Northern Ireland Assembly

Committee for Enterprise, Trade and Investment

OFFICIAL REPORT (Hansard)

Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (Northern Ireland) 1997: ICTU/NIC-ICTU Briefing

24 January 2013

NORTHERN IRELAND ASSEMBLY

Committee for Enterprise, Trade and Investment

Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (Northern Ireland) 1997: ICTU/NIC-ICTU Briefing

24 January 2013

Members present for all or part of the proceedings:
Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Steven Agnew
Mr Gordon Dunne
Mr Paul Frew
Mr Alban Maginness
Ms Maeve McLaughlin
Mr Stephen Moutray
Mr Robin Newton
Mrs Sandra Overend
Ms Sue Ramsey

Witnesses:

Ms Geraldine Alexander	Irish Congress of Trade Unions
Ms Barbara Martin	Northern Ireland Committee, Irish Congress of Trade Unions
Ms Clare Moore	Irish Congress of Trade Unions

The Chairperson: We have with us Clare Moore, from the Northern Ireland Committee, Irish Congress of Trade Unions (NIC-ICTU), who is the union services officer; Barbara Martin, who is the chairperson of the health and safety committee of the Irish Congress of Trade Unions (ICTU); and Geraldine Alexander, who is a member of the ICTU health and safety committee.

The three of you are very welcome. It is good to see you, and thanks very much for coming along. We are normally a pretty informal bunch, within reason. You have an opportunity to make your presentation. I realise that the regulations are specifically about one or two issues relating to a very clear issue. I have already attended a conference organised by the trade union, so I have heard about that issue loudly. This is your opportunity to present your concerns and issues around this, and then you can take questions and queries from Committee members. We have already heard from the Department, which gave us its take on a number of issues, including claims made by the Northern Ireland Public Service Alliance (NIPSA) around legal advice, European issues and the like.

Ms Moore, you are speaking first, and your colleagues can assist with queries and give clarification around different things.

Ms Clare Moore (Irish Congress of Trade Unions): Thanks to the Committee for inviting us. I will provide a very brief introduction, and then Geraldine and Barbara will come in. We are happy to answer questions from you.

We had hoped that Seamus Larkin would be with us, but, unfortunately, he has been brought into hospital quite suddenly. Seamus is a health and safety representative and an activist. We were relying on some of the expertise that he would bring this morning. However, I have a submission that Seamus provided to me. With your permission, when Geraldine has finished, I will read from that.

The Chairperson: Is it the NIPSA response that you will read from or something separate?

Ms Moore: No, Geraldine is representing the Irish Congress of Trade Unions today, but she is also a NIPSA official. I will provide a brief introduction, Barbara will make some points and Geraldine will come in after that. She will draw on the NIPSA response, as well on as a range of other responses.

The Chairperson: I am just seeking clarity, Clare, that what you will be saying has not already been submitted to us.

Ms Moore: No, it has not been.

The Chairperson: It might be helpful if you share that with us when it is convenient for you.

Ms Moore: Absolutely. We will share it with you.

On behalf of the Irish Congress of Trade Unions, I thank the Committee and the Chair for inviting us to present evidence to you on the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (Northern Ireland) 1997, known as RIDDOR.

I am a full-time officer with the Irish Congress of Trade Unions, with responsibility for, among other things, the ICTU health and safety committee. I will provide a very brief introduction and then invite my colleagues to make their contributions. Barbara Martin is the chairperson of the NICICTU health and safety committee, a former board member of the Health and Safety Executive for Northern Ireland (HSENI) and one of the two Trade Union Congress (TUC) nominated representatives on the EU Luxembourg committee, which was charged with forming health and safety policy development for EU member states. Barbara is also a member of UNISON.

Geraldine Alexander is also a member of the ICTU health and safety committee and a full-time official with NIPSA. Geraldine also served as a board member of the HSENI, and she served a term as deputy chair with the executive. As I said, Seamus is not with us, although we will hear some of his thoughts a little later.

It is now well-evidenced that unionised workplaces are safer workplaces. Where workplaces have safety committees, well-trained safety reps and consultation between safety reps and employers on health and safety matters, injury rates in workers have been found to be significantly lower. Trade union safety reps have also been found to be better informed on safety matters, such as legislation, than many managers, often because they receive more training and can therefore be an important catalyst for safety improvement in the workplace, including compliance.

In consulting about the proposed changes to RIDDOR to extend the period for reporting injuries and occurrences from three to seven days, the congress therefore drew on the experience gathered from health and safety reps. The views of those reps and the work done across the public and private sectors led us to oppose firmly the proposed changes. Although congress is not against simplification of regulations that benefit employers, regulators and safety representatives, we believe that any changes must not undermine the overall purpose of the regulation. Unfortunately, we must conclude that the overriding reason for considering change to RIDDOR was not about better protection of the health and safety of the workforce but more about saving money and reducing the so-called burden on business.

Ms Barbara Martin (Northern Ireland Committee, Irish Congress of Trade Unions): As you will know, the changes to the timescale for reporting accidents and ill health as a result of work are already in place in GB. The response from HSENI appears to have no real argument that we should not follow that example. Indeed, it advocates parity with GB. In the view of the ICTU, there is little to commend that approach. We do not need to follow slavishly the rest of the UK. We have our own identity, and, with approximately 0·02% of GB's population of workers, we have many fewer workers.

Denying parity is not unprecedented. The Equality Act 2010 is the amalgamation of a number of pieces of equality legislation in GB. We do not have that legislation. As you know, we have separate pieces of equality legislation, including pieces on disability discrimination, gender discrimination, and so forth. Our equality legislation is among the most robust in Europe and remains, I believe, as separate legislation for a reason. We do not feel the need to change that to maintain parity. We do what we believe to be the best for our people.

In the EU, much work has been done on the aspiration of good, healthy and prosperous populations in each of the member states. Part of that is recognition of the role that healthy and safe workplaces play in the health of a nation. There have been a number of Council decisions and directives with that goal in mind. To monitor the health and well-being of the various peoples, the Council of the European Union recognises the importance of clear, robust reporting and statistics gathering. To that end, the Council's resolution of 3 June 2002 brought forward a new European Community strategy on health and safety at work and called on the European Commission and member states to:

> *"step up work in hand on harmonisation of statistics on accidents at work".*

That led to regulation1338/2008 of the European Parliament and the Council on 16 December 2008, which called for "synergy" and "harmonisation" of statistics.

Annex IV of that regulation describes an accident as:

> *"a discrete occurrence in the course of work which leads to physical or mental harm."*

It continues in that annex:

> *"The data shall be collected, for the entire workforce, for fatal accidents at work and accidents at work resulting in more than three days of absence from work".*

Later in the same annex, it is stated:

> *"A limited subset of basic data on accidents with less than four days of absence may be collected, when available and on an optional basis, in the framework of the collaboration with the ILO."*

The ILO is the International Labour Organization.

That should surely show the Committee that the European Union expects to be able to draw on the statistics that show the patterns of short periods — less than four days — of physical or mental harm. If we in Northern Ireland fall in with GB and change the criterion for notification of accidents, illness or injury to seven days' absence, those important patterns of harm to our workers will be lost to those who develop policy for all of Europe.

Ms Geraldine Alexander (Irish Congress of Trade Unions): As you know, we are seriously concerned that the current proposals stem not from a wish to improve our health and safety regime but from the need to respond to the recommendations in Lord Young's report 'Common Sense — Common Safety'. That report had no evidence base; considered shops, offices and schools to be "low risk"; and obviously ignored violence, stress in work, work-related upper-limb disorders as serious workplace problems, and indeed any other work-related ill-health condition.

That is clearly wrong, as the stated aim of Lord Young's review was not to improve the health and safety regime but to:

> *"free businesses from unnecessary bureaucratic burdens"*

and save money. That aim would suggest that changes are being made to RIDDOR to meet the political agenda, rather than to improve workplace health and safety. It is clear that the proposed changes will be detrimental to workers, as no assessment has been made of the benefit to workers of those changes. That is borne out by the fact that in the consultation a question was asked for views on the advantage to business, but no corresponding question was asked about the advantage to workers.

We also believe that the consultation was fundamentally flawed by the failure of HSENI to carry out a Northern Ireland-specific equality impact assessment (EQIA). That was openly admitted by HSENI in

its evidence to the Committee on 29 November 2012. You cannot simply read across an EQIA in Great Britain to Northern Ireland. That is not compliant with our equality laws, and with section 75 in particular. You cannot make an assumption that equality implications in GB will be the same in Northern Ireland. If you look at the GB impact assessment, you see that there is, again, a clear focus on the calculation of costs and benefits of the proposal to both businesses and local authorities, with no mention of the potential impact on the health of employees. That is perhaps intentional, as it is difficult to understand or identify what benefits workers will gain from a reduction in the collection of data that helps to prevent and/or reduce workplace deaths, injuries and ill health.

We know that under-reporting under RIDDOR is rife and that some employers simply to do comply with the regulations and do not report many non-fatal prescribed accidents, injuries and dangerous occurrences. However, the requirement to report three-days incidents is incredibly simple. It is difficult to see how the so-called burden to businesses will be reduced when employers will be required to record over-three-days incidents and report them after seven days. Rather than reducing the burden, it is clear that that will increase as employers are faced with a two-tier system, which could increase the chance of non-compliance. Any proposed change should, in our view, seek to improve the process to encourage more employers to comply with the existing legislation. RIDDOR reports provide much-needed intelligence data to help with planning and targeting for enforcing authorities' interventions. If that change is allowed to go ahead, injuries and incidents, such as work-related upper-limb disorders, work-related stress, manual handling, slips, trips and falls, and verbal abuse, threats and actual violence will go under radar. The majority of those incidents occur in so-called low-risk workplaces. Consequently, the opportunity to identify prevention measures will be missed or ignored.

In its current format, RIDDOR suffers from massive under-reporting. Rather than extending the period in which the report takes place, we believe that it would make better sense to look at how levels of reporting can be improved, as well as at strategies to encourage more reporting, particularly in the small to medium-sized employers, in order that they comply with their duty to report under RIDDOR. We are of the view that simply to extend the number of days in which a report can be made will do nothing to improve reporting levels, especially as employers will still be required to record over-three-days incidents.

Ms Moore: I will make some concluding comments. Chair and Committee members, if you go out of the front of the Building and look to the left, you will see a tree that was planted in memory of David Layland, who lost his life in an accident at a landfill site in Mallusk in 2008. In 2011, the NICICTU health and safety committee, including the three of us who sit here, and members of this Committee commemorated Workers' Memorial Day by planting that tree in memory of David Layland. The event was attended by David's family — his mother, brother and father. Our lasting memory of that day was the continuing pain that is still experienced by that family. Three years on, time had not healed their grief. It was still raw. High-profile cases such as David's catch the public eye. Others' are less well known — on average, there are 10 a year — but those families' pain and suffering is just the same, only a lot less public.

We believe that that is what we must focus on when we look at changes to health and safety law. Will the change make a difference to accident prevention, whether it be minor, major or resulting in loss of life? If it does make a difference, we should endorse all such changes. However, if it does not, we must go back and ensure that it does.

As a safety rep, Seamus Larkin, who wished to be with us today, said that his aim was to ensure that the workplace where his colleagues earn their living is safe. Workers, whether members of a trade union or not, have a shared entitlement to return home from work safe and healthy to enjoy family life and prepare for work the following day. That is done through prevention. Time and time again, we hear that prevention is better than cure.

As a safety rep, he believes that information such as accidents statistics and RIDDOR reports play a key part in graphically indicating in which Departments and sectors, in which geographical areas, in which age groups and among which gender accidents occur. That then forms the foundation stone on which we base our policy and management strategy to seek further reductions and improved prevention. We battle year in and year out to get documentation on accidents from employers, with varying degrees of success. Thankfully, receipt of RIDDOR reports is one of our successes, initiating engagement that, more often than not, has a positive outcome. We believe that changing from three- to seven-days reporting will have a considerable detrimental impact on how we plan for prevention. Just because accidents are not recorded does not mean that they do not happen.

We have heard that it is generally accepted that there is under-reporting of accidents. We believe that the assumption that injuries that result in work absence of fewer than seven days are minor is seriously flawed. The assumption that all office work is low risk is also flawed. Seamus told us that, in an office, renovation works were mostly being undertaken at night to minimise risk and impact. One morning, a colleague tripped on cabling that had not been properly recased overnight. He banged his leg on the edge of the table, lost his balance, fell and hit his head, and will never work again. We do not believe that that represents low risk.

Having consulted with safety reps, I can say that the unanimous verdict is that we do not support the proposal. RIDDOR compliance is not, in our view, cumbersome or a burden on business. We do not understand how the proposals will improve the health and safety of those that RIDDOR is designed to protect. The consultation document offers no explanation of that.

The Chairperson: Thanks very much indeed for that. First, on behalf of the whole Committee, I convey our best wishes to Mr Larkin. I am sorry to hear that he has taken ill suddenly and admitted to hospital.

A number of issues popped up during your presentation. I heard you loudly, Geraldine, when you mentioned the question being asked about advantage to business but no question on advantage to workers. I am sure that we could seek some clarity from the Department on why that was not sought. Specifically, the issue that is extremely important is that no EQIA was done and that the proposed change is not compliant with section 75. Have you sought legal advice on that, or is that your considered view?

Ms Alexander: We did not seek legal advice on that specific issue, but, as you say, it is a very important flaw in the whole process, in that there was no Northern Ireland-specific EQIA carried out. What happened in GB was just applied here. That is a real fundamental flaw in the consultation process.

The Chairperson: It is crucial that we seek to establish from the Department why no EQIA was done, because, if it was not done, and if your assertion is correct that it is not compliant with section 75, that raises major issues.

In the submission that we received from NIPSA, there was a clear assertion about the proposals. It stated:

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

As you will have seen from the Hansard report, I put that clearly to the Department, and the response from a Mr Pinkerton was:

> *"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."*

Now, the Government may be satisfied with it because they are pushing it. Did you specifically seek out legal advice on that or about whether it was compliant, or was that assertion made having just looked at it?

Ms Alexander: European regulations, such as article 9 of framework directive 89/391/EEC and regulation EC 1338/2008 on community statistics on public health and safety at work, require employers to record all accidents that lead to an incapacitation of over three days and report them to national authorities in line with national laws.

There is no indication of how those requirements will be addressed if changes are made. In addition, it is not clear how the changes can be made under UK or Northern Ireland legislation, as 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 standards of health, safety and welfare. That is what the 1974 Act is about. We believe that this change to RIDDOR will not improve those standards.

The Chairperson: On those specific items that you outlined there in EU law, it would be very important that we establish whether the Department has sought specific advice on the issue that you

have just outlined. I am not talking about the Department just saying that it is all OK, but about whether it has received specific advice and what that advice has been. If it has not, it needs to.

Mr A Maginness: I would like to ask a question arising from that. The Health and Safety Executive for Northern Ireland gave evidence to the Committee on 29 November 2012. It seemed to me that they were saying that, no matter about the change in reporting, a record had to be kept of any accident that involved an absence of more than three days. That does not change. Therefore, would that not be consistent with the European regulation that you have just referred to?

This is not a trick question, by the way. I am just trying to find out —

Ms Alexander: There is a requirement not only to record but to report to the relevant authorities.

Mr A Maginness: Yes, but do the regulations state specifically the time that you have to report it within?

Ms Alexander: They just say in line with national laws.

Mr Flanagan: On this European legislation, I cannot see why this is changing. The sentence ends with the words "in line with national laws." If national laws change, does that regulation change?

Ms Martin: No. I would guess that the regulation does not change, but that it is left to the member states to administer it and interpret it whatever way fits with their specific laws and the changes in those.

Mr Flanagan: Has this change already happened in Britain?

Ms Martin: Yes.

Mr Flanagan: Has anyone challenged it in court?

Ms Martin: Not that we know of, as yet.

Ms Moore: The TUC has opposed it as well. Its response to RIDDOR was vociferous.

Mr Flanagan: But no one has actually taken it to court yet to see whether it is in line with European legislation?

Ms Moore: Not that we know of.

Mr Flanagan: It is interesting to look at the report that was commissioned by the British Government; good old Mr Young carried it out. If you do a bit of research on Mr Young you will find that he has quite a colourful background. He is continuing Maggie Thatcher's efforts to take down the trade union movement.

I might share some of his interesting history with the Committee to give members a bit of background. He was a member of the management board of a Thatcher think tank back in 1977. He was a special adviser responsible for privatisation. He was a Minister without portfolio in 1984 and was Secretary of State for Employment in 1985. He was central to the 1987 general election campaign and left the British Cabinet in 1989. He became deputy chairman of the Conservative Party and stood down upon the resignation of Margaret Thatcher. So, you can clearly see the people that he is aligned to and why this agenda is continuing today, but if you go back to the report that the British Government requested him to carry out, the purpose of it was to deal with the rise in compensation culture, along with the low standing that health and safety legislation now enjoys. What is proposed here is not going to address anything to do with the compensation culture, and it is not going to improve the low standing that health and safety legislation enjoys. So, how many of those changes are driven by the agenda that people like Mr Young have?

Ms Martin: We would guess that all of it is driven, on the basis of, one might argue, breaking the trade union movement even further, since we have been vociferous from the very start of this discussion on the changes to RIDDOR and any deregulation of health and safety law and the effect on workers

since, despite our best efforts, people still die at work. We have to recognise that there are other agendas at work, and, for the life of me, I and my committee cannot understand why this kind of attack on health and safety regulation is going to have anything but a detrimental effect on the worker.

Mr Flanagan: Have you not seen the considerable savings that are there to be made? There is massive money there to be saved. Business will save £41,000 over 10 years. It is huge money for businesses by putting all those lives at risk. Do you not think that is worth it?

Ms Martin: Absolutely, if that is your agenda — if you are the sort of person who believes that the people who work for you do not really matter as long as they make you a few pounds. On that basis, in 10 years, we ought to be putting wee boys back up chimneys.

Ms S Ramsey: You stole my line there.

Ms Martin: Sorry about that. You and I must have gone to the same school.

Mr Flanagan: This is being recorded by Hansard, so maybe those who are reading this may not pick up on my sarcastic tone, so I will just put that on the record. Returning to Mr Young, some of you may remember that, in more recent years, he was the man who started the controversy by coming out and saying that there are some who, since the start of this so-called recession, have never had it so good. He was subsequently forced to resign as an adviser to David Cameron.

Have you sought legal advice on the problems that you have had with the consultation, or is it just something that the committee is looking at as a committee?

Ms Moore: We have not sought specific legal advice on it. We do not have the resources that are at the Department's disposal, so that is not something that we have done, but we have considerable expertise to draw on to base our conclusions on, including, as I think we have all said, the conclusions of health and safety representatives who carry out their duties day and daily in the workplace. I should put on the record that, as a congress and as a health and safety committee, we work closely with the Health and Safety Executive for Northern Ireland on many issues, and we support very strongly no reduction in the budget of the Health and Safety Executive for Northern Ireland, as has been seen across the water, which is also probably an agenda of Lord Young, where we have seen the amount of unannounced inspections drastically slashed. So, we support the Health and Safety Executive, but we must say that we are very concerned by its approach on this issue, and we must put that on the record, while still continuing to work with it and support its work.

Mr Flanagan: So, just to be very clear, is it your request that the Committee reject this proposed change in the legislation?

Ms Moore: It is.

The Chairperson: Subject to a lot of clarifications that you have raised with us here today?

Ms Moore: Yes, absolutely.

Ms S Ramsey: You are welcome. Like the Chair, I pass on my best wishes to Seamus. My opening remarks were that we have come a long way from putting kids up chimneys or running knee deep in water in the mills, and we need to accept that. Part of that is down to the fact that the world is moving on, and part to the good work done by employers, employees, society and unions. So, we need to acknowledge that we have come a long way, but the reality is that there are still accidents. People may want to describe them as minor or major in the workplace. As to the point made around some of the minor issues, we hear reports of some of the stress and abuse that teaching staff take, so who defines those issues?

I am concerned about a couple of points. I am concerned that the Health and Safety Executive, in its presentation to the Committee, says that reporting over seven days rather than three:

"will probably knock 28% off the number of accidents reported to us."

That concerns me. Why would you do something that would knock off a sizeable percentage of incidents reported? Then it went on to say:

"In essence, that will not influence how we deploy our resources to identify priorities."

It does not explained how knocking 28% of things reported will not impact on how it deploys resources. I am concerned about that. If we are talking about being proactive, knocking that 28% off does not allow them to be proactive right across the board.

My other concern is that, in the report, without going into the history of the author, he indicates that changing the three-day rule to a seven-day rule is in line with people getting a doctor's line. I do not know anyone in this room who can get a doctor's appointment in seven days. We need to live in the real world, so that concerns me too.

The EQIA is there for a reason. However, on the issue of parity, when you say it is about parity with England, does that also include Scotland and Wales? Have you any idea what they are talking about doing?

Ms Martin: GB, generally, has changed this.

Ms Moore: Changes to the RIDDOR have gone across the three.

Ms Alexander: It has, yes.

Ms S Ramsey: Is that definite?

Ms Alexander: Yes. It is in Scotland, is my understanding.

Ms S Ramsey: Chair, can we check that out, and see what is happening in Scotland and Wales on this? The thing, then, about some of the presentations that we are getting is that there are general concerns around knocking that percentage off and all of that stuff. Even the Royal Society for the Prevention of Accidents say that it will have an impact.

In the previous mandate, I sat with some of the members on this Committee on the Employment and Learning Committee. We had similar employment issues coming up. At that time, I was Chair and Robin was Deputy Chair. We actually tried to bring the Department and the unions together on some of those issues and, once the discussion took place, we got things sorted out more quickly. Has the Department sat down with the unions to see what your view on this is and, how, by working through the issue collectively, people can sign up to the best way forward?

Ms Moore: No. We have not had any discussion on this with the Department.

Ms S Ramsey: There has been none of that?

Ms Martin: We would, of course, welcome the opportunity to influence the decision. We have always been keen to be part of a solution, rather than obstructive to one. However, that has not happened

The Chairperson: This is not a trick question, either. Have you sought a meeting with the Department to discuss this?

Ms Moore: No, we have not sought a meeting.

The Chairperson: It might be useful. Whoever blinks first.

Ms S Ramsey: I am even thinking prior to this even being put on paper. Sometimes, when you discuss an issue with people who you think will be your opponents, it works out more easily. So the Department did not take a proactive approach?

Ms Moore: No.

Ms S Ramsey: As to the 28%, that is scary.· Are they proposing that that would be 28% of minor accidents, or can it be anything?

Ms Martin: I guess that the 28% in its submission refers to the less important or less significant injuries. I am not certain that if you were one of the people who were off for three days because something happened to you at work, you would see it as insignificant. I suppose that it is, then, a bit subjective. Certainly, however, 28% is a big margin to just discount. Our issue with that was that there could be, in any workplace, a number of incidents that result in two or three days off work which will all fall below the radar. If that is not recorded, no pattern or trend will be picked up that people can then act on.

Ms S Ramsey: Chair, I suggest that we ask the Department. A number of months ago, I put a series of questions to all Departments because I was concerned that more people were employed to screen out policies around EQIA than to deal with EQIA. So, we can ask the Department for its rationale on why it was screened out. EQIA is there for a reason, as this shows.

The Chairperson: Absolutely.

Mr Frew: I want to add my sentiments to the gentleman, Seamus Larkin, who was unable to attend. I wish him all the best for a speedy recovery.

Members will have heard this before. I come from a background of 20 years in the construction industry. I was a foreman for 10 years. I have seen how health and safety has crept into the building site, and rightly so, over those years. Things are safer than they were back in 1991 when I first started. But it is also fair to say that, in my experience, the majority of accidents that I have witnessed have come from an action that an individual has taken. It is also fair to say that health and safety really only became serious when it became an industry in its own right and people were able to make money out of it. There is, whether you like it or not, a financial burden on companies to upgrade their materials, plant and education for employees. That is right and proper. That is the way that it should be. If Government can do something to ease a burden — if not financial, then regulatory — it should look at doing so. Is that not the case?

Ms Martin: Surely, then, if they are proposing changes to something that society's elected representatives voted for and is now an Act, there has to be some recognition of the other side of the coin before the decision is made. There had been no submissions on the effect that changes like that will have on the number of accidents or whether individual workers will suffer more. I, probably, hear more than anybody else in this room about how health and safety has gone so far up the road that it has met itself coming back. As chair of a committee, you get that no matter where you go. However, I have to say that I am happy to see deregulation if somebody can convince me that it will not impact on workers in Northern Ireland. I am yet to be convinced that there is anything but detriment to be had here.

Mr Frew: You could put that the other way round and ask them for proof that it will have detriment. I do not really see any credible evidence that it will actually affect individual employees with regard to health and safety. Companies that do this well — and there is a stark difference between the public sector, the private sector and, even, the agriculture sector, where this is nearly non-existent. Would it not be better that there should be a look at that, to try to improve the recording and monitoring of accidents, rather than try to keep something that will make us different from the rest of GB and will put an unfair regulatory burden on our companies? You talk about confusion. Would it not be more confusing for a company that straddles the entire United Kingdom if regulations on that very issue of reporting RIDDOR are different in Northern Ireland from they are in GB?

Ms Martin: The only thing that I can say to you is that I accept a lot of your points, but 28% of accidents that would normally have been reported to allow work to be done in those areas are going to be missing. How can that possibly give us any kind of confidence that we are moving in the right direction as far as workers' lives are concerned?

Mr Frew: But surely the people who will be implementing new change in their workplace will be the companies or the bodies in the public sector that will be effecting change in the first place. They will still have to have an accident book that will record, hopefully, all incidents. Whether it is a cut on the finger, a broken leg or a head injury, that will all still have to be reported in an accident book that sits in their office day and daily. So surely it is the companies themselves that do it well, and the public sector, which does it very well, that will always have those checks and balances in place, whether they have to report to RIDDOR or not. Surely that is where the change will take place.

Ms Moore: I will comment on the issue of burden. It is very interesting to hear your perspective, coming from the construction industry. Obviously, from the trade union perspective, our views are going to be about looking at the welfare and safety of workers, but, as I said in my presentation, we are not automatically opposed to any change in regulation. It is not that we are being obstructive. Our duty is to oppose changes that we believe will actually impact on health and safety. One of the points that were well made in the NIPSA submission was that the fact that the proposed change is that the incidents will still have to be recorded but not reported. We are saying that surely the burden of recording and reporting is not so much. I think, from the submissions that we read from Lord Young, that the actual process of reporting an incident is not overly burdensome or difficult. It is a relatively easy form to complete and submit to the relevant authorities.

We contend, and we hope, that the majority of workplaces and employers do not have significant over-three-day incidences and, therefore, the fact that we would keep it at three days would not make it overly burdensome. Geraldine might want to comment on this. One of the issues that we were considering was that, if you move it from three days to seven days, you have got the whole retraining aspect of having to record the incident but not report it. Then you have got the understanding and knowledge that the staff have. If we are not actually reporting an incident until one, two or maybe three years later, that understanding and knowledge is going to be lost. We feel that that burden is not overly cumbersome for employers.

Mr Frew: I have just one last question. In the private sector, it will be the large companies that are unionised and will have a health and safety employee to look after all of that, or, at least, they will have somebody in an office to look on it from time to time, but for SMEs in an industry where there is maybe only 10 or fewer employers, there will not be anybody dedicated to do that. You can understand why small companies will turn their face away from that if they can get away with it. Call it head-in-the-sand syndrome if you wish, but, basically, they will be scared of it if it becomes a burden. However, by extending the time, more smaller companies might look upon this as not something to be scared about and that it is not a scary process, because they will not have to do it as much and it will not be as big a burden on them. They might then look to do that right in future. I put it to you that this could actually improve the reporting to RIDDOR in the private sector.

Ms Alexander: Just on that point and the earlier point you made about reporting and the burden on business. If small to medium-sized enterprises avoid doing this and are only required to report seven days, they avoid it at their own cost, because prevention is important. Reporting the information to the relevant enforcing authorities gives them an idea of the safety culture in an organisation. That is key to preventing further ill health or injury to workers, especially in the long term. The important element is to ensure that we know the safety culture in an organisation, and the enforcing authorities can then implement prevention measures to address those so that the claims will not be taken in personal injury courts. The employer will then save money by not having claims taken against them because of early intervention and prevention.

Mr Frew: People are equating reporting with prevention. There is no link. There is not a company in this country that wants to see its employees damaged in any shape or form, and the very fact of a difference in reporting from three days to 10 days will not make one ounce of difference to the attitude of an employer towards their employees' health and safety. It is absurd that you could connect reporting and prevention. It just does not add up.

Ms S Ramsey: It makes a difference in the proactive approach that others have to take.

The Chairperson: We could come to that. Do you want to respond to that?

Ms Martin: I do not see that logic. If there is a pattern of a number of small incidents that result in a small number of days off work, that trend will be missed. The opportunity for the employer to have advice from the Health and Safety Executive and to have an inspector come and explain to him what he needs to do to put that right will be lost. That is how we implement prevention: by having somebody see what is happening and fix it before it becomes fatal.

Mr Frew: I put it to the panel that employers do not need a health and safety officer to tell them about trends in their workplace. They will see that.

The Chairperson: You have made your point well on that, Paul. A number of issues have emerged from that. While 99·9% of employers may be good employers who look after the safety and well-being of their workforce, I know families in which there has been a fatality.

Mr Frew: So do I.

The Chairperson: I know them very well. We have a duty of care to make sure that any potential that might exist for that is avoided. If patterns in a workplace that show that could be missed and could lead to difficulties further down the line where a family is left in a very difficult situation, we have a duty to prevent that.

Picking up on the course of the conversation here, I have asked for the reporting form that is used, for example, by the Assembly here to be brought in until we see it, and presumably that reporting can be done online. Secondly, in terms of the burden on business, any business that is having to do even one report a week of this sort has a problem. Any business that is flagging up more than one or two a year has a problem, if it is a small business. In terms of time and actual administration spent on this, I am anxious — I have never seen the form myself. That is why I have asked for it. I am anxious to see it and to see how long it would take to fill it in. If a firm is repeatedly filling these in during the course of a month or a year, it has a big problem, as will its workforce. It is a necessity for other people to be aware of that.

Mr Newton: I extend a welcome to the witnesses and echo your words, Chair, about Mr Larkin. I think you described him as the specialist, but you are acquitting yourselves rather well so far. I welcome your support for the Health and Safety Executive. Our primary concern as elected representatives must be for the health and safety of those employed in Northern Ireland and, indeed, around the management of risk because I suppose there are no environments that are completely risk free. I was going to say that, once you get out of bed, you are immediately at some level of risk. In all areas, we need to encourage a culture of health and safety.

Remarks were made about your ability, willingness or efforts to engage with the Department in this area. I think you indicated that you have not, thus far, done that. There are other voices in this field. I have not had contact with them but I imagine that the FSB, the Northern Ireland retail folk, the Institute of Directors, the chambers of commerce, and others who, in many ways, represent the employers, would also have a voice. Has your contact with them been extensive, is it ongoing or are you seeking meetings with them on the issues?

Ms Martin: No, we have not. Under current consultation arrangements, the trade union movement is inclined to put forward a response in the hope that those who are listening will look at the difference between a response from the CBI, for example, and from us. You are showing us that there is an area that we need to look at to see whether, in matters such as this, there is room to talk to others who make a submission, rather than allowing them to make theirs, and us making a counterargument. Perhaps we should have thought about that a long time ago, and it is useful to hear your thoughts on that.

We had discussions with the Department on health and safety issues but our problem with this was that it seemed a done deal in so far as we thought that anything that happens in GB is just rolled out here, no matter what we say. We talked about the opportunity and our committee was very much of a mind that this is our Assembly, it is here for a reason, and we ought to try to make the feelings of our own people known, because they understand our problems. That is what resulted in us being here. However, what you said is certainly a thought for the future.

Ms Moore: Congress has discussions with many bodies, including employers' representatives such as the CBI and the Federation of Small Businesses. We did not do that on this issue, but not for any particular reason. We welcome any discussion that may improve co-operation and reach a conclusion. We have an ongoing relationship with the HSE and have a forum in which we meet its chief executive and senior staff to discuss issues of mutual concern. That forum has not met to discuss this particular consultation, but the process is ongoing.

The Chairperson: Would it be helpful to find out from the HSE how many reports that fit the current three days have been made to it and from which sector, whether private, public or whatever? We could have a look at that ourselves, maybe for the past three years, just to see the scale of this. I presume that it is not that huge, but I might be wrong. Geraldine, did you want to make a point?

Ms Alexander: I did. Thanks, Chair. NIPSA — not the Irish Congress of Trade Unions — wrote to the Minister about the recommendations of not only Lord Young but Professor Löfstedt's report. We have been trying to engage with the Minister and the Department on this. For the record, we also wrote to all MLAs, raising our concerns about RIDDOR.

The Chairperson: Indeed. That is why you are here today.

Ms Martin: It may be that what comes out of a discussion about stats from HSENI about the three-day rule up to now will be that it was that bit of information that they dealt with to come up with the 28% figure. It will have looked over the past couple of years, but it certainly would do no harm to see which sectors are in there.

Mr Dunne: You have asked most of my questions, Chairman —

The Chairperson: We will have to get you in earlier, Gordon. *[Laughter.]*

Mr Dunne: Will you clarify your understanding of RIDDOR reporting and why you feel that it is essential? We need clarification on what is reported because not all absences from work are recorded; it is incidents and accidents at work. It would be useful if you would perhaps clarify that, and the real purpose of why you want such information recorded.

Ms Martin: Well, now we are seriously short of Seamus Larkin. *[Laughter.]* He is our expert on all things that are reported. Any incidents involving "injuries, diseases and dangerous occurrences" must be reported — anything that happens as a result of something in the workplace. The European directive describes it as:

"a discrete occurrence during the course of work which leads to physical or mental harm".

We could argue that somebody in bad form shouting a tirade of abuse at me in work is an occurrence.

Mr Newton: That happens here all the time.

Ms Martin: I could guess.

Mr Frew: Sometimes not enough. *[Laughter.]*

Ms Martin: I can imagine. The only thing about that is that if I am off work as a result of what happens to me, the Health and Safety Act places an obligation on my employer to record and report that. The Health and Safety Executive and the TUC are able to look at those figures and ask, "What is happening in that workplace? What do we need to do to stop this happening and becoming completely out of control?" That is why this has always been useful; it has been useful to prevent matters from getting any worse.

Mr Dunne: But is there a risk that there is over-reporting in certain areas at the moment? We all remember the old risk assessments. When they started, everything was risk-assessed. Nowadays, small organisations take it down to eight or 10 processes, which is manageable. Is there that possibility of over-reporting in some areas of incidents that really should not be reported and the result is that this is why they are trying to thin it out?

Ms Moore: I think that the evidence, even from the HSENI, is that there is, in fact, under-reporting rather than over-reporting.

Mr Dunne: It is probably under-reported in some organisations.

Ms Moore: Absolutely. As members have pointed out — we would also say it — some employers are very good and have very good systems. In other workplaces, for whatever reason, systems are not so good.

Mr Dunne: Would you agree that the public sector is good at reporting, while the private sector tends to be slower?

Ms Moore: That trend has been identified in the statistics.

Mr Dunne: Obviously, there are organised and paid union representatives in the public sector, and trade unions are active there. The committees are also there, and there is a health and safety ethos. The public sector may be over-reporting. We need to encourage more reporting in the private sector.

Finally, do you feel that an incident that is reported through the RIDDOR system is subject to tighter scrutiny and will be officially recorded and probably investigated? If there is a compensation case, could that be used in support of it?

Ms Moore: If an incident or accident happens and there is a legal obligation on the employer to report it, it is on the system, it is official and it rests with a reporting authority such as HSENI or a council. That is bound to be taken extremely seriously.

Mr Dunne: Are we aware of how many incidents were reported through the system, for example in the last calendar year in Northern Ireland? I think that is important.

The Chairperson: Earlier, I asked for the figures for the past three years.

Ms Moore: The HSENI handles that.

The Chairperson: We will establish those.

Mr Dunne: Is it possible that it is not a huge issue?

The Chairperson: That could be the case.

Mr Dunne: My assumption is that serious incidents are reported because they have to be reported. Incidents that cause serious injury — or death, obviously — must be recorded, and are recorded. However, do you feel that the risk is with more minor issues that are not being reported?

Ms Martin: I would be reluctant to call them "minor issues". To give the Committee an example, over the past number of years, stress in the public sector was under-reported. Many people who were stressed because of something that happened at work went to their GPs and got sick notes that said something like "flu" on it, rather than being seen to be stressed. They saw that as some kind of weakness or a way of letting their employer think that they could not do the job. Since reporting has shown that stress is almost endemic in the public sector, small amounts of sick leave —

Mr Dunne: In the public sector?

Ms Martin: In the private sector also. However, in the public sector, there is a huge problem with stress. That reporting led the Health and Safety Executive to create the health and safety stress-management standards to help employers look at where stress can occur and how to manage it better. That has made a big difference for all employers. They now have a template from which to work to ensure that they are removing —

Ms S Ramsey: There is the issue of bullying in the workplace as well.

Ms Martin: Yes. The stress management guidelines came out of the reporting system directly so that we can now identify the patterns and clear them up.

Mr Newton: A remark was made about the role of GPs. We are being reported by Hansard, but the remark was that a GP may give you a flu sick line when he or she believed that you were suffering from stress.

Ms Martin: I do not think that that was what I was saying.

The Chairperson: Do you want to clarify that?

Ms Martin: For clarification, people will go to their GPs and tell them that they feel unwell, that they are not sleeping properly, and that they think they have flu. They may then describe symptoms a GP would believe to be flu, when they did not want to tell the GP that they were stressed at work.

The Chairperson: There was an underlying —

Ms Martin: Yes; that there was an underlying problem.

The Chairperson: Thank you for that clarity.

Ms Martin: Thank you for helping me clear that up.

Mr A Maginness: I remember well the event to commemorate David Leyland in the Assembly, which was very moving. It was a terrible accident. He was literally drowned in a sea of rubbish, crushed and suffocated. It was an appalling accident, and I think that it is important to remember the dangers that people sometimes face in the workplace.

In any event, we are discussing these changes. A fatal accident will, of course, be reported as soon as possible, so we can count those out.

I come from a legal background. That is relevant because I dealt with many accidents in the workplace. The changes in regulations in the workplace have revolutionised health and safety in Northern Ireland. Those have been very largely inspired by European regulations, which have insisted on the assessment of risk at every level in the workplace. I think that that is right and proper. That places a burden on employers and on some employees, but I think that it is an acceptable burden. No one is saying that the regulations are not burdensome, but the degree to which they are burdensome is very limited, financially and administratively. I cannot see why reporting within 10 days an accident that has caused an absence of three or more days is so burdensome. You will record it anyway and you have to record it in detail. It is just a simple matter of sending it by e-mail or letter to the Health and Safety Executive.

What worries me is the evidence given by representatives of the Health and Safety Executive on 28 November. They seemed to be supportive of the changes that were proposed by Lord Young's report, etc. I am uncomfortable with that. I found them very impressive people who are very concerned about safety in the workplace, yet they were supportive of the changes. However, I could not find any great rationale in their thinking, except that they were simply following the British model, which may or may not be good. However, that is irrelevant; we will make up our minds here in any event.

During the course of their evidence, they said that reports from the agricultural sector were poor. It was quite evident in their evidence — it was given in the context of the terrible tragedies that took place on farms — that they were very concerned about the agricultural sector, because of the high level of fatalities. You could draw a link between accidents not being reported in the agricultural sector and the increase in the number of accidents that incur fatalities and serious injuries. There is a link there that I draw that to the attention of the Committee and the panel.

I think that we should be seeking our own advice on the law. I am not convinced that what is being brought in in Britain is contrary to European law. I think that it will stand up to scrutiny, but we, as a Committee, should at least check it, because once the changes go through, there is nothing we can do about it, and they could be challenged in the courts.

I am with you in general terms, and I suppose the question is this: does reporting mean that patterns of difficulties in the workplace are picked up and that they represent an early warning in relation to potentially more serious accidents?

The Chairperson: On the back of what Alban has just said, it might be useful for the Committee to ask Legal Services to check out the European aspect of that. Sue and Paul want to make brief points before we conclude.

Ms S Ramsey: Chair, I do not know whether this in order, but I am conscious that Seamus is not here. The meeting is being reported by Hansard. Would it be in order, all being well with Seamus, to give him the opportunity to respond to some of the points that we have made, once the Hansard report is published?

The Chairperson: The witnesses will pick it up in the Hansard report; they will receive it. If there is anything that you think should have been said but was not, due to Mr Larkin's absence, and which would supplement what you have said, feel free to let us know.

Ms Moore: Thank you for that.

Mr Frew: I support that, Chair, because I think it would be useful to have his expertise and views.

One issue that we have not covered, and on which I am keen to hear your views, is presenteeism. Alban brought it up previously. It is an unacceptable spectre and practice, if it exists, and I am sure it does, whereby people are forced back to work before they are better. How do you view presenteeism? Is it a big issue? If it is, how will it sit with regard to the new changes here, if they are implemented? Will it mean that companies that dabble in that unacceptable practice will force the employee back to work on the fifth day rather than on the second day and, by a fluke, eradicate the pressure or practice in any way?

Ms Moore: I do not think that we have any solid research on that issue, unless my colleagues beside me have something. Anecdotal evidence suggests that, at times, people feel pressured to return to work before they are fully ready. We can all sympathise with that issue. Certainly, as trade union representatives, we say that that is unacceptable in many ways, not least because somebody who is back to work before they are fully well is not only at risk, but less productive. The rise in stress in the public sector, and, of course, in the private sector, which Barbara spoke about means that people feel forced to return to work.

The impact of austerity measures, through which we are going to see further redundancies, particularly in the health sector and public sector, will mean that people will be carrying additional burdens and will have to return to work to carry out their roles. That is of concern to us. We have not fully risk-assessed whether the RIDDOR changes will have an impact on that, but I do not think that that likely impact would influence our view that the changes are wrong and that we oppose them. That is our primary point. Of course, we would want to consider any issues that emerge.

The Chairperson: Presumably, your views on the proposed extension of the time period for submitting a report from 10 day to 15 days will be an extension of your existing views. Do you have anything specific to say about that for the record while you are here?

Ms Martin: I have to add that it leaves room for under-reporting. The longer that you leave something sitting, the more likely that you are not to bother sending it because it is regarded as not important any more.

The Chairperson: OK. Thank you very much for your time today. I found it very informative. Best wishes to your colleague; I hope that it will be a speedy recovery.

Ms Martin: Thank you very much, Chair and Committee members.