701 545500). Some technical information can be found on the HSE website: www.hse.gov.uk.

Other information and technical guidance published by HSE is available from HSE Books, PO Box 1999, Sudbury, Suffolk CO 10 6FS, telephone number 01787 881165, Fax 01787 313995.

APPENDIX 4 - SUGGESTED WORKFORCE POOLING AGREEMENTS

1. Example agreement for short-term secondment

This agreement is to confirm the arrangements for the short-term secondment of an individual employee from their normal place of employment to the premises of another employer in the pooling scheme.

Name of lending employer

Name of borrowing employer

Name of employee

NI Number

Date of commencement of loan period

Duration of the loan period

Place of employment during the loan

During the period of the loan the employee will retain their existing terms and conditions of employment and will continue to be paid by their permanent employer. The lending employer will invoice the borrowing employer on a weekly/monthly basis the employment costs.

It is the responsibility of both employers to check the employers' and public liability coverage with their insurance provider to ensure adequate cover.

Signed.....
Lending employer

Signed.....
Borrowing employer

Date.....

Date

Signed

Employee

Date

2. Agreement for project-based cluster

A range of possible agreements have been used successfully, for example in the aerospace industry. The precise terms of the agreement are generally specific to each project, and it is not possible to give a generic template.

Specialist advice should be sought to set up this type of agreement.

APPENDIX 5 - ILLUSTRATIONS OF TWO MODELS OF WORKFORCE SHARING

These illustrative models are based upon the findings of research into workforce sharing arrangements of various companies and organisations. The first example is an instance of how a secondment initiative could work; the second, a project based pooling arrangement.

1. Pan company secondment in a cyclical workload situation.

The Billings Yacht and Boat Building Company builds small craft to order, specialising in GRP moulding of hulls and high quality interiors. They employ 35 people, mainly laminators and carpenters in their yard; the majority of whom are involved with new builds, but some employees specialise in repairs and refits.

Billings found that they were busy with new orders throughout the autumn and winter; however, most buyers want their new craft ready for the beginning of the sailing season in the spring or early summer. This was also a busy time for the refit work. Although there were some new builds, projects and repair work that continued over the summer months, they were not as busy during this time as in the winter months. Annual leave, training, maintenance and repair to the facilities took up some of the workforce's time, there was still not enough work to occupy their full complement of employees. This situation caused some problems with cash flow later in the year.

In the past they have laid off surplus employees during this slack time. Recently this course of action had become less appropriate: the labour market for skilled workers had become tighter; they had experienced problems recruiting highly skilled workers and have been forced into investing in a training scheme. They feared that redundant workers would not return to them when needed and recruitment and training costs would spiral upwards.

Instead they decided to look for other companies in the area that might need extra skilled workers at a time when Billings did not. This idea was broached with the workforce and was met by scepticism by some, but a group volunteered for secondment. Through networking opportunities and also by word of mouth through employees Billings found several companies that might possibly need some extra skilled workers in the summer months. After initial negotiations, two companies agreed to take workers from Billings during the first summer: one company produced garden decking made to order and the other specialised in producing GRP panels for shop signs, flat roofs etc.

There were a number of issues that were dealt with during these negotiations:

- The borrowing companies agreed to pay Billings a fixed price for the labour over a three month period. In the case of Tredwell Garden Decking, this fee did not cover the true cost of the wages.
- Workers would remain in the employment of Billings
- It was agreed that priority for labour remained with Billings, therefore one month's notice would be given for early withdrawal of the workers.
- Health and safety training had to be given to the seconded workers.
- Seconded workers would adopt the working practices and hours of the hosting companies.

- Employer's liability would remain with Billings
- In cases of disciplinary action, seconded workers would be returned to the Billings

Negotiations with the volunteers for secondment highlighted the following issues:

- Out of pocket expenses
- Travelling time

Billings agreed to pay any out of pocket travelling expenses to loaned-out employees and also to pay an allowance for extra travelling time, although this was only paid when workers spent time at HJP Laminates; it was not paid for working at Tredwell's as they were based near the secondees' normal place of work.

The system worked well despite initial scepticism and glitches. There were a number of positive outcomes:

- During busy times Billings hosted some laminators from HJP to help with lay ups. Billings promoted the idea within the local area in order to enlarge the pool of employers and skilled workers.
- Workers also acquired new skills and methods whilst on secondment.
- It created more stable employment for workers therefore maintaining a skills base and improving returns on investment in training. This also had the effect of making recruitment easier.

The main benefits were:

- The initiative helped to improve Billing's cash flow. The scheme saved about £3000 – £4000 in the first year because not all of the workers had been hired out at full cost. However it did mean that money was still being banked over this quiet period and also Billings did not have to pay out redundancy to non productive workers. For the future, Billings expected the costs of recruitment and training to rise. They estimated that the savings from the scheme could double in the next few years.
- The redundancy and recruitment strategy usually resulted in a great deal of managers' and administrators' time being spent on associated activities such as paperwork, interviewing, letter writing, briefing etc. Billings found that more time was available to managers and supervisors after the secondment scheme was put into action: they could spend more time on pro-active functions such as sales, marketing and customer care activities. Administration time was also saved.
- Overall recruitment effort fell: in fact they found that skilled workers applied on speculation because they were seen as a good employer in the area.
- Productivity was not affected by a redundancy situation and worker moral was found to be higher overall.

2. Project based pooling

A number of aeronautical companies and a boat builder based in the same town had co-operated in the past on relatively small projects, lending out labour or other resources on an informal basis when needed. All of the companies experienced lumpy order books and went through busy and quiet periods. In order to use their workforces more efficiently in a similar manner, one company suggested that they collaborated more fully and build a prototype flying boat aimed at the private market. The prototype was needed for testing the

design and also as a marketing tool. They intended to collaborate in the future to manufacture the aeroplane.

Neither company had the financial, material or human resources to handle this work individually. They decided that the work could be carried out on their own or each others' premises by pooling their workforces. This had the advantage of not only taking up spare labour capacity but also spare workshop space. One company acted as overall project manager. It was agreed that labour could be "bought" on a man-hour basis up to an agreed budget or through a straight sub-contact for a fixed price for a specific package of work.

Contracts were drawn up between the various parties. The main points were:

- Employers' liability insurance: liability remained with the original employer.
- Agreement on the number of workers and the time spent on the project; this was on a fixed man hour budget or discrete task.
- Rules for health and safety practice. Risk assessment was also needed for employees working on another company's premises.
- Agreement on working practices when various employees were working together on the same premises.
- Clauses were also inserted to introduce financial penalties for early withdrawal from the project of labour, materials, finance or machinery.

Pay and man-hour rates were not equalised throughout the consortium. Financial allowances were made for use of workshop space. Workers were always kept informed of the progress of the project beforehand. None had to travel any further distance to work because the companies were based in the same area. A further incentive for employees to co-operate fully in this scheme was the introduction of a database to record skills and experience; especially any new skills that had been acquired during the course of the project.

On completion of the project, the consortium thought that the main benefits of this initiative were:

- Different pooling mechanisms offered flexibility to suit different business needs and contract limitations
- Some risk factors for such a development project were mitigated. Productivity was not affected by a redundancy situation and worker moral was found to be higher overall
- Co-operation with local partners provided workforce flexibility without travel problems
- A transparent approach meant that partners could see where there was risk and could take steps to minimise it
- There was no change to employment liabilities compared with existing non-pooled workforce

There were no problems with worker scepticism, as there was no significant change to staff rights or wages.

APPENDIX 6 - PASSPORT TRAINING SCHEMES

This appendix explains what “passport schemes” are, how they work and their relevance to workforce pooling in the marine sector.

Passport schemes exist in several industrial sectors, notably construction. These schemes have grown up informally in recent years with the aim of providing assurance that contractors’ employees have been trained in health and safety. Workers receive passports by attending a training course designed to raise awareness of the risks associated with their working environment.

1. Regulatory support

Employers are required by the Health and Safety at Work etc Act 1974 to provide health and safety training. The passports themselves are not required by law but the Health and Safety Executive (HSE), the national health and safety regulator, has recently welcomed passport training schemes as a way of improving health and safety, particularly for contractors and small firms, helping them to promote good practice and reduce accidents and ill health at work.

In October 2003 HSE published “Passport Schemes: a good practice guide for health, safety and the environment” to help those who run or are considering setting up a scheme. This can be downloaded free from the HSE website:

<http://www.hse.gov.uk/pubns/indg381.pdf>.

HSE also hosts a Passport Forum enabling those running different passport schemes to share ideas about good practice.

2. Features of a typical passport

Passports belong to the worker, not the employer. They show that a worker has received basic health and safety training. They are not a way of showing that a worker is competent. A typical Passport shows that a worker has up-to-date basic health and safety awareness training. They are usually valid for up to three years. The passport may resemble a plastic credit card and some have had security features incorporated.

A worker may hold more than one if he or she works in different industries with different schemes.

3. Benefits of passport schemes

A worker who holds a valid passport can demonstrate that he or she has received health and safety training. This should assure employers that workers coming onto their sites have basic health and safety awareness.

Passports are also useful in controlling access to worksites – only those workers with valid passports are allowed to work. Passport validity can be checked by interrogating a central database.

Passports drive good practice through the contractor supply chain. Improved health and safety standards and fewer accidents and cases of ill health are likely to result, with corresponding reduction of costs to business.

The schemes have particular relevance in situations where employees of different companies may work on the sites of client employers, who may or may not directly control their work activities but are responsible in law for standards of health and safety on their sites.

4. Costs

Health and safety law requires health and safety training to be provided during working hours and not paid for by employees, though self-employed workers may have to pay for it. Passport training is cost effective and relatively inexpensive compared to the benefits.

5. Syllabus

Whilst HSE does not endorse or approve passport training schemes they suggest that ideally these should share a common core syllabus. This has the advantages that passport holders do not have to repeat training if they move from one employer or contract to another and of avoidance of unnecessary duplication of costs. The HSE guidance leaflet includes a description of the key elements of a health and safety core syllabus that an effective passport scheme would be expected to have.

HSE also suggests that its publication “Essentials of Health and Safety at Work” can be used as a training manual for passport schemes. This is available from HSE Books, PO Box 1999, Sudbury, Suffolk CO10 2WA.

6. The IOSH-SPA Passport Scheme

The Institution of Occupational Safety and Health (IOSH) has joined with the Safety Pass Alliance (SPA) to offer a health and safety training passport scheme. SPA is a partnership of audited training providers with a proven track record in the design and delivery of safety passport training. The course comprises a core day module with a further day module specific to the sector of work. For example, their latest course has been specifically tailored for the food and drink sector that has developed their own passport scheme.

Each participant who passes the IOSH-SPA training requirements receives a passport, a plastic photocard valid for three years which allows the holder access to a passport-controlled environment. Details are held on a central database that can be interrogated to check passport validity.

7. Current developments in the marine sector

The Shipbuilding and Ship-repairing Health and Safety Consultative Committee (SSHSCC), whose members include representatives from the major shipbuilding companies (including VT and A and P Southampton), contractors and MOD, has recently been discussing passport schemes (minutes of meetings available on HSE website). The SSHSCC noted that the ports have been developing a passport scheme with the intention that people working in the ports will have a smart card pass indicating that they have had basic health and safety training. The card could also show other competences such as for forklift truck or crane operation.

SSHSCC agreed that the issue should be taken forward by the Engineering and Marine Training Authority (now known as SEMTA). A pilot scheme has been running in the North East and Humberside for some months with the aim of establishing a national skills database, a register of the skills of individuals. It is now proposed to attach a health and

safety passport. The final scheme would thus become a safety and skills database, a web based register of the skills of individuals and the health and safety training they have received. Employers would have password protected access to verify records.

8. Recommendation

If the SSHSCC pilot scheme succeeds it would seem appropriate to consider adopting it as a future prerequisite of a workforce pooling scheme in the marine sector. If not, it should be possible to work up a passport training scheme in the South East Region, possibly with IOSH-SPA.