

Health and Safety Executive Board		HSE/11/50	
Meeting Date:	17 August 2011	FOI Status:	OPEN
Type of Paper:	Above the Line	Exemptions:	
TRIM Reference:	2011/414436		

## Outcome of the Consultation on the Common Sense, Common Safety Proposal to Amend the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)

### Purpose of the Paper

1. This paper:-
  - Informs the Board of the outcome of the statutory consultation on the proposed change to RIDDOR to increase the period for reporting injuries that lead to a worker being incapacitated from over three days to over seven days; and
  - Invites the Board to make a recommendation to the Secretary of State following that consultation.

### Background

2. On 15 December 2010, the Board agreed to undertake a statutory consultation on the “Common Sense, Common Safety” recommendation to amend RIDDOR. The amendment would increase the “over three” days (O3D) time period after which an injury must be reported to enforcing authorities to “over seven” days (O7D). The increased period coincides with the point when an employee who is absent from work due to ill health or injury must obtain a “fit note” (form Med3) from their doctor. The injury must result from an incident that arose out of or is connected with the work activity. It would remain a legal requirement for employers and others to keep a record of O3D injuries for three years.
3. The consultation document sought views on the proposal, the impact assessment (IA) and equality impact assessment (EIA). The Board asked that the consultation should include the advantages and disadvantages of the change, the accuracy of the impact and equality impact assessments, some detailed issues arising from the proposed change and the effect on national statistics. Over 18,000 copies of the consultative document were downloaded, but only 776 finalised responses were received .

### Summary of the Outcome of Consultation

4. A detailed analysis of the consultation responses is given at annex 1. There is a 2:1 majority in favour of the proposed change and clear majorities who agree with the impact and equality impact assessments. Further, a majority feel that the change will not have an adverse consequence on national statistics.

## 5. Results

Question	Q1) Do you support the proposal?	Q2) Do you agree with the impact assessment (IA) of costs and benefits?	Q3) Do you agree with the Equality impact assessment (EIA)?
Yes	516 (67%)	382 (53%)	517 (73%)
No	242 (31%)	163 (23%)	52 (7%)
Don't know / No response	18 (2%)	172 (24%)	144 (20%)
Total	776 (100%)	717 (100%)	713 (100%)

## Argument

### Key Themes from the Consultation

6. Key themes identified by respondents who agreed with the proposed change included that:

- Administrative burdens would be reduced;
- Aligning with the “fit note” would make sickness absence easier to manage;
- The medical examination would assist with rehabilitation and the management of the injured person’s return to work;
- Some employers felt that some employees extended their absence in order to have an incident officially reported. The need to obtain a “fit note” and therefore undergo a medical examination before reports were made, would do much to eliminate this and, thus, there would be a positive impact on the “claims culture”;
- The extended period would allow more time for employers to investigate the incident internally;
- Uncertainty when the period of absence goes into a weekend or other rest period would be removed;
- The quality of information about the injury provided in the RIDDOR report would improve as this would be confirmed by a medical professional when the fit note was issued; and
- It would focus RIDDOR on the more serious injuries.

7. Key themes identified by respondents who disagreed with the proposed change included that:

- There might be a negative impact on the health and safety culture of the organisation leading to a lowering of standards;
- Reducing the number of reports reduces the opportunities for duty holders and regulators to spot incidents that could have resulted in more serious injuries;

- The increased period between the incident and reporting means a consequential delay in follow-up action;
  - Compliance with RIDDOR would decrease for a variety of reasons, including that an increased reporting period would lead to duty holders forgetting to report O7D and potential confusion over whether the changes meant the duty was to only record O3D injuries or O7D injuries;
  - There would be more scope to pressure an injured person to return to work sooner by an employer who wished to avoid the need to report; and
  - The injured person might take longer to return to work in order to obtain a RIDDOR report of the incident.
8. In addition, some respondents raised concerns about the legality of the proposal.
  9. Some (61) who opposed the change did so because they felt that there are no advantages in the change for either their organisation or the national health and safety system. They estimated the potential cost savings as small when familiarisation costs and the need to change their incident reporting systems and software were taken into account.
  10. A number of respondents, including the CBI, the Federation of Small Businesses and the Chartered Institute of Occupational Safety and Health (IOSH) while supporting the change, asked for a fuller review of the regulations as did Trades Unions. The Royal Society for the Prevention of Accidents (RoSPA) and the Royal Collage of Physicians opposed the change and sought a fundamental review of RIDDOR instead. Respondents from education, the leisure, retail and other sectors that report incidents to members of the public, students, customers and other people not at work, also argued that this requirement under regulation 3(1)(c) should be reviewed.
  11. The HSE Board considered, in December 2010, whether to widen the review of RIDDOR at that time. You agreed not to look at wider issues surrounding RIDDOR until the current proposal had been taken forward and evaluated after a 12-month period from the amendment being made.

### **Local Authorities**

12. No response was received from Local Government Regulation (LGR). This was in order to avoid duplication as LA's indicated they had also submitted their own response to the consultation. In the event, ninety-five responses were received from individual local authorities and local authorities' enforcement liaison groups.
13. These included enforcement officers, health and safety managers and those responsible for service delivery. Fifty-four supported the proposal, 40 disagreed and one, an enforcement officer/department, did not know. From those who identified their roles within local authorities, 18 enforcement officers/departments agreed, 12 disagreed, 26 health and safety managers/ service providers agreed, while 21 disagreed, the remainder could not be identified.

## Impact Assessment

14. The impact assessment (IA) (see annex 2) has been reviewed to take account of the points raised by the Regulatory Policy Committee (RPC) and comments made by consultees. In addition, the new reporting arrangements along with the closure of the Incident Contact Centre (ICC) in September 2011 have been included.
15. Many who disagreed with the impact assessment did so because they felt that the wider costs of health and safety failings including the effects upon the injured person, the business, productivity, insurance premia, etc. should have been included. These costs were not directly relevant to the assessment of the current proposal, but many who raised them also argued that reducing the reporting requirement would have a negative impact on an organisation's health and safety culture. Thus, its performance would decline, leading to such costs increasing.
16. Similar views had been expressed by respondents to the Health and Safety Commission's 2005 discussion document about the future of RIDDOR. HSE followed this up, conducting focus groups involving interviews with medium to large manufacturing companies. These groups said that there were other drivers, more important than RIDDOR, for the investigation and prevention of incidents, such as pressures from parent companies and insurance premia.

## Equality Impact Assessment

17. The equality impact assessment (EIA) is attached at annex 3. A minority of respondents raised concerns that the proposal would disproportionately impact upon women and part-time workers. However, HSE's Chief Statistician advises that there remains no evidence to suggest that the distribution of O3D and O7D injuries would differ. Hence, there should not be a disproportionate effect by gender, part-time working, age etc.
18. Labour Force Survey (LFS) data broken down by gender shows that men are 60% more likely to suffer a reportable injury than women. By age, 16-24 years olds have the highest rate of reportable O3D injury. A comparison of LFS data with the RIDDOR data for these groups implies that reporting levels are lower for young people and women. Consultees expressed views that linking the "lost-time" reporting requirement to the "fit note" would improve reporting rates. Views expressed by consultees from the retail sector, in particular, also said that reporting rates for injuries to part-time workers would improve. Their reasoning for this was that under the O3D requirement, it is often a matter of judgement whether the injured worker would have been fit to return to work on the fourth day if this was a non-working day for that worker with that employer. The O7D requirement and the necessity of a "fit note" for absences would remove any dispute about when the injured person had to take time off work. The requirement to report would remain after consecutive, calendar days, not working days.

19. O3D injuries are not routinely investigated by HSE and some local authorities have adopted HSE's approach to incident investigation selection.
20. There is no evidence that any identifiable group would be disproportionately affected by the proposed change. The impact of the change could be monitored by means of extrapolation from the Labour Force Survey.

### **Workplace violence**

21. On 15 December 2010 Board members asked whether the proposal would have an adverse impact upon women working in the public sector, especially in the health care sector who were victims of violence at work. RIDDOR data shows that women working in the healthcare sector are twice as likely to suffer an O3D injury due to violence at work, as their male counterparts. However, HSE accepts that acts of physical violence to people at work are very under-reported and so the main source of statistical data is the British Crime Survey. This also covers both physical assaults and threats. RIDDOR does not cover verbal abuse, threats, etc. HSE does not use the RIDDOR data as an intelligence source for this purpose.
22. In addition, HSE and local authorities do not in general investigate individual incidents of physical violence against workers; these are a matter for the police. HSE and local authorities' primary focus is management of risks from workplace violence through examining the employer's systems and policies.
23. HSE encourages duty holders to internally report and record all incidents of physical violence and verbal abuse and to analyse these. Reliance upon RIDDOR data that only requires physical injuries to be reported would not, on the whole, provide sufficient information for dutyholders to manage this risk.

### **National Statistics**

24. The questionnaire asked specifically whether respondents felt that the proposed change would have an adverse impact on national statistics. Around 40% of respondents raised concerns that the change would adversely impact upon national statistics, especially HSE's ability to spot trends in injury rates.
25. HSE's Statistics Unit analysed the RIDDOR data and the Labour Force Survey (LFS) data. An analysis of the trends in injury rates from 2003/04 to 2009/10 showed that O3D and O7D injury rates were similar overall and for all of the major employment sectors. HSE's Chief Statistician advises that HSE would be able to spot trends for the whole of the workforce and each sector and feed these into HSE's planning process, if the change were implemented.
26. Concerns about the ability to "benchmark" were raised by respondents. This appears to most often be an issue for health and safety professionals checking their individual employer's performance against the national picture and the broader industry performance. The proposed change should not prevent this in future as it is possible to compensate for the change through standard statistical analysis techniques.
27. The vast majority of the remainder of respondents made no comment. A small number amongst these did say that they felt the proposal may have a positive impact in that they thought the change might well improve compliance

and the quality of the data. They based this view on the fact that the requirement to obtain a fit note, would remove some of the uncertainties around the severity and nature of the injury and the expected recovery period.

### **Other Issues: Deadline by which Reports Should be Submitted**

28. A small number of respondents asked whether the period by which the report must be made would be extended. Currently the responsible person is required to send this to the enforcing authority within 10 days of the incident. Respondents who raised this pointed out that currently this allows six days after the injury becomes reportable for the report to be made. If no consequential amendment is made and the change to over seven days goes ahead, responsible persons will have only two days to report the incident. To maintain the deadline it is proposed that a consequential amendment is made extending the period by which the responsible person must make the report to 15 days from the day of the incident.

### **Conclusion**

29. Following widespread consultation, there is a clear majority of 2:1 in support of the proposed change. No fundamental obstacles have been identified. Therefore, on the basis of this alone, it would be difficult to conclude that the proposed change that the Government has accepted, may not go ahead. It is the view of officials that the Board should recommend to the Minister the proposed change to RIDDOR with two consequential legislative amendments that were raised by consultees. These are to protect certain rights of safety representatives and to extend the deadline by which the responsible person must make the report.
30. There was a minority view expressed in the consultation exercise in favour of a more radical examination of RIDDOR; the Board will recall that at its 15 December 2010 meeting you decided to review any implementation of this proposed change before considering whether to widen the scope of the review (see paragraph 11 above)
31. The Board is therefore invited to recommend to the Secretary of State that the proposed change (as described in paragraph 29) should be carried into effect. The Board may wish to accompany its recommendation with a covering letter identifying some other issues and concerns raised in the consultation.
32. If the Board agrees and recommends to the Secretary of State that regulation 3(2) of RIDDOR is amended in line with the Government's proposal, the key milestones would be:
- Submission to Ministers – week commencing 5 September 2011
  - Submit regulations to Ministers for signing – week commencing 26 December 2011
  - Regulations laid before Parliament - week commencing 13 February 2012
  - Common Commencement Date – Regulation in force – 6 April 2012

**Action**

33. The Board is invited to make a recommendation to the Secretary of State following the consultation exercise.

**Paper clearance**

34. Cleared by Geoffrey Podger on 4 August 2011