



The House of Commons Work and Pensions Select Committee inquiry into the work of the Health & Safety Commission and Health & Safety Executive

Submission by Unite the Union January 2008

Unite the Union was formed by the merger of the Transport and General Workers Union and Amicus in May 2007. It is the UK's largest general union, bringing together some 1.8 million members working in all parts of the economy.

Unite welcomes the opportunity to make a written submission to the inquiry of the Select Committee. Our submission will focus on the legislative framework, HSE resources, regulatory activity, safety representatives' rights, some hazardous occupations and vulnerable workers.

We would like to place on record that Unite is very supportive of the work that the HSE, and its staff do. We believe strongly in principles underpinning their work, in particular tripartite working and worker involvement.

We also request the opportunity to give oral evidence to the Committee hearing.

1. The legislative framework

1.1 Overall, Unite believes that the Health and Safety at Work etc Act 1974 (HSWA) continues to form a good basis for our health and safety legislation. We do, however, wish to make a point about the more recent focus on risk assessment. Though risk assessment is very important, and clearly a legal requirement, it is our experience that many employers simply do not understand the process and what is required.

1.2 So we urge a much more prescriptive approach to standards setting and an interventionist stance taken to the application of such standards. Regulations continue to complement and clarify HSWA by laying down specific requirements, for example on safety representatives' rights and functions or on provision of welfare facilities. We are strongly opposed to recent moves towards a voluntary approach. A good example of this is the Stress Management Standards, where we feel specific regulations should be introduced.

1.3 We are strongly opposed to recent moves towards a voluntary approach, the so called "light touch" to regulation and the concept that regulations are a "burden on

business". These ideas are simply not sustainable as is demonstrated by the rising tide of occupational ill-health and the recent increased rate of fatalities at work.

1.4 We regard the core principle embedded in the HSWA, consultation with workers through their unions, as absolutely central to the health and safety framework.

1.5 In relation to changes to the framework, we broadly welcome the Corporate Manslaughter and Corporate Homicide Act 2007, but regret that provision for individual duties of senior managers and others such as company directors was ruled out by the Government. We strongly believe that, were new legal duties to be introduced, the boardroom culture in relation to health and safety management would change overnight

2. Health & Safety Executive and Health & Safety Commission

2.1 Unite broadly supports the proposed merger between the Commission and Executive so long as the tripartite structure is maintained and reinforced.

2.2 However, we are also extremely concerned that the HSC/E are so underfunded that they are barely able to carry out basic enforcement activity. A merger must not be used to cut costs, staffing and resources further but must instead be seized as an opportunity to build the best possible mechanism for safeguarding worker and public safety.

3. Resources

3.1 We wish to emphasise our very strong concern at the lack of resources for HSE. The demands on HSE increased in many respects in recent years brought on in particular by increasing demand for action on occupational health; fresh challenges in key sectors such as construction (the house building boom, crane collapses); the chemical industry (Buncefield); in agriculture (foot and mouth and avian influenza); and as a result of changes in the nature of the workforce (migrant workers, increasing use of agency workers, contractors and those with self-employed status).

3.2 Unite represents workers in the agriculture and forestry sector. Taking this sector as an example, we note that while much effort has recently been put by the HSE in reaching self-employed workers, who form a significant group in this industry, it is now estimated that there are at least 250,000 migrant workers working in agriculture, which is a significant development and presents new challenges in ensuring that H&S law is both communicated and understood.

3.3 The HSE needs funds to communicate directly with all workers, particularly vulnerable workers, as well as a strategy for working with unions to reach them. This requires full resourcing in order that the HSE can anticipate and guard against future problems born out of the changing labour market, not just respond to present circumstances.

3.4 Agriculture is top of the industrial league table for deaths and major injuries (including children) as well as occupational illness (often caused by farm chemicals

and exposure to biological hazards) despite massive under reporting of incidents. As mentioned above, this industry has also seen a huge expansion of employment of migrant workers and in the use of gangmasters. Protecting the health and safety and general workplace conditions of these vulnerable workers is our priority, and, we submit, a government priority.

3.5 The Agricultural Industry Advisory Committee of the HSE has a good ten point programme including proactive inspections and Safety and Health Awareness Days (SHADS) and we urge that this is carried forward to prevent more deaths and ill-health.

3.6 We are therefore particularly concerned that in recent years the agricultural sector specialist HSE inspectorate has been disbanded as part of general cuts in services. This also brought to a halt pro-active inspections in one our most dangerous industries.

3.7 In addition, we understand that the Department for Work and Pensions is proposing that the HSE should receive a 5% real terms cut in its budget each year from 2008-9 to 2010-11. This is in addition to significant staffing reductions in recent years. It is not surprising that the highest number of workplace fatalities in 5 years was recorded last year.

3.8 We have written expressing strong concern about these cuts in general to the Secretary of State, Peter Hain, and have requested a meeting with him (a copy of this letter from Unite Joint General Secretaries dated 30 October 2007 is attached at Appendix 1).

4. Enforcement

4.1 We have already drawn attention to the fact that resources for regulatory activity including enforcement have been cut, the result being a fall in investigations, inspections, notices and prosecutions. We believe that robust enforcement action – including prosecutions - is absolutely essential to improve health and safety culture at work and prevent fatalities, accidents and ill-health and we ask the Committee to consider this.

4.2 **Occupational Road Risk.** Unite represents a large number of professional drivers in passenger transport and road haulage. Unite is represented on the RoSPA national H&S committee and has worked with RoSPA to support their concept of including managing road risk in mainstream H&S management.

4.3 A significant number of deaths on the road every year involve people driving at work. We believe that the long hours culture is linked to the number of accidents on the roads. We have become aware in our discussions with HSE that there is confusion relating to the enforcement of work-related safety on the highway. The police do of course investigate road accidents, but many of these incidents may be attributable to poor health and safety practice on the part of the employer.

4.4 According to the HSE, in 2005/06 217 workers were fatally injured – this corresponds to a rate of fatal injury rate of 0.72 per 100,000. In 2005, 109 goods vehicle drivers were killed on the roads - this includes both drivers of large goods vehicles and light goods vehicles. This corresponds to a rate of fatal injury of 15.2 per 100,000 workers.

4.5 But these figures are excluded from the HSE figures. We estimate that only ten per cent of fatalities for goods vehicle drivers are included in the HSE figures. If the accident occurs on the road it is treated as a road traffic statistics, and not a work related statistic.

4.6 This problem has been recognised both by the HSE and the police and changes to the reporting of road transport accidents (RTA) have been implemented in an attempt to capture this information. However, we believe that the only way to ensure the proper reporting of work related RTA is to bring them under the provisions of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR).

4.6 Our professional driver members are also very concerned about the lack of rest and welfare facilities. There is currently no requirement for motorway service areas (MSA) operators or other providers to provide dedicated accommodation, eating facilities, shower and toilet facilities for professional lorry and coach drivers. Currently, rather than seeing an expansion of the services for professional drivers, we are seeing roadside facilities closing, resulting in a further reduction in an already poor provision of these facilities.

4.10 With regard to the both enforcement of drivers' hours regulations and the Working Time Regulations and the safety standards of commercial vehicles we believe that insufficient resources are allocated to enforce the legislation.

4.11 One major problem is that we have no real estimate of the size of the problem. As far as we are aware there has never been a proper national survey to identify the amount of drivers' hours regulations breaches, or to identify what proportion of the national fleet is overloaded or does not meet the required safety standards.

4.12 We include here some statistics to illustrate what is a very serious health and safety problem which affects not only worker but public safety. Results of VOSA's vehicle checks on the 23 October 2006 (the latest information we could obtain¹). 445 vehicles were checked for roadworthiness (251 UK-registered vehicles and 194 foreign vehicles). Of the 251 UK vehicles checked, 74 prohibitions were issued with brakes and tyres being the most common defects. Of the 194 foreign vehicles checked, 33 prohibitions were issued.

4.13 With regard to traffic offences, 223 vehicles were checked (130 UK-registered vehicles and 93 foreign). Of the 281 UK vehicles checked, 35 prohibitions and 25 verbal warnings were issued for drivers' hours offences.

¹ <http://www.vosa.gov.uk/vosacorp/newsandevents/pressreleases/2006pressreleases/23-10-06illegalimmigrantsarrestedduringoperationmermaid.htm>

Fifteen reports for further investigation were issued for drivers' records/hours, and operators' and drivers' licence offences.

Of the 93 foreign vehicles checked, 19 prohibitions and 60 verbal warnings were issued.

4.14 Unite is also increasingly concerned about the safety and stability of containers as there are an increasing number of reports of containers overturning. We are calling for a much more rigorous inspection and regulatory framework for containers.

4.15 We ask the committee to address this as a matter of urgency. We strongly believe that significant resources should be allocated to enforcement and we recommend suggest that HSE should be given the resources to play a much larger role in regulating and enforcing occupational road risk issues. The lack of resources means that both employers and professional drivers will continue to break the law, because they know that there is little or no chance of the being pulled up and their lorry condition and driving hours checked.

4.16 **Penalties** Unite also wants to see a much more robust approach to penalties. Most offences are only punishable by a fine and often fines are used even when the offence has resulted in a death at work and where there is the possibility of imprisonment. Last year the average fine was £15,370, but if the small number of convictions of over £100,000 are removed the average is a modest £8723 for what may have resulted in loss of life or serious injury. The government committed itself in 2002 to increase penalties for health and safety offences but no steps have yet been taken.

4.17 **Directors' duties** As previously mentioned, we believe that there should be legal duty on directors to ensure that their organisation does not put the health and safety of their workforce at risk. Individual employees, managers and suppliers have duties; it seems illogical and immoral then that an important group such as directors does not, particularly in view of directors' stringent legal requirements with regard to upholding financial law. Unite has been campaigning on this issue for many years and we enclose (Appendix 2) our report *A hard day's work never killed anyone* (2003) together with the draft bills and subsequent briefings on Directors Duties.

4.18 We also urge that the range of penalties is expanded including corporate probation, and "naming and shaming" orders available, as well as much more use of disqualification for directors for health and safety offences.

4.19 Effective enforcement is not simply a matter of adequate agency budgets, however. The 'light touch' approach to inspections and compliance that has prevailed in recent years means that those employers who are flouting the law do so safe in the knowledge that they will rarely, if at all, face discovery, let alone sanction, for any breaches. In this regard, we are not asking government to pass more law; we are merely asking that they judiciously and thoroughly apply the laws that exist already. Rigorous publication of how breaches in the law were dealt with, and a regime that awarded only the best practitioners with public contracts for instance,

would also, we believe, go some way towards ensuring a progressive health and safety culture.

5. Working together

5.1 The tripartite approach (employers, trade unions and government working together) is fundamental to the health and safety system in the UK. Research has shown that in workplaces where there is consultation and trade union recognition, the level of work-related injuries is half that of workplaces with no union recognition and consultation. Unite is committed to working in partnership and has put extensive resources and effort into organising formal partnerships with industry bodies, for example the electrical and plumbing JIB, and the NJC in construction engineering. This has resulted in a more pragmatic approach, formulating H&S strategies together and improving health benefits.

5.2 Unite strongly supports changes to the Safety Representatives and Safety Committees Regulations 1977 to make them more effective, and build on the experience of the last 30 years.

5.3 This includes giving safety representatives the right to inspect all premises where they have members, and those of contractors. Also needed are specific duties on employers to respond to issues raised by safety representatives to consult safety representatives on risk assessments.

5.4 Safety representatives need stronger employment protection. At present unfair dismissal claims involving a safety representative can result in compensation, but not in reinstatement. We believe that health and safety law should be strengthened to give further protection to safety representatives.

5.5 We want to highlight the success of Workers' Safety Advisor pilot scheme and the Workers Safety Advisor Challenge Fund project. Unite successfully participated the pilot project (including the hospitality, printing and construction sectors. We followed this up in the Challenge Fund with a very successful joint project with the Federation of Master Builders in which trade union appointed Workers Safety Advisors worked alongside small construction businesses to raise health and safety awareness and practice. We believe that initiatives such as the Workers Challenge Fund should be repeated and built upon as this particularly benefited workers in small enterprises in high risk sectors such as construction. But as yet we have not seen a full evaluation report of the third year of the project.

5.6 Unite is strongly committed to high quality education and training for safety representatives and the union devotes considerable resources to this. Thousands of our members pass through safety representative training every year. The HSE's support for this work is crucial, including making available speakers and resources for these programmes.

5.7 Unite has carried out successful work in pioneering roving safety representatives in the agriculture sector and in the financial sector, and we urge the establishment of statutory roving safety representative schemes.

5.8 Furthermore, we strongly support a new statutory right for safety representatives to serve provisional improvement notices (PINS) at work which is a statutory right in parts of Australia. The effectiveness of PINS was demonstrated recently when a government department in the state of Victoria ignored a PIN served by a safety representative and was then successfully prosecuted.

5.8 An HSC consultation on new rights for safety representatives took place in 2006. This resulted in considerable input from our members, and overwhelming support for changes to the regulations, but regrettably in spite of this the HSC has not revised the regulations, and we ask the Committee to consider how progress can be made on this.

5.9 Unite actively participates on behalf of the TUC in tripartite working through membership of various HSC Industry Advisory Committees and other HSE tripartite bodies. We regard this system as an extremely effective way of raising standards. It is therefore regrettable that recently HSE commitment to these bodies has been reduced, in some cases leading to watering down of their work or winding them down.

5.10 In one particular instance, Unite initiated tripartite working with the HSE and employers on beer delivery. The union represents about 7,000 beer delivery workers and our members are deeply concerned by the incidence of musculoskeletal disorders caused by work activities and the fact that many members have to retire early from their job because of this. We all (HSE, Union and employers) put in a huge amount of work on new draft guidance on beer delivery but the work has been discontinued at present largely because of resource issues for the HSE. This is a huge disappointment and we ask the committee to consider this. We are also very concerned about the inability of the employers and the HSE to respond to the Union's requests for precise data on accident levels in the industry.

5.11 Unite has been involved in extensive research with the HSE to identify the effectiveness of trade union appointed safety reps in communicating information, and implementing improvements, concerning musculoskeletal risks. This involved Unite safety reps on H&S education courses receiving specific training and information on assessing such risks and taking them back to their workplaces. The outcome was a very clear indication of the value of TU safety reps as agents for change in the workplace, and as effective influencers in improving employers' approaches to health and safety.

6. Research and publications

6.1 The HSE publishes a wide range of practical and authoritative health and safety materials of a very high standard. They are well used by our members who welcome both their content and the fact that they are produced by an independent body. The research work carried out by the Health and Safety Laboratory (HSL) is also crucial to maintaining these standards and we urge that HSL is properly funded to enable this to continue.

6.2 We also urge that all the HSE's guidance is published free of charge. At some stage the HSE agreed to do this by putting it on the website. We hope that funding restraint will not put this in jeopardy and we ask the Committee to consider this. Free access to these very important materials is crucial to workers who, we assure you, will make very good use of them.

7. Vulnerable workers and dangerous industries

7.1 As indicated above, hundreds of thousands of migrant workers are now working the UK economy and they require health and safety protection. The HSE's resources are required to ensure these workers and their employers are helped to understand and implement good health and safety practice. We have come across many situations where migrant workers' health and safety is being disregarded and believe also that there is chronic under-reporting of injuries in this group of workers, as well as more generally. HSE resources are urgently required to address this.

7.2 We have already mentioned agriculture. Of great concern is the construction industry with its culture of bogus self-employment, appalling accident record and lack of basic skills training and health and safety training. We are working very hard with the industry to try to address these issues but we are also in the midst of a building boom and a number of major projects including the Olympic sites, and we must stress the crucial role of HSE's regulatory and enforcement activity in this sector.

7.3 The establishment of the Gangmasters Licensing Authority in 2004 is helping to safeguard employment standards in one sector, the food and agriculture sector. The GLA views H&S breaches seriously when awarding the licences that gangmasters need to operate in this sector, working with the HSE/C to ensure abuses are followed up. However, this agency faces considerable demands on its very small resources. It is also prevented from acting on any breaches committed by gangmasters operating outside of this sector. Unite firmly believes that the GLA's remit should be expanded across the economy so that the most can be made of this joined-up approach to enforcement.

7.4 Please also see our comments under the Sections headed **Enforcement and Resources** above.

Summary

1. We support the work of the HSE
2. We believe the HSE is severely under-resourced in all respects
3. We urge a more prescriptive approach to standards and regulations
4. We regard consultation and engagement of workers as fundamental to the health and safety system
5. We strongly support the tripartite system
6. We have strong concerns about the health and safety of vulnerable workers – particularly migrant workers - and those working in dangerous industries such as agriculture and construction

7. We urge the HSE to address the under-reporting of health and safety problems faced by vulnerable workers, particularly the self-employed and migrant workers who have no workplace structures to ensure such reporting is carried out with efficacy.
8. We believe that the HSE should assume full responsibility for regulating occupational road risk
9. We believe that extending safety representatives' rights and protection is crucial to raising workplace standards

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Appendix 1

Letter to Rt Hon Peter Hain MP, Secretary of State for Work and Pensions and Wales from the joint General Secretaries of Unite the Union, Tony Woodley and Derek Simpson, dated 30 October 2007

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Appendix 2

Report: A hard day's work never killed anyone (2003)

Health and Safety (Director Duties): Draft Bill and Explanatory Memorandum

Corporate Killing: Draft Bill and Explanatory Memorandum

Three Directors' Duties Briefings (2005)