

Health and Safety Executive

Consultation on proposals for amendments to the Health and Safety Information for Employees Regulations 1989



A response by the Association of Personal Injury Lawyers

August 2008

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 are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

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Executive Summary

- APIL agrees that the Health and Safety Information for Employees Regulations 1989 (HSIER) should be amended.
- APIL agrees that the Health and Safety Executive (HSE) should approve and publish new posters and leaflets which do not need employers to physically add the name and address of the enforcing authority or the local Employment Medical Advisory Service (EMAS).
- APIL suggests that the posters and leaflets should have fixed, mandatory, wording relating to HSE's Infoline service (including a telephone number, website address and e-mail address).
- APIL agrees that regulations 5(1) and 5(3) of the HSIER should be amended. However, the wording of the draft statutory instrument attached to the consultation paper is not clear enough to ensure that the wording (relating to HSE's Infoline service) is mandatory, as APIL believes that it should be.
- APIL does not agree that employers should be able to continue to display an unrevised poster or use an unrevised leaflet provided the information is still current and readable. The HSE acknowledges in the consultation paper that the current poster is visually unappealing, is difficult to understand and is not very widely read. Therefore, allowing employers to continue to use such a poster (or leaflet) does not improve the position at all for employees but simply provides a very modest cost-saving benefit to individual employers.

Introduction

APIL welcomes the opportunity to respond to this HSE consultation regarding the proposals for amendments to the Health and Safety Information for Employees Regulations 1989 (HSIER).

APIL supports the HSE's drive for better and smarter regulation and a reduction in administrative burdens provided that this is not at the expense of the provision of clear, basic information about health and safety rights and responsibilities being available to employees.

APIL is concerned that the HSE estimate current compliance with HSIER to be in the region of 50% of workplaces¹ despite the fact that failure to comply is a criminal offence, punishable by a fine. Whilst we therefore welcome the HSE's initiative to employ other channels of communication with workers, particularly vulnerable workers, to ensure information about health and safety is available to them², we are concerned that the proposals will mean that employers will find it even easier to avoid their obligations.

Proposal one: HSE intends to publish new approved posters and leaflets and proposes to amend regulations 5(1) and 5(3) of the HSIER.

APIL agrees with the first part of this proposal, namely the publication of new approved posters and leaflets. APIL supports the second part of this proposal, namely a proposed amendment to regulations 5(1) and 5(3) of the HSIER, but not in the terms proposed in the draft statutory instrument attached to the consultation paper.

¹ Health and Safety Commission Paper HSC/07/64, paragraph 12

² Ibid, paragraph 22

The purpose of the HSIER is to ensure that clear, basic information about health and safety rights and responsibilities are available to employees together with information about how to contact the enforcing authority for their workplace and the Employment Medical Advisory Service (EMAS) for help and advice. These must remain mandatory objectives for the protection of employees.

APIL therefore believes that it should remain a mandatory requirement for employers to provide the poster or leaflet with the name and address of both the enforcing authority for health and safety and the local EMAS or, alternatively, mandatory specified wording, approved by the HSE, along the lines suggested in the consultation paper.

For this reason, APIL does not agree with the proposed amendments to regulations 5(1) and 5(3) in the terms suggested. The proposed wording in the draft statutory instrument for both regulations 5(1)(c) and 5(3)(c) simply refer to the insertion of 'information' as to how the names and addresses can be obtained without stipulating what that 'information' is. APIL agrees that regulations 5(1) and 5(3) should be amended but it should be made clear that the obligation is to either provide the names and addresses in full or, alternatively, the mandatory wording approved by the HSE.

APIL notes that this consultation paper does not invite comments on the content and design of any new posters and leaflets and thus we do not specifically comment upon these aspects. However, we would stress that it is absolutely vital that any revised posters and leaflets are readily understood by all employees, particularly those vulnerable employees with visual or learning difficulties or poor levels of literacy.

In the light of the proliferation of internet usage, APIL also suggests that the mandatory wording for the revised posters and leaflets should include a website address and an e-mail address for HSE's Infoline service.

APIL agrees that a new approved poster should still retain optional boxes for inserting local information about health and safety representatives, and the persons appointed by the employer to assist with health and safety responsibilities. APIL would, however, suggest that it be mandatory for this information to be inserted by employers.

Proposal two: HSE intends that employers should be able to continue to display an old poster or provide an old leaflet provided the information on it is current and readable and proposes to delete regulations 3(3) and 4(3) of the HSIER.

APIL does not agree with this proposal. The transitional provisions in the draft statutory instrument (regulation 4) are ‘open-ended’ so, effectively, provided an unrevised approved poster or leaflet remains in a readable condition there is no obligation on an employer to ever change to the new approved poster or leaflet.

The Health and Safety Commission (HSC) commissioned the Health and Safety Laboratory to conduct a number of focus groups amongst workers to explore their current understanding and awareness of the poster.¹ Participants were critical of the presentational aspects of the poster and the general consensus was that the content and presentation of the information could be improved upon to make it easier to understand and visually more attractive to encourage people to read it.²

Employers, under regulations 3(3) and 4(3) of the HSIER, effectively have a nine month period of grace in which to change any revised poster or leaflet. APIL believes that, to go from that to a situation where there is no requirement to use a new poster or leaflet at all, is a step too far.

If this proposal were to be implemented APIL believes that many employers would decide not to update their posters or leaflets at all which would leave a considerable

¹ Health and Safety Commission Paper HSC/07/64, paragraph 10

² ibid, Annex 2, paragraphs 2 and 3

body of employees only having access to an unrevised poster or leaflet which the HSE acknowledges in the consultation paper (paragraph 3) is '...unappealing and very rarely read by employees'.

APIL has some sympathy with employers in relation to the cost of purchasing new posters on a regular basis but the current poster has not been revised since 1999 and the current cost is £7.50 per poster, which is relatively modest. Employers have always had the alternative option of providing leaflets, which can be freely downloaded from the HSE website, but the majority appears to choose the poster option, presumably because of its simplicity.¹ The cost to individual employers of purchasing a new poster is therefore very minimal and is, in APIL's view, a small price to pay to ensure that all employees have access to relevant health and safety information in a clear, easily readable and understandable format. This is vital for the protection of all employees.

¹ Health and Safety Commission Paper HSC/07/64, Annex 1, paragraph 1