HEALTH AND SAFETY COMMISSION (HSC)

THE REVIEW OF THE REPORTING OF INJURIES, DISEASES AND DANGEROUS OCCURRENCES REGULATIONS 1995 (RIDDOR)

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

(APIL09/05)

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The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and prompt compensation for all types of personal injury;
- To improve access to our legal system by all means including education, the exchange of information and enhancement of law reform;
- To alert the public to dangers in society such as harmful products and dangerous drugs;
- To provide a communication network exchanging views formally and informally;
- To promote health and safety.

APIL's executive committee would like to acknowledge the assistance of the members of the Health and Safety Policy Working Group in preparing this response:

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THE REVIEW OF RIDDOR

Executive Summary

Introduction

1. APIL welcomes the opportunity to put forward its comments on the Health and Safety Commission's (HSC) consultation on the Review of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR).

Question 1 – What are your views on using RIDDOR to trial alternative penalties such as administrative fines or fixed penalty notices?

2. APIL believes that the Health and Safety Commission's (HSC) suggested use of alternative sanctions is a positive move as it will allow companies to be punished without the need to use criminal procedures. There is currently a statutory requirement to report incidents falling under the RIDDOR scheme. This requirement is subsequently policed via the use of criminal law penalties for non-compliance. As with the majority of criminal actions, there is almost always a need for the case to be heard in front of a judge or magistrate. The HSC's proposal to use alternative sanctions would mean that this onerous requirement is circumvented, and companies failing to report would be subject to spot fines and unlimited administrative fines.

3. APIL would also advocate, in line with its previous suggestions concerning the 'naming and shaming' of companies and the linking of insurance premiums to health and safety, that failure to report under the RIDDOR regulations should result in 'points' being awarded against an organisation. The more 'points' awarded against a company, the more it would affect certain statutory aspects of the business. For example, employers' liability compulsory insurance

(ELCI) would increase proportionately to the number of points you received, eventually resulting in some companies being stripped of insurance completely. The net effect of such a move would mean that companies which continually fail to have satisfactory health and safety reporting procedures - and by implication, poor health and safety records - would be driven out of the market.

Question 2 – Should a more explicit link be made between the reporting and recording requirements of RIDDOR and the requirements of the Management of Health and Safety at Work Regulations 1999?

☒ **Yes**

☐ **No**

4. APIL believes that, in the interests of a more co-ordinated approach to health and safety, there should be an explicit duty within the Management of Health and Safety at Work Regulations 1999 (MHSWR) that all specified accidents and occupational diseases have to be recorded and reported, both to the HSE and the company's board. In terms of how this could be achieved, APIL suggests that the MHSWR's could be amended so as to include a requirement to record and report specified accidents and occupational disease. This would require a brief addition to the main body of the regulations[1], with the details of the recording and reporting placed in the MHSWR's schedules. Indeed the lack of legal

[1] See suggested amendment to Regulation 7 – Health and safety assistance – by Professor Peter Waterhouse on behalf of Royal Society for the Prevention of Accidents (ROSPA):
1(a) Every employer shall ensure that the competent person or persons appointed under paragraph 1 shall make and keep a record of accidents specified in Schedule 2.
1(b) Every employer shall ensure that the competent person or persons appointed under paragraph 1 shall report accidents to the relevant enforcing authority as specified in Schedule 2.
I further suggest that an amendment is made to Regulation 6 - Health surveillance - as follows:
(1) Every employer shall ensure that his employees are provided with such health surveillance as is appropriate having regard to the risks to their health and safety which are identified by the assessment.
(2) Every employer shall, subject to paragraphs n to m, appoint one or more competent persons to assist him in undertaking the measures he needs to take to comply with the requirements and prohibitions regarding health surveillance imposed on him by or under the relevant statutory provisions.
(3) Every employer shall ensure that the competent person or persons appointed under paragraph 2 shall make and keep a record of occupational diseases accidents specified in Schedule 3.
(4) Every employer shall ensure that the competent person or persons appointed under paragraph 2 shall report occupational diseases to the relevant enforcing authority as specified in Schedule 3.
(5) A person shall be regarded as competent for the purposes of paragraphs (1) to (4) where he has had sufficient training and experience or knowledge and other qualities to enable him to properly assist in undertaking the measures referred to in paragraphs (3) and (4).

obligations in relation to the recording and reporting of illnesses and accidents can be seen to be an anomaly within the MHSWR as the regulations provide for explicit duties in relation to other essential aspects of health and safety, in particular risk assessment and control of risks.

5. Furthermore, APIL believes that by requiring a company to discuss RIDDOR incidents at a boardroom level, health and safety will be addressed as a management priority. It will also allow continued health and safety failures to be traced back to those making the strategic decisions. At the moment, according to APIL members, the discussing of monthly RIDDOR incidents occurs within the NHS. This allows for a certain amount of accountability in terms of health and safety at the highest level. APIL believes that this type of accountability needs to be extended to encompass the private sector where similar mechanisms simply do not exist.

6. In order to facilitate a more co-ordinated approach to health and safety, APIL proposes that the need to discuss RIDDOR incidents at a boardroom level should be introduced alongside our previous proposal for there to be a statutory obligation for a health and safety director. In APIL's recent response to the Home Office's consultation on the Draft Corporate Manslaughter Bill[2], we recommended that there should be a change to the Companies Act specifying that a company has to appoint a director to be responsible for health and safety. By combining this stipulation with an obligation to report RIDDOR incidents, APIL hopes that health and safety will be dealt with at the highest strategic level. Consequently, when there is a serious or continued health and safety breach, a company director can be identified, and possibly proceeded against, using the current corporate manslaughter legislation.

It may be necessary to further amend Regulation 6 when the full implications of the above suggestions have been identified.

[2] See www.apil.com/pdf/ConsutlationDocuments/159.pdf for a copy of APIL's response.

7. In addition, APIL suggests that any incident reported under RIDDOR should trigger a further risk assessment in that particular area. This risk assessment should, in turn, be backed-up by a written report and confirmation. The need to perform an additional risk assessment will enable possible dangers - which may have lead to the initial incident which was recorded and reported under RIDDOR - to be identified and appropriate action taken.

Question 3 – How can RIDDOR's reporting and recording requirements be used to drive or influence duty holder behaviour?

8. APIL believes that in addition to specifying the need for an extra risk assessment after a RIDDOR incident has been reported and recorded - as mentioned above - there needs to be written confirmation that the principles of risk prevention specified in the MHSWR have subsequently been implemented and followed. Both of these requirements – triggered by the need to report under the RIDDOR regime – will hopefully influence the duty holder into ensuring that health and safety procedures are strictly followed, especially if there is a requirement for RIDDOR reports to be discussed at boardroom level. The presence of penalties for non-compliance with proposals could therefore extend to company directors. This threat should hopefully drive companies, ideally from senior boardroom level downwards, to ensure health and safety procedures are followed effectively and efficiently.

Question 4 – Should the collection of statistical information on injuries from accidents arising from work and on occupational ill health be disconnected from other RIDDOR objectives?

☐ **Yes**

☒ **No**

9. APIL firmly believes that it is vital that statistical information arising out of RIDDOR reporting should continue to be a primary objective

within its operation. While the consultation document details various other sources of occupational health information - for example, the Workplace Health and Safety Survey (WHASS), Labour Force Survey (LFS), Self-reported Work-related illness (SWI) household surveys and the Health and Occupation Reporting Network (THOR) - which are used to collect statistics, none of these appear to cover everything relating to ill-health at work. By attempting to remove the hugely valuable information which RIDDOR statistics provide, gaps will inevitably be left. This will undoubtedly mean it will be more difficult for the Health and Safety Executive (HSE) to devise policy, as it will have to base its decisions on potentially restrictive statistics which do not necessarily provide the full picture. Until there is a satisfactory replacement for the collection of statistics which RIDDOR provides, APIL strongly recommends that the collection of ill-health and accident information should remain one of RIDDOR's primary objectives.

Question 5 – Do you agree that these are the key objectives for any future revised notification and reporting system or should we prioritise the objectives in another way?

☒ **Yes**

☐ **No**

10. While APIL agrees with the key objectives as stated within the consultation document – namely *"to provide information to guide the enforcing authorities regulatory activities"* and *"to meet relevant specific legal obligations"* – we do, however, feel that there should be more emphasis placed on the prevention of accidents. While APIL is fully supportive of the HSE's use of inspection and enforcement in respect of RIDDOR, we believe that the current review can also be used to strengthen the need for organisations to prevent accidents or illnesses. This can be achieved by the implementation of APIL's previously stated recommendations – post-RIDDOR risk assessments and written conformation that the MHSWR 'principles of

prevention' have been followed. If these recommendations are instigated, it is unlikely that there would need to be explicit mention of prevention within the key objectives as it would fall under 'specific legal obligations'.

Question 6 – What are your views on the removal of the current requirement on duty holders to report occupational diseases? We would also welcome your views on the likely impact and costs to your business or organisation.

11. APIL believes any attempt to remove the need to report occupational diseases from RIDDOR will undermine the HSE's efforts to tackle this area of health and safety effectively. This suggestion is particularly alarming when considered in tandem with the low level of current compliance with RIDDOR reporting; the estimate for the level of reporting under the compulsory Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR)[3] is only 41.3 per cent. This indicates that over 50 per cent of non-fatal injuries are not reported. Indeed without the vital information which RIDDOR provides in relation to occupational disease it will be increasingly difficult for the HSE to direct it resources into appropriate intervention strategies to tackle the problem. Indeed Bill Callaghan – Chair of the Health and Safety Commission – has highlighted the fact that occupational disease is a significant problem:

"Since 1974, we [HSE] have achieved a record of safety in the workplace that is enviable. But we are still some way off achieving a similar level for occupational health. Thirty-three million working days are lost to occupational ill health each year. And while there is general recognition across Britain of the moral case for health and

[3] Based on the Labour Force Survey

safety, there is less acceptance and understanding of the wider issues.[4]*"*

APIL believes that the removal of the necessity to report on occupational diseases is contrary to this stated intention by the HSC to significantly reduce the amount of ill-health in the workplace.

12. In addition, if the HSE intends to reach its target of reducing the incidence of work-related ill health by 20 per cent by 2010, there is a real need to have effective reporting standards in place in order to identify the areas in which further work is needed. The removal of occupational disease reporting will potentially have the opposite effect, making it more difficult to identify and target areas of concern within workplaces.

13. APIL believes that it is unlikely that the removal of the need to report occupational diseases will *"encourage a wider review of how occupational ill health data should be collected and used".* For example, the UK has still not ratified or accepted the International Labour Organisation (ILO) Occupational Safety and Health Convention 1981 (No.155) or its accompanying protocol, both of which strengthen recording and notification procedures for occupational accidents and diseases and promote harmonisation of recording and notification systems. APIL is therefore sceptical about the suggestion that the government would be willing to endorse a wider review of ill health data collection when it has yet to ratify a similar scheme 24 years after the introduction of the ILO convention.

14. APIL believes that one of the greatest benefits of the RIDDOR reporting regime is it's "immediacy and specificity" in reporting ill-health and workplace accidents – a benefit that the HSE recognises itself. Therefore any attempt to remove or restrict the occurrences or

[4] Speech by Bill Callaghan – '*Real Solutions, real People: HSC's approach to tackling work-related stress'* – Millennium Gloucester Hotel, South Kensington, London (30 October 2003)

incidents which should be reported under RIDDOR will inevitably mean that there will be a reliance on other systems of reporting which may not be as effective as RIDDOR. In order for enforcement, and indeed prevention, to work effectively instances of both occupational disease and/or accident need to be reported promptly and accurately. The HSE can then analyse this information and respond accordingly. Left to another agency or alternative reporting mechanism, APIL anticipates that this health and safety information will not be given the same priority, therefore any type of response will be slower. In the current situation a slow, or slower, response could potentially mean the death or injury of another worker. APIL believes this is unacceptable, and feels that – if anything – the RIDDOR requirements should be strengthened rather than simplified.

15. APIL supports the linking of insurance premiums to health and safety record, as mentioned earlier. A potential consequence of removing certain RIDDOR requirements is that the information needed to make an accurate assessment about whether a firm justifies a reduction in its premiums due to a genuine reduction in health and safety incidences will be lost. Ultimately, this will make it more difficult for such a scheme to operate.

Question 7 – What are your views on removing the current reporting requirement on duty holders to notify and report some dangerous occurrences? We would also welcome your views on the likely impact and costs to your business or organisation.

16. APIL is deeply opposed to any attempt to simplify, or remove certain reporting elements, of the RIDDOR scheme. This includes duty holders' responsibility to report dangerous occurrences.

Question 8 – Should we adopt a more goal-setting rather than prescriptive approach to dangerous occurrences e.g. by developing a more generic list of dangerous occurrences?

☐ **Yes**

☒ **No**

17. APIL believes that the approaches suggested can work in tandem rather than to the exclusion of each other. Therefore APIL proposes that a goal-setting approach is adopted with the establishment of a generic list of dangerous occurrences, as well as a list of specific prescriptive occurrences. The reason for this approach is that there is a real danger that a generic list may be misinterpreted or misunderstood, and duty holders will be unsure about exactly what dangerous occurrences it applies to. In these situations – situations containing a certain amount of ambiguity – people often tend to assume it doesn't apply to them, rather than vice versa. This will ultimately mean that some dangerous occurrences which should be included within the reporting structure are missed. APIL suggests that by including a generic list in addition a specific list, all possible types of dangerous occurrence will be appropriately covered.

18. APIL is also concerned that the one of the drivers behind this proposal is due to the fact that it will assist duty holders *"by reducing the costs of having to notify and report specific dangerous occurrences to the enforcing authorities",* and this will consequently mean that the *e*nforcing authorities will *"be able to move resources to other priority areas of work".* We feel that any money which is saved due to this proposal – unlikely to be a large amount – should be compared to the possible losses which occur if dangerous workplaces are not identified quicker enough. The preliminary estimates for 2001/02 for the cost of work-related ill-health to society was stated as being between £5.52 to £6.24 billion a year, while the cost in terms of those employees who withdraw permanently from the workforce due to work-place ill-health was between £5.33 to £16.50 billion a year.

APIL contends that the potential costs to society far out-weigh any possible savings to duty holders.

Question 9 – What are your views on developing a wider system for sharing information and safety lessons from a range of accidents and incidents?

19. APIL fully supports the idea of a wider system for sharing information and safety lessons from accidents and incidents, but would like to see specific proposals on how the HSE intends to achieve this. One way of achieving this aim – in terms of sharing information with the public at least – would be to place companies' health and safety performance on a dedicated interactive web-site. Such a strategy would directly tie-in with APIL's 'naming and shaming' campaign. This campaign involves placing offending companies onto a publicly available register or 'black list'. Similar to the current use of the NHS Charter, a company's health and safety records would be assessed against clearly defined and transparent criteria, possibly including the aforementioned use of 'points' to denote when a company has failed in it's RIDDOR reporting duties. Once a company has been assessed with reference to the various criteria, its details could then be placed on a league table, indicating how companies compare with each other and also highlighting any particularly persistent offenders. This league table would, in turn, be placed on a dedicated website, which is made available to both the press and public. APIL envisages that with such media scrutiny directed at its health and safety record, companies will feel pressurised into improving their workplace health and safety.

Question 10 – What are your views on removing the current reporting requirement on duty holders to notify and report 'major injuries' replacing it with a requirement to report and record all work-related over-3-day absences? We would also welcome your views on the likely impact and costs to your business or organisation.

20. As mentioned previously, APIL is opposed to any attempt to remove any reporting aspects - including the need to report major injuries - which currently exist under the RIDDOR scheme. It is already difficult to get a full and well-informed picture of health and safety behaviour in organisations and businesses, especially when levels of under-reporting are so high. Naturally this problem would be exacerbated further by less information being collected and analysed.

21. It appears that a primary driver for this proposal is that duty holders *"find it difficult to distinguish between absences due to minor illnesses such as cold, flu, stomach upsets and headaches and work-related sickness absence and may make reports to the enforcing authorities 'just in case".* APIL disputes the labelling of this issue as a 'risk' as any increase in reporting, inappropriate or not, should be applauded and encouraged. In terms of the duty holders ability to distinguish exactly what is meant by 'major injury', APIL recommends HSE guidance accompanying RIDDOR be drafted in plain and simple language. This will hopefully make the various definitions within RIDDOR easier to understand, and therefore comply with.

Question 11 – What are your views on making 'at work' work-related road traffic incidents reportable under RIDDOR? We would also welcome your views on the likely impact and costs to your business or organisation.

22. APIL fully supports this suggestion as it fills an important gap that exists within the current reporting regulations. For example, it is necessary for industrial drivers – such as truck and bus drivers – to report under the RIDDOR scheme. By requiring other professionals –

such as sales executives – who spend a similar amount of time on the road as a truck driver to report under RIDDOR, it is hoped that a true picture of work-related road traffic incidents will able to be formed. This will, in turn, hopefully lead to health and safety initiatives which will directly address issues concerning this particular sub-group of road users.

23. APIL believes that it is particularly important to target 'at work' road users who are not currently covered under RIDDOR as they will often be sales professionals who may be more inclined to use electronic communication devices – i.e. mobile phones, PDAs, Blackberrys, etc. – whilst driving. From personal experience, due to the respective distances between clients, there is always a temptation to attempt to conduct work whilst in transit. As demonstrated by the recent legislative moves prohibiting the use of mobile phones in certain situations, it is vital to target these road-users. In addition, APIL suggests that there is a need to address the issue of so-called 'psychoactive drugs', such as antihistamines, being used whilst driving. By including the necessity to report this information via RIDDOR it will hopefully be easier to analyse the effects of different types of 'on the road' work systems and also causes of accidents.

Question 12 – What other proposals or areas should HSC/E examine further?

24. APIL believes the biggest challenge facing RIDDOR is under-reporting. As previously mentioned, the level of reporting under RIDDOR is only about 40 per cent. In order for clear effective data to be gathered the HSE must explore ways of increasing reporting levels, either through more stringent monitoring and harsher punishments – i.e. the use of the 'points' system on a company's ELCI premium – or through other initiatives.

25. APIL suggests that RIDDOR should be more inter-connected with other Government schemes. For example, we were disappointed to learn that following changes to the social security system the HSE now does not receive information from the DWP in relation to work-related injuries and disease claims for short –term absences. We feel that such cross-departmental initiatives would help and enhance both the level of reporting as well as allow more analysis of ill-health figures. One way of achieving this cross-departmental information is to re-align the RIDDOR 'days off sick' stipulation with the current statutory sick pay (SSP) conditions. This would effectively mean that rather than the necessity to report an employee illness under RIDDOR after three days off, and then process a claim for statutory sick pay (SSP) after five days off, the employer could do both at the same time. It is debateable about whether the threshold should be increased from RIDDOR's 3-day limit to SSP's 5-day limit, or vice versa. Ultimately, however, it is envisaged that this change will mean that employers have no excuse for failing to report under RIDDOR as they should be processing statutory sick pay at the same time. Failure to do either would be deemed a breach of the employer's statutory duty.

26. APIL also proposes, in order to raise awareness of RIDDOR, that there should a specific term placed within employees contract obliging them to report specified illnesses and accidents via RIDDOR. This stipulation, combined with the employers responsibilities to provide appropriate training and instruction to employees under regulation 10 of the MHSWR, should mean that employees are fully informed of both their and the employers responsibilities in terms of accident and illness reporting.

Additional comments

27. While there is some mention of possible initiatives being explored with the Department of Health and GPs about additional reporting via

them, no further information is provided. APIL would be very interested in the details of such initiatives, and believes that they could provide a further avenue for enhancing – rather than replacing – the statistics which are reported under RIDDOR.

28. In addition, it has been mooted that there may be a role for solicitors in helping to improve notifications of health and safety breaches. One such method could be the notification of a claim to the HSE at the same time that a claim letter is sent to the defendants, and APIL are currently giving this matter some thought.