

February 2010

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Dear Mr Knight

Unite the Union's Response to CD 227: A consultative document on legislation to implement the Physical Agents (Artificial Optical Radiation) Directive

This response is submitted by Unite the Union. Unite is the UK's largest trade union with 2 million members working in the private and public sectors. The union's members work in a wide range of industries including docks, construction, manufacturing, food manufacturing distribution and retail, agriculture, financial services, road, rail, air and sea transport, print, media, not for profit sectors, local government, education and the health service.

Summary

Unite strongly supports the introduction of new regulations.

Unite also calls for robust enforcement of the new regulations.

We do not believe that the draft regulations are fully compliant with Directive 2006/25/EC in that they do not sufficiently incorporate the requirement to consult workers as set out in Article 7. In view of the HSE's Strategy's particular recognition of the role of workers and trade unions in prevention, we are very disappointed that the draft regulations do not include this requirement. We urge that Article 7 is incorporated into the regulations, for example at Regulation 4 which deals with risk assessment.

We do not believe that the draft guidance is very helpful in assisting duty holders in complying with their legal obligations. It is robust enough in a number of respects, and we are also very concerned that the draft guidance is over simplistic for example making general statements about "safe" light sources without qualification.

Annex 2 of the guidance "Less common issues" should be expanded to provide more advice and information. Equality issues are not dealt with for

example taking account of workers who may have pre-existing health conditions such as epilepsy, eye and skin conditions.

We also provide comments below in answer to the specific questions posed.

In any event, Unite believes that it is not sufficient to support these regulations with guidance alone. There should be an Approved Code of Practice (ACoP) as is the case with other regulations which deal with major hazards to health.

We have considered the draft Health Protection Agency (HPA) guidance *A Non-Binding Guide to the Artificial Optical Radiation Directive*. This document looks very useful and could be a useful starting point for an ACoP. Whilst we appreciate that HPA guidance is non binding, we believe that referring to a **non-binding** guide in the leaflet sends out the wrong message to duty holders.

Unite also believes that separate guidance should be issued for safety representatives.

Comments on specific questions

a) Does the guidance at Annex B help you identify those sources of light in your workplace that are safe and require no further assessment?
If no, what additional sources should be listed as safe or what sources are you unclear/concerned about?

*Page 12 - second paragraph should be much more robust and state that employers are legally required to manage the risk and provide a short introductory paragraph **describing** employers' legal obligations, including consulting workers and their representatives, risk assessment, providing information and training and providing health surveillance.*

There is also no explanation of technical issues such as exposure limit values.

b) Does the guidance at Annex B help you identify those particularly sensitive sources of light in your workplace that are hazardous?
If no, what additional sources should be listed as potentially hazardous or what sources are you unclear/concerned about?

No comment

c) Is the filter in Regulation 3 clear in helping you decide whether or not you will need to do more?
If no, what extra would you like to see?

No comment

d) Does the guidance in Annex B help you understand what you should already be doing to protect workers' eyes and skin? If no, what areas would you like to see covered in additional guidance?

*There is a general assumption that businesses have in fact carried out risk assessments. Whilst undoubtedly many businesses will have taken appropriate action, no such **assumption** should be made in the guidance, which should take the opportunity to reinforce the legal requirements much more strongly.*

Page 14 under the heading What should you already be doing?

The leaflet should include reference to the employer informing themselves and taking competent advice about how to manage hazardous light sources, and also to consulting and engaging employees and their representatives.

*The use of future perfect tense (will have been, etc) is not only over optimistic, but also could imply that there is no longer any need to do anything, and lacks the necessary robust and **proactive** tone.*

There is no reference to the hierarchy of control.

e) Does the guidance in Annex B help you understand what more you should do if you are not already protecting your workers' eyes and skin? If no, what areas would you like to see covered in additional guidance?

We believe that there should be more emphasis on consulting safety representatives – and the employees concerned.

There should be more information on vulnerable groups.

The leaflet needs to provide some more information about the health effects of UVR exposure on the skin and eyes, for example a long-term effect of exposure may be skin cancer.

On page 13, the paragraph starting.. “This list is not exhaustive..” should suggest also that the employer should ask safety representatives/employees if there is a problem, not simply make an assumption that there isn't one.

Table 1 is not particularly helpful. If it is intended as a checklist, then there are a number of omissions.

It makes the assumption that a situation is “safe” and therefore no action should be taken, but does not suggest that the employer should first make inquiries, consult the workforce and train them if necessary in addition to informing them

There needs to be a reference to consultation and worker involvement in risk assessment.

f) Do you think the assumptions used to calculate the costs for familiarisation, risk assessment and control in the impact assessment look reasonable?

No comment.

g) Do you have any specific comments on the Regulations?

We have the following comments and suggested amendments:

Regulation 4

Regulation 4(1) should include a specific requirement to consult safety representatives and employees about the revision of the risk assessment. This is consistent with Article 7 of Directive 2006/25/EC.

Regulation 5

Obligations to eliminate or reduce risk

Regulation 5 (1)(4)

*We suggest that the following additional wording is inserted:
The action plan "should be drawn up in consultation with safety representatives and the employees concerned"... and must take into account
..*

Regulation 6

Health Surveillance and medical examinations

We are very concerned that there is no reference to confidentiality of employee medical records.

The Directive specifically states at Article 8. 3 that confidentiality must be taken into account both in relation to the keeping and consultation of records, and when supplying copies to the competent authority. Unite believes that Regulation 6 should be amended at both Regulation 7(3) and Regulation 7(5) to reflect the Directive.

Thank you very much for giving us the opportunity to comment. We look forward to an early introduction of the regulations accompanied by robust programme of enforcement.

Yours sincerely

Joint General Secretaries