

Health and Safety Executive

Consultation on Proposed Changes to the RIDDOR Reporting System



A response by the Association of Personal Injury Lawyers

October 2012

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 20-year history of working to help injured people gain access to justice they need and deserve. We have around 4,400 members committed to supporting the association's aims and all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which 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.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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Introduction

APIL welcomes the opportunity to respond to the Health and Safety Executive's (HSE's) proposals to change the reporting requirements of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR). APIL aims to promote safety. We express concern that the proposals are not in line with the purposes of RIDDOR, and as such are a potential threat to safety. The main purposes of RIDDOR are to allow for effective investigation of serious incidents; to gather intelligence; and to secure statistical information regarding injuries in order to track trends and the progress of any health and safety legislation. It is feared that the proposals do not reflect these purposes.

A significant change being consulted upon is the reduction in the number of situations where reporting accidents is required. If this is implemented then it will not be possible to track trends, investigate incidents or prevent injuries in these areas effectively. It appears that the HSE is removing the requirement to report in areas where there has been low compliance with the regulations. This is an illogical step, because low numbers of *reported* incidents does not mean that there are low numbers of actual incidents. Removing the requirement to report will mean that it will be even more difficult to monitor trends, detect problems, and thus prevent further accidents. Innocent people will therefore be put at risk of injury as dangerous or hazardous practices go unmonitored and unaddressed. APIL suggests that if the proposals are not in line with the original purposes of RIDDOR, then they should not be brought into force.

As our remit only extends to concerns about personal injury, we have only answered those questions which relate to this field. As such, questions 1, 2 and 3 were not answered, as they were aimed at business owners, and how the proposed changes will affect them.

Terminology and General Principles

“Accident”

Q.4. Should the requirement that there must be an “accident” before death or injury becomes reportable be maintained?

Q.5. Does “accident” need to be defined in guidance?

APIL believes that the requirement that there be an accident before death or injury becomes reportable should be maintained. However, there are difficulties surrounding the definition of accident that may mean incidents go unreported. The consultation paper suggests that all reportable deaths or injuries must arise from an “accident” that led to harm. The difficulty with such a definition is that it will be difficult for employers to determine whether or not an

occurrence falls within the definition of accident, and if so whether or not they need to report it to the HSE. It is important that there is clarity over what must be reported but equally the definition should not be drafted in such a way as to be too narrow. Clear guidance would assist employers to know what their responsibilities are.

Q.6. Is the current definition of “accident” sufficient?

APIL suggests that the current definition of “accident” may not be sufficient. The definition should allow for all incidents at work that result in death, hospitalisation, or cause a person to be absent from work for 7 days to be reported to the HSE by the employer. We feel that the reference to hospitalisation should have a broad definition, to include visits to Accident and Emergency, as opposed to being limited to overnight stays (which would most likely be the definition favoured by the HSE). This broader definition will ensure that injuries such as certain simple fractures that do not need admittance; and also do not require a person to be absent from work for 7 days, are covered. The above suggested definition of accident will allow the HSE to then decide if they need to investigate, and will provide them with a fuller set of statistics to be able to identify and monitor trends and educate people as to risks.

It is possible that certain injuries under the definition suggested would not be reported by an employer because they would not intuitively think that they would fall under the definition of “accident”. One such injury would be Acoustic Shock Disorder. This is caused by a loud or unexpected noise close to the ear, which causes symptoms including, but not limited to, tinnitus, pain, burning or blockage in the ear, pain, burning or numbness around the neck, and muffled or distorted hearing. The sufferer can also experience fatigue, headaches and even depression. This may not be classed by the employer as an “accident” that has resulted in an “injury”, and consequently may not be reported to the HSE. Those most at risk are telemarketers and those who work in call centres.

Q.7. Would it improve clarity to restrict accident reporting to injuries to people engaged in work at any place, and to non-workers only when occurring at “work premises”?

APIL suggests that it would not improve clarity to restrict accident reporting to injuries to people engaged in work at any place, and this restriction could lead to some incidents that should be reported and monitored falling outside of the requirement. As stated in the consultation paper itself, there would be issues with restricting accident reporting to work premises. The current definition provides that an accident that results in a reportable death or injury must arise out of, or be connected to a work activity. We do not agree with the proposal to limit the definition of accident, because this would mean that accidents suffered

by members of the public, injured in a public place by a work activity would fall outside of the definition and thus would not be reported. This would mean that the HSE would not be able to monitor trends and prevent dangerous practices in the future.

Specific categories of reportable events

Deaths

APIL is satisfied with the proposal to remove the requirement to report suicides on railways. The HSE do not need to receive reports regarding suicides on the railway, because the British Transport Police already have a system in place to monitor these incidents. There is no sense in duplicate reporting. However, as a result of this proposal, there could be difficulties surrounding injuries sustained where a person's suicide affects another worker. For example, a train driver who sees a member of the public committing suicide on the railway line may suffer Post-Traumatic Stress Disorder as a result of witnessing the incident. His employers may no longer be required to report this injury to the HSE because of these changes. This would lead to a lack of monitoring and perhaps a lack of support and education in these instances, as the HSE become unaware of the effects of suicides on the employees that are involved.

Non-Fatal Injuries to People at Work

Q.8. Do you agree with aligning the major injury categories with those in the HSE's incident selection criteria?

Q.9. Is the proposed list of major injuries clear and unambiguous?

Q.10. Are there any other types of injury that you feel should be included in the list of major injuries? If so, please describe and explain why they require inclusion.

APIL does not agree with aligning the major injury categories with those in the HSE's incident selection criteria. There are a number of potential difficulties and issues surrounding this proposal, and the proposed list of major injuries is far from clear and unambiguous. Firstly, one of the aims of the proposals was to improve simplicity and clarity for employers. Removing certain categories of injury from the list of reportable injuries would potentially increase confusion for employers. For example, the temporary loss of sight has been removed as a reportable injury but "permanent blinding in one or both eyes" remains. But when an eye injury occurs, it is unlikely that an employer will be able to identify if the injury will be permanent or temporary- and so will not know whether to report it or not. Time will pass and the incident will go unreported.

Another example of the difficulties that an employer may experience due to changes in the list of reportable injuries would be the requirement to report only a burn that covers “10 per cent of the body’s surface”. The vast majority of employers will not have the experience or training to identify whether a burn covers 10 per cent of the body’s surface. The only way that an employer could ascertain this information is to make enquiries to the employee. This is a very intrusive and inappropriate question for an employer to ask an employee who has just suffered a traumatic injury at their place of work.

Secondly, there are several injuries and categories of injuries that have been removed from the list without clarification as to why. The list does not include loss of hearing or sense of taste; soft tissue damage or spinal injuries; and it does not include inhalation injuries, such as Reactive Airways Distress Syndrome (RADS). The symptoms of RADS include wheeziness, shortness of breath and coughing. The very nature of inhalation injuries means that they can be severe and very distressing for the sufferer. Without being reported, the HSE is then not made aware of the occurrence of these injuries and so cannot monitor trends, educate and prevent further harm.

A further issue is that strains are not included on the list, but fractures are. This could create inconsistencies, as some fractures are very minor and can mend within a matter of weeks. A severe strain may affect a person for months, maybe longer. Under the list as prescribed, the latter would go unreported, and the HSE would not be able to work to prevent these injuries from occurring in the future.

In light of these comments, APIL suggests that the list of major injuries should be illustrative not exhaustive. All injuries that result in hospitalisation or 7 days off work should be reported by the employer, and then once all relevant information has been gathered, the HSE can categorise and decide whether investigation is needed. It is far better to report all injuries, and then let the HSE decide if an investigation is necessary once all the relevant information has been submitted, rather than to expect the employer to make a judgment about the severity of an injury as soon as it happens. This will be far more beneficial for the HSE because it will allow them to access more information, to be able to monitor trends and recognise and predict risks. The employers will also benefit, because they will not be expected to make an uneducated judgment call as to whether to report an injury. Employers record all accidents in any event. Reporting to the HSE does not add much of an extra burden. Making an uneducated judgement on reporting would arguably mean that the employer would need to spend more time on this, which would add to rather than decrease the “red-tape” and burden of health and safety regulations. The proposals are said to be

aiming to achieve clarity and simplicity for employers, and this will surely not be achieved with the proposed injuries list in place.

The removal of the requirement to report non-fatal injuries to persons not at work

Q.11. Do you agree with removing the requirement to report non-fatal injuries to persons not at work? (i.e. non-workers who sustain injuries as a consequence of a work activity, such as members of the public and customers in retail premises.)

APIL does not agree with this proposal. Removing this reporting requirement could lead to dangerous practices going undetected. If these incidents are not picked up through reporting and identified by the HSE, then they will not be prevented in the future.

In addition, non-fatal injuries to a person not at work would include severe injuries to members of the public. Slips and falls, for example, have the potential to be very dangerous and even life-changing. These would go unreported and undetected and dangerous health and safety practices would remain, putting the public at risk of harm. There would also be a fall in standards in places where the public frequent, such as supermarkets, because there would be no fear that incidents would be reported or monitored by the HSE. The HSE will not be alerted to issues, so will not be able to target and educate those who require it.

Q.12. Do you agree that removing the requirement to report non-fatal injuries to persons not at work makes it easier to comply with the requirements?

Q.13. Are there any potential negative consequences of not recording/reporting this information?

It would indeed be easier for businesses to comply with the requirements because there would no longer be a need to report certain injuries. However, this would be to the detriment of the safety of members of the public, as explained above.

Occupational Diseases

Paragraph 62 of the consultation proposes changes to the reporting of occupational diseases. APIL believes that the proposal to remove the reporting requirement for cases of occupational diseases other than those resulting from a work related exposure to a biological agent is too simplistic. There are many occupational diseases that can be both severe and life-changing, yet under the proposals would no longer be reportable. These include occupational asthma, dermatitis, stress and stress-related illnesses, and vibration white finger. An individual suffering from occupational asthma will suffer socio-economic difficulties as well as symptoms such as difficulties breathing, wheezing and coughing. The person will more than likely have to leave a job they have been trained in, due to the risks to their health. Consequently, they will find it more difficult to get another job as a result of their

illness rendering them less employable. Again, the non-reporting of these diseases would lead to trends and problem areas remaining undetected, and more people being put at risk of these injuries and subsequent consequences.

Reporting of Gas Incidents

Q.14. Do you agree with the proposed change to the reporting threshold for non-fatal injuries for gas incidents?

The proposal to simplify the duty to report gas-related injuries only to those that lead to deaths or loss of consciousness or a person attending hospital after the incident for treatment of an injury or illness appears to be satisfactory. This should ensure that those gas incidents that are severe enough to be reported are dealt with as such. However, APIL would also like to suggest that inhalation injuries and exposure to toxic gas should be mentioned specifically in this regulation, to ensure that they are reported by the employer.

Dangerous Occurrences

Q.15. Do you agree with the proposals for the revision of the types of dangerous occurrences that must be reported given in Annex 1 to this consultative document?

In looking at Annex 1, the pattern that emerges is that the HSE is proposing to remove the requirement to report in areas where there is already a trend for low reporting. As explained above, this is an illogical step, because even if there are low numbers of reports, this does not mean that there are low numbers of actual incidents. There could be problems or trends in these areas that the HSE is not aware of, and the solution to this is surely not to just remove the requirement to report. This will then leave these areas unregulated and could lead to dangerous practices.

Record Keeping

Q.16. Do you agree that there should be no change to the recording requirements. i.e. records must be kept of all deaths, injuries and dangerous occurrences that must be reported, together with records of O3D injuries to workers.

APIL is satisfied that there are no changes to the record keeping requirements.

The Self Employed

Q.17. Do you agree that those self-employed people who will be excluded from the requirements of other health and safety law should no longer be required to report or make arrangements for another to report, their own injuries, occupational diseases, and dangerous occurrences at their own premises that endanger no-one else- e.g. others working at the premises or neighbours?

The HSE proposal to exempt the self-employed who pose no danger to anyone else from the requirement to report injuries has several flaws. Firstly, APIL believes that this proposal is at odds with the function of the HSE. The HSE's role is to protect the health and safety of those at work. The self-employed are at work, and so should be entitled to the protection of the HSE, through the keeping of records and monitoring of accidents that occur.

In addition, it is suggested that the reasoning behind the proposal, namely that health and safety law is an unnecessary burden on the self-employed, is a distorted perception of the relationship between this group of people and health and safety law. APIL believes that self-employed people are not overly concerned by their obligations under the current law, and the attempts to change it will do more harm than good, leaving the law in this area unclear and unsatisfactory. For example, there will be difficulties in determining who is self-employed, and thus who is exempt. Who is classed as an employee and who is not is a complex question, with difficulties experienced by, for example, agency workers. These people will then be left to decide if they fall under this exemption or not- this is very unclear. A further issue is that the HSE already have very few statistics regarding self-employed people. It is again illogical to reduce these statistics even more, as this could lead to dangerous practices going undetected, and the self-employed being uneducated about potential risks that they could face.

- Ends -

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