Health and Safety Executive for Northern Ireland Proposals to revise and amend the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (Northern Ireland) 1997 (RIDDOR)

A response by the Association of Personal Injury Lawyers

January 2014

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 4,000 members, 74 of those in Northern Ireland, 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:

Alice Warren, Legal Policy Officer
APIL
3 Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX
Tel: 0115 9435428; Fax: 0115 958 0885
e-mail: alice.warren@apil.org.uk

Introduction

APIL welcomes the opportunity to respond to the Health and Safety Executive of Northern Ireland's (HSENI's) proposals to change the reporting requirements of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (Northern Ireland) 1997 (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.

We are particularly concerned that the driving force behind this consultation is the low reporting numbers for certain accidents, and the suggested proposal to tackle this is to remove certain 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 HSENI 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.

Deaths

We are pleased that there are no changes to the requirement to report work-related deaths of any person, and agree that it remains important that regulators continue to receive prompt notice of fatalities. The HSENI should be made aware of deaths so that trends can be monitored, dangerous practices detected, and any further accidents can be prevented.

Non-Fatal Injuries to People at Work

Major Injuries

APIL does not agree with aligning the major injury categories with those in the HSENI'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.

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. 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.

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 HSENI 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 three days off work should be reported by the employer, and then once all relevant information has been gathered, the HSENI can categorise and decide whether investigation is needed. It is far better to report all injuries, and then let the HSENI 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 HSENI because it will allow them to access more information, to be able to monitor trends and recognise and predict risks. Employers record all accidents in any event, and reporting to the HSENI does not add much of an extra burden; whereas 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.

Lost Time Injuries

As in our earlier response, we do not support the proposal to increase the reporting threshold from over-three to over-seven consecutive days. The move to extend the period for lost time injuries was halted in 2011 over impacts on employee protection and general health and safety standards. These impacts and associated concerns still remain. The lost time reports provide data for statistical and intelligence purposes, and if the amount of data is reduced or skewed, the HSENI may not be alerted to dangerous workplace practices. Accident reporting helps to keep safety standards high, and in recent years there has been a decline in the number of work-related accidents. According to HSENI statistics, there was a 25 per cent decrease in the number of fatal major injuries seen between 2007 and 2012[1]. The data is already supplemented by the Labour Force Survey to compensate for under-reporting, and changing the requirement from three to seven days will only increase incidences of under-reporting.

Further, the proposal has been made with the sole intention of cutting costs. Aside from the fact that health and safety rules should not be reduced simply to save costs, we suggest that it would be more beneficial and cost effective to ensure that accidents in the workplace were prevented, as there is a significant cost to Health and Social Care in Northern Ireland in relation to preventable workplace injuries.

We do not support the further recommendation that the time period for submitting the report should be extended to within fifteen days, rather than the current ten. The longer the period of time between the occurrence and the reporting of the injury, the more difficult it is for the individual to recall the details of the occurrence and it suggests less urgency as regards investigation. The problem that must be addressed and resolved is being able to ensure that businesses report the injuries in the first place.

Occupational Diseases

APIL is pleased that the proposed amendments to the reporting of occupational diseases is broader than that originally proposed in the HSE (England and Wales) consultation of 2012. APIL had previously expressed concern 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. It is important that instances of other occupational diseases which can be both severe and life-changing, are reported to the

[1] http://www.hseni.gov.uk/hseni_statistics_booklet_-_2011-12.pdf

HSENI to ensure that trends are examined and further occurrences can be prevented. Occupational asthma, dermatitis, and hand arm vibration syndrome all have the potential to be life changing. An individual suffering from occupational asthma, for example, 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.

Reporting of 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. We would, however, 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

The list of reportable dangerous occurrences in schedule 2 almost exactly parallels the list of dangerous occurrences in Annex 1 of the HSE's 2012 consultation. The pattern that emerges is that the HSENI 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 HSENI 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, with the HSENI unable to monitor potentially dangerous practices and prevent accidents. This will then leave these areas unregulated, with the HSENI unable to monitor potentially dangerous practices and prevent accidents.

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▶ 3 Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX

● T: 0115 958 0585 ● W: www.apil.org.uk● E: mail@apil.org.uk