



Northern Ireland
Assembly

Committee for Enterprise, Trade and
Investment

OFFICIAL REPORT (Hansard)

Reporting of Injuries, Diseases and
Dangerous Occurrences Regulations
(Northern Ireland) 1997

29 November 2012

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Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)
Mr Steven Agnew
Mr Gordon Dunne
Mr Paul Frew
Mr Alban Maginness
Ms Maeve McLaughlin
Mr Stephen Moutray
Mr Robin Newton
Ms Sue Ramsey

Witnesses:

Mr Dermot Breen	Health and Safety Executive for Northern Ireland
Mr George Lucas	Health and Safety Executive for Northern Ireland
Dr Bryan Monson	Health and Safety Executive for Northern Ireland
Mr Mark Pinkerton	Health and Safety Executive for Northern Ireland

The Chairperson: We have with us everybody, bar one change, from the earlier presentation. We have been joined by Mr Mark Pinkerton, who is the legislation team leader in the Health and Safety Executive. As before, I ask you to make an opening presentation, please.

Mr Mark Pinkerton (Health and Safety Executive for Northern Ireland): Chairman, I am happy to do that. As you have said, the Committee has already had some discussion on the issue, so I will be quite brief and just remind you of the broad issues. Then, we can have a general discussion.

RIDDOR stands for the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (Northern Ireland) 1997. Dermot referred to them earlier in the context of farm safety. Basically, those regulations require employers to alert the Health and Safety Executive for Northern Ireland (HSENI) and, in some cases, local authorities of any accident that has led to an employee's absence from work for more than three days.

The Northern Ireland 1997 regulations replicated Great Britain regulations of 1995. When the coalition Government came in, and even slightly before that, they asked Lord Young of Graffham to have a look at health and safety regulations in Great Britain. In 2010, he produced a report called, 'Common Sense, Common Safety'. One recommendation that he made in that report was that the three-day absence be increased to seven days. One reason for that was that it was consistent with the requirement for individuals to obtain a fit note from their GP at the end of seven days, and it would, therefore, mean that anybody who had been off work as a result of an accident or injury would actually

have a report from his or her general practitioner before returning to work. It would also clearly reduce the need for reporting as three days is quite a short period. Clearly, it would not be a very serious injury that required an absence of only three days. The Government accepted that. Indeed, in April 2012, the rule was changed in GB. It is now seven days, rather than three days. So, we are out of step.

It used to be the case that employers had to report within 10 days. If somebody had been off for three days, the employer had 10 days to report. The other change, which followed on from the recommendation, was that it has been extended to 15 days; again, that is just to keep it consistent with the length of time between the return to work or the ongoing absence and the requirement to report. It should be made clear that there is still a requirement for employers to keep a record in an accident book of any illness or injury that lasts more than three days. So, it is not the case that they will not have to record it, but they will not have to report it to HSE.

There would be some financial benefit, though that is not the major point of it. It is estimated that there would be a saving to business of some £41,000 over 10 years and a 28% reduction in the number of reports. The saving to HSE and councils in administration costs would be around £56,000 over 10 years.

The main principle is that the Department of Enterprise, Trade and Investment is committed to ensuring that businesses in Northern Ireland do not have to endure a regulative burden that is greater than that of their counterparts in Great Britain or elsewhere and also that companies that operate across the UK are not subject to more stringent or even different regulatory requirements when they operate here than when they do elsewhere. That is the main principle; it is one of parity. That is why the Minister is proposing to make the change here.

The Chairperson: Thanks very much for that. You were sitting at the back of the room during the previous presentation. In the context of what we heard during that presentation, I have some concerns about this proposal. You are the experts in the field. If, for example, a farm employee is overcome by fumes to the point that he — it is usually a he — is sick and off work for a couple of days, whatever had been the issue on that farm might not be reported because the employee is not incapacitated for more than three days. That is what applies now, but you are looking to extend that period to seven days. The potential for something slipping under the radar and not being picked up on in light of what we have just heard gives me cause for concern.

Mr Dermot Breen (Health and Safety Executive for Northern Ireland): I will pick up on that. The information supplied to us through RIDDOR on farming is quite minimal. We get good information on fatal accidents and some of the major injuries. We define a major injury as one in which someone is hospitalised, maybe as the result of exposure to gas, or has a limb broken or even amputated. I am afraid that we do not get any reports from the agricultural industry on incidents leading to absences of more than three days.

The Chairperson: It does not have to apply only to that. That shows me that the monitoring or enforcement of RIDDOR is an issue rather than there being any need to extend the period from three to seven days. You said that the number of cases reported through RIDDOR is low, and you made the case that the reason for extending the period to seven days is to reduce the overwhelming amount of red tape. However, it does not seem that an awful lot of red tape is being complied with currently, so we will just park that argument. If those incidents are not being properly reported, there is another question to be asked.

Mr Breen: My comments were on the agricultural industry specifically. A number of over three day absences are reported to us by other industries.

The change in the requirement to report over seven day incidents rather than over three day incidents will probably knock 28% off the number of accidents reported to us. In essence, that will not influence how we deploy our resources to identify priorities. Our priorities are set mainly in relation to the more serious incidents. Information on minor injuries is useful intelligence to have, but we can get better intelligence on minor injuries through sources other than RIDDOR. That is through —

The Chairperson: As we heard in your evidence, a catastrophe might be avoided by just a matter of a few minutes. The difference between it being a minor incident that may or may not require someone to go to the doctor, or take a day or two off to clear their head, could simply be the intensity of the noxious fumes or the proximity of that person to them. That concerns me. If you are saying that there

is a problem with reporting from the agricultural sector, the problem is with reporting; it does not mean that incidents or potential incidents are not happening.

Mr George Lucas (Health and Safety Executive for Northern Ireland): Chair, you are absolutely right. One general message that we have been trying to get across is the information from the Bird diagram, which takes account of over 30 years of insurance information. The diagram shows that, for every one major accident, there are something like 10 minor accidents and more minor incidents and near misses as you go down the pyramid. Obviously, we would love to be able to get into the middle of those near misses, the reporting, and the issues that you talked about, such as, for example, when you sniff a room, smell fumes and recognise that there has been a near miss. If that is recorded, we all learn from it. That tends to be the case in other industries. It has proved to be extremely difficult to make that happen in farming generally across the world. That is because, as you can imagine, of the issues that we talked about earlier. The farmer gets up, he works alone and his instinct is to carry on. It is about trying to change that behaviour as much as anything.

Mr Breen: May I clarify something? It is not a problem in the sense that the agricultural industry is not complying with that bit of law; it is simply that a farmer is not required to report an awful lot of incidents because, in the majority of cases, no employee is engaged in the sector. That is why reporting is at a relatively low level and why we need to look at other means of getting good intelligence from the agricultural industry. A number of the actions in our action plan aim to improve the intelligence that we get from the industry. We will work closely with NFU Mutual, for example, to try to garner more information about what is happening on farms. All low-level incidents and near misses give us a better idea of what is happening so that we can intervene and prevent the more serious incidents.

The Chairperson: Sorry, but I will play devil's advocate. Do you not agree that if the current incidence of reporting from the agricultural sector is low, extending the number of days of incapacity to seven will make it even lower?

Mr Breen: It will make little difference to the agricultural sector because so few incidents are legally required to be reported to us.

Mr Lucas: In the South of Ireland, we recently met officials from the Health and Safety Authority. They told us that there were something like 4,000 accidents in the Republic but only about 100 were reported. That is, unfortunately, the situation. In our case, we estimate that about 60 of 2,000 accidents in Northern Ireland are reported. Across the world, the situation is similar because of the circumstances that we talked about earlier. The farmer works on his own and is isolated, and so on.

Mr Pinkerton: If I may add, just so that the Committee is aware of it, that RIDDOR has recognised the difficulties. As well as making this specific proposal, Lord Young recommended a general review. His report was followed up by one on health and safety by Professor Löfstedt, of which you are probably aware. A major consultation in Great Britain has just been completed, so it is likely that we will come back to the Committee with further RIDDOR recommendations. Under-reporting is certainly an issue, as is the fact that employers are unaware of what they do and do not have to report. It is rather complex. There will be proposals to simplify that and make it more reliable.

The Chairperson: I interrupted you earlier, Mr Breen, for which I apologise. You were about to expand on other methods of gaining information from farms.

Mr Breen: I was saying that there are a couple of actions in our action plan to try to address the paucity of data on low-level incidents and near misses that happen on farms. Information from our inspector, who visits farms, is part of the data collection that we draw from when farmers make us aware of accidents. There are other more formal mechanisms, such as our use of the survey that the Northern Ireland Statistics and Research Agency runs regularly. We have embedded questions in its labour force survey and in the continuous household survey, which is another survey that we use, to try to collect more reliable evidence on the low-level incidents.

The Chairperson: Will you tell me about the two proposals included in the document? Let us move away from the agricultural sector. Are there other industries, sections of industries or businesses where incidence of reporting to you is not as high as in others? I am sure that, with RIDDOR, reporting to you is on a sliding scale. Do you have any data on that because you are obviously aware that it is an issue in the agriculture sector?

Mr Breen: When it comes to RIDDOR, the best reporters are in the public sector. That reflects the administrative nature of much of the public sector in that it has systems in place that readily identify what needs to be recorded. If you will forgive me, they are good at complying with the rules. We get a lot of over three day accidents reported by the education sector, for example, and the health sector. That is widely true of the public sector.

When it comes to the lesser reliability of the information coming through on the over three day accidents, that is when, we believe, it tends to drop off in the private sector. I say "we believe", but that is from comparing the information that we get through RIDDOR with the other sources to which I referred, such as the labour force survey and the continuous household survey.

Mr Lucas: It might be fair to say that strong trade union involvement helps. The companies that tend to be better on the spectrum of improvement in health and safety standards have improved reporting in those areas as well because they realise the benefit of diagnosing the problem and trying to learn from it.

The Chairperson: If you would forward to the Committee copies of any documents that you referred to, that would be useful.

We have received a submission from the Northern Ireland Public Service Alliance (NIPSA), and we will also hear evidence from its representatives, so your response will be important. I will ask you to respond to these issues, please. Other members may want to pick up on it as well.

NIPSA has concerns, as you will know. It opposes your proposed amendments to RIDDOR because:

"we believe them to be in breach of European Law, the 1989 Framework Directive, and to be unlawful under UK law."

I will take you through some of the key issues that I have highlighted. NIPSA says:

"the consultation is clearly biased towards business, and fails even to ask a single question about workers' health and safety. This is contrary to what the RIDDOR Regulations (Northern Ireland) 1997 and the Health and Safety at Work Act 1974 are about. Neither does it accord with the Executive's aim to 'prevent death, injury and ill health in Northern Ireland's workplaces'".

There are a number of issues here. NIPSA also says:

"the impact assessment is flawed, misleading and neither suitable or sufficient, and the costs analysis for business inaccurate. Nor does the impact assessment in any way begin to address the benefits of the current position to workers, business, society or the economy in general".

Do you have any views on those opinions?

Mr Pinkerton: We sought legal advice from the Departmental Solicitor's Office, and it is not contrary to European law. Indeed, the UK Government are satisfied with it as far as it applies in GB. We are quite satisfied that it is not an issue.

On the wider health and safety issues, there will be a more general consultation on RIDDOR, and we expect those issues to be addressed in that context.

The Chairperson: Are those the issues of workers' health and safety?

Mr Pinkerton: That is correct. NIPSA states that the consultation went against the principles of the RIDDOR regulations and the Health and Safety at Work (Northern Ireland) Order 1978, and that they do not accord with HSE's aim to prevent death, injury and ill health in the workforce, and so on. However, this is very much about simply maintaining the principle of parity. The wider issues will be addressed in the forthcoming consultation.

The Chairperson: What about NIPSA's charge that the impact assessment was flawed?

Mr Pinkerton: Again, in these cases, we tend to look at the impact assessment in Great Britain and read it across to Northern Ireland. Then, if anyone has any specific reason to think that a pro rata

approach in Northern Ireland is inappropriate because our circumstances are so different, the consultation is an opportunity to make that case. None of the consultees, in fact, made that case. We assume that if it is valid in Great Britain, it is valid here.

Mr A Maginness: I just want to address one small point in NIPSA's written response. I do not know whether you have a copy in front of you. In its summary, NIPSA uses the word "presenteeism", which is not a word that I have come across.

Mr Pinkerton: Presenteeism, I think it is, as opposed to absenteeism. It means turning up to work when you are sick.

Mr A Maginness: Just explain what that means.

Mr Pinkerton: It means that the unions are concerned that when people are pressured to come into work when they really should not, they spread germs about the office, and so on.

Mr A Maginness: Right.

Mr Pinkerton: We have no reliable data to support that claim. Obviously, it is anecdotal, but it is clearly something that other —

Mr A Maginness: Why should this happen as a result of any changes?

Mr Pinkerton: I suppose that it would be to get somebody back to work within three days. If seven days is the limit, they may put pressure on people to come back within five, I suppose. I do not know. However, as I said, there is no hard evidence one way or the other.

Mr A Maginness: So NIPSA is suggesting that people will be forced back to work before they are better.

Mr Pinkerton: Yes, exactly. NIPSA is saying that employers will put pressure on them.

Mr Breen: From our perspective, change would improve the presenteeism situation. Rather than employers forcing people back before the three days have elapsed, they now have seven days before having to turn the screw, if I may put it that way. We would never advocate or support that notion of presenteeism. If someone is sick, ill or injured because of work activities and needs to be off work to recuperate, that must happen. We are certainly aligned with the trade unions on that approach. I cannot see how these regulations will really impact on that.

Mr A Maginness: This does not deal with fatalities. Fatalities are reported immediately or as soon as possible.

Mr Breen: Absolutely. That does not change.

Dr Bryan Monson (Health and Safety Executive for Northern Ireland): Mark also mentioned the linkage between the fit note, which used to be called the sick note, and the seven days. That is important because there is now an idea that the fit note should facilitate an individual who is ill, their GP and the company to look for opportunities to bring them back to work in an appropriate way and not have a situation in which somebody is off long-term sick with no intention of trying to reintroduce them to the workplace. There was work done in GB on the introduction of the fit note and trying to tie those two things together, again to ensure that people are brought back to work in an appropriate way, depending on their circumstances and in consultation with their GP.

The Chairperson: How would an employer's occupational health responsibility fit in?

Dr Monson: The intention is that if an employer has an occupational health service, they would work together to bring the person back to work. If not, the idea of the fit note is that the GP is able to indicate the sort of work activities that would be acceptable and not exacerbate any condition that the individual has.

The Chairperson: Will that create more paperwork for GPs?

Dr Monson: The system is already in place, and I am not aware of any significant complaints in that regard.

The Chairperson: That is grand.

Thank you very much for taking the time to be with us today. It was a very valuable session.