

HEALTH AND SAFETY EXECUTIVE CONSULTATION

**PROPOSALS TO AMEND THE MANAGEMENT OF HEALTH AND SAFETY
AT WORK REGULATIONS 1999 AND THE FIRE PRECAUTIONS
(WORKPLACE) REGULATIONS 1997**

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

MARCH 2002

The executive committee would like to acknowledge the assistance of following people for assisting with the preparation of this response:

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CONSULTATIVE PROPOSALS TO AMEND THE MANAGEMENT OF HEALTH AND SAFETY AT WORK REGULATIONS 1999

1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 and represents more than 5250 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 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 the 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.

2. APIL supports fully the removal of the civil liability exclusion in the Management of Health and Safety at Work Regulations (MHSWR) 1999, in respect of employees. We can see no reason, however, why the exclusion should remain in respect of non-employees and we urge the HSC to remove it as soon as possible.

3. APIL agrees with the case for removing the civil liability exclusion, which is detailed on page two of the consultation paper. It is important to have consistency within the MHSWR and with other UK health and safety regulations. The amendments will also underpin efforts to raise the profile of occupational health and safety and will prompt employers to raise their health and safety performance. We support these aims, but we can see absolutely no reason why the case for removing the exclusion does not also apply to non-employees. Civil liability is not excluded in respect of non-employees within the Control of Substances Hazardous to Health 1999 (COSHH), the Workplace (Health and Safety) Regulations 1992 or the Provision and Use of Work Equipment Regulations 1998. The risk assessments required under the MHSWR

underpin occupational health and safety. Employers who have breached these regulations should not be able to escape civil liability where a non-employee has been injured as a result of that breach, just as they would not be able to escape civil liability if a non-employee was injured as a result of a breach of COSHH.

4. This issue is of concern because of the extremely high incidence of injury to the public caused by work activities, which far exceeds the number of employees injured at work. According to recent HSE statistics, the number of reported fatal injuries to members of the public is 447 (2000/2001) and 436 (1999/2000). In comparison, the number of reported fatal injuries to employees and self-employed workers is nearly half that of injuries to the public (220 (1999/2000) and 295 (2000/2001)). There were also 20,693 non-fatal injuries to members of the public caused by work activities in 2000/01. Undoubtedly, there is ample scope for improvement of non-employee work-related safety. Removing the exclusion of civil liability for non-employees under MHSWR would go a significant way towards reinforcing the rights of claimants and further promoting health and safety at work.

5. Under regulation 3 MHSWR, an employer does have obligations in respect of non-employees:

“(1) Every employer shall make a suitable and sufficient assessment of:

...(b) the risks to the health and safety of persons not in his employment”.

By failing to remove the exclusion of liability under the proposed amendments, the HSC is, in our view, failing to grasp the opportunity to raise further the health and safety performance of employers. In addition, European case law establishes that individuals must have an effective remedy where they have suffered as a result of a breach of European law. Enforcement of health and safety law lies to the HSE and the only effective remedy for an injured individual would be a civil claim for compensation to meet the losses and expenses caused by that injury. In conclusion, we believe that the discrimination in respect of non-employees is unfair and unjust

and we call on the HSC to remove the exclusion of civil liability in respect of them as soon as possible.