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CENTRAL OFFICE

Unite the UNION

A consultation document on Proposed Amendment to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR).

Response by Unite the Union

Unite is Britain's largest trade union, with just under 1.5 million members. Unite members work in most industrial sectors including the most dangerous, such as agriculture and construction. Our members work in public services including the health sector, local government and the civil service, print, graphical and media, finance, IT and communications, the community and not for profit sector, docks, rail, ferries and waterways, passenger transport and road transport, energy and utilities, forestry, horticulture, food and drink manufacturing and distribution and supermarkets.

General points

Unite strongly condemns any changes to the current reporting arrangements which will do nothing to improve health and safety at work and indeed will reduce health and safety protection for workers.

The proposed change is driven by irrational ideology
The proposal is driven purely by the government's desire to implement proposals by the Young Review, regardless of the rationale for them. The Young Review was driven largely by the desire to curb compensation claims, not to improve health and safety at work. The Review's stated aims include "..To free businesses from unnecessary bureaucratic burdens; …applying common sense not just to compensation but .to everyday decisions once again".

It is suggested that the proposed change is being made to align the incident reporting threshold with that for obtaining a "fit note" from a GP for sickness absence and would therefore ensure that someone who has suffered a reportable injury has had a professional medical assessment.

We suggest that neither common sense nor indeed any clear reasoning is being applied here. Lord Young's recommendation – and the Government's wish to implement it - is purely ideological. This ideology is also reflected in the consultation questions. For example Question 2 asks only about the advantage to business.

The proposal would be in breach of European legislation
The European Union Framework Directive (89/391/EEC) states at Article 9 that:

Employers shall

1(c) keep a list of occupational accidents resulting in a worker being unfit for work for more than three working days

(d) draw up, for the responsible authorities and in accordance with national law and practices, reports on occupational accidents suffered by his workers.

An HSE Board Paper prepared for their meeting on 15 December 2010 confirmed that that the Framework Directive "requires employers to record all accidents which lead to 03D incapacitation and report these to national authorities in-line with national laws". The paper also confirmed that EU Regulation 1338/2008 "requires the UK to provide workplace accident data to the European Commission for its own statistical, intelligence and planning purposes."

The proposal would be in breach of UK legislation
Regulations can only be made, or amended, under the Health and Safety at Work etc Act 1974 if they are "designed to maintain or improve the standards of health, safety and welfare". The purpose of this consultation is simply to carry through a recommendation by the Young Review. Neither the Young Review nor the consultation document suggest that this proposed change will maintain or improve the standards of health, safety and welfare.

The proposal will not improve reporting
Unite is aware that HSE estimates that at present around 50% of the injuries and incidents which are reportable under RIDDOR are not in fact reported. HSE website notes: *The Labour Force Survey provides estimates of both the total number of accidents at work and the number which should have been reported under RIDDOR. In 2009/10 we estimate there were 7,267,000 accidents at work. In 233, 000 of these accidents the injured people were away from their normal work for at least 4 days, so these accidents would have been reportable under RIDDOR. This suggests that about 6 in 10 of RIDDOR reportable accidents are reported.*

This disgraceful situation – that is flagrant abuse of and disregard for the law - is certainly confirmed by anecdotal evidence from our members which suggests that in many cases employers will do everything they can to avoid reporting incidents under RIDDOR, in particular an "over three day" injury. The HSE's L23 guidance para 58 states "*An over-3-day injury is one which is not "major" but results in the injured person being away from work or unable to do the full range of their normal duties for more than three days".*

Examples of disregard for and abuse of the reporting requirements for over three day injuries include employers:

- asking injured employees to take holiday;
- instructing injured employees who are unable to do the full range of their normal duties to undertake so called "light duties";
- using language such as "incident" rather than "injury" to evade responsibility for reporting an over three day injury;
- not recognising that accidents associated with a work activity are still reportable where the employee concerned may have a pre-existing health condition
- creating a climate of fear in the workplace to dissuade workers from reporting incidents;
- making it difficult for employees to report incidents for inclusion in the accident book
- providing financial incentives to managers and other employees to discourage reporting.

Under-reporting has also been highlighted in official reports. Earlier this year a review of RIDDOR reporting in the railway sector by the Rail Safety and Standards Board (published in January 2011) concluded that there had been a significant level of under –reporting of RIDDOR lost time injuries by Network Rail staff and its contractor companies – 500-600 such injuries may not have been reported in the previous 5 years. Unite is very pleased to be able to be working with the company to help make improvements.

These are not just isolated examples, but rather an indication of widespread abuse and ignorance on the part of employers which only serves to support the HSE view in relation to under reporting under RIDDOR. Engendering a climate of fear in workplaces to discourage reporting is both morally repugnant and unlawful. Employers being wilfully unaware of the recording and reporting requirements means opportunities for prevention are missed, and the result is more dangerous workplaces.

However, we are of course aware that many employers are concerned to comply with RIDDOR requirements, and also that the reporting requirements are not necessarily a bureaucratic burden on them. Research conducted by the HSE in 2005 found that generally SMEs found it easy to report through the Contact Centre or using the report form.

There also appears to be underlying assumption that over 3 day or over 7 day injuries are very minor and not worth considering. We do not agree. If a worker has to take a week off work because they have been injured there, this is not a trivial issue for them and their injury may not necessarily be a minor injury. For example, an incident where a worker is knocked unconscious and suffered concussion but who was not off work for more than 7 days would not be reportable(unless the incident falls within the definition of a reportable injury in any other respect or loss of consciousness falls within the definition of a major injury at Schedule 1 of RIDDOR). Not being required to report incidents, including ones as serious as this, could result in further failures in prevention.

In addition, there is no evidence that the change from a 3-day to 7-day reporting will increase the rate of reporting – in other words, there will be no improvement in the level of under-reporting either. Indeed, extending the period for reporting an incident could actually lead to a drop in reporting because a longer period could result in people forgetting to report an incident.

The proposal will not improve national and EU information about workplace accidents and trends

Changing the reporting requirement will mean that fewer accidents will be reported. The result will be less information being available to identify national, European Union and industry trends and clusters of injuries. This type of injury in any event is less likely to be identified in other surveys such as physician reporting schemes because the person is less likely to visit their GP.

Enforcement and compliance are required

Changing the RIDDOR reporting requirements in the way suggested will not achieve the employer compliance required to prevent injury and ill health.

Unite supports the current RIDDOR requirements which we believe are fit for purpose. We therefore urge:

- stringent enforcement of the current RIDDOR requirements and educating employers – including directors and senior managers - on their duties both under RIDDOR and under the Health and Safety at Work etc Act 1974;

- employers fulfilling their legal obligations in training and involving safety representatives and other employees in all aspects of reporting and prevention;

- the encouragement of blame free workplace cultures to ensure that employees feel able to report problems and facilitate prevention.

Q1 Do you support the proposal to extend the time before an occupational accident needs to be reported from over three days to over seven?

Unite does not support this proposal.

We do not believe that the policy objective of the consultation which is stated as, “To improve the effectiveness of the reporting of workplace accidents by reducing unnecessary burdens on business while still maintaining standards of compliance which should help to contribute towards the effectiveness of Great Britain’s occupational health and safety system” is being met, for the reasons set out above.

Enforcement of the current provisions would be more effective.

Q2 What advantages will the proposed extension to over seven days make to your business?

The effective operation of RIDDOR is of great significance to workers. Limiting the question to businesses is both irrational and immoral.

The underlying principle of the Health and Safety at Work etc Act 1974 is to ensure that health and safety standards are maintained and **improved.** There is nothing in the consultation document which suggests that the proposed change will improve standards of health and safety at work

We can see no advantage to the proposed change. This will result in far fewer injuries and ill health incidents being reported, which will have these consequences:

- Employers will be less able to identify problem areas and to take early preventive action.
- Safety representatives need access to information about **all** workplace injuries to help prevent future injuries and incidents. It is noted in the consultation document that reliance is placed on accident book data. Whilst we strongly support the use of the accident book, unfortunately our experience is that some employers try to prevent information being entered in the accident book.
- Difficulty for employers, trade associations and government in making comparisons with previous performance because the basis of the statistics would change. We are aware that trade associations have expressed concern about this.
- There will be no reduction in the volume of record-keeping in any case as employers are still required to **record** details of incidents.
- Aligning the reporting requirement to the issuing of a “fit note” is of no practical use. Research has shown that individuals are much more likely to know if their condition is work-related than their GP.

Q3 At annex 1 of the consultation document, the Impact Assessment paragraphs 13-38 focuses on the calculation of costs and benefits of the proposal to both businesses and local authorities. Do you agree with the assessments of costs and benefits? Are there other factors which should be taken into account?

We question the whole basis of the costs and benefits of the proposal.

We strongly disagree with the statement at para. 51 which states that, “There would be no impact on the health and well-being of those affected by the policy change”. No supporting evidence is offered for this.

There is no consideration of the effect on prevention of not reporting over 3 day injuries. After all, injuries which are over 3 days but not over 7 days comprise 70% of reportable absences. Not reporting these injuries will have a potentially significant effect on workplace health and safety and employees. Removing the requirement will provide a disincentive for employers to make improvements as they are even less likely to receive a visit from the enforcing authority.

Safety representatives are entitled to RIDDOR information from their employers. Research has shown repeatedly that workplaces where there are safety representatives and a properly functioning safety committee are twice as safe. Safety reps say that RIDDOR reporting is of huge help to them as it alerts them to workplace health and safety problems. Not having access to information to about 70% of the data they were previously entitled to will severely hamper safety representatives’ ability to raise the

issues with a view to helping their employers on prevention. No costs assessment has been made of this effect.

No consideration has been given to the cost benefit of supplying RIDDOR information internationally, for example European statistics.

Q4 Do you agree with the Equality Impact Assessment at annex 2 of the consultation document? Are there any other factors which should be taken into account

Unite would like to see much more detail on the process adopted to which led to the conclusions being made in relation to the Equality Impact Assessment. Please would you supply this.

Q5 Can you foresee any specific problems that might arise for employers, workers, enforcing authorities or any other groups if the proposed extension to over seven days is adopted?

Please refer to our comments above.

In summary, confusion will arise for employers over when they report and when they record; the number of injuries will increase because there will less enforcement action (and less expectation of enforcement action). Safety representatives are likely to receive less information which would otherwise be used by them to work with their employers to help prevention; and the enforcement authorities will have less information to assist them in regulatory and prevention activity.

Q6 Do you believe the loss of national data for over 3 to over 7 day injuries would have adverse consequences and, if so, what would identify those as being?

Yes. Please refer in addition to our comments above. We believe that consultation document underestimates the importance of the RIDDOR data which is collected, and its effect on preventing workplace injuries and ill-health.

We believe that a reduction in RIDDOR data will reduce the capacity of the government, employers and enforcers to prioritise on prevention in an informed way whether on a national basis, by sector or by individual employer.

As previously mentioned, safety representatives will receive less information to inform them in their vital role of helping prevention of ill health and injuries at work.

RIDDOR information is key data for academic research.

Employers and occupational health services need RIDDOR information not just for their own purposes but also to help identify general trends with a view to prevention.

Changing the basis for collecting RIDDOR information would, as indicated above, create difficulties when making historical comparisons. It is not sufficient to rely on other data sources such as the Labour Force Survey which is linked to individuals, not employers.

Q7 Are there any further comments you would like to make on the issues raised in this consultation document?

As previously indicated we believe that this proposal is completely misconceived. There is no rational basis for it, and we believe that if RIDDOR is amended the result will be more occupational accidents and ill health. We believe that RIDDOR requirements should in fact be extended, for example to include occupational road accidents.

And we most certainly want to see all employers complying fully with RIDDOR and robust enforcement action taken against those who do not.

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