



The manufacturers' organisation

**EEF Response to the HSC Discussion
Document on The Review of the Reporting
of Injuries, Diseases and Dangerous
Occurrences Regulations 1995 (RIDDOR)**

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**Consultation
Response**

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ABOUT US

EEF, the manufacturers' organisation, has a membership of 6,000 manufacturing, engineering and technology-based businesses and represents the interests of manufacturing at all levels of government. Comprising 11 regional Associations, the Engineering Construction Industries Association (ECIA) and UK Steel, EEF is one of the UK's leading providers of business services in health, safety and environment, employment relations and employment law, manufacturing performance, education, training and skills.

INTRODUCTION

EEF understand that this review is taking place as a result of a commitment made by the HSC in the 'Revitalising Health and Safety Strategy Statement'. Our members are well aware of the shortfalls of RIDDOR as outlined in the Discussion Document and welcome the Commission's decision to make this a fundamental review of the entire reporting structure from first principles. However, it is important to remember that there are positive as well as negative aspects to the reporting structure. Care should be taken to retain aspects of the system which work well whilst evaluating the areas of concern and proposing changes to address these.

Discussion Part 2 – What are the key objectives of RIDDOR?

EEF agree with the key objectives for any future revised reporting system as set out in paragraph 34 of the discussion:

- to provide information to guide the enforcing authorities' regulatory activities; and
- to meet relevant specific legal obligations

Currently many different groups of people use information from RIDDOR reporting in different ways, however the principles of simplicity, clarity and fitness for purpose must prevail. Ultimately the data which is generated from RIDDOR reporting is intended for use by the enforcing authorities. Consequently, this must be the main focus for the review and other considerations should be secondary.

The discussion document sets out the ways in which data from the RIDDOR system is used in the whole spectrum of Regulation to:

- Identify incidents which require investigation in order to prevent reoccurrence and hold duty holders accountable where they have failed to meet their legal obligations
- Provide intelligence for the development of proactive strategies and the targeting of regulatory effort to areas where it will deliver the greatest benefit
- Generate statistical information for tracking and reporting purposes

There is an obvious value to each of these activities, and this underpins the continuing need for a statutory requirement to report incidents under criminal law, with sanctions for non compliance. However, EEF members are strongly opposed to the suggestion that 'alternative penalties' such as administrative fines or fixed penalty notices should be included in a revised reporting system. We are not aware of any evidence that such penalties encourage compliance. Indeed in the case of RIDDOR reporting it would be the duty holders that do make reports who would be likely to suffer a penalty, perhaps for late reporting or inadequate information. This would be a disincentive to submitting a report and would be more likely to reduce the overall number of incidents reported than to increase it. This would be counterproductive, as the review has already established that the enforcing authorities need the data generated by RIDDOR reporting.

Under reporting of incidents which should be covered by RIDDOR is often not due to any wilful act of non-compliance, but is actually a product of ignorance, misunderstanding and confusion among duty holders over the actual requirements of the regulations. Rather than imposing penalties it would be more advantageous to make it easier for duty holders to report, and to communicate to them the benefits of investigating and reporting incidents. This could raise the profile of the reporting system, improve duty holder understanding and thus generate better data to feed the regulatory process. There will always be a need for penalties to be used to address wilful or repeated non-compliance, however the existing provisions in RIDDOR appear to meet this requirement and should remain largely unchanged by the review process.

We understand that some 80% of enforcement action taken by the enforcing authorities is initiated by a RIDDOR report. However it is estimated that only 42% of businesses make reports under the regulations. Thus the enforcing authorities are only engaging a small section of the business community through enforcement activity. It could be argued that they should be actually be targeting the larger percentage of companies, in targeted sectors, which do not currently submit reports in order to engage these organisations in the enforcement process, rather than concentrating on those which do report and are already engaged. Consequently EEF believe that the review of RIDDOR should form part of a broader change in direction with regard to the way in which enforcing authorities direct their resources.

There is much discussion in the document around the ways in which duty holders use RIDDOR information to drive recoding and investigation of incidents, to monitor and benchmark their health and safety performance and to promote their organisations in terms of good management and CSR. The discussion goes on to consider whether it would be advantageous to strengthen the link between the reporting regime and the Management of Health and Safety at Work Regulations 1999 in order to drive duty holder behaviour in any of these areas.

The discussion document identifies early on that the primary objective of the review is to ensure that the reporting system meets the needs of the regulator, and at this stage the review should confine itself to this objective. To be successful the revised reporting system needs to be simple, clear and easy to understand. This can only be achieved by concentrating on one key set of objectives. There would be significant potential for the system to become cumbersome and over-complicated if it was to attempt to address the needs and objectives of all stakeholders. Therefore we urge the HSC to build a system around the stated key objectives and to consider all other requirements as secondary concerns. Stakeholders will be able to evolve their own systems to complement the statutory reporting structure and will continue to use the statistics generated by the system for internal monitoring.

In terms of driving duty holder behaviour, the HSC needs to consider whether this fits within the scope of HSE activities and the principles of better regulation. There are already basic duties imposed on duty holders to record incidents and to report certain types of incident under RIDDOR. There has been discussion around the possibility of a specific duty to investigate accidents, and HSE have issued guidance to assist duty holders in this task. To go further than this would be an extension beyond the role of the health and safety authorities and could prove to be an excessive burden on businesses, the majority of whom already operate effective health and safety management systems which make provision for the recording, investigation and reporting of accidents.

The discussion document identifies that data generated by the RIDDOR system is the primary source of statistical data on injuries, ill health and incidents. This statistical information is used by the HSE and by Government to track trends, inform guidance on prevention and to deliver assistance in areas where there is a high occurrence of incidents. It also forms the basis of published statistics and statistical reports made to the EU and internationally. The discussion questions whether RIDDOR is the best

source for this data and suggests that other sources could include the Labour Force Survey, HSE's new Workplace Health and Safety Survey (which is currently under trial) and the various physician led reporting systems.

RIDDOR is currently the only source of mandatory data on injuries, ill health and incidents sourced directly from employers. It therefore does have significant value and makes an important contribution to the data pool, although it is acknowledged that the system does have faults. Other data sources also have value, but they too have limitations. It is widely recognised that the injury and ill health data from the Labour Force Survey can be flawed, as it is purely subjective, leads to estimates of risk being used as absolute figures and is not validated for accuracy. The physician reporting systems only generate data from a voluntary group and do not necessarily reflect every aspect of occupational ill health as only a small percentage of the total workforce is covered, and the workplace health and safety survey is still under pilot, so its value as a data source remains unproven for the time being. The obvious solution is that data should continue to be gathered from all of these sources and used to create a data pool from which statistics can be drawn to meet all of the identified needs. As time goes on the effectiveness of each of the contributory data sources can be monitored and evaluated so that future decisions on data sourcing can be made from a position of strength and knowledge.

The final area of discussion in this section of the document focuses on legal obligations under British and European law and potential international obligations. The discussion identifies how RIDDOR reports of a fatality trigger action by the Coroner or Prosecutor Fiscal Service. This must obviously be incorporated into any revised reporting system. The discussion also identifies the potential for international obligations which may make further requirements around the reporting of injury, illness and incident statistics. The review should examine these areas in detail and ensure that the revised reporting system is structured so that it will be able to enable the enforcing authorities to meet these requirements should they be formalised.

On consideration of all of the issues and requirements set out in this section of the discussion document, the outcome is clear. Any revised reporting system arising out of this review process should focus primarily on the need of the regulator to:

- Provide information to guide the enforcing authorities regulatory activities and focus resources; and
- To meet relevant specific legal requirements (including those related to international reporting)

Any other considerations should be secondary to these core objectives.

Discussion Part 3 – Current Issues for RIDDOR

The second section of the discussion document draws attention to some of the problems associated with the current RIDDOR system.

The document suggests that there is a significant level of under-reporting of injuries, illnesses and incidents which should be covered under RIDDOR. This statement is qualified by references to disparities between RIDDOR statistics and the results of the Labour Force Survey and some commissioned surveys from the 1990s, although it is also acknowledged that reporting levels are better in major hazard industries than in other areas of business.

The document suggests that under-reporting and poor quality reporting mean that RIDDOR fails to meet the requirements of the enforcing authorities. It suggests that one answer would be to conduct and

enforcement blitz and that the other would be to use the Workplace Health and Safety Survey to plug the data gap.

Both of these suggestions are flawed. It is the opinion of EEF that the majority of under-reporting is due to ignorance and lack of understanding, particularly among small and medium sized enterprises. An enforcement blitz would not address this, and would risk further alienating employers from the enforcing authorities. It would be far more effective to direct resources towards building long-term relationships with businesses in the community, using business support organisations and banking firms to assist in the proactive engagement of duty holders.

The RIDDOR system is complex and some of the definitions within the regulations are not clear. Duty holders are often confused about the situations in which they should make a report to the enforcing authority, or indeed about the mechanisms which are in place to help them do so. The review should concentrate on clarifying the reporting requirements and on simplifying the definitions contained within the regulations to make it the whole system clearer, simpler and easier to understand.

The Workplace Health and Safety Survey system is still under trial and its value as a source of data remains unproven. Once established, this system may have a role to play in supplementing the information generated by the reporting system, but for the time being it should be kept under review until its effectiveness can be properly evaluated.

The discussion goes on to consider in particular the significant under-reporting of occupational diseases and cases of ill health under the RIDDOR system. It is widely accepted that this is the case and that reporting is hampered by:

- the strict criteria and trigger for reporting
- the limited range of diseases and work activities included in the regulations; and
- the difficulty in establishing causal links which tie the illness to the workplace

The discussion considers whether data collected from other sources such as physicians reporting and the DWP industrial injuries scheme and information from new initiatives such as Workplace Health Direct, could replace ill health reporting under RIDDOR. These schemes cannot replace the immediacy and independence of RIDDOR reports, and this is vital in identifying 'clusters' of similar occurrences in disparate parts of the country or employment sectors and the potential links between them in order to drive proactive prevention and targeted initiatives. All of the schemes operate based on a different list of recognise occupational illnesses so there is no consistency between them. The picture is confused, but that does not mean that there is no value in the information which is generated. Is it worth observing here that on occasion regulators own use of reported data lacks sophistication. This can be illustrated by a member company which informed HSE to expect to receive increased numbers of HAVs reports. This was due to an initiative on this issue within the business. However, every time a report was subsequently submitted an inspector was sent out to investigate.

EEF are always keen to welcome initiatives for joined up working in Government, and feel that there is potential for a harmonisation of the lists of illnesses covered by all of the reporting systems mentioned in the discussion document. The principles of clarity, simplicity, and relevance to the modern workplace should prevail and ideally the review should aim to produce a standard list which could be incorporated into all of the reporting systems. Once this is in place, an education campaign could help to address the lack of knowledge and understanding of reporting requirements among employers and healthcare professionals, including GPs who would need training in diagnosing a number of work related conditions. This should lead to a significant improvement in the quantity, quality and consistency of the data

generated by the reporting systems. Again, there is value in that which already exists, although it is not perfect, and we would recommend building on these established foundations rather than discarding the present system in favour of a new and unproven regime with the risk of having no system at all providing any data.

There are similar concerns around the reporting of dangerous occurrences. The current regulations include a very specific list of reportable situations which are also linked to particular circumstances of occurrence, many of which originated in the Factories Acts. The result is a confusing picture which leaves many employers unsure of whether they should report particular situations or not. Generally compliance is better in more highly regulated industries where specific reporting requirements are more common and better understood.

The discussion underlines the particular importance of dangerous occurrence reporting, which is designed to obtain real time information about incidents which happen relatively infrequently, but have high potential to cause significant harm. There are few other data sources for this information, and again, although the HSE suspect that there is significant under-reporting, they value the information that they do receive and use it to drive proactive improvements in order to prevent harm from occurring.

EEF are supportive of the suggestions within the discussion document that the list of reportable dangerous occurrences should be significantly reviewed and believe that a more generic list of reportable occurrences would be a big step forward. However, we do feel that this list of occurrences should be reportable in respect of all workplaces, and not confined to use with major hazard industries as this data has value to all sectors of business. The discussion also suggests that a list of a small number of generic 'reportable' occurrences could be used as a meaningful measure of performance in major hazard industries. Here we urge caution. It seems counter productive to limit the scope and source of data which the review process has already identified as valuable to the regulator. In addition to this we feel that it would be difficult to draw up generic criteria which would be a meaningful measure of performance across vastly different operations and there would be the potential for misleading data to wrongly direct regulatory activity.

We suggest that at this stage of review the appropriate action would be to amend the list of reportable dangerous occurrences within the principles of clarity, simplicity, and relevance to the modern workplace, to promote these through an education campaign to ensure widespread understanding and compliance, and then to monitor the situation over a period of years to inform a further review of the criteria at a later date.

The discussion goes on to consider the issues of inaccurate compliance and inadequate reporting.

It is common for duty holders to misunderstand key definitions within the current RIDDOR system and this creates confusion around when they should make a report. The definitions of an 'over 3 day injury' and a 'major injury' are particularly problematic, as are the descriptions of some reportable dangerous occurrences and occupational illnesses.

The solution here is to review these key definitions within the principles of clarity, simplicity and ease of use. There may also be an opportunity to adjust the reporting system in this country to better compliment those used in other parts of the world. The definitions and reporting requirements set out by OSHA are widely accepted throughout the world. EEF recommend that HSC consider whether the revised reporting system in the UK could be designed to complement the OSHA system. This would be a significant benefit for UK firms which are part of global organisation or trade internationally as it would ensure consistency of approach in terms of injury, illness and incident reporting.

The discussion identifies that reports which are submitted under RIDDOR are often inadequate in terms of the detail that they contain. The document suggests that this could be addressed through modifications to the reporting form, and EEF strongly support this suggestion. The current form (F2508) does not clearly identify the information which should be supplied in each section and the review of the reporting system now presents a welcome opportunity to address these shortfalls. Following the Hampton Review, much work is being done in Government to consolidate and simplify reporting documentation. We recommend that the HSE utilise the experience and expertise of other government departments in revising the RIDDOR report form to ensure that becomes specific, clear, concise, relevant and easy to use. It would also be an advantage to design the form so that it is well suited to electronic completion as the current one does not adapt well for use with modern technology. The new form should be designed specifically to guide duty holders in supplying the core information which is of greatest use to the enforcing authorities. If necessary a guidance sheet should be included to assist in this process.

Discussion Part 4 – Proposals for Change

This section of the discussion document sets out 4 proposals for change and invites comments on each of them although it also acknowledges that the list is not exhaustive and also welcomes any additional suggestions from respondents.

Proposal 1 – Remove the current requirement on duty holders to report occupational diseases

EEF do not support this proposal.

It is accepted that there are inadequacies with the current data, and that these are largely attributable to the criteria and methodologies which are set out in the current regulations. These issues could be easily addressed through the review process.

RIDDOR occupational health data does have value and should not be discounted. It is the only 'real time' source of data submitted directly by employers and cannot be replaced by the other data sources discussed in the document, particularly in terms of the identification of 'clusters' of illness which can then drive proactive intervention to limit reoccurrence.

As suggested in our response to Part 3 of the discussion document, we feel that the reporting process for occupational ill health should be reviewed and simplified. The list of reportable occurrences should be harmonised with those used in physician's reporting and by other government departments eg. the Industrial Injuries Advisory Council List of Prescribed Diseases. This will improve consistency and allow data from all of the systems to be combined to inform statistical analysis and reporting. There are some significant areas of potential work related ill health which are not covered by any of the established reporting system, for example hearing loss due to workplace noise. The review should examine whether illnesses such as these can be incorporated into the list of reportable occurrences.

The next stage would be to promote the revised system across the health care sector, and in particular to GPs, in order to address the widespread confusion over the reporting requirements. The HSC could even consider making it mandatory to report certain occurrences as is the case with regard to the Road Traffic Act.

It may also be advantageous to consider whether reports of occupational ill health really need to be initiated by a doctor, or whether it would be appropriate to also allow qualified occupational health nurses to take on this role. Qualified Occupational Health Nurses are taking an ever more active part in the provision of occupational health services, and often have a better knowledge and understanding of the

workplace than a GP so we feel that it would be entirely appropriate for them to take on a role the reporting system.

Retention of occupational ill health reporting, operated through a revised system has the potential to generate meaningful data for the enforcing authority, in line with the stated aims of the review. It would also be timely and has the potential to be complementary to other initiatives which are being launched to raise the profile of work related ill health in general. There is a drive to promote rehabilitation in the UK and to limit the number of people who are out of work and claiming benefits for health reasons. A revision of the reporting system would present a good opportunity to gather statistics to assist in monitoring of these initiatives and communication of the system would be an effective way to raise awareness and promote proactive management of work related health issues among healthcare workers and employers. Elimination of occupational ill health reporting from RIDDOR would undermine these initiatives and send mixed messages to business. On the one hand they are being told to focus on occupational health issue, but then on the other hand HSC would be abolishing reporting requirements.

Proposal 2 – Remove or make changes to the current reporting requirement on duty holders to notify and report dangerous occurrences

EEF are supportive of a fundamental review of the requirements on duty holders to report dangerous occurrences. We feel that the lists of reportable occurrences, and the industries covered by the reporting requirements should be brought up to date, consolidated and re-written to ensure that they are relevant to the modern workplace.

We are supportive of the proposal to draw up a short generic list of reportable occurrences, and of moves towards a goal setting approach, however we would like to see these requirements applied universally and not just to major hazard industries.

We are sceptical about the suggestion that reporting under a few generic headings could be used as a measure of wider health and safety performance to inform the regulatory process. This would represent a significant departure from the current role of RIDDOR reporting and a move into a potentially controversial field. If the HSC wishes to progress this initiative we would suggest that it should be the subject of a specific consultation exercise which would allow detailed proposals to be evaluated and discussed by all key stakeholders in a formal manner.

Proposal 3 – Remove the Current Reporting Requirement on Duty Holders to Notify and Report ‘Major Injuries’ Replacing it with a Requirement to Report and Record all Work-Related over 3 Day Injuries

EEF do not support this proposal.

Removing the duty to notify and report major injuries will eliminate a data stream which the discussion has identified as being of importance to the enforcing authority. This is the facility which allows inspectors to obtain real time data about an incident so that they can decide whether they need to investigate immediately or await a full report from the duty holder.

The definition of what constitutes a work related over 3 day injury is widely misunderstood and is the cause of much of the inaccurate compliance which the discussion document references in part 3. It would not be helpful to replace one set of misunderstood criteria with another.

The review should concentrate on making the definitions of the categories of reportable injury clearer and easier to understand. It should also review the list of reportable major injuries in order to ensure that it is clear, concise and relevant to the modern workplace.

In the longer term the review should consider whether it would be useful to harmonise the reporting requirements in the UK with those set out by OSHA. As discussed in our response to Part 3 of the discussion document, this could be very beneficial for businesses which are part of global organisations and to those which operate internationally, and would also help to ensure some consistency in terms of the statistics which we share with other countries.

Proposal 4 – consider whether to make ‘at work’ work-related road traffic accidents reportable under RIDDOR

EEF are undecided on this proposal, as the discussion document does not clearly identify the desired outcome.

EEF do support and promote the effective management of occupational road risk as part of a proactive health and safety management system, but in line with the principles of better regulation we are keen to avoid duplication of responsibility and additional burdens on business and on enforcing authorities.

The principle underpinning reporting of work related accidents is to facilitate investigation and to inform the regulatory process through the collation of statistics. Many road accidents are already investigated by the police, and they do now record whether drivers were engaged in work activity at the time of the accident in order to build a data bank. Consequently it would seem excessive to require duty holders to additionally report these accidents under RIDDOR, to prompt additional investigation and data collection by the health and safety enforcing authorities. The resources of all the enforcing authorities are finite and should be deployed where there is the greatest need, or the potential to deliver the greatest benefit. Another area for consideration is that a number of the factors which may contribute to a road traffic accident are outside of the control of an employer. It may not therefore be appropriate for these accidents to be investigated and reported in the same way as those which occur within the workplace, and therefore within the control of the employer. The review must consider these tests in further evaluation of this proposal.

The Proposed Way Forward

The discussion document sets out proposed short to medium term goals as follows:

- remove the current requirement on duty holders to report occupational diseases;
- overhaul the dangerous occurrences requirements and make them more goal-setting
- strengthen the links between RIDDOR and the Management of Health and safety at Work Regulations 1999; and
- work in partnership with other government departments and public bodies like the NHS

EEF do not feel that these proposed goals would meet the objectives of RIDDOR as set out in Part 2 of the discussion document.

Removal of the requirement to report occupational diseases will eliminate an existing source of valuable, if limited, data, some of which cannot be duplicated by alternative systems.

Strengthening the links between RIDDOR and the Management of health and safety at Work Regulations 1999 will not alter the quantity or quality of the information submitted to the enforcing authorities, but may place additional administrative burdens on businesses contrary to the principles of better regulation.

In contrast the remaining two proposals do have the potential to make a positive contribution towards the objectives of RIDDOR in a limited way.

Overhauling the dangerous occurrences requirements and making them more goal setting should improve clarity, and applicability and therefore make it easier for duty holders to know which occurrences they should report and when. This has the potential to improve both the quality and the quantity of reports submitted to the enforcing authorities, provided that the changes are communicated effectively to duty holders.

Improvements in partnership working across government are always welcome. In the case of RIDDOR this presents opportunities particularly in the field of occupational health. Harmonisation of the lists of reportable illnesses and a merger of data from several sources could potentially promote a significant improvement in both the quality and the quantity of the data available to the enforcing authorities.

CONCLUSION

EEF would propose that HSC consider the following as key short to medium term proposals for the RIDDOR Review:

- Review of the list of reportable diseases in order to make it simpler, clearer and more relevant to the modern workplace
- Review of the definition of over 3 day accident and the list of major injuries in order to make them simpler, clearer and more relevant to the modern workplace
- Review of the list of dangerous occurrences to make them simpler, clearer and more relevant to the modern workplace, possibly including a move towards a more generic and goal setting approach
- Review of the reporting form to more specifically request the items of information which are of most interest to the enforcing authorities as well as making it simpler, clearer and easier for a duty holder to complete effectively.
- Work in partnership with other government departments and public bodies
- High profile campaign to communicate the changes to all stakeholders including businesses, enforcers and healthcare providers. This should also identify the positive benefits of incident recording, investigation and reporting and the key requirements of the legislation

We feel that these proposals would deliver greater benefit in terms of the objectives of RIDDOR. They would have the potential to deliver a significant increase in the quality and the quantity of the reports submitted under the regulations, and would leave the way open for longer term goals to address other issues such as:

- the criteria and mechanism for reporting occupational ill health
- opportunities to make reporting requirements in the UK more consistent with those operating internationally
- ways in which new initiatives such as Workplace Health and Safety Survey and Workplace Health Direct can contribute to the process of data gathering
- whether work-related road traffic accidents should be reported under RIDDOR

EEF will look forward to engaging with the HSC on the next stage of the review process and in formal consultation on their proposals.